

FINDINGS

The *State-by-State Report on Authentication of Online Legal Resources* is essentially an answer to the question: ***How trustworthy are state-level primary legal resources on the Web?*** The report and the Authentication Survey on which it is based investigate which government-hosted legal resources on the Web are *official* and capable of being considered *authentic*.

The Authentication Survey investigated six sources of law: state administrative codes and registers, state statutes and session laws, and state high and intermediate appellate court opinions. The summary answer to the question of their trustworthiness is: A significant number of the state online legal resources are *official* but none are *authenticated* or afford ready authentication by standard methods. State online primary legal resources are therefore not sufficiently trustworthy. Citizens and law researchers may reasonably doubt their authority and should approach such resources critically.

The emergence of online *official* legal resources is a positive development, providing that the publications are actually trustworthy. To be trustworthy, digital materials – vulnerable to lapses in management and control, corruption, and tampering – must be equivalent to print *official* legal resources. To be equivalent, they must be *authentic*. Some states cast online legal resources in a facilitative role, intending citizens and law researchers to use such materials as a means to identify law they must take steps to verify elsewhere. This is a misleading and self-defeating role for government information. As fully demonstrated in the detailed findings below, some online sources now replace print *official* legal resources. For states to rely on an approximation of the law – even one “good enough” most of the time – completely fails in its role where the online source is the sole *official* statement of the law and is not authenticated.

Definition of Online *Official* Legal Resource

An online *official* legal resource is one that possesses the same status as a print *official* legal resource. The concept of an *official* legal resource applied to print publications is well established. Print *official* legal resources have generally served as a touchstone for authoritative and reliable statements of the law.

The working definition of *official* legal resource, drawn from the latest editions of *Black’s Law Dictionary* and *Fundamentals of Legal Research* and adopted as a guide to survey participants, reads:

An *official* version of regulatory materials, statutes, session laws, or court opinions is one that has been governmentally mandated or approved by statute or rule. It might be produced by the government, but does not have to be. (Instructions for Completing the Survey Form

and Summarizing the Situation in your State, reproduced as Appendix D-2.)¹

This definition is firmly rooted in the print world. Now, however, the survey results make it evident that the very concept of an *official* legal resource fits print much more easily than online sources of law. Insofar as courts and public officials turn to *official* legal resources for authoritative and reliable statements of the law and require citation to such sources in the documents that come before them, the operative element of *authenticity* is implicit in the definition. The fixed nature of the print medium, coupled with the paper publication's multiple copies and wide distribution, ensures that the print *official* legal resource, as "governmentally mandated or approved by statute or rule," is an *authentic* resource. An online *official* legal resource offers no such automatic assurance.

Definition of Online *Authentic* Legal Resource

The Authentication Survey investigated the *authenticity* of online legal resources as a separate and distinct question – as, indeed, a complete analysis requires. The survey borrowed from the definition of terms contained in the *Authentication* white paper² prepared by the U.S. Government Printing Office to outline that agency's designs for a

¹ See BLACK'S LAW DICTIONARY 1327 (8th ed. 2004); ROY M. MERSKY & DONALD J. DUNN, FUNDAMENTALS OF LEGAL RESEARCH 11 (8th ed. 2002); see also PROGRAM DEV. SERV., OFFICE OF INFORMATION DISSEMINATION, U.S. GOV'T PRINTING OFFICE, AUTHENTICATION (2005) (agency white paper), at http://www.gpo.gov/su_docs/fdhp/pubs/proceedings/05fall/authentication_white_paper_oct05.pdf (hereinafter cited as AUTHENTICATION WHITE PAPER and reproduced as Appendix C).

Note that there are very few sources that define the word *official* in the context of legal resources. 2 NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION (6th ed. Dec. 2001 Rev.) helps to clarify the legal role played by *official* legal sources. In connection with statutory materials, Singer asserts that being labeled as *official* does not "afford any definitive means for discovering the legal effect" such resources may have. *Id.* § 36A:5. "Whatever legal effect [official statutes] may have must be derived from statute. There is considerable variation among the states having collections of this nature in regard to the authenticity which their collections possess." *Id.* Statutes designated as *official* vary in the extent to which they actually repeal former statutes or serve only as *prima facie* evidence of the law. *Id.* As more fully discussed below, in identifying online *official* legal resources, we address whatever statutes may confer that status and define its particular legal effect. We find that the *official* status of a legal resource generally distinguishes government-prepared or government-authorized materials from resources over which the government exercises no control. The concept represents a common sense understanding that *official* materials, as against unofficial materials, are authoritative and reliable. Whether particular *official* statutes repeal former statutes, serve only as *prima facie* evidence of the law, or perform some other function, they represent the authoritative and reliable source of their kind. For a fuller discussion of *official* status in the context of online resources see Richard J. Matthews, *When is Case Law on the Web the "Official" Published Source? Criteria, Quandaries, and Implications for the US and UK*, AMICUS CURIAE: J. OF THE SOC'Y FOR ADVANCED LEGAL STUD. (forthcoming after Feb. 2007).

² See AUTHENTICATION WHITE PAPER at 3-4 (survey definition based on the agency definitions of "Authentic Content," "Certificate," "Certification," and "Authentication"). A fuller discussion of GPO's concept of authentication is found below. For additional help placing the federal approach in context see Richard J. Matthews, *The Smart Citizen's Search for State Law on the Web*, AALL SPECTRUM, July 2006, at 20.

federal digital system to replace print government documents (*see* Appendix C). The Authentication Survey’s working definition of an *authentic* legal resource reads:

An *authentic* text is one whose content has been verified by a government entity to be complete and unaltered when compared to the version approved or published by the content originator. Typically, an *authentic* text will bear a certificate or mark that conveys information as to its certification, the process associated with ensuring that the text is complete and unaltered when compared with that of the content originator. An *authentic* text is able to be *authenticated*, which means that the particular text in question can be validated, ensuring that it is what it claims to be. (Instructions for Completing the Survey Form and Summarizing the Situation in your State, reproduced as Appendix D-2.)

This concept of an *authentic* legal resource is especially suited to the digital world. It contemplates encryption-based authentication methods, especially digital signatures and public key infrastructure. The concept of an *authentic* text as one “able to be *authenticated*” broadens the definition to include technologies or practices beyond digital signatures and public key infrastructure. The definition clearly recognizes that online legal resources are inherently capable of being corrupted or tampered with at the level of the individual copy. In that respect, online legal resources are fundamentally different from print legal resources.

In the broadest sense, an online legal resource capable of being considered *authentic* is one that is *authenticated* or clearly possesses characteristics that would readily allow it to be *authenticated* by a recognized authentication process. An *authenticated* resource is one shown to be a complete and unaltered version of an approved text.

Appendix B provides definitions for “encryption,” “digital signature,” “public key infrastructure,” “digital watermarking,” and various terms related to computer-based technologies and practices that readily allow online legal resources to be *authenticated*. Going beyond this, the Authentication Survey approached the issue of authentication without preconceptions. The analysis centered on what authentication technologies or practices each state may use or be considering. It also inquired into “chain of custody” information as very basic evidence of procedures for data handling that would contribute to online resources being *authenticated* by other than purely technological means.

One basic prescription appears to be warranted: The approved text of an *authenticated* legal resource on the Web *should* be the *official* version of the online source. While there may be circumstances where a state would be concerned to preserve *authentic* unofficial versions (*e.g.*, original court slip opinions superseded by the final *official* version), the concept of *authentic* legal resources generally pertains to *official* sources. The interrelation between *authenticity* and *official* status is further discussed below.

Inductive Approach to Survey

The overall approach of the Authentication Survey has been inductive. Rather than begin by investigating what laws or rules would likely support a court or other formal determination that a particular online resource is *official* or *authentic*, the Authentication Survey collected evidence of what resources officials and others consider *official* or *authentic*. What is considered *official* or *authentic* formed the starting point leading to further inquiry and analysis as to what statutes, court rules, administrative regulations, and other factors support or inform what is considered *official* and *authentic*.

As confirmation that a common sense approach was the best means to grasp this special category of online materials, we note that a number of the states express unequivocally on their Web site that the online legal resources are *official*. Online sources that now substitute for discontinued print *official* resources typically indicate they have *official* status. Officials responsible for online publications often demonstrated an informed understanding and conviction that particular online sources have *official* status. At the same time, we often found no definite laws or rules stating that particular online legal resources are entitled to judicial notice and other recognition as authoritative statements of the law. We sometimes found statutes that were unclear as to whether they applied to both print and online versions of legal resources or to print alone. Using deductive methods to start from sources of law that *might* lead researchers to identify resources that now form an acknowledged category of online materials was not a viable approach.

An especially notable exception in our findings – a situation where one *can* point to a source of law that declares an online legal resource is an *official*, citable authority – is the New Mexico statutes on the Web. Recent legislation provides that:

Upon the certification of the compilation . . . or any supplement by the New Mexico compilation commission, with the advice and approval of the advisory committee of the supreme court, the compilation or supplement shall be in force, and printed *and electronic* copies thereof *shall be received, recognized, referred to and used in all the courts and in all departments and offices of the state as the official compilation of the statutory law of New Mexico* and may be cited as [further specified]. Act of July 1, 2006, ch. 70, § 4, 2006 N.M. Adv. Legis. Serv. 480, 483 (codified as N.M. STAT. § 12-1-7) (emphasis added).

This example and the relatively large number of New Mexico online legal resources deemed as *official* are further discussed below.

Generally, one is more likely to find in the case of print *official* resources a statute or rule that directly states a particular resource is *official*, citable, and *prima facie* evidence of the law, entitled to judicial notice and other recognition. Links to judicial and administrative recognition are a hallmark of *official* status. The existence of statutes and rules making such links contributes to our understanding of what makes a resource *official*, even

though an express, direct connection between *official* status of a source and prescribed judicial notice and other recognition cannot be found in every case of an *official* resource.

Our further inquiry into the online legal resources considered *official* and *authentic* sometimes led us to vexing situations. In some cases the evidence of *official* status was inconclusive, inconsistent, or even contradictory. This prompted us to introduce the concept of “official traits,” where a source with such traits may share some of the characteristics of an *official* legal resource without being *official*. The analytical table in Appendix A shows what resources are *official* or have “official traits”. The Authentication Survey’s methodology set forth in Appendix D-1 discusses our overall approach for categorizing online legal resources. The evidence set forth in Key Findings 1, 2, and 3 shows the basis for categorizing particular resources.

The reality of the situation is this: For the print world, one finds no master set of statutes, court rules, and administrative regulations controlling the question of *official* status. Since *official* status may turn on the degree of control the government exercises in publishing the print legal resource itself or authorizing another, *official* status is sometimes established or repudiated on the basis of the government’s practices and usage over time. Deductive methods alone are insufficient to understand the print world. Less so can such methods be used to understand the entire picture for online *official* legal resources. If the print world is lacking some rigor in this regard, the digital is lacking even more, and is much more susceptible to rapid change.

The representations and disclaimers of a particular online legal resource are especially valuable as a starting point for investigating their *official* or unofficial status. This is particularly so in a world where courts have not adjudicated questions of which online legal resources are *official* or *authentic*, and are unlikely to do so. Deductions from existing statutes, court rules, or administrative regulations concerning which online resources are *official* are often uncertain. A direct representation by an online legal resource that it is *official* is a substantial, if not determinative, indicator of its *official* status.

Characteristic Features in States Committed to Online *Official* Legal Resources

New Mexico, Utah, and Tennessee are among the states most committed to making online *official* legal resources available to citizens and others. They have designated as *official* a substantial number of their online sources. This section of the report examines these states closely to identify whether common features characterize their commitment to online *official* legal resources. We begin with an inventory:

New Mexico. Its *official* online *New Mexico Administrative Code* is the state’s first and only *official* administrative code. New Mexico’s online administrative register and court opinions are *official*, as are its online statutes, at least the particular version available on

the New Mexico Compilation Commission Web site. The administrative code and administrative register directly state on the Web that they are *official*.

Utah. The state's online *official* statutes and administrative rules publications substitute for discontinued print *official* resources. One of the state's two online versions of the statutes directly states it is *official*. Utah's online administrative register and administrative code explain in detail their *official* status.

Tennessee. Its online *official* administrative code and administrative register substitute for discontinued print publications. The state's online session laws are also *official*. Only the administrative rules publications directly state that they are *official*.

The number of each state's *official* resources online is significant. So is the extent to which each state has discontinued print *official* sources. Beyond these raw measures, however, there are few common features in the New Mexico, Utah, and Tennessee approaches to *official* status of legal resources on the Web.

a. No Common Approach in Key Areas

It is instructive to consider the adoption and implementation by the states of universal citation systems (also known as medium-neutral or public domain citation systems). The *AALL Universal Citations Guide*, which was developed by AALL's Citation Formats Committee, is an example of such a system. Like such systems generally, the *AALL Universal Citation Guide* (ver. 2.1 2002, at <http://www.aallnet.org/committee/citation/ucg/>) requires use of citation forms capable of referencing the text of a legal resource regardless of its publisher and its print or digital form. How a state implements a universal citation system shows what role it gives online legal resources. The implementation may be viewed as a gauge of the state's integration of legal resources on the Web. As more fully discussed below, the findings on this account for New Mexico, Utah, Tennessee, and the states as a whole fail to show a pattern. The committed states do not approach universal citation systems the same way.

In addition, our findings reveal no general pattern in statutory requirements or policies and practices addressed to the committed states' online *official* legal resources. A criterion relevant in such an assessment is the extent to which a state designates *official* status by requiring some form of certification as to the legal publication's completeness and accuracy. Coupled with a prescribed procedure for such certification, states may tie *official* status to judicial and other recognition of such resources, designating them as citable and authoritative statements of the law. As more fully discussed below, the findings for the committed states reveal no deliberate solution, much less a model approach, to designating as *official* their online legal resources. The committed states are a little different from those states with fewer *official* online sources. The overall failure of states to follow deliberate policies and practices affecting the authority of legal resources on the Web is the subject of Key Finding 4.

The lack of a common approach makes this an area ripe for statutory reform. Indeed, we find there is a serious need for such action as the legal information environment becomes increasingly digital. An agenda for statutory reform would cover legal specifications for procedures certifying the completeness and accuracy of online *official* legal resources. In addition, recognizing a crucial concern that has escaped state attention, certification procedures should be coupled with measures ensuring the authentication and long-term integrity of online sources. Statutory specifications addressing such measures would properly extend recognized principles for designating legal resources as *official* and acknowledge the special vulnerabilities of digital materials.³

A more detailed account of the foregoing conclusions follows. We examine more closely the online *official* legal resources of New Mexico, Utah, and Tennessee.

b. Approaches to Universal Citation Systems

Thirteen states – Louisiana, Maine, Mississippi, Montana, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Utah, Vermont, Wisconsin, and Wyoming – have adopted universal citation systems. *See generally* THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION T.1, 198-239 (Columbia Law Review Ass’n et al. eds., 18th ed. 2005).⁴ Inasmuch as universal citation systems are intended to allow users to rely on any source of legal information, official or unofficial, a state’s adoption of such a system is not tied to any recognition of its online resources as *official*. Universal citation systems

³ *McCormick on Evidence* is a source for further discussion of models for statutory reform in this area. *See* 2 MCCORMICK ON EVIDENCE § 335 (Kenneth S. Broun ed. 6th ed. 2006). *McCormick’s* description of the practical approach of judges in taking judicial notice of law is relevant to the Authentication Survey’s efforts to understand the role of *authenticated* online *official* legal resources. “The heavy-footed common law system of proof by witnesses and authenticated documents is too slow and cumbersome for the judge’s task of finding what the applicable law is.” Usually the law is already familiar or, if not, the judge relies on sources cited by counsel. “[T]he normal method then is by informal investigation of any sources satisfactory to the judge.” *Id.* at 458. Consistent with *McCormick*, the Authentication Survey finds that the common sense approach in the increasingly digital world is to ensure that judges have authoritative and reliable materials close at hand to facilitate the informal processes of judicial notice of the law. The existing “hodgepodge” of laws that, in piecemeal fashion, prescribe judicial notice for certain resources and ignore others (*see id.* at 466-7) is unsatisfactory. So are over-technical rules of evidence. Note that *McCormick’s* analysis is consistent with the approach of the advisory committee responsible for the *Federal Rules of Evidence*, which have been widely adopted at the state level. That committee’s “Note on Judicial Notice of Law” makes clear that a premise of the rules – in particular Rule 201 addressing judicial notice – is that “the manner in which law is fed into the judicial process is never a proper concern of the rules of evidence” Rules of Evidence for United States Courts and Magistrates, 56 F.R.D. 183, 207 (1972). It may rightly be a concern of the rules of procedure and their notice or pleading requirements. *Id.* We return to general evidentiary issues in Key Finding 5, where we discuss *Federal Rules of Evidence* Rule 902(5) addressing the “self-authentication” of official publications.

⁴ *The Bluebook* omits Vermont without explanation. *See* Peter W. Martin, *Neutral Citation, Court Web Sites, and Access to Case Law*, 99 LAW LIBR. J. (forthcoming 2007)(text also published as Cornell Legal Studies Research Paper No. 06-047 at <http://ssrn.com/abstract=950387> (states adopting universal citation systems discussed on page 6, n.27)).

principally address the dominance of particular commercial publishers. Nevertheless, they are also a basic means to enhance citizens' use of government-hosted Web resources. Depending on their specific citation requirements and the conditions of their implementation, universal citation systems may free users from the need to consult any resource other than the appropriate government-hosted online legal source in preparing paperwork acceptable to the state court system.⁵

The Wyoming Supreme Court, for example, adopted its universal citation system expressly “in recognition of the increasing level of legal research being conducted via the Internet and other electronic resources” and acknowledged the need for “a public domain, neutral-format citation which [supports] use of legal sources in both the traditional book and electronic formats.” WY. SUP. CT., ORDER ADOPTING PUBLIC DOMAIN OR NEUTRAL-FORMAT CITATION (Oct. 2, 2002), at http://courts.state.wy.us/LawLibrary/univ_cit.pdf. This rationale is most likely representative of other states, even though Wyoming is just one of two states that allow use of universal citation forms without requiring an additional citation to a print reporter. Eleven of the thirteen states with universal citation systems require some form of additional citation to at least one specified print reporter. In ten of the eleven states, the print *official* reporter must be cited. Louisiana, which has no *official* reports, is the only exception here.

The mandatory print citations serve in some capacity as a counter pressure to any tendency of universal citation systems to undermine the bedrock of authoritative and reliable statements of the law ensured by the *official* status of print legal resources. Even where the particular implementation of the citation system (*e.g.*, North Dakota and Oklahoma) actually frees users from consulting any print sources, the print versions of legal resources must still be cited at least once. So cited, they are “kept in reserve” as authoritative and reliable sources in case of doubt. The court system thus remains dependent upon them. True fulfillment of universal citation systems' functions demands online *official* legal resources capable of being considered *authentic*.

New Mexico's Universal Citation System. The state's implementation requires users to cite opinions of the New Mexico Supreme Court or the New Mexico Court of Appeals (which have print and online *official* versions) with the prescribed universal citation form, as well as a citation to the print *official* reporter. The user may elect also to cite the relevant regional reporter published by Thomson West. Pinpoint citations are to be made to numbered paragraphs and, unless it is an older case without such numbering, a citation to the page of the print *official* reporter is not needed. Insofar as each online *official* court opinion provides parallel citations to both the print *official* reporter and the regional reporter, and gives the opinion a unique Web citation and numbered paragraphs, it is possible to use the state's online *official* opinions alone without consulting any other

⁵ Our analysis in this section draws on work of Professor Peter W. Martin, Cornell Law School, who has investigated provisions of universal citation systems as adopted by states and the conditions of their implementation. While most states require some form of parallel citation to print sources, two states – Mississippi and Wyoming – do not. *Id.* at 13. North Dakota, Oklahoma, and other states provide parallel citation information, as well as numbered paragraphs, in their publicly accessible online court opinions. Thus, in accord with applicable rules, their court opinions may be given pinpoint cites without any need to consult other resources. *See id.*

source. New Mexico's system further provides for a single specified universal citation for references to the state statutes (which have print and online *official* versions) and the state administrative code (which has an online *official* version only). See N.M. S. Ct. R. 23-112.

Utah's Universal Citation System. The initial citation of an opinion of the Utah Supreme Court or Utah Court of Appeals must include the prescribed universal citation form, as well as a citation to the relevant regional reporter published by Thomson West, the *official* publisher for the state. The state's pinpoint citation rule is similar to that of New Mexico. Its online court opinions do not provide parallel citations to the print *official* regional reporter and it is not possible to use the online opinions alone without consulting other versions. Utah's universal citation system addresses the citation of opinions of Utah courts only. See Utah S. Ct. Standing Order No. 4.

Tennessee Has Not Adopted a Universal Citation System. The state bar association unsuccessfully petitioned the Tennessee Supreme Court to adopt such a system in 1997. See TENN. SUP. CT., IN RE PETITION OF TENN. BAR ASSOC. FOR APPROVAL OF CITATION SYSTEM FOR TENN. APP. DEC. (2000), at <http://www.tsc.state.tn.us/opinions/tsc/pdf/003/TBA.pdf>.

There is no intrinsic connection between a state's having a universal citation system and its commitment to online *official* legal resources. Still, the particular implementation of such a system may reinforce the use of such resources by citizens and others. Where Utah's implementation remains grounded in a commitment to print *official* sources, New Mexico's citation system facilitates use of the state's online *official* court opinions, statutes, and administrative code. The situation in Tennessee is not comparable since Tennessee has not adopted a universal citation system.

c. Approaches to Certification and Judicial and Other Recognition

It is rare for states to designate the *official* status of an online legal resource in the same manner as a print *official* source. The *official* status of a print legal resource is often predicated on a formal certification of the text by a designated official. The state may tie that status to judicial and administrative recognition of the resource by courts and government officials, often designating the source as *prima facie* evidence of the law. New Mexico's online statutes, discussed above, are a notable exception where a statute specifies the *official* status of the online and print sources together, treating them identically.

It was beyond the scope of the Authentication Survey to systematically identify statutes and other sources of law that create print *official* resources. But a number of state authors discuss such statutes in their state summaries. Oregon law addressing the *official* status of its print statutory compilation is a good example:

(1) When any edition of the statutes, or part or supplement designed to replace parts of or to supplement a previous edition and to bring such edition up to date, is published by the Legislative Counsel Committee, the Legislative Counsel shall cause to be printed in the edition, part or supplement a certificate that the Legislative Counsel has compared each section in such edition, part or supplement with the original section in the enrolled bill or, if the enrolled bill is stored in a computer or similar device, with any printout or other output readable by sight, shown to reflect the enrolled bill accurately, and that, [with certain editing] and other changes specifically authorized by law, the sections in the published edition, part or supplement are correctly copied.

(2) Any edition, part or supplement certified as provided in [the preceding subsection] shall constitute prima facie evidence of the law in all courts and proceedings, and any section in such edition, part or supplement may be amended or repealed by amending or repealing such section of the edition, part or supplement without reference to the legislative Act from which it was derived. No compilation of the statute laws of Oregon not bearing such certificate, or a similar certificate of the Reviser of Statutes, shall be admissible as evidence of the law in any court or proceeding. OR. REV. STAT. § 171.285(1) & (2).

States with similar laws addressing their print *official* statutes include Minnesota (MINN. STAT. §§ 3C.11(1) & 3C.13), Missouri (MO. REV. STAT. § 3.090), and Wisconsin (WIS. STAT. §§ 35.18(2) & 990.07). States with such laws addressing their *official* administrative codes and administrative registers include Minnesota (MINN. STAT. §§ 14.47(4) & 14.37(2)) (print administrative code); Indiana (IND. CODE § 4-22-9-3(a) & (b))(print and electronic versions of administrative code and register); and Tennessee (TENN. CODE ANN. § 4-5-221(b))(contemplating print but applied to online versions of administrative code and register).

We find that New Mexico, Utah, and Tennessee, the states most committed to making online *official* resources available, have not followed any particular statutory template or common mechanism for designating online legal resources as *official*. The approaches taken by committed states have not been completely deliberate.

New Mexico's Approach to Official Status Online. As indicated above, New Mexico is a noteworthy example of a state that predicates the *official* status of its online statutes on certification and ties that status to judicial recognition. See Act of July 1, 2006, ch. 70, § 4, 2006 N.M. Adv. Legis. Serv. 480, 483 (codified as N.M. STAT. § 12-1-7).

In contrast to the situation with its statute law, the *official* status of New Mexico's online administrative code and administrative register is based on indefinite statutes that mandate the publication of such resources without specifying the particular medium, whether print or online. The New Mexico State Records Administrator is empowered to promulgate regulations "prescribing the format and structure of the [administrative]

code” (N.M. STAT. § 14-4-7.2) and is given open-ended powers to promulgate “necessary” rules concerning publication of the administrative register (*id.* § 14-4-7.1). Regulations applicable to the administrative code constitute “a system for uniformly organizing state rules that facilitates fully searchable electronic access” and “electronic publication and availability via the internet.” *See* N.M. ADMIN. CODE 1.24.10.6; *see generally* N.M. ADMIN. CODE 1.24.10. Judicial notice of the rules, based on case law, is not tied to any particular publication; no known case addresses online resources.

The *official* status of online opinions of the New Mexico Supreme Court and the New Mexico Court of Appeals (as published in two separate repositories) is based on the Supreme Court’s system of updating online slip opinions that have become final and authorized for print *official* publication. The New Mexico Compilation Commission is responsible for publishing the “bound volumes . . . known as the New Mexico reports” (N.M. STAT. § 34-4-2) and is empowered “to publish, distribute or sell and keep current automated legal databases of publications” including the “New Mexico reports” (*id.* § 12-1-3.1). The Supreme Court and the New Mexico Compilation Commission are jointly involved in publishing the online *official* court opinions.

Utah’s Approach to Official Status Online. The *official* status of Utah’s online statutes is based on section 36-13-1 of the *Utah Code Annotated*, which makes the Utah State Legislature broadly responsible “for printing, storing, and distributing . . . the Utah Code Annotated.” The state does not publish its own version of the *Utah Code Annotated* and responsible state officials do not consider any commercially published versions *official*.

The *official* status of Utah’s online administrative code is based on the existing statutory mandate directing the Department of Administration, Division of Administrative Rules, to “compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it.” UTAH CODE ANN. § 63-46a-10(e). The division “repeals” and “reenacts” the administrative code, utilizing public notice and review; it may require individual agencies responsible for codified rules to review the administrative code and initiate needed substantive changes. *See id.* § 63-46a-10.5(1) & (2). Judicial notice is tied to the *official* administrative code, but not on account of a specific *official* certification of that text. *See* UTAH CODE ANN. § 63-46a-16. The *official* status of the online administrative register is based on existing law requiring the division to “publish all proposed rules, rule analyses, notices of effective dates, and review notices” in the *Utah State Bulletin*. UTAH CODE ANN. § 63-46a-10(d). The statutes cited here were the basis for the state’s print *official* administrative code and administrative register, which were discontinued due to budgetary constraints.

Tennessee’s Approach to Official Status Online. The Secretary of State is required to “publish a monthly administrative register” (TENN. CODE ANN. § 4-5-220(a)) and “compile and publish or cause to be published all the effective rules of each agency in an official compilation of rules” (*id.* § 4-5-220(b)). The statutes base the *official* status of the administrative rules publications on proper certifications by the Secretary of State, who is required to compare “the text of each rule printed or appearing in each volume or issue” *Id.* § 4-5-221(b). As certified, the publications are expressly *prima facie* evidence

of the administrative rules and regulations. *Id.* § 4-5-221(c). Under applicable rules of evidence, judicial notice of such sources is either mandatory or optional, depending on the existence of statutes addressed to particular rules or regulations. *See* Tenn. R. Evid. 202(a)(4) & (b)(2). The statutes contemplate print publications and, as discussed by the state author, information on the Web site of the administrative register and administrative code somewhat confusingly describe the online resources as print publications. Print versions of the rules publications are no longer published.

The *official* status of Tennessee's session laws is based on section 12-6-116(a) of the *Tennessee Code Annotated* permitting the Tennessee Secretary of State to publish "the text of the public acts in electronic form by use of the Internet" instead of distributing required printed pamphlets.

Authentication Linchpin

States are missing the *authentication* linchpin. Online *official* legal resources are different from print *official* sources in one fundamental respect: They demand a separate assurance that they are complete and unaltered statements of the law. *Authentication* is what gives that assurance. *Authentication* ties together the *official* status, certification, and recognition of online legal sources. It supplies for the digital world what is automatic for the print. It allows online *official* legal resources to function in law and everyday use just as print *official* legal resources do.

Making digital government information essentially equivalent to print is central to the U.S. Government Printing Office's (GPO) agenda for a Future Digital System. *See* U.S. GOV'T PRINTING OFFICE, A STRATEGIC VISION FOR THE 21ST CENTURY (2004), at <http://www.gpo.gov/congressional/pdfs/04strategicplan.pdf>; U.S. GOV'T PRINTING OFFICE, CONCEPT OF OPERATIONS (CONOPS V2.0) FOR THE FUTURE DIGITAL SYSTEM (FDSYS) (final version, May 16, 2005), at http://www.gpo.gov/projects/pdfs/FDsys_ConOps_v2.0.pdf. Federal developments in this area prompted the Authentication Survey, as did concerns about the elimination of important print legal resources by federal government entities. Our definitions borrow from the GPO's *Authentication* white paper (AUTHENTICATION WHITE PAPER), which recognizes the interrelation between official status of digital materials and authentication.

The *Authentication* white paper defines two levels of authentication: one level is "authentic" and a second, higher level is "official." GPO acknowledges that its use of the latter term is somewhat different from that of the legal community. *See* AUTHENTICATION WHITE PAPER at 4, n.1 (2005). The agency regards the government documents on *GPO Access* (at <http://www.gpoaccess.gov>) as "official," *i.e.*, "published by the Federal Government, at Government expense, or as required by law." In connection with its two levels of authentication:

GPO defines "authentic" as content that is verified by GPO to be complete and unaltered when compared to the version received by GPO [as the

government’s printing office]. “Official” content is content that is approved by, contributed by, or harvested from an official source in accordance with accepted program specifications. There may be instances . . . where GPO will harvest information that cannot be confirmed as official by the content originating agency. An example is a publication harvested from the Internet Wayback Machine. This content will be considered authentic but not official by GPO. AUTHENTICATION WHITE PAPER at 4-5.

Thus, recognizing that *official* information is the most trustworthy information, GPO’s definitions collapse the distinction we make in the Authentication Survey using language of the legal community. According to GPO, official information is always authenticated information, but not all authenticated information is official. The federal approach – which we would endorse for online *official* legal resources – ensures that official materials are fully authenticated materials having a demonstrated connection to their original official source.⁶

Giving online *official* legal resources the same, highest level of authentication requires certification and a level of reliability that warrants judicial notice and other recognition as authoritative statements of the law.

Summary Findings on *Official* Status, Authentication, and Related Concepts

The Authentication Survey is a groundbreaking inventory of online *official* legal resources. It is unique as the first known effort to help establish for online legal resources what has developed for print sources over time: an understanding, captured in the literature of legal bibliography as a whole, of which resources are *official* or

⁶ In GPO’s response to public comments on the draft version of the *Authentication* white paper, GPO noted that “the Administrative Committee of the Federal Register has stated that both the online and print versions of the Code of Federal Regulations and the Federal Register are ‘Official,’ while the Supreme Court and the Law Revision Counsel of the U.S. House of Representatives have stated that the online versions of Supreme Court Slip Opinions and the U.S. Code, respectively, are not ‘Official’ for purposes of legal citation.” AUTHENTICATION WHITE PAPER at 9-10. GPO then reaffirmed its position that “all of these online titles are official Federal Government information in the sense of that term as used in this document. GPO is currently working on language to address this discrepancy.” *Id.* at 10.

Consistent with AALL’s stance on the draft *Authentication* white paper, articulated during that publication’s initial public review, we would ask that GPO make the certification of official status a responsibility of the official source of the information. When GPO actually implements appropriate authentication measures, the discrepancies concerning the *official* status of certain federal online legal resources will largely be obviated. That should certainly be so in the case of the online *United States Code*. Interim Supreme Court slip opinions, however, might still be authenticated without being considered official insofar as they are eventually superseded by final, official versions. Authenticated online versions certified as official by the official source of the information will be equivalent to, and interchangeable with, the print official versions. That affects GPO’s fundamental plan.

considered as such. That understanding includes an appreciation of which resources are in some critical sense inchoate or unresolved as *official* sources. The existence of such resources, which fall under the category we label “O traits” or “official traits” is fully discussed in Key Finding 3. Understanding which resources are inchoate or unresolved as *official* sources brings us a far way toward improving the dissemination of legal resources on the Web. With very little effort and expense, states might eliminate confusions and deficiencies of current approaches and better serve citizens and law researchers.

Official Status. The analytical table in Appendix A shows what resources are *official* or have “official traits” only. Greater detail supporting the conclusions for particular resources is set forth in Key Findings 1 and 2.

Authentication. The analytical table in Appendix A shows that no states provide resources capable of being considered *authentic* according to the broad definition of this report. The table indicates that Minnesota’s online administrative register is *authenticated* (as well as *official*). This anomalous finding requires some discussion.

Minnesota appreciates the fundamental connection between *official* status and authentication. *Official* status is not meaningful without authentication, since *official* status is achieved when the resource can serve as a touchstone for accurate and complete statements of the law. As described by the Minnesota author (pp. 127-129):

The Revisor of Statutes is aware of [authentication] issues and has discussed digital signatures, watermarks, and other technologies . . . but there is no process in place to certify Web text as complete and unaltered. The online *State Register* is [nonetheless] considered *authenticated* insofar as the material submitted for publication is properly endorsed.

As noted above, it was beyond the scope of the Authentication Survey to systematically identify sources of law responsible for formal certification and recognition of legal resources designated as *official*. The preceding section of the report touched on Minnesota statutes (MINN. STAT. §§ 14.47(4) & 14.37(2)) that tie the *official* status of its print administrative code to certification and judicial notice. In the case of Minnesota’s administrative register, state agencies must endorse duly adopted notices of hearing, rules or changes submitted for publication. See MINN. STAT. § 14.46(3). According to the state author, text so endorsed is considered under state law to be an *authenticated* source.

We consider certification and other types of formal endorsement of legal resources to be vital links in the “chain of custody.” As more fully discussed in Key Finding 5, such information is crucial in authentication of online legal resources but not, by itself, sufficient to establish them as *authentic*. Digital materials endorsed according to the Minnesota statute are still vulnerable to lapses in management and control, corruption, and tampering after the fact.⁷

⁷ Note that Minnesota’s online administrative register is published as a PDF. Implications for the *authenticity* of resources so published are addressed under Key Finding 5.

It appears online legal resources in other states may have similar formal endorsements that are not reflected in the analytical table. The Authentication Survey's methodology captures the Minnesota anomaly and acknowledges the state's approach. Unfortunately, the form of authentication for the Minnesota administrative register must be qualified as not conforming to the broad standard of this report. The Minnesota example contains an important lesson for other states, especially those that have discontinued a print *official* source.

Permanent Public Access (PPA). The analytical table in Appendix A shows what resources are ensured permanent public access. Greater detail supporting the conclusions for particular resources is set forth in Key Finding 6. Permanent public access, which is the subject of this report's companion *State-by-State Report on Permanent Public Access to Electronic Government Information*, is a policy and practice ensuring "applicable government information is preserved for current, continuous and future public access." See GOV'T RELATIONS COMM. & WASH. AFFAIRS OFFICE, STATE-BY-STATE REPORT ON PERMANENT PUBLIC ACCESS TO ELECTRONIC GOVERNMENT INFORMATION 2 (2003), at http://www.ll.georgetown.edu/aallwash/State_PPAreport.htm. Authentication is related to other archival methods ensuring PPA. Authentication and permanent public access affirm the profound value to a democratic society of effective access to government information.

The report now turns to the Key Findings of the Authentication Survey, which include a discussion of deficiencies in current approaches to state dissemination of legal resources on the Web.

KEY FINDING 1: *States have begun to discontinue print official legal resources and substitute online official legal sources.*

Ten states, plus the District of Columbia, have deemed as *official* one or more of their online primary legal resources. Five of these ten states – Alaska, Indiana, New Mexico, Tennessee, and Utah – have declared the online versions of legal resources a substitute for a print *official* source. The online resource is, therefore, the sole *official* statement of the law. This is a very significant concern to law librarians and the legal community. None of the substitute online legal sources is capable of being considered *authentic*.

The discontinuation of print in favor of online sources has occurred principally with state administrative registers (Alaska, Indiana, Tennessee, and Utah) and state administrative codes (Indiana, Tennessee, and Utah). The first *official* administrative code for New Mexico is its online publication; the sole print unofficial version is commercially published. The sole *official* version of the Utah statutes is on the Web.

The creation of new online legal resources where a print *official* source had not existed attests to the significant potential of the Web. Still, any *official* resource demands *authenticity*. The disappearance of print *official* legal resources without an *authentic* online substitute critically erodes the *bedrock* of trustworthy statements of the law.

Alaska's Administrative Register. The *Alaska Online Public Notice System* substitutes for the former *official* print *Alaska Administrative Journal*. The latter was eliminated in 2000 pursuant to statutory provisions creating the notice system. By statute, the *Alaska Online Public Notice System* contains notices of proposed actions adopting, amending or repealing administrative regulations and a variety of other *official* notices. ALASKA STAT. § 44.62.175(a).

The governor's transmittal letter for the bill (H.B. 315, 21st Leg., Reg. Sess. (Alaska 2000)), creating section 44.62.175, indicated that the move to the *Alaska Online Public Notice System* was an efficiency and cost-saving measure. See JOURNAL TEXT FOR HB 315 IN THE 21ST LEG. (Alaska, Jan. 24, 2000), at http://www.leis.state.ak.us/basis/get_jrn_page.asp?session=21&bill=HB315&jrn=1988&hse=H (containing text of transmittal letter dated Jan. 21, 2000). Subscriptions to the *Alaska Administrative Journal*, which had been available on the Web, as well as in print, had dwindled to twelve, dropping from 125 in 1995. *Id.*

Indiana's Administrative Code and Administrative Register. Indiana Public Law 215-2005 (Act effective July 1, 2005, Pub. L. No. 215-2005, §§ 13-14, 2005 Ind. Acts 3365, (codified as IND. CODE §§ 4-22-8-2 & 4-22-8-5)) requires, effective July 1, 2006, the electronic-only distribution of the *Indiana Register* and the *Indiana Administrative Code*. At the time of this writing, the means by which this statutory change will be effected are still unclear. Under applicable statutes, as amended, the publisher – the state's Legislative Services Agency – “may meet the requirement to publish the Indiana Register electronically by permanently publishing a copy of the Indiana Register on the Internet.” IND. CODE § 4-22-8-2(c). Similarly, the publisher “may meet the requirement to publish the Indiana Administrative Code electronically by permanently publishing a copy of the Indiana Administrative Code on the Internet.” *Id.* § 4-22-8-5(d).

Tennessee's Administrative Code and Administrative Register. In Tennessee, “the administrative code and register no longer have print *official* versions.” By statute, the Tennessee Secretary of State is required to “publish a monthly administrative register,” with specified contents. TENN. CODE ANN. § 4-5-220(a). The Secretary is further required to “compile and publish or cause to be published all the effective rules of each agency in an official compilation of rules,” with supplements at least every three months. *Id.* § 4-5-220(b). The *Tennessee Administrative Register* Web site indicates that its text “is an official publication of the Tennessee Department of State” but somewhat confusingly refers to the availability of a print subscription, which does not exist, since its print version ceased in 2004. The *Official Compilation Rules and Regulations of the State of Tennessee* Web site states that “the following rules and regulations are current and official rules and regulations presented as the official compilation.”

The applicable statutes generally contemplate the print publication of the administrative register and administrative code. They explicitly tie *official* status for the publications to certification; the certified text is *prima facie* evidence of the regulatory law. TENN. CODE ANN. § 4-5-221(b).

**TABLE SHOWING STATES WITH OFFICIAL (O) LEGAL RESOURCES ON WEB
SUBSTITUTING FOR PRINT OFFICIAL SOURCES**

This table shows states where repositories of online *official* legal resources substitute for print *official* resources that have been discontinued or have lapsed. One state (New Mexico) never had a print *official* equivalent of its current online *official* administrative code. The table also shows what resources are afforded permanent public access and notes the status of the other online repositories. "O" designates *official* legal resources on the Web. "O traits" indicates that relevant evidence as to the official or unofficial status of the resource on the Web is inconclusive. "PPA" designates resources safeguarded for current and future public access.

The table is a simplified reformatting of certain information from the analytical table in Appendix A. Each block represents a separate repository for an online legal resource. All repositories designated as *official* or possessing "official traits" are represented; there are actually many more unofficial repositories than represented here. Blocks colored blue (or medium grey, when printed in greyscale) indicate that the type of legal resource represented is currently published in one or more print *official* resources.

	Administrative code	Administrative register	Statutes	Session laws	High court opinions	Intermediate appellate court opinions
Alaska		O, PPA DISCONTINUED OFFICIAL PRINT			O traits	
Indiana	O DISCONTINUED OFFICIAL PRINT	O, PPA DISCONTINUED OFFICIAL PRINT				
New Mexico	O NEVER HAD OFFICIAL PRINT	O	O		O O	
Tennessee	O DISCONTINUED OFFICIAL PRINT	O DISCONTINUED OFFICIAL PRINT		O		
Utah	O, PPA DISCONTINUED OFFICIAL PRINT	O, PPA DISCONTINUED OFFICIAL PRINT	O, PPA OFFICIAL PRINT LAPSED IN PAST O traits, PPA OFFICIAL PRINT LAPSED IN PAST	PPA		

Utah’s Administrative Code and Administrative Register. The Utah Department of Administrative Services, Division of Administrative Rules, is required to “publish all proposed rules, rule analyses, notices of effective dates, and review notices” in the *Utah State Bulletin*. UTAH CODE ANN. § 63-46a-10(d). The agency is also required to “compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it.” *Id.* § 63-46a-10(e). The *Utah Administrative Code* “shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the administrative law of the state of Utah and as an authorized compilation of the administrative law of Utah.” *Id.* § 63-46a-16. “All courts shall take judicial notice of the code and its provisions.” *Id.*

The Division of Administrative Rules Web site states the agency “no longer sponsors paper editions of administrative rules publications” since relevant funding ceased in 2003. Since then, the state treats the Web versions of those publications as *official*. The *Utah State Bulletin* Web site states that the resource “is an official publication of the Division of Administrative Rules, mandated by” section 63-46a-10 of the statutes. The *Utah Administrative Code* Web site similarly states it is an *official* publication, mandated by that section. The Division of Administrative Services construed the statutes to permit either print or electronic publication of those titles.

Utah’s Statutes. The Utah State Legislature “is responsible for printing, storing, and distributing . . . the Utah Code Annotated.” UTAH CODE ANN. § 36-13-1. The applicable statutory provision, as amended, was first enacted in 1953. Currently, the state does not publish its own version of the *Utah Code Annotated*⁸ and the Utah State Legislature, Office of Legislative Research and General Counsel, does not consider the two versions available from commercial publishers to be *official*. Rather, only those statutes published on the legislature’s Web site are *official*. A notice on the “simple numerical list” version states: “The Utah Code consists of laws of the state that are codified. This Web version is an official publication of the Utah State Legislature.” The searchable version has no similar notice. Under the circumstances, the “simple numerical list” version is *official*; the other is considered to have “official traits.” The “official traits” of the later version are further examined in Key Finding 3.

New Mexico’s Administrative Code. The State Records Administrator, who heads the State Records Center and Archives, Commission of Public Records, is required to “create and have published a New Mexico Administrative Code, which shall contain all adopted

⁸ Information available from the Utah History Research Center suggests that the chain of print *official* versions of statutes published under the authority of section 36-13-1 of the *Utah Code Annotated* was broken at some point in the history of that title. Compare the archival description of record series 1052 for the *Utah Code Unannotated* (1988–[ongoing]) (at <http://historyresearch.utah.gov/inventories/1052.html>) with the description of record series 83238 for the *Utah Code Annotated* (1851–[ongoing]) (at <http://historyresearch.utah.gov/inventories/83238.html>). Series 83238, which continues to date, is said to be “the official version of the codified laws and contains historical and legal annotations as well as the laws themselves.” However, this statement should be qualified, inasmuch as the actual archival holdings have various gaps. Lee Warthen and William Logan of the S.J. Quinney Law Library, University of Utah, are thanked for identifying this archival information.

rules.” N.M. STAT. § 14-4-7.2. The administrator is empowered to promulgate regulations “prescribing the format and structure of the code,” among other things. Responding to new technologies, the Commission of Public Records updated regulations in 2000 to facilitate publication of the administrative code on the Internet. The current Web version is published on “The Official Site of the New Mexico Administrative Code,” which states that the code “is the official compilation of current rules filed by state agencies.” After the Commission of Public Records completed its compilation of the code in January 2002, the agency placed it online. New Mexico has never had a print *official* version of its administrative code.

It cannot be said of the New Mexico administrative code that a print *official* version was discontinued in favor of the online *official* source. Nonetheless, the consequence of having an online publication as the sole *official* source of the law is fundamentally the same, regardless of whether a discontinuation occurred or no print source ever existed. If the sole *official* legal resource is not capable of being considered *authentic*, one finds no *bedrock* of trustworthy statements of the law.

KEY FINDING 2: Ten states & D.C. have deemed as official one or more of their online primary legal resources.

Ten states – Alaska, Indiana, Maryland, Michigan, Minnesota, New Mexico, New York, Tennessee, Utah, and Virginia – plus the District of Columbia, have made twenty-three sources of law available in online repositories that are considered *official*. The six sources investigated in the Authentication Survey – state administrative codes and registers, state statutes and session laws, and state high and intermediate appellate court opinions – are the units counted in our total of twenty-three sources; *official* high court opinions published in two separate official repositories are, for example, counted as one instance of an *official* source of law available in *official* online repositories. Most state repositories of court opinions combine the opinions of courts from different levels. Counting the online repositories and not the separate sources they contain, twenty-two repositories are considered *official*.

The number of *official* sources of law is close to the number of *official* repositories, even though they represent two different things, because the states tend to publish final *official* court opinions in separate duplicate repositories, one for the opinion in its original format and another for the opinion as reformatted (and sometimes edited) and deposited in a database system. The analytical table in Appendix A gives a source-by-source account of how the six sources for each state are distributed among separate *official* repositories.

The twenty-two *official* repositories may be said to represent separate publication titles. The repositories for administrative codes, administrative registers, statutes, and session laws have easily recognized corresponding print publication titles. But, because the repositories of court opinions combine the opinions of courts from different levels, such

TABLE SHOWING STATES WITH *OFFICIAL* (O) LEGAL RESOURCES ON WEB, WITH NOTATION AS TO WHETHER SOURCE DECLARES ITSELF *OFFICIAL*

This table shows the states where repositories of online legal resources have been designated as *official*. Information concerning the basis for that status is given. The table also shows what resources are afforded permanent public access and notes the status of the other online repositories. "O" designates *official* legal resources on the Web. "O traits" indicates that relevant evidence as to the official or unofficial status of the resource on the Web is inconclusive. "PPA" designates resources safeguarded for current and future public access.

The table is a simplified reformatting of certain information from the analytical table in Appendix A. Each block represents a separate repository for an online legal resource. All repositories designated as *official* or possessing "official traits" are represented; there are actually many more unofficial repositories than represented here. Blocks colored blue (or medium grey, when printed in greyscale) indicate that the type of legal resource represented is currently published in one or more print *official* resources. The block with a slash through it indicates that the state's court system has no intermediate appellate court.

	Administrative code	Administrative register	Statutes	Session laws	High court opinions	Intermediate appellate court opinions
Alaska		O, PPA STATUS NOT DECLARED; BASED ON STATUTE			O traits	
District of Columbia			O STATUS DECLARED (IMPERFECTLY)		O traits	
Indiana	O STATUS DECLARED	O, PPA STATUS DECLARED				
Maryland		O STATUS DECLARED	O STATUS NOT DECLARED; BASED ON STATUTE			
Michigan					O STATUS DECLARED (IMPERFECTLY)	O STATUS DECLARED
Minnesota		O STATUS DECLARED (IMPERFECTLY)		PPA		
New Mexico	O STATUS DECLARED	O STATUS DECLARED	O STATUS NOT DECLARED; BASED ON STATUTE		O STATUS NOT DECLARED; BASIS OTHER THAN STATUTE	
					O STATUS NOT DECLARED; BASIS OTHER THAN STATUTE	
New York					O STATUS DECLARED (IMPERFECTLY)	
Tennessee	O STATUS DECLARED	O STATUS DECLARED		O STATUS NOT DECLARED; BASED ON STATUTE		
Utah	O, PPA STATUS DECLARED	O, PPA STATUS DECLARED	O, PPA STATUS DECLARED	PPA		
			O traits, PPA			
Virginia		O STATUS NOT DECLARED; BASED ON STATUTE			O traits	

repositories do not always correspond to court opinions as organized into print *official* publications.

Online legal resources that unequivocally state they have an *official* status based on a specific corroborative statute could be said to be *official* sources about which we are the most confident. We found no absolutely explicit online *official* source. Indiana's online *official* administrative code and administrative register may be thought to be among the closest contenders. They state they are *official* and their status is based on a corroborative statute. They do not themselves state they are *official* on the basis of that statute, however, and their declaration is not especially prominent on the Web site or in its documentation.

Indiana's online rules publications, which are discussed above as resources that substitute for discontinued print *official* resources, warrant closer examination. The controversy that has surrounded the online resources prompted the state's Legislative Council to publish an online *User's Guide to the -IR- Database* (at <http://www.in.gov/legislative/iac/faqs.pdf>). This guide, which addresses the online *Indiana Administrative Code*, as well as the *Indiana Register* (the "IR" referred to in the title), unequivocally represents that both of the newly *official* online administrative rules publications are *official*. The guide explains:

The *Indiana Register* is an official publication of the state of Indiana. The Indiana Legislative Council publishes the full text of proposed rules, final rules, and other documents, such as Executive Orders and Attorney General's Opinions, in the *Indiana Register* in the order in which the Indiana Legislative Council receives the documents.

The *Indiana Administrative Code* is an official publication of the state of Indiana. It codifies the current general and permanent rules of state agencies in subject matter order. *Id.* at 11.

This unequivocal representation is based on the statute, amended in 2005, designating the administrative rules publications as sole *official* substitutes for the discontinued print. The wording of the amendment is instructive as an example of language creating online *official* legal resources from an existing law on print *official* sources. Amendments are set forth in italics:

[Section 4-22-8-2 of the *Indiana Code* is amended to read:] (a) The publisher shall publish a serial publication with the name *Indiana Register* at least six (6) times each year.

(b) *Notwithstanding any law, after June 30, 2006, the publisher shall publish the Indiana Register in electronic form only. However, the publisher shall distribute a printed copy of the Indiana Register to each federal depository in Indiana.*

(c) *The publisher may meet the requirement to publish the Indiana Register electronically by permanently publishing a copy of the Indiana Register on the Internet.*

[Section 4-22-8-5 of the *Indiana Code* is amended to read:] (a) The publisher shall compile, computerize, and print a codification of the general and permanent rules of the agencies with the name Indiana Administrative Code.

(b) The publisher shall establish a system to maintain, supplement, and recompile the Indiana Administrative Code

(c) *Notwithstanding any law, after June 30, 2006, the publisher shall publish the Indiana Administrative Code in electronic form only. However, the publisher shall distribute a printed copy of the Indiana Administrative Code to each federal depository library in Indiana.*

(d) *The publisher may meet the requirement to publish the Indiana Administrative Code electronically by permanently publishing a copy of the Indiana Administrative Code on the Internet.* Act of July 1, 2005, Pub. L. 15-2005, §§ 13-15, 2005 Ind. Acts 3365, 3372-73.

These amendments were effective July 1, 2005. The statute was further amended in 2006 to eliminate the provision of the 2005 legislation that had preserved limited access to the print resources at specified depository libraries. Note that Indiana law here ties the *official* status of legal resources to certification and judicial notice. The 2005 amendments addressed relevant provisions of the existing law as follows:

[Section 4-22-8-8 of the *Indiana Code* is amended to read:] (a) Before an edition or supplement of the Indiana Administrative Code is printed *or (after June 30, 2006) published in electronic form*, the publisher shall deliver an affidavit to the secretary of state attesting that the text to be published in the edition or supplement has been compared with the preceding edition, the preceding supplement (if applicable), and the appropriate original versions of recently adopted rules and been found to be correct and complete. *Id.*

Separate amendments in 2006 addressed existing law relevant to judicial notice:

[Section 4-22-9-3 of the *Indiana Code* is amended to read:] (b) Subject to [provisions relating to the original creation of the initial compilation of the administrative code], the official publication of a rule in the Indiana Register or the Indiana Administrative Code, *including the official publication of rules published only in electronic format after July 1, 2006*, shall be considered prima facie evidence that the rule was adopted in conformity with IC 4-22-2 and that the text published is the text adopted. Act of July 1, 2006 Pub. L. 123-2006, § 24, 2006-2 Ind. Code Ann. Adv. Legis. Serv. P.L. 296, 319 (LexisNexis).

Thus the online *Indiana Administrative Code* and *Indiana Register* are noteworthy as examples of well-grounded *official* resources on the Web. We leave for later the discussion of characteristics that have come under fire by lawyers and law librarians. The state author spells out a number of reservations on this account (pp. 107-109).

Fifteen Online Legal Resources State They Are *Official*

Of the twenty-two online repositories deemed as *official*, fifteen express in some manner, either in an introductory description or statements within the resource itself, that they are *official*. For eleven of the fifteen resources, the expression is an unequivocal representation that the resource is *official*. The representations of four of the fifteen resources are not conclusive without examining other evidence of their *official* status. The intent to declare their *official* status may be reasonably inferred, but shortcomings in the wording of the representations or manner of presentation warrant corrective attention.

Apt examples of situations requiring such attention come from Minnesota and Michigan. The problem with Minnesota's administrative register could be solved with very little fuss. The statement found only inside the PDF copy of the *Minnesota Register* – which would therefore, without more explanation, paradoxically appear to be a statement about the *print* version of the resource – expresses that the register is *official*. Problems with Michigan's online court opinions are only slightly more difficult. Its two repositories for court opinions are not sufficiently coordinated to enable users to recognize, with complete confidence, the *official* status of every *official* opinion, despite representations as to that status. A fuller explanation of this follows.

Michigan's High Court and Intermediate Appellate Court Opinions. Slip opinions for the Michigan Supreme Court and the Michigan Court of Appeals are collected in a repository maintained by the court system. A separate repository of final opinions of those courts is maintained by Thomson West, the *official* publisher of the print *Michigan Reports* and *Michigan Appeals Reports*. The repository of slip opinions satisfactorily describes which slip opinion texts are final and *official*. The site maintained by Thomson West, however, is equivocal in its wording and presentation.

The court system Web site providing links to Michigan court opinions describes the process whereby texts of slip opinions of the Michigan Supreme Court and the Michigan Court of Appeals are determined to be final opinions and designated *official*. Newly issued opinions “are reviewed by the Editor's Office and forwarded to the *official* publisher of the Michigan Reports and Michigan Appeals Reports.” When the opinion is determined to be final, any later version of the slip opinion is uploaded to the Web site and the final text is flagged as *official* with an “open book” icon. The separate repository of final opinions of Michigan courts available for no-fee access from Thomson West styles itself as “Michigan Official Historical Reports.” The *official* status of the opinions available on the site is declared merely through the inclusion of the word “official” in the title given to the resource by the commercial publisher.

The eleven online legal resources identified by this report as unequivocally representing their *official* status are analyzed in subsection (a) below. The four online legal resources identified as representing imperfect representations as to their *official* status are analyzed in subsection (b) below.

a. Resources Making Unequivocal Representations as to Their Official Status

Typically, unequivocal representations of *official* status provide an explanation or justification for their declaration. Contrary to what might be expected, except for Indiana's online administrative rules publications, the unequivocal representations we found are not based on fully corroborative statutes. In the case of Utah's administrative code and administrative register, which have no print equivalents, the statutes cited by the resources themselves as authority for their *official* status do not mention electronic versions of the titles. The agency responsible for the administrative rules publications construed the statutes to permit print or electronic publication. The statutory basis for the *official* status of Maryland's online administrative register is also problematic.

Our count of the eleven resources identified as unequivocally representing their *official* status includes Indiana's administrative code and administrative register, as described above. The count includes the repository containing Michigan Supreme Court and Michigan Court of Appeals slip opinions – not the Thomson West “Michigan Official Historical Reports” – as described above. Our count also includes several other resources which have already been given full descriptions. These are Tennessee's administrative code and administrative register, Utah's administrative code and administrative register, Utah's statutes, and New Mexico's administrative code. The following additional resources are counted.

Maryland's Administrative Register. The Secretary of State, Division of State Documents, is responsible for compiling, editing, publishing, and distributing the *Maryland Register* as well as the *Code of Maryland Regulations* (COMAR). MD. CODE ANN., STATE GOV'T § 7-204. Statutory provisions describing the *Maryland Register* refer to print characteristics of the resource, including page numbers and issue dates turning upon its deposit in the United States mail. *See id.* § 7-206. But other provisions require the Division of State Documents to make available to the public no-fee “direct on-line searching of” the administrative code and the administrative register. *Id.* § 7-206.2. The division treats the online version of the *Maryland Register* as *official* and its Web site states “[t]his is an official publication of the State of Maryland.” By statute, the text of documents published in the *Maryland Register* is *official* until incorporated into the *Code of Maryland Regulations*. *Id.* § 7-217(a).

New Mexico's Administrative Register. The State Records Administrator must “provide for publication of the New Mexico register at least twice a month.” N.M. STAT § 14-4-7.1. “The New Mexico register shall be the official publication for all notices of rule makings and filings of adopted rules, including emergency rules, by agency.” *Id.*

The statute does not mention electronic publication, but directs the administrator to “adopt and promulgate rules necessary for the implementation and administration of” the section. *Id.* Applicable regulations do not address the electronic version, except to specify fees for electronic copies of the publication. The Web version of the *New Mexico Register* states that it is “[t]he official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico.” *Id.* All issues of the administrative register since August 2001, when the Commission of Public Records assumed responsibility for in-house publication of the title, are available on the Web site.

b. Resources with Imperfect Representations as to Their Official Status

Four of the fifteen resources that indicate they are *official* fail to make conclusive representations. These resources may label themselves *official* without giving an explanation as to their status. With the exception of Minnesota’s administrative register, which merely states in the PDF copy of its print version that it is *official*, the resources that make imperfect representations as to their *official* status merely label themselves *official*. Two of the resources are court opinions. As reported by the relevant state authors, all four resources are decisively considered *official* by officials responsible for their publication.

The equivocal labeling of the online Thomson West “Michigan Official Historical Reports” is discussed above. This publication is counted as a resource with an imperfect representation as to its *official* status. So are the following online resources:

New York’s High Court and Intermediate Appellate Court Opinions. The New York State Law Reporting Bureau edits and prepares opinions of the Court of Appeals and the Appellate Division. Through an agreement with the state’s *official* publisher, Thomson West, the Law Reporting Bureau’s Web-based “New York Official Reports Service” provides electronic access to all opinions published in the print version of the *official* reports, from January 2000 through the latest advance sheet. Annotations provided in the print version are not given.

The Thomson West component gives no account as to the *official* status of the online opinions. The “New York Official Reports Service” declares its *official* status by including the word “official” in the title of the resource. The basis for the *official* status of the resource published by Thomson West is more fully discussed in Key Finding 4.

Minnesota’s Administrative Register. The *Minnesota State Register* is published in electronic and print formats. The electronic version is a PDF document, a copy with the same text, formatting, and layout as the print version. Each issue prominently states that “Judicial Notice Shall be Taken of Material Published in the *State Register*. The *State Register* is the official publication of the State of Minnesota, published weekly to fulfill the legislative mandate set forth in *Minnesota Statutes* § 14.46.” Among other specifications, section 14.46 provides that the Department of Administration “must make an electronic version of the State Register available on the Internet free of charge through

the North Star information service,” the state’s Web portal. Significantly, the state has begun to limit print distribution in favor of the Web. Since July 1, 2004, printed copies are no longer available by subscription; the *State Register* continues to be distributed to depository libraries as specified by statute (see MINN. STAT. § 14.46(4)) and print versions are available for individual sale.

District of Columbia’s Statutes. The District of Columbia Council has contracted with Thomson West to provide the full, *official* online version of the *District of Columbia Official Code*. Thompson West is also the publisher of the print *official* version of the code, since 2001. The Web site for this resource identifies itself as “the online source for District of Columbia Official Code.” It sets forth no disclaimer information.

Seven Other Online Legal Resources are Deemed as *Official* Without So Stating

In addition to the fifteen online legal resources that state they are *official*, seven are considered to be *official* even without their making representations as to their status. Paradoxically, resources stating they are *official* generally are *not* based on fully corroborative statutes indicating the resources are *official*; those that do *not* state they are *official* generally are based on such statutes.⁹

a. Resources Deemed as *Official* Based on Statute

As already detailed in the description of the online *official* resources provided under Key Finding 1, the status of Alaska’s administrative register is based on statute. The following additional online legal resources are also deemed *official* based on statute.

Maryland’s Statutes. The “Code of Public General Laws, as compiled, updated and maintained by the Department of Legislative Services” is evidence of the state’s laws.” MD. CODE ANN., CTS. & JUD. PROC. §10-201(c). The Department of Legislative Services is required to “maintain in the form of a statutory database, a code comprising the public general laws of the State.” MD. CODE ANN., STATE GOV’T § 2-1243(c). Maryland maintains no print version of the statutes. Its online version of the statutory code, produced by the Department of Legislative Services, indicates that “[i]t is the actual words of the codified law as enacted by the Maryland General Assembly” and does not contain copyrighted annotations and other material as found in the alternative *official* print versions published by LexisNexis and Thomson West.

⁹ Issues involved in determining the status of online legal resources that do not state they are *official* are sometimes very subtle. We discuss our approach in determining which online legal resources are *official* in Appendix D-1, which addresses the Authentication Survey’s methodology. We closely examine our reasoning for two states – Kentucky and New Jersey – where we determined online versions of statutes were not *official* despite provisions of laws that potentially deem them so. Because of the subtleties that must be considered, we strongly urge states to take steps to make the status of online legal resources clear to users.

New Mexico's Statutes. Chapter 70 of the New Mexico Laws of 2006 (Act of July 1, 2006, ch. 70, § 4, 2006 N.M. Adv. Legis. Serv. 480, 483 (codified as N.M. STAT. § 12-1-7)) amended certain statutory provisions concerning the composition and powers of the New Mexico Compilation Commission. Under section 2 of the law, the commission, acting on the advice and approval of an advisory committee appointed by the New Mexico Supreme Court, is empowered to “provide for official, annotated compilations of the New Mexico Statutes, including court rules governing practice and procedure in the state courts. . . .” N.M. STAT. § 12-1-4. Section 4 of the law provides that upon the “certification” of such a compilation and acting with its advisory committee, “the compilation or supplement shall be in force, and printed and electronic copies thereof shall be received, recognized, referred to and used in all the courts and all departments and offices of the state as the official compilation of the statutory law of New Mexico.” *Id.* § 12-1-3. Section 3 of the law empowers the commission to “publish, distribute or sell and keep current automated legal databases,” including “publications of law and court . . . rules of this state.” *Id.* § 12-1-3.1. It is not clear that the electronic version of the statutes linked to from the home page of the New Mexico Compilation is “certified” as *official*. The resource does not state it is *official*; however, in assurances to the state author, the Commissioner of the New Mexico Compilation Commission reports that the electronic version of the statutes is *official*.

Tennessee's Session Laws. The Secretary of State is responsible for distributing the “unbound, printed pamphlets containing the public acts of the general assembly.” TENN. CODE ANN. § 12-6-116(a). The Secretary may fulfill this responsibility “by publishing the text of the public acts in electronic form by use of the Internet.” The “welcome” page for the public and private acts does not state it is an *official* site. Rather, it cites section 12-6-116 of the *Tennessee Code Annotated* as its authority. The slip laws that were previously bound into session laws are now only available online. Bound volumes of *official* session laws continue to be printed and distributed.

Virginia's Administrative Register. The Virginia Code Commission's Registrar of Regulations is required to “publish every two weeks a Virginia Register of Regulations” that includes proposed and final administrative regulations and other specified content. VA. CODE ANN. § 2.2-4031(A). The *Virginia Register of Regulations* “shall be published by posting the Register on the Virginia Code Commission's Web site.” In addition, it may be printed. *Id.* § 2.2-4031(D).

The description of the *Virginia Register of Regulations* found on the Virginia General Assembly Web site leaves the viewer some doubt as to whether it describes only the print or both the print and online versions. The page titled “About *The Virginia Register of Regulations*” reads: “An official publication of the Virginia Code Commission, the Register is distributed every other week throughout the year. Indexes are published quarterly and are cumulative for each volume.” The page leading to the online issues of the administrative publication is titled “Virginia Register Online” and refers to the electronic issues as the “Virginia Register,” not the “Virginia Register of Regulations.”

Nonetheless, since the statute makes the Web version of the *Virginia Register of Regulations* primary, the online resource is considered *official*.

b. Resources Deemed as Official on a Basis Other than Statute

Two separate resources constituting the online collection New Mexico court opinions are discussed in this section. Generally, it may be said the judiciary independently possesses the authority to make such designations. Moreover, it would appear courts naturally recognize the authority of their own resources; inherent if not statutorily express powers underlie their formal designation of *official* reports.

New Mexico's High Court and Intermediate Appellate Court Opinions. The New Mexico Supreme Court Web site provides a link to an “infobase” containing Supreme Court and Court of Appeals opinions from 1995 to 2005. It also provides other links to “Prior Year Opinions” and “Current Year Opinions” (for the Supreme Court and Courts of Appeals) and “Slip Opinions” (for the Supreme Court). According to information from the Web site and the state author’s contacts with appropriate state officials, the “infobase” and the “Prior Year Opinions” and “Current Year Opinions” are considered *official* once they become final.

The Supreme Court slip opinions are not considered *official* because each contains the notice: “These electronic slip opinions may contain computer-generated errors or other deviations from the official opinion. Moreover, a slip opinion is replaced within a few months when it is formally released by the Clerk of the Supreme Court for publication. In case of discrepancies between a slip opinion and the opinion published on the Supreme Court Web site, www.supremecourt.nm.org under ‘Current Year Opinions’, the opinion posted under the ‘Current Year Opinion’ link controls. The ‘Current Year Opinions’ is regularly updated to include all revisions.”

The New Mexico Court of Appeals Web site links to the “Prior Year Opinions” and “Current Year Opinions” (for the Supreme Court and Courts of Appeals) found on the Supreme Court Web site. The page contains unique links to Court of Appeals’ “Slip Opinions,” which are not considered *official*.

The New Mexico Supreme Court’s relationship to the state’s Compilation Commission prompts the statement on its home page: “The New Mexico Supreme Court Web site is jointly maintained by the New Mexico Supreme Court and the New Mexico Compilation Commission. The site is maintained to provide public access to New Mexico Supreme Court and Court of Appeals opinions, court forms and uniform jury instructions.” Significantly, the New Mexico Compilation Commission is responsible for publishing the “bound volumes . . . known as the New Mexico reports” (N.M. STAT. § 34-4-2) and is empowered “to publish, distribute or sell and keep current automated legal databases of publications” including the “New Mexico reports” (*id.* § 12-1-3.1).

Before turning to Key Finding 3, it is worth noting that four of the six states with two or more online *official* legal resources – Maryland, New Mexico, Tennessee, and Utah – are inconsistent in stating whether or not their online titles are *official*. Indiana’s online administrative code and administrative register are alike insofar as both publications now state (as of August 2006) that they are *official*. The two resources constituting Michigan’s online *official* high and intermediate appellate court opinions also both state they are *official*, although there are other problems with coordination as previously mentioned. The fact that so many of the states with multiple online *official* resources are inconsistent in their approach to basic descriptive information indicates that states do not follow sufficiently deliberate policies and practices in disseminating primary legal resources on the Web. The report explores weaknesses of state policies and practices in Key Finding 4.

KEY FINDING 3: *One or more of the online primary legal sources of eight states and D.C. have “official traits,” where evidence as to the actual status of the resources is conflicting.*

Eight states – Alaska, California, New Jersey, Ohio, Texas, Utah, Vermont, and Virginia – plus the District of Columbia, are responsible for sixteen sources of law that are inchoate as *official* resources or unresolved as to their official or unofficial status. These sixteen sources are contained in thirteen separate repositories. As explained under Key Finding 2, the six sources investigated in the Authentication Survey – state administrative codes and registers, state statutes and session laws, and state high and intermediate appellate court opinions – are the units counted in our total of sixteen sources; high court opinions and intermediate appellate court opinions, counted as two sources, may be combined in one repository. These inchoate and unresolved sources fall into the category we label “O traits” or “official traits.”

Such resources are vexing to citizens and law researchers. The “O traits” or “official traits” category of online legal resources is contentious. It would be reasonable to assert that any resource that is not *official* is simply unofficial. We acknowledge this, but at the same time wish to highlight certain confusing situations that involve “official traits” of legal resources and signal a need for statutory reform or changes in state policies and practices. We find the “official traits” category is warranted for resources where a state has intended to create an online *official* legal source but a definite impediment has blocked its realization. Additionally, we find the category is warranted where states have failed to recognize the consequences of steps taken in making a legal resource available on the Web. This characterizes situations where a mismatch exists between applicable statutes and the state’s implementation or where statutory provisions themselves are ill-coordinated. Intentions of those responsible for the resources may be unclear and steps with confusing consequences may have been taken. Users tend to be misled or confused by resources falling within the “official traits” category. Online resources within this category deserve the states’ immediate corrective attention.

Vermont's Statutes. The online statutes are a noteworthy example of a state's efforts to create an online *official* resource without adequate implementation to make it a reality. Vermont statutes direct the Vermont General Assembly, Legislative Council, to "maintain official computerized databases of the Vermont Statutes Annotated." VT. STAT. ANN. TIT. 2, § 425 (2005). The section specifies, among other things, that the Legislative Council "shall post these databases, along with a seal of authenticity, on the worldwide Web site of the Vermont general assembly." The online version of the statutes, published on the General Assembly's Web site, sets forth a notice: "The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated, provided as a convenience. It has NOT been edited for publication. The 'official' version of the Vermont Statutes Annotated is online at LexisNexis Publishing." The LexisNexis version "makes no statement that it is *official*, although the print version is produced by the same company and is required by statute (VT. STAT. ANN. TIT. 2, § 423(a) (2005)) to contain a certificate of authenticity by the Council." Under the circumstances, the LexisNexis version has "official traits" only.

Virginia's High Court and Intermediate Appellate Court Opinions. The state has not recognized the confusing consequences of steps taken in labeling these resources. Opinions of the Virginia Supreme Court and Virginia Court of Appeals are uploaded to the judiciary Web site on the day they are released. "No notice is given to users regarding the official or unofficial status of the opinions or their accuracy." The opinions are currently published online in PDF and ASCII text formats; several years earlier they were published in DOC (Microsoft Word) and ASCII text formats. "The Web site refers to the PDF and the 'word-processed' versions – distinguished from the ASCII text version – as official, since the opinions in these formats contain the court's original footnotes and layout." The state author points out that the "Web site's use of the word 'official' here appears to have a broader meaning than the word as used in the phrase *official reporter*." It is a confusing use of language inasmuch as the state has "no process in place to assure this *slip opinion* is the same as the final opinion published in the *official bound Virginia Reports*" reflecting subsequent editing.

The situation in Virginia is a subtle but truly mischievous confusion that creeps into the subtext of Web sites for legal resources in other states. For example, returning to Vermont and examining a situation involving the publication of Vermont Supreme Court slip opinions, the state author there describes the court system's labeling practices. Current opinions and current entry orders of the Vermont Supreme Court are initially posted on the Web without being identified as official or unofficial. But "[a]fter the opinions and published entry orders appear in the print *official reporter*, the opinions and published entry orders are removed from the 'Current List' and arranged on [new] Web pages according to their print volume number. Links to those Web pages name the volume number and are [then] labeled as unofficial."

The author identifies the quandary: "Since slip opinions and slip entry orders are *first* labeled as unofficial *after* they are removed from the 'Current List' and identified by their print *official reporter* volume number, one might ask whether the slip opinions and slip entry orders are initially considered to be *official*. . . . According to the Vermont Reporter

TABLE SHOWING STATES WHERE EVIDENCE AS TO ACTUAL STATUS OF LEGAL RESOURCES ON WEB IS CONFLICTING (“O TRAITS”)

This table shows states where repositories of online legal resources are in some critical sense inchoate as *official* sources or unresolved as to their official or unofficial status. Information concerning the basis for such conclusions is given. The table also shows what resources are afforded permanent public access and notes the status of the other online repositories. "O traits" indicates that relevant evidence as to the official or unofficial status of the resource on the Web is inconclusive. "O" designates *official* legal resources on the Web. "PPA" designates resources safeguarded for current and future public access.

The table is a simplified reformatting of certain information from the analytical table in Appendix A. Each block represents a separate repository for an online legal resource, unless a block contains "N/A," which indicates that no current government-hosted repository is available. All repositories designated as *official* or possessing "official traits" are represented; there are actually many more unofficial repositories than represented here. Blocks colored blue (or medium grey, when printed in greyscale) indicate that the type of legal resource represented is currently published in one or more print *official* resources. Blocks with a slash through them indicate that the state's court system has no intermediate appellate court.

	Administrative code	Administrative register	Statutes	Session laws	High court opinions	Intermediate appellate court opinions
Alaska		O, PPA			O traits POLICY AMBIGUITY	
California	O traits POLICY AMBIGUITY		O traits STATUTE AND IMPLEMENTATION MISMATCHED	PPA	O traits POLICY AMBIGUITY	
District of Columbia			O		O traits POLICY AMBIGUITY	
New Jersey	N/A	N/A	O traits STATUTE AND IMPLEMENTATION MISMATCHED			
Ohio		O traits LABELING NOT COORDINATED WITH FUNCTIONS			PPA	
Texas	O traits STATUTES NOT COORDINATED	O traits STATUTES NOT COORDINATED		O traits POLICY AMBIGUITY		
		PPA		PPA		
Utah	O, PPA	O, PPA	O, PPA	PPA		
			O traits, PPA STATUTE AND IMPLEMENTATION MISMATCHED; LABELING ISSUE			
Vermont	N/A		O traits STATUTE THWARTED			
Virginia		O			O traits LABELING CONFUSION	

of Decisions, such online slip opinions and slip entry orders may be recognized as official – just as a decision published in the print *official* reporter – at least for some limited purposes”.

This conundrum concerning the *official* status of slip opinions is resolved somewhat differently in other states. For example, as described by the state authors, systems for New York and Illinois courts carefully distinguish online slip opinions from final opinions published either online (New York has both online and print *official* publications) or print only (Illinois).

Ambiguous Status of Six Online Legal Resources Stems from Underlying Statutes

The resources described in this subsection are placed in the “official traits” category because they involve a mismatch between the provisions of applicable statutes and the state’s implementation (California, New Jersey, and Utah, especially), the description and labeling of the resource are not coordinated with the resource’s statute-defined functions (Ohio), or the underlying statutes themselves are not seamlessly coordinated (Texas).

California’s Statutes. California does not publish a print *official* version of the state’s statutory codification, the California Codes. The Legislative Counsel is required to make the California Codes “available to the public in electronic form.” CAL. GOV’T CODE § 10248(a). The applicable statute specifies that “the electronic public access provided by way of the [Internet] . . . shall be in addition to other electronic or print distribution of the information.” *Id.* Thus the legislature contemplated something other than a mandate designating the online version as *official*. Under the circumstances – where no other state-hosted version of the California Codes exists – it still cannot be said definitely that the resource is *official*.

New Jersey’s Statutes. Under applicable statutes, the New Jersey Legislative Services Commission, Office of Legislative Services, a non-partisan legislative agency responsible for research, bill-drafting and administrative services, is required to “make available to the public and maintain in electronic form . . . the most current available compilation of the official text of the statutes of New Jersey.” N.J. STAT. ANN. § 52:11-78. Despite this mandate, the status of the electronic version of the statutes available on the New Jersey legislature Web site is ambiguous. As discussed by the state author, “[t]he database does not explicitly indicate whether it is *official* or not. Nor does the database contain any disclaimer directing users to the ‘official’ print version.” The site contains a “caution,” warning that the “statutory database is unannotated and as such may include laws that have not become operable due to unmet conditions, have expired, have been ruled inoperative by a court, or have otherwise become inoperable. Effective dates are not typically included.” The state author points out that this warning addresses the appropriate use of the resource; “it is not a disclaimer concerning ‘official’ status of the Web site.” The resource “leaves the user unsure whether it is *official* or not.”

Ohio's Administrative Register. The online-only *Register of Ohio* has distinct official functions and its description of itself uses somewhat ambiguous language that stops short of stating the resource is *official*. According to a statement on the Web site directed to administrative agencies, “[t]he Legislative Services Commission recognizes the official notice and information functions performed by the *Register of Ohio*, and makes every effort to publish all documents in the Register free of error.” The Web site states that the *Register of Ohio* – which was first published on July 3, 2000 by the Ohio Legislative Service Commission – is “an electronic publication that functions as a gazette to which members of the public may readily resort for notice of and information about rule-making processes.” By statute, the *Register* must be updated weekly, with documents purged when their “display no longer serves the public notice and information functions performed by the register.” OHIO REV. CODE ANN. § 103.051. The *Register* was created as part of a comprehensive revision to administrative rule-making procedures affording greater public participation and establishing an electronic-only system for agency rule-filing. It is a companion to the *official* print-only *Ohio Monthly Record*, which publishes in chronological order the state’s administrative regulations.

Texas' Administrative Code and Administrative Register. The status of the Web versions of the Texas administrative rules publications is not clear. In 1993, the legislature declared that the *Texas Administrative Code* and the *Texas Register* are *prima facie* evidence of the text of the of the administrative rules they contain. Act of Sept. 1, 1993, ch. 268, §§ 2002.054 & 2002.022, 1993 Tex. Gen. Laws 583, 754-755 (enacting TEXAS GOV'T CODE §§ 2002.054 & 2002.022). The same legislation provided that, in the event of conflict, the official text of an administrative rule is the text the agency filed with the Secretary of State, not the text of the *Texas Register*. In 1995, the legislature directed the Secretary of State to make the *Texas Administrative Code* and the *Texas Register* available on the Internet. TEXAS GOV'T CODE §§ 2002.057 & 2002.0151. Nothing on the Secretary of State's Web site, including its disclaimer, addresses the question of the official or unofficial status of the Web version of the Texas Administrative Code and the Texas Register. In describing the *Texas Administrative Code* and the *Texas Register* and discussing their role in open government and the administrative rule making process (at http://www.oag.state.tx.us/AG_Publications/txts/2002adminlaw4.shtml0), the Texas Attorney General appears to treat the print and electronic versions of those resources as equivalent, except he advises users to consult the Texas Register when researching a rule, since the Web version of the Texas Administrative Code is not updated as frequently as the Texas Register.

Utah's Statutes. Of two online versions of the state’s statutes – one a “simple numerical list” and the other a searchable version contained within a database system – the latter lacks the declaration and notice as to *official* status given by the former. The state author reports that “technical issues make it difficult to add . . . language” comparable to that of the version of the statutes mounted as a numerical list. Nonetheless, the absence of such language on one of two versions of statutes throws into sharper contrast their possible differences. The resulting uncertainty – easily removed by means of an appropriate descriptive statement – warrants an “official traits” label for the searchable version.

Five Other Online Legal Sources Have Unresolved Characteristics as to their Status

Alaska's High Court and Intermediate Appellate Court Opinions. In Alaska, “the court system has negotiated an agreement with Thomson West, its *official* publisher, to make all appellate opinions, 1960 to date, available electronically as well as in print.” The Web site for Alaska Appellate Court Slip Opinions and Memorandum Opinions alerts users that the print *official* appellate opinions – the *Pacific Reporter* and the offprint for Alaska published under the title *Alaska Reporter* – are available at Alaska Court System law libraries. Thomson West’s *Alaska Case Law Service*, however, states nothing about the official or unofficial status of its opinions, except it identifies opinions not reported in the *Pacific Reporter* as “unpublished.” The underlying concern to have authoritative materials available on the Web – a policy particularly important in a state with a widely disbursed population – is evidently at odds with policies on print *official* legal resources. The unofficial status of the online legal resources is not perfectly clear.

California's Administrative Code. Thomson West was required to provide online access to administrative regulations as a condition for being awarded the contract to publish the print *official* version of that material. According to the California Code of Regulations Web site, the contract requires that “[t]he Contractor shall ensure that the [Web version] is consistent with the most recent updated [print version], accurately reflects what is filed with the Secretary of State; and that it is complete and contains all the material defined as part of the official [Code].” The Web version makes no representation as to its official or unofficial status. It states the “Official California Code of Regulations is available” from the publisher “in looseleaf printed format.”

California's High Court and Intermediate Appellate Court Opinions. Similarly, LexisNexis was required to provide online access to the court opinions as a condition for being awarded the contract to publish the *official* print version of that material. The “Official Reports” site (also identified as “Searchable Opinions 1850 – Present”) draws directly from the LexisNexis database. It is integrated into the California Courts homepage, which also provides a set of links for current slip opinions, superseded slip opinions, and short-term unpublished opinions of the California Supreme Court and Courts of Appeal. LexisNexis pages provide extensive disclaimers and limitations of liability. To gain access to the “Official Reports,” a user is required to check mark a box acknowledging that he or she has read extensive “Terms and Conditions” and agrees to them. One paragraph of the “Terms and Conditions” states that “Provider does not represent or warrant that the Web Site will be error-free Provider does not warrant or represent that the information available on or through the Web Site will be correct, accurate, timely, or otherwise reliable.” Another paragraph states:

THIS WEB SITE IS PROVIDED ON AN “AS IS” BASIS. PROVIDER EXPRESSLY DISCLAIMS ALL WARRANTIES PROVIDER DISCLAIMS ALL RESPONSIBILITY FOR ANY LOSS, INJURY,

CLAIM, LIABILITY, OR DAMAGE OF ANY KIND RESULTING FROM, ARISING OUT OF OR ANY WAY RELATED TO (A) ANY ERRORS IN OR OMISSIONS FROM THIS WEB SITE AND THE CONTENT, INCLUDING BUT NOT LIMITED TO TECHNICAL INACCURACIES AND TYPOGRAPHICAL ERRORS . . . (at <http://www.lexisnexis.com/clients/CACourts/> (all caps in original)).

Such representations and disclaimers leave questions as to the status of the materials. Those questions are unanswered where the online resource's representation as to its status consists solely in the word choice for the title of the database, a title not used consistently throughout the resource. Additional analysis of "as is" representations and disclaimers is given in Key Finding 4.

District of Columbia's High Court Opinions. A representative of the District of Columbia Court of Appeals, the district's highest court, indicated that the opinions posted on the court's Web site are considered *official*. However, a disclaimer on each opinion states: "This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press." In addition, the Court's *Citation Guidance Memorandum*, which needs updating in several respects, sets forth rules that appear to contradict the conclusion that opinions on the Web site are *official*. Paragraphs 3 and 5 of the memorandum indicate that the *Atlantic Reporter* is the source to cite for published opinions of the court. Statements applicable to the Web site as a whole indicate that "[t]he content and function of the Web site are provided to you 'as is,' without warranties of any kind, either express or implied, including, but not limited to, warranties of title, merchantability, fitness for a particular purpose or use, or currency."

Texas' Session Laws. The Secretary of State obtains the "bills that have become law" (TEX. GOV'T CODE ANN. § 405.014) and is charged to make them available (*see* TEX. GOV'T CODE ANN. § 405.011). PDF copies of original documents constituting the enrolled bills of the current legislature, including signatures, are available on the Secretary of State's Web site. Insofar as the Secretary of State is responsible for authenticating legislation and other legal sources, the posting of PDF copies of the original documents may be thought to represent an unperfected form of an *official* legal source. It is not clear whether the PDF version is intended to be an official or unofficial publication.

KEY FINDING 4: *States have not acknowledged important needs of citizens and law researchers seeking government information; they have not been sufficiently deliberate in their policies and practices.*

The representations and disclaimers made by online legal resources were a starting point for the Authentication Survey's investigation of official or unofficial status. Online legal

resources that disclaim *official* status often make extensive disclaimers concerning their accuracy and reliability. Online *official* legal resources also sometimes make such disclaimers. The prevalent use of disclaimers – which may be contrasted with very limited use of disclaimers for official and unofficial print titles – points to fundamental differences between online and print media.

Publishing entities, both government and commercial, have long recognized that digital materials are vulnerable to lapses in management and control, corruption, and tampering. More importantly, publishers simply have not taken extra steps needed to put online legal resources on the same footing as print. This is so even for publishers of online *official* legal resources. This failure represents a serious neglect of the needs of citizens and law researchers seeking government information. It is axiomatic that persons using legal resources seek trustworthy – *official* and *authentic* – government information without reservations concerning how online versions relate to authoritative originals, transcription accuracy, completeness, and currency. Citizens and law researchers seek authoritative online information; they reasonably, if uncritically, use the government-prepared or government-hosted information they find on government Web sites.

The fundamental trustworthiness of online legal information is not the only concern, however. Fully recognizing the needs of citizens and law researchers related to the authority of online legal resources necessitates that the states take action to make online sources serve as improved or, at least, adequate substitutes for print *official* legal sources. The states need to deliberate a number of practical issues, including:

- Should the title of the online source be identical to the print version?
- What features and formatting of the online publication would best serve applicable citation systems?
- Should formatting of online sources correspond to their print counterpart?
- Should updating for an online source occur more frequently than the print version?
- How are any differences as to currency and other essential features best communicated?
- How is the official or unofficial status of the online source best communicated?

There are some overarching structural concerns as well:

- How might maintenance of online legal resources be integrated into the flow of administrative, legislative, and judicial activity generating the law?
- What systems best reflect the natural life-cycle of legal information?
- What processes ensure permanent public access?

Generally, the states have neglected needs of citizens and law researchers and have failed to develop sufficiently deliberate policies and practices affecting the authority of online

legal resources. This section of the report first examines the states' use of formal representations and disclaimers in detail. Afterwards, it identifies a number of issues relevant to states now entering an all-digital world of legal information. These are issues the states should address in making legal resources available on the Web. Our focus is the authority of online legal resources, as measured against print *official* sources.

Two Basic Forms of Disclaimer Information

One form of disclaimer information states, in its purest version, that a resource is not *official*. (This is opposed to a representation that the resource is *official*.) We call this form of disclaimer information the official-unofficial type. The second form that representations and disclaimers take may make no mention of the official or unofficial status of a resource and, in its purest version, states that the text is offered “as is.” It usually disclaims any warranties and specifically limits the publisher’s liability. We call this second basic form of disclaimer information the “as is” type.

The official-unofficial type corresponds to conventions in legal publishing established in the print world. Simple convention may account for why the meaning of an official or unofficial designation is rarely spelled out within the print resources themselves. Just as likely, their meaning is rarely made express – at least for unofficial resources – because print unofficial resources are sold on a true *on inspection* basis. Making extensive representations and disclaimers suggesting a resource is not reliable would be commercially unwise. One might compare the marketing of print legal resources with the electronic. Electronic resources make boilerplate representations and disclaimers with few serious marketing consequences. Electronic resources are regularly fitted with “I agree” check-off hurdles, forbidding access unless a purchaser or user agrees to extensive boilerplate limitations of the publisher’s liability. The “as is” form of disclaimer information arises out of such contracts of adhesion; it is a phenomenon of the digital world. The use of “as is” representations and disclaimers has troubling consequences for government-hosted online *official* legal resources published by commercial vendors and made available for no-fee public access.

Yet another type of disclaimer information may be added to the list including the official-unofficial and “as is” types. This third type is somewhat hazier in outline than the others. It is associated with certain resources produced or distributed with the assistance of commercial vendors who enter into public-private partnerships responsible for statewide government portals or one-stop gateways to all government information and services. This type in its purest version would make few representations and disclaimers. The resources available on the portal – sometimes by subscription and with per-search fees – would be silent as to their status (unless they are *official*) and make few statements diminishing their reliability and authority. Kansas’ online legal resources, available through an official portal created by a public-private venture (*Kansas.gov* at <http://www.kansas.gov>), are silent about their official or unofficial status. As spelled out in the Kansas state summary, the disclaimers have a distinctively lighter touch:

A disclaimer on the interface for the statutes (both free and fee-based) states that the text “is provided with the permission of the Revisor of Statutes.” A disclaimer on the interface for the session laws states that the Information Network of Kansas creates an “electronic representation of the Session Laws” derived from “electronic-readable material provided by the Kansas Division of Printing.” A disclaimer on the interface for the Kansas Administrative Regulations states that the text “is derived from electronic-readable material provided by the . . . Division of Printing.” All of the disclaimers go on to state, “The Information Network of Kansas has made every effort to create an accurate electronic representation of the [resources]. In some cases there may be minor discrepancies with the printed document. In those cases neither INK nor the State of Kansas shall be liable for the effect of those discrepancies” (pp. 112-113).

Kansas is one of eighteen states – Alabama, Colorado, Hawaii, Idaho, Indiana, Iowa, Georgia, Kentucky, Maine, Montana, Nebraska, Oklahoma, Rhode Island, South Carolina, Tennessee, Utah, and Virginia – that have a state-level portal created through a public-private venture involving National Information Consortium, Inc. (at <http://www.nicusa.com/html/>). Kansas was the first such venture; the corporation is headquartered in that state. Resources of other states with public-private partnerships do not necessarily make representations and disclaimers like those of Kansas; undoubtedly a variety of factors come into play. A full exploration of the special category of representations and disclaimers associated with such public-private ventures is beyond the scope of the Authentication Survey. The effect of such ventures on the dissemination of government information warrants further study.

a. Official-Unofficial Type of Disclaimer Information

This type of disclaimer information turns on the well-established official-unofficial dichotomy in legal publishing. A disclaimer of this type may simply state that the legal resource is not *official*. But it is rarely so completely unadorned. Often the resource stating it is unofficial identifies its *official* counterpart and gives some additional information about it. A representative example of this type is given on the Web site for Alabama’s online administrative code:

This is not the Official Alabama Administrative Code. The Official Alabama Administrative Code is available in hardcopy form from the Legislative Reference Service [giving specified contact information].

The Alabama Administrative Code is published by the Legislative Reference Service pursuant to subsection (e) of Section 41-2-7 of the Code of Alabama 1975. The Alabama Administrative Code is a compilation of the rules of all state agencies covered by the Alabama Administrative Procedure Act. . . . (at <http://www.alabamaadministrativecode.state.al.us/about-code.html>).

Often the official-unofficial type is combined with a few representations and disclaimer statements that are characteristic of the “as is” form. Thus, in addition to a statement that a resource is not *official*, one finds statements such as: “While every effort is made to ensure the accuracy and completeness of the [online resource], the [resource] is not official, and the [agency creating the resource] will not be responsible for any errors or omissions that occur in these files” (Georgia’s statutes at <http://w3.lexis-nexis.com/hottopics/gacode/Terms%20and%20Conditions.doc>). “This Web site contains copies of the [online resource]. These are not the official copies of the [resource]. The official copies remain the paper copies published by the [agency creating the print resource] pursuant to [specified statute]. Every attempt has been made to ensure accuracy and reliability. However, the [agency creating the resource] makes no warranties, either express or implied, including warranties regarding the content of copies presented on this Web site” (Missouri’s administrative register at <http://www.sos.mo.gov/adrules/moreg/moreg.asp>). “The [resource] is a free service of the [agencies cooperatively creating the resource]. The information obtained from this site is not intended to replace official versions of that information and is subject to revision. The [hosting body] presents this information, without warranties, express or implied, regarding the accuracy of the information, timeliness, or completeness” (Michigan’s statutes at [http://www.legislature.mi.gov/\(S\(cvgvdi5510mtwxz1sdotia55\)\)/mileg.aspx?page=home](http://www.legislature.mi.gov/(S(cvgvdi5510mtwxz1sdotia55))/mileg.aspx?page=home)). Multiple additional examples are found in the state summaries of this report.

Finally, the special case of online *official* legal resources making extensive “as is” representations and disclaimers must be noted. They are usually court opinions published by commercial vendors – usually the same vendors who publish the print *official* versions – and made available on government-hosted Web sites for no-fee public access. This special case is discussed in detail after we address multi-purpose “as is” disclaimer information in the next subsection.

b. “As Is” Type of Disclaimer Information

States offering their online legal resources “as is” do a great disservice to citizens and law researchers, yet the Authentication Survey found several states that offer such resources. Even online *official* legal resources are being offered “as is.” One may wonder how it is possible for *official* legal sources to be offered “as is,” inasmuch as this runs contrary to one’s intuitive sense of *official* status. The existence of untrustworthy *official* legal resources – resources that suggest themselves that they may not be reliable – signals a critical need for *authentication*. Legal resources deemed as *official* should be *authentic*.

The “as is” type of disclaimer information turns the well-established official-unofficial dichotomy on its head. In the world of print legal resources, a publication is either official or unofficial. Responsibilities in connection with print dissemination are settled in law or by recognized convention. In general, a state official certifies the text of an *official* legal resource as an accurate and complete statement of the law. That certification is a basis for judicial notice and other recognition; generally the *official*

resource is *prima facie* evidence of the law, trustworthy though not guaranteed as infallible.

There is little room in the established concept of *official* status for express limitations of liability. Indeed, were this area of the law explored judicially and fully settled, the required good faith of certifying officials and *official* publishers may very well negate any attempt on their part to limit their liability with total “as is” representations and disclaimers.

Nonetheless, boilerplate “as is” representations and disclaimers appear on government-hosted online legal resources. They originated, undoubtedly, from commercial vendors that were invited or required to publish legal resources on government Web sites. A representative example of such “as is” language is given for Tennessee’s online statutory compilation. The resource is made available by a major law publisher. Relevant excerpts are as follows:

General Disclaimer. EXCEPT AS EXPRESSLY STATED IN [other sections making limited warranties not relevant here], WE MAKE NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE CAPABILITY OF THE LEGAL RESEARCH SERVICE OR THE ACCURACY OR THE COMPLETENESS OF THE MATERIALS.

THE LEGAL RESEARCH SERVICE AND MATERIALS ARE FURNISHED ON AN “AS IS,” AS-AVAILABLE BASIS. ALL WARRANTIES OF ANY TYPE NOT EXPRESSLY STATED IN THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

...

CONSEQUENTIAL DAMAGES DISCLAIMER. UNDER NO CIRCUMSTANCES WILL WE OR ANY RELATED PARTY OR SUPPLIER BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES; OR FOR LOSS OF PROFITS, REVENUE, OR DATA; WHETHER IN AN ACTION IN CONTRACT, TORT, PRODUCT LIABILITY, STRICT LIABILITY, STATUTE OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

LIABILITY DISCLAIMER. Neither we nor any Related Party or Supplier shall be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from: (a) any errors in or omissions from the Legal Research Service or any Materials available or not included therein...

(<http://198.187.128.12/tennessee/lpext.dll?f=templates&fn=copyright.htm>
(all caps and bolded text in original)).

It will be recalled that Tennessee is one of the three states among the most committed to making online *official* legal resources available to citizens and others. Identical representations and disclaimers are made by the same major commercial legal publisher in connection with Mississippi’s statutory compilation on the Web.

States have adopted similar language in representations and disclaimers that, evidently, were crafted directly by the state itself. Relevant excerpts from language applicable to a number of Hawaii’s resources are as follows:

Notice [y]ou have entered an official State of Hawaii WEB SITE (i.e., all pages starting with “www.state.hi.us” [.] “www.hawaii.gov”, “www.ehawaii.org”, or “www.ehawaii.gov.com [.]”), which may be used for authorized purposes only. . . .

Disclaimer of Warranties [.] This WEB SITE is provided “AS IS” and without warranties of any kind. To the fullest extent of the law, the State of Hawaii, including each agency, officer, or employee of the State of Hawaii, disclaims all warranties, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose, with respect to this WEB SITE; the disclaimer of warranties includes but is not limited to disclaimers as regards the following: . . . (2) that any defects or other errors on this WEB SITE will be corrected . . .

In addition, neither the State of Hawaii nor any agency, officer, or employee of the State of Hawaii makes any representations, guarantees, warranties as to: (1) the accuracy, completeness, currency, or suitability of the information provided via the WEB SITE; . . . and (3) the accuracy, reliability, availability or completeness or usefulness of the content of Web sites created and maintained by persons other than the State of Hawaii and linked to from this WEB SITE (at <http://www.hawaii.gov/portal/terms.html> (words in all caps in original)).

None of the legal resources covered by Hawaii’s representations and disclaimers is *official*, despite the use of that term – a label typically given state-level portals – in the opening statements on their home page.

Official Legal Resources Making “As Is” Representations and Disclaimers

Boilerplate “as is” disclaimers are found on *official* legal resources on the Web. They are uncommon on *official* legal resources, but no less troubling as a result. Instances of “as is” disclaimer information typically originate from the major commercial legal publishers

that make the online *official* resources available. In one case it is part of the boilerplate given for all resources – official and unofficial – on a state portal, namely that of Utah. The situation with the “New York Official Reports Service,” noted above, is an important, telling example.

The “New York Official Reports Service” is a feature of the New York Law Reporting Bureau Web site. The Law Reporting Bureau is statutorily responsible for overseeing, among other things, the preparation of the bound volumes of *official* opinions of the New York Court of Appeals and Supreme Court, Appellate Division. See N.Y. JUDICIARY LAW §§ 433 & 433-a. Those volumes, published as the *New York Reports* and the *Appellate Division Reports*, constitute two of the three series of *official* reporters for the state. Their actual printing and publication is performed pursuant to a contract currently held by Thomson West. That contract is statutorily required to permit the contractor “to produce and market [the court reports] and the combined official series in any medium or format, besides bound volumes and printed advance sheets, including but not limited to microfiche, ultrafiche, on-line computer retrieval data base, and CD-ROM, subject to prior approval by the state reporter and the chief judge of the court of appeals.” *Id.* § 434(5)(b). Thus the no-fee “New York Official Reports Service” is *official*, as is Thomson West’s commercial online-annotated version, which draws from the same data.

Those seeking to use the “New York Official Reports Service” encounter an “I agree” check-off hurdle, forbidding access unless the user agrees to extensive boilerplate “as is” type disclaimer information. The representations and disclaimers include the following:

THE NEW YORK OFFICIAL OPINIONS ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OMISSIONS, COMPLETENESS, CURRENTNESS AND DELAYS. USER ACKNOWLEDGES THAT USE OF THE NEW YORK OFFICIAL OPINIONS IS AT USER'S SOLE RISK. WEST IS NOT LIABLE FOR ANY CLAIMS RELATING IN ANY WAY TO USER'S INABILITY OR FAILURE TO PERFORM LEGAL OR OTHER RESEARCH OR RELATED WORK OR TO PERFORM SUCH LEGAL OR OTHER RESEARCH OR WORK PROPERLY OR COMPLETELY, OR ANY DECISION MADE OR ACTION TAKEN BY USER IN RELIANCE ON THE NEW YORK OFFICIAL OPINIONS. IN NO EVENT WILL WEST BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. . .

(<http://government.westlaw.com/nyofficial/search/default.asp?tempinfo=SEARCH> (all caps in original)).

Returning to our discussion of California’s court opinions, we note that the situation involving the repository of “Official Reports” or “Searchable Opinions 1850 – Present” on the California judiciary Web site has several things in common with the “New York Official Reports Service.” Notably the California “Official Reports,” which is maintained by LexisNexis, makes “as is” representations and disclaimers very similar to the New York resource. The LexisNexis resource also appears to declare its *official* status by including the word “official” in its title.

The Judicial Council of California is responsible for the judiciary Web site of which the “Official Reports” or “Searchable Opinions 1850 – Present” is a part. Like the Web site of the New York Law Reporting Bureau, the California judiciary Web site is well organized. It provides a set of links for current slip opinions, superseded slip opinions, and short-term unpublished opinions of the California Supreme Court and Courts of Appeal. The LexisNexis resource is well integrated with those other links. There are some indications that the Judicial Council of California intends the LexisNexis resource to be *official*. The site’s “Important Notice to Publishers” advises unofficial publishers to “exercise caution as to any California appellate opinions *not procured from this Web site*” (at <http://www.courtinfo.ca.gov/opinions/notice.htm> (emphasis added)). The notice cites the Reporter of Decisions as the final authority concerning the status of opinions. The site appears to set itself up as a standard insofar as an opinion not published on the opinions page is cause to inquire further as to its status. The notice cites an instance where paper opinions not on the Web site had erroneously been distributed as final opinions and – because they were paper – improperly treated by unofficial publishers as citable authority. *Id.*

Conceivably, the Judicial Council of California is privileging the online resource over paper (because errors are found to creep into the distribution of *paper* opinions). Even if this is the correct reading of the Judicial Council’s intention, however, it still has failed to take the simple step of actually explaining the status of the materials on the site. Balancing all relevant factors – including the troubling nature of its “as is” type disclaimer information – the overall absence of a definitive statement of the Judicial Council’s intentions compels our conclusion that the resource has “official traits” only.

We urge states to take care to make the status of online legal resources clear to users. While we are troubled by its mixing of *official* status and “as is” disclaimer information, the New York Law Bureau has the virtue, in the final analysis, of being clear enough to make the actual status of its materials understood. Further, it may be thought New York is especially well positioned to achieve *authentication* of its online court opinions – and remedy the unseemly “as is” disclaimer information – by requiring its commercial *official* publisher to use appropriate *authentication* methods. Given the profit incentives built into the statutory arrangements that underlie the state’s *official* publication of online legal resources, such an avenue to genuine *authentication* would appear to be viable.

Policies and Practices Meeting the Needs of Citizens and Law Researchers

In general, the states appear to be unaware of the consequences of steps they have taken and representations they have made concerning their legal resources on the Web. They have sought little continuity between online materials and print *official* sources, as they might have were they engaged in a truly coordinated shift from print to the Web. Many states appear to be unaware, as well, of legal principles applicable to print *official* legal sources and their rationale; current policies and practices do not reveal an understanding of the problems *official* status is designed to solve. The policies and practices fail to meet the needs of citizens and law researchers. The report now turns to specific suggestions for states entering the all-digital world. Areas of concern not adequately addressed in state policies and practices are as follows:

- Giving online legal resources specific and easily identified names. Do the Uniform Resource Locators (URLs) for the legal resources logically reflect those names? Are the URLs of reasonable, citable length?
- Naming online legal resources consistently vis-à-vis any print counterparts. Are online *official* legal sources given names identical to equivalent print *official* sources? Are such resources named differently but according to a pattern or convention easily understood by citizens and law researchers? Do the URLs logically reflect the natural sections into which the legal resources are divided?
- Identifying print *official* sources, giving information about where to find them, and providing other guidance about options for locating legal information.
- Resolving and communicating clearly any differences in currency and updating schedules for online legal resources vis-à-vis any print counterparts. How should the resource be structured to ensure access to earlier versions? How should superseded material be presented?
- Using Persistent Uniform Resource Locators (PURLs) to ensure permanent accessibility and unhindered linking to the online legal resource from other sites.
- Addressing pagination or other formatting issues concerning equivalency between online and print legal resources. Does the implementation of the state's universal citation system, if any, optimize use of online legal resources?

- Providing a clear statement about the official or unofficial status of online legal resources. What source of law provides for the status of the resource?
- Using the word “official” with care. Can citizens and law researchers easily understand the difference between its use in “official state Web site” and “official state statutes”?
- Identifying the source of the data of the online legal resource, its “chain of custody,” and relevant processes and procedures in the state’s handling, safekeeping, and long-term preservation of the data.
- Describing authentication and archival processes and procedures ensuring *authenticity*. Is the source *authentic*? How do users obtain an *authentic* source?
- Addressing any duplicate versions of the same online legal resource. What purpose is served by the duplicate resource? Is that purpose communicated to users, along with a link to the duplicate source?
- Presenting prominently any representations and disclaimers. Do users understand any limitations on the usability of the legal resource?
- Specifying precisely the scope of any representations and disclaimers.
- Developing thorough policies and procedures specifically addressing online primary legal resources. Are rationales given? Does the state address *official* status, authentication, and permanent public access for online legal resources?
- Posting the policies and procedures with online legal resources, along with contact information for persons responsible for the policies and procedures.

We now turn to the central issue that should inform any state’s policies and procedures, namely, the *authenticity* of online *official* legal resources.

KEY FINDING 5: *No state’s online primary legal resources are authenticated or afford ready authentication by standard methods.*

The Authentication Survey found, unfortunately, that it is difficult to know with certainty whether an online legal resource is *official* or not. The report helps to make clear what it means for online resources to be *official*. It examines statutes responsible for online *official* legal resources. It demonstrates that the concepts of *official* status and

authenticity of online legal sources are inextricably interrelated. Our analysis of the relationship is this: An online *official* legal resource is one that possesses the same status as a print *official* legal resource. The essential means to ensure the online legal resource is equal to the print *official* source is to ensure the online resource is *authenticated* or affords ready authentication by standard methods.

No state's online primary legal resources are *authentic* – meaning that none of those resources are *authenticated* or afford ready authentication by standard methods. One recalls that “an authentic text is one whose content has been verified by a government entity to be complete and unaltered when compared to the version approved or published by the content originator.” It bears a certificate or mark as proof of its certification, “the process associated with ensuring the text is complete and unaltered” from the original. An *authentic* text is able to be *authenticated*, “ensuring that it is what it claims to be.”

Three States Express Special Concerns about Authentication

In completing the Authentication Survey, the state authors for Minnesota, Virginia, and Vermont identified their states as “addressing the authentication of online legal resources.” Efforts of Minnesota and Vermont require some scrutiny. Virginia's longer-range efforts in this area seem especially promising.

a. Minnesota's Approach Concerning its Online Administrative Register

Minnesota's Revisor of Statutes has an important awareness of authentication issues and, as described by the state author, “has discussed digital signatures, watermarks, and other technologies, but there are no immediate plans to make online resources *official* and there is no process in place to certify Web text as complete and unaltered.” The state author comments that “[t]he online State Register is considered *authenticated* insofar as the material submitted for publication is properly endorsed.”

We have already noted that this form of authentication is insufficient. It is worth summarizing our conclusions here. Under Minnesota law, state agencies must endorse duly adopted notices of hearing, rules or changes submitted for publication. *See* MINN. STAT. § 14.46(3). Text so endorsed is considered to be an *authenticated* source. Thus, adhering to our methodology, we have labeled the resource as *authentic*, with our stated reservations. Under our broad definition of authentication, we consider the resource to have been certified, but for one point in time only. Digital materials endorsed according to the Minnesota statute are still vulnerable to lapses in management and control, corruption, and tampering. The Minnesota certification is not, by itself, sufficient to establish that the digital materials are *authentic*.¹⁰

¹⁰ A “silent” issue – one never actually voiced by relevant state officials – concerning the *authentic* status of Minnesota's online administrative register warrants some attention. According to the state author, the position on authentication taken by the Minnesota Revisor of Statutes is based on the proper endorsements

Something else is needed, namely, processes described by one of the standard methods of authentication. Those methods include digital signatures and public key infrastructure, but other archival methods or “best practices” are also possible. Certification or other types of formal endorsement of legal resources are a vital link in the “chain of custody.” That chain may contain a link to computer technologies that guarantee the very copy delivered to the user’s computer screen is uncorrupted and complete. Or that chain may be part of other archival methods.

b. Vermont’s Authentication Law Concerning its Statutory Compilation

Vermont is the only state to mandate by statute proof of authenticity for a legal resource on the Web. The state’s Legislative Council is required to “maintain official computerized databases of the Vermont Statutes Annotated” and post them, “along with a seal of authenticity, on the worldwide Web site of the Vermont general assembly.” VT. STAT. ANN. tit. 2 § 425. Vermont does not appear to have complied with this mandate. Nonetheless, the state has a “growing awareness of authentication issues”. This represents important progress in addressing authentication of online legal resources.

In requiring a “seal of authenticity,” does section 425 of title 2 of the *Vermont Statutes Annotated* contemplate authentication of the online statutes as defined by this report? Since neither the online statutes maintained by the Legislative Council nor the statutes available on the Web through LexisNexis actually have the required “seal of authenticity,” it is difficult to answer this question with certainty.

The print *official* statutes published by LexisNexis have a “certificate of authenticity” in compliance with section 423(a) of title 2 of the *Vermont Statutes Annotated*. This evidence represents a one-time certification as to the text’s accuracy and completeness sufficient to designate the print resource as *official*. But the situation with the “seal of authenticity” for online statutes is very different. Consistent with our central understanding that authentication is needed to ensure an online legal resource is

of the administrative material submitted for publication. Viewing the endorsements along with the added observation that the *Minnesota State Register* is published as a PDF of the print provides additional color to the claim that the resource is *authenticated*. Undoubtedly the print version of the administrative register is *authenticated* for purposes of the statute in question. See MINN. STAT. § 14.46(3). Insofar as the PDF version of the *Minnesota State Register* has a fixity equivalent – or nearly equivalent – to the print, does the PDF format make the publication sufficiently trustworthy? It is beyond the scope of the Authentication Survey to examine technologies from the perspective of engineering or computer science experts. Our understanding of the limitations of the PDF format as a vehicle for *authenticated* legal resources is based on the expertise supporting the U.S. Government Printing Office (GPO) efforts to *authenticate* PDF documents on *GPO Access* (at <http://www.gpoaccess.gov>). Working with Adobe Acrobat (PDF) technologies, GPO determined that secure documents meeting federal government standards required use of digital signatures and public key infrastructure to ensure the PDF copy delivered to the user’s computer screen is unaltered and complete. A description of the pilot project for *GPO Access* preliminary to the proposed Federal Digital System is found on GPO’s Web site (at <http://origin.www.gpoaccess.gov/authentication/>). Authentication using digital signatures and public key infrastructure is demonstrated there.

equivalent to a print *official* source, we argue that the seal required by the statutes must be a form of proof associated with a standard authentication method as defined in this report.¹¹

c. Virginia's Legislative Study Addressing Authentication and Related Issues

There is also some progress to report from Virginia, where a joint subcommittee of the legislature has been studying issues of providing official authentication of state electronic records and permanent public access. The study, which has focused on records, may help in developing a model for legal materials on the Web. Recently enacted legislation developed by the subcommittee has charged the State Library Board with issuing regulations designed to address the range of issues inherent in the preservation, management, and storage of all records, including electronic records.

¹¹ We have noted that a premise of the *Federal Rules of Evidence* is that “the manner in which law is fed into the judicial process is never a proper concern of the rules of evidence”. Like the majority of states, Vermont has patterned its rules of evidence on the *Federal Rules of Evidence*. *Vermont Rules of Evidence* Rule 902(5), which is identical to the federal rule, provides that “[e]xtrinsic evidence of authenticity as a condition precedent to admissibility is not required [for] . . . (5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.” Thus publications “purporting to be issued by public authority” are “self-authenticating” under federal and Vermont rules. Even assuming this rule of evidence would apply to issues concerning the *authenticity* of legal resources, its rationale would be seriously undermined if the “seal of authenticity” requirement for Vermont’s online statutes was construed as any less stringent because official publications are “self-authenticating” under the evidence rule. As discussed in connection with Minnesota’s online administrative register, *official* status is not meaningful without authentication by standard methods, since that status is not functionally achieved unless the online resource can serve as a touchstone for accurate and complete statements of the law.

The only known case applying Rule 902(5) to an online government publication is *U.S. Equal Employment Opportunity Comm’n v. Dupont Nemours & Co.*, 65 Fed. R. Evid. Serv. (Callaghan) 706, 16 Am. Disabilities Cases (BNA) 381, 2004 U.S. Dist. LEXIS 20753 (E.D. La. 2004). In that case, a table giving employment information printed off from the Web site of the United States Census Bureau was found to be self-authenticating under Rule 902(5). The exhibit in question gave the Internet domain address for the site from which the table was printed and the date on which it was printed. The court verified that the Web page existed at that location. This report takes the common sense position that proof as to the domain address for a statute and its printout date, without more, would be wholly insufficient to ensure the text is trustworthy, even where the court verified that the online text existed at that location. Additional certification is needed, one meaningful in light of the risk of accidental changes and data corruption over potentially long periods of time. The text of online sources such as statutes is usually drawn from databases that are intended to accommodate changes and, without the rigorous controls of authentication, are susceptible to unaccounted for alterations. Without additional certification in the form of authentication by standard methods, it cannot be said the text is what it purports to be. To assert that the question of accidental changes is a matter of how much weight the evidence deserves, not authenticity, misstates the law and, worse, returns over-technical rules to a matter that is not “a proper concern of the rules evidence.” Professor Peter W. Martin, Cornell Law School, is thanked for alerting us to Rule 902(5) and this case law; the interpretation is ours.

Other States and Authentication Concerns

At least eight states – Alabama, Arkansas, Connecticut, Maryland, Montana, Ohio, South Carolina, and Tennessee – potentially perceive authentication or its absence as a specific concern warranting attention. The state author for Ohio points out that certain state legal resources may imply they are *official*, even where they are not. That state’s concern about authentication is well placed.

Some states – Wisconsin, for example – have definite policies that make it very clear to users that only print resources are *official* and therefore are not considering authentication at this time. Other states appear to regard online legal resources as law searching tools not intended as a final source. They may indicate that resources are offered “for informational purposes only.” States that cast online legal resources in a facilitative role consider authentication a low priority.

For five states – Alaska, Indiana, New Mexico, Tennessee and Utah – online versions of legal resources substitute for a print *official* source; the online resource is the sole *official* statement of the law. There is a significant disconnect between states aware of the role of authentication and the states most in need of addressing authentication of their sole online *official* legal resources. Only Tennessee, a state committed to making *official* legal resources available on the Web, may have priorities concerning authentication not fundamentally misaligned here. New Mexico and Utah are urged to review priorities in their public information policies.

We find that virtually all states have the preconditions for implementing encryption-based authentication methods. Laws and policies addressing e-commerce, including transactions involving state government, are in place in most states. States therefore have addressed the validity and acceptance of digital signatures involving government agencies and have laid the groundwork for a public key infrastructure.

The Authentication Survey investigated what basic “chain of custody” information is available for online legal resources. This information addresses data handling procedures essential to encryption-based authentication and standard archival methods. We found too little information to draw relevant conclusions here. We urge states to make information about their data handling procedures for online legal sources readily available on Web sites for the resources.

KEY FINDING 6: *Eight states have provided for permanent public access (PPA) to one or more of their online primary legal resources.*

Eight states – Alaska, California, Indiana, Minnesota, Ohio, Pennsylvania, Texas, and Utah – have afforded thirteen sources of law permanent public access. These are

contained in thirteen separate repositories. As explained under Key Findings 2 and 3, the six sources investigated in the Authentication Survey – state administrative codes and registers, state statutes and session laws, and state high and intermediate appellate court opinions – are the units counted in our total of thirteen sources. The number of safeguarded sources of law equals the number of safeguarded repositories, but the counts represent two different things. As noted above, PPA is a policy and practice that ensures “applicable government information is preserved for current, continuous and future public access.” See GOV’T RELATIONS COMM. & WASH. AFFAIRS OFFICE, STATE-BY-STATE REPORT ON PERMANENT PUBLIC ACCESS TO ELECTRONIC GOVERNMENT INFORMATION 2 (2003).

For five of these states – Alaska, Indiana, New Mexico, Tennessee, and Utah – the online versions of legal resources substitute for a print *official* source. Where the online source is the sole *official* statement of the law – as it is in these five states – those digital materials demand safeguards that ensure permanent public access. While relatively few online legal resources are afforded PPA, disappearing print has prompted affected states to address PPA.

The analytical table in Appendix A shows that most states that substitute online *official* legal resources for discontinued print have begun to provide for the long-term accessibility and preservation of those online sources. Three of four states – Alaska, Indiana, and Utah – that have discontinued print *official* administrative registers afford PPA for the online resource. Tennessee does not. The situation with discontinued print *official* administrative codes is less optimistic. Utah affords PPA for its online *official* administrative code but Indiana and Tennessee do not. New Mexico does not afford PPA for its sole online *official* administrative code. This section describes efforts by those states and several others that have put in place statutes or reasonably secure policies and practices addressing PPA.

Alaska’s Administrative Register. Statutory provisions that created the *Alaska Online Public Notice System* (ALASKA STAT. § 44.62.175(d)), direct the State Lieutenant Governor to “provide a permanent, electronic archive system of notices posted on the Alaska Online Public Notice System.” Under those provisions, “[a]ccess to the electronic archive system shall be made available to the public. At this time, there is no separate archive for the notice system and it is unclear whether the Lieutenant Governor intends to provide for continuous online access to the archives. Significantly, section 44.62.175(f) of the *Alaska Statutes* protects the state from liability in managing the site. “A person may not maintain an action based on the posting or lack of posting on the Alaska Online Public Notice System.”

**TABLE SHOWING STATES THAT PROVIDE FOR PERMANENT PUBLIC ACCESS (PPA)
TO LEGAL RESOURCES ON WEB**

This table shows states where repositories of online legal resources are safeguarded by statutes or reasonably secure policies and practices ensuring "applicable government information is preserved for current, continuous and future public access." Information concerning the basis for such conclusions is given. The table notes the status of the state's online repositories. "PPA" designates repositories of online legal resources safeguarded for permanent public access. "O" designates *official* legal resources on the Web. "O traits" indicates that relevant evidence as to the official or unofficial status of the resource on the Web is inconclusive.

The table is a simplified reformatting of certain information from the analytical table in Appendix A. Each block represents a separate repository for an online legal resource, unless a block contains "N/A," which indicates that no current government-hosted repository is available. All repositories designated as *official* or possessing "official traits" are represented; there are actually many more unofficial repositories than represented here. Blocks colored blue (or medium grey, when printed in greyscale) indicate that the type of legal resource represented is currently published in one or more print *official* resources.

	Administrative code	Administrative register	Statutes	Session laws	High court opinions	Intermediate appellate court opinions
Alaska		O, PPA BASED ON STATUTE			O traits	
California	O traits		O traits	PPA BASED ON STATUTE	O traits	
Indiana	O	O, PPA BASED ON STATUTE				
Minnesota		O		PPA BASED ON POLICY		
Ohio		O traits			PPA BASED ON COURT RULE	
Pennsylvania			N/A	PPA BASED ON POLICY		
Texas	O traits	O traits		O traits		
		PPA BASED ON POLICY		PPA BASED ON POLICY		
Utah	O, PPA BASED ON STATUTE	O, PPA BASED ON STATUTE	O, PPA BASED ON STATUTE	PPA BASED ON STATUTE		
			O traits, PPA BASED ON STATUTE			

California's Session Laws. The Legislative Counsel is required to make "available to the public in electronic form . . . [a]ll statutes enacted on or after January 1, 1993." CAL. GOV'T CODE § 10248(a)(10). This refers to the legislature's session laws. Applicable provisions further require that the information "be made available in one or more formats and by one or more means in order to provide the greatest feasible access to the general public in this state." *Id.* § 10248(b). Since section 10248(b) of the *California Government Code* also addresses the statutory compilation and other materials not necessarily safeguarded for permanent access, it is not clear the statute may be read as a broad PPA mandate.

Indiana's Administrative Register. Statutory provisions applicable to the state's administrative code were amended with the provisions applicable to its administrative register. The 2005 amendments now require electronic-only distribution of the publications. That distribution requirement may be met by "permanently publishing" the documents on the Web. *See* Act effective July 1, 2006, Pub. L. 215-2005, §§ 13-14, 2005 Ind. Acts 3365, 3372-73 (amending IND. CODE §§ 4-22-8-2 & 4-22-8-5). It is clear that the Legislative Services Agency will continue making each new issue of the administrative register permanently available on the Web. It is too early to determine how the statute will be applied to the administrative code.

Minnesota's Session Laws. A retention policy posted on the state's legislative Web site recommends that the online version of the *Laws of Minnesota* be kept indefinitely. The policy notes that "[m]aterials which populate the legislative www site are considered unofficial documents and as such are not subject to Minnesota Statutes § 15.17 which governs responsibilities of 'public officers' with regard to preservation of official records. Policies made regarding www materials [on the legislative site] are designed to provide access and to manage the site, not maintain an official archival record." In their very nature, session laws require PPA.

Ohio's High Court and Intermediate Appellate Court Opinions. The court rules require that all Supreme Court opinions and Court of Appeals opinions be posted permanently on the Supreme Court Web site. Ohio Sup. Ct. R. Rep. Ops 1(A) & 3(B). Slip opinions are posted until replaced by the final version. Opinions have a unique Web citation and give their citation for the print *official* reporter if they are also published there.

Pennsylvania's Session Laws. As described on its Web site, the Pennsylvania Legislative Reference Bureau, an agency of the state legislature, "has undertaken a long-term preservation and public access project to digitize the laws enacted for the Province and Commonwealth of Pennsylvania and published on a periodic basis from 1682 to the most recently completed session of the Pennsylvania General Assembly, referred to for purposes of the project as 'session laws.'" The project is not yet completed, but the agency is up-to-date with the legislature's most recent enactments. Among other express goals, the project is intended to "[c]reate a permanent digital repository of the session laws of Pennsylvania" and "[p]rovide single-point, worldwide public access to the session laws via [the] Web site." Carl L. Mease, former Director of the Legislative

Reference Bureau, is credited as the “driving force” for the project. Notwithstanding the apparent lack of a dedicated budgetary appropriation to ensure permanency, the goals of the project, when accomplished, squarely constitute PPA.

Texas’ Administrative Register. As described on the *Texas Register Archive* Web site, the archive was established “to insure permanent storage and public access to the non-current electronic files” of the Texas Register. The latest issue of the Texas Register is first posted on the Texas Secretary of State Web site, which links to the most current six months’ issues of this weekly publication. The University of North Texas Libraries provides free access to all issues of the Texas Register beginning with the June 14, 1991 issue, up to within a week of the latest issue. The *Texas Register Archive* is the result of an agreement between the University of North Texas and the Office of the Texas Secretary of State.

Texas’ Session Laws. The *Texas Laws and Resolutions Archive* Web site states that the “University of North Texas Libraries and the Office of the Texas Secretary of State – Statutory Documents, in a partnership arrangement, established the [archive] to ensure permanent storage and public access to the non-current electronic files” for certain legislative materials. At the time of this writing, the archive covers the 78th and 79th legislative sessions; complete session laws are available for the former.

Utah’s Administrative Code, Administrative Register, Statutes, and Session Laws. The Utah State Library Division has undertaken a pilot project to archive Utah digital government publications to ensure permanent public access. Equally significant, effective May 1, 2006, the State Library Division is now required by statute to “manage and maintain an online, Web-accessible digital library for state publications” and “provide for permanent public access to the publications.” State agencies posting a digital version of a state publication to its public Web site may not remove the publication “until a copy is deposited into the digital library for permanent public access.” Act of March 10, 2006, ch. 81, sec. 4, 2006-1 Utah Code Ann. Adv. Legis. Serv. 759, 761 (LexisNexis) (codified as UTAH CODE ANN. § 9-7-208). The range of state publications covered by the legislation is substantial. See UTAH CODE ANN. § 9-7-101(7)(a) (as renumbered under the new law).

Conclusion

The Authentication Survey's findings point to a critical need for action on the part of state legislators and government officials. The detailed findings of this report provide guidance for revising existing laws and, at the administrative level, adjusting policies and practices to ensure each state's publicly available legal resources on the Web are authoritative and reliable. The need is particularly acute for those online legal resources that replace discontinued print *official* sources and are now the sole *official* published source of the information.

The Survey found that online legal resources are increasingly the sole *official* published source. Laws addressing those resources and other online *official* sources are seriously deficient, failing to require certification as to completeness and accuracy for online resources comparable to that required for print *official* sources. Moreover, those laws fail to recognize the authentication linchpin, essential to online *official* sources, tying together their official status, their certification or other formal endorsement, and their judicial and administrative recognition as authoritative and reliable statements of the law.

Official status demands appropriate authentication procedures. Standard methods of authentication may include encryption, digital signatures and public key infrastructure but other methods to adopt best practices are also possible. Certification or other types of formal endorsement of legal resources are a vital link in the "chain of custody" involved in dissemination, maintenance, and long-term preservation of digital materials. That chain may contain a link to computer technologies that guarantee the very copy delivered to one's computer screen is uncorrupted and complete or it may be part of other archival methods.

The fundamental trustworthiness of online legal information is not the only concern, however. Fully recognizing the needs of citizens and law researchers related to the authority of online legal resources necessitates that the states take action to make online sources serve as improved or, at least, adequate substitutes for print *official* legal sources. This means that the states think through a number of practical matters, particularly their use of disclaimers. The detailed findings discuss issues relevant to the authenticity and authority of online legal resources, as measured against print *official* sources.

The *State-by-State Report on Authentication of Online Legal Resources* raises concerns that need to be addressed by the states both as high-level policy decisions and practical matters. The American Association of Law Libraries hopes that it will serve as a guide for the states to correct smaller-scale deficiencies in their current dissemination of online legal resources and to initiate long-term progress toward the all-digital legal information environment that will enhance each state's fundamental interaction with its citizens.