



American Association of Law Libraries

MAXIMIZING THE POWER OF THE LAW LIBRARY COMMUNITY SINCE 1906

AALL Statement on Legal Materials and Our System of Law

The Raw Materials of Our Democracy Broader Access to Primary Legal Materials in the United States

Convened by the Honorable Zoe Lofgren
Vice Chairwoman, Committee on House Administration

and

The Honorable Dan Lungren
Ranking Member, Committee on House Administration

Committee on House Administration Hearing Room, Room 1310
Longworth House Office Building
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Good morning. I am Roger Skalbeck, Associate Law Librarian at the Georgetown University Law Library and in-coming chair of the American Association of Law Libraries' Copyright Committee. Mary Alice Baish, AALL's Director of Government Relations, sends her regrets for not being able to join us today. She did ask me, though, to be sure to express our gratitude to you, Rep. Lofgren, and to you, Rep. Lungren, for your strong support of the Law Library of Congress and, in light of today's topic, its unique and valuable digital initiatives.

AALL is an educational organization with over 5000 members who serve the information needs of the legal community and the public at more than 1900 academic, firm, state, court and county law libraries nationwide. AALL's mission is to promote and enhance the value of law libraries, to foster law librarianship and to provide leadership and advocacy in the field of legal information and information policy.

Our Association has been committed to improving access to legal information since it was established in 1906 by a handful of visionary law librarians. We have a strong Government Relations Policy based on the core belief that accessible government information is both an essential principle of a democratic society, and a valuable public good created at taxpayer expense. Citizens must be able to access the laws and regulations that govern them. The development of the Internet and the constant improvements to digital technologies have caused a sea change during past the two decades in how the public can now access the law.

As law librarians, we have been leaders in advocating that governments move online, but that they do so in a way that guarantees that today's electronic legal information is as trustworthy as print, and that it will be available to us in five, ten, fifty or a hundred years from now.

In 2007, AALL's Executive Board adopted new principles and core values related to public information on government Web sites that articulate policies on the creation, access, and distribution of government information in the digital age. I'd like to mention them briefly because they guide our Association's legislative and technology policy efforts.

We believe that Federal, state, and local governments have a duty to disseminate government information to their citizens through government Web sites. In terms of accessibility, the information must be easily searchable, available to the public without charge, and equally accessible to everyone, including those with disabilities.

Regarding the need for reliability and trustworthiness, appropriate safeguards should be established to protect the integrity and authenticity of materials published in electronic formats. This is critical when government entities eliminate an official print legal title in favor of an electronic version available only through the Web. It is equally important that the official status of the electronic version be clearly designated, and that government entities establish and maintain a clear chain of custody for all electronic information published on the Web.

Federal, state and local authorities must also ensure that government information is permanently available to the public and is preserved. Last, but far from least, AALL strongly believes that government information, including the text of all primary legal materials, must be in the public domain and available to the public without restriction.

Our core policies are well aligned with Carl Malamud's goals for broader public access to the law. We are grateful to him for his role in raising national awareness, breaking down walls, and bringing together new allies to help us broaden public access to the rule of law here in the United States. AALL is especially pleased to be working in partnership with Carl and also with the Law Library of Congress. Hundreds of our members, in every state and the District of

Columbia, have joined forces to form state working groups to help achieve Carl's goal of a national inventory of all legal information—Federal, state, county and municipal.

This is a daunting task, initiated by Paul Lomio and Ericka Wayne at the Stanford University Robert Crown Law Library, with the assistance of members of the Northern California Association of Law Libraries.

The California state inventory is almost completed, and preliminary findings are indeed troubling. Of the nearly 540 municipalities and counties in California, most have online codes and ordinances—however approximately 40% of these legal materials are not “official” and have a strong Web disclaimer about the use of the online version. Approximately 50% have copyright assertions. Further, a small sampling of these online materials found that none provided bulk access.

At the state level, the administrative regulations are online but there is a copyright assertion, and the cost for a subscription to the official print version is approximately \$3,500 per year. As to the courts, the full archive of California Supreme Court cases is only available on a vendor Web site and, to gain access, you must click “agree” to a license preventing you from using the data for legal research, even for “nonprofit or public use.”

These preliminary findings of the California inventory should be a wake-up call to us all about the clear lack of government policies and technological solutions to ensure equitable, effective, no-fee, public access to online legal information that is official, digitally authenticated, and that we can be assured will be permanently available to the public and preserved.

Because these core principles are so critically important to our members, AALL has become a national leader in advocating for the need to digitally authenticate, make permanently available, and preserve electronic legal materials. In 2007, we published the ground-breaking

State-by-State Report on Authentication of Online Legal Resources which revealed that a significant number of state online legal resources are considered to be “official,” but that states had not yet implemented ready authentication by standard methods. We’ve just completed our 2010 state updates, and while we’ve found few changes in the use of digital technologies to authenticate electronic information, even when there is no official print version, we are alarmed at how many state, county and municipal governments—in reaction to their serious budget shortfalls—are eliminating a print official legal title in favor of online only. In addition to populating their state inventory, our working groups are also closely monitoring this situation in their state, and speaking out against it to ensure that if an official print title is no longer published, proper digital authentication and preservation measures are implemented.

We’re very pleased that, as a direct result of our work, the National Conference of Commissioners on Uniform State Laws last summer named a drafting committee to develop the “Authentication and Preservation of State Electronic Legal Materials Act.” One of our members, Professor Barbara A. Bintliff of the University of Colorado Law Library, is the Reporter and AALL has been actively engaged in the commenting process. The draft uniform law will have its first reading this summer, and we anticipate it going out to the states in 2011.

As you can see, AALL is deeply committed to making the law more broadly accessible and our members have stepped up to the place to work on these issues in their states. Thank you very much for the opportunity to join you this morning and describe some of our important initiatives.