

AUTHENTICATION OF ONLINE LEGAL RESOURCES

KEY FINDINGS

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What is *Official*?

- Mandated or approved by statute or rule.
- An online official legal resource would possess the same status as a print official legal resource.

What is *Authentic*?

- Content that 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, authentic text will bear a certificate or mark that conveys information as to its certification.
- Such as encryption or a digital signature.

Discontinuing Print Titles, Substituting Online Access

- This is a trend that will only continue.
- State agencies believe they are assisting their citizens by providing ready access to legal sources.
- State agencies save print and distribution costs by publishing only online.
- AND, state officials talk to each other!

The Train has Left the Station!



Online Versions are the Sole Official Resource

- Alaska Administrative Register
- Indiana Administrative Code & Register
- New Mexico Administrative Code*
- Tennessee Administrative Code & Register
- Utah Admin. Code & Register,
Official Print Statutes Lapsed

- These state that the online versions of their legal resources are a substitute for the print *official* source.
- Primarily administrative registers and administrative codes.

3 Versions:

- Utah: Online substitutes for discontinuations. Explicitly states the official status. Provides for PPA.
- New Mexico: Official online Admin. Code is the *only* official one. No PPA.
- Tennessee: Online session laws are official, but they do not state this on the site. Merely state that the Secretary of state may publish them online. No PPA.

■ No Common Approach

- Might say online that it is official, or might say that the online resource substitutes for discontinued print official versions.
- Or, the state might merely say that the online version is equal to the print version.

States with *Official* Legal Resources

Ten States + D.C. designate one or more
of their online legal resources as *official*.

Primarily regulatory law.

- 23 sources of law in 10 states + D.C. are available in online repositories that are considered *official*.

Conflicting Evidence of Status

- The use of the word “official” does not necessarily appear on a resource
- Or, it appears but the online resource isn’t considered to be as official as the print version
- Or, the official status is noted with no back-up information citing as to why it is official. (Such as legislative action or court rule.)

Needs of Citizens

- States have not acknowledged important needs of citizens and law researchers seeking government information.
- Nor have they considered the evidentiary aspects of not authenticating their only legal resources.

Our Recommendations:

- Provide online legal resources specific and easily identified names. Reflect in the URL.
- Names for online and print should be consistent.
- Identify print official sources; tell where to find them.
- Resolve & communicate differences in currency between print & online.
- Use PURLs (Persistent Uniform Resource Locators to ensure permanent accessibility and easy linking.

- Address pagination and formatting issues of the two formats. Does the use of the a universal citation system help?
- Provide a clear statement of the official status, & source of law for such.
- Use the designation *official* carefully, so as to not confuse the citizen.
- Identify source of the date,, its “chain of custody,” and relevant processes.
- What purpose is served having duplicate versions of an online resource? Is it explained?

- Prominently display any representations and disclaimers and provide the specifics of the scope of such.
- Develop thorough policies, procedures and rationales. Address official status, authentication and PPA for online resources.
- Post the above, with contact information.

Authentication

- No state's online primary legal resources are authenticated.
- However, Minnesota, Virginia & Vermont are addressing the problem.

Minnesota

- Aware of issue, & discussing techniques
- No immediate plans to make online resources official, thus no pressing need for authentication at this time.
- “Endorsing” is not authentication

Vermont

- State statute mandates proof of authenticity for a legal resource on the Web. This is the only state with this provision.
- Despite this awareness, the state government does not comply with the statute.

Virginia

- Legislative subcommittee studied the issue.
- State Library Board has been charged with developing regulations.

Permanent Public Access

- Eight States Provide for PPA to Online Primary Law

■ Nine States!





Montana H.B. 132

- AN ACT RELATING TO STATE PUBLICATIONS; MODIFYING THE DEFINITIONS OF "STATE AGENCY" AND "STATE PUBLICATION"; DEFINING "DEPOSITORY LIBRARY"; PROVIDING FOR THE ADMINISTRATION OF THE STATE PUBLICATIONS DEPOSITORY LIBRARY PROGRAM; MODIFYING THE NOTIFICATION AND AVAILABILITY REQUIREMENTS FOR STATE PUBLICATIONS; ***MAINTAINING PERMANENT PUBLIC ACCESS TO STATE PUBLICATIONS***

- “ any information originating in or produced by the authority of a state agency or at the total or partial expense of a state agency that the agency intends to distribute outside the agency, regardless of format or medium, source or copyright, license, or trademark.”

- **Section 5. Permanent public access to state publications.** The state library shall routinely notify depository libraries of recently acquired state publications. The state library shall coordinate with state agencies and depository libraries to ensure permanent public access to state publications.

■ Signed into law March 30, 2007.

Critical Needs

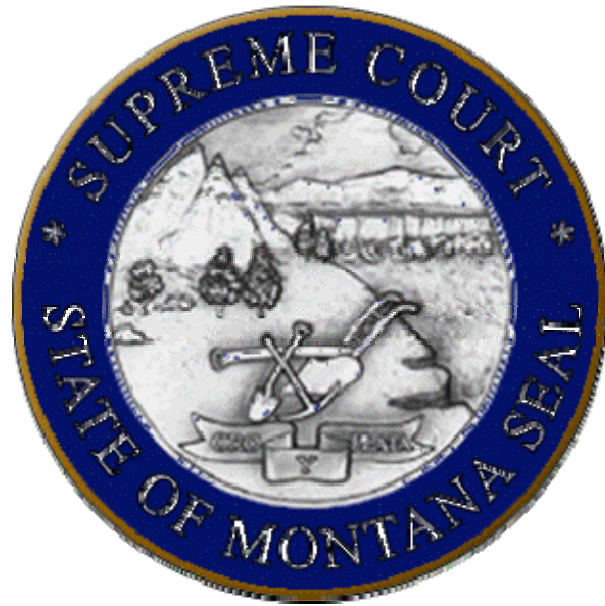
- Actions needed by government officials
- Court rules
- Model legislation

Disappearing URL's

- A growing problem for the Courts
- Illustrates the capricious and arbitrary nature of electronic information, from any source.

Example of Possible Court Rule

- “Briefs, motions and documents shall not cite to websites or URL’s, unless the underlying information cited is included as a document or documents in the record on appeal, or as part of the record in an original proceeding.”



- This is one example of how a court rule could address the transitory nature of online information.
- This weekend we will look to see how model legislation might help.

- Digital Information will not survive by accident.
- It will survive only with our intervention.

We Need to Apply ALL the Interventions Available:

- PPA

- AUTHENTICITY

- AWARENESS AND ACTION BY THOSE WHO ARE IN A POSITION TO MAKE POSITIVE AND PERMANENT SOLUTIONS.

THAT MEANS YOU!



Our citizens deserve nothing less than access to the *reliable, authentic* law that they are required to follow.

