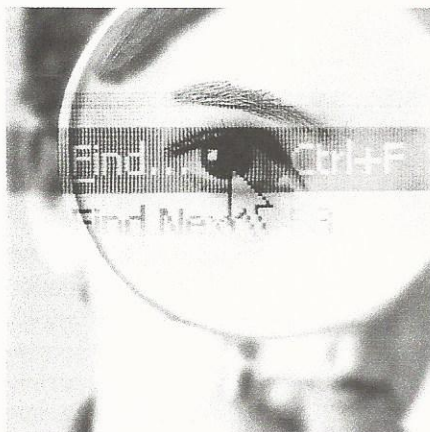


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The Uniform Electronic Legal Material Act in New York

The trend among state governments is to move the publication of primary legal materials online.¹ This development will provide more transparency and allow for the timely and cost-effective distribution of information; however, it also raises several concerns regarding the trustworthiness of the material. The legal community and the public at large must be able to rely on the law being accessible, authenticated, and preserved for the future, but these essential qualities are frequently lacking from electronic government publications. Without a framework to protect digital material, the principle of open government suffers.

The Uniform Law Commission offers a solution through the Uniform Electronic Legal Material Act (UELMA). The UELMA was completed by the National Conference of Commissioners on Uniform State Laws in 2011² and approved by the American Bar Association House of Delegates in 2012.³ It provides standards for the authentication, preservation and accessibility of official electronic legal publications by requiring that such online materials meet the same standards to which print materials have been held.⁴

The UELMA defines legal material as session laws, codified or consolidated laws, agency rules and decisions having the effect of law, and the state constitution.⁵ Reported decisions and court rules are also recommended for inclusion by the Act,

but the drafters recognized that their inclusion may, in some cases, create a separation of powers issue between the state legislature and the judicial branch.⁶

Electronic legal materials designated as official are covered by the UELMA.⁷ Also covered are any materials that were not previously designated as official, but the print option for which was eliminated after a state's enactment of the UELMA.⁸ In these instances, the electronic versions must comply with the terms of the Act.

The UELMA does not require states to publish legal materials electronically,⁹ and it does not apply retroactively to materials published before its enactment.¹⁰

The UELMA explicitly notes that it does not deal with copyright issues, affect or supersede rules of evidence, affect existing state law regarding the certification of print materials, or interfere with the contractual relationship between a state and its commercial publishers.¹¹

UELMA Standards

The first requirement of the UELMA is authentication. The Act defines an authentic document as "one whose content has been verified by a government entity to be complete and unaltered."¹² In other words, authentication verifies not only the content of a document but also validates the source of the file, thereby providing attorneys and the public with

trustworthy copies of the law on which they can rely.¹³ So important is authentication, the *Bluebook* prefers a cite to an authentic authority before an official authority when one must choose between the two.¹⁴

Under the Act, a party who contests the authentication of legal material bears the burden of proof.¹⁵ In addition, states that enact the UELMA enjoy a presumption by every other state that has enacted the UELMA that their official electronic legal material is accurate and unaltered.¹⁶

The second requirement of the UELMA is preservation. The Act recognizes the importance of retaining yesterday's legal materials that remain relevant to the outcome of current legal disputes.¹⁷ It therefore provides that material governed by the Act be preserved and secured.¹⁸ States may choose to do so in print or electronic format.¹⁹ If done in electronic format, then the publisher must "ensure the integrity of the record; provide for backup and disaster recovery of the record; and ensure the continuing usability of the material."²⁰ These outcomes may be accomplished through several measures, including maintaining multiple copies, storing the copies in separate geographic and administrative locations, and migrating materials to new storage platforms as technology evolves.²¹

Finally, the UELMA requires that material subject to the authentication and preservation requirements of the

Act be made accessible. Specifically, it must be made "reasonably available" to the public on a permanent basis.²² States have discretion to determine what is reasonable, but the standard should be made consistent with other state practices.²³

Who's Enacted the UELMA

To date, the UELMA has been enacted in 12 states, including California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Minnesota, Nevada, North Dakota, Oregon, and Pennsylvania.²⁴ The UELMA has additionally been introduced elsewhere, including Massachusetts and the District of Columbia.²⁵

Current Publication of Official Materials in New York

At the same time that New York is a leader in providing substantial online access to electronic copies of its legal publications, it also continues to maintain a robust system of print publication through which nearly all of its official materials are produced.

For example, the *Laws of New York*, prepared by the New York Legislative Bill Drafting Commission, are statutorily required to be published in printed bound volumes.²⁶ Moreover, certification of session laws and consolidated and unconsolidated laws is limited to print only.²⁷ Similarly, administrative codes, rules, and regulations are certified by the Secretary of State in print.²⁸

Judicial decisions have traditionally been required to be published and printed in bound volumes;²⁹ however, this requirement is evolving. The State Reporter recently began an initiative, approved by the Court of Appeals, to publish a limited number of trial court decisions exclusively online, with only an abstract published in the Advance Sheets.³⁰ It is possible that this is an example of an area of publication that may be immediately impacted by passage of the UELMA in New York, if judicial materials are included in New York's version of the UELMA, and if New

York chooses to designate those electronic decisions as official.

Cost

Eight of the 12 states that have enacted the UELMA did so with no fiscal impact.³¹ Typically, this was because the states determined that they could meet the requirements of the UELMA without additional funds. Some, such as Minnesota, were able to use their current staff and existing information technology support to create a prototype for an authentication system.³²

Those states that have experienced a fiscal impact have managed to keep costs low thus far. For example, North Dakota projects spending \$115,000 for the 2013–2015 biennium. Of this amount, \$85,000 is attributable to one-time software development costs, and the remaining \$30,000 is attributable to ongoing costs each biennium.³³

In another instance, the District of Columbia has chosen to use open source software³⁴ to authenticate the D.C. Code and Statutes at Large, and estimates that the cost to do so may total less than \$2,000 per year.³⁵

Technology

The value of the UELMA is furthered by its flexibility. It is technology-neutral,³⁶ thereby allowing each state to choose the most appropriate option for the multiple entities responsible for publication, as well as account for the existing information technology structure.

Authentication is typically evidenced by electronic signature or digital watermark, but may also be accomplished through hashing algorithms, transient key technology, and other means.³⁷

Many attorneys are familiar with the authentication process used by the U.S. Government Printing Office, which applies digital signatures to PDF documents using a digital certificate.³⁸ This is only one option and other locations, such as Minnesota³⁹ and the District of Columbia,⁴⁰ have chosen alternative technologies that better suit their needs.

Support for the UELMA in New York

According to Richard Long, chair of New York's Uniform State Laws Commission, the Commission has listed the UELMA in its Annual Legislative Report as an Act that it will seek to have introduced in New York in 2015. Commissioner Long elaborates, "New York's Uniform Law Commissioners strongly support the enactment of UELMA in our state. The Act enhances New Yorkers' online access to authenticated state law through a technologic-neutral approach."⁴¹

In addition, the Law Library Association of Greater New York⁴² and the Association of Law Libraries of Upstate New York⁴³ have both officially endorsed the enactment of the UELMA in New York.

Why New York Needs the UELMA Now

New York is actively turning to electronic publishing of its legal materials. Not only are some cases now being published exclusively online, but voters approved a ballot proposal in November 2014 to amend Article III, § 14, of the New York Constitution to "allow electronic distribution of a state legislative bill to satisfy the constitutional requirement that a bill be printed and on the desks of state legislators at least three days before the Legislature votes on it."⁴⁴

The measure is an important one that will save significant amounts of money and paper. Logistically, it directs that bill text may not be modified "without leaving an adequate record thereof,"⁴⁵ but unfortunately does not include any explicit terms for authentication or permanent preservation of the new electronic bills.

New York is rightly moving forward to embrace the digital age. Introducing the UELMA now will allow for passage of the Act in a thoughtful and deliberate manner that meets the unique needs of our state while ensuring that the transition to electronic publication is done

well. The result will be a trustworthy system of official electronic publication on which everyone can rely. ■

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"A living wage implies you have a life outside the office. We're not in favor of that."