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UELMA—Another First for Colorado

by Susan Nevelow Mart

These days, searching the law on the Internet is fairly commonplace for lawyers. So, if we are going to rely on the version of the primary law we find on the Internet, then we need that law to be authentic, official, and permanently accessible. Colorado has been a leader in the movement to make these needs a reality. In 2003, Colorado became the first state to enact a statute that expressly addressed permanent public access to electronic government information.¹ In 2007, Colorado designated the online version of the Code of Colorado Regulations as the official version.² In 2012, Colorado became the first state to enact the Uniform Electronic Legal Material Act (UELMA), which requires that, if a state designates the online version of its primary laws as the official version, the online version has to be official, authentic, and permanently accessible.³

Background of UELMA

In 2003, the American Association of Law Libraries (AALL), concerned that states were putting versions of primary law on the Internet without thoughtful consideration of the issues raised, conducted a study that found that Colorado was the only state to have addressed the question of permanent public access to online versions of primary law.⁴ A 2007 AALL study found that no state had addressed the issue of ensuring that the version of the official law provided online was authentic.⁵ “Authentic” means that an appropriate government entity has verified that the document is complete and unaltered.

State laws were online everywhere, but the online versions, being neither official nor authentic, were not entirely trustworthy. In some cases, state governments have moved to online publication of legal information as a cost-savings measure, and may have eliminated print publications altogether. The online versions, in many

instances, are the *de facto* official versions. As more researchers rely on the Web versions, it is critical that the online information be authentic and verified. It was, and remains, typical for online versions of legal materials to be unclear about whether they were official or authentic. For example, the online version of the Colorado Revised Statutes says only: “This website is maintained by Lexis-Nexis,[®] the publisher of the Colorado Revised Statutes, to provide free public access to the law.”⁶

AALL held a summit in 2007 to address these issues. One of the attendees, Michele Timmons, is a member of the Uniform Law Commission (ULC), known then as the National Conference of Commissioners on Uniform State Laws. Timmons was interested in the problems presented and thought that the ULC might be able to develop a solution. The long and measured movement toward the passage of a uniform law began.

The need for a model act or uniform act was thoroughly studied. The UELMA was then drafted, revised, and finally approved in July 2011. When a new uniform law is passed, ULC commissioners may express interest in adopting the act for their states. In 2011, the Colorado commissioner to the ULC was the president of the Colorado Senate, Brandon Shaffer. When AALL’s local representative asked Senator Shaffer to help implement UELMA in Colorado, he was both receptive and helpful.⁷ Because Colorado had already made the online version of the Code of Colorado Regulations the official version, the question of the cost of authentication was not an academic one. Funds for the cost of authentication would need to be appropriated immediately.

Questions of how to authenticate the Code of Colorado Regulations would also need to be addressed. UELMA is technology-neutral; each state decides how to implement the authentication requirement once an online legal resource is designated official. Sen-



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This Department, published quarterly, is sponsored by the Colorado Association of Law Librarians (CoALL) to provide helpful information about legal research. Readers are welcome to send research questions to CoALL—Legal Research Corner, at www.aallnet.org/chapter/coall. CoALL members will attempt to answer questions individually or as part of this Department.

The information provided in this Department is for educational purposes only and is not intended as legal advice. No endorsement or recommendation is made of any product named in articles. Department coordinators are CoALL members Andrea Hamilton, Madeline Cohen, and Cecily Nicewicz. For more information about CoALL, visit www.aallnet.org/chapter/coall.

ator Shaffer agreed to find a sponsor for a bill implementing UELMA in Colorado, and Senator Morgan Carroll enthusiastically sponsored the bill. As a practicing attorney with a focus on social justice issues, Senator Carroll understood the need for the broadest possible access to authentic legal materials. The American Bar Association understood this need as well, and endorsed UELMA in January 2012. The bill was signed into law by Governor Hickenlooper on July 25, 2012, effective March 31, 2014.

Implementation

Once UELMA was enacted, the real work in Colorado began. Based on estimates from the Colorado Department of State (Department), \$198,912 was appropriated to cover the cost of authenticating the Code of Colorado Regulations. UELMA set a deadline for the Department; UELMA was to be implemented by March 31, 2014. In 2013, a bill established the Legislative Digital Policy Advisory Committee (LDPAC), comprising the state archivist, the librarian of the Supreme Court Library, the director of research of the Legislative Council, the director of the Office of Legislative Legal Services, the chief clerk of the House of Representatives, and the secretary of the Senate.⁸ Dan Cordova, the law librarian of the Colorado Supreme Court, chaired the committee.

The LDPAC studied the solutions available and made recommendations about the best way to authenticate legal materials. The decision regarding authentication requires that current regulations in the Code of Colorado Regulations be converted to an archival version of a PDF and signed with a digital signature at the top of the front page. A digital signature encrypts documents with digital codes that are particularly difficult to duplicate. The digital signature certifies that the regulation being viewed is the official version, and that it has not been altered.

According to Deanna Maiolo, the administrative rules manager for the Department, at the time this article was being prepared, the system was being tested, and the Department was on schedule to release the current version of the Code of Colorado Regulations by the legislatively mandated target date of March 31, 2014. If some-

one needs authentication of a prior year's regulation, the Department will authenticate the request. The Department has decided that this is the best solution for the Code of Colorado Regulations at this time, although it may or may not be the best solution for other online state publications if—and when—UELMA applies to them.

In addition to making recommendations for authenticating the online and official Code of Colorado Regulations, the LDPAC was tasked with recommending a policy for limited-term legislative storage, perpetual archival storage, and public access to electronic legislative records. The committee made its report on November 1, 2013.⁹

A National Movement

When the Department released the authenticated version of the Code of Colorado Regulations on March 31, 2014, the electronic legal documents were given the same presumption of accuracy that is given to print legal material. That presumption of accuracy and trustworthiness can be applied to the electronic legal documents in every other state that has enacted UELMA. Following Colorado's lead, California, Connecticut, Hawaii, Minnesota, Nevada, North Dakota, and Oregon have enacted UELMA.¹⁰ Bills to enact UELMA are pending in the District of Columbia, Illinois, Maryland, Massachusetts, and Pennsylvania.

The adoption of UELMA will harmonize standards for acceptance of electronic legal material across jurisdictional boundaries. It's exciting to know that Colorado was the first to do so.

Notes

1. CRS § 24-90-204 requires electronic copies of government publications to be deposited and retained the same way that print publications have been. The full text of the uniform law as it was adopted is available at www.uniformlaws.org/Act.aspx?title=Electronic+Legal+Material+Act.

2. CRS § 24-4-103(11).

3. CRS §§ 24-71.5-101 *et seq.*

4. AALL, State-by-State Report on Permanent Public Access to Electronic Government Information (2003), www.aallnet.org/Archived/Government-Relations/Issue-Briefs-and-Reports/2003/ppareport.html.

5. AALL, State-by-State Report on Authentication of Online Legal Resources (2007), www.aallnet.org/main-menu/Publications/products/Report-on-Authentication-of-Online-Legal-Resources.html.

6. CRS § 2-5-118(1)(a). The only official version of the Colorado Revised Statutes is the print version. A typical disclaimer is the one on the New Mexico Compilation Commission's online statutes website, www.nmcompcomm.us:

The information obtained on this site is not intended to replace the official version found in New Mexico Statutes Annotated 1978 and is subject to revision. The New Mexico Compilation Commission presents this information without warranties, express or implied, regarding the information's accuracy, timeliness, or completeness. Use of the information is the sole responsibility of the user.

7. I was asked by AALL to be its representative in Colorado to advocate for the implementation of UELMA in Colorado.

8. CRS § 24-80-114.

9. The LDPAC's term expired on January 1, 2014. The committee has been reconstituted and given another year to make further reports. *See* House Bill 14-1194, amending CRS § 24-80-114.

10. California Gov't Code §§ 10290 *et seq.*; Connecticut Gen. Stat. §§ 1-335 *et seq.*; Hawaii Rev. Stat. §§ 98-1 *et seq.*; Minnesota Stat. §§ 3E.01 *et seq.*; Nevada Rev. Stat. §§ 721.010 *et seq.*; North Dakota Cent. Code §§ 46-03.1-1 *et seq.*; Oregon Rev. Stat. Ch. 221 §§ 1 *et seq.* ■

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