

Assuring authentic legal information in the digital age

In April, I learned that Indiana is not the only state where concerns are being raised about the transition from printed volumes of a state’s laws and rules to electronic-only public access.

The American Association of Law Libraries (AALL) held a National Summit on Authentic Legal Information in the Digital Age April 20-21. I was fortunate to be invited.

Experts at the meeting examined questions including:

- In today’s dynamic digital environment, can an electronic version of a statute, rule or judicial opinion substitute for the print version?
- How trustworthy are state-level primary legal resources on the Web?

Are they official?

Have they been authenticated?

Are they authentic?

Are they permanently accessible?

Are they secure?

The AALL has been at this for some time; it has conducted two nationwide surveys that validate its concerns.

The first, the 2003 *State-by-State Report on Permanent Public Access to Electronic Governmental Information*, researched what state governments were doing to ensure the permanency and continuing public accessibility of government information on the Internet.¹

The second, the *State-by-State Report on Authentication of Online Legal Resources*, was released at the National Summit in April.² The report examines the trustworthiness of online legal resources, targeting six sources of law: state administrative codes and registers,

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state statutes and
session laws, and state
high and intermediate

Part I – the Acts of Indiana and the Indiana Code

appellate court opinions. From the *Report*:

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, some online sources now replace print *official* legal resources. For the 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.

The *Report* concludes that existing state online primary legal resources are not sufficiently trustworthy. Although a number of state online resources have been designated as “official,” none are authenticated, or afford ready authentication by standard methods.

What is meant by ‘official’ and ‘authentic’ in print publications?

The Acts of Indiana (the session laws), a series going back to Indiana statehood, will be used to illustrate these terms. Most law libraries in the state have a copy, for instance, of the Indiana Acts of 1975.

The volume was produced from the enrolled acts of the 1975

session of the General Assembly. Each enrolled act in the volume was certified by the signatures of the President and President Pro Tempore of the Senate and the Speaker of the House of Representatives. The current Joint Rules of the General Assembly provide:

3. Every bill or joint resolution, after having been enrolled, shall be examined by the Committee on Rules and Legislative Procedures of the house in which it originated, which shall compare the enrolled copy with the engrossed copy, or cause the author thereof to do so, taking special care that the engrossed amendments adopted by either house, if any there be, shall have been properly incorporated in said enrolled copy and shall report in writing to said house any errors therein.

4. (a) Every bill or joint resolution reported to have been duly enrolled shall be signed first by the Speaker of the House of Representatives, who shall send the same to the Senate; then by the President and President Pro Tempore of the Senate, after which it shall be presented by the Secretary of the Senate or the Clerk of the House of Representatives to the Governor for his signature.

The Acts of 1975 is a hard-bound volume including all the enrolled acts of the General Assembly that became law, plus other materials, including tables and indices. The production process involved sending the certified enrolled acts to the contract printer, with a State Police escort to assure chain of custody.

The galleys produced were proofed by General Assembly employees to assure no deviation from the enrolled acts upon which they were based, and a certificate signed by the Speaker of the House and the President Pro Tempore of the Senate was included in the final printing, stating:

We, the undersigned, do hereby certify that Public Laws 1 through 351 of the First Regular Session of the 99th General Assembly have been compared with the enrolled acts from which they were taken and have been found correctly printed.

Signed in the City of Indianapolis, State of Indiana, this 25th day of June, 1975.

The Preface to the Acts notes that the volume is published “by authority” and references the certification included in the volume. The current law governing the publication of the session laws, I.C. §2-6-1.5, provides for this certification at section 4(b).

And I.C. §34-38-1, relating to judicial evidence of statutes and laws, provides at section 1:

The printed statute books of
(1) Indiana ... purporting to be printed under the authority of the state or territory is evidence in all

courts and places of the acts contained in the statute books.”³
(emphasis added)

What is meant by ‘official’ and ‘authentic’ in online publications?

Printed volumes of the Acts of Indiana go back to statehood and carry forward to this day. These volumes readily meet the requirements set out at the beginning of this article of permanently accessible and secure, as well as official and authentic. But as explained in the *AALL Report*:

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.

Making the transition in Indiana from print to online publication of the Acts

Printed Acts. In recent years the General Assembly has printed only a very limited number of copies of the Acts, for the most part to meet its own internal needs. The General Assembly has its own in-house printing plant; the bills leading to the enrolled acts themselves are produced digitally; and a contract printer is no longer used. The certification process remains the same.

In 1997 a new section 0.5 was inserted at the beginning of I.C. §2-6-1.5, the law relating to the printing and distribution of the bills, laws and journals, to redefine “printing and distribution” to include “[t]he production and transmission of

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electronic versions of legislative documents that are subject to this chapter.”

CD-ROM Acts. This change allows the General Assembly to meet the requirements of the law regarding distribution of the Acts of Indiana by distributing the Acts on a CD-ROM produced from the same electronic files used to produce the printed volume.

As a result, most libraries and county courthouses around the state no longer receive printed volumes of the Acts – they have CD-ROMs. It is doubtful that these may be thought of as permanently accessible. One hundred years from now the Acts of 1975 on the shelf will remain useable; the CD-ROM will most certainly have gone the way of the 8-track tape and the floppy disk.

The CD-ROMs contain a PDF version of the Acts. Presumably these are the same files used to print the few copies of the printed and bound Acts still produced, although there is no statement or certification on the CD-ROM itself that this is the case.

Acts on the Web. Occasionally but not reliably the most recent year of the Acts of Indiana has been made available online via the General Assembly Web site. Currently the 2006 Acts are available.⁴ However, the authenticating statement, “This PDF file is a duplicate of that used to print this volume of the Acts,” does not accompany the link to the file.

The user who clicks on this link will, if patient, open a 23,723 KB file containing the 4,181-page Acts 2006, complete with its introductory material, tables and index, and certification.

The Acts of Indiana are important. For instance, they are the only source of the budget bill other than the enrolled act itself.⁵ But the Acts

are not referenced by the public on a daily basis like the Indiana Code and the Indiana Register. It is ironic, then, that as we will see, it is the Acts of Indiana that appear to come closest to meeting the requirements for authentic online legal materials set out by the AALL.

Problems remain however. The Acts available online appear to be there as an afterthought. Nothing has been done to streamline access for the Web. There is no statement certifying either that this is the file used to print the Acts, or that this is the “official version.”⁶ And certainly the issues of permanent public access and security of the files would need to be addressed.

Making the same transition with the Indiana Code

What of the Indiana Code? The Indiana Code is, in the end, based on the Acts of Indiana,

including the massive act that in 1976 enacted the most recent Indiana Code into law. Like the Acts, the updated Indiana Code each year currently is distributed for the most part via CD-ROM. Printed volumes are produced to meet the General Assembly’s internal needs, plus those of a very limited number of libraries, such as the Supreme Court library.

At this vantage, however, it looks like there is a long way to go to create an authentic and official online version of the Indiana Code of which the courts could take judicial notice.

As with the Acts, the pieces are there – the electronic files used to create the print version of the most recent Indiana Code, plus the enrolled acts that update it. The updating step, however,

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is problematic. Each year the General Assembly passes hundreds of enrolled acts amending, repealing and adding to the Indiana Code. These changes have to be incorporated.⁷

When the work is completed each year, its accuracy is certified by the Speaker of the House and President Pro Tempore of the Senate. Here is the certificate printed in the 2004 edition of the Indiana Code:

We, the undersigned, do hereby certify that the text of the Indiana Code, as presented in this edition, has been compared with H.E.A. 1010 of 1976 which enacted the Indiana Code and with all laws enacted subsequently through the 2004 regular session of the Indiana General Assembly affecting the Indiana Code, and has been found accurate, correct, and complete.

The foreword to the 2004 edition of the Indiana Code states:

The 2004 official edition of the Indiana Code contains the text of Indiana Code provisions affected by legislation enacted through the 2004 regular session of the Indiana General Assembly. The text of the laws is published exactly as enacted without grammatical or spelling deviation.

Nonetheless, errors have occurred.⁸

Presumably the printed and CD-ROM edition of each year's Indiana Code are identical, although again there is no statement of this, and the CD-ROM contains, without explanation, additional material. However, the online Indiana Code definitely is not the same.

The current online Indiana Code. The online Indiana Code⁹ makes no statement as to how current it is; what it is based on; what, if any, claims are made as to authenticity, etc. Despite this, as discussed at length in my earlier article, "The General Assembly's Role in Making the Indiana Rules and Statutes Available to the Public,"¹⁰ the online Indiana Code is generally taken to be official, up-to-date, accurate and authentic, and has been referenced in at least one Court of Appeals opinion as "the official version ... on www.in.gov."¹¹

My earlier article points to significant errors in the online Indiana Code. In addition, while writing this article I came across others. For instance, I.C. §2-6-1.5-5, which deals with the distribution

of enrolled acts, is preceded by this “Revisor’s Note”:

The version of I.C. §2-6-1.5-5 printed in the 2004 edition of the Indiana Code was printed incorrectly. Use the following version of I.C. §2-6-1.5-5.

How to explain these variances? The CD-ROM of the 2004 Indiana Code is 345 MB. So there is no practical way to simply post the PDF files on the Internet. Instead, the current online version is broken into many hundreds of individual PDF files. In addition, it is available in HTML format. Thus, much editorial work¹² has gone into converting the original verified files for access online.¹³ Each additional step compounds the possibility of errors.

* * * *

In short, the online Indiana Code currently meets none of the requirements set out at the beginning of this article for trustworthy state-level primary legal resources on the Web:

Are they official?

Have they been authenticated?

Are they authentic?

Are they permanently accessible?

Are they secure?

Yet most users of the Indiana Code, including at least some members of the judiciary, are unaware of this, and consider the online Indiana Code to be trustworthy.

Furthermore, the online Indiana Code is now the only available recourse to the laws of Indiana for most people. Printed versions of the Indiana Code are no longer available to either the public directly or to most libraries. From the AALL Authentication Survey:

The disappearance of print official legal resources without an authentic online substitute critically erodes the bedrock of trustworthy statements of the law.

What’s next?

Part II will look at the trustworthiness of the Indiana Register and Indiana Administrative Code, which are no longer available in print form and are available only online. ☺

1. <http://www.aallnet.org/aallwash/PPAreport.html>
2. <http://www.aallnet.org/aallwash/authenreport.html>
3. Rule 201(b) of the Indiana Rules of Evidence provides that “A court may take judicial notice of law. Law includes (1) the decisional, constitutional, and public statutory law.” Rule 22 of the Rules of Appellate Procedure deals with citation form.
4. http://www.in.gov/legislative/pdf/acts_2006.pdf
5. Much of the budget bill is of a temporary nature and is not codified.
6. According to the AALL, there can be only one official version.
7. Complaints from Indiana law librarians, in addition to the concerns about “accurate and authentic,” include the fact that it is five to six months after a session is completed before the online version is updated, that you are never sure whether the changes from the past session have been incorporated, and that there is no online archive of either the Indiana Acts or each year’s version of the Indiana Code.
8. Where there is a variance between the Indiana Code and the provision in the enrolled act upon which it was based, the enrolled act prevails. The same applies when there is a variance between the Acts of Indiana and an enrolled act. The courts in Indiana do not look beyond the enrolled act: “The act in question bears the

signatures of the presiding officers of the General Assembly, and the courts of this state have consistently held for over one hundred years that those signatures conclusively establish the due passage of the act. Our courts do not go behind or receive evidence going behind an enrolled act in order to determine if the General Assembly did, in fact, comply with the constitutional procedural requirements.” *Taxpayers Lobby v. Orr*, 262 Ind. 92.

9. <http://www.in.gov/legislative/ic/code/>
10. 50 *Res Gestae* 1 (July/August 2006), pp. 19-26.
11. *Michael Neidow v. Cash in a Flask, Inc.* (2/6/06).
12. The enrolled acts are not, at this time, coded in XML, which would facilitate ready machine conversion. As will be seen in Part II, the Indiana rules are available as XML files.
13. A question to explore would be whether the updated online version each year is prepared directly from the newest edition of the Indiana Code, or if the online files of the Indiana Code are updated independently.

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