

2008

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Recommended Citation

Timothy L. Coggins, *Virginia Law: It's Online, But Should You Use It?*, *Virginia Lawyer*, June/July 2008.

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Virginia Law: It's Online, But Should You Use It?

by Timothy L. Coggins

An online official legal resource is defined as one that possesses the same status as a print official legal resource.

A judge asks you to present her with a copy of the *Virginia Code* section you are referencing in court, or she asks you to provide a copy of the Supreme Court of Virginia opinion you cited. You used Virginia state government websites to find both the code section and the court opinion. This is easy, right? You give her the copy of what you found online. But could there be a problem? Is the court opinion that you retrieved from the court website considered an official version of the court opinion? Has the *Virginia Code* section that you provided been authenticated to establish its legitimacy? Do these issues matter, and do they have any practical effect on your work as an attorney?

In 2006 the American Association of Law Libraries (AALL) completed a fifty-state survey that investigated whether legal resources on government websites are official and capable of being considered authentic. The AALL published the results of this survey in its report *State-by-State Report on Authentication of Online Legal Resources*¹ in March 2007. The survey investigated six sources of law: statutes and session laws, administrative codes and registers, and intermediate and court of last resort opinions. The survey sought to determine the veracity of state-level primary legal resources on the Web. The AALL reported both good news and bad news:

A significant number of the state online legal resources are *official* but none are *authenticated* or afford ready authentication by standard methods. State online primary legal resources are therefore not sufficiently trustworthy. Citizens and law

researchers may reasonably doubt their authority and should approach such resources critically.²

How did Virginia stack up on this survey and report? Are the documents that you provided to the judge official and authentic? Before discussing Virginia's situation, two definitions used in the survey are necessary, and it is important to note the key findings from the AALL report.

What does "official" mean? An online official legal resource is defined as one that possesses the same status as a print official legal resource.³ This means that an official version of regulatory materials, statutes, session laws, or court opinions is one that has been governmentally mandated or approved by statute or rule. It does not necessarily have to be produced by the government. This working definition of an official legal resource comes from the latest editions of *Black's Law Dictionary* and *The Fundamentals of Legal Research*.

An authentic text has been verified by a government to be both complete and unaltered when it is compared to the version approved or published by the content originator. Authentic text typically will bear a certificate or mark that conveys information as to its certification—the process associated with ensuring that the text is complete and unaltered when compared with that of the content originator. An authentic text is able to be authenticated, which means that the particular text in question can be validated, ensuring that it is what it claims to be. Authentication could be done by encryption-based authentication methods, such as digital signatures and public key infrastructure.⁴

The key findings in the AALL report follow.

- States have begun to discontinue printing official legal resources. They are substituting online official legal sources.
- Ten states and the District of Columbia have deemed as official one or more of their online primary legal resources.

- One or more of the online primary legal sources of eight states have “official traits,” where evidence as to the actual status of the resources is conflicting.
- States have not acknowledged important needs of citizens and law researchers seeking government information; they have not been sufficiently deliberate in their policies and practices.
- No state’s online primary legal resources are authenticated or afford ready authentication by standard methods.
- Eight states have made arrangements for permanent public access to one or more of their online primary legal resources.⁵

Results from the survey show that online legal resources are more frequently the sole official published source. The laws referencing those resources and other online official sources are seriously deficient; they fail to require certification of completeness and accuracy for online resources that is comparable to that required for print official sources. The laws also do not recognize the authentication piece of the equation, which the survey indicates is essential to online official sources. The report, therefore, questions the fundamental trustworthiness of online legal information and raises concerns that need to be addressed by states at both the policy and practical levels.

Virginia is a leader in one area: it is one of only three states ... that had considered the authentication issue at the time that the survey was completed.

How did Virginia rate in the survey? Is the judge in Virginia going to accept your website-retrieved documents as official and authentic versions of the court opinion and the code section?

Gail Warren, state law librarian at the Virginia State Law Library, provided the survey information for Virginia. Warren concludes that “[g]enerally speaking, the Commonwealth of Virginia has not taken steps to designate legal resources on the Web as *official*.”⁶ She notes one exception: the state administrative register. The *Virginia Register of Regulations* was created by statute, and the code section that created the *Register* requires that it be published on the Web.⁷ Thus, following the definitions set out in the

AALL report, the *Register* is considered official. Other Virginia online primary law sources are a little less certain. The online *Code of Virginia* is “the actual text of the print version,” but the website includes no notice that addresses the status or accuracy of any of the three electronic publications: statutory code, session laws, and administrative code.⁸ Warren points to a notice at the Division of Legislative Automated Systems website regarding the statutes: “The Virginia General Assembly is offering access to the *Code of Virginia* on the Internet as a service to the public. We are unable to assist users of this service with legal questions nor respond to requests for legal advice or the application of the law to specific facts.”⁹

The Virginia judiciary website offers electronic access to the opinions of the Supreme Court of Virginia and the Virginia Court of Appeals. Warren notes the opinions are uploaded to the website on the day that the court releases them. But there is no notice for users about the official or unofficial status of the opinions or about their accuracy. She reports that the text on the website is pulled from the original slip opinion electronically prepared by the court, but currently there are no steps taken to ensure that the slip opinion as released on the Web is the same as the final opinion published in the official bound *Virginia Reports*.

Virginia is a leader in one area: it is one of only three states — Minnesota and Vermont are the other two — that had considered the authentication issue at the time that the survey was completed. Eight other states — Alabama, Arkansas, Connecticut, Maryland, Montana, Ohio, South Carolina, and Tennessee — indicated that they

perceive authentication as a concern. Warren notes that a joint subcommittee of the General Assembly in 2004 studied issues relating to providing official authentication of state electronic records, as well as permanent public access to those documents, but it did not specifically address online legal sources.¹⁰

What’s the conclusion about Virginia and the answer to the questions posed in the first paragraph of this article? Warren concludes: “Virginia still publishes print *official* versions of its statutory code, session laws, administrative code, administrative register, and appellate court opinions.”¹¹ She continues, “[U]ntil the legislature and judiciary address the authentication or perma-

nency of electronic legal information produced by their respective branches of government, the use of legal information appearing on these websites is limited to locating relevant code sections, but not citing the electronic resource or relying on it as an *official* source.”¹² If the judge is looking for authentic and official copies of the documents that you presented in court, the copies that you supplied will not suffice.

The Honorable Herbert B. Dixon Jr. of the Superior Court of the District of Columbia, a leader in the area of technology in the judiciary, agrees with Warren. In a 2007 article about the “authentication” and “official” issues and the AALL report, he thanks the American Association of Law Libraries for its work, stating that “[t]he AALL study is a timely wake-up call for work that needs to be done to ensure the integrity and trustworthiness of electronically transmitted and maintained legal documents and information.”¹³ ■

Endnotes:

1 Richard J. Matthews and Mary Alice Baish, *State-by-State Report*

on Authentication of Online Legal Resources (Chicago, IL: American Association of Law Libraries, 2007). The report can be purchased from the AALL or can be viewed in full at the AALL website — <http://www.aallnet.org>.) [hereinafter cited as *AALL Report*].

2 *Id.* at 7.

3 *Id.*

4 *Id.* at 8-9.

5 *Id.* at 10-14.

6 *Id.* at 185.

7 *Va. Code Ann.* § 2.2-4031.

8 *AALL Report* at 186.

9 *Id.*

10 H.J. Res. No. 6, Gen. Assem., Reg. Sess. (Va. 2004).

11 *AALL Report* at 186.

12 *Id.*

13 Herbert B. Dixon Jr., *The Lack of Effort to Ensure Integrity and Trustworthiness of Online Legal Information and Documents*, *The Judges Journal* (volume 46, no. 3, Summer 2007).