

UELMA: The Uniform Electronic Legal Material Act

By Marlene Coir and Virginia C. Thomas

At the federal, state, and local levels, primary legal materials are increasingly being made available to the public in electronic format. It is a matter of great concern to attorneys and legal researchers that these electronic resources routinely include caveats and disclaimers regarding their authenticity and official status. Until recently, however, state and local governments have seldom guaranteed that these resources would be updated, maintained, and securely archived for the benefit of their citizens.

What is UELMA?

In July 2011, the National Conference of Commissioners on Uniform State Laws¹ approved the text of the Uniform Electronic Legal Material Act (UELMA).² As drafted, this uniform law clearly outlines the rationale, methodology, and standards for authenticating and permanently preserving official legal materials published exclusively in electronic format. The act is intended to complement the Uniform Commercial Code, the Uniform Real Property Electronic Recording Act, and the Uniform Electronic Transactions Act.³ It is technology-neutral and outcome-based.⁴ In the words of the drafting committee:

The use of digital information formats has become fundamental and indispensable to the operation of state government. This act addresses the critical need to manage electronic legal information in a manner that guarantees the trustworthiness of and continuing access to important state legal material.... A uniform act will allow state governments to develop similar systems of authentication and preservation, aiding the free flow of information across state lines and the sharing of experiences and expertise to keep costs as low as possible.⁵

Applicability

UELMA would apply to any primary digital text that a state designates as an official legal publication including, for example, session laws, codified statutes, the state constitution, agency regulations, local ordinances, or court opinions.⁶ The act requires primary legal resources that a state elects to publish electronically to be authenticated and permanently preserved and to remain permanently accessible to the public. However, it would not *require* states to publish any primary legal materials electronically.

Authentication

Under UELMA, the enacting state must provide a method for determining that the material has been authenticated. Authentication ensures a complete and unaltered document as verified by the implementing government agency and harmonizes acceptance of electronic legal materials across jurisdictional lines. In other words, the responsible government agency must certify that the material represents the true and official text. An archival copy of every document must be preserved in electronic or print format. If preserved in electronic format, provisions must be set in place for backup and recovery. The state also would be required to ensure the permanent integrity and usability of official texts disseminated electronically.

An authenticated online document would typically bear an electronic watermark or digital signature as certification that the content has been verified as complete and unaltered by its government publisher. Additional methods of assuring authenticity of legal materials include the use of secure websites, hashing algorithms, and visual signatures. Commercial vendor-supplied authentication may include time-stamping, signatory identity information, and transient key technology.⁷ An authenticated resource is presumed to be accurate, but its accuracy may be challenged by offering proof of an inaccuracy or alteration.⁸

Preservation and security

Legal materials are of enduring historical value to their respective jurisdictions. For that reason, UELMA requires that states retain and preserve their official legal materials for future use. However, enacting states would have discretion to preserve legal material in electronic *or* print format according to well-established practices.

If electronic materials are to be preserved electronically, UELMA does require a number of specific outcomes and best practices. First, electronic records must be stored securely to guarantee their preservation. For example, multiple copies stored geographically and administratively separate are recommended. To maintain security over time,

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backup copies of electronic files are essential to preserving existing legal materials and more recent updates. States also must be attuned to developments in information technology and plan to migrate legal materials to new storage media in a way that preserves their legally significant formatting.

Implementation

Of course, implementation of UELMA is governed by the individual states that have adopted the act. Each state must designate a government agency or officer as the official publisher of the legal resource. The specific designees may vary from state to state. The designated official publisher is responsible for the authentication and preservation of all legal materials it publishes and must assure permanent public access to the materials. UELMA would not apply retrospectively to materials published by a state before its enactment.

Costs

States that have adopted and implemented UELMA have done so with surprisingly little fiscal impact. The California legislature, which enacted UELMA effective July 1, 2015, anticipates \$135,000 to \$165,000 for initial implementation costs, authentication, archiving, and onsite storage in addition to annual expenses of \$40,000 to \$70,000.⁹ North Dakota has estimated \$115,000 for the 2013–2015 biennium; of that amount, \$85,000 has been earmarked for one-time costs relating to software development.¹⁰ Most other states that have enacted UELMA estimate minimal or no fiscal impact.

State enactment of UELMA

In considering the benefits of UELMA for Michigan, it may be useful to take a look at legislative developments in other states. To date, 11 states including California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Minnesota, Nevada, North Dakota, and Oregon have enacted UELMA. In addition, UELMA was introduced and considered by the legislatures in Maryland, Massachusetts, Pennsylvania, Rhode Island, and the District of Columbia. These and other

states have taken the lead in addressing concerns about the authenticity of online-only legal resources.

Impact for Michigan practitioners

We may anticipate consideration of this essential legislation in Michigan during the 2015–2016 session. If this initiative is successful, it would greatly enhance the practical value of the growing body of resources provided on the Michigan Legislative Website¹¹ for all legal professionals. The changes brought by this statute should make it much easier to submit legal documents as evidence of the law in litigation proceedings.

For example, attorneys would be able to rely on the evidentiary authority of texts of Michigan bills, session laws, and Michigan Compiled Laws, all of which have been made available online as a courtesy of the state, but which have not yet been authenticated in that format.¹² Authentication standards might also be expanded to encompass online resources such as the Michigan Administrative Code,¹³ which has been designated “official” but remains unauthenticated, as well as other official legal publications of the state.

Read more about it

While we await legislative developments in our state, the following resources may be helpful in further informing readers interested in this topic:

- American Association of Law Libraries, *UELMA Resources*¹⁴
- National Conference of State Legislatures, *Legislation Related to the Uniform Electronic Legal Material Act (UELMA)*¹⁵
- Michele Timmons, Mendora Servin, and Tim Orr, *The UELMA: Implementation in California and Minnesota*, 2014¹⁶
- Uniform Law Commission, The National Conference of Commissioners on Uniform State Laws, *Acts: Electronic Materials Act*¹⁷
- Michigan Bar Journal (July 2009 issue), *Digital Legal Authority: Accuracy, Authentication, and Preservation*¹⁸ ■

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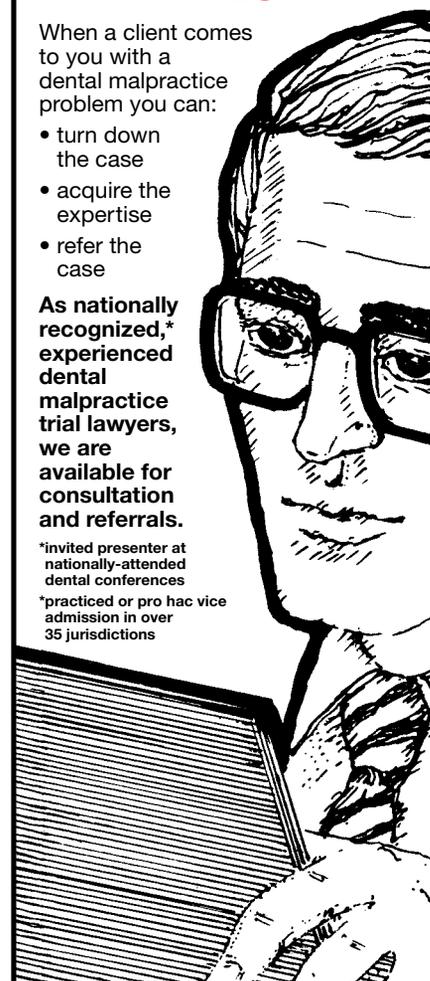
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ENDNOTES

1. Also known as the Uniform Law Commission (ULC), this organization drafts state legislation on subjects of common interest to states when uniformity is desirable. See Uniform Law Commission, *About the ULC* <[http://www.uniformlaws.org/Narrative.aspx?title=About the ULC](http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC)>. All websites cited in this article were accessed September 14, 2014.
2. National Conference of Commissioners on Uniform State Laws, *Uniform Electronic Legal Material Act* (2011), available at <http://www.uniformlaws.org/shared/docs/electronic%20legal%20material/uelma_final_2011.pdf>.
3. California Office of Legislative Counsel, *Authentication of Primary Legal Materials and Pricing Options* (December 2011), p 3, available at <http://hapax.qc.ca/CA_Authentication_WhitePaper_Dec2011.pdf>.
4. See American Association of Law Libraries, UELMA History <<http://www.aallnet.org/Documents/Government-Relations/UELMA/history.html>>; American Association of Law Libraries, UELMA Resources <<http://www.aallnet.org/Documents/Government-Relations/UELMA/>>.
5. National Conference of Commissioners on Uniform State Laws, *supra* at 3.
6. Court opinions are not explicitly included in the text of UELMA because courts are generally autonomous from legislatures.
7. California Office of Legislative Counsel, *supra* at 3.
8. *Id.* at 10–14.
9. American Association of Law Libraries, *Uniform Electronic Legal Material Act—Enactments* <<http://www.aallnet.org/Documents/Government-Relations/UELMA/UELMAenactments.pdf>>.
10. *Id.*
11. Michigan Legislative Website <[http://www.legislature.mi.gov/\(S|0a0ncu55g01ol03ft0f5o45\)\)/mileg.aspx?page=Home](http://www.legislature.mi.gov/(S|0a0ncu55g01ol03ft0f5o45))/mileg.aspx?page=Home)>.
12. *Id.* Please note the disclaimer located at the bottom of each statutory page on the website.
13. Department of Licensing and Regulatory Affairs, Michigan Administrative Code <http://www.michigan.gov/lara/0,4601,7-154-35738_5698--,00.html>.
14. American Association of Law Libraries, UELMA Resources <<http://www.aallnet.org/Documents/Government-Relations/UELMA/>>.
15. National Conference of State Legislatures, *Legislation Related to the Uniform Electronic Legal Material Act (UELMA)* <<http://www.ncsl.org/research/telecommunications-and-information-technology/uniform-electronic-legal-material-legislation.aspx>>.
16. Timmons, Servin & Orr, *The UELMA: Implementation in California and Minnesota*, available at <<http://www.ncsl.org/documents/summit/summit2014/onlineresources/UELMAinCA-MN.pdf>>.
17. Uniform Law Commission: The National Conference of Commissioners on Uniform State Laws, *Acts: Electronic Legal Material Act* <<http://www.uniformlaws.org/Act.aspx?title=Electronic+Legal+Material+Act>>.
18. 88 Mich B J (July 2009) <<http://www.michbar.org/journal/home.cfm?viewtype=archive&volumeid=114>>. This special issue focuses on authentication and preservation issues of digital legal information in Michigan.



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