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**Authentication of Online State Primary Legal Resources as a
Social Justice Issue: The Uniform Electronic Legal Material
Act and How it Can Benefit *Pro Se* Litigants**

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I. Introduction

The American Association of Law Libraries (“AALL”) has advocated for years for the adoption of standards to authenticate online state primary legal material. AALL was among the first to recognize that while states were making their primary legal materials available electronically on government-sponsored websites, they were not ensuring that those resources were trustworthy and authentic. AALL warned that states had not been “deliberate in their policies and practices to ensure that information obtained from their websites can be relied upon and can be verified to be complete and unaltered when compared with the version approved or published by the content originator.”¹ AALL investigated and reported on what each state was doing, if anything, to authenticate its electronic primary legal information and published two comprehensive state-by-state reports in 2007 and 2009 that addressed this very issue. AALL is in the processing of preparing another state-by-state report that is scheduled to be released later this year.

AALL’s advocacy related to the adoption of standards to address the authenticity issue led to the enactment of the Uniform Electronic Legal Material Act (“UELMA”), which became final in October 2011. UELMA, for the first time, provides a framework for and guidance about how state governments can ensure that their official electronic legal information is authenticated, preserved and permanently accessible to the public. Legislation to enact UELMA has since been introduced in six states and was recently adopted in Colorado on April 26, 2012, with full support from the House and Senate.²

This paper provides a brief history of the development of UELMA as context for the argument that the adoption of standards related to the authentication of electronic state legal resources can be considered a social justice issue. More specifically, this paper frames authentication of electronic state primary legal material as a social justice issue in the context of *pro se* litigants and argues that states, like Washington, should adopt UELMA to ensure that these vulnerable users of legal information have access to authentic and trustworthy electronic versions of the law that governs them.

¹ David G. Badertscher & Deborah E. Melnick, *Is Primary Legal Information on the Web Trustworthy?*, 49 JUDGES JOURNAL 14 (2010).

² American Association of Law Libraries, *The AALL Washington E-Bulletin*, Vol. 2012, Issue 4 (April 2012), <http://www.aallnet.org/main-menu/Advocacy/aallwash/Washington-E-Bulletin/2012/ebulletin0412.pdf>; See also American Association of Law Libraries, *Uniform Electronic Legal Material Act – Bill Tracking Chart* (April 27, 2012), <http://aallnet.org/main-menu/Advocacy/aallwash/Advocacy-Toolkit/7-Uniform-Electronic-Legal-Material-Act/UELMAbillchart.pdf>.

Over the past several years, there has been a tremendous shift in how legal information is delivered.³ While “[p]reviously, a printed book was the gold standard of accurate representation of law as it was made; now law is often captured in fragile (digital) media.”⁴ Electronic legal material abounds, and print publication is no longer the only means for delivering legal material. Indeed, “[p]roviding information online is [now] integral to the conduct of state government in the 21st century.”⁵

There are benefits associated with making legal material available online, namely, that it “enables governments to meet their obligations to provide legal information to the public in a timely and cost-effective manner,” “facilitates transparency and accountability, provides widespread access, and encourages citizen participation on the democratic process.”⁶ As with any significant shift in how information is communicated and delivered, however, there is a period of time in which new standards and guidance related to information management must be developed and implemented. In the case of state legal material, state governments began publishing their laws and other legal resources online without first developing a methodology or framework for preserving that information or ensuring that it is as authentic and trustworthy as the print counterparts.

Currently, many states have begun eliminating their print resources in favor of electronic-only without taking steps to ensure that its information is authentic, free and permanently accessible to members of the public. In fact, very few “state governments have taken the actions necessary to ensure that the electronic legal information they create and distribute remains unaltered, and is, therefore, trustworthy or authentic.”⁷ State legislatures must consider introducing legislation to enact UELMA to address the authenticity issue, and develop procedures for ensuring that their electronic legal information is as trustworthy as print resources. This is particularly important in the context of *pro se* litigants, who are especially vulnerable users of primary legal materials. States need to

³ Tammy R. Pettinato, *Legal Information, the Informed Citizen, and the FDLP: The Role of Academic Law Librarians in Promoting Democracy*, 99 LAW LIBRARY JOURNAL 695 (2007) (Explaining that “[b]eginning with the founding fathers and gaining strength throughout the nineteenth and twentieth centuries, the importance of citizen access to information has become a cornerstone of the democratic vision.”).

⁴ American Association of Law Libraries, *Access to Electronic Legal Information Committee, Principles & Core Values Concerning Public Information on Government Websites* (2007), <http://www.aallnet.org/main-menu/Advocacy/recommendedguidelines/principles-core-values.html>.

⁵ National Conference of Commissioners on Uniform State Laws, *Uniform Electronic Legal Material Act* (2011), <http://www.aallnet.org/Documents/Government-Relations/2011Oct-UniformElectronicLegalMaterialAct-Final.pdf>.

⁶ National Conference of Commissioners on Uniform State Laws, *Uniform Electronic Legal Material Act, Prefatory Note* (2011), <http://www.aallnet.org/Documents/Government-Relations/2011Oct-UniformElectronicLegalMaterialAct-Final.pdf>.

⁷ National Conference of Commissioners on Uniform State Laws, *Uniform Electronic Legal Material Act, Prefatory Note* (2011), <http://www.aallnet.org/Documents/Government-Relations/2011Oct-UniformElectronicLegalMaterialAct-Final.pdf>.

apply the same rigor and seriousness to the publication of electronic versions of their primary legal materials as they do to print versions. State governments have always placed importance on making sure the law is accurate when published and the same sense of importance should apply in today's world of electronic publication.

II. Electronic State Primary Legal Materials and the Problem of Trustworthiness: The Work of the American Association of Law Libraries

Ensuring equitable and permanent access to legal information is at the heart of law librarianship and is a principle that has an important place within the work of the AALL.⁸ Law librarians and the AALL have a rich history of advocacy related to fair and equitable access to the law and legal information for all members of society. In the past several years, AALL has expanded its advocacy related to these issues and has been outspoken about the need to ensure permanent access to trustworthy online state legal resources. To that end, AALL has been working for the adoption of standards to address the authentication of electronic state primary legal materials.

Years ago, AALL was among the first to recognize the growing trend of states to publish their laws and other primary legal resources online, and raised serious concerns about whether states were also taking steps to ensure that the information they provide online is authentic and trustworthy. AALL took the position that in order for official online legal resources to be truly useful to those seeking the law, they must be authentic and trustworthy.⁹ AALL's subsequent investigation of this critical issue led to the enactment of the UELMA, the first uniform law to provide states with a framework for authenticating their electronic primary legal material.

In 2007 and again in 2009,¹⁰ AALL commissioned two comprehensive State-by-State Reports in which it investigated and then reported on the following question: how trustworthy are state-level primary legal resources on the Web?¹¹ Both Reports, which included specific information from each of the fifty states,

⁸ American Association of Law Libraries, *Access to Electronic Legal Information Committee, Principles & Core Values Concerning Public Information on Government Websites* (2007), <http://www.aallnet.org/main-menu/Advocacy/recommendedguidelines/principles-core-values.html>.

⁹ Center for Technology in Government, *Opening Government's Official Legal Materials: Authenticity and Integrity in the Digital World* (2012), http://www.ctg.albany.edu/publications/reports/legal_materials/legal_materials.pdf.

¹⁰ A third AALL State-by-State Report is forthcoming in 2012.

¹¹ American Association of Law Libraries, *State-by-State Report on Authentication of Online Legal Resources* (2007), http://aallnet.org/Documents/Government-Relations/authen_rp/authefinalreport.pdf (hereinafter "AALL 2007 Report"); American Association of Law Libraries, *2009-10 Updates to the State-by-State Report on Authentication of Online Legal Resources*, <http://aallnet.org/Documents/Government-Relations/authen-rprt-updates/2009aallauthenticationreportupdates.pdf> (hereinafter "AALL 2009 Report").

considered “which government-hosted legal resources on the Web are *official* and capable of being considered *authentic*.”¹² AALL presented the central issue this way: [t]o 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*.¹³ That is, the “official” status of a state government publication means little without accompanying authentication. As defined by the AALL, 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.” An *authentic* resource, on the other hand, is “one whose content has been verified by a government entity to be complete and unaltered when compared to the version approved or published by the content originator.”¹⁴

In both of its State-by-State Reports, AALL reported that a significant number of states had not only started making their primary legal material available online, they had also begun discontinuing print versions of these resources in favor of “official” electronic versions. Despite designating the legal resources “official,” however, very few states were taking the additional step of ensuring the authenticity and trustworthiness of their electronic legal information.¹⁵ Thus, AALL concluded that state online primary legal resources are not “sufficiently trustworthy” and [c]itizens and law researchers may reasonably doubt their authority and should approach such resources critically.¹⁶

AALL underscored the crucial need for citizens of each state, as members of the democratic process, to have access to trustworthy and authentic electronic primary legal material and the role that each state government must play in ensuring such authentication. Our democratic society rests on the presumption that citizens have a right to access to the law that governs them if they are to be meaningful participants in the democratic process. Indeed, as noted by AALL, it is “axiomatic that persons using legal resources seek trustworthy- *official* and *authentic*- government information without reservations concerning how online versions relate to authoritative originals...”¹⁷ As explained in a recent publication from the Center for Technology in Government, “usefulness is a function of the extent to which the custodian...of records, in this case state government agencies, have been able to maintain the integrity and authenticity of the record, along with the content.”¹⁸ If states are going to make their legal information available electronically to members of the public, then they must also ensure that the underlying content in those materials is trustworthy and authentic.

¹² AALL 2007 Report; AALL 2009 Report.

¹³ AALL 2007 Report; AALL 2009 Report.

¹⁴ AALL 2007 Report.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ AALL 2007 Report.

¹⁸ Center for Technology in Government, *Opening Government’s Official Legal Materials: Authenticity and Integrity in the Digital World* (2012), http://www.ctg.albany.edu/publications/reports/legal_materials/legal_materials.pdf.

As noted above, one of the main points revealed in the first AALL State-by-State report from 2007 was the growing trend among states to discontinue official print resources in favor of “official” online materials without taking steps to ensure the authenticity of that information.¹⁹ The information contained in the AALL 2007 Report is based on a 2006 authentication survey in which states were invited to respond about their online practices concerning six sources of law: state administrative codes and registers, state statutes and session laws, and state high and intermediate appellate court opinions²⁰ (that is, their primary sources of law).

Soon after releasing its 2007 Report, the AALL held a National Summit on Authentication of Digital Information. Just as in the 2006 AALL Survey, the Summit concentrated on whether “government-hosted legal resources on the Web [are] official and capable of being considered authentic...”²¹ At that Summit, “delegates from the judiciary, the legal community, state governments, and interested organizations...discussed the findings of the 2007 Report and explored legal and technological solutions to ensure that state online legal resources are authenticated and trustworthy.”²²

As a result of the Summit, in 2008 the National Conference of Commissioners on Uniform State Laws²³ (“NCCUSL”) created a Study Committee on Online Authentication of Legal Materials to investigate and study the possibility of developing a uniform law to address the authentication issue.²⁴ In 2009, NCCUSL approved the Study Committee’s recommendation to create a Drafting Committee on Authentication and Preservation of Electronic State Legal Materials.²⁵ This Drafting Committee worked on developing what was to become the UELMA.

¹⁹ AALL 2007 Report.

²⁰ AALL 2007 Report.

²¹ American Association of Law Libraries, *AALL Leadership on Authentic Legal Information in the Digital Age* (last visited May 16, 2012), <http://www.aallnet.org/main-menu/Advocacy/aallwash/summit?css>; See also American Association of Law Libraries, *The Need for Authentication and Preservation of Online Legal Resources* (last visited May 16, 2012), <http://www.aallnet.org/Documents/Government-Relations/Advocacy-Toolkit/webinar-authentication.pdf>.

²² American Association of Law Libraries, *AALL Leadership on Authentic Legal Information in the Digital Age* (last visited May 16, 2012), <http://www.aallnet.org/main-menu/Advocacy/aallwash/summit?css>.

²³ The National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission), “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.” National Conference of Commissioners on Uniform State Laws, *Uniform Electronic Legal Material Act, About ULC* (2011), <http://www.aallnet.org/Documents/Government-Relations/2011Oct-UniformElectronicLegalMaterialAct-Final.pdf>.

²⁴ American Association of Law Libraries, *AALL Leadership on Authentic Legal Information in the Digital Age* (last visited May 16, 2012), <http://www.aallnet.org/main-menu/Advocacy/aallwash/summit?css>.

²⁵ *Id.*

Also in 2009, the AALL Electronic Legal Information Access and Citation Committee (now called the Digital Access to Legal Information Committee) drafted a second State-by-State Report that updated the original state summaries and assessed how much progress states had made since the 2007 Report.²⁶ In general, the AALL 2009 Report indicated that while many states had added “official and authentic notations to their legal information” and “disclaimers to...state Web sites regarding authentication and official format of the information online,” very few had made any progress towards the development and implementation of systems for authenticating their online primary legal information.²⁷

The AALL 2009 Report also revealed that a very small number of states began certifying their online resources as authentic, but only four--Connecticut, Georgia, Idaho and Utah--had actually implemented systems for guaranteeing permanent public access to their electronic primary legal material.²⁸ The most problematic issue raised in this updated 2009 Report, however, was the growing trend among states to eliminate “their print legal publications in favor of online-only without guaranteeing digital authentication or permanent public access.”²⁹ Washington State, for example, reported that it had eliminated its print publication of the Washington Register and designated its online version as “official” but did not take any steps to authenticate this electronic resource.³⁰ Similarly, Georgia eliminated its print version of the Georgia Register and began publishing only an online version, and Michigan eliminated the print version of its Administrative Code.³¹

After both State-by-State Reports were released, AALL continued to support the work of the NCCUSL and remained involved in the process of developing UELMA. In July 2011, the NCCUSL approved the Uniform Electronic Legal Material Act and it became final in October 2011,³² thanks in large part to the advocacy and investigative work of the AALL. UELMA is the first uniform law to provide guidance about and a framework for the authentication and preservation of electronic state legal materials.³³

²⁶ *Id.*

²⁷ *Id.*

²⁸ AALL 2009 Report.

²⁹ *Id.*

³⁰ AALL 2009 Report.

³¹ *Id.*

³² Center for Technology in Government, *Opening Government’s Official Legal Materials: Authenticity and Integrity in the Digital World* (2012), http://www.ctg.albany.edu/publications/reports/legal_materials/legal_materials.pdf ; See also National Conference of Commissioners on Uniform State Laws, *Uniform Electronic Legal Material Act* (2011), <http://www.aallnet.org/Documents/Government-Relations/2011Oct-UniformElectronicLegalMaterialAct-Final.pdf>.

³³ American Association of Law Libraries, *Authentication and e-Life Cycle Management* (last visited May 16, 2012), <http://www.aallnet.org/main-menu/Advocacy/aallwash/Issue-Briefs-and-Reports/2009/dayonhill-authentication.pdf>.

III. The Uniform Electronic Legal Material Act: a New Framework for States

The purpose of UELMA is to further “state policies of accountability and transparency in providing legal information to the public.”³⁴ The ultimate goals of the “authentication and preservation program outlined in the act are to enable end-users to verify the trustworthiness of the legal material they are using and to provide a framework for states to preserve legal material in perpetuity in a manner that allows for permanent access.”³⁵ To that end, UELMA “provides a technology-neutral, outcomes-based approach to ensuring that online state legal material deemed official will be preserved and permanently available to the public in an unaltered form.”³⁶ For the first time, UELMA offers a solution to the authentication problem and gives states the necessary framework for ensuring that their official online legal material has the same level of trustworthiness that has been traditionally provided by print resources.³⁷

As written, UELMA mandates that if state legal material is published only electronically, it must be designated “official” and, therefore, be:

- Capable of being authenticated (the state must provide the user with a method to determine that the legal material is unaltered);
- Preserved (the state may choose to preserve either in electronic or print form); and
- Permanently accessible to the public.³⁸

Certain kinds of primary state legal material are specifically enumerated in UELMA including the state constitution, state session laws, codified laws and regulations that have the effect of law. States also have discretion to include other kinds of legal material within the UELMA framework.³⁹ UELMA does not require states to authenticate judicial information such as court rules and case law “because in some states the judicial branch is the official publisher of those materials” and could implicate separation of powers issues.⁴⁰

³⁴ American Association of Law Libraries, *Uniform Electronic Legal Material Act, Summary and Frequently Asked Questions* (2012), <http://aallnet.org/main-menu/Advocacy/aallwash/Advocacy-Toolkit/7-Uniform-Electronic-Legal-Material-Act/UELMAFAQ.pdf>.

³⁵ National Conference of Commissioners on Uniform State Laws, *Uniform Electronic Legal Material Act, Prefatory Note* (2011), <http://www.aallnet.org/Documents/Government-Relations/2011Oct-UniformElectronicLegalMaterialAct-Final.pdf>.

³⁶ American Association of Law Libraries, *Uniform Electronic Legal Material Act, Summary and Frequently Asked Questions* (2012), <http://aallnet.org/main-menu/Advocacy/aallwash/Advocacy-Toolkit/7-Uniform-Electronic-Legal-Material-Act/UELMAFAQ.pdf>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ National Conference of Commissioners on Uniform State Laws, *Uniform Electronic Legal Material Act, Comment at 7* (2011), <http://www.aallnet.org/Documents/Government-Relations/2011Oct-UniformElectronicLegalMaterialAct-Final.pdf>.

UELMA also requires that when a state designates a legal resource as “official,” the state is required to name an “official publisher” who is responsible for authenticating, preserving, and providing permanent public access to that legal material.⁴¹ The official publisher is then required to “give the user of the information a way in which to authenticate the information--that is, to ensure that the information is unaltered.”⁴² UELMA, however, does not mandate that any specific technology standards be used by states; rather, it “requires official publishers to consider the most recent standards and best practices for preservation, authentication and access to electronic legal material.”⁴³ Thus, UELMA leaves it up to the individual states to determine what technology standards will be utilized in authenticating their “official” online legal information.

UELMA was designed to encourage “collaboration and cooperation” among states as they develop standards and systems for authentication of their electronic legal material, not to specify how states should approach the development of technology to authenticate.⁴⁴ It is possible, then, that giving states the ability to collaborate and “share” the work with other states as standards for authentication are developed will help remove some of the technological roadblocks to implementing such a framework. UELMA also gives states flexibility to change their methods for authenticating their official resources as the underlying technology changes and evolves.

The AALL, via its Digital Access to Legal Information Committee and Working Groups, continues to support AALL’s advocacy efforts and is working on another update to the State-by-State Reports, which is scheduled to be released in 2012. That report, “to be issued later this year, will once again support what law librarians have known for years: there are widespread issues with access to legal resources and there is an imminent need to prevent a trend of eliminating print resources in favor of electronic resources without the proper safeguards in place.”⁴⁵ Recently, AALL Working Groups determined that “no states have added authentication measures since the 2009-2010 update.”⁴⁶ The Committee continues to monitor developments concerning UELMA and the authentication of online legal material generally and also participates in the work of the state legal inventory, a national project that focuses on collecting and creating a database of

⁴¹ American Association of Law Libraries, *Uniform Electronic Legal Material Act, Summary and Frequently Asked Questions* (2012), <http://aallnet.org/main-menu/Advocacy/aallwash/Advocacy-Toolkit/7-Uniform-Electronic-Legal-Material-Act/UELMAFAQ.pdf>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Emily Feltren & Tina S. Ching, *Protecting Access One Entry at a Time: Update on the National Inventory of Legal Materials* (Feb. 1, 2012), Voxpopulii, <http://blog.law.cornell.edu/voxpath/2012/02/01/protecting-access-one-entry-at-a-time-an-update-on-the-national-inventory-of-legal-materials/>.

⁴⁶ Emily Feltren, *Washington Brief: Promoting UELMA in Your State*, AALL Spectrum, May 2012 at 5.

free, permanently accessible state-specific primary legal materials.⁴⁷ The authentication issue continues to be an important and visible part of AALL’s advocacy agenda and is a priority for the organization.⁴⁸ Currently, many AALL members are leading advocacy efforts in their states to adopt UELMA.⁴⁹

IV. Washington State: No Authentication for Electronic Primary Legal Materials

The following discussion uses Washington as an example of a state that publishes its primary legal material online but does not use technology to authenticate that information. Both AALL State-by-State Reports regarding the authentication of state electronic primary legal material include information from the State of Washington.⁵⁰ In the 2007 Report, Washington State reported that its online primary legal resources are not “official” and that it was not intending to produce “online official statutes, administrative law, or court opinions.”⁵¹ The Report stated that the Code Reviser’s Office of the Statute Law Committee is responsible for the “online versions of the Washington statutes, administrative code, and administrative register,” and that the “print copy is the only *official* source, and Washington does not warrant the ‘accuracy, reliability or timeliness’ of its online information.”⁵² Washington also indicated that it did not intend to address the issue of authentication of online legal resources.⁵³

In the updated AALL 2009 State-by-State Report, Washington had another opportunity to report about its progress and policies related to the authentication of its electronic legal material. In that Report, Washington stated that the majority of its online legal resources are not designated as official and that it had not taken any steps to implement a standard for the authentication of its online primary legal resources since the 2007 Report (in other words, Washington reported that it was still not addressing the authentication issue).⁵⁴ Washington also explained, however, that since 2007 it had discontinued its print version of the Washington Register⁵⁵ and designated the electronic version available on the

⁴⁷ Emily Feltren & Tina S. Ching, *Protecting Access One Entry at a Time: Update on the National Inventory of Legal Materials* (Feb. 1, 2012), Voxpopulii, <http://blog.law.cornell.edu/voxpath/2012/02/01/protecting-access-one-entry-at-a-time-an-update-on-the-national-inventory-of-legal-materials/>.

⁴⁸ Emily Feltren, *Washington Brief: Promoting UELMA in Your State*, AALL Spectrum, May 2012 at 5.

⁴⁹ *Id.*

⁵⁰ Kay E. Newman, Washington State Law Library, reported on behalf of Washington State for both the 2007 and 2009 AALL State-by-State Reports.

⁵¹ AALL 2007 Report.

⁵² *Id.*

⁵³ AALL 2007 Report.

⁵⁴ AALL 2009 Report.

⁵⁵ According to the Washington State Legislature’s website, “The Washington State Register is a biweekly publication. It includes notices of proposed and expedited rules, emergency and permanently adopted rules, public meetings, requests for public input, notices of rules review, executive orders of the governor, court rules, summary of attorney general opinions, juvenile disposition standards, the state maximum interest rate, an index, and WAC to WSR table.”

State Legislature's Website as "official" but did not implement a system to authenticate it.⁵⁶ Currently, the Washington State Legislature's website includes this information about its publication of the Washington Register:

Washington State Register Official Publication Statement

The Statute Law Committee declares that the publication of the Washington State Register on the Code Reviser's web site is the *official publication* of the Register. The Code Reviser's Office maintains and will continue to maintain a file of every document ever filed with the Washington State Register. When asked to certify a document, the Code Reviser will certify a copy of the original filing.⁵⁷

Washington also had not enacted any legislation "guaranteeing permanent public access to online government information," and reported that it was not using technology to authenticate its resources and did not plan to do so in the future.⁵⁸ As of the writing of this paper, Washington has not introduced legislation to enact the UELMA and the AALL Reports seem to indicate that it has no plans to do so.

Washington makes its primary legal resources (including its "official" electronic version of the Washington Register) available online through the Washington State Legislature's website.⁵⁹ The Municipal Research and Services Center of Washington ("MRSC") is another online site that provides free access to Washington State statutes, regulations, and municipal and county codes.⁶⁰ These two websites are the primary portals through which the public accesses online versions of the law in Washington State, but neither of them guarantee the trustworthiness or authenticity of the legal information that they provide.

For example, the Washington State Legislature's website provides free access to electronic versions of Washington State primary legal material, including the Revised Code of Washington (updated twice a year) and the Washington Administrative Code (updated twice a month). The State Legislature's website

Washington State Legislature, *Laws and Agency Rules* (last visited May 16, 2012), <http://www.leg.wa.gov/LawsAndAgencyRules/Pages/default.aspx>.

⁵⁶ AALL 2009 Report.

⁵⁷ Washington State Legislature, *Washington State Register Official Publication Statement* (last visited May 16, 2012) <http://www.leg.wa.gov/CodeReviser/Documents/officialstatement.htm> (emphasis mine); see also WASH. REV. CODE § 1.08.110 (2011) ("The statute law committee, in its discretion, may publish the Washington State Register exclusively by electronic means on the code reviser web site if it determines that public access to the Washington State Register is not substantially diminished. If the statute law committee publishes the Washington State Register exclusively by electronic means on the code reviser web site, the electronic copy posted on the code reviser web site shall be considered the official copy of the Washington State Register.").

⁵⁸ AALL 2009 Report.

⁵⁹ Washington State Legislature (last visited May 16, 2012), <http://www.leg.wa.gov/pages/home.aspx>.

⁶⁰ Municipal Research & Services Center (last visited May 16, 2012), www.legalwa.org.

also contains archived PDF versions of the Revised Code of Washington going back to 2002 and the Washington Administrative Code from 2004.⁶¹

The Washington State Legislature's website includes a disclaimer about the electronic legal information that it provides. The disclaimer, however, is located at the bottom of the main webpage and does not appear on the individual pages that provide the content of the Revised Code of Washington, for example. The text of the disclaimer from the Washington State Legislature's website is as follows:

Neither the State of Washington nor any agency, officer, or employee of the State of Washington warrants the accuracy, reliability, or timeliness of any information in the Public Access System and shall not be liable for any losses caused by such reliance on the accuracy, reliability, or timeliness of such information. Any person or entity who relies on information obtained from the System does so at his or her own risk.⁶²

Like the Washington State Legislature's website, the MRSC site also includes a disclaimer that the legal material contained in it is not official or authentic:

Disclaimer

The Municipal Research & Services Center of Washington presents the information on this Web site as a service to other Internet users. Although this site contains information about legal issues, it is not intended to be legal advice. Additionally, due to on-going changes in state and federal law and our reliance on information provided by outside sources, we make no warranty or guarantee concerning the accuracy or reliability of the content at this site or at any other sites to which we provide links. Please send questions or comments about this site to mrsc@mrsc.org. We can respond to requests for information from Washington city, town and county officials and staff only.⁶³

In 2011, the Washington State Legislature passed House Bill 1479, which added a new section to the Revised Code of Washington Chapter 1.08.080:

⁶¹ Washington State Legislature, *Office of the Code Reviser* (last visited May 16, 2012), <http://www.leg.wa.gov/CodeReviser/RCWArchive/Pages/default.aspx>; Washington State Legislature, *Office of the Code Reviser* (last visited May 16, 2012), <http://www.leg.wa.gov/CodeReviser/WACArchive/Pages/default.aspx>.

⁶² Washington State Legislature, *Disclaimer* (last visited May 16, 2012), <http://www.leg.wa.gov/legislature/pages/disclaimer.aspx>.

⁶³ Municipal Research & Services Center, *Disclaimer* (last visited May 16, 2012), <http://legalwa.org/mrscdisc.htm>.

Statute law committee publications to be permanently available in digital form on legislative web sites: Current digital copies of the Revised Code of Washington, the Washington Administrative Code, the Washington State Register, and the session laws of the Washington state legislature shall be maintained and made freely available for permanent public access on the code reviser or legislative web site. All historical digital copies added to the web site shall be made freely available for permanent public access.⁶⁴

It is not clear whether the Washington code reviser or legislature has implemented technology to provide for the permanent public access described in this new section of the Revised Code of Washington. In addition, Section 1.08.080 states that the “statute law committee shall provide digital authentication for any publication in a digital format that is declared official; if in the discretion of the committee such authentication does not interfere with public access.”⁶⁵ To date, the electronic version of the Washington State Register appears to be the Washington’s only online legal resource that has been designated as “official.” Despite the official status of the electronic publication, Washington State has not authenticated the Washington Register as required by Section 1.08.080, perhaps because it has determined that such authentication would inhibit public access rather than enhance it.

In any event, the Legislative intent behind Section 1.08.080 is described as a desire to “promote widespread access to legal and public information materials produced by the statute law committee in both digital and print formats” while at the same time “responding to a changing marketplace where sale of paper copies no longer supports the printing of copies intended for free distribution.”⁶⁶ The Washington State Legislature also acknowledged that “web-based access” to the laws of the State of Washington is the “most popular and efficient method of access by the public, state agencies and local governments, and the legal community and that permanent public access to these web-based materials shall be maintained and preserved.”⁶⁷ According to the Code Reviser for Washington State, the online version of the Revised Code of Washington (available through the Washington State Legislature’s website), receives more than six million hits per month.⁶⁸

Washington, like many other states, has changed the way it publishes and distributes its primary legal authority like statutes and regulations. The problem with this shift, however, is that electronic publication is not the same as print

⁶⁴ WASH. REV. CODE § 1.08.080 (2011) (emphasis mine).

⁶⁵ *Id.*

⁶⁶ 2011 Wash. Sess. Laws Chp. 156.

⁶⁷ *Id.*

⁶⁸ Law Librarians of Puget Sound, *Enacted Legislation--Work of the Statute Law Committee* (2011), http://llops.org/?page_id=50 .

publication, and it is not as simple for users of legal information to identify an official and authentic version of the law when it is in an electronic form. Indeed, as “states have moved to web-based publication of new statutory materials, there has been little or no planning about how to handle the preservation and authentication that has been an inherent part of the paper system.”⁶⁹ Washington, like many other states, did not implement a system for authenticating and preserving their electronic primary legal material before publishing it online, and, as a result, Washington residents seeking access to the legal material have come to rely on unauthenticated and untrustworthy versions of the law. Thus, concerns related to the authenticity, integrity and preservation of electronic primary legal material “have now re-emerged after being off the radar screen of many state legislatures and policy makers,”⁷⁰ thanks in large part due to the efforts of the AALL and the passage of UELMA by the NCCUSL.

V. Authentication of Primary Electronic State Legal Material as a Social Justice Issue: *Pro Se* Litigants and the Need for Trustworthiness

It is clear that most people today prefer electronic resources when researching a legal issue.⁷¹ Consumers of legal information have come to rely on the internet, often because of perceptions about accessibility, convenience, and cost.⁷² This trend, however, “is producing a near paradigm shift toward using Web-based technology as the primary (and sometimes only) source for searching and retrieving all types of legal information, regardless of its authority and authenticity.”⁷³ Robert C. Berring observed in *The Heart of Legal Information: The Crumbling Infrastructure of Legal Research*, that the “tectonic plates” of legal information are shifting and that “[m]ost citizens prefer to have access to state materials offered via the Internet than access to paper sets that require going to a library where the book that they want may not even be on the shelf.”⁷⁴ Using the internet has become such an integral part of our lives that people have moved to using and relying on information they located online, even if it is not the best

⁶⁹ Robert C. Berring, *The Heart of Legal Information: The Crumbling Infrastructure of Legal Research*, in LEGAL INFORMATION AND THE DEVELOPMENT OF AMERICAN LAW, A COLLECTION OF ESSAYS INSPIRED BY THE CONTRIBUTIONS OF ROBERT C. BERRING 293 (Richard A. Danner & Frank G. Houdek eds., (2008).

⁷⁰ Center for Technology in Government, *Opening Government’s Official Legal Materials: Authenticity and Integrity in the Digital World* (2012), http://www.ctg.albany.edu/publications/reports/legal_materials/legal_materials.pdf.

⁷¹ David G. Badertscher & Deborah E. Melnick, *Is Primary Legal Information on the Web Trustworthy?*, 49 JUDGES JOURNAL 14 (2010) (noting that both producers and consumers of legal information are relying more on the internet to serve their information needs).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Robert C. Berring, *The Heart of Legal Information: The Crumbling Infrastructure of Legal Research*, in LEGAL INFORMATION AND THE DEVELOPMENT OF AMERICAN LAW, A COLLECTION OF ESSAYS INSPIRED BY THE CONTRIBUTIONS OF ROBERT C. BERRING 292 (Richard A. Danner & Frank G. Houdek eds., (2008).

resource for their needs, and even if they cannot, or do not know that they should, determine the information's authenticity and trustworthiness.⁷⁵

The publication of state legal information online has, in one important sense, afforded greater access to state primary legal material because more citizens are able to access their state laws online rather than just in print.⁷⁶ Provided that they have access to the internet, which, in Washington State, 88.37% of adults do,⁷⁷ anyone can access the law online through the State Legislature's website or the MRSC.⁷⁸ Barriers to finding information online are being lowered and more people have access to do-it-yourself programs that facilitate the location of free online government legal resources.⁷⁹

One of the most serious problems with the trend towards exclusively researching legal material online--and in making certain legal resources available only electronically--is that in most states there is no system or set of standards for how legal information should be organized and disseminated electronically, with the result that people cannot (and are sometimes cautioned not to) rely on what their state governments publish online. This creates a divide between those who have the resources and ability to locate (and perhaps pay for) and evaluate web-based legal information and those who cannot. This is particularly troublesome when it comes to the issue of the law and citizens who are proceeding *pro se* through the legal system.

Pro se litigants are, by definition, representing themselves in the legal system without the aid of a trained lawyer.⁸⁰ As already explained, while electronic versions of state law abound, very few states have implemented a system for authentication and the majority have not yet introduced legislation to adopt the UELMA. Instead, many states have begun including disclaimers on their government websites. Disclaimers, however, probably do little to caution *pro se* researchers who do not know they are there and do not appreciate the message that states are intending to convey: do not rely on or cite this version of the law, we do not guarantee that it is authentic and trustworthy. In other words, just because something is available on a state government-sponsored website does not mean that it is reliable and trustworthy. As Claire Germain put it, "[i]n spite of huge technological advances, *access* to information is different from *use* as a

⁷⁵ Matthew S. Novak, *Legal Research in the Digital Age: Authentication and Preservation of Primary Material*, 13 NEB. LAW. 19 (2010).

⁷⁶ The purpose of this paper is to consider authenticity and trustworthiness issues related to electronic primary legal information and does not consider whether print versions of primary legal material should continue to be published and designated as the "official" versions of state law.

⁷⁷ U.S. Census Bureau, *Statistical Abstract of the United States*, Table 1156 (2012).

⁷⁸ Municipal Research & Services Center (last visited May 16, 2012), www.legalwa.org.

⁷⁹ 49 JUDGES JOURNAL at 15 (2010).

⁸⁰ BLACK'S LAW DICTIONARY (Bryan A. Garner, ed., 9th ed. 2009), (defining *pro se* as "[o]ne who represents oneself in a court proceeding without the assistance of a lawyer...").

reliable source.”⁸¹ Trustworthy and accurate government information is a necessity for citizens of each state if they are to participate meaningfully in the democratic process; disclaimers do not fix the fundamental lack of trustworthiness of many state legal resources that are regularly used and relied on by *pro se* litigants.

The fragile nature of digital information means that it is “inherently capable of being corrupted or tampered with at the level of the individual copy.”⁸² Simply put, it is incredibly easy to alter and manipulate electronic information, and very difficult for researchers to identify even minor changes in content.⁸³ Thus, it could well be impossible for someone acting as their own lawyer (or even as a member of the public) to discern whether a digital copy, obtained from any number of websites, is the authentic and unaltered version of a law.

Even when a *pro se* litigant does locate a reputable website like the Washington State Legislature or MRSC, for example, they may not (and very likely do not) appreciate that the legal information they access from these sites carry no guarantee of trustworthiness or authenticity, a fact that is pointed out only if one clicks through to the disclaimers on the main web pages. It seems unlikely that a disclaimer, by itself, would prompt a member of the public or *pro se* litigant to seek out an authentic (and citable) version of a law that is otherwise easily accessible online, particularly when any number of legal aid organizations and public law libraries direct them to the State Legislature’s website and the MRSC’s free legal information.

Perhaps most troubling is the fact that the electronic versions of the Revised Code of Washington and Washington Administrative Code available on the Washington State Legislature’s website, for example, are not necessarily the same versions that lawyers typically have easy access to either in print or from Westlaw or Lexis;⁸⁴ they are “unofficial” substitutes for what others can afford to pay for. While it is true that the Westlaw and Lexis versions of state primary legal materials are not technically official or citable, they carry more guarantees of trustworthiness because of the value added by these companies and are regularly relied on and cited by legal professionals. Westlaw and Lexis have a high price tag and they are incentivized to update their legal information continuously and to ensure that the legal material they provide is accurate and trustworthy. *Pro se* researchers often do not have access to expensive databases like Westlaw and Lexis and must rely on the legal resources that they can locate for free or for reduced cost. If they do have access to the Westlaw and/or Lexis databases, their

⁸¹ Claire M. Germain, *Legal Information Management in a Global and Digital Age: Revolution and Tradition*, INTERNATIONAL JOURNAL OF LEGAL INFORMATION 35:1, 134-163 (2007) (emphasis mine).

⁸² 13 NEB. LAW. at 21 (2010) (citing Heather MacNeil and Bonnie Mak, *Constructions of Authenticity*, 56 LIBRARY TRENDS 26 (2007)).

⁸³ 13 NEB. LAW. at 21 (2010).

⁸⁴ 13 NEB. LAW. at 20 (2010) (discussing the value added by computer-assisted legal research services like Westlaw and Lexis).

access may be limited to, for example, public research terminals in a law library that provide access to KeyCite and Shepard's.⁸⁵

Furthermore, it is unclear whether lawyers even appreciate or are aware that the information provided by the Washington State Legislature's website, for example, is not official or authentic. It is easy to assume that information made available online by a state government is trustworthy and, therefore, citable to a court. The lack of state systems for authenticating electronic state primary legal material affects all users of online state legal information, but especially *pro se* litigants who are conducting their own legal research and acting as their own lawyers. *Pro se* litigants likely do not have the resources to locate the law some other way. The law belongs to each citizen in the State of Washington, and they have a right to access "the law" in its authentic form. Washington State should consider the needs of the public and *pro se* litigants, in particular, when making its primary legal information available online and assessing whether UELMA can be enacted in this state.

VI. How UELMA Can Help Public Law Libraries, Legal Aid Organizations and *Pro Se* Litigants

Public law libraries serve an important function as the access point for many *pro se* litigants researching the law, in print and digitally. Because *pro se* litigants are representing themselves in the legal system without the aid of a lawyer, they must do their own legal research and handle the legal requirements of their own cases. Many *pro se* litigants rely on the services of a public law library or other publicly-available resources to conduct their legal research and to find the law that applies to them and their cases.

Although county law libraries were created to serve primarily the local legal community and judges, public patrons have always been users of county law libraries and that use has only been increasing in recent years.⁸⁶ There are different reasons why people may choose to represent themselves in the legal system, but the most common reason is financial; many low and moderate-income people cannot afford to hire a lawyer and are forced to go it alone.⁸⁷ While there

⁸⁵ At the Marian Gould Gallagher Law Library at the University of Washington, for example, public patrons are limited in what they can access via Westlaw (KeyCite only) and Lexis (Shepard's and LexisAcademic). Gallagher Law Library, University of Washington School of Law, *CALR Access by UW Students, Faculty, Staff & Librarians: LexisNexis and Westlaw*, <http://lib.law.washington.edu/collect/lexis.html>. Gallagher Law Library is open to the public but cannot afford to provide the same access to public patrons that it does to UW School of Law faculty and students.

⁸⁶ Christine A. Brock, *Law Libraries and Librarians: A Revisionist History; or More Than You Ever Wanted to Know*, 67 *LAW LIBRARY JOURNAL* 325 (1974); see also Paul D. Healey, *In Search of the Delicate Balance: Legal and Ethical Questions in Assisting the Pro se Patron*, 90 *LAW LIBRARY JOURNAL* 129, 130-132 (1998).

⁸⁷ Alan T. Schroeder, Jr., "And Justice for All, Why access to justice is important," *AALL Spectrum*, July 2010 at 25-27.

are legal aid programs to assist people proceeding *pro se*, those programs simply cannot serve everyone with the few resources that they have, resources that have been stretched to the breaking point in recent years with the exploding number of people in need of legal assistance in Washington State.⁸⁸ The public law libraries fill a critical need for those seeking access to the law.⁸⁹

In Washington State, there is one state law library that is open to the public. The Marian Gould Gallagher Law Library at the University of Washington School of Law is also open to the public. In addition, there are thirty eight county law libraries, but only fifteen of them are open to the public and just six have websites.⁹⁰ The Public Law Library of King County (“PLLKC”) has the most resources designed specifically for public and *pro se* patrons, both in its physical library location and online via its website. The PLLKC, like many other organizations, has been affected by budget cuts in recent years while at the same time responding to increasing numbers of public patrons using the library’s resources.⁹¹

The PLLKC, for example, reported a 75% increase in public patron visits to the Library and an average of 7,000 visitors per month to its website in its 2009 Annual Report.⁹² At the same time, the Library’s budget decreased markedly, with only 50% of the Library’s budget being actually funded in 2009.⁹³ Despite these challenges, the Library remains committed to “preserving access to information,” for all users.⁹⁴ In 2010, the Library reported that its website traffic had increased 31%, that library staff answered over 17,500 questions and 18,000 people accessed the library’s public computers.⁹⁵ In addition, in May 2012 the Library launched a new version of its website, a redesign that focused on providing a site that is more flexible and easier for public patrons to use.⁹⁶ The PLLKC believes that “having a library with the right resources empowers and restores hope,” particularly for people struggling to address legal issues.⁹⁷

⁸⁸ Equal Justice Coalition (last visited May 16, 2012), www.ejc.org.

⁸⁹ Richard McDermott & Barbara Madsen, *Cuts in legal aid would harm those already financially strapped*, SEATTLE TIMES, Feb. 29, 2012; see also Paul D. Healey, *In Search of the Delicate Balance: Legal and Ethical Questions in Assisting the Pro se Patron*, 90 LAW LIBRARY JOURNAL 129, 131 (1998) (explaining that public law libraries are a “class of libraries that often shoulder an enormous burden of *pro se* reference requests”).

⁹⁰ Washington Association of County Law Libraries (last visited May 16, 2012), <http://www.wacll.org/>.

⁹¹ In 2010 the name of the library changed from the King County Law Library to the Public Law Library of King County to mark its commitment to serving the legal research needs of all citizens. 2010 Annual Report.

⁹² King County Law Library 2009 Annual Report, *Preserving Access to Justice; Public Law Library of King County Mission Statement* (“Without access to information there is no justice.”).

⁹³ King County Law Library 2009 Annual Report, *Preserving Access to Justice* (2009) <http://www.kcell.org/aboutus/publications/annualreports/2009annualreport.pdf>

⁹⁴ King County Law Library 2009 Annual Report, *Preserving Access to Justice* (2009)

⁹⁵ King County Law Library 2009 Annual Report, *Preserving Access to Justice* (2009)

⁹⁶ Public Law Library of King County 2010 Annual Report, <http://www.kcell.org/aboutus/publications/annualreports/2010annualreport.pdf>

⁹⁷ *Id.*

The PLLKC has worked hard to provide the best service and resources that it can to all of its patrons in the face of enormous budgetary challenges and soaring numbers of *pro se* patrons. As noted by Rick Stroup, the Library serves a diverse patron population with a wide variety of abilities.⁹⁸ This means that the librarians at the PLLKC are skilled in directing patrons to both print and electronic resources, depending on the patron's needs.⁹⁹ For example, PLLKC offers an array of legal research guides, training classes, reference services, print and electronic legal materials, newsletters and forms, all of which are designed to assist people in accessing the laws of the State of Washington and navigating the legal system.¹⁰⁰

In addition to the PLLKC, there are many other excellent organizations and resources in Washington State dedicated to providing assistance to those in need of legal aid, such as the Northwest Justice Project (NWJP), which provides legal assistance for low-income people in Washington.¹⁰¹ Like the PLLKC, the NWJP serves people in need of legal resources, many of whom have a critical need for legal help and cannot afford to hire a lawyer to assist them. In its 2010 Annual Report, the NWJP notes that between the years 2008 and 2010, “the unemployment rate in Washington more than doubled [and] [n]early two million Washingtonians live at or below 200 percent of the federal poverty level.”¹⁰² Furthermore, there is a “huge gap between the number of people in need of civil legal aid and the current resources available.”¹⁰³ Washington “is only meeting the needs of one in five low-income people facing urgent civil legal problems.”¹⁰⁴ Thus, it could be assumed that substantial numbers of people in Washington State are forced to turn to self-help resources to solve their legal problems and that most of those researchers will do some—if not all—of their legal research online.

The NWJP and the PLLKC direct people to websites like the Washington State Legislature and MRSC for primary sources of legal material like the Revised Code of Washington, the Washington Administrative Code and case law.¹⁰⁵ They do this because these websites are the main portals through which the public access electronic versions of the laws of the State of Washington,

⁹⁸ Rick Stroup, *Rumors of Our Death Have Been Greatly Exaggerated*, King County Bar Bulletin, January 2012.

⁹⁹ *Id.*

¹⁰⁰ Public Law Library of King County (last visited May 16, 2012), <http://www.kcll.org/>.

¹⁰¹ Northwest Justice Project (last visited May 16, 2012), www.nwjustice.org.

¹⁰² Northwest Justice Project, *Advocacy Report 2010* at 3 (last visited May 16, 2012), <http://nwjustice.org/sites/default/files/2010NJPAdvocacyReport.pdf>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ The Northwest Justice Project links people to Washington Law Help (<http://washingtonlawhelp.com/WA/index.cfm>) for access to the laws of the State of Washington. Washington Law Help, in turn, links users to both the State Legislature's website and the MRSC for access to electronic primary legal materials: <http://washingtonlawhelp.com/WA/StateChannelResults.cfm/County/%20City/%20demoMode/%3D%201/Language/1/State/WA/TextOnly/N/ZipCode/%20/LoggedIn/0/iSubTopicID/1/iProblemCodeID/2160000/sTopicImage/lifePlanning.gif/iTopicID/1107/bAllState/0/ichannelid/7>.

regardless of their authenticity or trustworthiness. Neither the PLLKC nor the NWJP, however, appear to alert users to the fact that the legal information available on the State Legislature's website or the MRSC website is not authentic or trustworthy and cannot be relied on or cited to a court.

The enactment of UELMA in Washington State could assist and strengthen public law libraries like the PLLKC that provide crucial services to *pro se* patrons because they would be able to direct those users to authentic and preserved electronic versions of Washington State law. A system for authentication would provide more certainty to those who interact with and serve *pro se* citizens every day and would ensure equal access to the law in its official and authentic form. Once the underlying legal material is authenticated, the State Legislature's website, for example, can become the "portal" through which the public in Washington State accesses primary legal resources. Organizations like the NWJP and the PLLKC could direct their clients and patrons to the State Legislature's website as a source of free and authentic legal material.

The interaction between state legal systems and *pro se* litigants will be strengthened by a more productive and trustworthy interaction with the laws that govern them. *Pro se* litigants are going to continue to use the legal system and legal material and aid organizations will continue to struggle to meet the needs of those working their way through a complicated court system. By providing a better infrastructure and system for authenticating primary legal resources, Washington State could assist public libraries and aid organizations, among others, by ensuring that there is a "place" on the internet that citizens can be referred to for accurate and trustworthy representations of state law.

VII. The Government Printing Office and FDsys: an Example of a Working System for Authentication

The authentication issue is a difficult one--conceptually and financially--because implementing a framework for authentication will require states to take a step back and fix structures that are already in place and to develop systems for authenticating and preserving their electronic legal information. This is not easy to accomplish when there is no money in the budget and other citizen needs may be equally important. It is possible that states might be more concerned with making their laws available online rather than ensuring the trustworthiness of the underlying legal material because making the resources available electronically is preferable to not providing them online at all.

The Government Printing Office's ("GPO") system of authentication can perhaps serve as guidance for how a government organization is presently tackling the authentication issue successfully through FDsys, the government's free federal digital system.¹⁰⁶ GPO recognized the importance of authenticating the legal material that it publishes and implemented a system for authentication

¹⁰⁶ U.S. Government Printing Office (last visited May 16, 2012), <http://www.gpo.gov/fdsys/>.

that not only guarantees the trustworthiness of the underlying legal material, but also signifies to the user that the information obtained electronically is just as trustworthy as a printed document.¹⁰⁷

For more than 150 years, the GPO has been charged with printing and distributing Federal government information to the public.¹⁰⁸ Traditionally, GPO provided Federal government material via print publications. Of course, over time, GPO's system for publication has evolved because "the adoption of digital technology has changed the way publications are created, managed, and delivered to users of Federal government information."¹⁰⁹ Despite changes in publication and technology, GPO's mission remains the same; GPO is still charged with providing trusted government information and "strives to provide tools and evidence to allow users to determine the authenticity of [government] content."¹¹⁰ GPO "has begun implementing measures that establish GPO as the trusted information disseminator, but also provide the assurance that an electronic document has not been altered since GPO disseminated it" to address challenges inherent in a digital environment where print is no longer the standard for publication.¹¹¹

In 1993, "with the advent of *GPO Access*, GPO became a repository and disseminator of official, no-fee electronic publications from all three branches of the Federal Government."¹¹² GPO later developed and launched *FDsys* in 2009 as a "response to the growing need for tools to preserve, manage, and provide access to [authentic] Federal government content."¹¹³ GPO defines authentic content "as the complete and unaltered representation approved or published by the content originator or an authorized derivative with a trusted chain of custody to that representation."¹¹⁴ The purpose of this definition is to create a "model for assuring the authenticity of electronic government information, regardless of changes in technology."¹¹⁵

¹⁰⁷ Though very few states are authenticating their legal material, some have started implementing systems for authentication. For example, Utah "authenticates its administrative code using hash values" and "Delaware provides an authenticated electronic version of administrative rules using a digital signature." National Conference of Commissioners on Uniform State Laws, *Uniform Electronic Legal Material Act* at 10-11 (2011). Arkansas also uses digital signatures to issue its "opinions in an authenticated, electronic format." *Id.*

¹⁰⁸ U.S. GOVERNMENT PRINTING OFFICE, AUTHENTICITY OF ELECTRONIC FEDERAL GOVERNMENT PUBLICATIONS at 5 (June 13, 2011).

¹⁰⁹ U.S. GOVERNMENT PRINTING OFFICE, AUTHENTICITY OF ELECTRONIC FEDERAL GOVERNMENT PUBLICATIONS at 5 (June 13, 2011).

¹¹⁰ U.S. GOVERNMENT PRINTING OFFICE, AUTHENTICITY OF ELECTRONIC FEDERAL GOVERNMENT PUBLICATIONS at 4 (June 13, 2011).

¹¹¹ U.S. Government Printing Office, *Authentication* (last visited May 16, 2012).

¹¹² U.S. GOVERNMENT PRINTING OFFICE, AUTHENTICITY OF ELECTRONIC FEDERAL GOVERNMENT PUBLICATIONS at 5 (June 13, 2011).

¹¹³ *Id.*; see also United States Government Printing Office, *FDsys FAQ* (last visited May 16, 2012), http://www.gpo.gov/pdfs/fdsys-info/FDsys_FAQ.pdf.

¹¹⁴ U.S. GOVERNMENT PRINTING OFFICE, AUTHENTICITY OF ELECTRONIC FEDERAL GOVERNMENT PUBLICATIONS at 4 (June 13, 2011).

¹¹⁵ *Id.*

FDsys provides free and authentic official publications from all three branches of the Federal government, spanning approximately fifty collections of material. The material available includes primary legal resources like the United States Code and the Code of Federal Regulations.¹¹⁶ What makes FDsys unique is its system for certifying to users that the electronic government information they access on FDsys is (1) from a “trustworthy repository” where the “history of each item” can be documented and (2) the content’s integrity and trustworthiness is established through “digitally signed PDF files and cryptographic hash values.”¹¹⁷ Each government publication available via FDsys includes a “digital signature” that serves “the same purpose as handwritten signatures or traditional wax seals on printed documents.”¹¹⁸

The digital signature, which is displayed as a GPO Seal of Authenticity, “verifies document integrity and authenticity on GPO online Federal documents at no cost to the consumer.”¹¹⁹ When accessed online by a user, each document goes through an authentication process that verifies the trustworthiness of the document and certifies that the content has not been altered.¹²⁰ In addition to the certification process, the GPO “uses digital signature technology to add a visible Seal of Authenticity to authenticated and certified PDF documents” in the form of a blue ribbon icon that “appears to the left of the Seal of Authenticity and in the Signatures tab within Adobe Acrobat or Reader”.¹²¹ The Seal of Authenticity is a “graphic of an eagle next to the words ‘Authenticated U.S. Government Information’.”¹²²

The Government Printing Office has successfully implemented a process for authenticating Federal government documents and certifying to the user that the content has not been altered. GPO has figured out how to deliver digital content to users that is just as trustworthy and authentic as printed material.¹²³ Everyone, including *pro se* litigants, can access free and trustworthy primary federal legal resources online through FDsys, and what’s more, they can see on each document an icon that promises and guarantees the content of the law. The law is free, authentic, and preserved. Those seeking access to the law do not have to search for the best and most authentic version of the law; they can find it on FDsys.

¹¹⁶ U.S. Government Printing Office, *Authentication* (last visited May 16, 2012), <http://www.gpo.gov/authentication/index.htm>; U.S. Government Printing Office, *Authentication: Frequently Asked Questions* (last visited May 16, 2012), <http://www.gpo.gov/authentication/faq/>.

¹¹⁷ U.S. GOVERNMENT PRINTING OFFICE, AUTHENTICITY OF ELECTRONIC FEDERAL GOVERNMENT PUBLICATIONS at 4 (June 13, 2011); *see also* U.S. Government Printing Office, *Authentication* (last visited May 16, 2012), <http://www.gpo.gov/authentication/index.htm>; U.S. Government Printing Office, *Authentication: Frequently Asked Questions* (last visited May 16, 2012), <http://www.gpo.gov/authentication/faq/>.

¹¹⁸ <http://www.gpo.gov/authentication/index.htm>; U.S. Government Printing Office, *Authentication: Frequently Asked Questions* (last visited May 16, 2012).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

Access to the law is fundamental to our democratic system and states must begin to implement systems to authenticate and preserve their primary legal materials, just as GPO has for Federal legal and government information. Authenticating the law improves the interaction between states and their citizens and ensures that anyone with a need for the law finds the law in its authentic and preserved form.

VIII. Conclusion

AALL's years of advocacy related to the authentication of electronic primary state legal material was the catalyst for the development of UELMA. For the first time, states have a framework for and guidance about how to implement systems for authenticating and preserving their electronic primary legal material. Enacting UELMA is a necessary first step toward addressing the authentication issue and helping to ensure that citizens of each state will have permanent access to authentic digital copies of the law.

It is critical that states, including Washington, take a step back, consider the authenticity issue, and introduce legislation to enact UELMA to put into place an infrastructure for authenticating their primary legal resources before "the legal system has to deal with the fact that it has lost control of the sources of law itself..."¹²⁴ and some of the most vulnerable users of the legal system have lost their ability to find the law. *Pro se* litigants, in particular, can benefit from UELMA's framework because it will ensure that the laws that they access online via free state-sponsored websites are as trustworthy and accurate as their print counterparts.

¹²⁴ Robert C. Berring, *The Heart of Legal Information: The Crumbling Infrastructure of Legal Research*, in LEGAL INFORMATION AND THE DEVELOPMENT OF AMERICAN LAW, A COLLECTION OF ESSAYS INSPIRED BY THE CONTRIBUTIONS OF ROBERT C. BERRING 293 (Richard A. Danner & Frank G. Houdek eds., (2008); see also Claire M. Germain, *Legal Information Management in a Global and Digital Age: Revolution and Tradition*, International Journal of Legal Information 35:1, 134-163 (2007).