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# A Matter of Trust: Why the Time is Right to Adopt the Uniform Electronic Legal Materials Act (UELMA) in Florida

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***A Matter of Trust: Why the Time is Right to Adopt the Uniform Electronic Legal Materials Act (UELMA) in Florida***

In an era where cost-cutting has become increasingly important, there already exists an untapped resource related to legal research. More and more resources exist online (some exclusively). It has been a long time since the introduction of the Internet, but it is finally going to prove instrumental in reducing the cost of legal research. Legal research is expensive; some of it doesn't have to be, because several resources are available online for free.

Many lawyers (this one included) can probably still remember the days before computers, when legal research was conducted using only books. With the introduction of LexisNexis and Westlaw followed by personal computers, lawyers began doing research electronically.

Although one could find cases online and print them, courts would often not accept these versions and required photocopies of the cases published in case reporters. Over time, the legal community became accustomed to online research and accepted cases, annotated statutes, and regulations retrieved electronically via Westlaw and LexisNexis.

As often happens, government publications have trailed private industry in innovations. The United States government has led the way, domestically, in publishing legal materials electronically. Take a look at a recent example of an entry from the [Federal Register](#) online.<sup>1</sup>

Notice the seal in the upper-left-hand corner: that is the verification that the content is authentic and unadulterated.<sup>2</sup>

With the knowledge that electronic publication *can* be done well, the question is why not do the same for state materials? Electronic research is better in many ways:

- Electronic publishing is faster.
- Electronic publishing is cheaper – the government will realize big cost savings.

- Electronic publishing makes the material accessible for everyone.

So, why hasn't the move to electronic materials happened sooner? Much like the conversion of case law research a couple of decades ago, there are inherent trust issues. It is great to find materials online, especially when they are free and easy to access. How do you know, however, if the material is accurate and unaltered?

It is time to come to terms with the fact that most legal material should be readily available electronically and that there must be a way to verify that the material is authentic.

### **Uniform Law, Anyone?**

Attorneys are familiar with the concept of Uniform Laws; we have the Uniform Commercial Code (UCC); the Uniform Child Abduction Prevention Act (UCAPA); and the Uniform Electronic Transactions Act (UETA), just to name a few. Once a need becomes known, 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."<sup>3</sup> It is helpful in the legislative process to have a model to follow, and adoption leads to uniformity across state lines. Seeing the need for legislation related to electronic legal materials, the thoughtful folks at the National Conference of Commissioners of Uniform State Laws (UNCCUSL) have taken this bull by the horns and created the Uniform Electronic Legal Materials Act (UELMA).<sup>4</sup>

After it was drafted, the UELMA was approved and recommended for enactment in all of the states in 2011 (see cover page of the Act).<sup>5</sup> To date, the Act has been adopted in 12 states<sup>6</sup> and is pending in 5 states<sup>7</sup> (according to <http://www.aallnet.org/mm/Advocacy/aallwash/Washington-E-Bulletin/2015/ebulletin0515.html>). Florida has neither adopted the Act nor has it been introduced in the legislature. The issue is ripe, however, for being addressed. As of 2012, the official version of the Florida Administrative Code is now the online version.<sup>8</sup> Having an

official online resource is not the same as having an authenticated resource, and that is why the UELMA is so important.

### **How did the UELMA come to be and what is it?**

The American Association of Law Libraries (AALL), in 2003, created a report entitled “State-by-State Report on Permanent Public Access to Electronic Government Information.”<sup>9</sup> In 2007, AALL published another state-by-state report. This report was “Authentication of Online Legal Resources.” According to this second report: “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 resources are therefore not sufficiently trustworthy.”<sup>10</sup> After reviewing the results, it became apparent that the tide of legal research was moving to electronic means. It was also apparent that there were an assortment of treatments as to how to ensure that the electronic materials were authentic and unadulterated. AALL held a National Summit on Authentication of Digital Legal Information in April of 2007 to discuss the findings from the reports.<sup>11</sup> In attendance were a number of individuals from the legal community, including Michelle Timmons.<sup>12</sup> Timmons is the Revisor of Statutes for the State of Minnesota and a Commissioner on the Uniform Law Commission (ULC).<sup>13</sup> She recommended the creation of a uniform act to address the proliferation of electronic legal material and the lack of consistent policies on authentication and retention.<sup>14</sup> AALL submitted a formal request to the ULC to consider drafting a uniform law to address electronic legal materials.<sup>15</sup> The ULC recommended the creation of a uniform law, and appointed a drafting committee.<sup>16</sup> At the July 2011 meeting of the ULC, the ULC’s Committee of the Whole approved the UELMA.<sup>17</sup>

## **What is UELMA and how does it work?**

The UELMA was designed to deal with the problems of unauthenticated and unofficial electronic publications:

- Access. If the electronic publication is unofficial, where does one access the official publication? This is a growing problem, as fewer and fewer law libraries are collecting print materials when they are available online. In addition, there are fewer law libraries as well.
- Trust. Without an authentication method, one cannot be sure that they are accessing an unadulterated version of the electronic legal material. In the NCCUSL's Prefatory Note "[a]uthenticity is a much larger concern in the electronic age than in the print age, where legal information typically exists in multiple copies. The content of a print work is 'fixed' once printed, making the text easily verifiable and changes readily detectable."<sup>18</sup> This expands to working with legal materials from other states and with other countries (European nations have been moving in the same direction to provide open/reliable access).<sup>19</sup>
- Preservation. How can anyone rely on electronic legal materials when formats change so frequently? Floppy Disk anyone? There needs to be a framework for maintaining access to electronic legal material so that nothing is lost with our desire for immediate access.

The UELMA provides, in part:

- An official publisher who publishes legal material only in electronic format must designate that format as official. If the publisher also publishes in another format, the publisher may designate the other format as official. The designations may be made only if the publisher complies with the other provisions of the UELMA.<sup>20</sup>

- An official publisher of an official electronic record must authenticate the record: this includes providing a method for the user to determine that the record is unadulterated.<sup>21</sup>
- Authentication by an official publisher of legal material in an electronic format leads to a presumption that the legal material is an accurate copy of the legal material.<sup>22</sup>
- An official publisher of legal material in an electronic format must provide for the preservation and security of the record. If the preservation is in an electronic format, it must be backed up and must have continuing usability.<sup>23</sup>
- An official publisher of legal material in an electronic format must ensure that the material is “reasonably available for use by the public on a permanent basis.”<sup>24</sup>
- An official publisher of legal material in an electronic format must consider many factors, including: standards and practices in other jurisdictions; needs of users; views of interested persons; and methods which are compatible with other official publishers (with an eye toward uniformity).<sup>25</sup>

Those all seem like reasonable goals, given the proliferation of legal materials in electronic format. These conditions would allow more people to have access to accurate legal materials and would lead to harmony across jurisdictional borders due to a more uniform standard.

### **Why the Time is Right for the UELMA in Florida**

We can start with being the “Sunshine State.” Florida is proud of having government in the sunshine – meaning having open meetings and access for citizens. The Public Records Law (found at Chapter 119, Florida Statutes) was originally passed in 1909.<sup>26</sup> Florida has a longstanding tradition of providing virtually unlimited access to government information. In addition to our state tradition, there is also a federal mandate from the Obama Administration, the “open government initiative.”<sup>27</sup> Promising an “unprecedented level of openness in

Government,” this initiative seeks to strengthen citizen involvement and participation in government. Florida, being Florida, where hurricanes and flooding are always a possibility – it is a good idea to have things secure and backed up for the sake of preservation.

As mentioned earlier in the article, in 2012, Florida changed the Administrative Code to the official publication of the Code.<sup>28</sup> Also, the online Florida Administrative Register is the official online publication of ongoing administrative actions (replacing the Florida Administrative Weekly).<sup>29</sup> Some states that have moved to making their (unauthenticated) electronic legal materials official have sometimes added a disclaimer to warn users that the material is not entirely secure. At this point, Florida has neither ensured that the materials are authentic nor provided a disclaimer for users.<sup>30</sup>

### **Access to Justice**

The Florida Commission on Access to Civil Justice was launched by Chief Justice Labarga in November of 2014.<sup>31</sup> The goal is for the legal community to work together to remove economic barriers that prevent those of limited means from seeking legal redress to their problems. The Florida Bar and Florida Bar Foundation are deeply involved in the support and funding of this initiative. Making optimal use of technology is one thing that can help in the mission. The Florida Bar is moving toward providing consistency in other areas, including the e-filing system as announced in the June 1, 2015 Florida Bar News article [Portal Board Green Lights Standardization Plan](#).<sup>32</sup> Clearly, moving toward a consistent, reliable system for online legal materials and activities would be helpful both for attorneys and for citizens who will be able to rely on the materials they find and have them accepted by the court system. According to the NCCUSL, making official, authenticated legal materials available online “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 in the democratic process.”<sup>33</sup>

### **How Can the UELMA Become Law in Florida?**

One benefit to not being the first state to pursue adoption of the UELMA is that other states can provide examples for how to be successful. The first state to pass the UELMA was Colorado.<sup>34</sup>

In an article about the experience<sup>35</sup>, Susan Nevelow Mart shared the following actions which might provide a model for actions in Florida:

- Meet and discuss the UELMA with legislators. Note for them the fragile nature of electronic materials, the need for the broadest access to authentic legal materials; in addition to meeting with the legislators, send an email to each legislator to educate them on the UELMA.<sup>36</sup>
- Florida and Colorado share a common concern in adopting the UELMA. Because Colorado (like Florida) already had electronic legal materials that were official, an immediate need for appropriations existed upon adoption of the UELMA.<sup>37</sup> Florida would have the same concern.

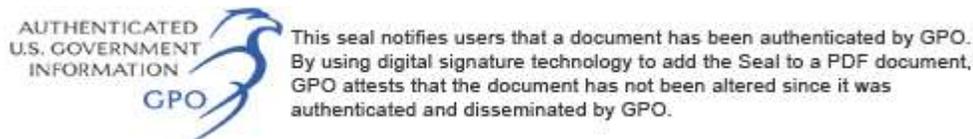
Not long after Colorado adopted the UELMA, California did.<sup>38</sup> Actions that were instrumental in passage of the UELMA there were:

- The Uniform Law Commission distributed information to legislators.<sup>39</sup>
- The California contingent found an ally, the Legislative Counsel in the state, who was a member of the ULC at the time.<sup>40</sup>
- Legislative days are an opportunity for meeting with one’s legislators and supporting the introduction of the UELMA.<sup>41</sup>

- Letters of support with endorsements from respected individuals/groups is helpful, as is attending hearings held once the legislation is introduced.<sup>42</sup>

In Florida, one can expect some resistance particularly when it comes to the cost of implementing the UELMA. Overall, however, it is a cost saving measure compared to the expense of print materials. Expenses would be recouped fairly quickly. Again benefitting from the experience of others, a White Paper was created in the state of California.<sup>43</sup> It was authored by the Office of Legislative Counsel, and the Paper discusses several different authentication methods that might be adopted pursuant to the UELMA.<sup>44</sup> It also estimates potential costs of each method.<sup>45</sup> Because the paper was authored in 2011, it may need to be updated in terms of costs and technology.

The best model is likely found with the federal government. The Government Printing Office in Washington, D.C. uses an Adobe program to create documents with their unique authentication seal (see below). The GPO also provides a discussion of their authentication process at their [website](#).<sup>46</sup>



## **Conclusion**

Clearly, then, it is time to get serious about authentication and preservation of electronic legal materials in Florida. More and more legal materials will be found in electronic format, and those materials are the official publications of the government. The federal government and many states have begun to ensure that their materials are accurate and unadulterated.

All of the tools needed are in place. The UELMA provides a framework to follow and achievable goals, while leaving room for states to implement the Act in the way best suited to their citizens. We also have models provided by other states and research on how to follow the UELMA in Florida.

What is needed now is action. The Florida Legislature looks for ways to improve services to its citizens while providing cost-effective solutions. The UELMA will allow the state to save taxpayer dollars while improving access to legal information that legislators, judges, lawyers, and citizens need. Finding allies and helping those allies to put forth a workable plan for Florida is our next step in ensuring that electronic legal materials are free, accurate, and preserved to help all Floridians have access to justice.

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<sup>1</sup> <http://www.gpo.gov/fdsys/pkg/FR-2015-04-20/pdf/2015-09032.pdf>

<sup>2</sup> Overview of GPO authentication is found here:

<http://www.gpo.gov/pdfs/authentication/authenticationoverview.pdf>

<sup>3</sup> <http://www.uniformlawcommission.com/>

<sup>4</sup> UNIF. ELECTRONIC LEGAL MATERIAL ACT, (National Conference of Commissioners of Uniform State Laws 2011), [http://www.uniformlaws.org/shared/docs/electronic%20legal%20material/uelma\\_final\\_2011.pdf](http://www.uniformlaws.org/shared/docs/electronic%20legal%20material/uelma_final_2011.pdf)

<sup>5</sup> *Id.*

<sup>6</sup> 12 states where UELMA adopted: California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Minnesota, Nevada, North Dakota, Oregon, and Pennsylvania. Found at <http://www.aallnet.org/Documents/Government-Relations/UELMA/UELMAenactments.pdf>.

<sup>7</sup> 5 states where pending: Maryland, Massachusetts, New York, Rhode Island, and Texas. Found at: <http://www.aallnet.org/Documents/Government-Relations/UELMA/uelmabilltrack2015.pdf>.

<sup>8</sup> 2012 Fla. Laws 759. For a history of the conversion to electronic format, see: Jennifer Wondracek, *The E-FAC: One Year Later*, FLA. B. J, Jan. 2015, at 18.

<sup>9</sup> <http://www.aallnet.org/Archived/Government-Relations/Issue-Briefs-and-Reports/2003/state-report.pdf>

<sup>10</sup> [http://www.aallnet.org/Documents/Government-Relations/authen\\_rprt/authenfinalreport.pdf](http://www.aallnet.org/Documents/Government-Relations/authen_rprt/authenfinalreport.pdf).

<sup>11</sup> <http://aallnet.org/Documents/Government-Relations/summit.html>.

<sup>12</sup> Rhonda R. Schwartz, *The Uniform Electronic Legal Material Act: "Desirable and Practicable" for North Dakota?*, 87 N.D. L. REV. 325, 330 (2011).

<sup>13</sup> *Id.*

<sup>14</sup> Catherine Dunne, *Local Advocacy Networks: Adopting UELMA in Your State and How You Can Help*, AALL SPECTRUM, June 2013, at 11.

<sup>15</sup> *Id.* at 12.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> UNIF. ELECTRONIC LEGAL MATERIAL ACT, Prefatory Note, (National Conference of Commissioners of Uniform State Laws 2011), [http://www.uniformlaws.org/shared/docs/electronic%20legal%20material/uelma\\_final\\_2011.pdf](http://www.uniformlaws.org/shared/docs/electronic%20legal%20material/uelma_final_2011.pdf)

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- <sup>19</sup> Claire M. Germain, *Worldwide Access to Foreign Law: International & National Developments Toward Digital Authentication*, (2012), Working Paper 1, accessed at <http://scholarship.law.ufl.edu/working/1>.
- <sup>20</sup> UNIF. ELECTRONIC LEGAL MATERIAL ACT at 9.
- <sup>21</sup> *Id.* at 10.
- <sup>22</sup> *Id.* at 11-12.
- <sup>23</sup> *Id.* at 13.
- <sup>24</sup> *Id.* at 15.
- <sup>25</sup> *Id.* at 16.
- <sup>26</sup> Brechner Center for Freedom of Information (University of Florida, College of Journalism and Communications), FLORIDA GOVERNMENT IN THE SUNSHINE: A CITIZEN'S GUIDE, accessed at [http://www.brechner.org/citizen\\_guide\\_08.pdf](http://www.brechner.org/citizen_guide_08.pdf).
- <sup>27</sup> Exec. Order No. 13,642, 3 C.F.R. § 13642 (2013).
- <sup>28</sup> 2012 Fla. Laws 759, 261-262.
- <sup>29</sup> *Id.* at 262.
- <sup>30</sup> Wondracek, *supra* note 8 at 25.
- <sup>31</sup> <http://www.floridabar.org/TFB/TFBPublic.nsf/WNewsReleases/E865D46FC567588985257D9A004FD1BF?OpenDocument>.
- <sup>32</sup> Gary Blankenship, *Portal Board Green Lights Standardization Plan*, Fla. Bar News, June 1, 2015.
- <sup>33</sup> UNIF. ELECTRONIC LEGAL MATERIAL ACT, Prefatory Note, (National Conference of Commissioners of Uniform State Laws 2011), [http://www.uniformlaws.org/shared/docs/electronic%20legal%20material/uelma\\_final\\_2011.pdf](http://www.uniformlaws.org/shared/docs/electronic%20legal%20material/uelma_final_2011.pdf).
- <sup>34</sup> <http://www.uniformlaws.org/NewsDetail.aspx?title=Colorado%201st%20State%20to%20Enact%20Uniform%20Electronic%20Legal%20Material%20Act>.
- <sup>35</sup> Susan Nevelow Mart, *Notes from an Accidental Advocate for the Uniform Electronic Legal Material Act (UELMA)*, (October 27, 2013), Fairly Used Blog (Stanford University Libraries, Copyright & Fair Use), at: <http://fairuse.stanford.edu/2013/10/27/notes-accidental-advocate-uniform-electronic-legal-material-act-uelma/>.
- <sup>36</sup> *Id.*
- <sup>37</sup> *Id.*
- <sup>38</sup> <http://www.uniformlaws.org/NewsDetail.aspx?title=California%20Enacts%20Uniform%20Electronic%20Legal%20Material%20Act>.
- <sup>39</sup> Dunne, *supra* note 14 at 13.
- <sup>40</sup> *Id.*
- <sup>41</sup> *Id.*
- <sup>42</sup> *Id.*
- <sup>43</sup> [http://www.mnhs.org/preserve/records/legislative/records/docs\\_pdfs/CA\\_Authentication\\_WhitePaper\\_Dec2011.pdf](http://www.mnhs.org/preserve/records/legislative/records/docs_pdfs/CA_Authentication_WhitePaper_Dec2011.pdf).
- <sup>44</sup> *Id.*
- <sup>45</sup> *Id.*
- <sup>46</sup> <http://www.gpo.gov/authentication>.