



Authentication and Pricing Options for Primary Legal Materials in California

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Overview of the Project

- OLC and MHS through NDIIPP grant
 - A) Test 5 methods of authenticating primary legal materials in an electronic format
 - B) Assess their costs
 - C) COBIT framework

Print vs. Electronic

- **Print Legal Material is authoritative**
 - consistent
 - easily verifiable and
 - alterations are detectable
- **Electronic Legal Material lacks authority because it lack authentications**
 - content easily changed or lost
 - hackers may go undetected

UELMA goal of authenticity

- Provide the same level of assurance of accuracy in an e-record as already available in a printed book

OLC's Authentication

- Content has been verified by a government entity to be complete and unaltered when compared to the version approved or published by content originator
 - certificate or mark of authenticity
 - it is what it claims to be

States already authenticating primary legal material

- Arkansas-digital signatures
- Delaware-digital signatures
- Indiana-certificate of authenticity
- Utah-hash values

Legal Status of E-Records in California

- No official version of state statutes or codes
- No state entity acts as digital clearinghouse for all e-records
- OLC required to make Cal Codes available to the public in e-form

Legal Status of E-Records in California - 2

- SOS custodian of all acts and resolutions passed by the Legislature
- SOS does not maintain an official e-version of California laws
- State Records Management Act applies to e-records but lacks authentication provision

Legal Status of E-Records in California - 3

- SOS required to approve and adopt standards for the purposes of storing and recording permanent & non-permanent documents in e-media
- Standards have not been finalized

California Evidence Code

- E-Records need to be authenticated before being received into evidence
- Presumption that a certified copy is a correct copy but is rebuttable
- Public employee who has legal custody of the official writing certifies as to its originality and correctness

California Evidence Code - 2

- Official record is prima facia evidence of the existence and content of the original record
- Presumption that the original writing is authentic but rebuttable
- There are no statutory provisions or rules of court regarding the authentication of primary legal materials

Uniform and Federal Acts related to e-primary legal materials

- UETA (set to ensure that e-record of commercial transaction = paper record)
 - Section 12-assures that the information stored electronically will remain effective for all audit, evidentiary, archival and similar purposes
 - ... as long as there is a “reliable assurance that the electronic record accurately reproduces the information” of the original

Federal Acts

- E-Sign Act of 2000 (use of e-records in interstate and foreign commerce)
 - “a signature, contract, or other record relating to such transaction” may not be denied legal effect solely because it is in electronic form”
 - “a contract relating to such transaction may not be denied legal effect” solely because an electronic signature or e-record was used in its formation

Federal Acts -2

- E-Government Act of 2002 (to improve the management and promotion of e-government services, citizen access to government info and services)
 - Information security means “integrity ... guarding against improper information modification or destruction, and includes ensuring information non-repudiation and authenticity”

Federal Rules of Evidence

- Article IX (Authentication and Identification)
- Rule 901 (a) & (b)(7)(9) & (10)
 - authentication is satisfied by evidence to support a finding that the matter in question is what it purports to be
- Rule 902 (4) & (5)
 - certified copies of public records
 - official publications
- Rule 1002 & 1003
 - originals and duplicates
- Rule 1005
 - public records

Federal Rules of Civil Procedure

- Rule 34(a)(1)(A) “any designated documents or e-stored information ... stored in any medium from which information can be obtained either directly or, if necessary, after translation by responding party into a reasonably usable form.”