

## *Notes for Talk*

### **When is Law on the Web the “Official” Published Source? Criteria, Quandaries, and Implications for the US and UK**

*These are notes for a talk given on 11 December 2006 at IALS. They are drawn from an early draft of a work in progress. Any comments would be gratefully received. These notes do not represent a final considered view on the topics under discussion.*

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#### **[Title] (1)**

Thank you very much.

This presentation – this paper – is an effort to get a firm grip on a small corner of a much larger problem. The small corner I’m talking about is the official or unofficial status of legal resources on the Web. Having a firm grip on that small corner would amount to having a good understanding of which publicly available sources are official and which are not. The larger problem is having an understanding of what, if anything, may be needed when the online legal resource is the sole official published source of the information.

It is increasingly the case that online legal resources are the sole official published source. When they are, the official status of the resource warrants deeper scrutiny, a second very critical look.

With a big slash – I hope it won’t seem like dull hacking motions instead ... With a big slash – I want to cut to the chase to disclose precisely where I’m going. The concept of official status has some complexity. In the long run, in an all-digital world, the concept is meaningful only when sources have been safeguarded by authentication procedures.

#### **Three Theses (2)**

I have three theses, three main claims. Thesis I is that, reasonably construed, law in some cases has addressed the official or unofficial status of certain legal resources on the Web. Thesis II is that, outside of

law, convention is taking hold – or has done so already – carving out as official certain legal resources on the Web. Thesis III is that the concept of official status is generally very useful and important. Official status is given to authoritative and reliable sources. With Web resources, however, the trust engendered by official status is ill-placed – and at some level misplaced – where the official legal source is not safeguarded by authentication procedures.

I will not try to prove the theses in order, one, two, three. Instead, I will use them – naming “Thesis I,” “Thesis II,” and “Thesis III” – as tack points to hold together a discussion that must range over the law of multiple jurisdictions. The approach of this paper is comparative and I reckon with law in the US, at the federal and state levels – particularly state levels – and law in the UK.

I acknowledge to this UK audience that the overall situation in the UK is comparatively much more definite than in the US. It involves Thesis I claims, but with interesting subtleties. Understanding the official or unofficial status of online UK legal resources – particularly court decisions, which I’m going to focus on for both the US and UK – involves an interplay of laws and conventions concerning print sources, with somewhat counterintuitive results. My review and analysis draws on the work of some powerful British legal thinkers interested in law reporting, particularly Michael Zander (London) and Roderick Munday (Cambridge).

The situation in the US is problematic. It involves some Thesis II claims that convention is carving out as official certain online legal resources, as well as Thesis I claims. The problematic state of the law in the US prompted the American Association of Law Libraries (AALL) to undertake a survey as to which states, if any, have official and authenticated primary legal resources on the Web.

The study was called the AALL Authentication Survey. Efforts by the US Government Printing Office to develop a system called FedSys, intended eventually to replace the bulk of print distribution of government information, were an additional prompt for the AALL Authentication Survey. The US federal government is concerned to ensure authentic information in an all-digital world, the situation where the authority and reliability of information is no longer anchored in widely-distributed paper sources.

I have not uncovered developments in the UK similar to those of the US Government Printing Office. As for US states, our survey found that no state governments have begun to address authentication suited to an all-digital world, although a number of states have begun to publish certain official legal resources on the Web, discontinuing their print official counterparts. The *State-by-State Report on Authentication of Online Legal Resources*, the final report of the AALL Authentication Survey, will be published sometime early in 2007.

### **Preliminaries (3)**

I have two preliminary points and one “station break” for the British and Irish Legal Information Institute (BAILII). After these preliminaries I’ll state the whole problem of determining which legal resources on the Web are deemed as official.

My first preliminary: I wish to make clear that my presentation is essentially a Part I of at least one additional round of effort needed to address the natural groupings of online primary legal sources associated with the judiciary, the legislature, and the executive. In the interest of being precise, I’m going to limit my discussion here largely to judicial materials.

This means I’ll address online court decisions, what US public websites usually call *court opinions* and what comparable UK sites call *court judgments*. BAILII, by the way, refers to such texts as *court decisions*. Very sensibly, I will follow suit.

BAILII, as I’m sure you know, is a great resource for law on the Web associated with the Institute of Advanced Legal Studies (IALS). BAILII offers free public access and sophisticated cross-database searching capabilities for a wide range of legal materials from England and Wales, Ireland, and beyond.

That was my advertisement for BAILII. A warm thank you goes to the IALS, Jules Winterton, and my international colleagues on the fourth floor of the law library.

My second and final preliminary point: I hope this exploration of US and UK legal resources on the Web provides useful insights into the interrelation between technological innovation and system change. It might be grand to contemplate – but it is something truly realistic – both the US and UK appears to be moving toward an all-digital legal

information environment. Relevant evidence is abundant. New evidence coming out of the AALL Authentication Survey is: Five of the ten states (plus the District of Columbia) that have deemed as official one or more of their online legal resources have also discontinued a print equivalent. This has happened primarily with administrative rules publications – generically, in the US, administrative codes and administrative registers.

As we will see below, when we examine Ohio, it has certainly begun to occur to state courts to move in the same direction. Movement toward the all-digital world has been accompanied by significant system changes. The UK has undergone and is undergoing remarkable changes to its legal system. The extent to which these can be traced to new information technologies is difficult to gauge, but the UK programs advancing “joined up” electronic government certainly make such technologies a very visible factor in the causal mix.

#### **Problem of Official / Unofficial (4)**

Now, to state the problem of official or unofficial status on the Web more fully.

One might inquire first: Why does it matter whether online or any other format of legal resources is deemed as official? It may be asserted that official status has no intrinsic significance and is no more or no less than what statute- or rule-defined characteristics those resources may possess. In the case of UK court decisions, we will see that the notion of an official or authoritative version is a relatively recent development. The situation with UK statutes is different; their characteristics are shared by US session laws in many respects. For US statutes, whose codification may be the result of compilation or positive re-enactment, the attributes of official versions may vary significantly.

My answer, reiterating my Thesis III claim, is that the concept of official status is generally very useful and important. Properly understood, it has a renewed significance for US and UK legal resources on the Web, particularly in an increasingly all-digital world.

The concept of official status is well-recognized in the US. There is surprisingly little literature defining the concept, however. There is even less in the UK, where the concept is fundamentally less entrenched. The term official is used widely in US legal bibliography to distinguish

certain publications from a substantial amount of publishing activity tagged as unofficial.

### **Black's and Other Definitions (5)**

*Black's Law Dictionary*, an authoritative US reference source, does not provide a general definition of official, but has an entry for *official report (usu. pl.)*, which reads: "The governmentally approved set of reported cases within a given jurisdiction." *Fundamentals of Legal Research*, a major text in US legal education, observes of US law publishing:

American legal resources, whether books, electronic databases, or other media, can be divided into those that are *official*, and those that are *unofficial*. This distinction is important but often misunderstood. An official publication is one that has been mandated by statute or governmental rule. It might be produced by the government but does not have to be.

### **Complexities with Concept (6)**

The work goes on to note that the distinction is misunderstood in connection with citation rules that "often require both official and unofficial citations." As well-understood in UK legal research, especially with statutes, unofficial publications are often more useful than official publications. For the same reason, courts in the US often require both official and unofficial citations. The authority of those citations may be said to be equivalent, at least in American law, insofar as judicial notice of the law is generally not a matter of evidence of the law as taken from any particular text, although that rule has many, many exceptions, as found in statutes that authorise official publications.

Even the straightforward definition of *official report* given in *Black's Law Dictionary* is qualified (without analysis) by quotation from the foundational 1914 edition of the US law research textbook, *Brief Making and the Use of Law Books*:

[I]t may justly be said that all reports are in a sense 'official,' or that to use the term 'official reports' as referring to any particular series of reports is a misnomer, for it is certainly misleading. The mere fact that each state authorises or requires publication of reports of its Supreme Court decisions, and, to ensure such publication, agrees to purchase a stated number of each volume of the reports, cannot be said to give a series preeminence as an 'official' publication.

I cannot gauge the extent to which the author here is informed by British tradition, which historically has eschewed the concept of official reporting of court decisions, without further research into early scholarship. I suspect the author is not concerned in this passage with the *prescriptive* dimension of the definition of official. The *if-used-properly* dimension that addresses the reliability and, for the US especially, the approved textual integrity of the source.

### **UK Concept Less Entrenched (7)**

I turn now to UK authorities to complete this comparative overview of the meaning and significance of the concept of official status.

*Jowitt's Dictionary of English Law* does not have an entry for the term official. Nor does it have an entry for *official report*, which is not unexpected, particularly since *Jowitt's* was last supplemented in 1985. Insofar as this leading dictionary tracks and analyses trends affecting use of legal terms, one expects it might in a future update comment on the implied recognition of official reports as referred to in recent Practice Directions addressing citation of authorities. I discuss these Practice Directions below.

The situation with official status in the UK is somewhat more complex than in the US. One must appreciate the oral tradition of British courts. An aspect of that tradition regards the common law as principle existing apart from any text. A new privileging of written decisions may be associated with the rise of the Web and related text processing efficiencies.

*Butterworth's Legal Research Guide*, a highly-respected work, uses the term official extensively, but unfortunately does not define it. It is clear from that work and others that UK authors find the term has utility for discussing Web resources. More than in the US, the term official carries in the UK associations with government documents, as in the British term "official publications." In the US, the term has a weaker association with government documents. The US has substantial experience with commercial publication of official legal resources. The term is useful to distinguish government-endorsed commercial publications from non-endorsed commercial publications. The notion of endorsement is central to US legal bibliography; overall, endorsement has little role in UK publication, recent Practice Directions notwithstanding.

## **Web Gives New Significance (8)**

The Web has given new significance to the term official. The Web creates an immediate connection between users and government publishers. When a court publishes a decision on the Web, it can scarcely deny that it is an official publication, absent elaborate qualifications. Speaking as an experienced law librarian, to many if not most citizens, publicly available online legal resources are the only actual primary legal sources to which those citizens have ever had access and exposure. Distinctions that would make government-published information unofficial are artificial. They are meaningless and, at worst, irrational to lay users.

Placing aside the complexities we have identified concerning the concept, official status is a mark of authority and reliability for legal resources. Except for technical difficulties, never unexpected to Web users, online legal resources published by the government are generally viewed as trustworthy. By association and the usual social processes whereby humans create a taken-for-granted world, print and other formats for the official legal resources are similarly viewed as authoritative and reliable. This is a common sense understanding of official status that ultimately informs the law profession's understanding – most importantly the judge's understanding – of official legal resources.

## **Authority, Reliability, and Authentication (9)**

Referring again to Thesis III claims: With Web resources the trust engendered by official status is ill-placed – and at some level misplaced – where the official legal source is not safeguarded by authentication procedures.

It must be recognised that the Web is a massive collection of texts. The “delivery-layer” of problems with textual information is well-known to users. Texts do not always render on our computer screen as they should. We have all seen garbled documents, even irregular PDF texts. Nearly every user understands that digital materials are inherently susceptible to corruption and tampering.

Beyond these pitfalls, publication on the Web has a deeper set of problems related to long-term preservation and access. Librarians in the US and, I hope, the UK identify these as issues concerning permanent public access. As defined in AALL's *State-by-State Report on*

*Permanent Public Access to Electronic Government Information*, permanent public access is a policy and practice ensuring “applicable government information is preserved for current, continuous and future public access.”

The authentication procedures to which Thesis III refers are those bound up with ensuring permanent public access. The *State-by-State Report on Authentication of Online Legal Resources* addresses these authentication procedures.

Authentication may be understood as the overhead of technological or archival data management controls that ensure the integrity of electronic information, preserved indefinitely, as a substitute for paper technologies and conventional publications maintained indefinitely on library or archive shelves.

To state the requirements simply: the controls are analogous to justiciable certification procedures that ensure the authenticity of a print document, or a copy faithful to the original, but repeated continuously over time, acknowledging the characteristic fluidity of digital materials. Such controls may involve encryption, digital signatures, and public key infrastructure. These are technologies US Government Printing Office plans to deploy for FedSys, the system intended to replace paper distribution of government documents. Authentication need not involve such technologies, however. Archival standards are relevant.

### **Criteria for Official Status (10)**

I turn now to criteria for official status of publicly accessible legal resources on the Web. I feel remiss not explaining thoroughly the methodology we followed in the AALL Authentication Survey to determine which online legal resources are deemed as official. Given the limited time, let me note that we used an inductive rather than deductive method, since it is clear online official sources are a recognized category, even though statute- or rule-based support for such a status may sometimes be imperfect. Such situations invoke my Thesis II claims that convention is carving out as official certain online legal resources. When we discuss specific online court opinions deemed as official I strive to provide enough evidence to demonstrate our method is sound.

Before proceeding to that proof, I wish to note that our inductive method happens to begin from the vantage point of the lay citizen viewing the

legal resource on the Web. That was not our conscious design. It is simply an inevitable consequence of starting with what a website discloses about itself and then proceeding to uncover the supporting statutes or rules. That citizen perspective is, I believe, extremely valuable for understanding the meaning of our findings. Although I find a deductive method, beginning with statutes and rules, is sufficient to understand the situation in the UK, the citizen perspective is, again, very instructive.

I now review US and UK publicly available online court decisions and name those deemed as official. I will also discuss some resources that definitely are not deemed as official. This helps to make a few things clear.

### **Example US Web Sources (11)**

I begin with the US and concentrate on state materials.

Because it provides an instructive contrast, we'll examine the Supreme Court of Ohio database of opinions and announcements, which contains unofficial versions of Supreme Court, Court of Appeals, and other opinions. The unofficial status of these opinions invokes Thesis I, involving laws that squarely address the official or unofficial status of the resource.

The database contains opinions starting from 1992, published as PDF copies of the court originals, enhanced with unique Web citation information and numbering of paragraphs. If the opinion is also published in the state's print official reporter or the Thomson West unofficial regional reporter, the online version includes citation information for locating the text in those sources. Consistent with Ohio's universal citation rules, one could use and cite an opinion from the Supreme Court of Ohio database without having to consult any other version.

### **Supreme Court of Ohio (12)**

Pursuant to applicable court rules, selected Court of Appeals and other opinions are published in the print official *Ohio Appellate Reports* and the *Ohio Miscellaneous Reports*. According to Rule 9(C) of the *Ohio Rules of Court, Rules for Reporting of Opinions*:

Should the Supreme Court cease publication of the Ohio Appellate Reports and the Ohio Miscellaneous Reports in a paper medium (which event shall not occur prior to July 1, 2006), the Supreme Court website may be designated the Ohio Official Reports for those opinions.

The date limitation mentioned in the rule corresponded to provisions of the now-renewed contract with Thomson West, the state's official reporter. My contacts in Ohio – one of them the state law librarian – tell me that the print official publications have not ceased.

The Ohio court rules potentially still could form the basis for designating certain online court opinions as official. The state law librarian concludes it is just a matter of time before the Supreme Court “takes the position that materials on its website are official.” The Supreme Court database of opinions and announcements makes no disclaimers of any type

### **New Mexico Supreme Court (13)**

We'll turn next to the New Mexico Supreme Court website, which contains official decisions of the Supreme Court and Court of Appeals. The official status of these opinions invokes Thesis II conventions, based on statutory language not directly addressing official status. The situation contrasts with the Ohio Thesis I unofficial court decisions.

The New Mexico Supreme Court website links to a database containing Supreme Court and Court of Appeals opinions starting from 1995, published as HTML text. The opinions provide unique Web citation information and numbering of paragraphs, as well as citations to the print official version and the unofficial regional reporter. One could use these opinions alone and properly cite them in accord with New Mexico's universal citation rules.

Statutes defining New Mexico's court structure and administration give the New Mexico Compilation Commission responsibility for “receiv[ing] all opinions of the supreme court and court of appeals” and “caus[ing] them to be published in bound volumes to be known as the New Mexico reports.” The Compilation Commission is empowered “to publish, distribute or sell and keep current automated legal databases of publications” including “the New Mexico Reports.” As directed by an advisory committee appointed by the Supreme Court, the Compilation Commission has a broad mandate “to do all things necessary to keep

current one or more computer databases of [its] publications.” The New Mexico Supreme Court website explains that it “is jointly maintained by” the Supreme Court and the Compilation Commission, but does not state that its database or other collections are official. The Supreme Court Clerk, however, “considers the final opinions published on that page to be official because of the court’s relationship with the Compilation Commission.”

It is significant that the Supreme Court website gives the following conspicuous, spare disclaimer: “Data is ‘AS IS’.” Coupled with the state’s hesitancy in declaring the website official, the disclaimer is good evidence for the Thesis III claim that trust engendered by official status is ill-placed where the resource is not safeguarded by authentication procedures.

More optimistically, the state’s online official court decisions may be viewed as part of a developing system or structure that would permit exclusive digital interaction with the courts. For online official court decisions, New Mexico may be unique; it is also noteworthy that the state has no less than three other primary legal resources deemed as official. These are its administrative code, administrative register, and a version of its statutes. Its online administrative code is the sole official source. New Mexico is anticipating the all-digital world.

Two additional states – New York and Michigan – have online official court decisions. In the interest of time I must refer you to the forthcoming *State-by-State Report on Authentication of Online Legal Resources*.

I now turn to the UK.

Invoking Thesis I, the straightforward answer is “no” to the question of whether UK publicly available online court decisions are deemed as official. Strictly speaking there is no official series of law reports covering the courts of England and Wales.

This answer with respect to online court decisions fails to satisfy fully, however. Web publication represents an important break from the British mold whereby the selection of court judgments for publication had previously always been solely in the hands of editors of independently published law reporters. Court decisions published on Her Majesty’s Court Service website, which I fully discuss below, are selected by the very judges responsible for issuing them.

### **Practice Directions on “Official” Reports [Citations] (14)**

One seeks to appreciate the significance of recent Practice Directions that have begun to label and privilege as official a reporter of the Incorporated Council of Law Reporting for England and Wales. (*Practice Direction (Court of Appeal: Citation of Authority)*, [1995] 1 WLR 1096; reach extended by *Practice Statement (Supreme Court: Judgments)*, [1998] 1 WLR 825.) Although it is organized as a charity, the Incorporated Council fully exercises a proprietary copyright in its publications. The Practice Directions so privileging the Incorporated Council contradict the historical attitude of the courts that no law reporters are official. As a consequence, despite the recent recognition of a neutral citation system, which provides the practical means to identify online sources without regard to print, users must still locate and cite specified print sources that are restricted by copyright and not freely available. Even House of Lords decisions available on the Parliament website must be cited to a restrictive print source. Those public resources freely available on the Web have, it seems, an untimely de-privileged status in a system now naturally equipped for judicial control of publication and that, in any case, historically had eschewed privileging any source.

### **1995 Practice Direction on “Official Reports” [Text] (15)**

The courts’ new use of the word official in connection with Incorporated Council law reporting is a topic of interest to Professor Roderick Munday. In a 2001 article in *Justice of the Peace* he writes:

This notion, that there are so-called “official” law reports, has progressively gained ground during the later part of the twentieth century. In 1987, for instance, we find Steyn J [now Lord Steyn] remarking that “surprisingly, there is no report of [a named decision] in the official law reports.” Even some academic writers subscribe to this view: Professor Atiyah, for example, has written of the “official law reports.”

However, even if a convention is developing that there exist “official reports”, there may not yet be complete agreement as to which series are entitled to be so designated. [Munday goes on to quote the 1995 *Practice Direction (Court of Appeal: Citation of Authority)*], which lays down a hierarchy of citation for the various series of reports:

”If a case is reported in the *official Law Reports* published by the

Incorporated Council of Law Reporting for England and Wales, that report should be cited. These are the most authoritative reports; they contain a summary of argument; and they are the most readily available.”

. . .

“If a case is not (or not yet) reported in the official *Law Reports*, but is reported in the *Weekly Law Reports* or the *All England Law Reports*, the report should be cited.”

Munday examines earlier Practice Directions and concludes “it would seem that the ‘official’ designation . . . was intentionally added in the 1995 Practice Direction.”

### **2001 Practice Direction on Neutral Citation [Citation] (16)**

In 2001, the Lord Chief Justice, Lord Woolf issued a Practice Direction ordering that High Court and Court of Appeal judgments be given media neutral citations. (Practice Direction (Supreme Court Judgments: Form and Citation), [2001] 1 WLR 194) These undoubtedly are already familiar. The neutral citation is the judgment’s official number and must be used when the judgment is cited in later judgments. It “must appear in front of the familiar citation from the law report series.”

The stated purpose of the Practice Direction is “to facilitate the publication of judgments on the World Wide Web and their subsequent use by the increasing numbers of those who have access to the Web.” The changes also assist in searching and electronic storage.

### **2001 Practice Direction on Neutral Citation [Text] (17)**

Especially relevant to our discussion of the official or unofficial status of online court decisions, the Practice Direction emphasized that “where a case has been reported in the official Law Reports published by the Incorporated Council of Law Reporting” – note the “official” – “it must be cited from that source.” Unfortunately, it appears persons desiring to work completely online have little choice but to use the proprietary online version of the law reports series. The note states: “It will in future be permissible to cite a judgment reported in a series of reports, including those of the Incorporated Council of Law Reporting, by means of a copy of a reproduction of the judgment in electronic form that has been authorized by the publisher of the relevant series, provided that (1) the

report is presented to the court in an easily legible form (a 12-point font is preferred but a 10 or 11-point font is acceptable) and (2) the advocate presenting the report is satisfied that it has not been reproduced in a garbled form from the data source.”

It is clear that a printout from BAILII would not be sufficient, even where the citation to an appropriate print reporter was located and cited to the court. Would the court accept a printout from LexisNexis Butterworths, which would give the All England Reports version of the Incorporated Council of Law Reporting publication? Undoubtedly this issue is not one a lawyer would tend to test. The lawyer will deliver to the court what it apparently wants, namely, a printout from Westlaw UK or Justis.com, where the judgment is published in Law Reports of the Incorporated Council of Law Reporting. I wish to investigate my question about LexisNexis Butterworths more fully. What the court considers the authoritative and reliable legal source is of profound concern to lawyers and citizens alike. Where lawyers generally have adequate means to address such requirements, citizens typically do not. Impediments to citizens' access to justice are sometimes not fully recognized.

### **Example UK Web Sources (18)**

I turn now to the actual publicly available online legal resources, as well as one or two other sources that are important, but do not exactly fit the definition of publicly available. To do this means taking the citizens' perspective.

BAILII is a natural starting point, as that is its special role in the UK.

BAILII “includes most of the recent British and Irish primary legal materials that are freely available to the public.” The data comes from published or unpublished CD-ROMS or directly from responsible courts or government agencies. The resource has some material not available from any other free source. BAILII converts the data into a consistent format. Court decisions, as all its materials, are rendered in HTML capable of displaying, as highlighted text, the key words the user had searched. The later functionality is a result of BAILII's adding “a generalized set of search and hypertext facilities” that allow for searching across all databases.

## **BAILII (19)**

BAILII does not purport to be an official source and its disclaimer information references the 1995 Practice Direction on Citation of Authorities that we discussed above. BAILII's disclaimer information begins with the following language:

BAILII does not invite reliance upon, nor accept responsibility for, the information it provides. BAILII makes every effort to provide a high quality service. However, neither BAILII, its host Universities, nor the providers of data on BAILII, give any guarantees, undertakings or warranties concerning the accuracy, completeness or up-to-date nature of the information provided. Users should confirm information from another source if it is of sufficient importance for them to do so.

Two sources outside of BAILII are especially significant. The House of Lords "Judicial Work" Web pages and Her Majesty's Courts Service "Judgments" Web pages. Both of these resources fit the categories for comparable US publicly accessible online legal resources.

## **House of Lords (20)**

The House of Lords is the final court of appeal on points of law for the whole of the United Kingdom in civil cases and for England, Wales and Northern Ireland in criminal cases. Its Web pages on the UK Parliament website contain an unofficial version of all of its judgments starting from late 1996. The copies are HTML files, with links to PDF versions, starting in 2005. The judgments give neutral citation information, including numbered paragraphs. They do not give parallel citations.

Consistent with the UK's neutral citation rules, one could not use and cite a judgment from the website without having to consult other sources, almost invariably the Law Reports published by the Incorporated Council of Law Reporting. The website gives no disclaimers about its accuracy or completeness.

## **Her Majesty's Courts Service (21)**

Her Majesty's Courts Service website contains an unofficial version of judgments, starting from 1996, selected by the responsible judges from the wide spectrum of courts within that service. The court decisions are HTML files with neutral citation information, where applicable.

Where the judgment is also published elsewhere – which is information not given by the resource – one could not use and cite a judgment from the website without having to consult other sources. The website gives the following disclaimer information:

The contents of these pages are provided as an information guide only. No responsibility is accepted by or on behalf of the Secretary of State for Constitutional Affairs and Lord Chancellor for any errors, omissions, or misleading statements on these pages . . .

### **WLR Daily Summaries (22)**

To these resources the Incorporated Council of Law Reporting for England and Wales (ICLR) website may be added, inasmuch as the ICLR is being recognized as the source for “official” court decisions. It is not a publicly accessible source for court judgments. It does provide freely available summaries for decisions reported in its Weekly Law Reports, starting from 2005. Electronic versions of the decisions as reported in the “official” source are available to paid subscribers.

For completeness’ sake, the WordWave International website should be mentioned as the home page for the parent organization of Smith Bernal Reporting, the official court stenographer. The transcripts available by paid subscription on its website do not purport to be official, but may be accepted as such in individual cases.

Why the House of Lords “Judicial Work” Web pages and Her Majesty’s Courts Service “Judgments” Web pages are not deemed as official must be somewhat vexing to citizens.

The answer to the question of why is, actually, in the final analysis, the UK courts’ answer to the authentication concerns I have raised about online legal resources. The UK insists that online legal resources be capable of authentication against official paper sources and submitted printouts. The form this authentication takes is at the expense of the remarkable potential of the Web to make official, authentic, and reliable online legal information publicly available to citizens and law researchers.

The US has begun to exploit some of the remarkable potential of the Web, but it has not, at the state level, taken steps to ensure authenticity and trustworthiness.

Neither US nor UK is particularly well-prepared for the all-digital world. It is hoped this presentation has identified some areas where each falls short and the reasons why. Attention might then be paid to changes in the structures and processes in law, institutions of justice, and the legal profession needed to ensure readiness for an all-digital environment.

Assuming that is actually something the US and UK want.

These *Notes for Talk* do not contain citations to all authorities on which they rely. Works of Roderick Munday, Michael Zander, Peter Martin, Peter Clinch, Guy Holborn, and others inform the conclusions.

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