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Issues that impact access and use of state regulatory publications

NoCALL Spring Institute
California Regulatory Research, No Fool's Game

April 1, 2017
UC Davis

Kris Kasianovitz, krisk11@stanford.edu
@govinfogal



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Let's Discuss:

- Principles of access to government information, generally
- Regulatory publications – pros/cons
- Access to Regulations/Usability of Regulations
 - Results from Glassmeyer's Census
 - Copyright and the PublicResources.org case
- ...so now what?

Principles of Access to Government Information:

(Regulatory publications = Government Information)

Government Information should be:

- Preserved and **discoverable**
- Not just discoverable but **deliverable**
- Not just deliverable but **readable**
- Not just readable but **understandable**
- Not just understandable but **usable**

Slide used with permission: Allen; Jacobs; Jacobs; Laster. (March 29, 2017) Saving Government Data, A Conversation with the Future. NCLA Webinar Series.

<http://www.nclaonline.org/government-resources/help-im-accidental-government-information-librarian-webinars>

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Based on Open Archival Information System (OAIS) [ISO 14721:2012](#)

Principles of Access to Government Information:

(state) Government Information Should be:

- Free, in the public domain

Free State Government Information (F S G I)

Because State Gov Info Needs to be Free — in the public domain!

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RESOURCES

PRESENTATIONS

STATE COPYRIGHT RESOURCE CENTER



<http://stategov.freegovinfo.info/>

California Regulatory Publications

- California Code of Regulations (CCR)
(standards “included by reference”)
-Title 24: Building, Residential, Electric, Mechanical, Plumbing, Fire, Green Buildings
- California Code of Regulations Supplement (CCR Supplement or Register)
- California Regulatory Notice Register (z register; and index)
- Digest of New Regulations (Public comments, hearings, etc.)
- Agency Decisions
- Office of Administrative Hearings
- Sub-regulatory guidance (letters & notices)

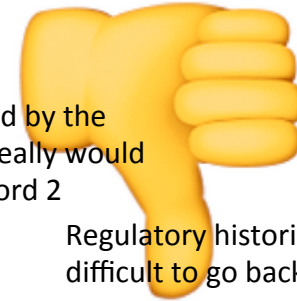
Let's Discuss:

Regulatory Research and Access to Publications

(added audience comments on April 3, 2017 – let Kris know if you don't see your comments!)



Access to regulatory history is impeded by the way the print gets updated weekly; ideally would need 2 subscriptions; but we can't afford 2 subscriptions



Regulatory histories –it's difficult to go back in time

NOCALL digitization project? Get funding (grant?) to digitize historic materials (collection at SFPL?). Issue – can we legally digitize?

Multiple agencies – regulatory information is scattered, across agencies, locations. Agencies sometimes loose or do not keep reports. Or may warehouse materials v. send to State Archives

Issues with searching online versions

Is there a better way to fund publishing of regs to enable better accessibility? Standard fee for lawyers, law firms?

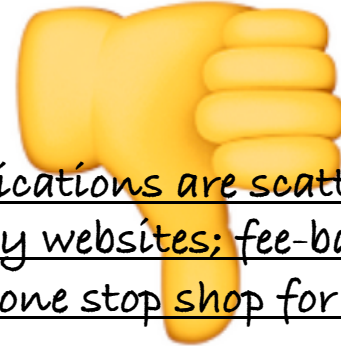
Lack of ability to link data (citations within regs)

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Let's Discuss: Regulatory Research and Publications



- Freely* available online
- Depository Libraries often get free print copy with all updates
- Awesome guides created by awesome law librarians to help bring all the info together **IHT to Chuck Markus!!**
- Fee based versions have linked footnotes, annotations

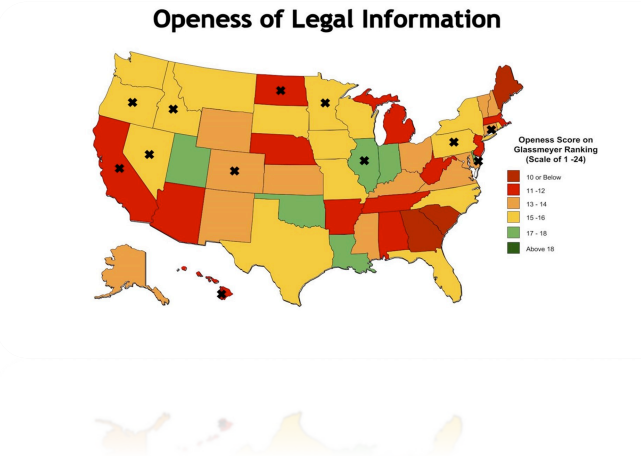


- Various publications are scattered all over agency websites; fee-based versions – no one stop shop for all publications
- Fee-based versions have limited access by general public
- Typically can't print or download "free" versions (standards)
- Fee-based are often the "official" copy AND access doesn't always provide access to all regulatory publications
- Search feature for free versions not so great; better to browse
- COPYRIGHTED!

14 Barriers to Access of State Legal Materials

Glassmeyer, Sarah. (2015). State Legal Information Census, An Analysis of State Legal Information. <http://www.sarahglassmeyer.com/StateLegalInformation/>

- Cataloging
- Citation
- Citator
- Container
- Content/
Archives
- Context
- **Control**



- **Conveyance**
- **Copyright**
- **Corporate Control**
- Correctness
- Cost
- Currency
- Search

Barriers to Access of State Legal Materials

Glassmeyer, Sarah. (2015). State Legal Information Census, An Analysis of State Legal Information. <http://www.sarahglassmeyer.com/StateLegalInformation/>

- CONTROL

“Perhaps due to the high use of regulations by businesses, they contain by the the most restrictions of the three types of primary laws” p. 16 of .pdf version

- CONVEYENCE – pdf, html; no bulk download
- CORPORATE CONTROL
- COST – positive free; except for subscriptions to Law, West; Depository Library in CA free print
- COPYRIGHT

Georgia

<http://rules.sos.state.ga.us/gac/>

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Ohio

- <http://codes.ohio.gov/oac/>
- <http://fclawlib.libguides.com/ohioprimaryl原因/agencies>
- **Regulations "adopted by reference"** are not contained in the Ohio Administrative Code. You must locate the text in other documents. This is especially true of the building code, which incorporates the [Ohio Building Code](#) by reference (Print copy of the Ohio Building Code also available in the library at KFO 459 .A3). The General Index volume to the Ohio Administrative Code contains a list of documents incorporated by reference. The [Ohio Legislative Service Commission](#) and [Ohio Secretary of State](#) can provide the text of the regulations adopted by reference, if the text is not available otherwise.

New York

[https://govt.westlaw.com/nycrr/Index?transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Index?transitionType=Default&contextData=(sc.Default))

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California

- CA OAL has done a good job of providing free online access and supporting contextual material (to most publications under their jurisdiction)...

https://www.oal.ca.gov/publications/administrative_procedure_act/

...but there are some issues

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California Code of Regulations

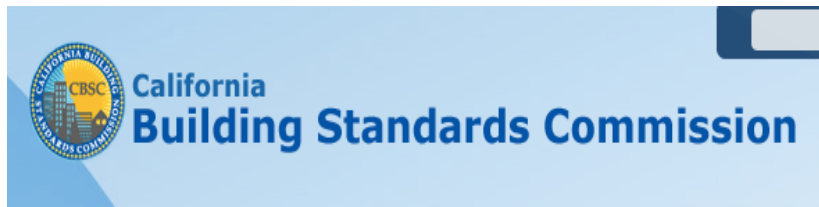
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California (con't)



Title 24 (13 parts)

<http://www.bsc.ca.gov/Codes.aspx>

<https://codes.iccsafe.org/public/document/details/toc/655>

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2016 California Building Code, Part 2, Volume 2

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Search? Download? Archives?

Container! Conveyance! Copyright! Control!

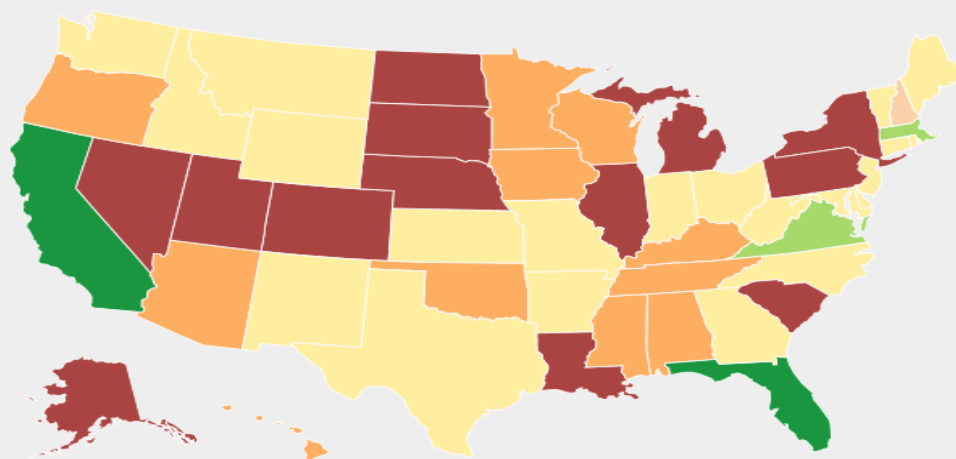
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Copyright of State Legal (and well, all) government materials – it's a real issue

State Copyright Resource Center

<http://copyright.lib.harvard.edu/states>

Federal copyright law says that "Copyright protection under this title is not available for any work of the United States Government." 17 U.S.C. § 105. This is a broad and clear statement that works of the federal government are in the public domain and are free for use by all, but by specifying works of the United States Government, the statute fails to address the copyright status of any works of state governments, [Puerto Rico](#), and the [District of Columbia](#). It turns out that figuring out whether state documents are copyrighted is a tricky question, and we've created this website to help identify the relevant laws in each state.



Click on a state to see a review of the copyright status of government documents within that state, or use the states menu above. **Red** indicates that documents are presumptively copyrightable, **green** indicates that documents are presumptively public domain, and colors in between indicate a tendency to one or the other where the governing law is not clear.

(more on) Copyright

Not a win...

Civil Action No. 2013-1215

AMERICAN SOCIETY FOR TESTING AND MATERIALS et al v. PUBLIC.RESOURCE.ORG, INC.

Doc No. [175](#) (memorandum and opinion) by Judge Tanya S. Chutkan

- Regulations incorporated by reference = copyrighted
- The standards organizations have TM rights
- They are “reasonably available”
- Congress already figured this out; free, online access in formats other than pdf – Congress will need to decide. (See pp.19-24 of opinion)

<https://www.techdirt.com/articles/20170203/00341736620/federal-court-basically-says-okay-to-copyright-parts-our-laws.shtml>

...so now what?

- Use the awareness...
- Get active/involved [ADVOCACY]
 - AALL <https://www.aallnet.org/mm/Advocacy/aallwash>
 - FSGI <http://stategov.freegovinfo.info/>
 - Work with me to write draft legislation 😊
 - Write a letter, meet with law and rule makers, vendors
- What do you think?

Thank you!

and let's continue the discussion

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Free State Government Information (FSGI), [Contact Us](#)

Please cite this presentation as follows:

Kasianovitz, K. (April 1, 2017). Follow the Rules, Just Hope You Can Find and Use Them: Issues that impact access and use of State Regulatory Publications. Presentation at NoCALL Spring Institute.

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