

Blogging the Law.Gov Conference at Duke Law: Should the Law be Open Source?

Scholars and advocates [met today at Duke Law School](#) to discuss the future of “Law.gov,” a proposed system that would provide open access to all primary legal materials in the US (statutes, codes, judicial opinions and more) through a centralized registry and repository.

The workshop, hosted by Duke Law’s [Center for the Study for the Public Domain](#), discussed the many legal and practical issues raised by the possibility of increased public access to legal materials, such as potential savings to the federal government, intellectual property issues in the creation of the repository, looming privacy concerns regarding data in the repository, and the challenge of maintaining accuracy and authenticity across the provided materials.

Duke Law is providing a [streaming webcast](#) of the conference and invites you to tune in. You can also follow posts about the conference on Twitter by searching for the hashtag [#lawgov](#).

10 AM – James Boyle, William Neal Reynolds Professor of Law, Duke University School of Law – Prof. Boyle opens the conference by opining that the law is the original open source effort, and that openness is a fundamental tenet of the legal system. (Info courtesy [@carlmalamud](#))

10:30 AM – Richard Danner, Senior Associate Dean for Information Services, Duke University School of Law - Dean Danner provides a history of efforts to provide digital access to scholarly and legal materials (PACER, the Cornell Legal Information Institute, etc.) He notes that we must prepare for a future where libraries will no longer host physical repositories of authoritative legal sources. He notes that the primary issues for librarians in assembling a digital repository of legal materials include authentication, preservation, and authenticity. As he puts it, “Where did Google Scholar get those cases, anyway?”

11 AM – David Levi, Dean and Professor of Law, Duke University School of Law – Dean Levi, former Chief U.S. District Judge for the Eastern District of California, discussed judicial concerns about public accessibility of judicial records. He explained that in the past, judges had specified that many opinions remain unpublished due to various concerns including deficiencies in the trial record or briefing, and have been unhappy to see such opinions available in Westlaw or other services — a concern which may intensify if public access widens. Dean Levi reviewed a wide range of materials often found in court filings to which interested parties might wish to restrict access due to the presence of sensitive information: amnesty claims, other immigration documents, trade secrets, plea bargains. Any open access system will have to take these concerns into account. He concluded by saying, “If the eyes of the world are on every case . . . it can distort outcomes.”

11:30 AM – Carl Malamud, President and Founder, Public.Resource.Org – Malamud, the former Chief

Technology Officer at the Center for American Progress, is the president and founder of [Public.Resource.Org](#), an extensive collection of public domain legal materials. Malamud stated that justice, democracy and innovation are all furthered by open access to legal materials. He noted that there are many obstacles to open access at present: eight states continue to assert copyright interests in their own statutes, and a license to utilize the full text of the federal patent database, “the only [repository of this kind of information] mentioned by the Founding Fathers,” costs \$39,000 (see [Malamud’s letter to Vivek Kundra](#), Chief Information Officer of the U.S., for more background).

1:30 PM – Jennifer Jenkins, Director, Center for the Study of the Public Domain and Senior

Lecturing Fellow, Duke University School of Law – Prof. Jenkins provided a comprehensive review of copyright issues with regard to state law. Federal legal materials are explicitly exempted from the Copyright Act, but state legal materials are not. Courts have repeatedly held that the law is not copyrightable, either because public need trumps copyright interests or because public legal materials (state laws, etc) do not contain the kind of interest with which copyright concerns itself – they are mostly compilations of facts and ideas and are not distinguished by creativity or individual expression. Nonetheless, certain states (Jenkins used Oregon as an example) have continued to insist that their state laws are protected by copyright.

2 PM – Erika Wayne, Deputy Director of the Law Library and Lecturer in Law, Stanford Law School –

Wayne discussed the “National Inventory of Legal Materials” project and outlined the difficulties the project had encountered simply attempting to acquire the necessary source materials. For instance, of 540 municipalities/counties in California, 80% have outsourced the printing of their laws and codes to four publishers. Almost all of the information in question was available free online, but 40% of the sites where it is provided claim to be unofficial and provide disclaimers, and 50% have copyright assertions in the laws and codes. She noted that finding out how to acquire or license this data—sometimes merely trying to purchase a copy of a particular municipality’s codes—is often complicated, time-consuming, and expensive.

2:30 PM – David Ferreiro, Archivist of the United States – Ferreiro outlined the U.S. Archives’ efforts to

move federal records, including the Federal Register and the Code of Federal Regulations, online and make them more accessible. He described new applications of this source material, such as [FedThread.org](#), a Web tool to search and annotate the rules and proposed rules contained in the Federal Register.

3 PM – Andrew McLaughlin, Deputy Chief Technology Officer, Internet Policy, Executive Office of

the President – McLaughlin described the executive office’s efforts to move more data online for public consumption. He noted that one virtue of the traditional culture of federal government agencies is a high level of concern with data quality. He noted that the executive has been pushing agencies to publish data sooner, and that it would be useful to be able to signal the degree of confidence in the data, perhaps through metadata. He outlined potential future uses of government and/or public data, such as aggregation of home energy use data to figure out how to reduce energy consumption.