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STATEMENT OF PRINCIPLES: “OFFICIAL” ON-LINE DOCUMENTS

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The Association of Reporters of Judicial Decisions (ARJD) is an international organization of public servants whose primary responsibility is to prepare the opinions and judgments of appellate and other courts for official publication. In many courts, the Reporter of Decisions is also the primary archivist and repository of official opinions. As an organization dedicated to the dissemination, publication, and accurate reporting of court decisions, the ARJD recognizes that serious issues have arisen regarding the preservation, authenticity, and certification of official government documents, especially with regard to on-line and electronic versions of those documents. The following policy statement represents the position of the ARJD and its members on those issues. By publicizing its views, the ARJD hopes to alert its public-sector colleagues to the reality that the on-line publication of unauthenticated and impermanent “official” documents in an attempt to save publication costs may unwittingly result in the adulteration or loss of valuable and irreplaceable primary government source materials. Because court opinions frequently cite and rely on such materials, their preservation and authenticity are of paramount concern to the ARJD’s members.

1. A government document should not be considered “official” unless it is authorized by law or is designated “official” by the governmental entity that issued it. Court reports printed pursuant to statutory or judicial authorization are traditional, prototypical examples of “official” government documents. See, e.g., 28 U.S.C. §411 (authorizing the printing and binding of the opinions of the Supreme Court of the United States in the official United States Reports). Absent statutory authorization, each individual state or federal court is the arbiter of what constitutes its “official” reports.

2. There should be only one “official” version of a document in existence at any one time. Any given document has certain content, and the purpose of designating one version of that document as “official” is to denote, for legal and all other purposes, exactly what that content is. For example, if the document in question is a United States Supreme Court opinion and the bound volume of the U. S. Reports is designated as the “official” document, what is posted on the Court’s Website is an electronic copy of the “official” document, but it is not itself “official.” Discrepancies between print and electronic versions of a particular government document may be quickly and easily resolved if one, but only one, of those versions has been designated “official.”

3. Print publication, because of its reliability, is the preferred medium for government documents at present. For example, official court reports are relied upon as authoritative and definitive guidance in conducting legal dealings and affairs because of the reports’ undoubted and demonstrable authenticity and their existence in a permanent, published form. Similarly, on-line government documents should not be designated “official” unless they are (1) authenticated by encryption, digital signature, or some

STATEMENT OF PRINCIPLES: “OFFICIAL” ON-LINE DOCUMENTS — Continued

other computerized process to safeguard them from illegal tampering and (2) permanent in that they are impervious to corruption by natural disaster, technological obsolescence, and similar factors and their digitized form can be readily translated into each successive electronic medium used to publish them. So long as no computerized process guarantees such permanence, a governmental entity should not designate a non-print-published, electronic document “official” unless there is a statute or administrative regulation in the particular jurisdiction requiring the authentication and perpetuation of “official” online documents or the issuing governmental entity undertakes to make whatever conversions are necessary in the future in order to perpetuate the document in an accessible, accurate, “official” form.

4. If, notwithstanding the imperative that there be but one official version of a document, a governmental entity chooses to designate multiple co-existing versions (print and/or electronic) as “official,” mechanisms must be provided to ensure that each of those official versions meets the foregoing authentication and permanence criteria. With respect to official electronic documents, this requires that appropriate encryption techniques be employed and that the digital formats used to store and process the documents take into account the evolving hardware and software utilized to preserve access to those documents.

5. An on-line government document, even one designated “official,” cannot be considered authoritative if it does not satisfy the foregoing authentication criterion. An on-line government document, particularly one designated “official,” should never be the sole published version of the document if it does not satisfy the foregoing permanence criterion.

6. So long as only the print version of an official document meets the foregoing authentication and permanence criteria, the print version (and any printed errata thereto) should control and be considered authoritative whenever there is a discrepancy between it and an on-line version of the same document that has also been designated “official.” In such an instance, the issuing governmental unit should post a disclaimer with the on-line version establishing the print version’s ascendancy in cases of conflict.