

Public Access to the Law in the YaOogle Age, J-3
American Association of Law Libraries Annual Meeting
Washington Convention Center
Tuesday, July 28th from 2:30 p.m. to 3:15 p.m.
Presentation of Alan D. Sugarman, Esq.*
sugarman@sugarlaw.com

Attachment: *White Paper of May 7, 2008 from Alan Sugarman to the Administrative Office of the United States Courts* concerning access to the judicial opinions of the lower federal courts (17 pages). The AALL presentation will cover the issues discussed therein.

Additional Resources: Prior to the session, a PowerPoint presentation and links to supporting material will be available at <http://www.hyperlaw.com/topics/2009/aall-2009-1.html>.

Focus of presentation: Public Access to U.S. District Court Judicial Opinions: Barriers and Solutions.

- U.S. Courts of Appeals opinions, both published and unpublished, have been available digitally to the public since 1994-96. Over 29,000 opinions each year each year, of which 5000 are "published".
- U.S. district courts, not so: 100,000 a year of which 8,000 are "published".
- As a result of the successful CM/ECF system, all district court opinions are now filed along with all other case documents, and entered on the case's electronic docket system, with a unique docket entry number.
- FRAP Rule 32.1. As of January 1, 2007, unpublished opinions of federal courts may now be cited.
- Mandate of E-Government Act of 2002 as to judicial opinions of federal courts.

Response of federal Judiciary:

Added a new report to the CM/ECF system - Written Opinions Report. Court documents listed as Written Opinions are free to download. Some courts post some opinions on websites separate from CM/ECF.

Problems:

- Not all opinions documents are marked as written opinions and many are not searchable.
- No one in judiciary will step up to the task of assuring that all Westlaw/Lexis collected opinions are marked as judicial opinions in the CM/ECF system.
- Opinions maintained behind firewall.
- Citation information not included in document metadata.
- Artificial barriers to bulk downloading.
- No files name identified with particular document file.
- Google and Yahoo cannot index and search the court opinions.
- Vaporlaw - false impressions of availability of legal resources; diminishes perception of need for change.

What is meant by "Access":

- Metadata and text searchable.
- Persistent location
- Persistent file names
- Significance of Acrobat PDF Title Property (Metadata) in search and retrieval on Google and other retrieval systems.

Solutions To Be Performed by the Federal Judiciary:

- Task judiciary personnel to mark documents as opinions, even if a judge does not do so; create a new written orders report.
- Direct public to court personnel to notify as to documents not marked properly.
- Programmatically, insert metadata from the existing CM/ECF database into pdf metadata fields and file name.
- Accumulate all written opinion documents into a single web accessible location with ftp download ability.

* Alan D. Sugarman is a private practitioner in New York City. He graduated from the University of Chicago Law School and was a member of the Law Review. He holds a degree in electrical engineering from Tufts University; in 1982 he created a syllabus in Computer Literacy for Lawyers, teaching seminars around the country. He founded HyperLaw, Inc. in 1990 to publish an electronic version of his John Wiley & Sons real estate law book, linking to the text of opinions. When West, in threatening language, would not authorize him to copy opinions for linking. HyperLaw began to collect and compile Supreme Court and U.S. Courts of Appeals decisions, and released them on CD. Sugarman became active in the efforts to free the law and public domain citations and by 1994 was focusing on the lack of access to U.S. District court cases. West continued its threats against HyperLaw. HyperLaw joined a declaratory copyright action concerning citations against West brought by Matthew Bender. HyperLaw added to the case a challenge to West's claims to copyright of corrected and enhanced text of opinions. HyperLaw prevailed on the text challenge, with AALL support, applying *Feist* to judicial opinions and prevailed with Matthew Bender on the citation claim. In 2007, after the new FRAP rule, Sugarman began pressing again for opening access to U.S. District court opinions, but, stopped after realizing that all opinions were not being identified by the courts.

