

EDITORS NOTE:

Although, the below primarily focuses on California, it should be stressed that this issue is not a California issue alone. The problem of state records and official documents disappearing is causing concerns on a national level. As we continue the move to paperless offices this is an issue that is surely to get worse before we see improvement. Concerned about this issue H.R. 1387 was introduced on March 9, 2009 and passed by the House of Representatives. This bill is now in the hands of the Senate and attempts to correct some of the issues surrounding e-documents. We can expect this issue to gain increasing visibility in the months or year ahead.

Official state records are disappearing

By **ANTHONY PIGNATARO**
CalWatchdog Report
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If there's one thing our state government does exceptionally well, it's the production of records. Every month, dozens of state agencies and departments — to say nothing of the Legislature itself — churns out thousands of pages of reports, studies, analyses, papers and fact sheets, as well as laws, orders, directives and, of course, regulations. Seriously, it's a lot; anyone suffering from insomnia should check out the California State Library's monthly index of new government publications.

Given the way computers permeate government,

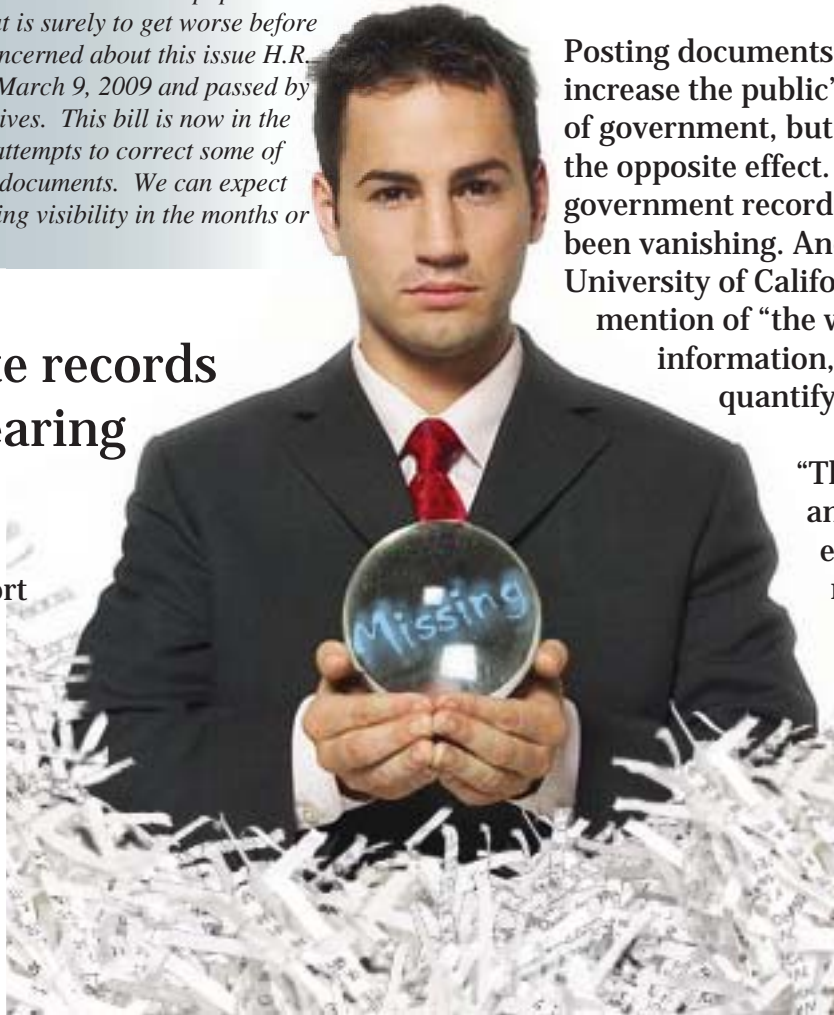
the vast majority of these records exist in digital form. In fact, State Library officials estimate that "80 percent to 90 percent of all California state publications are now issued on the Web. For many of these there is no print counterpart."

Posting documents online was meant to increase the public's access to the workings of government, but it's actually having the opposite effect. For years now, official government records created electronically have been vanishing. And while a June 21, 2009 University of California press release makes mention of "the wholesale disappearance of information," no one seems to be able to quantify the extent of losses.

"The problem is, I don't think anybody has done a scientific evaluation of exactly how many electronic-only documents of California state government are disappearing," David Cismowski, the State Library's bureau chief for library services, e-mailed on Jan. 7.

The state Office of the Chief Information Officer (OCIO) also couldn't

say for certain what has been lost. "While we are not aware of any critical documents that are lost or being destroyed, given the exponential growth of digital media the OCIO has been focused on the issue of records and document management," OCIO spokesman Bill Maile e-mailed on Jan. 11. "Whether it is a digital photograph, video file, spreadsheet or word processing document, we are modernizing



our approach to organizing, storing and managing electronic records.”

Terry Francke, general counsel of Californians Aware — a Carmichael-based non-profit organization that advocates for open government — wasn’t surprised by the news that state e-records have been disappearing for years.

“The problem is, I don’t think anybody has done a scientific evaluation of exactly how many electronic-only documents of California state government are disappearing,”

- David Cismowski,
Library bureau chief

“I don’t believe that there’s any records retention law that applies generally to documents of the executive branch,” he said. “Without some kind of legal requirement, agencies are left to their own devices. Without knowing what’s being lost or at what rate, it’s easy to over- or under-estimate the importance of this. But I can imagine it’s like a warehouse full of records burning down every six months.”

None of this is new. In fact, the deletion — accidental or purposeful — of state e-records has been going on a long time. This is made clear by examining two state reports, both released in

August 2004. Ironically, despite the fact that they’re nearly six years old, the reports represent the most recent studies of the loss of government e-records.

The first is *Managing and Sustaining A State Government Publications Program in California*, written by Judith Cobb and Gayle Palmer of OCLC, a library services consulting firm. It’s a thorough analysis of the State Library’s function as a depository for government records that’s uncompromising in its conclusions.

“Now that most state government publications are available only through the World Wide Web, the [California State Depository Library] program fails to fulfill its mission because there are few mechanisms in place to preserve those digital publications and provide access to them over time, or even to notify librarians and the public about their existence,” Cobb and Palmer wrote, who estimate that the state government spends about \$2 billion every year on its “current technological infrastructure.” “The resultant loss of state government information is untold... The disappearance of state government information has present and future implications for ever Californian. Preservation of, and permanent access to, this information is imperative; the state’s historical, cultural, and intellectual record is at stake.”

According to Cobb and Palmer’s report, “digitally published documents are dynamic, volatile and uncontrolled.” Software and

hardware changes may account for some losses. Sometimes agencies will dump some records to make room for others. Still other records may disappear through “link rot” — “information that has become inaccessible because of an invalid link to a Web page, deletion or removal of Web sites, and/or loss of access to information previously published on Web pages.”

Then, especially in the case of e-mails, there’s this view from First Amendment Coalition’s Peter Scheer: “People feel compelled to delete things.”

Made public around the same time as Cobb and Palmer’s report, the California Performance Review — Governor Arnold Schwarzenegger’s big “blow up the boxes” look at state government that never really went anywhere — also identified the disappearance of state records as a big problem. Recommendation GG 45, “State Digital Records Vanishing,” stated that because “Many digital documents are deleted or otherwise lost each year... the governor should issue an executive order that requires all state agencies to alert the State Library of publication of digital documents, Web sites or other products that may be candidates for permanent public access through the State Library.”

To the best of Cismowski’s knowledge, GG 45 “was not fully implemented.” But Cismowski did say that libraries statewide



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Judith Kahler
President

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June 1, 2010

Dear Friends,

In this issue of *CLAS Notes* We wanted to look at the issue of data and the sources from which data is derived.

Our industry has experienced a myriad of changes since we entered it 30 years ago. Searching out authentic public data for our clients has become somewhat easier with the advent of technology. Clients want information faster and in many cases, especially in the lending community, they are willing to accept information from databases that were fraught with misinformation and missing information. I certainly do not know how much this contributed to our recent round of bank closures and credit problems, but I have to believe that it was at least a contributing factor.

We have always had the philosophy along with our legal industry clients that actual data from the original source delivered in a timely manner was what was required for the completion of due diligence. In an attempt to save money a banking client of ours recently decided to use an online search system. We decided to present them with some comparative data to establish the accuracy of what they were getting in their search for court records. We compared our searches on 18 names with the data that was available through the online search product and their document retrieval system. We found that the online company missed 180 court cases including numerous felony charges. The results were even more profound than we could have imagined. If anyone would like to be provided with a copy of our case study please feel free to contact us for further information.

This small study has reinforced our belief that our role in this industry has evolved into being the experts on the accuracy of the data being used. It is our job to guide our clients through the process and to insure that whatever sources they are using they know the risks and can then make informed decisions on their course of action.

With warmest regards,

Judy Kahler

President
CLAS Information Services

are working on preserving government e-records.

“[T]he State Library has worked with the California Digital Library (CDL) and State Archives to study ways of preserving these vital electronic publications,” Cismowski e-mailed on Jan. 6.

For instance, there’s the CDL’s Web Archiving Service, which preserves access to a pretty random collection of old websites of historical import from all over the world. There’s the 2003 California Recall Election pages, a group of sites from the Guantanamo Bay Detention Camp, a wide variety of sites dealing with labor unions, anarchism and even Trotskyism, as well as various local government Web sites from around the state. Then there’s the far more massive Online Archive of California that gives the public online access to libraries and research centers across the state.

How easy it is for researchers —

“Digitally published documents are dynamic, volatile and uncontrolled.”

- Judith Cobb and
Gayle Palmer

to say nothing of members of the public — to access these multiple archives is another story.

“Searchability is critical to access,” Scheer said. “If there’s no way to find something, then it might as well not exist.” •

Meet Your CLAS Mate Amanda Martinez



Whenever you have questions regarding UCC filings you may hear Amanda Martinez’s voice on the other end of the phone. Amanda is our UCC Filing Specialist and this September will mark her eighth year with CLAS.

Recently, Amanda graduated as a paralegal from MTI College, so she has some time on her hands to enjoy her love of anything pertaining to water, including boating and wakeboarding. She

is a Sacramento native and raising her son Devin (five) and is expecting another boy this fall.

In addition to Devin she also has another man in her life, Jimmy. Jimmy is her seven-month-old Shih Tzu and is appropriately named after her son’s cat.

Whenever you call in for assistance with anything UCC, Amanda is our go to girl. She is not only a friendly voice on the phone, but an incredibly knowledgeable woman, and we are lucky to have her! •



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Court Record Research, Online Does Not Equal Better Information

BY: EDWARD NOYER
MORGAN HABERMAN

We have become dependent and trusting of technology, and often believe that online data must be accurate. The truth is very few jurisdictions in the United States offer court data for sale. The bulk of public record data is obtained by manual abstracting documents and information in a jurisdiction.

Court abstractors "scrape" information from courts on a predetermined schedule. For this reason the update frequency varies from daily, weekly, monthly, quarterly or annually (depending on the court). This is not intended to imply that all data is obtained this way, as there are legitimately some governmental agencies that offer data for sale. However, these are generally state and federal jurisdictional agencies. More often than not court information is manually obtained by abstractors, typed into a laptop, then compiled into a database, creating an online searchable database where none exists.

Obtaining information in such a manner is problematic because:

- Courts "date stamp" filings as they are submitted to the court clerk. Filings that are keyed into the system late are

backdated to the date the file was received over the counter. For example, a filing submitted to a court clerk minutes before the courthouse closes for the day, are not entered the day of delivery but rather the following day. As a result, dates are often backdated to the day it was handed over the counter to the clerk.

- If a filing is not available on the day the abstractor is scraping information it never becomes part of the data submitted to the database.

- Even in cases where an abstractor has an arrangement to obtain new cases from the clerk, when staff gets busy mistakes occur and data is never provided, and therefore never becomes data entered into the database.

- When information is recompiled to create data the database is effected by the changes. For example, if a name is Smith and it is keyed as SmYth the filing will never be located unless you knew the error existed, therefore erroneous or incomplete results will be provided. For example, we located a case where the file number was not only missing a digit, but the remainder of the filing number was inaccurate.

Therefore, information could not be found on the missing record without a physical search.

- Some court computer systems do not index all defendants or plaintiffs due to system limitations, so in large cases such as class action suits, only a few of all persons named will ever be indexed into an online system.
- Some additional items to consider are if the online system does not provide an index date that is specific how do you verify the currency of the data? Was the data abstracted yesterday or 45 days ago, since language such as "information appears within 45 days" is used?
- An online provider scraping court files can never verify that online data is complete. Even courts that provide online data insert language such as "we are not liable for missing, incomplete or inaccurate information."
- If online data is reliable why is the government considering regulating this information? There have been numerous court-cases against providers of online data because innocent people have been denied jobs, loans

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and security clearances as a result of inaccurate information provided through online databases.

- Finally consider why do all online databases contain the phrase, "this is for informational purposes only?" Even the online service providers know that their information has gaps and they want to protect themselves from liability from those who utilize the data.

Inaccurate court data is readily available because companies that compile this information are engaged in the business of reselling the data to offset the cost of abstracting it. As a result this information is sold to aggregators and other online databases who in return provide it to their clients. As this information is sold and resold it is made available to other databases. As a result, discrepancies are propagated throughout all online databases, since the data contains a common source.

Obviously, data obtained directly from the court responsible for the information is of the highest quality and will contain few if any errors. This is because it is an identical copy to what the court database contains. An example of this superior data would be PACER(R). This information is obtained directly from the source electronically and therefore reliable. However, when users go outside the PACER(R) system they should be skeptical as to how and where

State holidays:

Memorial Day

- May 31

Florida State Offices Closed

- June 3rd

Alabama State Offices Closed

- June 7th
- June 28th

Independence Day

- July 5 (Observed)

Labor Day

- September 6



the information was derived.

It is easy to verify the accuracy of online court data, since a search performed on any online system compared to searches conducted at courthouses more often than not contain discrepancies. For example, 18 searches in ten different jurisdictions were conducted and in 16 of the searches performed omitted and erroneous results were discovered. The errors located included incomplete names, mis-keyed file numbers and cases dating back years that were not reported when other cases from the same year were reported. They were simply missed!

Online data will continue to contain holes until every courthouse in every one of the approximately 4,000 counties, independent cities and special courts create databases that are available for purchase. Use of online data for courthouse

information is at your own risk since providers clearly disclaimed as "for informational purposes only" to avoid litigation.

Considering the cost difference of \$20 to \$30 between an online search and on site search, the cost savings are not worth the potential risk. You may want to consider the extra money for the on site search as an inexpensive insurance policy considering the negative publicity or potential loss that is at stake. •

News From the States

CALIFORNIA

Changes in Forms, Fees and Law for Limited Partnerships

All limited partnerships are now subject to the Uniform Limited Partnership Act of 2008. As a result the following documents and forms have been revised as of January 1, 2010.

- The Certificate of Election to Windup and Dissolve

The following forms have been eliminated:

- Form LP-3 (Certificate of Dissolution)
- Form LP-8 (Certificate of Continuation)

The following forms have been replaced:

- Form LP-2 (Amendment to Certificate of Limited Partnership)
- Form LP-4/7 (Certificate of Cancellation)
- For LP-10 (Restated Certificate of Limited Partnership)

Suspension and Delinquency Notices for LLC's to be Sent

In California a Statement of Information (LLC-12) and a tax return are required to be filed annually. LLC's that have not filed an annual report are delinquent. This has been a requirement since 1994 the year

the state began allowing LLC's, however, no LLC was ever suspended for failure to file. That is until now. The Secretary of States' office began working with the Franchise Tax Board in 2008 to suspend business entities that had not filed tax returns. Now that the Franchise Tax Board has worked through their files to suspend LLC's the Secretary of States is ready to start reviewing their records for those entities that have not filed their Statement of Information.

The first delinquency notices for LLC's were sent April 20th for entities dating back to 1994, and they will shortly begin working on subsequent years. LLC's receiving notices of delinquency will have 100 days to file a Statement of Information. If this document is not filed within the 100 day period then the entity will be suspended.

It is currently projected the first suspension notices will be sent on August 1st for those entities formed in 1994.

LOS ANGELES COUNTY

County Recorder Fee Increase

As of March 4, 2010 the Los Angeles County Registrar-Recorder/County Clerk's Office is increasing the fee and changing the way the recording fee is calculated. The fee will now be \$6 for real estate documents, and charged per title / instrument (for

combo documents.)

KANSAS

New Business Entity Forms Required

As of March 1st the Business Entity forms have been updated and only the new forms will be accepted going forward. Visit:

http://www.kssos.org/forms/forms_results.asp?division=BS

MASSACHUSETTS

Exact Search May be the only Search Logic for UCC Filings

Is considering making an amendment to the standard search logic (SSL) used to conduct UCC searches. This change has been opened to public comment.

The proposed change would remove all noise words from the search logic. The name would be searched EXACTLY as provided, and the results would return only exact matches.

At this time the change has not been made However, if this change is enacted all previously filed documents could become seriously misleading and therefore ineffective.

MISSOURI

LEGALZOOM Slapped with UPL Lawsuit

A lawsuit was filed against Legalzoom, claiming their document preparation business constitutes unauthorized practice of law in the state of Missouri. *TODD JANSON v. LEGALZOOM* [Case #2:10-cv-04018-NKL] case was filed in Cole County, Missouri. This case is currently pending.

The North Carolina bar association has sent a letter to Legal Zoom Alleging Unauthorized Practice of Law - (Cease and Desist).

NEVADA

Nevada to Offer Expedited Services

As of March 1st Nevada now offers 24-hour expedited service. The fee for this service is:

- Initial, Annual and Amended Lists of Officers: \$125
- All Trademark Filing: \$125
- Uniform Commercial Code Filings and Searches: \$125
- Copies, Certificates, Searches, Apostilles: \$125
- Name Reservations: \$50

NEW MEXICO

Limited Partnership Fees Must be Paid to Secretary of State

Limited Partnerships are filed at the Secretary of states and those filings fees are payable to that agency.

Secretary of State to Increase Most Fees

As of January 1st the Secretary of State raised most of its fees, so if you are planning on filing it is advised to review the fees to prevent rejections.

Checks for Corporate Filings Must be Made Payable to Public Regulation Commission

All corporate filings at the Public Regulation Commission need checks for the filing fees payable to the Public Regulation Commission, or PRC. Checks made out to the Secretary of State will not be accepted and your

documents will be rejected.

NORTH CAROLINA

LEGALZOOM sent Cease and Desist Letter from State Bar

The North Carolina bar association sent a letter to LegalZoom Alleging Unauthorized Practice of Law (Cease and Desist) developments. See Missouri for similar issues for Legalzoom.

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