

# Yes, Virginia, Everything is Available on the Web for Free

by Lyn Warmath

How often have we heard researchers assert, “Everything is available for free on the Web”? How many times have we heard well-meaning attorneys or administrators say, “Let’s get rid of the books. Who needs books, expensive floor space for libraries or even librarians for that matter? It’s all on the Web, isn’t it?” Well, . . . not yet anyway.

Although researchers can find immeasurable numbers of free resources on the Web, free Internet-based resources will not replace the need for libraries anytime soon. Two classes of important resources for attorneys are not and never will be accessible on the Web for free. First, there are copyrighted materials whose copyright holders and publishers are trying to earn a living. Second, older materials are unattractive candidates for any enterprise to post on the Web for free, notwithstanding a Google Print project that aims to allow Internet searches of millions of books. Without a cultural shift from copyright law and researchers’ preferences for paper, truly free Internet-based research will never come to pass.

This article surveys the free availability on the Web of authoritative and trusted sources of Virginia-specific law on which Virginia’s attorneys have come to rely.<sup>1</sup> The article links to survey results ([www.vsb.org/publications/vlawyer/dec05](http://www.vsb.org/publications/vlawyer/dec05)) confirming that a remarkable percentage of Virginia-specific law sources are not published for free on the Web. The article examines which titles are not currently available on the Web at any cost, and reveals mistaken assumptions about the Web.

### Where Did the “Free” Myth Come From?

Researchers often confuse Web access with “free” Web access. Because a source or document is posted on a Web site does not mean it is or will ever be accessible for free. The publisher of *Virginia Lawyers Weekly* maintains a Web site, but the publisher charges for its Virginia circuit court opinions and for access to its articles. Commercial publishers expect to be paid for their copyrighted works—just as attorneys expect to be paid for their work products. Expecting copyright holders and commercial publishers to post their works

for free is analogous to expecting attorneys to post their work products on the Web for free.

Nonprofits rely on sales to survive. Virginia Continuing Legal Education “relies entirely on income from registration fees and publications and will never be able to offer its hugely popular CLE books and seminar materials on the Web for free,” according to Gary Wilbert, executive director of Virginia CLE. “Virginia CLE serves the entire bar, presenting seminars and publishing books that are not always profitable. Commercial enterprises would not undertake some of the projects that we do. Like other businesses, Virginia CLE has staff to pay, a building to house them, utilities and equipment expenses.”<sup>2</sup> Businesses cannot expect publishers to post their intellectual property on the Web for free and remain in business.

It is easy to see how researchers may become confused about “free” Web sources. The opening line on the opening page of one major “free” legal site reads: “Enhanced! Find Cases for FREE.” Savvy researchers find that this “free” site

offers a meager five years' opinions—hardly a starting point for serious, comprehensive research.

Librarians inadvertently have promoted the myth of free access. Two recent seminars on effective Web searching skills presented by librarians for continuing education organizations were both titled or subtitled, "Find it Fast, Find it Free."

Moreover, researchers should not be misled by flat-rate contracts (sometimes known as fixed-fee contracts) offered by Westlaw and LexisNexis, for example. How many times have we heard researchers suggest that their institutions' flat-rate contracts mean the resources are free? Not one of them is free. Subscribers pay monthly fees for flat-rate contracts. Flat-rate does not mean free. All subscribers pay for access to these two services, and some institutions pay dearly for flat-rate contracts.

LexisNexis and Westlaw charge for access to primary materials (e.g., statutes, regulations and courts' opinions) that researchers might find on free sites. The operative word is "might," because "Wexis" offers researchers better access (not to mention annotations and headnotes), as well as depth of coverage, than alternative free sources whose years of coverage and jurisdictional coverage pale in comparison to the magnitude of "Wexis's" coverage.

#### **So, Which Sources Really Are Free?**

##### **Primary Sources: Those Government Sources Funded by Your Tax Dollars**

The Web abounds in free primary sources. Researchers will find codes, regulations and opinions everywhere. Virginia's state government, for example, is an authoritative source of primary materials. But the years of coverage vary from one free site to the next. The Supreme Court of Virginia's free Web site publishes its opinions and those of the Virginia Court of Appeals from mid-1995. (Other free sites offer partial coverage of opinions, too: Findlaw from 1995, LexisOne since 2000 and *Virginia Lawyer's Weekly* from 1998 and 1997, respectively.) These are great sites for staying abreast of newly issued opinions, but not so useful for comprehensive coverage and research.

Many attorneys rave about sources freely

available on the Web, but those free sites often come with significant trade-offs:

- Many lack the capability to search multiple jurisdictions simultaneously.
- Many lack search engines.
- Many lack annotations and headnotes.
- Many offer limited or no search help or tech support.
- Some may have undergone little or no editorial review, fact-checking or quality control.
- Organization, if any, may be difficult to discern.

#### **It Pays to Pick and Choose**

Knowing when not to use the Web has become an attorney's most critical Internet research skill. Before relying on information from any online source, researchers should assess a site's credibility, authority, reliability, currency and accuracy. Free sites posted by government entities and educational institutions are reliable, but careful researchers verify the sources and currency of government and education sites.

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Failing to confirm a site's currency can be disastrous. For example, local ordinances of a city in Virginia that appear on a free Web site were last updated in 1997. The print edition of that city's code of ordinances is more up-to-date than its Web site.

#### **Time to Throw Away the Books?**

The Google Print project, announced in December 2004, has served to reinforce the notion that everything that is not already on the Web soon will be. Google and several of the world's top libraries have joined to put fifteen million books online. Lawrence Lessig, professor of law at Stanford University and founder of the school's Center for Internet and Society, has reservations about the Google Print project. "It is not at all clear that Google

and these libraries have the legal right to do what is proposed. For work in the public domain, the right is clear enough. But for work not in the public domain, Google's right to scan—to copy—whole texts to index is uncertain at best—even if it ultimately makes only snippets available. When permission has been given by the copyright holder, again there's no problem. But when permission has not been secured, the law is essentially uncertain,"<sup>3</sup> he says.

The Authors Guild, a society of eight thousand published authors, as well as several individual authors, filed a class-suit for massive copyright infringement against Google in September 2005. In October, the Association of American publishers filed a complaint seeking an injunction to prevent Google from scanning copyrighted materials without permission. "The legal battle could help define how copyright law will affect the Internet and the business models of publishers, news organizations and other content owners."<sup>4</sup>

According to Thomas Mann, a reference librarian at the Library of Congress, obstacles remain—among them that "Most people simply do not like having to do sustained reading of book-length texts on electronic screen displays.

"People who claim that all books will be available online—usually implying thereby that real libraries will become unnecessary—seem seldom to have actually read any book-length works themselves in the electronic format they would so readily impose on other people,"<sup>5</sup> Mann says.

#### **Virginia's Survey Statistics Speak Volumes**

The mission of the Google Print project and the reality of publishers' practices with Virginia-specific law titles are clearly at odds. A cursory look at the numbers of titles of Virginia-specific law treatises, practice books, CLE books, form books and research manuals available online for free may startle some. None of the sec-

ondary sources surveyed in the linked study is available on the Web for free. Researchers have access to the following Virginia-specific favorites, but not for free:

- *Bryson on Virginia Civil Procedure.*
- *Friend's Virginia Pleading and Practice.*
- *Virginia Civil Procedure.*
- *Virginia Remedies.*
- *Virginia Forms.*
- *Virginia Model Jury Instructions.*

Many treatises and practice books are not available online: fifty-four of 122, or 44 percent, of treatises and other secondary sources surveyed are available only in print. Treatises include some of Virginia's best known, frequently requested and cited titles such as *Goolshy on Virginia Corporations* and *Virginia Title Examiner's Manual*. In another class are the hybrid formats of Virginia CLE materials. Although the nonprofit institution does not enjoy the resources of the big commercial publishers to mount sophisticated online databases, Virginia CLE makes every effort to serve the bar efficiently. Its recent online publishing campaign offers for sale electronic PDF and CD-ROM versions of most of its books and seminar materials. Both are searchable through Adobe Acrobat's Find feature.

Web searchers fare better when they search for primary materials. Of the 155 total sources surveyed, including primary and secondary sources, ninety-nine entries or 63 percent are available on the Web in varying formats, but only 14 percent of those are free. Coverage is spotty, and researchers are warned to proceed with caution.

**Reality Check**

Librarians and attorneys cannot toss the books and rely on free or fee-based online sources. Some authorities suggest that day may never come. Mann says:

The bottom line is that copyright restrictions will never disappear from the Information Superhighway. Neither U.S. nor international law is simply going to change and allow free access to "everything." Some vir-

tual library enthusiasts regard copyright protection as a problem that will eventually be "solved." This is nonsense. Copyright is not the problem. Piracy is the problem. Copyright is the solution. That fundamental relationship will not go away.<sup>6</sup>

The American Bar Association's Catherine Sanders Reach, associate director of the Legal Technology Resource Center, and her coauthors are more optimistic about a virtual library while validating the Virginia survey's results. "It certainly appears that federal case law, statutes, and regulations in a law firm collection can be entirely digital, but practice-specific resources, state resources, and treatises still need refinement in the digital world to be viable. The digital library remains more a vision than a reality."<sup>7</sup>

While publishers may refine their collections of treatises and state-specific resources, researchers cannot expect publishers to provide their work products for free. Mann says:

The Internet will never include everything in real libraries until such time as human nature itself changes, in the direction of selfless benevolence, and all writers, artists, and creators forgo the advantages of intellectual property to voluntarily contribute their work products to the good of the socialist whole. History has not been kind to systems based on the assumption that most human beings will act in this manner. Within the world of learning, however, history has also witnessed the creation of a marvelous mechanism for protecting the rights of authors while also making the universe of knowledge freely available to anyone who will travel to certain locations," and that mechanism is real libraries.<sup>8</sup>

In the meantime, while tensions heat up among commercial interests, copyright holders and advocates of free access, many public libraries are filling a breach.

**Good News for Researchers**

Local public library systems in many cities and counties in Virginia now offer desktop access to scores of pricey, commercial, nonlegal publications purchased by taxpayers. Researchers who own a public library card can visit their local public libraries to register for desktop access to titles such as the *Richmond Times-Dispatch*, *Washington Post*, *New York Times* and *Encyclopedia of Associations* as well as company and industry information. Researchers can "read all about it" through a Web site called Find It Virginia (<http://www.finditva.com>).

Remember, however, that selected databases may have the trade-offs mentioned in this article (lack of legal publications, date coverage restrictions, search engine quirks, unfamiliar and awkward navigation systems).

**What Lies Ahead?**

Many of us are amazed by the wealth of documents freely accessible on the Web. Scores of sites posted by government and educational institutions are impressive (see Paul Barron's article in this issue) and the sites offer researchers conveniences unknown before the Internet. For the foreseeable future, however, careful research will require reliance on fee-based resources and the judicious use of free online sources, as well as those in print. ♪

Endnotes:

1 The linked survey covers Virginia-specific law treatises, practice books, CLE books, form books,

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**For more information  
 about the  
 Virginia  
 Association of  
 Law Libraries  
 see  
<http://law.richmond.edu/vall>**

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manuals, citators, digests, encyclopedia, statutes, ordinances, opinions, regulations, legislative materials and *selected* periodicals. Excluded from the survey are law reviews because subject coverage expands beyond topics specific to Virginia. Excluded too are CLE seminar outlines and a few titles available from Virginia CLE that are not Virginia-specific.

Excluded from the survey's statistics are sites offering opinions from the federal courts sitting in Virginia, although their URLs and dates of coverage are included for researchers' convenience.

- 2 Gary Wilbert, phone interview by author, 17 October 2005.
- 3 Lawrence Lessig, "Let A Thousand Googles Bloom," *Los Angeles Times*, 12 January 2005, p. 11.
- 4 Kevin J. Delaney and Jeffrey A. Trachtenberg, "Publishers Challenge Google's Book-Scanning Plans," *Wall Street Journal*, 20 October 2005, p. A1.
- 5 Thomas Mann, *The Oxford Guide to Library Research*, 2d. (New York: Oxford University Press: 1998), 139.
- 6 Mann, *Oxford Guide*, 134.
- 7 Catherine Sanders Reach, David Whelan and Molly Flood, "Feasibility and Viability of the Digital Library in a Private Law Firm," *Law Library Journal* 95 (2003): 381.
- 8 Mann, *Oxford Guide*, 256.