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Internet Materials in Opinions: Citations and Hyperlinking

The Judicial Conference has issued a series of “suggested practices” to assist courts in the use of Internet materials in opinions. The recommendations follow a pilot project conducted by circuit librarians who captured and preserved webpages cited in opinions over a six-month period.

The Internet often seems to pervade everyday life, giving us answers, matches, recommendations, definitions, and citations. But the information on the Internet can be as ephemeral as yesterday’s blog entry. Websites can change or disappear altogether.

“Judges are citing to and using Internet-based information in their opinions with increasing frequency,” Judicial Conference Secretary Jim Duff wrote recently to chief judges. “Unlike printed authority, Internet information is often not maintained at a permanent location, and a cited webpage can be changed or deleted at any time. Obviously, this has significant implications for the reliability of citations in court opinions.”

The Judicial Conference Committee on Court Administration and Case Management (CACM) began the pilot project, conducted by circuit libraries, and received and endorsed the recommendations of an ad hoc working group of circuit librarians. In approving those recommendations in March 2009, the Judicial Conference agreed that all Internet materials cited in final opinions be considered for preservation, while each judge should retain the discretion to decide whether the specific cited resource should be captured and preserved. The Conference directed the Administrative Office to work with the CACM Committee to develop guidelines “to assist judges in making the determination of which citations to preserve.”

The guidelines suggest that, if a webpage is cited, chambers staff preserve the citation by downloading a copy of the site’s page and filing it as an attachment to the judicial opinion in the Judiciary’s Case Management/Electronic Case Files System. The attachment, like the opinion, would be retrievable on a non-fee basis through the Public Access to Court Electronic Records system. When considering whether to cite Internet sources, judges are reminded that some litigants, particularly pro se litigants, may not have access to a computer.

The Judicial Conference also recommended that the Judiciary avoid including in final opinions working hyperlinks that lead directly to materials contained within commercial vendor databases to prevent a stated or implied endorsement or preferential treatment. To the extent that a court determines that such hyperlinks are to be used in opinions, it is recommended that an appropriate disclaimer be provided.