

# Digital Statutory Supplements for Legal Education: A Cheaper, Better Way

by

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and

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Version: 7/20/09

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## Abstract

*Law students spend hundreds of thousands of dollars each year on statute books, also known as statutory supplements. These statutory supplements, notorious for their weight and bulk, are compilations of statutes and regulations specific to the subject of a particular course. The statutes and regulations included in these print supplements are often publicly available for free, but students typically pay \$30-\$40 or more for each book. This article discusses the advantages of digital statute books, details how the authors created a digital statute book that was used in two securities regulation courses, and evaluates the result of that experiment.*

## I. Introduction

It seems like an offer only an idiot would accept: pay \$40, \$50, or more for a bulky, non-searchable print version of information that is not copyrighted and is readily available for free on the Internet. We concede it's a horrible deal, but we hesitate to call those who accept it idiots, because this is precisely the deal that hundreds of thousands of law students accept from Thomson/West, Aspen, Foundation Press, and other legal publishers every semester.

The product is the statutory supplement<sup>3</sup>—collections, typically paperback, of subject-specific statutes and regulations that are required for dozens of law school courses, from civil procedure to business associations to environmental law to basic income taxation. Statutory supplements have been around for decades. Hundreds of law professors regularly require them and most law students buy them, often grudgingly, and lug them from class to class.

Statutory supplements are expensive—usually cheaper than casebooks,<sup>4</sup> but the difference is misleading because the constant change in statutes and regulations makes it difficult for students to resell the supplements. A law student could easily spend \$500 or more just on statutory supplements during three years of law school.<sup>5</sup> It's not an astronomical figure when compared to law school tuition, but it's not pocket change, either.

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<sup>3</sup> Although these books often contain regulations, forms, and other materials in addition to statutes, they are commonly called statutory supplements or statute books.

<sup>4</sup> For instance, the securities regulation casebook authored by John Coffee and Hillary Sale, *SECURITIES REGULATION* (11<sup>th</sup> ed. 2009), has a list price of \$138.00. See Thomson West, *Faculty Online Store*, <http://www.westacademic.com/Professors/ProductDetails.aspx?productid=149196&tab=1> (last visited May 12, 2009). The statutory supplement prepared by Tom Hazen for the same course, *SECURITIES REGULATION: SELECTED STATUTES, RULES AND FORMS: 2009 ED.*, has a list price of \$45.00. See Thomson West, *Faculty Online Store*, <http://www.westacademic.com/Professors/ProductDetails.aspx?productid=145052&tab=1> (last visited May 11, 2009).

<sup>5</sup> Assuming a price of \$40 a book, a student who took thirteen courses requiring statute books would pay \$520. Thirteen courses requiring statute books in three years of law school seems plausible.

Students should not have to pay so much for statutory supplements. Commercial casebook publishers add very little value to the freely available, non-copyrighted material in statutory supplements, and commercial publishers have no real comparative advantage in producing them. Even if one concedes that published *casebooks* are an essential part of legal education and that commercial legal publishers have an essential role in producing them,<sup>6</sup> statute books are different. With very little effort, law professors could produce many of the statutory supplements required for their courses for free, just as they produce course syllabi and other handouts. And they could provide those materials in a more convenient digital form, not in the bulky print format offered by the commercial casebook publishers.

No new technology is required. No special expertise is needed. No huge expenditures are necessary to make this happen. We have done what we propose, and the amount of time and effort required was minimal. We produced a digital Securities Regulation statutory supplement for Professor Bradford's two classes in the spring of 2009. It is freely available on the Internet for anyone who wants to review or use it.<sup>7</sup>

That digital statute book saved students \$900—an average of \$45 each.<sup>8</sup> Nine hundred dollars is not a huge amount, but that is the savings for two very small classes at a single law school. Multiply that small amount by all the law school courses that require statutory supplements and the possible cost savings are phenomenal. The Association of American Law Schools consists of 171 law schools.<sup>9</sup> If only one professor at each of those schools offered this digital option to a single class of twenty students, the savings for a single semester would be over \$150,000.

## II. The Advantages of Digital Statute Books

Cost savings alone justify a move to open-source, digital statute books, but digital materials also have several other advantages over traditional, printed statute books. Some of these advantages are pedagogical; some of them relate solely to ease of use.

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<sup>6</sup> Even that proposition is questionable. See, e.g., Matthew T. Bodie, *The Future of the Casebook: An Argument for an Open-Source Approach*, 57 J. Legal Educ. 10 (2007); Robert Laurence, *Casebooks are Toast*, 26 Seattle U. L. Rev. 1 (2002).

<sup>7</sup> See *Digital Securities Law: Statutes and Regulations*, <http://www.unl.edu/bradford/Digital%20Statute%20Book.html> (last visited July 9, 2009).

<sup>8</sup> Twenty of 24 students who responded to a survey used the digital statute book exclusively; the other four used both the digital statute book and a printed book. The print alternative was Thomas Lee Hazen, ed., *SECURITIES REGULATION: SELECTED STATUTES, RULES AND FORMS: 2009 EDITION* (2009). Its list price is \$45. See Thomson West, *Faculty Online Store*, <http://www.westacademic.com/Professors/ProductDetails.aspx?productid=145052&tab=1> (last visited May 11, 2009). An abridged version is available for a list price of \$33, but it does not include all of the materials needed for one of the two classes. See Thomson West, *Faculty Online Store*, <http://www.westacademic.com/Professors/ProductDetails.aspx?productid=149396&tab=1> (last visited May 11, 2009).

<sup>9</sup> See Association of American Law Schools, *What Is the AALS?*, <http://www.aals.org/about.php> (last visited June 9, 2009).

## A. Cost Savings

Digital statute books are cheaper to produce.<sup>10</sup> The editorial work is essentially the same for digital and print statute books, but that editorial work is minimal. No one has to write or edit the text; the only editorial work is to convert the publicly available material into book format. And the cost to produce and deliver digital materials is much less. No ink or paper is used. No physical delivery is required. No bookstore is needed. Digital materials can be delivered to both faculty and students on demand over the Internet.

## B. Physical Advantages: Portability and Durability

Print statute books are heavy and bulky. The print securities statutory supplement Professor Bradford has used for his Securities Regulation course in the past<sup>11</sup> weighs 4.8 pounds; the corporate law supplement he assigns for his Business Associations course<sup>12</sup> weighs 5.6 pounds, has over 2,300 pages, and is almost three inches thick. Statutory supplements are “overstuffed with statutes, regulations, interpretations, and model codes that the class will never discuss,”<sup>13</sup> undoubtedly to ensure that no law professor will refuse to adopt the book because it is missing something he or she covers in class.

Digital statute books weigh nothing and take up no physical space. Students must carry a laptop computer to class to use digital books (at least until a suitable e-book reader is available), but they only need one laptop computer for all their digital materials, and most students already carry laptops to class.<sup>14</sup> One laptop clearly weighs less and is less bulky than one laptop *plus* statute books.

Digital books are also easier for students to handle once they get to the classroom. The average law school classroom seat is not designed for multiple books plus a laptop. Professor Bradford’s students often sit with laptops on the table space, casebooks and (sometimes) casebook supplements occupying the rest of the table, with statute books perched on their laps. With digital statute books, students have one less item to juggle.

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<sup>10</sup> Since law publishers don’t share cost data with the public, the exact production cost difference is uncertain. However, existing undergraduate digital books cost approximately fifty percent of the retail price of their hard-copy equivalents. Advisory Committee on Student Financial Assistance, TURN THE PAGE: MAKING COLLEGE TEXTBOOKS MORE AFFORDABLE 21 (May 2007), available at <http://www.ed.gov/about/bdscomm/list/acsfa/turnthepage.pdf>.

<sup>11</sup> Thomas Lee Hazen, ed., SECURITIES REGULATION: SELECTED STATUTES, RULES AND FORMS: 2009 EDITION.

<sup>12</sup> Melvin Aron Eisenberg, ed., CORPORATIONS AND OTHER BUSINESS ORGANIZATIONS: STATUTES, RULES, MATERIALS, AND FORMS: 2008 EDITION.

<sup>13</sup> Matthew Bodie, *The Future of the Casebook: An Argument for an Open-Source Approach*, 57 J. Legal Educ. 10, 14 (2007).

<sup>14</sup> Except for the unfortunate ones whose professors have prohibited the use of laptops in class. See, e.g., Kevin Yamamoto, *Banning Laptops in the Classroom: Is It Worth the Hassles?*, 57 J. LEGAL EDUC. 477, 483 (2007); Eric Finkelstein, *No Logoff in Fight Over Laptops in Class: Law Students, Professors Debate Classroom Bans*, National Law Journal, June 26, 2006, at 6, col. 2.

Digital statute books are also more durable than physical statute books. For the most part, the printed statute books published by commercial publishers hold up well. But these are, after all, paperback books. The spines of the statute books used by Professor Bradford have broken and pages have fallen out. Professor Bradford is a high-intensity user compared to many of his students, but students have reported similar problems.

Digital books do not physically deteriorate. They can be erased accidentally or lost when a computer drive crashes. But those problems are easily remedied by backing up the file. Print statute books are also lost on occasion, and it is very expensive, and possibly illegal under current copyright law, to back up print books.

### **C. Timeliness**

Print statute books, like casebooks, “are out of date the moment they are printed,”<sup>15</sup> and certainly by the time they get to students. This is inevitable; it takes time to print these books and deliver them to local bookstores. The print statute book Professor Bradford assigned in his spring 2008 Securities Regulation course included changes through October 1, 2007, over three months before the class started.<sup>16</sup> The cutoff date for the other major securities statutory supplement was March 1, 2007, almost a year before Professor Bradford’s spring class began.<sup>17</sup> Sometimes, a statute book’s exact cutoff date is not even specified.<sup>18</sup>

Digital statute books do not have to be printed or physically distributed, so they can be updated immediately before the class begins. The digital securities statute book Professor Bradford used in class beginning on January 12, 2009, was current as of December 29, 2008.

### **D. Ease of Use/Pedagogical Advantages**

Digital statute books also offer potential pedagogical advantages over printed books. Digital statutes are easier for students to work with. The material from digital books can be cut and pasted directly into student notes and outlines. Professors can paste digital statutory materials directly into PowerPoint slide shows and handouts. Statutory materials in print books, on the other hand, have to be retyped or scanned.

It is also easier to find material in digital statutes. Students can search for particular text or section numbers. A hyperlinked table of contents can make it easier to

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<sup>15</sup> Bodie, *supra* note 6, at 10.

<sup>16</sup> See Thomas Lee Hazen, ed., *SECURITIES REGULATION: SELECTED STATUTES, RULES, AND FORMS III* (Abridged ed. 2008). This is actually a pretty good turnaround time for a print statute book.

<sup>17</sup> See John C. Coffee, Jr., et al, eds., *FEDERAL SECURITIES LAWS: SELECTED STATUTES, RULES AND FORMS: 2007 EDITION* iii (2007).

<sup>18</sup> See, e.g., Melvin Aron Eisenberg, ed., *CORPORATIONS AND OTHER BUSINESS ORGANIZATIONS: STATUTES, RULES, MATERIALS, AND FORMS: 2008 EDITION* (2008).

move around in the materials. Print statute books have no search or hyperlink function, and it is often difficult just to find the appropriate table of contents.<sup>19</sup>

Finally, a digital statute book is more likely to be available when the student needs it. Because of the weight and bulk of printed statute books, students sometimes don't bring them to school on days the particular class doesn't meet; if they want to study in their spare time, the statutes and regulations are unavailable.<sup>20</sup> Even on days when the class does meet, students sometimes forget to load the appropriate statute book into their backpacks, forcing them to share with another student or simply to do without. Digital statutes are available whenever and wherever the student has her laptop (or any other device that can read an electronic file). And a student is much less likely to forget her laptop than she is to forget a particular book.

### E. Readability

No discussion of electronic materials is complete without addressing the bogeyman of readability: black-and-white printed text is unquestionably easier to read than text on a computer screen.<sup>21</sup> Computer screens have improved dramatically over the years, and recent developments suggest even more improvement,<sup>22</sup> but computer screens have not yet reached the point where one would want to read novels on them.<sup>23</sup>

However, a statute book is not a novel. One does not read continuously through a statute book. Students read most statutes and regulations in precisely the same jumpy, small-bits-of-text-at-a-time manner that web browsing involves. In fact, what Cory Doctorow calls the "cognitive style" of computers<sup>24</sup> may fit statutes and regulations better than a printed book—precisely because of the text search and navigation features available on a computer.

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<sup>19</sup> Printed statutory supplements often have multiple tables of contents—a basic one at the front with a page reference for each distinct set of materials (a particular statute, for instance), and a more detailed table of contents within each set of materials. See, e.g., Melvin Aron Eisenberg, ed. *CORPORATIONS AND OTHER BUSINESS ORGANIZATIONS: STATUTES, RULES, MATERIALS, AND FORMS: 2008 EDITION* v-vii, 1-6.

<sup>20</sup> It's not just students. Professor Bradford has had this happen on trips, or when he is working from home.

<sup>21</sup> See generally Debra Moss Curtis & Judith R. Karp, *In a Case, On the Screen, Do They Remember What They've Seen?* *Critical Electronic Reading in the Law Classroom*, 30 *HAMLIN L. REV.* 247, 249-261 (2007) (discussing the differences between reading on screen and reading in a book).

<sup>22</sup> For example, Amazon recently produced a new version of its Kindle e-book reader in a larger format directed specifically to the textbook market. See "Amazon Introduces Big-Screen Kindle," *NEW YORK TIMES* (May 6, 2009). And there are rumors that Apple is developing a touch-screen reader that would essentially be a larger version of their iPod Touch. See Dylan F. Tweney, *Large-Screen Kindle Won't Mean Squat if Apple Tablet Arrives*, *Wired*, May 4, 2009, available at <http://www.wired.com/gadgetlab/2009/05/kindle-vs-apple/>.

<sup>23</sup> See Cory Doctorow, *You Do Like Reading Off A Computer Screen*, *Locus Online*, March 13, 2007, available at <http://www.locusmag.com/Features/2007/03/cory-doctorow-you-do-like-reading-off.html>. Even this complaint is overstated. Professor Bradford has read books on his 15-inch laptop screen and 24-inch LCD monitor, and he now regularly reads all law review articles on his computer.

<sup>24</sup> *Id.*

Moreover, this generation of law students is much more comfortable with computer screens than past generations. With the omnipresence of cell phones, digital audio and video players, and laptop computers, many of today's students read on computer screens *all the time*.

### III. Creating a Digital Statute Book

To create a digital statute book, one must find the desired materials in digital form, and then put them in a format suitable for student use. The first step was relatively easy for us; the relevant federal securities laws and regulations are publicly available in digital format and are not copyrighted. Professors preparing digital statute books for other courses might find this step more difficult. The second step—deciding on a format, and reformatting the materials—was the harder one for us, but even that was not overly complicated or time-consuming.

#### A. Source Materials

The various materials that might be included in a statutory supplement—federal and state statutes and regulations, uniform and model acts, restatements of the law—vary in availability. Some are freely and publicly available on-line in various digital formats; some are not available at all.

Some of the materials that might be included in a statutory supplement are available to law students and law professors through Lexis or Westlaw, but we decided not to use these services. We believe creating a statutory supplement for students is consistent with our law school's contracts with Westlaw and Lexis, but we were worried that those contracts might limit the future direction of the project. We were also concerned that Westlaw or Lexis might modify those contracts if faculty-created statutory supplements significantly affected their publishing businesses. Therefore, we avoided Lexis and Westlaw entirely.

Some of the materials that might be included in a digital statute book are available on-line through the Legal Information Institute at Cornell University.<sup>25</sup> The LII is a non-profit activity of the Cornell Law School, and its web site is one of the best, if not the best, starting point for on-line legal resources. However, the LII is, for the most part, a secondary source; it obtains its materials from other on-line resources.<sup>26</sup> Instead of using LII, we decided to go directly to the primary sources.

#### 1. Federal Statutes

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<sup>25</sup> See Cornell University Law School, *Legal Information Institute*, <http://www.law.cornell.edu/> (last visited July 30, 2008).

<sup>26</sup> In addition, the LII claims a copyright on its formatting and organization of the materials available on its web site, and we wanted to avoid any copyright restrictions.

The United States Code is available on-line in digital format.<sup>27</sup> The on-line version of the Code is provided by the Office of the Law Revision Counsel of the U.S. House of Representatives, the same office that is responsible for the printed Code.<sup>28</sup> The on-line version is consistent with the latest print edition of the Code, but it also includes updates with amendments not yet included in the printed Code.<sup>29</sup> To create an up-to-date version of the federal statutes, one must manually incorporate these amendments.

## 2. Federal Regulations

The Code of Federal Regulations is also available on-line. The Electronic Code of Federal Regulations, or e-CFR, is a joint venture between two federal government agencies, the Government Printing Office and the Office of the Federal Register in the National Archives and Records Administration.<sup>30</sup> The e-CFR is updated daily and is usually current within two business days.<sup>31</sup> Amendments and new rules are incorporated into the e-CFR as of their effective date, but the e-CFR also includes hyperlinks to amendments that are not yet effective.<sup>32</sup>

The e-CFR is not currently recognized as an official edition of the Code of Federal Regulations, but the government plans to make it an official compilation as soon as “all remaining technical and performance issues are resolved.”<sup>33</sup> According to its sponsors, the plan is to continue “to make . . . [the e-CFR] . . . available for free, in perpetuity.”<sup>34</sup>

## 3. State Statutes and Regulations

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<sup>27</sup> See *Office of the Law Revision Counsel*, <http://uscode.house.gov/> (last visited June 9, 2009). Files may be downloaded as ASCII text files or as .pdf files. See *Download the United States Code*, <http://uscode.house.gov/download/download.shtml> (last visited June 9, 2009).

<sup>28</sup> See *Office of the Law Revision Counsel: About the Office and the United States Code*, <http://uscode.house.gov/about/info.shtml> (last visited June 9, 2009). See also 2 U.S.C. 285b(3) (Office of Law Revision Counsel responsible to “prepare and publish periodically a new edition of the United States Code”)

<sup>29</sup> See *Office of the Law Revision Counsel: About the Office and the United States Code*, <http://uscode.house.gov/about/info.shtml> (last visited June 9, 2009).

<sup>30</sup> See GPO Access, *Electronic Code of Federal Regulations*, <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=40014c700a8903f5594c817482ebcccd&c=ecfr&tpl=%2Findex.tpl> (last visited June 9, 2009).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* The Administrative Committee of the Federal Register (ACFR) has statutory authority over the Code of Federal Regulations. See 44 U.S.C. § 1510(c). Once the remaining issues are resolved, the Government Printing Office and the Office of the Federal Register will propose to the ACFR that the e-CFR become an official edition of the CFR. See GPO Access, *Electronic Code of Federal Regulations*, <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=40014c700a8903f5594c817482ebcccd&c=ecfr&tpl=%2Findex.tpl> (last visited June 9, 2009).

<sup>34</sup> See GPO Access, *Electronic Code of Federal Regulations*, <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=40014c700a8903f5594c817482ebcccd&c=ecfr&tpl=%2Findex.tpl> (last visited June 9, 2009).

The availability of state statutes and regulations in digital form varies from state to state.<sup>35</sup> The on-line version of state materials has official status in only a few states,<sup>36</sup> and some of the on-line versions are incomplete<sup>37</sup> or raise issues of authenticity.<sup>38</sup> In many states, a complete set of administrative regulations is not available on-line.<sup>39</sup> As a result, including state materials in a digital statute book is a hit-or-miss proposition. Washburn Law School maintains a web site, Washlaw, which allows one to easily search for a particular state's materials.<sup>40</sup>

#### 4. Uniform and Model Acts and Other Copyrighted Materials

Many courses use model or uniform acts and commentary, such as the uniform acts adopted by the National Conference of Commissioners on Uniform State Law (NCCUSL), the model acts adopted by the American Bar Association, or the restatements and commentaries adopted by the American Law Institute.<sup>41</sup> The on-line availability of these materials varies.

The American Bar Association publishes a number of model codes and model acts, including, for example, the Model Rules of Professional Conduct and the Model Business Corporation Act. Some of these materials, such as the Model Rules of Professional Conduct, are available on-line.<sup>42</sup> Others, such as the Model Business Corporation Act, are not.<sup>43</sup>

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<sup>35</sup> See American Association of Law Libraries, *State-by-State Report on Authentication of Online Legal Resources* Appendix A (March 2007), available at [http://aallnet.org/aallwash/authen\\_rprt/AuthenFinalReport.pdf](http://aallnet.org/aallwash/authen_rprt/AuthenFinalReport.pdf).

<sup>36</sup> *Id.*, at 37. A few states have made the online repository the official publication, and no longer publish print versions of some or all of the state statutory or regulatory materials. See *id.*, at 35.

<sup>37</sup> California, for example, excludes the building standards title, which includes copyrighted materials from model code providers. *Id.*, at 86. As of March 2007, much of the Colorado administrative code was still "under construction." *Id.*, at 88. The coverage in Vermont is "uneven and incomplete." *Id.*, at 182.

<sup>38</sup> *Id.*, at 74.

<sup>39</sup> See *id.*, at 90 (Connecticut); 92 (Delaware); 130-131 (Mississippi); 144 (New Jersey); 148 (New York).

<sup>40</sup> See Washlaw: Legal Research on the Web, <http://washlaw.edu/> (last visited June 9, 2009).

<sup>41</sup> The Business Associations course is a good example. One popular statutory supplement includes all or part of the Restatement (Second) of Agency, the Restatement (Third) of Agency, the Uniform Partnership Act, the Revised Uniform Partnership Act (1997), the Revised Uniform Limited Partnership Act (1976), the Uniform Limited Partnership Act (2001), the Uniform Limited Liability Company Act (1996), the Revised Uniform Limited Liability Company Act (2006), the Model Entity Transactions Act 2007, the Revised Model Business Corporation Act, the Uniform Commercial Code, the Uniform Fraudulent Transfer Act, the ABA Model Rules of Professional Conduct, the American Law Institute Principles of Corporate Governance: Analysis and Recommendations, and the American Bar Foundation Commentaries on Debentures. See Melvin Aron Eisenberg, ed., *CORPORATIONS AND OTHER BUSINESS ORGANIZATIONS: STATUTES, RULES, MATERIALS, AND FORMS: 2008 EDITION*.

<sup>42</sup> See American Bar Association, *Model Rules of Professional Conduct*, available at [http://www.abanet.org/cpr/mrpc/mrpc\\_toc.html](http://www.abanet.org/cpr/mrpc/mrpc_toc.html) (last visited June 9, 2009).

<sup>43</sup> The Model Business Corporation Act is available on-line with revisions through 2002. See Model Business Corporation Act (3d edition 2002), [www.abanet.org/buslaw/library/onlinepublications/mbca2002.pdf](http://www.abanet.org/buslaw/library/onlinepublications/mbca2002.pdf) (last visited June 9, 2009). However, the Act has been amended several times since 2002, and the most recent version is not publicly available.

All of the Uniform Acts adopted by NCCUSL are available on an archive maintained by the University of Pennsylvania Law School.<sup>44</sup> The uniform acts are available in .pdf, ASCII text, or WordPerfect formats, but, unfortunately, they are not available as Word documents.<sup>45</sup>

The American Law Institute publishes both restatements of the law and some additional materials, such as Principles of the Law and codifications such as the Model Penal Code and the Uniform Commercial Code. These materials are not publicly available on-line.

For some courses, such materials are essential. For instance, the ABA's Model Business Corporation Act and NCCUSL's Uniform Partnership Act and Uniform Limited Partnership Act are indispensable in a Business Associations course.

Unfortunately, these materials, unlike federal and state statutes and regulations, are copyrighted.<sup>46</sup> A statute book containing any of these materials can be assembled only with the permission of the copyright holder,<sup>47</sup> and the copyright holders vary in their willingness to accommodate a project like this. We did not need any of this material for our digital securities statute book, but we contacted the copyright holders to see how willing they would be to license their materials.

The American Bar Association rejected our request to include the Model Business Corporation Act in a set of digital corporate law materials. The ABA licenses this material for use in commercially published print statute books, but it was unwilling to license its materials for a digital supplement that would be provided free to students, whether or not we paid a licensing fee.<sup>48</sup>

The American Law Institute was more receptive than the ABA. We asked them if we could include their Principles of Corporate Governance in a set of digital corporate law statutory materials. The ALI was unwilling to allow us to use the Principles for free, but they were willing to allow the Principles to be included in a digital supplement for a flat, nominal annual fee.

We also contacted NCCUSL about the possibility of including several uniform acts—the Uniform Partnership Act, the Uniform Limited Partnership Act, and the Uniform Limited Liability Company Act—in a digital corporate law supplement. NCCUSL was also more accommodating than the ABA, but never provided a definitive

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<sup>44</sup> See University of Pennsylvania Law School, *NCCUSL Drafts and Final Acts*, [http://www.law.upenn.edu/bll/archives/ulc/ulc\\_final.htm#final](http://www.law.upenn.edu/bll/archives/ulc/ulc_final.htm#final) (last visited June 9, 2009). This archive contains not only final acts approved by NCCUSL, but also drafts of other statutes. See *id.*, <http://www.law.upenn.edu/bll/archives/ulc/ulc.htm#drafts> (last visited July 30, 2008).

<sup>45</sup> See *id.*, [http://www.law.upenn.edu/bll/archives/ulc/ulc\\_final.htm#final](http://www.law.upenn.edu/bll/archives/ulc/ulc_final.htm#final) (last visited June 9, 2009).

<sup>46</sup> See Bodie, *supra* note 6, at 30-31.

<sup>47</sup> An alternative would be to use the text of the act as adopted by a particular state, particularly if that state uses a numbering system that matches the section numbers of the model act.

<sup>48</sup> They were willing to consider licensing the statute for use in a particular course at a particular law school, but not for materials that would be available to all law students nationwide.

answer to our request. We terminated the discussions when the ABA rejected our licensing request.

## **B. Formatting**

The first step is finding the material; the second step is formatting it for student use. A number of different formats are possible—.pdf files readable by Adobe Acrobat Reader; web-based .html format; proprietary word processing formats used by WordPerfect and Word; .txt text files. We ultimately decided to make the digital securities statute book a .pdf document.

### **1. Criteria**

Eight criteria guided our choice of format. First and foremost, we wanted the format to be something students could access without having to purchase additional software. Second, we wanted to create statutes and regulations that were easily navigable. Third, we wanted students to be able to do text searches of the materials. Fourth, we wanted students to be able to highlight and underline the materials. Fifth, we wanted students to be able to add notes and comments. Sixth, we wanted students to be able to copy text from the materials and paste it into other materials such as their notes and outlines. Seventh, we wanted the materials to be free of any digital rights management (DRM) software that would limit student use. Finally, we wanted the materials to either be free to students or available for a nominal sum.

#### *a. Accessibility*

The first and most important requirement was student accessibility. We wanted students to be able to access the digital statute book using software that they already owned or that is available to them for free. We would not be doing a favor to law students if we forced them to buy expensive software or a special reader to access a free statute book. We also wanted to use software that even technically unsophisticated users would find easy to use. Those preferences limited us to materials that can be read using a web browser like Internet Explorer or Mozilla Firefox, the free Adobe Acrobat Reader, or Microsoft Word.<sup>49</sup>

#### *b. Navigability*

Students need to be able to move around in the materials. They need an index that will allow them to orient themselves, find a statute or regulation, and locate a particular section within that statute or regulation. They need to be able to move back

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<sup>49</sup> We never seriously considered WordPerfect. Word is ubiquitous; WordPerfect is not. Word is not a free product, but many universities have site licenses that allow students to purchase a full-featured copy of Microsoft Word for a nominal price. At the University of Nebraska-Lincoln, for example, students may buy Microsoft Office 2007 Professional suite for only \$14.99. See University of Nebraska-Lincoln, *Software Deals for Students*, <http://shop.unl.edu/software.php> (last visited July 29, 2008). In any event, WordPerfect reads most Word documents well, so using the Word .doc format would not freeze out WordPerfect users.

and forth from index to statute to regulations, and from section to section within a particular statute or regulation, with little effort. If it takes thirty seconds or more to find a particular section, the materials are not suitable for classroom use.

Fortunately, both Adobe Acrobat and Microsoft Word enable one to create a multi-level, collapsible index that facilitates navigation. Using frames and hyperlinks, a similar result is possible for .html documents. The ease with which such an index can be created varies, but it is possible for all of the formats we considered.

### *c. Text Searching*

A major advantage of digital media over printed text is the ability to search for a particular rule number or string of text. All of the formats we considered include full text-searching capability. Numerous search engines, such as Google and Bing, are available for .html documents, and both Adobe Reader and Microsoft Word include a built-in search function.

### *d. Highlighting and Underlining*

Many students (and professors) like to highlight and underline, and some of them like to do it in multiple colors. We wanted to choose a format that would allow students to highlight and underline and save the material in its marked-up form.

Both Microsoft Word and Adobe Reader include these functions. In Word, one can highlight in multiple colors, underline text, or even change the color of text. One can do the same things in Adobe Reader, but only if the person who creates the .pdf document enables these features.<sup>50</sup>

Browsers like Microsoft Internet Explorer and Mozilla Firefox, used to read .html documents, are more problematic. Neither Internet Explorer nor Mozilla have built-in highlighting or underlining features. Plug-ins that add these functions to the basic browser are available as free downloads, but, in our opinion, they are not as good as the equivalent functions in Adobe Reader and Microsoft Word. In addition, we were uncomfortable forcing students to find and install these plug-ins as a condition to using the digital statutes.

### *e. Adding Notes and Comments*

Both Microsoft Word and Adobe Acrobat Reader allow one to post notes and comments (in the case of Acrobat Reader, only if the person creating the document has enabled the commenting features). Neither tool is particularly good, but they work, and documents may be saved with the comments. As with highlighting, neither Internet

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<sup>50</sup> The person creating a .pdf document in Adobe Acrobat does this easily by clicking on the Comments menu, then clicking on "Enable for Commenting and Analysis in Adobe Reader." Anyone reading the document in Acrobat Reader may then activate a Commenting toolbar that allows one to highlight, underline, and add comments, among other things.

Explorer nor Firefox contain a comment tool, but plug-ins are available that add note and comment functions.

### *f. Copying and Pasting*

All of the formats we considered—.html, .doc, and .pdf—allow students to cut text and paste it into other documents. Cutting and pasting is relatively easy in all three formats, although minor formatting problems sometimes arise when one is pasting .html material into Word or WordPerfect documents.

### *g. Digital Rights Management*

We did not want the digital statute book to be encumbered by digital rights management (DRM). For those of you who don't download music and have never heard of the Digital Millennium Copyright Act,<sup>51</sup> DRM software limits the ability of users to copy digital materials or convert them to other formats. Until recently, most commercial music was sold with digital rights protection; almost all commercial digital video is still protected by DRM.<sup>52</sup>

The limited digital materials produced so far by the commercial casebook publishers have incorporated DRM—usually by forcing students to go to a dedicated web site or to use proprietary software to use the materials.<sup>53</sup> For commercial publishers, the desire for such restrictions is understandable. In the absence of DRM, a single student could purchase one copy of a statute book and freely distribute it to everyone else, significantly reducing sales.<sup>54</sup>

DRM appears to be slowly disappearing in the music world. Most commercial music was originally sold on-line with significant DRM restrictions, but, in the face of pressure from sellers like iTunes and Amazon, most digital music is now available in a DRM-free format.<sup>55</sup> Similarly, some books are being offered free in unrestricted digital form in the hope that this will lead to greater sales of the printed book.<sup>56</sup>

<sup>51</sup> Pub. L. No. 105-304, 112 Stat. 2860 (Oct. 28, 1998).

<sup>52</sup> See John Y. Kim, *The Great Kaleidescape: New Hope in the Digital Rights Debate*, 27 TEMP. J. SCI. TECH. & ENVTL. L. 339 (2008).

<sup>53</sup> For example, the Thomson West Interactive Casebook series is accessed via a password-protected web site. See Interactive Casebook Series, <http://www.interactivecasebook.com> (last visited June 9, 2009). StatutesOnDemand, Thomson West's limited experiment with digital statutes, offers downloadable documents in .pdf format, but those files are protected by digital rights management. See StatutesOnDemand, <http://statutesondemand.com/Default.aspx> (last visited June 9, 2009). StatutesOnDemand uses a plug-in for Adobe Reader; the files cannot be accessed without that plug-in, which limits transferability. See *id.*, <http://statutesondemand.com/faq.aspx> (last visited June 9, 2009).

<sup>54</sup> See, e.g., David I. C. Thomson, LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE 87-88 (2009).

<sup>55</sup> See Kim, *supra* note 52, at 349-351.

<sup>56</sup> See, e.g., Cory Doctorow, *Giving It Away*, *Forbes*, Dec. 1, 2006, available at [http://www.forbes.com/2006/11/30/cory-doctorow-copyright-tech-media\\_cz\\_cd\\_books06\\_1201doctorow.html](http://www.forbes.com/2006/11/30/cory-doctorow-copyright-tech-media_cz_cd_books06_1201doctorow.html).

We rejected DRM for several reasons. First, we are philosophically opposed to digital rights management, but we also rejected it for other reasons. First, we wanted to give students to be able to use the digital statute book in any way they found helpful—cutting and pasting it into their notes; printing all or part of it; sharing their annotations. We didn't want to force the students to go to a protected web site to view the materials, to use special proprietary software, or to download plug-ins that disable some of the functions of their existing software. We also wanted the materials to be as portable as possible (which eliminates the possibility of any DRM control that forces students to use the materials on a protected web site). Finally, since we decided to offer the materials for free, it did not matter to us whether students copied the book.

### *h. Pricing*

One of our goals was to save students money, so cost was an important issue. We wanted to be able to provide the statutory materials to students for free or, at worst, for a nominal charge. Pricing might have become an issue if we had to license copyrighted material, but we included no copyrighted material in this digital statute book. The only cost of these materials was our time and effort, and the amount of time and effort involved was surprisingly small.<sup>57</sup>

## **2. Our Choice**

Any of the formats we considered, .pdf, .doc, or .html, would have probably been satisfactory, but we ultimately decided to format the digital statute book as a .pdf document. We chose the .pdf format instead of Word for two reasons. First, we found it easier to create a hyperlinked index using the Adobe software. Second, unlike Adobe Reader, Microsoft Word is not free, and some students do not use Word. We chose .pdf over .html primarily because we thought it would be easier for students to highlight and annotate a .pdf document.

## **IV. The Experiment: A Digital Securities Regulation Statutory Supplement**

We tested the practicality of digital statute books by preparing one for use in Professor Bradford's two securities law classes in the spring of 2009—Securities Regulation; and Securities Brokers, Mutual Funds, and Investment Advisers.

### **A. The Two Classes**

The Securities Regulation class is a typical introduction to federal securities law. It covers the regulation of the distribution and trading of securities, focusing on the Securities Act of 1933 and the Securities Exchange Act of 1934, with minor attention to state "blue sky" laws. Students use a traditional, problem-oriented casebook—*Securities Regulation: Cases and Materials*, by James D. Cox, Robert W. Hillman, and Donald C.

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<sup>57</sup> Most of our time and effort was spent figuring out what we wanted to do and how to do it. That is a nonrecurring cost.

Langevoort.<sup>58</sup> This book, published by Aspen Publishers, includes cases, problems, regulatory releases, textual notes, and questions.

The statutory and regulatory materials needed include the Securities Act, the Securities Exchange Act, the regulations adopted by the Securities and Exchange Commission under both statutes, and certain Securities Act and Exchange Act forms. The class also deals briefly with the Uniform Securities Act, which is copyrighted. But Professor Bradford's discussion of the Uniform Act is minimal, and the relevant provisions of the Uniform Act are fully described or quoted in the casebook. Therefore, Professor Bradford decided he did not need to include the Uniform Act in the supplement.<sup>59</sup>

The Securities Brokers, Mutual Funds, and Investment Advisers class covers three related topics: the regulation of brokers under the Securities Exchange Act; the regulation of investment companies under the Investment Company Act; and the regulation of investment advisers under the Investment Advisers Act. For this class, students needed all the statutes and regulations used in the Securities Regulation class, plus the Investment Company Act, the Investment Advisers Act, and the SEC regulations and forms associated with those two statutes.

Students in the Securities Brokers class do not use a traditional casebook. Instead, they use a combination of materials prepared by Professor Bradford and materials prepared by Professor Larry Barnett at Widener University entitled *Readings on the Investment Company Act and the Investment Advisers Act*. These materials are distributed to students in digital (.doc) format and some of the students do not print them. This provided a good opportunity to see how digital statute books interact with digital casebooks, something that is more likely to occur in the future.<sup>60</sup>

We originally planned to create two separate statutory supplements, one for each course. However, because the materials needed for the two courses overlapped, we ultimately decided to prepare only a single supplement for both courses.<sup>61</sup>

## B. Preparing the Materials

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<sup>58</sup> (5<sup>th</sup> ed. 2006).

<sup>59</sup> The Uniform Securities Act is available on-line. See Uniform Securities Act, <http://www.law.upenn.edu/bll/archives/ulc/securities/2002final.htm> (last visited June 9, 2009). In the future, to facilitate further student exploration of the Uniform Act, we may include in the digital securities book a hyperlink to the Uniform Act.

<sup>60</sup> In class, Professor Bradford used the statute book in digital form, but used printed copies of the course materials. He decided that it would be too hectic to keep track of both the digital statutes and the digital course materials on his relatively small laptop while simultaneously running PowerPoint slides off the classroom computer. Younger faculty members who grew up multitasking on a computer might be able to do this more easily.

<sup>61</sup> As discussed in section V.C.3, *infra*, a couple of students complained that the digital statute book slowed down their computers significantly. In the future, we might create a separate statute book for the Securities Regulation course, to reduce the file size of the digital book used in that class.

We downloaded .txt file versions of the federal securities statutes and regulations from the on-line U.S. Code<sup>62</sup> and e-CFR web sites.<sup>63</sup> We obtained copies of the SEC forms from the SEC's own web site.<sup>64</sup>

Most of the SEC forms were already in .pdf format and needed no further editing.<sup>65</sup> We edited the rest of the materials in Microsoft Word.<sup>66</sup> When we pasted the source material into Word documents, some of the original formatting, particularly the indentation of paragraphs and subparagraphs, was lost. Fortunately, we were able to restore the outline alignment without line-by-line reformatting.<sup>67</sup> Formatting took approximately two hours for each of the sets of regulations and approximately two to three hours for each statute. Detailed instructions about how to do this using Microsoft Word are available on Professor Bradford's web site.<sup>68</sup>

We formatted each statute or set of regulations, as well as a title page, separately. When each Word file was complete, we converted it into a .pdf file using the Adobe Acrobat plug-in in Word 2007. We then merged these individual .pdf files into the digital statute book using the "Combine" function in Adobe Acrobat.<sup>69</sup>

The digital statute book includes a hyperlinked table of contents. We used the Acrobat plug-in for Word to automatically tag section headings. Then, in Adobe Acrobat, we used those tags to automatically generate bookmarks. Here is an example of what the index looks like. The first screen shot is of the index fully collapsed:

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<sup>62</sup> See U.S. House of Representatives, Office of the Law Revision Counsel, <http://uscode.house.gov/lawrevisioncounsel.shtml> (last visited June 9, 2009).

<sup>63</sup> See GPO Access, *Electronic Code of Federal Regulations*, <http://ecfr.gpoaccess.gov/> (last visited June 9, 2009).

<sup>64</sup> See Securities and Exchange Commission, <http://www.sec.gov/> (last visited June 9, 2009).

<sup>65</sup> See Securities and Exchange Commission, *Forms List*, <http://www.sec.gov/about/forms/secforms.htm> (last visited June 9, 2009).

<sup>66</sup> We decided to make the materials available in .pdf format, but even Adobe recommends editing .pdf documents outside of Adobe Acrobat using word processing software. See *Editing PDFs* in the Adobe Acrobat 9 Pro help files, which suggest users "reserve . . . substantial revisions for your source application."

<sup>67</sup> The "we" in this sentence and the next was Mr. Hautzinger. Professor Bradford did initially reformat the Securities Act of 1933 line by line, but that took too much time and effort. Mr. Hautzinger developed a more efficient formatting method.

<sup>68</sup> See <http://www.unl.edu/bradford/Digital%20Statute%20Book.html> (last visited July 16, 2009).

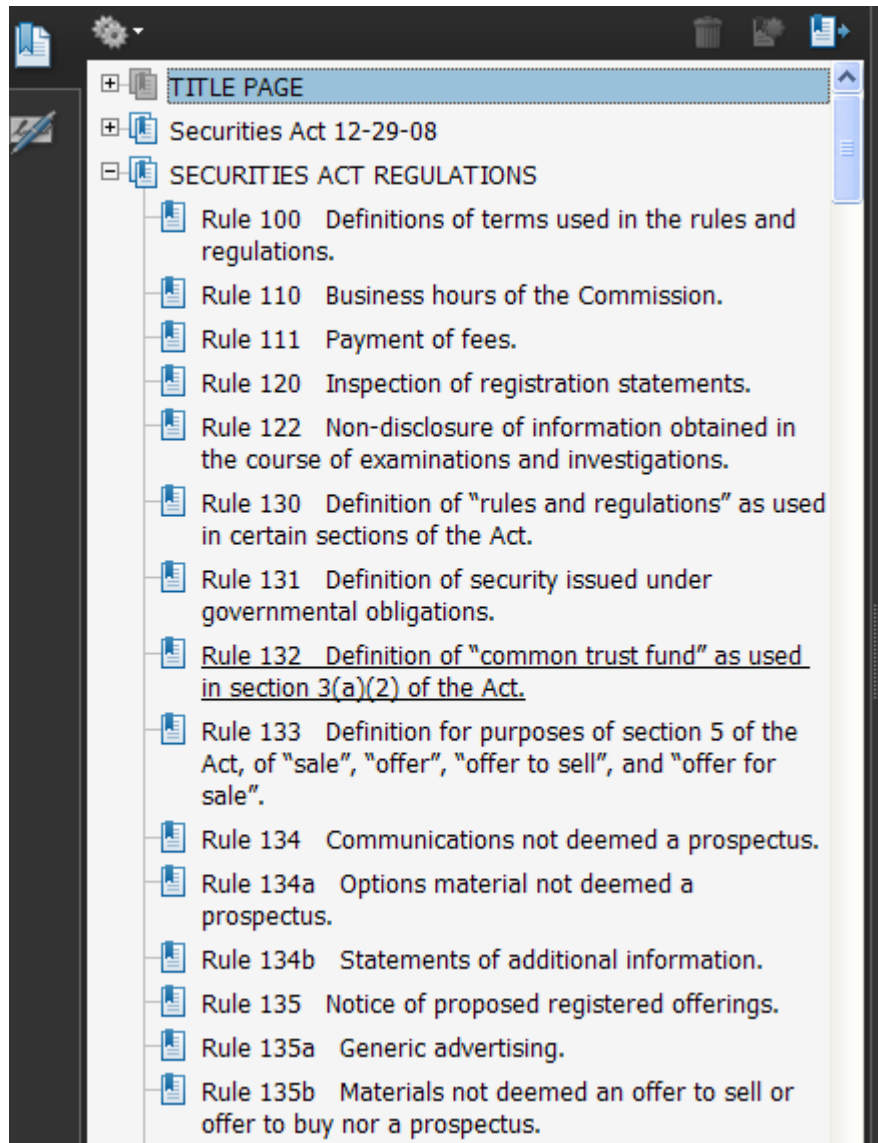
This reformatting may seem like a lot of time and effort, but it is a one-time effort for the statutes. Once the statutes are properly formatted, the only additional effort required from year to year is to track and incorporate amendments into the existing materials.

Originally, the plan was to update all the materials, statutes and regulations, in this manner, but we decided this would not be efficient for the regulations, which are amended regularly. For example, we found 33 final rules releases from the SEC in the period May 1, 2008-April 30, 2009. We decided it would be easier to recreate the regulations each year from scratch than to cut and paste all the changes. The statutes change less often, so we plan to cut and paste any changes into the files we have already created.

<sup>69</sup> In the Adobe Acrobat file menu, select *Combine*, then *Merge Files Into a Single PDF*.



The second screen shot shows one of the collapsible indices expanded:



We cannot fully describe the digital statute book in this article; we invite readers to review it directly. It is available on Professor Bradford's web site.<sup>70</sup> Anyone may download and copy it, subject to a Creative Commons Attribution-Noncommercial-Share Alike license.

### C. Distribution to the Students

The digital statute book was posted on Professor Bradford's web site two weeks prior to the beginning of classes and students were given the URL. Professor Bradford also offered to put the statutes on a CD or USB drive, but no students asked us to. To

<sup>70</sup> *Digital Securities Law: Statutes and Regulations*, <http://www.unl.edu/bradford/Digital%20Statute%20Book.html>.

accommodate students who might not want to use the digital materials, Professor Bradford suggested a print alternative; this book was available in the University bookstore.<sup>71</sup> Only four students chose to use the print book, and all of them also used the digital book at least part of the time.<sup>72</sup>

Some readers might object that the choice between free digital materials and rather costly printed materials is an unfair one. Some students might have chosen the digital materials for cost reasons even though they would have preferred to use the printed materials.<sup>73</sup> That objection misses the point; cost affects the choices people make and to talk about preferences independent of cost is silly. The important question is whether the less costly alternative performs adequately.<sup>74</sup>

#### **D. Use of the Materials at Other Schools**

We did not publicize the materials to students or faculty outside the University of Nebraska College of Law. The materials were posted on a public web site, so anyone who stumbled across them could download and use them, but we wanted to test them with a small number of students before making them available nationally. As far as we know, no students or faculty at other schools used the materials in the spring 2009 semester.

### **V. Overall Evaluation of the Experiment and Possible Future Changes**

Near the end of the semester, we surveyed the students in both classes to see if they used the digital statute book and, if they did, what they thought of the experience. The survey's response rate was extremely high; 24 of the 25 students enrolled in the two classes responded.<sup>75</sup> The survey form, with a full compilation of all student answers, is available on Professor Bradford's web site.<sup>76</sup>

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<sup>71</sup> The alternative was Thomas Hazen, ed., *SECURITIES REGULATION: SELECTED STATUTES, RULES AND FORMS: 2009 EDITION*.

<sup>72</sup> See Student Survey, *infra* note 76, Questions 1, 3. As far as we know, none of the students who used the digital statute book printed it in its entirety. It does appear, however, that some students printed individual sections of the statutes or rules for particular classes. See *id.*

<sup>73</sup> Not surprisingly, several students indicated that cost was an important advantage of the digital statute book. See section V.A, *infra*.

<sup>74</sup> Professor Bradford chose his current car rather than a Porsche 911 GT2 primarily because of the cost of the Porsche. He is reasonably sure the Porsche would be better, but his less expensive car performs adequately.

<sup>75</sup> Eighteen students were enrolled in Securities Regulation and eleven students were enrolled in Securities Brokers, but a few students were enrolled in both classes, so the total number of students was only 25.

<sup>76</sup> See <http://www.unl.edu/bradford/Digital%20Statute%20Book.html> (last visited July 16, 2009) (hereinafter Student Survey).

After the exam in each course, we sent a follow-up e-mail asking students about their experiences using the digital statutes on the exams.<sup>77</sup> This e-mail and a compilation of the student responses are also available on Professor Bradford's web site.<sup>78</sup>

### A. The Student Experience

Twenty of the 24 students who responded to the survey used the digital statute book exclusively. The other four students used both the digital statute book and the print statute book. Two of those four used the digital statute book approximately 50 percent of the time and the other two used the digital statute book approximately 20 percent of the time.<sup>79</sup> Of those four students, three indicated they preferred to use a print book when they were working on another document on their computers, rather than using split screens or navigating back and forth. Two of the four indicated that they simply preferred to read printed text.

The students' overall response was very positive. Seventeen of the students indicated they preferred the digital statute book to print books they had used in other classes and only three indicated they preferred print.<sup>80</sup> Almost all of the students who used the digital version indicated that they would choose it again if they had a choice.<sup>81</sup>

One of the survey questions asked students what aspects of the digital statute book they found most appealing. The leading responses fell into the following categories: the ability to navigate within the materials (11 responses); the ability to highlight and annotate (9 responses); price (7 responses); portability, as compared to a print book (7 responses); the ability to copy, cut, and paste (4 responses); and the ability to search (4 responses).<sup>82</sup>

Another survey question asked students what they found least appealing about the digital statute book. The negative responses were much more diverse, but the leading issue was navigation, particularly navigation within subsections of a statute. Four students complained about some issue with navigation, and three of those students noted problems navigating within a section of the statute.<sup>83</sup> The only other multiple responses were: problems with the computer running slow or freezing (2 responses); the inability to search (2 responses); and the inability to create additional bookmarks (2 responses).<sup>84</sup> Some of these issues are discussed in greater detail in subsection C below.

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<sup>77</sup> A few of the full surveys were returned after the exams; that is why the full survey includes comments about using the digital statute book on the exam.

<sup>78</sup> See <http://www.unl.edu/bradford/Digital%20Statute%20Book.html> (last visited July 16, 2009) (hereinafter Post-Exam Survey).

<sup>79</sup> See Student Survey, *supra* note 76, Question 1.

<sup>80</sup> See Student Survey, *supra* note 76, Question 9. The four remaining students either expressed no clear preference or indicated that they preferred print for some purposes and digital for others. *Id.*

<sup>81</sup> See Student Survey, *supra* note 76, Question 11.

<sup>82</sup> See Student Survey, *supra* note 76, Question 9.

<sup>83</sup> See Student Survey, *supra* note 76, Question 10.

<sup>84</sup> See Student Survey, *supra* note 76, Question 10.

## B. Professor Bradford's Experience

Professor Bradford used the digital statute book exclusively.<sup>85</sup> He used it to prepare for class, highlighting and annotating the copy on his laptop. He cut and pasted from the digital statute book when he wanted to include statutory or regulatory language on PowerPoint slides or in handouts. And he used the digital statute book for reference as he taught. He took the print copy to class each day as a backup, but neither Professor Bradford nor any of the students ever needed it.<sup>86</sup>

Professor Bradford planned to project statutes and regulations in class directly from the digital statute book. He often projects statutes and regulations using PowerPoint slides because he believes this is an effective way to force students to grapple with the actual language of the rules. However, the version of the digital statute book Professor Bradford kept open on his laptop during class included his own highlighting and annotations, and Professor Bradford wanted students to analyze the rules on their own. He could have projected a clean, unannotated version of the digital statute book, but it was easier just to incorporate the relevant statutory and regulatory language into PowerPoint slides.

Professor Bradford's overall evaluation of the experiment was extremely positive, and he plans to continue using the digital statutes. He had only two complaints; each was also reflected in student responses to the survey. First, the highlighting and annotation features in Adobe Reader are a little cumbersome and, as a result, slightly slower than highlighting and annotating on a print copy.<sup>87</sup> Second, like some of his students, Professor Bradford found it difficult to navigate within very long sections during class. It was easier to find particular sections, but harder to find material within a lengthy section.<sup>88</sup> Even when Professor Bradford found the relevant passage, he sometimes had to wait for his students to catch up.

## C. Particular Issues

### 1. Navigation

Student views on navigation within the materials were mixed. Some students said it was harder to move around in the digital statute book than in a print statute book. Other students rated navigability as the best feature of the digital statute book, and

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<sup>85</sup> A professor could allow her students to use the digital statute book without using it herself. A professor's choice need not mirror the students' choices. But we wanted to test the teaching efficacy of the digital statute book, not just its utility to students.

<sup>86</sup> In addition to the version on his laptop, Professor Bradford installed a copy of the digital statute book on the classroom computer, but he never used that digital backup, either.

<sup>87</sup> On the other hand, one cannot easily remove or edit highlighting or annotation on a printed book, something that is easy to do in the .pdf version. And, on a digital copy, one never has the problem of insufficient space in the margins in which to fit annotations.

<sup>88</sup> When using a print statute book, Professor Bradford often provides page numbers so students can locate a particular section more quickly. That speeds up the use of the print book, so it is not clear that using the digital book materially changed the total class time spent navigating within the materials.

indicated it was easier to navigate in the digital book. Except for the problem discussed in the next paragraph, we suspect this difference reflects students' relative comfort browsing digital materials of any sort.<sup>89</sup>

Several students indicated that it was easy to get lost within long sections of the statutes or regulations, a problem Professor Bradford also experienced on occasion. Each section of the statutes and regulation was bookmarked, so it was relatively easy to find a particular section. However, subsections were not bookmarked. The hierarchical structure of the statute is indicated by progressive indentation, as show in the illustration below, but the level of indentation is not always obvious in a long passage. Thus, it was sometimes difficult to determine exactly where one was in a lengthy section.

(2) Judicial review

Within -

(A) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or

(B) 10 days after the Commission renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and-desist order entered without a prior Commission hearing.

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under paragraph (1) of this subsection.

(3) No automatic stay of temporary order

The commencement of proceedings under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(4) Exclusive review

Section 9(a) of this Act shall not apply to a temporary order entered pursuant to this section.

(e) Authority to enter order requiring accounting and disgorgement

In any cease-and-desist proceeding under subsection (a) of this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

A couple of students complained about their inability to add their own bookmarks. We agree that personalized bookmarking would be a nice feature, but the Adobe Reader software does not allow it. One can only add bookmarks to a document in the full-featured (and expensive) Adobe Acrobat software. A JavaScript file that adds a

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<sup>89</sup> A few of the students' navigation problems involved fairly basic problems using their computers. For example, one student complained that it was "impossible to just use the mouse to try to manually move the scroll bar a tad to get the subsection you want," apparently not realizing that clicking on the arrow key on the scroll bar adjusts the view a line at a time. We wrongly assumed that all students would be adept at things like this.



Unfortunately, these Adobe Reader functions are a little cumbersome. It is difficult to both underline and highlight the same text. Highlighting in multiple colors involves a two-step process: first highlighting in the default color, then opening a Properties pop-up to change the color. The same two-step process is required to change underlining colors or styles.

Given these difficulties, we were not surprised to see student complaints about the highlighting and annotation features. Some students said they would have preferred highlighting and annotating a print book. What surprised us were the positive comments; in spite of these issues, some students preferred highlighting and annotating in the digital book. These students may just be more comfortable with computers and electronic materials.

### *3. Speed of Use*

Some of the students complained that their computers ran more slowly when using Adobe Acrobat to read the digital statute book. Professor Bradford did not have any problems on his laptop computer, and he usually has a number of different programs and windows open. However, Professor Bradford's laptop is fairly new, with a relatively fast processor and ample RAM, and it is understandable that the digital book might run more slowly on older, slower computers, particularly if those computers are using the Microsoft Vista operating system. The digital statute book is approximately 18 megabytes, and the file size increases with the addition of annotations and highlighting.<sup>92</sup> Moreover, Adobe Reader is notoriously slower than many word processing programs.

### *4. Formatting Issues*

The digital statute book had a couple of minor formatting problems, one of which was entirely our fault and will be corrected in later editions. First, a few lines of text were missing at two points in one of the statutes. The problem resulted from pure sloppiness—our failure to follow our own formatting instructions for that particular statute. Professor Bradford “solved” the problem by distributing handouts containing the additional lines.<sup>93</sup>

The second formatting problem was relatively minor: at a couple of points, the statutes did not indent properly. Here is an example:

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<sup>92</sup> An unmarked version of the digital statute book is 17.8 MB. Professor Bradford's fully annotated copy is 20.0 MB.

<sup>93</sup> We could have made the corrections on the .pdf itself and distributed a new version of the digital statute book. However, students who had already highlighted and annotated the statute could not have easily transferred their mark-up to the new version.

(3) "Affiliated person" of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person;

(D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

This only happened a couple of times, and we are not sure exactly why it happened—perhaps stray code in the materials we downloaded. It is at most an annoyance, but we will correct it manually in future versions of the digital statute book.

### ***5. Use on Exams***

We were a little concerned about students' ability to use the digital statute book to take the exams. Professor Bradford requires students to take exams on their computers using Exam4 software,<sup>94</sup> and we were worried students might have trouble navigating between the exam and the statute book on a single computer monitor. As far as we know, no one had any such trouble. The post-exam comments were positive, and a couple of people even volunteered that they found it easier to use take the exam using the digital statute book.<sup>95</sup>

## **D. Possible Future Changes**

We plan to change future editions of the digital statute book in response to student comments and Professor Bradford's own experience using the book. First and foremost, it is clear that some students need more instruction about how to effectively use the digital book. Second, we want to make it easier to navigate within lengthy sections. Third, we want to enhance the statutes by adding internal hyperlinks.

### ***1. Additional Instruction in Using Adobe Reader***

The first edition of the digital statute book includes some basic instruction in the use of Adobe Reader.<sup>96</sup> In, particular we explain how to view the index and how to

<sup>94</sup> See Exam4, <http://www.exam4.com> (last visited June 9, 2009).

<sup>95</sup> See Post-Exam Survey, *supra* note 78.

<sup>96</sup> The Title Page includes the following instructions:

#### *1. Table of Contents*

- a. To access the table of contents, click on the Bookmarks tab in Adobe

highlight or add comments. The survey responses make it clear that this is insufficient, that some students need additional information about how to use Adobe Reader.

First, some students had trouble activating the highlighting and commenting features. One student was using an older version of Adobe Reader that (the student said) did not include those features.<sup>97</sup> A couple of students tried to use the .pdf reader Apple includes in its Mac software; that reader does not include commenting functions. Professor Bradford made it clear to students in the syllabus for each course that students would need Adobe Reader for the statutes; at least one of the Mac users just assumed the native .pdf reader on her Mac *was* Adobe Reader. In the future, we will make it clear that students must download the latest version of Adobe Reader and use that to read the digital statute book.<sup>98</sup>

Second, a couple of the survey comments indicate that some students were unfamiliar with Adobe Reader's search function, used to search within .pdf documents. This surprised us; the *Find* function in Adobe Reader is relatively easy to find and use,<sup>99</sup> and the survey comments indicate that other students found this function very helpful in navigating the digital statute book. In the next version of the digital securities statutes, we will specifically discuss how to search.

Third, the digital statute book's instructions on highlighting and commenting are very brief. We say:

2. *Highlighting and Comments*: You can highlight or add comments to these materials. In the Adobe Reader Tools menu, choose *Commenting*, then click on *Show Commenting Toolbar*. You can highlight, underline, or add notes or

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Reader. (If the Bookmarks tab is not visible, choose Navigation Tabs in the Adobe Reader View menu, then select Bookmarks.)

b. To make navigation easier, I suggest you keep the Bookmarks frame open as you use the materials. You can change the relative sizes of the bookmarks and text panes by clicking your mouse on the line between them and moving the division line to the desired location.

c. You can move to any location in the materials by clicking on it in the Bookmarks tab.

2. *Highlighting and Comments*: You can highlight or add comments to these materials. In the Adobe Reader Tools menu, choose *Commenting*, then click on *Show Commenting Toolbar*. You can highlight, underline, or add notes or comments to the text. Just remember to save the revisions when you exit the materials.

<sup>97</sup> We are not sure why this student did not simply download the newest version of Adobe Reader, unless he or she did not realize it is available for free.

<sup>98</sup> One of the students suggested Foxit Reader, another .pdf application. See *Foxit Reader 3.0 for Windows*, <http://www.foxitsoftware.com/pdf/reader/> (last visited July 10, 2009). Foxit, which is available for free, is a little more trim and less cumbersome than Adobe Reader, so we may suggest it to students in the future as an alternative to the Adobe product.

<sup>99</sup> It can be accessed either by typing Control-F or through the Edit menu.

comments to the text. Just remember to save the revisions when you exit the materials.

In the future, we will provide students with more instruction about how to highlight and underline in multiple colors, how to add comments and sticky notes, and how to add callouts.<sup>100</sup> We may also hyperlink from the digital statute book directly to Adobe's own on-line discussion of these features.

## ***2. Bookmarking Subsections in the Statutes***

We also plan to address the navigation problems some students noted. We bookmarked each section of the statutes and regulations, but not subsections, and students sometimes got lost in the lengthy sections. Some of the sections, particularly definitions sections, go on for several screens, and it is hard to find particular subsections. In the future, we will bookmark subsections in the statutes, but probably not in the regulations.

## ***3. Internal Hyperlinks in Statutes***

Our goal this year was to produce a usable, bare-bones version of the materials, with enhancements to come later. One of the enhancements we may add to future editions of the statutes is internal hyperlinks. If, for instance, the text of section 12 of the statute refers to section 5, a hyperlink would take the reader to section 5. We also would like to include internal hyperlinks to defined terms, even if those definitions are not expressly cross-referenced in the statute. Every time a defined word appears, a hyperlink would take students to the section defining that word.<sup>101</sup>

Internal hyperlinks would not just make it easier to use the digital statute book; they also have a pedagogical purpose. Students should be looking for these kinds of connections and anything that will encourage students to explore the connections within the statutes has pedagogical value.

# **VI. The Commercial Casebook Publishers' Response**

## **A. Introduction**

Our initial experiment with digital statute books was a success. Students saved money and the digital materials performed at least as well as, in the opinion of many students better than, equivalent print supplements.

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<sup>100</sup> When a student indicated she had trouble highlighting, Professor Bradford reviewed these features briefly in class, but this instruction should be included in the digital book itself, especially if the digital book is to be used in other professors' classes.

<sup>101</sup> We are still unsure about hyperlinking all defined terms. In some cases, there are so many defined terms that this could be distracting.

Anyone could have done what we did. We are comfortable with computers and electronic materials, but we have no special technological expertise. And producing the digital statute book did not take an extraordinary amount of time or effort.

We hope that the digital securities statute book is only a first step, that other professors will prepare digital supplements for other legal subjects.<sup>102</sup> The move to digital statute books is probably inevitable. The digital generation has entered law school and is slowly working its way into the law professorate. Over time, more students will demand, and more law professors will provide, digital alternatives to today's expensive, cumbersome print statute books. As software and technology advance, creating (and using) materials like this will become even easier.

But what about the big commercial casebook publishers—Thomson/West (and its subsidiary Foundation Press), Aspen, and Lexis/Nexis? They undoubtedly make a great deal of money selling print statutory supplements.<sup>103</sup> How will they respond to competition from digital supplements like ours?

The commercial publishers' digital efforts so far have been half-hearted. Thomson West, for example, offers .pdf copies of statutes and rules under the label "Statutes on Demand."<sup>104</sup> But statutes and regulations are available for only two subjects, Corporations and Securities Regulation,<sup>105</sup> and access to the digital materials costs almost as much as print statute books.<sup>106</sup> Moreover, students must download a DRM plug-in for Adobe Reader and go through a special set-up procedure before they may access the files.<sup>107</sup> Tellingly, this product is relegated to a separate web site and is not even mentioned on the main Thomson West site.<sup>108</sup>

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<sup>102</sup>Professor Bradford would be happy to advise any law professor who wishes to do something similar in another subject area.

<sup>103</sup> The exact amount is unclear, but a couple of publishers' representatives have told Professor Bradford privately that statutory supplements are quite profitable. Statute books sell for less than casebooks, but, because statutes and regulations change frequently, new editions come out every year, limiting the resale market that cuts into casebook profits.

<sup>104</sup> See StatutesOnDemand, *What is StatutesOnDemand?*, <http://statutesondemand.com/Default.aspx> (last visited June 9, 2009).

<sup>105</sup> *Id.*

<sup>106</sup> The full set of Corporations materials costs \$43.00; the full set of Securities Regulation materials costs \$36.00. See StatutesOnDemand, *Professor Page*, <http://statutesondemand.com/Professors.aspx> (last visited June 9, 2009). A professor may create a customized set of materials at a lower price. *Id.* However, a barebones set of materials for a basic securities course—the Securities Act; Securities Act rules; the Exchange Act; Exchange Act rules; and forms under both statutes—would exceed the limit for the reduced pricing. *Id.*

<sup>107</sup> See StatutesOnDemand, *Download FAQ's*, <http://statutesondemand.com/faq.aspx> (last visited June 9, 2009).

<sup>108</sup> StatutesOnDemand does not appear on the Thomson West home page for professors, and is not accessible via either the "Technology Tools" or "Product Lines" links on that page. See Thomson West, *Faculty Online Store: Welcome Faculty!*, <http://www.westacademic.com/professors/default.aspx>. It also is not listed in either the Corporations or Securities Regulation sections of the web site under "Statutes and Court Rules." See Thomson West, *Faculty Online Store*, <http://www.westacademic.com/Professors/ProductSearchResults.aspx?searchtypeasstring=BROWSE-BY-ANY&subject=33&tab=5>; and <http://www.westacademic.com/Professors/ProductSearchResults.aspx?searchtypeasstring=BROWSE-BY->

## B. Digital Statute Books are Different

The reluctance of commercial casebook publishers to embrace digital statute books may be momentary; as demand for digital books increases, the commercial publishers may become more active in providing them. Or their slow response to this new technology may reflect a deeper problem, an inability to adjust to a new market that offers lower profit margins and does not value the commercial publishers' existing advantages.<sup>109</sup> The advantages that have made today's commercial publishers successful in the market for print casebooks—editorial control, marketing, printing facilities, and distributional ties—are relatively unimportant in producing digital statute books.

Commercial casebook publishers succeed in part because of their editorial reputations. A professor who chooses a casebook published by Aspen or Thomson West can be reasonably confident that the company has vetted the authors, sought editorial review from others in the field, and thoroughly proofread the book. Editorial expertise is less important for digital statute books. The content is fairly standard and law professors can easily verify whether the book has the required content. Little proofreading is required, as the materials are publicly available in their original form.

The sophisticated printing facilities and distribution networks available to commercial publishers like Thomson West and Lexis-Nexis also are unnecessary for digital statute books. The big commercial casebook publishers have access to low-cost, high-speed presses that allow them to produce thousands of books quickly at a relatively low cost. They have well-established ordering and shipping networks that allow them to get print books to University bookstores quickly and efficiently. But digital statute books are neither printed nor shipped. Bookstores are unnecessary; the materials can be made available on-line.

The major commercial casebook publishers also have strong marketing operations—networks of sales representatives regularly contact law professors and make sure those professors have examination copies of the commercial publishers' books. But that marketing edge is less important today, especially for digital books. Anyone producing a new digital statute book could notify professors of its availability by e-mail or through the many subject-area blogs many professors subscribe to. E-mail is almost costless and the e-mail addresses of professors teaching in selected fields are available from the Association of American Law Schools for a fee.<sup>110</sup> Many professors who teach the same subject know each other, so it would not be hard to create a stir by word of

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[ANY&subject=133&tab=5](#) (last visited June 9, 2009). The Thomson West home page offers a search tool, but a search for StatutesOnDemand produced nothing.

<sup>109</sup> See Clayton M. Christensen, *THE INNOVATOR'S DILEMMA: THE REVOLUTIONARY BOOK THAT WILL CHANGE THE WAY YOU DO BUSINESS* (1997) (explaining why industry leaders sometimes fail to adapt to disruptive technological change).

<sup>110</sup> With a few hours' work, anyone with a copy of the latest AALS directory could create their own list without paying the fee.

mouth. And examination copies are irrelevant in the digital world; anyone with a computer and the appropriate URL has an instant examination copy.

In short, the competitive advantages that have made the commercial publishers successful in producing print casebooks do not transfer to digital statute books. As others begin to offer low-cost digital statute books, the commercial publishers will have to adapt and offer their own digital statute books at a substantially reduced price, or they are likely to be pushed aside. The days of charging \$45 for publicly available material are numbered.

### **C. Maintaining Market Share**

The commercial casebook publishers will not cede the market for statutory supplements without a fight. So what can they do to fight off challenges from free or low-cost digital alternatives? One alternative would be to bundle digital statutory supplements with their casebooks—providing casebook and statute book together for a single price. Even without bundling, the commercial publishers still have a significant advantage with respect to statutory supplements that include copyrighted materials, at least until the copyright holders are willing to license digital statute books.

#### **1. Bundling Statute Books with Casebooks**

Currently, course materials are delivered in one book, the casebook, and the statutory materials are delivered in a completely separate book, the statutory supplement. Any statutory supplement works with any casebook. A student using a casebook published by West could still use a free digital statute book instead of the more expensive West statute book.

Commercial publishers could try to freeze out free supplements by bundling supplements with the casebook, combining the casebook and the relevant statutes and regulations into a single product. Students could always use another statute book, but they could not avoid paying for the bundled statute book. Many law professors are notoriously insensitive to price in choosing casebooks, so the commercial publishers might even be able to charge as much for the bundled books as they currently do for the two separate books.

The anti-competitive nature of this kind of bundling is obvious, but it could also be beneficial to students if the casebook and statute book were bundled into a single digital product. A publisher could create hyperlinks among the cases, textual explanations, and statutes and regulations, and make it easier for students to integrate all of the materials in their studies.<sup>111</sup>

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<sup>111</sup> The Aspen Study Desk is a first move in this direction. See <http://www.aspenlaw.com/>. Aspen has not yet incorporated statutes into the Study Desk mix, but at least one Aspen representative has indicated an interest in doing so.

The combined casebook/statutory supplement is not necessarily good from a pedagogical standpoint. One of the skills that law students learn in regulatory classes is how to work their way through

## 2. Supplements Including Copyrighted Material

Commercial legal publishers have an advantage with respect to statutory supplements that include a substantial amount of copyrighted material. As previously indicated, some copyright holders are reluctant to license their materials for digital statute books,<sup>112</sup> and many statutory supplements include a fair amount of copyrighted materials.<sup>113</sup> These supplements are likely to be offered only in print versions until the copyright holders are willing to license digital materials.

Even if the copyright holders agree to license their materials for digital use, the major commercial casebook publishers may still have an advantage over other providers. The copyright holders are likely to charge a licensing fee, just as they do for print versions of their materials. The large commercial publishers may have economy-of-scale advantages in aggregating these copyright permissions across a number of different supplements and passing that cost on to student users. If the copyright holders insist on digital rights management, the large commercial publishers may have an advantage over individual law professors or small providers in designing and imposing such controls. Thus, unless the copyright holders agree to allow free student use, the existing commercial publishers may continue to control this portion of the supplement market.

Anyone wanting to offer free statutory materials to students could substitute the statutes of particular states for the copyrighted model and uniform acts. A digital Business Associations supplement might, for example, include the Model Business Corporation Act as adopted by Nebraska instead of the MBCA itself. However, this solution is imperfect. States adopting uniform acts often include non-uniform amendments, and the state section numbers do not always match the uniform/model act numbers. This makes it more difficult for students to correlate casebook references to the materials in the statute book. Moreover, for some subjects, the official comments to the model and uniform acts are almost as important as the statutes themselves. State statutes would not include the official comments, and publishing the comments would pose the same copyright issue as publishing the statutes themselves. Finally, some materials, such as the restatements of the law prepared by the American Law Institute, are not adopted and republished by state legislatures, so state law is not an alternative.

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statutes and regulations. A text that automatically provided them with the relevant statutes and regulations would not necessarily force them to develop those skills. Of course, as the statutes and regulations themselves become increasingly accessible in digital form, it's not clear that the "statute-searching" skill will be all that important in the future.

<sup>112</sup> See section III.A.4, *supra*.

<sup>113</sup> The supplements used for Business Associations and Corporations courses are a good example. They typically include the Model Business Corporation Act; at least one version each of the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Limited Liability Company Act; at least one version of the Restatement of Agency; and often the American Law Institute Principles of Corporate Governance. All of these materials are copyrighted: the MBCA by the American Bar Association; the Uniform Acts by the National Conference of Commissioners on Uniform State Laws; and the Principles of Corporate Governance by the American Law Institute.

## VI. Conclusion

We had two goals when we began this project. One of those goals—to make a free digital securities law statute book available to students—is almost accomplished. Professor Bradford intends to update the digital securities statute book, use it in his future classes, and make it available to law students and professors nationwide. Students now have available for free a better product than those being produced by the commercial casebook publishers.

But we hope what we have done is just a beginning. Our second goal is to spark a revolution in the way statutory materials are provided to law students. To that end, we have tried in this article to provide a roadmap to help other professors do in their fields what we have done in securities regulation. Our hope is that other professors will follow our path or, even better, improve on what we have produced.