

How About Free? Free Would be Nice!

The year 1984 has significance on so many fronts but none greater than its import regarding access to information. Contrast 1984 as George Orwell's target year in his futuristic classic about subverting control over all communications through "Big Brother," with 1984 as the year the first Macintosh computer was

of Public.Resources.Org, and a leading proponent of placing filed data in the public domain free of charge. His initial success was with the SEC and its EDGAR database of filings and disclosures of public companies. The SEC resisted the call for free access arguing that there was limited demand for this information and it would

Unfortunately there are gaps and exceptions to this free access to public information, and some of that is right here in the Tri-State area in our "open and transparent" insurance regulatory world. Consistent with the practice of states nationwide, Connecticut, New Jersey and New York each provide free access to case law for its state courts and each state's complete statutes through government sponsored websites. Assuredly, therefore, the regulations or administrative codes of these states would also be accessible online. After all, these are the formally promulgated rules for carrying out and enforcing the statutory directives relating to the business. Our local states, however, are quite inconsistent when it comes to providing access to their insurance regulations.

At one end of the spectrum is Connecticut, whose full and complete insurance regulations are accessible through the Connecticut Insurance Department website. In the middle is New Jersey. The New Jersey Department of Banking and Insurance website contains a link to a "Free Public Access" site for the NJ Administrative Code, which includes insurance regulations. However, this site is "maintained" by LexisNexis and access to the site requires you to agree to the LexisNexis lengthy "terms and conditions," many of which raise questions about the free ability to use the data for any practical research purpose.

And then there is New York. There is no access to a full and complete set of in-force insurance regulations available on the NY Department of Financial Services website. None! True, the DFS website has lots of information on newly adopted or revoked regulations, and an index to all in-force insurance regulations, but nowhere does the site include full access to a complete set of in-force regulations. For that, one has to subscribe to commercially available (i.e., expensive) resources or have access to a library that does.

While I have not done a 50-state survey, I checked a few of the larger states and found that the insurance regulations were



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introduced and the dawning of the Internet Age. The tension between controlling and accessing information was succinctly summarized by Stewart Brand, the founder of the Whole Earth Catalogue, who famously noted in the 1990s that: "On the one hand information wants to be expensive, because it's so valuable. . . . On the other hand, information wants to be free, because the cost of getting it out is getting lower and lower all the time."

In the decades that followed, free has become the norm over expensive – at least in most circles. Free is almost expected when it comes to the availability of information on the Internet. You can search almost any topic and get tons of information – helpful, unhelpful, accurate or questionable – without any cost whatsoever. Mitchell Kapur, the designer of Lotus 1-2-3, one of the first mega-apps, observed that: "Getting information off the Internet is like drinking from a fire hydrant." Free access to information, however, has flowed more slowly from the regulatory community, which cited and in some instances continues to cite the cost of providing free access as an impediment.

One of the first to contest the regulators' premise was Carl Malamud, founder

of Public.Resources.Org, and a leading proponent of placing filed data in the public domain free of charge. His initial success was with the SEC and its EDGAR database of filings and disclosures of public companies. The SEC resisted the call for free access arguing that there was limited demand for this information and it would

be prohibitively expensive to make the data readily available. Malamud got a grant from the National Science Foundation, bought the reports from the SEC and posted them on a public website. Today SEC filings are readily available at no or nominal cost to anyone. Reported court cases and statutes at both the Federal and State level soon followed suit. Prior to the digital age, you either had to have access to a major public library or to a law library that purchased volumes of "official" cases and statutes from "authorized" compilers such as West Publishing (and more recently, LexisNexis). These volumes were not cheap, as any law firm manager would know. Today, although West (now a unit of Thomson Reuters), LexisNexis and others continue to successfully sell access to cases, statutes and other public data with the addition of proprietary value-added enhancements, the basic data are now almost universally available online somewhere. With only an elementary expertise in searching the Internet, you can find complete copies of Federal and state statutes, cases and the rulings and regulations of governmental agencies. But not everything!

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freely accessible on their insurance department or state government websites, including Illinois, Florida, Pennsylvania, Texas and California. Interestingly, the site providing the California regulations is maintained through an independent for-profit service, the same as New Jersey, but without the “terms and conditions” trap.

It is time for NJ and particularly NY to catch up to the current digital age and

make a complete set of in-force insurance regulations fully accessible, without restrictions and free of charge to anyone seeking such access online. It makes no sense today for an agency responsible for the regulation of insurance to provide all kinds of information available for public access – press releases, newsletters, bulletins, consumer information, licensing forms, and the like – but not provide full access to the actual regulations it promulgates and enforces.

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While we are talking about websites, a brief word about the insurance-related websites of the Tri-State departments. The Connecticut site is far and away the best organized, most helpful site of the three. It is also the simplest to navigate and with its Quicklinks tab it is easy to find all kinds of insurance and government related information. The site for the New Jersey Department of Banking and Insurance is somewhat less friendly, harder to navigate, and with less accessible basic information. The site for New York's Department of Financial Services is by far the least friendly of the three and hardest to navigate.

Perhaps it is coincidence, but I note that in the Tri-State area, the site focused exclusively on insurance – Connecticut – is the simplest, most user friendly with the broadest access to information of the three. The two States that have combined banking and insurance into one agency are less friendly with narrower scopes of access. Hmm. [A]



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