

Vanishing into the Ether: Link Rot and Disappearing Precedent

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Raizel Liebler & June Liebert, [Something Rotten in the State of Legal Citation: The Life Span of a United States Supreme Court Citation Containing an Internet Link \(1996-2010\)](#), 15 *Yale J.L. & Tech.* 273 (2013).

Every first-year law student is taught the importance of citing to the materials relied upon to make a legal argument. Opposing counsel and the judge should be able to retrieve the materials cited and determine whether the materials support the argument put forth. At first blush, citation to materials on the internet would seem to make retrieval easier. Lawyers no longer have to go to a library or dig through a database to find the cited materials. However, a fairly high number of these citations are being lost to link rot, that annoying instance when you click on a link and what you are looking for is no longer available.

[Raizel Liebler](#) and [June Liebert](#) conducted a study of internet links contained in Supreme Court of the United States (hereinafter "SCOTUS") opinions from 1996–2010 and found that, shockingly, 29% of links in the opinions either led to nothing or did not lead to the information discussed in the opinion. With *stare decisis* as a foundational principle of American law, it is disturbing to consider how the underlying basis of court opinions may be disappearing at a rate much higher than anticipated. The consequences for lawyers and researchers seeking to understand the legal analysis contained in a court opinion are profound.

The authors begin, "Citations are the cornerstone upon which judicial opinions and law review articles stand." (P. 275.) From there, Liebler and Liebert go on to discuss the increasing use of citations to links in SCOTUS opinions. The first citation to an internet link appeared in Justice Souter's 1996 concurring opinion in *Denver Area Educ. Telecom. Consortium, Inc. v. FCC* (518 U.S. 727, 777 n.4). The next use was not until a 1998 dissent by Justice Ginsburg in *Muscarello v. United States* (524 U.S. 125, 143 n.6). Since that time, citations to links has increased tremendously. Liebler and Liebert found 430 website citations in 144 SCOTUS opinions from the 1995–96 term to the 2009–10 term. Of these 430 URLs, 29% of them had suffered link rot. As the authors state, "Considering the preeminence of the United States Supreme Court, a link rot rate of almost one-third . . . is quite shocking." (P. 298.)

The problem of link rot is not simply that a link may no longer work but can be much more complicated. For instance, a citation to an SSRN paper may later be changed as the author advances in the writing and publication process. The author of a blog post relied upon in a court opinion may later change her opinion and edit the blog post to reflect her current thinking. A lawyer or researcher examining the basis for a justice's analysis may find material that is entirely different from what the justice cited. Statistics found on the internet, even on a government website, may be removed and replaced with newer statistics. In fact, the authors found no difference in the probability of link rot between government and non-government websites. Similarly, the probability of link rot did not depend on the format of the link (i.e., pdf, htm, html). The authors conclude that it is not possible to predict which links will rot.

There is, apparently, hope that this unfortunate state of affairs may find a solution. The authors highlight 2009 guidelines released by the Judicial Conference of the United States titled [Citing To, Capturing, and Maintaining Internet Resources in Judicial Opinions/Using Hyperlinks in Judicial Opinions](#). The Conference advised judges to consider archiving a copy of internet materials relied upon in an opinion. The SCOTUS Clerk of Court does retain a print copy of cited materials in its case file but those materials are only available by visiting the Clerk's office or contacting the National Archives and Records Administration (NARA) after the files are archived. The Ninth Circuit Library is also

archiving websites cited by creating PDF files. As the authors insightfully point out, however, this works well for text files but does not capture audio, video, or software files.

Liebler and Liebert's article offers a shocking illumination of the problem facing citation to internet links in a system of law based on precedent. With no solid plan in place to accurately preserve and make accessible cited material we risk losing the ability to see and understand the authority relied on by the Court.

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