

DECLARATION OF CARL MALAMUD

I, Carl Malamud, declare as follows:

1. Since 2007, I have been the President and Founder of Public.Resource.Org (“Public Resource”), a nonprofit corporation incorporated in California which operates solely for educational and charitable purposes and is registered under Section 501(c)(3) of the Internal Revenue Code. I have personal knowledge of the matters stated in this declaration and could competently testify to them if called as a witness.

Public Resource Efforts to Improve Privacy Protection in U.S. Court Documents

2. Public Resource has a mission of making government information more broadly available on the Internet for use without restriction. We have worked with the Speaker of the House of Representatives to make 14,000 hours of video from congressional hearings available, with the Archivist of the United States to make 6,000 government videos available, and are responsible for the processing and posting of over 8 million Form 990 filings of exempt organizations distributed by the Internal Revenue Service. Our work with the Congress was formally recognized in a January 5, 2011 letter from Speaker John Boehner and Representative Darrell Issa. This letter may be viewed at the following URL:
<https://law.resource.org/rfcs/gov.house.20110105.pdf>.

3. From 1993 to 1997, I was the President and Founder of the Internet Multicasting Service, a 501(c)(3) nonprofit corporation. As part of that work, I was responsible for placing the U.S. Securities and Exchange Commission EDGAR database and the U.S. Patent database on the Internet for the first time. After the SEC indicated they would be willing to place the EDGAR database online as a government service, I donated software and hardware to the SEC to assist them in establishing that service.

4. A major focus of Public Resource is making the proceedings of our courts available. We are responsible for scanning approximately 3.3 million pages of briefs submitted to the Ninth Circuit of the U.S. Court of Appeals from 1891 to 1970 and making those documents available on the Internet Archive and on our servers. We are also responsible for making opinions in the Federal Cases, McAllister's Reports from California and in the First Series of the Federal Report available as scans as well as converting all of those opinions to more modern HTML markup. These materials may be viewed at the following URL:

<https://law.resource.org/pub/us/case/reporter/>

5. On February 11, 2008, Public Resource announced jointly with Creative Commons that we were making available 50 years of opinions from the United States Court of Appeals, the first time these opinions were freely available on the Internet. Our cost for the purchase of these opinions, \$600,000, was made

possible by contributions from the Omidyar Network Foundation and by several individuals, including attorney David Boies, Mr. John Gilmore, and the Elbaz Family Foundation. The announcement of this service is attached as Exhibit A.

6. After publication of these opinions on the Internet, Public Resource began to receive reports of Social Security Numbers in the opinion text. We conducted an audit of the opinions, discovered a large number of Social Security Numbers. The audit results were transmitted on May 3, 2008, to the Honorable Lee H. Rosenthal, Chairman of the Judicial Conference Committee on Rules and Procedure and to the Chief Judges of the Second, Fourth, Fifth, Ninth, and Eleventh Circuits of the U.S. Court of Appeals. A redacted copy of the audit document is attached as Exhibit B.

7. On July 16, 2008, the Honorable Lee H. Rosenthal acknowledged receipt of the audit results and stated that it was “enormously helpful to have the benefit of the empirical research that you have done.” A copy of that letter is attached as Exhibit C.

8. Subsequently in 2008, an audit was conducted of 19,856,160 pages of docket materials from 32 U.S. District Courts, uncovering 1,669 documents with verified Social Security Numbers and other privacy issues. The interim audit results were sent on October 3, 2008, and the final audit results on October 24, 2008, to the Honorable Lee H. Rosenthal and to the Chief Judges of the 32 U.S.

District Courts. A redacted copy of the October 24, 2008, audit results is attached as Exhibit D.

9. A number of Chief Judges responded with acknowledgement of the audit results and took actions to remove those documents from public view and to notify the filing attorneys of these violations of the privacy rules in effect in the courts. A copy of the January 28, 2009, acknowledgement from the Honorable Royce C. Lamberth of the United States District Court for the District of Columbia is attached as Exhibit E.

10. On February 27, 2009, Senator Joseph I. Lieberman, Chairman of the U.S. Senate Committee on Homeland Security and Governmental Affairs sent an inquiry to the Honorable Lee H. Rosenthal asking for information about compliance with the requirements of the E-Government Act of 2002 (Public Law 107-347). A copy of the letter from Senator Lieberman is attached as Exhibit F.

11. On March 26, 2009, the Honorable Lee H. Rosenthal and Mr. James C. Duff of the Administrative Office of the U.S. Courts jointly answered Senator Lieberman, acknowledged the results of the privacy audit, and outlined additional steps that were being taken to improve adherence to privacy rules. A copy of that letter is attached as Exhibit G.

12. On June 23, 2010, Chief Judge Alex Kozinski asked me to brief the Court on issue of access and privacy protection in court dockets. A copy of my prepared statement is attached as Exhibit H.

Public Resource Efforts to Improve Privacy In Other Government Documents

13. The audit and redaction of court documents was one of 3 such privacy audits that Public Resource undertook. The other two efforts uncovered privacy issues in the Government Printing Office and the Internal Revenue Service.

14. On November 16, 2007, Public Resource downloaded 5,177,003 pages from the servers of the Government Printing Office. In the course of doing so, we discovered a large number of Social Security Numbers in the Congressional Record, published by the U.S. Senate in conjunction with the promotion of military officers. Some of those Social Security Numbers were present on the U.S. Government servers, and private vendors had a larger collection of 308,085 SSNs covering 232,471 officers present on their services.

15. Public Resource notified the Government Printing Office, U.S. Senate, Department of Defense, and ultimately the Federal Trade Commission to secure the redaction of this sensitive information. After articles in publications such as Stars and Stripes, that information was finally redacted. A copy of the article in Stars and Stripes is attached as Exhibit I. A copy of the October 5, 2008,

complaint to the Federal Trade Commission and the Inspector General of the Department of Defense is attached as Exhibit J.

16. In the course of processing over 8 million Form 990 filings of Exempt Organizations from 2002 to 2014 distributed by the IRS, Public Resource uncovered approximately 600,000 Social Security Numbers present in those filings. Public Resource undertook an intensive program of detection and redaction. The IRS policy was that Social Security Numbers were not supposed to be filed in the Form 990 and therefore this was the responsibility of the filers and that the IRS would not perform any redactions as that would be altering a federal document.

17. On July 2, 2013, Public Resource reported to the IRS the presence of an estimated 100,000 Social Security Numbers on the government-operated web site providing access to filings of political organizations filing under Section 527 of the Internal Revenue Code. A copy of that audit document is attached as Exhibit K.

18. On July 15, 2013, 43 members of the U.S. House of Representatives wrote to the IRS to inquire about the privacy audit Public Resource had conducted. A copy of that letter is attached as Exhibit L.

19. On July 23, 2013, the Chairmen of the U.S. House of Representatives Committee on Ways and Means Subcommittees on Oversight and Social Security

wrote to the IRS to express additional concerns. A copy of that letter is attached as Exhibit M.

20. On September 16, 2013, the Acting Commissioner of the Internal Revenue Service acknowledged the audit results in a letter to members of Congress and announced a change in policy that would permit the Internal Revenue Service to begin redacting Social Security Numbers. Those policies were enacted in the January 2014 changes to Section 3.20.12 of the IRS Manual. A copy of that letter is attached as Exhibit N.

21. On July 7, 2014, Public Resource sent final audit results on the Exempt Organizations filings to the Commissioner of the Internal Revenue Service, as well as detailed suggestions for change to the IRS, their Inspector General, and other government officials. The audit included the redaction of 9,392 Form 990s, and has resulted in a significantly more aggressive program of detection, redaction, and notification by the Internal Revenue Service. A copy of those letters is attached as Exhibit O.

The Work Public Resource Proposes to Undertake Under the Fee Exemption Request

22. Public Resource proposes to undertake an audit of all documents in one or more courts. This fee exemption request is being filed simultaneously in 4 U.S. District Courts and for the U.S. Court of Appeals for the 9th Circuit. We would be delighted to undertake this work in all 5 jurisdictions, but if a more

limited experiment is granted, the simultaneous filings permits the selection of fewer venues.

23. The work we will do is similar to that undertaken previously. We propose to download all documents for a jurisdiction by systematically exercising calls to the PACER system for that venue. This program is known as a “web crawler” or “spider.”

24. Once the full corpus for a jurisdiction has been downloaded, any updates to the database will be periodically downloaded and added to the collection.

25. All the documents downloaded will be run through Optical Character Recognition, then a series of scripts will be run to discover the possible presence of Social Security Numbers. Any documents flagged as such will be manually examined and appropriate redactions performed.

26. The results of such redactions will be logged, and a notification will be sent to the attorneys listed on the dockets. In that notification, we will request acknowledgement of receipt and will outline the steps that the attorneys must take to come back into compliance with the privacy rules required by the courts.

27. The results of the download, redaction, and notifications will be assembled into an interim report (after 6 months) and a final report (at the close of the fee exemption period) and submitted to the court. The report will analyze

adherence to the privacy rules and will suggest any corrective measures the court may wish to consider.

Public Access to Electronic Court Records

28. The fully redacted documents will then be added to the collection on the Internet Archive, a public repository of court documents which was initially created with the 20 million pages we previously audited and redacted from 32 U.S. District Courts.

29. As of March 14, 2015, this collection contained some files from over 1,126,000 different U.S. District Court cases. The documents are made available for members of the public who do not have access to the PACER system, or for members of the public who use the RECAP plugin to access the PACER system.

30. By making the entire proceedings of a court available on the Internet Archive, we believe greatly enhanced access to those proceedings will be made available to the general public, in particular to those that are not currently PACER users.

31. In addition, we will work with and document the efforts of academic researchers who will be able to use the full proceedings of a court to conduct research that is not possible today.

32. Public Resource will provide a detailed report to the Court upon conclusion of the Fee Exemption period, detailing both general public access to these records as well as any research efforts that were undertaken.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and this declaration was executed this 2 day of April, 2015 at Sebastopol, California.

By 
Carl Malamud