

Declaration of Carl Malamud in Support of Public.Resource.Org

I, Carl Malamud, declare as follows:

1. I am the president of Public.Resource.Org, Inc., a 501(c)(3) nonprofit corporation based in California which I founded in 2007. A key mission of our organization is to make edicts of government available more freely and more broadly.
2. From 1993 to 1996 I founded and ran the Internet Multicasting Service, a 501(c)(3) nonprofit organization that is credited with running the first radio station on the Internet, pioneering the use of “podcasting” and live streaming on the Internet. As part of that work, we placed live streams of the floors of the U.S. House and Senate on the Internet. In addition, the Internet Multicasting Service was responsible for placing the Securities and Exchange Commission database of public filings (known as “EDGAR”) on the Internet for the first time, then working with the SEC to transition that service back over to the government. An article in the Washington Post about my work regarding the U.S. Congress is attached as **Exhibit A** and a letter of thanks from the SEC is attached as **Exhibit B**.
3. Beginning in 2007, with the encouragement first of Speaker of the House Nancy Pelosi and then of Speaker John Boehner, Public Resource assisted the U.S. Congress in placing over 14,000 hours of video from Congressional Hearings on-line and taught the House Committee on Oversight and Government Reform how to make hearings available in an accessible manner using closed-captions. We also convinced C-SPAN to waive assertions of copyright over Works of the U.S. Government so that these proceedings could be more widely shared. An article in the National Journal regarding the C-SPAN controversy is attached as **Exhibit C** and a letter from Speaker Boehner is attached as **Exhibit D**. The videos are archived at the following location:  
[https://archive.org/details/us\\_congress](https://archive.org/details/us_congress).

4. Beginning in 2009, Public Resource worked with the Hon. David Ferriero, Archivist of the United States, to send in volunteers into the U.S. National Archives and copy videos to place on-line for free access on YouTube and the Internet Archive. We also digitized tapes as part of a Joint Venture under agreement no. NTIS-1832. Under that agreement, we digitized the tapes, returned the tapes to the government along with a disk drive, and added them to the public collection. We also received approximately 800 DVDs from the Assistant Secretary of Defense for Public Affairs and added those to the collection. Over 6,000 videos are now available and the YouTube channel has received over 89 million views. A letter from Hon. David Ferriero is attached as **Exhibit E**, and an article in the New York Times about the program is attached as **Exhibit F**. The videos may be viewed at <https://www.youtube.com/user/PublicResourceOrg> on YouTube and at <https://archive.org/details/FedFlix> on the Internet Archive.

5. In 2007, Public Resource made available on the Internet, for the first time, the full set of the opinions of the U.S. Court of Appeals, an archive of over 1.8 million pages of federal law. In addition to making publicly accessible these fundamental legal materials, we worked to enhance compliance with judicial rules. Examining these opinions, Public Resource found a large number of Social Security Numbers in the texts. We noticed the Clerks of 11 circuits of our finding, as well as LexisNexis, and all of them responded by redacting this Personal Identifiable Information which was posted in violation of the rules of the Judicial Conference. An article announcing the availability of this information is attached as **Exhibit G**. A copy of our audit of these opinions is attached as **Exhibit H**, and a letter of receipt from the Hon. Lee H. Rosenthal, Chair of the Committee on Rules of Practice and Procedure of the Judicial Conference is attached as **Exhibit I**.

6. In 2009, Public Resource found substantial privacy violations in 19 million pages of documents from the federal judiciary's Public Access to Court Electronic Records (PACER) database and sent our detailed audit results to the Chief Judges of 32 U.S. District Courts. Some of the District Courts promptly redacted the offending documents or removed them from public access. Our own redacted copy of these documents formed the basis for free public access to PACER documents for the first time, and grew into services provided by a number of free law systems on the Internet, including Court Listener and the Internet Archive. Our efforts also resulted in changes to the privacy practices mandated by the Judicial Conference. A letter from Chief Judge Royce C. Lambert acknowledging our efforts is attached as **Exhibit J**, and an article in the New York Times is attached as **Exhibit K**.

7. In 2008, my colleagues at Justia, a company active in making the law of the United States freely available, received a takedown notice for having posted the Oregon Revised Statutes on the Internet. Since Public Resource also had those materials online, we answered on behalf of both ourselves and Justia, respectfully refusing to remove those materials and explaining the reasons why. The State responded by proposing to grant us a license to use the Oregon Revised Statutes for non-commercial purposes. Again, we respectfully refused to accept the license on the grounds that no copyright is available in edicts of government. The State invited both Justia and Public Resource to testify before the Legislative Counsel Committee of the Oregon State Legislature. Following the hearing, the Legislative Counsel Committee voted to waive all assertions of copyright on the Oregon Revised Statutes. The letter from the State of Oregon is attached as **Exhibit L**, and a copy of my testimony before the Legislature is attached as **Exhibit M**.

8. In 2013, Public Resource notified the Speaker of the House of the Idaho State Legislature that we had posted the Idaho Code on the Internet for free access (See [Exhibit N-1](#)). The Legislature hired outside counsel and threatened litigation (See [Exhibit N-2](#)). Public Resource respectfully refused to comply with the demand that these materials be removed from public view. The matter was discussed extensively in meetings of the Idaho Code Commission with their designated vendor, LexisNexis (See [Exhibit N-3](#)). In March, 2021, Public Resource again wrote to the Idaho Code Commission notifying it that an up-to-date version of the Idaho code is available (See [Exhibit N-4](#)). Despite repeated requests, nobody in the Idaho government will acknowledge receipt of our letter or discuss the matter. However, in August, 2021, the Idaho Code Commission met to consider options available to sue Public Resource (See [Exhibit N-5](#)). A copy of the Idaho Code transformed into PDF files is available at the Internet Archive at the following location: <https://archive.org/details/govlaw?query=subject%3Aidaho.gov+AND+subject%3A2020>. In addition, a copy of the Idaho Code transformed into HTML to make it more accessible to the visually impaired and to work better on mobile devices is available on a public repository on GitHub at the following location: <https://unicourt.github.io/cic-code-id/>. When Public Resource purchased the print copy of the Idaho Code in 2014, we spent \$1173.39 for 14 volumes with supplements.

9. On May 30, 2013, Public Resource informed the Speaker of the House of the Mississippi House of Representatives and the Attorney General of Mississippi that Public Resource had scanned and posted the Mississippi Code of 1972 Annotated (See [Exhibit O-1](#)). On October 7, 2013, the state responded demanding that the materials be immediately removed from the Internet (See [Exhibit O-2](#)). On October 11, 2013, Public Resource responded to the state with a detailed submission and respectfully refused to comply with their demand. (See [Exhibit O-3](#)). On April 10, 2014, counsel for Public Resource wrote to the Office of the Attorney General under

the provisions of the Public Records Act asking for copies of materials such as the contract with LexisNexis (See [Exhibit O-4](#)). The State never responded to that request.

10. On April 21, 2017, Public Resource received another letter from the Mississippi Office of the Attorney General citing a U.S. District Court decision regarding the Official Code of Georgia Annotated and demanded immediate removal of the Mississippi Code we had posted (See [Exhibit O-5](#)). When that U.S. District Court decision regarding the Georgia code was overturned by the Eleventh Circuit of the U.S. Court of Appeals, Public Resource wrote to the Mississippi Office of the Attorney General on November 12, 2018 and informed the office of that decision (See [Exhibit O-6](#)).

11. On March 30, 2021, Public Resource wrote to the Mississippi Joint Committee on Compilation, Revision and Publication of Legislation, pointing out that the continued copyright assertions by the State of Mississippi ran contrary to the opinion of the U.S. Supreme Court (See [Exhibit O-7](#)).

12. In that letter, Public Resource informed the Committee that Public Resource had continued to make the Mississippi Code available in better formats, including transformation of the code into HTML. The Mississippi Code was available in three formats from LexisNexis: A quarterly DVD product, the print volumes, and the LexisAdvance Service. The LexisAdvance Service does not allow downloading of the Mississippi Code of 1972 Annotated, enforcing that prohibition with both technical measures and terms of use. By late 2020, the State of Mississippi and LexisNexis had canceled the DVD product without informing Public Resource, in an evident attempt to prevent our transformation of the code into HTML to make it more accessible to the visually impaired, to work on mobile devices, and other transformations and enhancements to the format and usability of the Code. We were thus forced to revert to the far less efficient and far more expensive process of purchasing the print

volumes and scanning then. Seven releases of the transformed code from December 2018 to July 2020 may be viewed at <https://unicourt.github.io/cic-code-ms/>. The 99 volumes of Mississippi law, current through the beginning of 2021, may be viewed at <https://archive.org/details/govlaw?query=subject%3AMississippi2021&sort=titleSorter>. Public Resource spent \$1,195 in 2019 for a year of the Mississippi quarterly DVD service. For the print subscription, we must subscribe to an update service with annual charges. Our charge for the 2021 updates of the print volumes is \$1,555.51. Our initial base cost in 2020 for the Mississippi Code was \$984.18 in 2020.

13. On August 5, 2021, Public Resource submitted another request under the Mississippi Records Act (See [Exhibit O-8](#)). The State responded with minutes of the meetings of the Joint Committee (See [Exhibit O-9](#)) and the contract with LexisNexis (See [Exhibit O-A](#)). It is clear from these records the Joint Committee discussed the Public Resource actions extensively from 2013 through 2021, including statements about my actions that I consider to be defamatory and false. It is also clear that the Joint Committee was prepared to sue Public Resource over our actions in posting the edicts of government of Mississippi.

14. On May 30, 2013, Public Resource informed the Speaker of the House and the Legislative Counsel of the Georgia General Assembly that we had scanned and posted the Official Code of Georgia Annotated (See [Exhibit P-1](#)). On July 25, 2013, the Chairman of the Code Revision Commission of Georgia responded with a notice to “CEASE AND DESIST ALL COPYRIGHT INFRINGEMENT” (emphasis in the original) within 10 days of receipt of the letter and threatened legal action for monetary damages and equitable relief (See [Exhibit P-2](#)). On July 20, 2013, Public Resource responded with a detailed explanation of the edicts of government doctrine and respectfully refused to comply with their request (See [Exhibit P-3](#)). On August 15,

2013, the State responded by demanding that we immediately destroy all copies of the Official Code of Annotated in our possession and on the Internet or we would face legal action (See [Exhibit P-4](#)). On September 24, 2013, Public Resource sent copies of the Official Code of Georgia Annotated on a thumb drive to eight Georgia public servants, librarians, public defenders and legal aid societies (See [Exhibit P-5](#)).

15. On May 28, 2014, I wrote to the Georgia Code Revision Commission to inform the members that I had testified before the U.S. Congress on the subject of Edicts of Government and had extensively discussed the Georgia situation (See [Exhibit P-6](#)). A copy of my January 14, 2014, testimony is attached (See [Exhibit P-7](#)). The hearing was carried on C-SPAN and may be viewed at <https://www.c-span.org/video/?317174-1/house-subcommittee-hearing-copyright-protection>.

16. On July 1, 2014, Counsel for Public Resource wrote to the Georgia Code Revision Commission repeating my previous offers to fly to Georgia to discuss this matter with them (See [Exhibit P-8](#)). The Commission did not respond. On July 21, 2015, the State of Georgia filed suit against Public Resource in the U.S. District Court for the Northern District of Georgia. The full docket for case 1:15-cv-02594-MHC may be viewed on PACER or on the Public Resource web site at [https://law.resource.org/pub/us/code/ga/pro\\_v\\_georgia/gov.uscourts.gand.218354.docket.html](https://law.resource.org/pub/us/code/ga/pro_v_georgia/gov.uscourts.gand.218354.docket.html). Public Resource has also made available for public view all materials made available during discovery, as well as our settlement offer at [https://law.resource.org/pub/us/code/ga/pro\\_v\\_georgia/discovery](https://law.resource.org/pub/us/code/ga/pro_v_georgia/discovery). After judgment against us in the U.S. District Court, Public Resource appealed to the United States Court of Appeals for the Eleventh Circuit, where we prevailed. The docket for that case, including extensive amicus briefs filed for both sides may be viewed at [https://law.resource.org/pub/us/code/ga/pro\\_v\\_georgia/appeal\\_11th\\_circuit/](https://law.resource.org/pub/us/code/ga/pro_v_georgia/appeal_11th_circuit/). When the State of Georgia sought a writ of certiorari from the U.S. Supreme Court, Public Resource acquiesced and supported

the action, and the U.S. Supreme Court accepted the case. Public Resource prevailed in that case. The full docket may be viewed at <https://www.supremecourt.gov/docket/docketfiles/html/public/18-1150.html>.

17. The Georgia case attracted extensive public and media attention. The LA Times wrote “Georgia claims that publishing its state laws for free online is ‘terrorism’” (See [Exhibit P-9](#)). A New York Times editorial board opinion stated that “no one owns the law, and no one should be able to copyright it” (See [Exhibit P-A](#)).

18. After prevailing in the 11th Circuit, Public Resource was unable to obtain a copy of the Official Code of Georgia Annotated from LexisNexis. After numerous phone calls and letters, we wrote again to the Office of the Legislative Counsel on January 2, 2019 (See [Exhibit P-B](#)). On January 11, 2019, Public Resource received a letter from the Office of the Legislative Counsel, and LexisNexis finally agreed to sell us the Official Code of Georgia Annotated (See [Exhibit P-C](#)). On February 25, 2021, Public Resource wrote to the Georgia Code Revision Commission asking them to remove improper assertions of terms of use and copyright over the Official Code of Georgia Annotated and informing the Commission that Public Resource had made the OCGA available in a better format in an open repository (See [Exhibit P-D](#)). The Commission did not respond. Eleven releases of the OCGA transformed into HTML may be viewed at <https://unicourt.github.io/cic-code-ga/>. Our 2019 subscription to the quarterly DVD service was \$1,605.74. Our 2020 renewal cost was \$1430.24.

19. On August 2, 2021, Public Resource wrote to the Office of Legislative Counsel of the Georgia State Assembly under the Georgia Public Records Act requesting, among other materials, minutes of the Code Revision Commission meetings and the contract with LexisNexis. The State responded with the minutes of the 2021 meeting (See [Exhibit P-E](#)), but did not release minutes of any previous meetings, which I had requested. The State also released the 2006 contract with LexisNexis (See [Exhibit P-](#)



F), and the 2011, 2018, and 2021 amendments to that contract (See **Exhibit P-G**, **Exhibit P-H**, and **Exhibit P-I**).

20. On May 20, 2021, the Georgia legislature passed and the Governor signed SB238, “an Act to amend Chapter 1 of Title 1 of the Official Code of Georgia Annotated, relating to general provisions, so as to revise provisions relating to the enactment of the Official Code of Georgia Annotated; to clarify the portions of the Code which have the effect of law; to clarify the matter included in the Code that does not have the effect of law; to amend Chapter 9 of Title 28 of the Official Code of Georgia Annotated, relating to the Code Revision Commission, so as to clarify the oversight of the commission with respect to state content; to clarify the oversight of the commission with respect to supplementary content; to revise a provision relating to copyright of the Code; to provide for related matters; to repeal conflicting laws; and for other purposes.” The bill may be viewed at <https://legiscan.com/GA/bill/SB238/2021>. In my opinion, this appears to be a blatant attempt to evade the U.S. Supreme Court decision by making minor and inconsequential cosmetic changes to the publication of the Official Code of Georgia Annotated.

21. On April 14, 2021, the Vanderbilt Law School legal clinic, writing on behalf of their client Public Resource, wrote to the Tennessee Code Commission requesting removal of copyright assertions over the Tennessee Code Annotated (TCA) and informing the Commission that the TCA was available on an open repository in HTML format (See **Exhibit Q-1**). On April 17, 2021, Public Resource received a notice from LexisNexis that Tennessee was cancelling their DVD product, leaving only LexisAdvance and print as options (See **Exhibit Q-2**). The letter from Vanderbilt Law School had been circulating for several weeks, allowing several hundred people to sign letters of support, and we can only surmise that the State and their vendor got wind of this and decided to take preemptive steps. Five releases of the Tennessee

Code Annotated may be viewed at <https://unicourt.github.io/cic-code-tn/>. On August 11, 2021, the Office of the Attorney General of Tennessee wrote to the Vanderbilt Law School legal clinic, and asserted that the U.S. Supreme Court decision in the Georgia case did not apply to the State of Tennessee (See [Exhibit Q-3](#)). To purchase the Tennessee Code in print, Public Resource spent \$1,035.40 in 2021 and we expect similar charges in subsequent years for the updates. Our cost for the DVD service, before the state and their vendor cancelled electronic access, was \$1,771.18 in 2020.

22. On May 23, 2013, Public Resource wrote to the Arkansas Code Revision Commission, informing it that the Arkansas Code Annotated was available for free access on the Internet and enclosing a copy for the Commission on a USB thumb drive (See [Exhibit R-1](#)). No response was received to this letter. On December 1, 2020, the Arkansas Code Revision Commission met and received a briefing from LexisNexis, in which their vendor asserted that the U.S. Supreme Court decision did not apply to the State of Arkansas (See [Exhibit R-2](#)). A video of that meeting may be viewed at <https://archive.org/details/ar.crc.2020.12.1.video>.

23. On December 21, 2020, Public Resource wrote to the Arkansas Code Revision Commission, disputing the assertion that the U.S. Supreme Court decision did not apply to the State of Arkansas, informing the Code Revision Commission of the availability of the Arkansas Code Annotated on an open repository, and asking for an opportunity to discuss these matters with the Commission (See [Exhibit R-3](#)). The Commission did not respond, but soon thereafter Public Resource was notified by LexisNexis that the quarterly DVD product had been cancelled, and our only options were print or LexisAdvance. On April 6, 2021, Public Resource sent a letter protesting this action to the Arkansas Code Revision Commission, which did not respond (See [Exhibit R-4](#)). Three releases of the Arkansas Code Annotated transformed into HTML

may be viewed at <https://unicourt.github.io/cic-code-ar/>. The 113 volumes of Arkansas law current through 2021, which we subsequently purchased in print, and scanned at great expense and with great effort, may be viewed at <https://archive.org/details/govlaw?query=Arkansas2021&sort=titleSorter>. Our 2020 DVD subscription for the Arkansas Code cost \$2,288.56.

24. On August 31, 2021, Public Resource obtained a copy of the contract between LexisNexis and the State (See [Exhibit R-5](#)) and copies of the minutes of the Arkansas Code Revision Commission from 2012 to 2020 (See [Exhibit R-6](#), which contains the quotations cited herein). On October 8, 2013, LexisNexis briefed the Commission on the fact that Public Resource had posted the Arkansas Code Annotated, stressing that copyright was maintained in the name of the state, that Mississippi and Georgia had also been “targeted” and were considering legal action, and asserting that if copyright was not protected “the Code will not be of any value to a publisher.” On February 27, 2014, when Commissioner Brownstein asked about the purpose of copyright, Mr. Henderson, the Arkansas Code Revisor, said it was to maintain “control” over the publication, reminding the commission that “the code is actually the law.” On September 23, 2015, Mr. Henderson again briefed the Commission, saying it had “received a letter from a businessman who runs publicresource.org [sic].” Mr. Henderson maintained that we had violated the law and that the Georgia Attorney General has filed suit. On December 1, 2020, LexisNexis briefed the Commission on Public Resource and the U.S. Supreme Court case. The effort to evade the Supreme Court decision has been explicit and ongoing. On September 29, 2021, The Commission once again met and discussed the issue with the senior representative from Lexis and then passed an amendment to the Lexis contractor with the explicit aim of maintaining copyright registrations in the Arkansas Code Annotated and somehow avoiding the Georgia decision by declaring case summary annotations to be the private property of their vendor (yet still include them in the

one and only official codification of Arkansas). The motion to amend the contract is in [Exhibit R-7](#), the contract amendment is in [Exhibit R-8](#), and a transcript of that discussion is in [Exhibit R-9](#).

25. On June 1, 2020, Public Resource purchased the Wisconsin Jury Instructions, and wrote to the Wisconsin Judicial Conference regarding copyright assertions over these edicts of government (See [Exhibit S-1](#)). On January 25, 2021, the Supreme Court of Wisconsin announced that jury instructions would be available for free and that copyright assertions would be dropped (See [Exhibit S-2](#)). Public Resource scanned those documents and made them available in searchable archive, with files that are easily downloadable. Those documents may be viewed at [https://archive.org/details/JuryInstructions?and\[\]=subject%3A%22Wisconsin+Jury+Instructions%22](https://archive.org/details/JuryInstructions?and[]=subject%3A%22Wisconsin+Jury+Instructions%22).

26. On May 14, 2021, Public Resource purchased and posted a copy of the Pattern Jury Instructions from the Georgia Council of Superior Court Judges, and wrote the Council a letter discussing the edicts of government doctrine, the U.S. Supreme Court case, and informing the Council that we had posted the documents (See [Exhibit T-1](#)). The Council has failed to respond. On June 23, 2021, counsel for Public Resource wrote to the Council reiterating our concerns (See [Exhibit T-2](#)). The Council has failed to respond. The Georgia Pattern Jury Instructions may be viewed at [https://archive.org/details/JuryInstructions?and\[\]=subject%3A%22Georgia%22](https://archive.org/details/JuryInstructions?and[]=subject%3A%22Georgia%22).

27. On April 7, 2021, a colleague wrote to the Minnesota District Judges Association regarding the Minnesota Jury Instructions (See [Exhibit U-1](#)). On May 18, 2021, the Hon. Judge John Hoffman responded to that letter, asserting that the Minnesota District Judges Association is a voluntary non-profit organization and therefore the edicts of government doctrine does not apply to it (See [Exhibit U-2](#)). It should be noted that the Minnesota District Judges Association has offices in the

Minnesota Judicial Center and the authors of the jury instructions are all “volunteer active and retired judges.”

28. On November 24, 2020, the Samuelson Law, Technology & Public Policy Clinic of the School of Law of the University of California, Berkeley, writing on behalf of their client, Public Resource, wrote to the Judicial Council of California protesting the assertions of copyright over the Jury Instructions of California (See [Exhibit V](#)). The 19-page detailed analysis was accompanied by petitions of support from 11 public interest organizations, as well as the Office of the State Public Defender, and several hundred law professors, law librarians, and law students. The California Judicial Council has yet to take up the matter.

29. On December 29, 2020, Public Resource wrote to the California Building Services Commission under the California Public Records Act requesting an electronic copy of Title 24 of the California Code of Regulations (See [Exhibit W-1](#)). Title 24 consists of the mandatory public safety codes of California, such as the California Electrical Code (Title 24, Part 3). The Commission responded on January 7, 2021, that it would not provide the records we requested because they were subject to copyright by private parties (See [Exhibit W-2](#)). On January 29, 2021, Public Resource appealed the decision, but to no avail (See [Exhibit W-3](#)).

30. On December 29, 2020, Public Resource wrote to the California Office of Administrative Law under the California Public Records Act, requesting the rest of the California Code of Regulations in electronic format (See [Exhibit W-4](#)). On January 22, 2021, the Office of Administrative Law responded that it did not have in its possession electronic copies of the California Code of Regulations (See [Exhibit W-5](#)). On February 3, 2021, Public Resource wrote back to the Office of Administrative Law requesting that it reconsider its position (See [Exhibit W-6](#)). The Office remained firm in its position.

31. In a great many instances, edicts of government are subject to copyright assertions by the state or by their vendors. In addition, the vendors, including West Law and LexisNexis, enforce stringent contractual terms of use and technical means, such as Digital Rights Management and monitoring users, to enforce their claimed exclusive hold on edicts of government.

32. The prices to purchase these edicts of government are often spectacularly high. Public Resource recently spent \$2,929.87 purchasing the jury instructions of Ohio, Arkansas, Virginia, Indiana, and Illinois from LexisNexis. The Indiana Model Civil Jury Instructions, for example, has a list price of \$513.00 and bears stringent copyright assertions, even though it is authored by the Indiana Judges Association. LexisNexis maintains that the Indiana Judges Association “is a voluntary association comprised of state-employed members of the judiciary” (See [Exhibit X-1](#)).

33. Likewise, Public Resource recently purchased from WestLaw the jury instructions for Missouri, Alabama, Nebraska, New York, Mississippi, Tennessee, Arkansas, and Colorado. In order to purchase these edicts of government, Public Resource was required to put a down payment of \$398 and agree to 2-year contract for \$544/month, for a total cost of \$13,454 for 12 books. For example, the five volumes of the New York Pattern Jury Instructions - Civil, 2021 edition is \$1,960. It is authored by the Association of Justices of the Supreme Court of the State of New York and features a prominent copyright assertion and stringent terms of use. The product page may be viewed at <https://store.legal.thomsonreuters.com/law-products/Jury-Instructions/New-York-Pattern-Jury-InstructionsmdashCivil-2021-ed/p/106668380>.

34. Despite the strong and clear authority of the U.S. Supreme Court’s decision in the Georgia code case, making edicts of government available to the public remains a perilous and costly proposition. In addition to the numerous matters referenced above, various organizations sued Public Resource in federal court in Washington DC

in 2013 for posting online a body of standards that federal and state governments have incorporated by reference, making these standards the law; that case is currently pending in the U.S. District Court after the U.S. Court of Appeals ruled in our favor. [cite] Public Resource is privileged to have the pro bono support of a large number of prominent law firms, but this is not an exercise for the weak of stomach. Our pro bono pro forma invoices for legal services have run well over \$1 million per year in many years.

35. Even when we make these edicts of government available, many citizens, perhaps vaguely aware of the threats being made by states and their vendors, worry they will be accused of breaking the law by reading the law. A volunteer firefighter wishing to copy the life-safety code, a law librarian wishing to make the official code of a state available, a business person wishing to understand equal opportunity law, a factory worker wishing to understand occupational safety, or a parent wishing to understand laws governing educational institutions or nursing homes must pause and ask “is it legal for me to read this material without paying for it?”

36. The assertions of copyright are not subtle. For example, the Mississippi Secretary of State web pages proclaim that “the laws of Mississippi are copyrighted by the State of Mississippi. Users are advised to contact the Joint Committee on Compilation, Revision and Publication of Legislation of the Mississippi State Legislature for information regarding publication and distribution of the official Mississippi Code.” The web page may be viewed at <https://www.sos.ms.gov/communications-publications/mississippi-law>.

37. Asserting copyright over edicts of government is deceptive to consumers and has a huge chilling effect on competition. But, the consumer deception is more than asserting copyright or imposing improper terms of use. The so-called “free” site operated by LexisNexis for the State of Georgia is an example. Not only are onerous terms of use required to enter the site, with additional terms disclosed only after the user clicks agreement and enters the site, the site is clearly labeled the “Official Code of Georgia Annotated.” That site may be viewed at <http://www.lexisnexis.com/hottopics/gacode/default.asp>.

38. In a democracy, the rule of law requires that the law be promulgated. Ignorance of the law is no excuse. When states and their vendors collude to improperly assert copyright, invoke terms of use, and aggressively attempt to build walls around access to the raw materials of our democracy, we all suffer.

I declare that the foregoing is true and correct.

Executed on 10/18/2021 in Healdsburg, California.

DocuSigned by:  
*Carl Malamud*  
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/s/

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DS CARL MALAMUD

