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Georgia claims that publishing its state laws for free online is ‘terrorism’



Not your average “terrorist”: Carl Malamud of Public.Resource.Org testifying before Congress last year. (Public.Resource.Org)

BY MICHAEL HILTZIK | BUSINESS COLUMNIST

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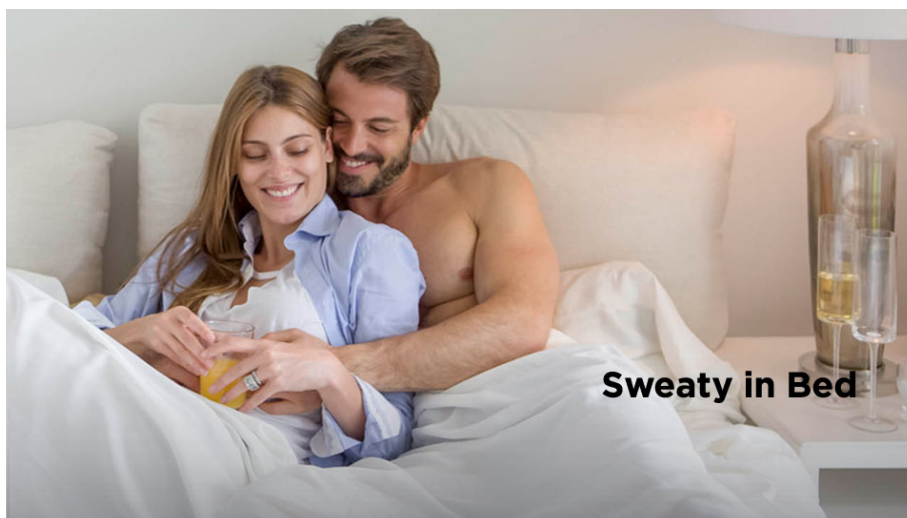
Government officials have threatened “rogue archivist” Carl Malamud with legal action many times for his efforts to make public government documents widely available for free, but the state of Georgia has set a new standard for fighting this ridiculous battle: It’s suing Malamud for [infringing its copyright of state laws](#) by -- horrors -- publishing them online.

The state’s lawsuit, filed last week in Atlanta federal court, accuses Malamud of piracy -- and worse, of “a form of ‘terrorism.’” His offense: Through his website, public.resource.org, he provides members of the public access to [a searchable and downloadable scan](#) of the Official Code of Georgia Annotated -- that is, the entire body of state law. The state wants a court order forcing Malamud to stop.

Georgia and Malamud have been waging this battle for a couple of years, or ever since [Malamud sent thumb drives](#) bearing the scans to the speaker of the state House of Representatives in 2013. A cease-and-desist order, which Malamud rebuffed, came virtually by return mail.

This isn’t the first such battle Malamud has waged. For roughly two decades he’s been working to make public laws, codes and court documents, well, public. At almost every turn he’s been fought by government agencies that prefer to extract a fee from taxpayers for access, even though, as Malamud points out, the public pays for the work in the first place, via taxes.

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[Among his notable successes](#) is helping to persuade the Securities and Exchange Commission to make EDGAR, its database of corporate filings, available free of charge. Another is RECAP, an add-on for Internet browsers that launches when the user accesses PACER, the federal court system's database of court filings and rulings, which charges users by the page. Every time a RECAP user accesses a court document, it automatically gets added to a free public database. Users get access for free to every document uploaded to RECAP, signified on their browsers by a glowing blue "R." This is the sort of effort that prompted BoingBoing's Cory Doctorow to label Malamud a ["rogue archivist."](#)

At the state level, his battle with Oregon ended when the state Legislature concluded that, yes, its state laws shouldn't be protected by copyright. "Most states don't play this game," Malamud says, but about a half a dozen still hold back from making their statutes books fully available, including Mississippi and Idaho.

Georgia has gone further than any other state, Malamud says, by actually filing an infringement lawsuit. The state claims that Malamud has done more than merely publish public statutes. The texts of state laws, it agrees, should be "free to the public."

His offense, the lawsuit asserts, is the inclusion in his download of the "annotations" attached to those texts. These include "synopses of cases" interpreting the law, "summaries of Opinions of the Attorney General of Georgia" and other summaries. Each is "an original and creative work of authorship that is protected by copyrights owned by the state of Georgia," the suit claims.

Malamud doesn't accept the distinction. The whole package, he says, is "the official code of the state of Georgia" and to fully understand the law one needs to refer to the annotations too. To say you can have free access to one but pay for the other, he says, is like saying "you can have a sandwich for free but you have to pay for the mayonnaise, and the mayonnaise comes on all the sandwiches." He also points out that the free online version of the statutory texts isn't all that useful: As maintained by LexisNexis on a state contract, it can't be copied or downloaded, according to the [attached copyright notice](#).

Malamud says he wouldn't distribute genuinely creative and independent work based on the Georgia code by a third party, such as the synopses of court cases produced by Westlaw. The annotations at issue aren't like that -- they're produced by a state body, the Georgia Code Revision Commission, and the copyright is held by the state, not a commercial publisher. "The law has no copyright because it's owned by the people," he says.

The state's own lawsuit acknowledges that the annotations are "valuable analysis and guidance regarding ... state law." And the core of its case isn't that the annotations shouldn't be broadly

accessible, only that the state doesn't want to pay the cost itself. LexisNexis shoulders the cost and in return gets the right to charge users, earning a profit.

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If LexisNexis can't recoup those costs because Malamud is providing a free alternative, the lawsuit asserts, the state "will be required to either stop publishing the annotations altogether or pay ... using tax dollars."

Well, yes. Isn't that what taxes are for?

One can glean how threadbare the state's case is from its use of the term "terrorist" to describe Malamud, who is anything but. This is an exploitation of a line from a book he published 20 years ago, describing in jocular terms his efforts to make international code standards public. "That was a quip," he says. "I've been a public servant for 30 years. I put the law online, and to make that into 'terrorism' is distasteful."

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