

Declaration of John Joergensen in Support of Public.Resource.Org

I, John Joergensen, declare as follows:

1. I am the Senior Associate Dean for Information Services and a Professor of Law at Rutgers Law School. I am also the Director of the law library that serves both the Camden and Newark locations of Rutgers Law. I have personal knowledge of the facts stated in this declaration and know them to be true and correct. I could competently testify to them if called as a witness.
2. I joined the Rutgers Law School faculty as a librarian in 1996, and have served in my current role for 5 years. One of the ongoing projects I have organized during my time at Rutgers is the New Jersey Courtweb Project, which provides free internet access to the full text of the decisions of the New Jersey Supreme Court and appellate courts, Tax Court, administrative law decisions, U.S. District Court of the District of New Jersey decisions, and the New Jersey Supreme Court's Ethics Committee opinions.
3. My work also includes digitizing U.S. congressional documents, the deliberations of state Constitutional Conventions, and other historical records. In 2007, I received the Public Access to Government Information Award from the American Association of Law Libraries.
4. As an academic law library, we are one of the few institutions with a vested interest in creating and preserving repositories of the law. We also understand that, in order to survive intact, the law needs actual distribution amongst holders rather than the apparent distribution that results from a single vendor making it available over the internet.
5. There is no official codification of New Jersey state statutes. I get my source materials from the New Jersey state legislature. This version of the code has numbering and other errors, for which the government disclaims any responsibility, and it lacks many title descriptors.
6. The majority of people look to the New Jersey Statutes Annotated (NJSA) produced by West as the sole trustworthy source for New Jersey law, and most code citations refer to the NJSA. West asserts copyright protections over the annotations in this version.
7. The New Jersey Office of Administrative Law claims copyrights over the New Jersey Administrative Code and the New Jersey Register, and the state contracts with LexisNexis exclusively for the publication of those documents in print and online. The Rutgers Law Library does not have a copy of the Administrative Code and we do not

have bulk access to the Register. The only online access we have to either is through LexisNexis.


8. Our library patrons—including the public, attorneys, faculty, and students—would find bulk access to source documents like the Administrative Code and the Register extremely useful. Local administrative law in New Jersey is very important because there are several significant differences between New Jersey state and federal administrative law. We have access to administrative law decisions through the Office of Administrative Law, but these interpretations of the law are merely secondary sources.
9. I have always wanted to do precedential research about administrative law decisions, and several faculty members have discussed their desire to perform computational law work at Rutgers. However, the current availability of primary legal material in the U.S. limits this universe of scholarship.
10. We get access to edicts of government through contracts with Lexis, West, and FindLaw (which is owned by West). I also teach people to use open-source government repositories to the extent that they are available. These repositories are growing, but not very quickly—especially at the state level.
11. At this point, I could not do my job as a law librarian without contracts with Lexis and West. These contracts cost us between \$40,000 and \$80,000 per year.
12. West offers law libraries Library Maintenance Agreements (LMAs). These agreements commit institutions to keeping certain materials current in their libraries in exchange for substantial discounts. However, each library that executes an LMA is required to enter into a nondisclosure agreement prohibiting disclosure of prices paid and discounts received under the LMA.
13. Before I became Director, Rutgers Law Library had LMAs regarding several materials. Those agreements were phased out over time, based on my insistence that our contracts not be secret. Consequently, we received significantly higher prices for materials that we needed, and which were only available from West.
14. Rutgers cannot afford to keep many materials current in its law library. Our costs for print materials that we access through West and LexisNexis rise approximately 14% each year, and—as with most academic law libraries—our acquisitions budget has remained flat for decades.
15. It is my belief that West and LexisNexis routinely raise the cost of print materials so that we shift to electronic materials. Every year, Rutgers cuts more print material and

becomes increasingly reliant on online databases. This practice effectively prevents us, and all similarly situated institutions from acting in our traditional role as a permanent repository of legal information. We are all rapidly becoming mere renters of access from a very small number of commercial sources. Further, West and LexisNexis impose significant restrictions on the usage and access of these electronic materials, including terms of service and digital rights management restrictions, which hamper our ability to disseminate the law.

16. I believe that West and LexisNexis are only able to impose these restrictive contract terms on their customers because of their market power. Without this market power, I do not believe that West or LexisNexis would be able to increase the cost of print materials by roughly 14% each year. This yearly increase is neither linked to the price of pulp nor the price of distribution. It is my belief that the owners of West and LexisNexis -- Thomson Reuters and RELX Group -- are simply aware of their market power and seeking to leverage this position to maximize their profits, all at the expense of their customers who have no other viable option to source these materials.

I declare that the foregoing is true and correct.

Executed on August 5, 2021 in Newark, New Jersey.

/s/ 
JOHN JOERGENSEN