

Declaration of Kim Paula Nayyer in Support of Public.Resource.Org

I, Kim Paula Nayyer, declare as follows:

1. I am the Edward Cornell Law Librarian, Associate Dean for Library Services, and a Professor of the Practice at Cornell Law School. 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. The opinions contained in this declaration are my own, and do not necessarily reflect the views of Cornell Law School or its affiliates.
2. In my capacity as the Law Librarian at Cornell Law School, I am familiar with contracts with vendors, including Lexis and West, for access to legal materials, including edicts of government.
3. Through my many years of being a law librarian, I have witnessed Lexis and West continue to grow and assert their powerful position in the legal research services market. Each of these vendors controls access to a significant number of resources, in some cases effectively maintaining a monopoly over access to a particular type of edict of government (e.g., a particular state's code). In fact, it is my belief that, in the U.S., we have no practical choice but to enter into contracts with at least one or more of Bloomberg, Lexis, and West in order to have comprehensive access to legal materials because there are no viable alternatives.
4. For many years, I worked in Canada, where there is a database called CanLII, which is a primary law database that allows users to look up legislation and case law, among other things, for free. In fact, CanLII is routinely updated any time a Canadian court issues a judicial opinion. Because of this viable alternative, it is my belief that Canadian law schools routinely teach access to CanLII.

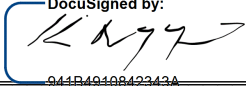
5. Such a fully viable alternative does not exist in the United States. No other resource in the United States is able to freely access, accumulate, and publish the official edicts of government, and I can reasonably infer that this is due to Bloomberg, Lexis, and West's effective monopolies over access to the official edicts of government, and their assertion of copyright over the process of annotating edicts of government. Without the ability to do so, no other resource is able to actually compete with Bloomberg, Lexis, or West.

6. I have spoken to a number of start-ups that are seeking to break down the barriers to entry erected by Bloomberg, Lexis, and West. In particular, I understand the aim of some of them to be to access and preserve older versions of edicts of government (e.g., older versions of state codes) because Lexis and West typically dispose of prior versions of these documents immediately once they have been updated. This means that access to prior versions of edicts of the government are often lost. This can be problematic for a number of reasons, including when changes in the official law are consequential to a case's outcome. Tracking changes in the law is also an important element of legal research, and Lexis and West's practices therefore impede the ability to perform comprehensive research.

7. It is my belief that Bloomberg, Lexis, and West are aware of their market dominance thus have an interest in using these positions of power to ensure their market power is further entrenched. And, by effectively preventing competitors from entering and disrupting the market for legal research materials, I fear that customers like me will continue to face increased costs and restrictions for accessing materials that should be widely available to the public.

I declare that the foregoing is true and correct.

Executed on 8/24/2021, 2021 in Ithaca, NY.

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KIM PAULA NAYYER