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September 30, 2009

The Honorable John Kroger, Attorney General
Oregon Department of Justice
State of Oregon
1162 Court Street, NE
Salem, OR 97301-4096

via electronic mail

Dear Attorney General Kroger:

I have been in communication with Mr. Leith and Mr. Green from your staff on the issue of your upcoming Public Records Review. Congratulations again on undertaking a reexamination of this important policy. I understand from Mr. Green that no public meetings or hearings will be held on the review and from Mr. Leith that you are quite busy and will be unable to meet with me. I hope you will accept this letter as input to your process.

Public.Resource.Org is a 501(c)(3) nonprofit corporation. Our goal, working with colleagues throughout the country, is to make available without restriction all primary legal materials in the United States. A long line of court opinions have held that the "authentic exposition and interpretation of the law, which, binding every citizen, is free for publication to all." *Banks v. Manchester*, 128 U.S. 244 (1888). The issue of making primary legal materials available to all without restriction is a fundamental part of our system of justice. As Judge Straub said, "due process requires that before a criminal sanction or significant civil or administrative penalty attaches, an individual must have fair warning of the conduct prohibited by the statute or the regulation that makes such a sanction possible." *County of Suffolk v. First American*, 261 F. 3d 179 (2nd Circuit, 2001).

As you may be aware, **a similar issue arose a year ago** in regards to the Oregon Revised Statutes. The Legislative Counsel had served organizations with a copy of the statutes on the Internet with a "take down notice." The matter received considerable public comment, and Public.Resource.Org and Justia, Inc. had prepared a Declaratory Judgment Action to resolve the dispute. At the request of the Legislative Counsel Committee, we testified on the matter along with a group of concerned Oregon citizens. The Legislative Counsel Committee, after due deliberation and analysis of the matter, voted unanimously to waive any assertions of copyright. As a direct result of "freeing" this valuable database of primary legal materials, a student at Lewis & Clark Law School created a greatly enhanced version of the statutes at **OregonLaws.org**.

In discussions with Mr. Leith on your staff, he had requested that we "stand down" on our **September 18 request** to purchase 4 key manuals maintained and published by your office, including the Attorney General's Administrative Law Manual, the Attorney General's Public Records and Meetings Manual, the Attorney General's Public Contracts

Manual, and the Core Mediation Training Manual. We were happy to comply with his request, and on **September 21** sent Mr. Leith a letter putting our request in abeyance for 90 days.

We believe this issue extends beyond the Attorney General's Office, and would encourage you to extend your review of the issue of copyright assertions over primary legal materials. We believe these copyright assertions, though unfounded, have a "chilling effect," greatly discouraging citizens from accessing materials. Upon completion of the 90-day abeyance period on January 1, it is our intent to post on the Internet for use without restriction the following primary legal materials:

- The Attorney General's Administrative Law Manual, the Attorney General's Public Records and Meetings Manual, the Attorney General's Public Contracts Manual, and the Core Mediation Training Manual. How public records, public meetings, public contracts, administrative law, and mediation are carried out by state agencies is central to the functioning of government and of great interest to all citizens.
- **The Oregon Administrative Rules and the Oregon Bulletin** published by the Secretary of State. While there is an online version of this information provided by the state, the copyright assertion discourages the kind of reuse and repurposing we saw with **OregonLaws.Org**.
- The Oregon Fire Code as adopted by Oregon Administrative Rule 837, Division 40, published by the **Oregon Office of the State Fire Marshal**. While copyright is claimed by a private entity and not the state, the Fire Marshal's web page encourages citizens to purchase only authorized commercial versions, and we find this to be extremely misleading.
- The Oregon Mechanical Code, the Oregon Residential Code, and the Oregon Structural Specialty Code, all published by the **Building Codes Division**. While there is a "view only" version of these codes available on-line from the vendor, citizens are unable to save, print, search or otherwise effectively use these crucial regulations.

Please note that we already have the **public safety codes** online on our site, but will not add the additional materials until the New Year pending your review.

Once again, I appreciate your efforts to conduct this public materials review. I will be giving lectures on this topic at two Oregon universities on October 22 and 23. If your schedule frees up and you would like to meet, or if Mr. Leith or Mr. Green have any questions, please don't hesitate to contact me.

Sincerely yours,

Carl Malamud
President & CEO
Public.Resource.Org

cc: Mr. Fred von Lohmann, Senior Staff Attorney, Electronic Frontier Foundation
Mr. Lawrence Lessig, Professor of Law, Harvard Law School