



PUBLIC.RESOURCE.ORG ~ *A Nonprofit Corporation*

Open Source America's Operating System

"It's Not Just A Good Idea—It's The Law!"

December 21, 2009

The Honorable David Kappos, Under Secretary of Commerce
U.S. Patent and Trademark Office
600 Dulany Street (Madison Building)
Alexandria, Virginia 22314

RE: Public Mirror of Patent Data

Dear Under Secretary Kappos:

Thank you for taking the time to meet with me Friday. I was pleased to discuss with you the work Public.Resource.Org, a 501(c)(3) nonprofit corporation, has undertaken to provide bulk access to U.S. patent data. Our goal is to provide a public mirror of any data your office has available so that any student, entrepreneur, or researcher can download this information. We are assisted in these efforts by our partners at Google and Intellectual Ventures, who have provided bulk data they previously purchased from you, as well as the Internet Archive, which is providing an additional mirror of the data we make available.

Your office has initiated RFI SS-PAPT-100008, "USPTO Data Dissemination Solution" which will likely result in the naming of a Selected Vendor who will be officially responsible for interacting with the public on behalf of the USPTO for distribution of data. It is our concern that this process will take a considerable period of time before the Selected Vendor is able to commence operation, and that once operations are begun that perhaps there might be restrictions on the ability of members of the public to download the entire database from the Selected Vendor.

Public.Resource.Org would thus be happy to continue in our role of providing a Public Mirror for your data. We are currently loading up the approximately 1,000 DVDs that were purchased from your office to provide public access to these products. In addition, we would be pleased if you could provide permission for us to crawl PAIR or access other databases currently not available.

Permission to crawl PAIR is simply a matter of allowing us to provide you with a set of IP addresses, and for you to provide us with guidance, such as the hours of the day such a crawl would be performed, or the number of transactions or megabytes per second you wish to limit our activities to. We would provide the service on a best-effort basis, and we'd like to suggest that we consider this a pilot project that could be terminated by either party, as opposed to a formal procurement. In particular, we would be unable to accept an agreement that contained clauses that would, for example, require us to delete public data upon completion of the pilot period or otherwise limit dissemination.

Public.Resource.Org has provided a similar service to your sister agency in the Department of Commerce, the National Technical Information Service. Under NTIS Joint Venture NTIS-1832, we provided a simple framework whereby NTIS sent us videotapes which we digitized, and then sent the government back their tapes and a digital copy. This FedFlix program is now one of the most popular U.S. government channels on YouTube and we have digitized over 1,000 tapes.

We ran the project very successfully for one year, then amended it for a 1-year extension which ramped the project up. Because that agreement required the government to ship us their property, we ended up with a two-page contract. I hope that since no government property is being shipped, an agreement with USPTO could be just as simple.

Again, thanks for taking the time to talk to me on Friday and I look forward to working with you.

Sincerely yours,

Carl Malamud
President & CEO
Public.Resource.Org

enc: Joint Venture Agreement NTIS-1832, Modified April 28, 2009

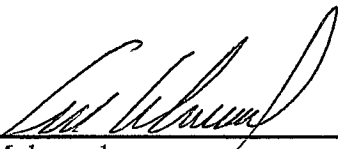
JOINT VENTURE
BETWEEN
THE NATIONAL TECHNICAL INFORMATION SERVICE
AND
PUBLIC.RESOURCE.ORG, INC.

Agreement No NTIS - 1832
Modified April 28, 2009

Pursuant to Section 3704b(a)(1)(A) of Title 15 of the United States Code, the National Technical Information Service (NTIS), a bureau within the Department of Commerce that operates on a self-sustaining basis without annual appropriations, and Public.Resource.Org, Inc. (PRO, a company incorporated under the laws of the State of California, hereby agree to enter into a joint venture to promote public access to multimedia products in the NTIS collection. The joint venture is based on an unsolicited proposal by PRO.

1. Each month NTIS will select no fewer than 100 non-copyrighted VHS videotapes or videotape masters in various formats from its collection and ship them to PRO.
2. PRO will pay costs associated with the Vendor's pulling, packaging and shipping of the master videotapes to NTIS. These costs must be approved by PRO in advance of shipping. On receipt of masters, NTIS will verify the title and number of masters sent by the Vendor and at its own expense, ship to PRO.
3. Immediately upon receipt, PRO will, at its own expense, digitize the videotape and return the videotape or videotape master and a copy in digital video disk (DVD) format to NTIS. The videotape and the DVD copy are both considered to be property of the United States Government. PRO will return the videotape and DVD within a reasonable time frame. A monthly submission to PRO will normally not occur until the DVDs sent the previous month have been returned to NTIS.
4. PRO will reimburse NTIS for the retail value of any videotape not returned to NTIS as provided in section 3.
5. Each party is free to make the content of the videotape available to the public through a web site or other means in any format and at any price, or for free, and to retain 100% of the revenue from any sales of the content.

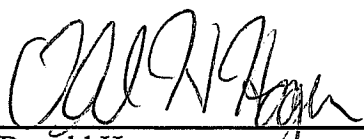
6. PRO will link its various sites where NTIS videos are displayed back to NTIS.
7. PRO will assert no intellectual property claim to the content provided by NTIS or the resulting DVD in any manner whatsoever.
8. Nothing in this joint venture purports to be an exclusive arrangement. NTIS may provide content in its videotape collection, including content digitized by PRO under this agreement, to any other business partner.
9. Unless renewed earlier, this Joint Venture will terminate one year from the date of execution, except that either party may terminate it with 60 days written notice to the other. If NTIS terminates, PRO may either return any videotapes it has not yet digitized at NTIS' expense or it may treat those videotapes as subject to section 4. If PRO terminates, it may either return any videotapes it has not yet digitized at its own expense or it may treat those videotapes as subject to section 4.
10. Neither party may assign its rights under this Agreement to a third party without the written consent of the other party.
11. This agreement will be construed in accordance with applicable Federal law as construed by the United States Court of Federal Claims.
12. Nothing in this agreement shall be construed as creating a partnership and neither party shall have the power to bind the other in any respect.



Carl Malamud
President, Public.Resource.Org, Inc.
1005 Gravenstein Highway North
Sebastopol CA 95472

Date: _____

5/14/09



Donald Hagen
Associate Director, Office of Product
Management and Acquisitions, NTIS

Date: _____

5/12/09