

STATEMENT OF CARL MALAMUD BEFORE THE ABA HOUSE OF DELEGATES

Thank you for the privilege of the floor. My name is Carl Malamud. I have spent 25 years helping governments put information on the Internet. In 1994, I posted the U.S. Securities and Exchange Commission database, then donated my software to the SEC so they could run it themselves. I've worked with Speaker Boehner's staff to post 14,000 hours of video from congressional hearings and with President Obama's transition team to help transform the Federal Register.

For the last 8 years, I have been posting—for free access—technical public safety standards that are deliberately and explicitly made into law—such as 486 building, fire, and electrical codes incorporated into state law—such as 980 public safety specifications that have been incorporated by reference into the Code of Federal Regulations, the subject of Resolution 112 before you today.

What is before you today is not a public access resolution, it is a private appropriations bill, one that fences off parts of the law as private property. Resolution 112, as written, encourages severe restrictions on the rights of citizens to read and speak crucial public safety regulations by specifying “read only access,” a loaded term.

“Read only access” means you must preregister with a private vendor before you can read the law. “Read only access” means you must accept onerous terms of use, including a covenant not to copy any of the laws you wish to see. “Read only access” means once you are permitted to enter the walled garden, you are presented with a web site that prohibits printing, searching, copying, or bookmarking the law, and discriminates against people who are visually impaired.

These public safety codes have the full force of law, they are edicts of government. These regulations cover some of our most important public safety concerns, such as testing for lead in water, the transportation of hazardous materials on roads and railways, personal protective equipment for emergency personnel, the safety of toys, the safety of infant car seats.

Promulgation of edicts of government is at the very heart of the rule of law. The rule of law means we are “an empire of laws, not of men,” that the law shall be committed to writing, that justice shall not be delivered on a whim.

Writing down the law is meaningless if we cannot read it. But, we must be permitted to do more than simply read the law. We must be able to freely speak the law, to share the law with our fellow citizens, to dispute it, to make it better.

Edicts of government are the raw materials of our democracy, the bricks on which we construct our temple of justice. I hope this House will do more than simply reject the current language, and instead reaffirm our commitment to making primary legal materials more readily available to the bar—and to our citizens—and form a Committee on Promulgation to examine access to all edicts of government.

One year after the American Bar Association’s ringing celebration of Magna Carta—after a decade of global leadership with the Rule of Law Initiative, we must not now say citizens will get second-class access to read about public safety, that lawyers will need to ask permission before speaking the law.

John Adams said that for our democracy to function properly, our citizenry must be informed, he said we must “let every sluice of knowledge be opened and set a-flowing.” But, how can justice ever pour forth like a mighty stream if we do not let the law flow like water? How can we ever enter that city of equality if we lock our codes behind a cash register? How can we ever have access for all on the road to justice if we post the law high up on a cross of gold?

Edicts of government are the property of the people—we the people—edicts of government are how we define our rights and obligations in our democracy. The question before this distinguished House today is no less than will you continue to stand with the people as you have for so many years? Today, let us all stand together for the rule of law and reject or postpone this resolution. Will you stand today?

Thank you.