

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN EDUCATIONAL RESEARCH
ASSOCIATION, INC., AMERICAN
PSYCHOLOGICAL ASSOCIATION, INC., and
NATIONAL COUNCIL ON MEASUREMENT IN
EDUCATION, INC.,

Plaintiffs,

v.

PUBLIC.RESOURCE.ORG,

Defendant.

Case No. 1:14-CV-00857-TSC-DAR

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANT-
COUNTERCLAIMANT
PUBLIC.RESOURCE.ORG, INC.'S
MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND
PERMANENT INJUNCTION**

Action Filed: May 23, 2014

Pursuant to Federal Rule of Evidence 201(b) and the authorities cited below, Defendant-Counterclaimant Public.Resource.Org respectfully requests that the Court take judicial notice of each of the following documents in connection with its Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment and Permanent Injunction:

1. The "Incorporation by Reference" webpage of the Office of the Federal Register, <http://www.archives.gov/federal-register/cfr/ibr-locations.html>, a true and correct copy of which is attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 65**.

2. The New York Times article "Putting a Number on Federal Education Spending," by Justin Delisle, published February 27, 2013, at <http://economix.blogs.nytimes.com/2013/02/27/putting-a-number-on-federal-education-spending/>, a true and correct copy of which is attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 66**.

3. The webpage entitled "Federal Pell Grant Program—Funding Status" on the U.S. Department of Education website, at <http://www2.ed.gov/programs/fpg/funding.html>, a true and

correct copy of which is attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 67**.

4. The webpage entitled "What are Title IV Programs?" on the U.S. Department of Education website, at http://federalstudentaid.ed.gov/site/front2back/programs/programs/fb_03_01_0030.htm, a true and correct copy of which is attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 68**.

5. The U.S. Senate Committee on Health, Education, Labor & Pensions 2012 report entitled "For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success," Executive Summary, https://www.help.senate.gov/imo/media/for_profit_report/ExecutiveSummary.pdf, a true and correct copy of which is attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 69**.

6. A letter from Lynn B. Mahaffie, Deputy Assistant Secretary for Policy, Planning, and Innovation, U.S. Department of Education, DCL ID: GEN-15-09, on the subject of "Title IV Eligibility for Students Without a Valid High School Diploma Who Are Enrolled in Eligible Career Pathway Programs," dated May 22, 2015, at <https://ifap.ed.gov/dpcletters/GEN1509.html>, a true and correct copy of which is attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 70**.

7. An August 2009 report of the U.S. Government Accountability Office, entitled "PROPRIETARY SCHOOLS: Stronger Department of Education Oversight Needed to Help Ensure Only Eligible Students Receive Federal Student Aid," at <http://www.gao.gov/new.items/d09600.pdf>, a true and correct copy of which is attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 71**.

8. "Program Integrity Issues," Federal Register, available at: <https://www.federal>

register.gov/articles/2010/10/29/2010-26531/program-integrity-issues#h-4, a true and correct copy of which is attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 72**.

9. Internet Engineering Task Force Request for Comments 7231, "Hypertext Transfer Protocol (HTTP/1.1): Semantics and Content" § 4.3 (June 2014), a true and correct copy of which is attached to Public Resource's Index of Consolidated Exhibits as **Exhibit 73**.

A district court may take judicial notice of facts that are "not subject to reasonable dispute in that [they are] either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Under this rule, it is well established that "matters of public record . . . [are] well within the range of judicial notice." *Bebchick v. Washington Metro. Area Transit Comm'n*, 485 F.2d 858, 880 (D.C. Cir. 1973).

All of the exhibits listed above are matters of public record. Exhibits 65, 67–72 are pages from government websites. This Court has "frequently taken judicial notice of information posted on official public websites of government agencies." *Pharm. Research & Manufacturers of Am. v. United States Dep't of Health & Human Servs.*, 43 F. Supp. 3d 28, 33 (D.D.C. 2014) (citing *Cannon v. District of Columbia*, 717 F.3d 200, 205 n. 2 (D.C. Cir. 2013)). Exhibit 66 is an article from the New York Times reporting on federal student aid spending. The Court may take judicial notice of facts about government action reported in newspaper articles. *See Washington Post v. Robinson*, 935 F.2d 282, 291 (D.C. Cir. 1991). Exhibit 73 is a voluntary industry standard that defines the communications protocol used by every World Wide Web browser and server. Widely used industry standards are another proper subject of judicial notice. *See Harmon v. Hilton Grp.*, No. C-11-03677 JCS, 2011 WL 5914004, at *7 (N.D. Cal. Nov. 28, 2011) *aff'd sub nom. Harmon v. Hilton Grp., PLC*, 554 Fed. Appx. 634 (9th Cir. 2014) (taking

judicial notice of newspaper industry standards document); *Boen Hardwood Flooring, Inc. v. United States*, 357 F.3d 1262, 1264 (Fed. Cir. 2004) (taking judicial notice of “Voluntary Product Standards” document concerning the composition of plywood).

For these reasons, Public.Resource.Org respectfully requests that the Court take judicial notice of the documents listed above.

Dated: January 21, 2016

Respectfully submitted,

/s/ Andrew P. Bridges

Andrew P. Bridges (admitted)
abridges@fenwick.com
Sebastian E. Kaplan (*pro hac vice* pending)
skaplan@fenwick.com
Matthew Becker (admitted)
mbecker@fenwick.com
FENWICK & WEST LLP
555 California Street, 12th Floor
San Francisco, CA 94104
Telephone: (415) 875-2300
Facsimile: (415) 281-1350

Corynne McSherry (admitted *pro hac vice*)
corynne@eff.org
Mitchell L. Stoltz (D.C. Bar No. 978149)
mitch@eff.org
ELECTRONIC FRONTIER FOUNDATION
815 Eddy Street
San Francisco, CA 94109
Telephone: (415) 436-9333
Facsimile: (415) 436-9993

David Halperin (D.C. Bar No. 426078)
davidhalperindc@gmail.com
1530 P Street NW
Washington, DC 20005
Telephone: (202) 905-3434

Attorneys for Defendant-Counterclaimant
Public.Resource.Org, Inc.