



Office of Legal Affairs
UNIVERSITY OF WISCONSIN-MADISON

September 1, 2020

VIA EMAIL

Carl Malamud, President
Public.Resource.Org, Inc.
P.O. Box 800
Healdsburg, CA 95448
carl@media.org

Re: Board of Regents of the University of Wisconsin's Wisconsin Jury Instructions

Dear Mr. Malamud:

I write in response to your June 1, 2020 correspondence regarding your intended publication of the Wisconsin Jury Instructions published by Continuing Legal Education, University of Wisconsin Law School ("university"). Thank you again for extending the time frame for the university's reply to September 1 given the current demands on the university's resources.

Your correspondence acknowledges the long history of the university's significant involvement and leadership in the creation of the Wisconsin Jury Instructions (civil, criminal, and juvenile). There is no doubt that the university is recognized for producing some of the nation's most comprehensive jury instructions and comments, the value of which is extolled among judges, lawyers, and juries in Wisconsin and other states. As you are aware, the university uses the proceeds from the sale of the jury instructions to fund the university staff and other expenses required to produce these high-quality instructions and comments. The university's role and process in creating the jury instructions has long been seen by the Wisconsin Judicial Conference as the most viable path to ensure the publication of jury instructions that are compatible with our shared goal of excellence.

Like you, we have spent considerable time reviewing the recent decision in *Georgia v. Public Resource.Org, Inc.*, 140 S.Ct. 1498 (2020). We acknowledge that the case presents an expansion of the government edicts doctrine. But we would be remiss in failing to note the many critical differences between the creation of the Wisconsin Jury Instructions and the facts in *Georgia v. Public Resource.Org, Inc.*, 140 S.Ct. 1498 (2020). Unlike *Georgia*, there is no agreement of any kind between the Wisconsin Judicial Conference and the University of Wisconsin regarding the jury instructions, including but not limited to a work made for hire agreement. Instead, the Wisconsin Jury Instructions are drafted and authored by employees of the University of Wisconsin, who also lead and coordinate the project. While the Wisconsin Judicial Conference works with our employees on the project, the writing and creating of the jury

instructions is solely performed by the University of Wisconsin and its staff. Importantly, the costs of drafting, proofing, and publishing the Wisconsin Jury Instructions are solely paid for by the University of Wisconsin without support from either the Wisconsin legislature or judiciary.

Based on these significant differences from *Georgia* as well as our own independent investigation, this is not the clear-cut case you suggest in your correspondence. We believe that the prohibition of copyright protection under the government edicts doctrine does not apply to the Wisconsin Jury Instructions as they have been authored and published, and that a Wisconsin court will uphold our copyright in the Wisconsin Jury Instructions. Accordingly, any publication of the Wisconsin Jury Instructions without express permission by the university violates its rights and constitutes copyright infringement in violation of federal and state laws, which provide remedies including injunctions and awards of damages, defendant's profits, and costs.

That said, we would like to avoid litigation and are currently engaged in a good-faith effort to find a way that the jury instructions can be made available to the public at no cost. Unfortunately, that will likely mean the end of the university's longstanding role. The university has been essential to the development of the jury instructions and comments, but that role cannot be sustained if the university cannot generate funds to support its valuable work. At this time, the university and the Wisconsin Judicial Conference are planning a transition of responsibility for future jury instructions in a manner that will enable for them to be provided at no cost starting in 2021. This period of transition is key to ensuring a successful transfer of operations while maintaining the quality of the instructions.

To give us time to make that transition, we respectfully ask that you not publish the Wisconsin Jury Instructions and confirm in writing that you will not publish the Wisconsin Jury Instructions while we complete this transition. While we believe that the existing jury instructions are protected by copyright law, we wish to avoid litigation, and would appreciate the time to ensure a smooth transition to jury instructions that are available free of charge in the future.

This letter is written without prejudice to university's rights and remedies, all of which are expressly reserved. Please confirm no later than September 15, 2020 that you will agree not to proceed with publishing the Wisconsin jury instructions through February 1, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy K. Lynch', with a stylized flourish at the end.

Nancy K. Lynch
Associate Vice Chancellor for Legal Affairs