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**Open Source America's Operating System**

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

May 13, 2021

Hon. Maria J. Luckert  
Chief Justice of the Kansas Supreme Court  
% Kansas Judicial Council  
Kansas Judicial Center  
301 SW 10th Ave, Suite 140  
Topeka KS 66612

via Electronic Mail

Dear Chief Justice Luckert:

I am writing to you today regarding copyright restrictions and barriers to access currently placed on the Pattern Jury Instructions for Kansas (Criminal and Civil, 4th) and the Kansas Appellate Handbook (2018). My purpose in writing is two-fold: to respectfully request that the Kansas Judicial Council remove these copyright restrictions and to inform the Kansas Judicial Council that our not-for-profit organization, Public.Resource.Org, has made these materials available for use without restriction.

All three of these documents carry a copyright assertion, as does the entire web site of the Kansas Judicial Council. Before I was able to purchase access to these materials, I had to undertake a phone interview with Judicial Council staff, asking me what my purpose was in obtaining these materials, what use I would make, and other questions. I was warned that the materials was subject to copyright. I said I had no intention of selling these documents, and I understood that the Council was asserting copyright.

After my organization was sued by the State of Georgia for posting the Official Code of Georgia Annotated (OCGA), the U.S. Court of Appeals **heard our case** and reversed the District Court judgment. In a 58-page opinion, the Hon. Stanley Marcus wrote:

Thus, we conclude that the annotations in the OCGA are attributable to the constructive authorship of the People. To advance the interests and effect the will of the People, their agents in the General Assembly have chosen to create an official exposition on the meaning of the laws of Georgia. In creating the annotations, the legislators have acted as draftsmen giving voice to the sovereign's will. The resulting work is intrinsically public domain material, belonging to the People, and, as such, must be free for publication by all.

As a result, no valid copyright can subsist in these works. **Code Revision Comm'n for Gen. Assembly of Georgia v. Public.Resource.Org, Inc., 906 F.3d 1229 (11th Cir. 2018)**

After the State of Georgia **appealed the decision** to the U.S. Supreme Court, the Court granted certiorari and heard argument. It then rejected the claims of Georgia that they could assert copyright over these codes. Writing for the Court, Chief Justice Roberts said:

The Copyright Act grants potent, decades-long monopoly protection for “original works of authorship.” 17 U. S. C. §102(a). The question in this case is whether that protection extends to the annotations contained in Georgia’s official annotated code.

We hold that it does not. Over a century ago, we recognized a limitation on copyright protection for certain government work product, rooted in the Copyright Act’s “authorship” requirement. Under what has been dubbed the government edicts doctrine, officials empowered to speak with the force of law cannot be the authors of—and therefore cannot copyright—the works they create in the course of their official duties. *Georgia et. al. v. Public.Resource.Org*, 140 S.Ct. 1498 (2020)

My purpose in writing to you today is, as I said, two-fold. First, I believe it is inappropriate for the Joint Council to continue to assert copyright over edicts of government. In the wake of the U.S. Supreme Court decision in the Georgia case, the U.S. Copyright Office has clearly stated that it “will not register a government edict that has been issued by any federal, state, local, or territorial government, including legislative enactments, judicial decisions, administrative rulings, public ordinances, or similar types of official legal materials.” *Compendium of U.S. Copyright Office Practices, Third Edition, § 313.6(C)(2), U.S. Copyright Office, January 28, 2021*

We thus request that the Judicial Council take affirmative steps to remove all copyright assertions and barriers to use.

The second reason for writing to you today is to notify you that Public Resource has posted these edicts of government at the following location, as well as on our web site:

- [Kansas Appellate Handbook, 2018](#)
- [Pattern Jury Instructions, Criminal 4th](#)
- [Pattern Jury Instructions, Civil 4th](#)

I believe we all share a common goal, which is to further our democratic system of government by informing our fellow citizens of their rights and their obligations. The rule of law is founded on the principle of promulgation of the law, and an informed citizenry is crucial to the furtherance of these common goals. Jury instructions are often the best plain-language statement of the law, and are of great interest to journalists, students, researchers, and citizens. They were created by judicial officers in the course of their official duties. There is no legal or policy justification for restricting access to these materials.

Please do let me know if I can be of assistance and I look forward to affirmative steps by the Judicial Council.

With best regards,

DocuSigned by:

*Carl Malamud*

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Carl Malamud, President  
Public Resource

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