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**Open Source America's Operating System**

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

July 22, 2013

Mr. Peter M. Brody  
Ropes & Gray LLP  
One Metro Center  
700 12th Street, N.W., Suite 900  
Washington, D.C. 20005-3948

Dear Mr. Brody:

Thank you for your courteous and thoughtful letter of July 18, 2013. I am pleased that the Harvard Law Review Association has seen to fit to retain an outside attorney with your wealth of experience, including your work as Executive Editor of the Harvard Law Review.

You raised the matter of redistribution of 3 kinds of materials and asked that as a sign of good faith and as a precondition to dialogue we take certain actions in response to those materials. I am able to comply with your request in 2 of the 3 matters and respectfully decline in the third.

1. Dean Minow received on a George Washington USB Thumb Drive a complete copy of The Bluebook® reset into valid XHTML with use of CSS. Copies of these thumb drives were also provided to 8 members of the Harvard Law School Faculty who received carbon copies of the letters and I made one more courtesy copy which was sent unsolicited to Judge Posner, as he was mentioned in the letter. I have also made a copy of this file available to a member of the academic media.
2. We posted on the Internet on our site at <https://law.resource.org/code/blue/> a file called bluebook-redacted.html which contained a very brief excerpt of the first few pages of The Bluebook®.
3. In the same location as above, we posted in a subdirectory entitled "developers" a copy of the 3 files commonly and widely distributed throughout the Internet which consist of Proper Names and Common Abbreviations which have been encoded into the JSON format. These files are used by application developers for a variety of different purposes.

As to item 1, I can assure you that we have no intention at this time of further distributing the unredacted version of The Bluebook®. It was provided to Dean Minow and to members of the Harvard Law School faculty to demonstrate how easy it would be to provide a substantially better guide to citation than is provided today. Our

purpose was to show that the current paper and online versions of The Bluebook® are quite old and do not adequately support recent developments such as the Kindle or other e-book formats and that a considerably better version of the Bluebook could easily be produced with very little effort.

As to item 2, I looked again at the brief excerpt we had published as a way of showing interested observers the general nature of the communication we made to Dean Minow and to members of the Harvard Law School faculty. I believe that the version we published was squarely within the guidelines of fair use. However, as a sign of good faith per your request, we have disabled access to the redacted reversion of the file and re-redacted the material even further. I trust you will see that what we have online is perfectly useless from a practical point of view and I hope this allays any concerns you might have. Please note that we are not waiving our rights to fair use on the previous version that was posted, nor are we waiving any claim that The Bluebook® is the law and must be freely available.

As to item 3, we respectfully decline to remove the listing of proper names and abbreviations from the Internet. These common names and abbreviations are used in systems such as CitationStylist, an open source noncommercial package which provides legal and multilingual support to the Zotero citation system. The system includes files for Canada, Great Britain, and New Zealand in addition to the American files and there have been no protests whatsoever from the other jurisdictions.

Being able to create a useful set of open source developer tools is at the heart of our concern with the current stance of the Harvard Law Review Association and the other Bluebook shareholders. When Professor Frank Bennett of the Nagoya University Graduate School of Law, out of an abundance of caution and prudence, attempted to request permission to use these materials, he was ignored and then rebuffed. We do not believe he needed to ask permission and subject his perfectly proper research and coding to prior approval before commencing his valuable work.

Names and abbreviations such as are contained in the developer files do not entail creativity. Significant numbers of the abbreviations in the 19th Edition of The Bluebook® are borrowed directly (and without attribution) from the Oxford Standard for Citation of Legal Authorities (OSCOLA), which is under a Creative Commons license. The data we have copied are merely facts and would in any case fall under fair use guidelines.

There are numerous uses for this material and it would be unreasonable to require every researcher to clear their plan in advance with The Bluebook®. For example, one researcher was recently able to use the abbreviation files to analyze actual citation usage in a corpus of opinions from the Federal Reporter to document variations. This kind of a study is important as the Internet develops tools for searching the legal corpus for citation analysis and other purposes. We have placed a copy of his work in the developer subdirectory.

I hope you will view our action on items 1 and 2 and our considered and careful explanation of why we believe the abbreviation files in item 3 are appropriate as a good faith basis for further discussion.

Again, I thank you for your courteous letter and your offer for continued dialogue. That dialogue, of course, is not so important between you and me as we are both simply interested outside observers. The conversation that needs to occur is within the law reviews, and with the students and faculty that are the owners and operators of those law reviews. The conversation should also draw on the views of the legal academy as a whole, which has placed its trust in the four schools to create and maintain a uniform system of citation.

While I appreciate you reaching out to me, I must confess I was a bit taken aback by what appeared to be a very polite yet stern takedown notice, so I hope we will be able to move beyond that discussion and instead assist the Harvard Law Review Association as they begin to deliberate the question of how to move The Bluebook® into the Internet era and as they continue to provide our American legal system with the invaluable service of helping us all define a Uniform System of Citation.

Sincerely yours,



Digitally signed by Carl  
Malamud  
DN: cn=Carl Malamud,  
o=Public.Resource.Org  
, ou,  
email=carl@media.org,  
c=US  
Date: 2013.07.22  
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