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December 24, 2015

BY FEDEX AND EMAIL

Mr. Carl Malamud
Public.Resource.Org
1005 Gravenstein Highway North
Sebastopol, CA 95472
carl@media.org

Professor Christopher Jon Sprigman
New York University School of Law
40 Washington Square South, Room 314C
New York, NY 10012
christopher.sprigman@nyu.edu

Re: *The Bluebook: A Uniform System of Citation*

Dear Messrs. Malamud and Sprigman:

As you know from our prior correspondence, we represent the Harvard Law Review Association, a non-profit association that, working together with the Columbia Law Review Association, Inc., The Yale Law Journal Company, Inc., and the University of Pennsylvania Law Review (collectively, the “Reviews”), produces, revises, publishes, and distributes *The Bluebook: A Uniform System of Citation* (“*The Bluebook*”), the latest (20th) edition of which was published in 2015.

I write concerning Mr. Malamud’s recent Twitter postings, including several in the last few days, disclosing your imminent release of an “implementation of the Bluebook’s Uniform System of Citation” called “BabyBlue,” possibly as soon as December 31, 2015. Based on the description of “BabyBlue” in these and other postings, Prof. Sprigman’s November 25, 2015 interview in the *NYU Journal of Intellectual Property & Entertainment Law*, and earlier correspondence from each of you, we believe that “BabyBlue” may include content identical or substantially similar to content or other aspects of *The Bluebook* that constitute original works of authorship protected by copyright, and which are covered by various United States copyright registrations.

For the reasons set forth in our previous letters to Mr. Malamud dated July 2013 and May 2014 (copies of which are attached), my client has been and remains concerned that the publication and promotion of such a work may infringe the Reviews’ copyright rights in *The Bluebook* and *The Bluebook Online*, and may cause substantial, irreparable harm to the Reviews and their rights and interests in those works. Accordingly, we request that, in advance of the release of “BabyBlue” (including in beta form), you provide us with a complete and up-to-date copy of “BabyBlue” and permit us a reasonable period of time in which to assess any potential copyright issues we may have with that work, and to address and attempt to resolve any such concerns with you.

On a related issue, it appears from the NYU interview and the Twitter postings – including a photograph attached to one posting – that you intend to use the title “BabyBlue,” and the subtitle “A free, Creative Commons-licensed implementation of the Uniform System of Citation” in the version

of your work released to the public. In addition, the pages shown in that photo include several explicit references to *The Bluebook*.

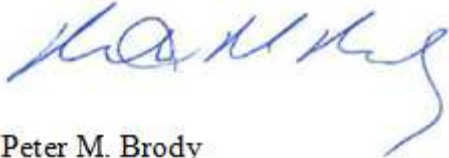
Please be advised that the Reviews are the collective owners of the registered trademarks THE BLUEBOOK (U.S. Reg. No. 3,756,727), THE BLUEBOOK ONLINE (U.S. Reg. No. 3,748,511), and THE BLUEBOOK A UNIFORM SYSTEM OF CITATION (U.S. Reg. No. 3,886,986) (collectively, the “BLUEBOOK Marks”). Given these rights, it is our client’s position that the title “BabyBlue,” or any title consisting of or comprising the word “Blue,” when used on or in connection with your work, would so resemble the BLUEBOOK Marks as to be likely, to cause confusion, mistake, and/or deception (including over whether “BabyBlue” was associated with or sponsored or approved by the Reviews), to the considerable detriment of the Reviews and in violation of their rights under the federal Lanham Act and state law.¹ The same is true for the subtitle, which includes a portion of one of the registered BLUEBOOK Marks, and which suggests that “BabyBlue” is a “licensed implementation” of *The Bluebook* (which it is not). Likewise, several references to *The Bluebook* shown in the photo could reinforce the false and misleading impression that your work was associated with or approved by the Reviews.²

Accordingly, and to avoid any risk of consumer confusion, my client respectfully demands that you agree (i) not to use the title or name “BabyBlue,” or any other title or name including the word “blue,” for your work, and (ii) not to include any other statement, phrase, word, term, name, symbol, device, subtitle, statement, or image in your work, or in the advertising or promotion of that work, that may be likely to cause confusion, mistake, or deception as to the source of “BabyBlue” or as to its affiliation, connection, or association with, or sponsorship or approval by, the Reviews. If you provide us with a pre-release copy of the work as requested above, we will undertake to identify any such material with specificity and bring it to your attention.

Given your announced release date for “BabyBlue,” we must request a response to this letter’s demands by **5 PM (EST) December 28, 2015**. (If your earliest planned release date, whether in beta or final form, is later than December 31, 2015 we would be open to a later response date.)

We look forward to hearing from you. Of course, the above is written without waiver of any of our client’s rights or remedies, all of which we expressly reserve.

Sincerely,



Peter M. Brody

¹ For similar reasons, the use of the title “BabyBlue” is likely to dilute the distinctiveness of, or tarnish, the registered BLUEBOOK Marks, in violation of laws prohibiting trademark dilution.

² Of course, the risk of any such confusion or dilution would be further exacerbated if “BabyBlue” incorporates any aspect of *The Bluebook*’s trade dress or other indicia of origin.



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July 18, 2013

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BY US MAIL AND E-MAIL

Carl Malamud
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1005 Gravenstein Highway North
Sebastopol, CA 95472

Re: *The Bluebook: A Uniform System of Citation*

Dear Mr. Malamud:

This firm represents the Harvard Law Review Association, which publishes and distributes *The Bluebook: A Uniform System of Citation* (“*The Bluebook*”). Together with the Columbia Law Review Association, Inc., The Yale Law Journal Company, Inc.—each a non-profit law review association—and the University of Pennsylvania Law Review—an operating unit of the University of Pennsylvania—the Harvard Law Review Association edits, revises and produces new editions of, and owns all copyright and trademark rights in and to, *The Bluebook*.

I write in response to your June 14, 2013 letter to Dean Martha L. Minow (copied on this correspondence) and unidentified members of the faculty of the Harvard Law School concerning the copyright protections afforded to *The Bluebook*. Although your request was directed to the Harvard Law School, we have interpreted it as a request directed to the Harvard Law Review Association, and respond accordingly.

We appreciate the questions you have posed regarding *The Bluebook*. By the same token, we appreciate your recognition that these issues are “complicated, involving large sums of money and four institutional stakeholders.” Indeed, your questions implicate the law reviews’ mission to develop and promulgate a uniform system of legal citation, their financial sustainability, their contractual obligations, and applicable law.

We believe that any discussion of the issues you have raised must be informed by the history of *The Bluebook* and the role that it plays in the legal community. For your convenience, we summarize this background as follows:

The first edition of *The Bluebook* was published in 1926 as a style and citation manual for the Harvard Law Review. By 1934, several other law reviews had adopted *The Bluebook* as a style

and citation guide. The 1934 edition and all subsequent editions were jointly prepared by members of the Harvard Law Review, the Columbia Law Review, the University of Pennsylvania Law Review and the Yale Law Journal. Over the next fifteen years, *The Bluebook* evolved into an authoritative system of citation for law reviews in the United States. The Twelfth Edition, published in 1976, further expanded *The Bluebook's* influence as the first edition marketed to both courts and legal practitioners as a uniform guide to legal citation. Now in its Nineteenth Edition, *The Bluebook* has grown from a 26-page pamphlet intended for use by a single law review to a full-fledged reference book over 500 pages long outlining a system of citation that communicates key information to legal scholars and practitioners alike.

The contents of *The Bluebook* include not only rules of legal citation developed by the law reviews over the years as described above, but also the law reviews' carefully curated examples, explanations and other textual materials, all of which have been diligently selected, coordinated and arranged over decades. The four law reviews invest significant time and effort to revise, update and continually improve *The Bluebook* in the face of rapid developments in the legal scholarship and publication technology. Each new edition, which is published roughly every five years, is the result of an extensive operation. Collectively, the editors of the law reviews spend upward of one thousand hours across two years in research, planning and collaboration. They survey developing trends in legal scholarship to find and address emerging practices in each new edition. For example, as legal scholarship has become increasingly international in scope, *The Bluebook* has expanded its coverage of international publications and legal sources. Similarly, recent editions of *The Bluebook* have standardized styles for citations to blogs, podcasts and other online forms of communication. These periodic updates also endeavor to correct any errors and inconsistencies in previous editions, and to incorporate and respond to feedback from lawyers, judges, law librarians, professors, students and other commentators.

The production of each new edition of *The Bluebook* is also a significant financial undertaking. For example, the law review associations bear the cost of printing *The Bluebook*. The Nineteenth Edition is now going into its seventh printing. In the last six years, the law reviews have also invested significant financial resources in developing and hosting *The Bluebook's* online subscription service, *The Bluebook Online*.

On top of publication costs, the law reviews bear the salaries of two permanent staff members employed by the Harvard Law Review Association to manage the day-to-day operations, customer service, logistics and business of the enterprise. In addition, the law reviews incur other overhead costs for the benefit of *The Bluebook*, such as the cost of computer and other equipment, software licenses, supplies, and so forth.

All of these publication and infrastructure costs are covered by the revenues derived from sales of *The Bluebook* and subscriptions to *The Bluebook Online*. No endowment, grant or award funds *The Bluebook*, and the represented law schools contribute no material support to the enterprise.

Revenues from *The Bluebook* are not used solely to perpetuate *The Bluebook*. They also support the efforts of the law reviews to identify, publish and disseminate legal scholarship, and to contribute to advances in legal academia, practice and reform. Indeed, some of the law reviews rely on revenues from sale and licenses of *The Bluebook* to remain independent from their respective law schools, giving them a platform to publish legal scholarship reflecting a variety of viewpoints.

In spite of the costs of publishing *The Bluebook*, the law reviews recognize that it is used primarily by students, and have made a substantial effort to keep it as affordable as possible. Thirty-four dollars is a fraction of the cost of most books required for a legal education. It is also a minimal investment for legal practitioners. As for *pro se* litigants, copies of *The Bluebook* are generally available for free at any law library and in many public libraries.

The law reviews also recognize the momentum of innovation in the Internet age and have begun to respond. In February 2008, they published *The Bluebook Online*. An institutional site license for *The Bluebook Online*—one that would provide access to multiple users at large organizations under a single license—is currently in development. In addition, the law reviews have posted some older editions of *The Bluebook* online for personal, non-commercial use as items of general, historical and scholarly interest.

While we of course disagree with many of the statements and positions in your letter (such as, among others, your characterization of *The Bluebook* as an “edict of government”), the law reviews believe that these disagreements can best be addressed through a dialogue about the issues you have raised. In that spirit, we would be happy to discuss your concerns at a mutually convenient time.

The law reviews are concerned that a productive dialogue regarding the questions you have posed will not be possible if it takes place under threat of unilateral actions that would imperil the economic viability of *The Bluebook* by making it freely available. As the law reviews in good faith consider the matters raised in your letter, we ask, in turn, that you and Public.Resource.Org in good faith remove the materials that you have posted without their permission on the Public.Resource.Org website, and that you not distribute digital copies of *The Bluebook* in any form by any means. Removing these files would also allow the law reviews to consider your positions without the risk that doing so could be argued to constitute a waiver of any legal rights which they may have. Please let us know at your earliest convenience whether you are amenable to proceeding in this manner.

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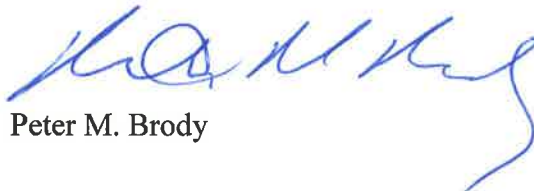
Carl Malamud

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July 18, 2013

The foregoing is without prejudice to or limitation of the law reviews' rights and remedies in this matter, which are expressly reserved.

Sincerely,



Peter M. Brody

cc: Dean Martha L. Minow



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May 20, 2014

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BY U.S. MAIL AND E-MAIL

Mr. Carl Malamud
Public.Resource.Org
1005 Gravenstein Highway North
Sebastopol, CA 95472

Re: *The Bluebook: A Uniform System of Citation*

Dear Mr. Malamud:

Last July, we corresponded regarding issues you had raised concerning public availability of *The Bluebook: A Uniform System of Citation* (“*The Bluebook*”). We appreciate your interest in these issues and would now like to update you in this matter.

Since our correspondence last summer, the four law reviews have been actively studying possible means of expanding access to *The Bluebook* and related issues. The law reviews are evaluating potential arrangements that would expand the availability of *The Bluebook* conventions while, at the same time, preserving the law reviews’ copyright interests and decades-long investment in *The Bluebook*. Notably, they are actively considering the viability of facilitating access to *The Bluebook* conventions for those who do not seek to use them for commercial purposes. The law reviews are also considering making the full *Bluebook* available to litigants who lack the financial means to purchase it. Of course, this is an ongoing and collaborative process, warranting careful deliberation, and benefitting from the input of multiple constituents. As such, the law reviews expect that this process will take some time, and, as we further develop our plans, the law reviews appreciate input from you and other interested parties. In order to engage in productive dialogue about these issues, we ask you not to continue distributing portions of *The Bluebook* publicly.

To this end, we note that you have re-enabled access to the unredacted excerpt of *The Bluebook* that you had redacted in response to our letter of July 18, 2013. We also note your tweet of April 18, 2014 in which you indicate that you have posted an access-restricted XHTML version of *The Bluebook* on your website at <https://law.resource.org>. As the law reviews proceed, we ask for your continued assurance that you will maintain the *status quo ante* by (i) either removing or re-redacting the unredacted version of the excerpt of *The Bluebook* that you have posted, and (ii) removing the full copy of *The Bluebook* posted on your website at <https://law.resource.org> and ensuring that access to this copy is not provided to any other person.

ROPES & GRAY LLP


Carl Malamud

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May 20, 2014

Again, we appreciate your interest in these matters as we continue to evaluate ways to increase access to *The Bluebook*.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter M. Brody", written in a cursive style.

Peter M. Brody