

From: Carl Malamud carl@media.org
Subject: Re: Georgia lawsuit
Date: July 24, 2015 at 7:58 AM
To: Bill Donahue bill.donahue@law360.com

Bad habit of mine, I always have opinions about the Internet sites, comes from doing this for a long time. :)

Nice story! Well done.

On Jul 24, 2015, at 7:56 AM, Bill Donahue <bill.donahue@law360.com> wrote:

Weird. I'll let our tech folks know. I stick to copy.

On Fri, Jul 24, 2015 at 10:55 AM, Carl Malamud <carl@media.org> wrote:
I registered as a user. It's somewhat broken ... if you put in a password that is longer than they can handle, the error message is "Password must be at least 6 characters" even though the one I submitted was 30 characters. When you get the error message, it keeps your form filled out but wipes out your "interests" so you have to recheck those. \$0.02 from a computer guy. :)

On Jul 24, 2015, at 7:53 AM, Bill Donahue <bill.donahue@law360.com> wrote:

Damn, I thought that social stories got a one-time clickthrough. Anyway, story is below. Thanks for the retweet, btw. If you guys file a motion to dismiss or anything like that in the next weeks/months, feel free to alert me.

-Bill

Georgia Sues Group For Publishing Annotated State Laws

Public.Resource.Org Inc. on Wednesday once again found itself on the receiving end of a copyright lawsuit over its efforts to digitize public materials, sued this time by the state of Georgia for publishing an annotated version of the state's code.

The transparency group and its founder, Carl Malamud, have been sued multiple times for copying and posting documents that they believe the public has the right to see, such as when they published privately developed industry standards that were later incorporated into actual state and local laws.

Georgia is the latest to go after Public.Resource, filing a complaint in federal court on Wednesday that claims the group is infringing copyrights that the state holds for annotations to the state's official code — things such as summaries of court rulings that impact the state's laws.

According to the complaint, the state hires LexisNexis to create the annotations on a work-for-hire basis, and then allows the publisher to sell access to the souped-up version of the code for a flat rate. Without the arrangement, Georgians "face losing valuable analysis and guidance regarding their state laws.

"Without providing the publisher with the ability to recoup its costs for the development of these copyrighted annotations, the state of Georgia will be required to either stop publishing the annotations altogether or pay for development of the annotations using state tax dollars," the complaint said.

Georgia's formal complaint makes good on a 2013 cease-and-desist letter that the state sent to Public.Resource, which the group then said publicly it would not comply with.

Actual laws cannot be copyrighted, and the state's complaint on Wednesday was careful to say that Georgia is only claiming copyrights on the annotations, not on the statutes themselves. The state said that LexisNexis makes a searchable online version of state code itself available for free.

Malamud, however, believes that there's no real distinction between important legal annotations that are produced at the behest of the state and the underlying statutory text.

"The 'Official Code of Georgia Annotated' is a publication of the state and it is the definitive statement by the state of the law," Malamud said on Wednesday, echoing his response to the 2013 letter. "Any lawyer would ignore this publication and any of its components at his or her peril.

"No matter how you slice that cheese, it all looks the same," he said. "The 'Official Code of Georgia Annotated,' every component of it, is the official law."

Georgia isn't the only state to target Public.Resource's efforts by citing copyrighted annotations to public codes. Mississippi and Idaho have also sent the group cease-and-desist letters over the issue, though neither appears to have actually sued. Oregon voiced similar concerns in 2008, but later backed down after a public hearing.

Public.Resource's other big legal dustup has been over so-called mandatory standards — voluntary standards developed by nonprofit industry organizations that are later incorporated into binding law by state and local governments.

A group that writes such rules, the Sheet Metal and Air Conditioning Contractors' National Association, backed down after suing in 2013, but a case filed by another set of such groups remains pending in federal court.

Georgia is represented by Anthony B. Askew, Lisa Pavento and Warren James Thomas of Meunier Carlin & Curfman LLC.

The case is Code Revision Commission et al v. Public.Resource.Org Inc., case number 1:15-cv-02594, in the U.S. District Court for the Northern District of Georgia.

--Editing by Stephen Berg.

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On Fri, Jul 24, 2015 at 10:48 AM, Carl Malamud <carl@media.org> wrote:
Nope. I have to register as a user to do that, even from twitter.

On Jul 24, 2015, at 7:47 AM, Bill Donahue <bill.donahue@law360.com> wrote:

Hey Carl,

I think you can get around the paywall if you click through to the story from a social media site. So, here's the story on Twitter. If you still can't read it, just let me know and I'll copy-paste-email you a copy.

-Bill

On Fri, Jul 24, 2015 at 10:40 AM, Carl Malamud <carl@media.org> wrote:
Could you send me a copy of your story (to read, I won't redistribute it)?

On Jul 22, 2015, at 11:13 AM, Bill Donahue <bill.donahue@law360.com> wrote:

Thanks Carl. I actually covered your testimony before Congress back in 2014.

Before you responded, I found your response letter from 2013 to the Georgia cease-and-desist, and one paragraph struck me as a great quote for the story. Does this work for you?

The Official Code of Georgia Annotated is a publication of the State and it is the definitive statement by the State of the law. Any lawyer would ignore this publication and any of its components at his or her peril. Any citizen wishing to read the Official Official Code of Georgia Annotated would have trouble distinguishing between the "statutory text itself" and those materials outside the box. No matter how you slice that cheese, it all looks the same. The Official Code of Georgia Annotated, every component of it, is the official law.

On Wed, Jul 22, 2015 at 1:59 PM, Carl Malamud <carl@media.org> wrote:
This is a subject I testified before Congress about in early 2014:

<https://public.resource.org/edicts/>

In the United States, it is a long-standing principle of our democracy that the law has no copyright because it is owned by the people. This principle applies to regulations, court opinions, and, of course, the law since ignorance of the law is not an excuse.

This is the same position taken by the U.S. Copyright Office in the Compendium of U.S. Copyright Office Practices, Third Edition, § 313.6(C)(2):

'As a matter of longstanding public policy, the U.S. Copyright Office will not register a government edict that has been issued by any state, local, or territorial government, including legislative enactments, judicial decisions, administrative rulings, public ordinances, or similar types of official legal materials...See *Banks v. Manchester*, 128 U.S. 244, 253 (1888) ("there has always been a judicial consensus, from the time of the

decision in the case of *Wheaton v. Peters*, 8 Pet. 591, that no copyright could under the statutes passed by Congress, be secured in the products of the labor done by judicial officers in the discharge of their judicial duties"); *Howell v. Miller*, 91 F. 129, 137 (6th Cir. 1898) (Harlan, J.) ("no one can obtain the exclusive right to publish the laws of a state in a book prepared by him").'

Let me know if you'd like to talk. I'm at 707-827-7290.

Carl

On Jul 22, 2015, at 10:54 AM, Bill Donahue <bill.donahue@law360.com> wrote:

Hi Carl,

I'm the copyrights reporter over at Law360, working on a story on the lawsuit filed by Georgia against Public.Resources over the publishing of the OCGA. Do you want to respond to or rebut the claims of copyright infringement?

Thanks,

Bill Donahue
Senior Reporter
Law360

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