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April 13, 2008

The Honorable Dexter A. Johnson
Legislative Counsel of the State of Oregon
Legislative Counsel Committee
The State of Oregon
Attn: Mr. Sean Brennan, Esq.

Re: Notice of copyright infringement and demand to cease and desist

Dear Mr. Johnson:

Tim Stanley of Justia Inc. shared with me your [April 7, 2008 "take down" notice](#) requiring him to remove all copies of Oregon Revised Statutes from the Internet and claiming that these state statutes are state secrets requiring your permission to publish. Public.Resource.Org, a 501(c)(3) nonprofit corporation, shares data with Justia Inc and many other for-profit and non-profit organizations dedicated to providing free public access to public domain documents, and we thus have copies of both your 2005 and 2007 Oregon Revised Statutes at the following location:

<http://bulk.resource.org/courts.gov/states/ORS/>

When Mr. Stanley notified us as to your assertions of copyright and your demands for compulsory monetary compensation to you under some form of licensing arrangement, we changed the permissions on these two data files so that they are not available on the Internet and are thus not "published" at this time. Because there is a compelling and urgent public policy issue at stake—the right of citizens to read the laws that govern them—I hope you will contact me at your earliest convenience so that we may better understand your claims.

Public policy on the issue of public access to Oregon law is clearly stated in section 173.763 of the Oregon Revised Statutes, spelling out a mandate of making available a number of items, including bills, bill histories, status, and "all Oregon Laws enacted on and after September 9, 1995" [2007 ORS 173.763\(1\)\(a\)\(H\)](#). (I apologize in this letter for not providing you with more precise "pinpoint" web links to the Oregon laws I cite, but your web site does not have "<a name=" links inside of your HTML files, and our version of the ORS, which has different formatting, needless to say, is not available at this time.)

The Legislative Counsel is given limited authority to "establish the charges necessary to recover the costs of publishing the materials sold and distributed" as part of the authorizing language in [2007 ORS 171.275\(3\)](#). However, that discretionary power to charge is expressly limited to your cost of publication, and is explicitly placed in context of public access:

PRO-000919

“The information identified in subsection (1) of this section shall be made available to the public through the largest nonproprietary, nonprofit cooperative public computer network. The information shall be made available in one or more formats and by one or more means in order to provide the general public in this state with the greatest feasible access. Any person who accesses the information may access all or any part of the information. The information may also be made available by any other means that would facilitate public access to the information.” [2007 ORS 173.763\(2\)\(a\)](#)

Additionally, the Legislative Counsel is required to use “the most cost-effective formats and procedures for the timely release of information” and “the Legislative Counsel Committee, in its discretion, may authorize the release of the text of Oregon Revised Statutes in electronic form” *id at* [173.763\(2\)\(b\) and \(2\)\(c\)](#).

The public right to read public law is a principle firmly established in American jurisprudence with the early oft-quoted pronouncement by the Supreme Court that “no reporter has or can have any copyright in the written opinions delivered by this court” [Wheaton v. Peters, 33 U.S. \(8 Pet.\) 591, 668, 8 L. Ed. 1055 \(1834\)](#). In numerous opinions subsequent to that, the courts have ruled that state statutes are indeed works of government:

“No one can obtain the exclusive right to publish the laws of a state in a book prepared by him. This general proposition cannot be doubted. And it may also be said that any person desiring to publish the statutes of a state may use any copy of such statutes to be found in any printed book, whether such book be the property of the state or the property of an individual” [Howell v. Miller, 91 F. 129 \(1898\)](#).

In numerous opinions, the courts have held that it is a compelling of “public policy” that “the law, which, binding every citizen, is free for publication to all, whether it is a declaration of unwritten law, or an interpretation of a constitution or a statute” [Banks v. Manchester, 128 U.S. 244, 32 L. Ed. 425, 9 S. Ct. 36 \(1888\)](#) and that

“Every citizen is presumed to know the law thus declared, and it needs no argument to show that justice requires that all should have free access to the opinions, and that it is against sound public policy to prevent this, or to suppress and keep from the earliest knowledge of the public the statutes or the decisions and opinions of the justices” [Nash v. Lathrop, 142 Mass. 29, 6 N.E. 559 \(1886\)](#).

On your web site, the Legislative Counsel heavily promotes sales of a printed copy of the Oregon Revised Statutes for \$390 as well as pursuing an aggressive electronic licensing policy as evidenced by your above-referenced letter to Mr. Stanley. The Legislative Counsel appears to reinforce the sales cycle through two kinds of statements on the web site:

1. Numerous warnings of copyright protection, many in bright red text: “The Legislative Counsel Committee holds the copyright to the Oregon Revised Statutes, including the organizational structure, leadlines, source notes, editorial notes, preface, cross-references and index.”

2. A disclaimer that the electronic version is neither official nor reliable: “The text appearing in this database was produced from material provided by the Legislative Counsel Committee of the Oregon Legislative Assembly. The official record copy is the printed published copy of the Oregon Revised Statutes. The text in the database is not the official text of Oregon law. ... Although efforts have been made to match the database text to the official legal text they represent, substantive errors or differences may remain.”

In light of your letter to Mr. Stanley and the above-referenced matters, I would like to raise several questions I am hoping you will help us address:

1. You referenced “terms for a license to display the Oregon Revised Statutes on a website.” Would you be able to make those terms available for us to examine? Please keep in mind that we are a 501(c)(3) nonprofit corporation. If those terms are different than for commercial entities, could you make the commercial terms available as well?
2. The purpose of copyright assertions is solely a tool to carry out the mandate of cost recovery of publication costs. What is the total direct cost of publication of the ORS and what are the revenues that have been received? If costs have already been recovered, particularly for the electronic edition, would the Legislative Counsel exercise the statutory discretion to release the information?
3. If the only official copy of the Oregon Revised Statutes are the printed copies for \$390 or the officially licensed commercial electronic versions, does publication of an unofficial electronic version for the general public at no charge have any effect on your revenue, and does your enabling legislation allow you to restrict distribution of non-official versions?
4. Has the Legislative Counsel made a legal analysis of the validity of copyright assertions over the statutes, and if so, would the Legislative Counsel make such a study available?
5. We have posted, but have currently restricted, both 2005 and 2007 copies of the Oregon Revised Statutes. Please confirm that it is your position that you asserting copyright and are issuing a “take down” notice under the Digital Millennium Copyright Act of 1998 and that you aware of the penalties for those who “knowingly materially misrepresent” copyright under that act. [17 USC 512\(f\)](#)

I look forward to your response to these questions and to your clarification of the status of the right of the public to read the public laws of the State of Oregon.

Sincerely yours,

**Carl
Malamud**

Carl Malamud
President & CEO
Public.Resource.Org, Inc.

Digitally signed by Carl Malamud
DN: cn=Carl Malamud, o=Public.
Resource.Org, ou,
email=carl@media.org, c=US
Date: 2008.04.13 12:57:50 -07'00'