

Prepared Statement

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Before the Legislative Counsel Committee, Oregon State Legislature

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Senate President Courtney, House Speaker Merkley, Honorable Members of the Legislative Counsel Committee:

I am pleased to be here today to discuss the Committee's copyright policy regarding the Oregon Revised Statutes in light of technological developments and the Internet. My name is Timothy Stanley and I am a founder and CEO of Justia, a company that provides free public access to federal and state laws, regulations, court opinions, and other public records. Prior to founding Justia, I was a founder and CEO of FindLaw.

Since my colleague Karl Olson has covered in great detail the legal reasoning why we feel a claim of copyright over the Oregon Revised Statutes is unfounded, I will not repeat his testimony. Instead, I will focus on the public policy reasons for encouraging the broad dissemination of the Oregon Revised Statutes.

The Oregon Public Access Act

In 1995, the Oregon Legislature recognized that the Internet offered a cost-effective means for widely disseminating information to the public. Such a sentiment may seem patently obvious today, but the Internet was still in its infancy back then. When the State Legislature passed the Oregon Public Access Act¹, Yahoo! had just been founded and Google did not even exist. Accordingly, I must commend the Oregon State Legislature for its tremendous foresight in mandating free, online access to Oregon laws before such actions became commonplace.

The Oregon Public Access Act directed the Legislative Administration Committee and the Legislative Counsel Committee to make all Oregon Laws enacted on and after September 9, 1995 available to the public in electronic form "through the largest nonproprietary, nonprofit cooperative public computer network" with the

¹ <<http://www.leg.state.or.us/95reg/measures/sb0300.dir/sb0335.en.html>>

express intent “to provide the general public in this state with the greatest feasible access.”

By publishing the Oregon laws on the Internet in an open, electronic format, Oregon wisely avoided errors committed by other states that have chosen restrictive, proprietary databases that cannot interface with modern web sites or web applications. The Act also conferred upon the Legislative Counsel Committee the authority to release the text of the Oregon Revised Statutes in electronic form. I am grateful that the Committee exercised its discretion in the manner that it did to promote a greater understanding and appreciation of Oregon laws. However, not all is well.

Although the Legislative Counsel Committee has provided free access on its own web site to the Oregon Revised Statutes, it has constrained the usefulness of these Statutes by claiming a copyright in the arrangement, subject-matter compilation, leadlines and numbering of the statutory sections. This claim of copyright casts a cloud over the Oregon Revised Statutes and will deter innovation in the area of online legal research and prevent the Oregon public from enjoying meaningful free access to Oregon laws.

The Current Copyright Policy Deters Innovation

In the 13 years since the State Legislature passed the Oregon Public Access Act, many educational institutions, non-profit organizations and entrepreneurial companies have attempted to organize, annotate and present legal information on the Internet in a manner that is easy to find and comprehend. These organizations have operated under the basic premise that the law is in the public domain and cannot be copyrighted. Accordingly, companies could reproduce laws or prepare derivative works based on laws, such as by adding hyperlinks, annotations or other mark-up text, or by improving the interface for searching, browsing or researching the law.

The Legislative Counsel Committee’s current copyright policy deters such innovation from benefiting the Oregon public. By claiming a copyright in the Oregon Revised Statutes, the Committee discourages organizations from investing the needed resources to promote greater understanding and access to Oregon laws.

Currently, Justia is collaborating with several law schools and non-profit organizations on producing a free online compendium of the codes and statutes from all 50 states. Our goal is to provide academic researchers, government officials, attorneys, and the public with advanced features, including full-text search, annotations by legal professionals, and comparison tools to visualize the differences in the law between the individual states.

The Legislative Counsel Committee has offered to license an electronic copy of the Oregon Revised Statutes to us for \$30,000 for two years. If all states adopted a similar position, one would have to raise \$1.5 million to compile the laws from all 50 states. Indeed, even the so-called public license offered by the Legislative Counsel during our discussions would prove unworkable, as we cannot distribute an unencumbered database of the laws from all 50 states if each state imposed its own set of special conditions and requirements that may change with each successive revision to its codified laws.

The Current Copyright Policy Restricts Public Access to Oregon Laws

The Committee's copyright policy impacts both innovators and the Oregon public. If we cannot incorporate the Oregon Revised Statutes into our current and future projects, I believe that such an omission will harm Oregon professors, attorneys, government officials and citizens. In effect, the policy locks them into viewing only the State's version of the Oregon Revised Statutes and using only the tools provided by Oregon Legislative Information Systems. However, this harm is not confined within the boundaries of Oregon. For example, government officials from other states seeking insight on how sister states have tackled similar legislative issues will miss out on the wisdom and experience that the Oregon State Legislature has to offer.

I would also note that the website of the Oregon State Legislature only maintains the current version of the Oregon Revised Statutes. Lawyers and members of the public who are seeking a prior version will have to turn to a paid service, such as Thomson-Reuters, which provides online access to the Oregon Revised Statutes since 1989² for a fee.

Other states have recognized the importance of providing the public with free online access to prior versions of their codes and statutes. For example, the website of the Florida Legislature currently displays 11 versions³ of their codified statutes. We believe that the public should be able to easily track how their laws have evolved over time. We plan to archive each periodic revision made to a state's codes in support of this endeavor. A change in the copyright policy by the Committee will help support these efforts.

The True Meaning of Public Access

In the end, we both recognize the importance of providing the public with online access to our nation's laws because such actions promote understanding,

² Thomson-Reuters WestLaw databases. <<http://directory.westlaw.com/>>

³ Florida Statutes: 1997-2007. <<http://www.leg.state.fl.us/statutes/>>

participation in and respect for our democratic institutions and legal system. Indeed, in the Oregon Public Access Act, the Oregon State Legislature found that the use of electronic communication would “better inform the public,” “allow broader participation among Oregonians in the legislative process,” and “provide the public with a better insight into the operations of the state government.”

Where we differ is over the meaning of public access. The true meaning of public access involves structuring and presenting the law in a format that the public can readily understand and digest. Such an endeavor will require a joint effort from participants in both the public and private sectors. I am certainly excited about the possibility of providing not just more information, but more meaningful information to educate and enrich the public.

I ask the Legislative Counsel Committee to consider the benefits that relinquishing its copyright claim to the Oregon Revised Statutes will provide. Such an act will encourage third parties to innovate in the area of online legal research services and provide the Oregon public with a richer set of information to understand Oregon laws, and participate and interact with the Oregon legal system. I have faith that the Legislative Counsel Committee will act with the same foresight displayed by the Oregon State Legislature in 1995. Our laws belong in the public domain: open to public examination and unencumbered by governmental ownership claims. Free and meaningful access to them benefit us all.