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Public Works for a Better Government

July 15, 2013

Hon. Ben Ysura
Secretary of State
State of Idaho
PO Box 83720
Boise ID 83720-0080

Hon. Brent Hill
President Pro Tempore of the Senate
Idaho State Legislature
1010 South 2nd East
Rexburg, Idaho 83440

Hon. Scott Bedke
Speaker of the House
Idaho State Legislature
P.O. Box 89
Oakley, ID 83346

Idaho Code Commission
P.O. Box 388
Boise, ID 83701

Dear Secretary Ysura, President Pro Tempore Hill, Speaker Bedke, and Members of the Idaho Code Commission:

Public.Resource.Org is in receipt of the communication of July 12, 2013 from Mr. Bradlee R. Frazer of Hawley Troxell Ennis & Hawley LLP concerning your notice under 17 U.S.C. § 512(c)(3), the Digital Millennium Copyright Act. Your notice claims copyright infringement for the publication of the Idaho Code without having secured from you first a “royalty-free copyright license ... to reproduce and display the native, underlying statutory code content.” In addition, your letter claims additional rights, for which you apparently will not grant any license, for all text which falls outside of the red boxes you drew on the Idaho Code, constituting what you describe as “analyses, summaries and reference materials.”

We respectfully decline to remove the Idaho Code and respectfully reject the distinction between “native” code and additional materials, as both are integral part and parcel of the only official Idaho Code, such material constituting the official laws of Idaho as published by the state.

PRO-001388

It is a long-held tenet of American law that there is no copyright in the law. This is because the law belongs to the people and in our system of democracy we have the right to read, know, and speak the laws by which we choose to govern ourselves. Requiring a license before allowing citizens to speak the law would be a violation of deeply-held principles in our system that the laws apply equally to all.

This principle was strongly set out by the U.S. Supreme Court under Chief Justice John Marshall when they stated “the Court is unanimously of opinion that no reporter has or can have any copyright in the written opinions delivered by this Court, and that the judges thereof cannot confer on any reporter any such right.” *Wheaton v. Peters*, 33 U.S. (8 Pet.) 591 (1834). The Supreme Court specifically extended that principle to state law, such as the Idaho Code, in *Banks v. Manchester* (128 U.S. 244, 1888) , where it stated that “the authentic exposition and interpretation of 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.”

This principle has become embedded clearly throughout our country. The Court of Appeals for the Sixth Circuit has stated 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, 137 (6th Cir. 1898) (Harlan, J.).

These strong precedents are reflected in the official policy statement of the U.S. Copyright Office:

“Edicts of government, such as judicial opinions, administrative rulings, legislative enactments, public ordinances, and similar official legal documents are not copyrightable for reasons of public policy. This applies to such works whether they are Federal, State, or local as well as to those of foreign governments.”

U.S. Copyright Office, *Compendium II: Copyright Office Practices* § 206.01 (1984)

The principle that there is no copyright in the law, and that no license is therefore needed, has been fundamental to the evolution of our legal system. West Law could never have built that magnificent edifice of American jurisprudence, the Federal Reporter, if each court had required a license to publish. If citizens are required to obtain a license before repeating the law, does that not strike at the very heart of our rights of free speech under the First Amendment? If ignorance of the law is no excuse, how can we restrict promulgation of those laws?

The distinction between “native” content (“the law”) and additional materials perhaps would have some bearing if the publication in question were the independent commercial endeavor of a publication firm. If such a firm were to copy the state statutes and compile that information with additional analyses and summaries and were to do so as a strictly commercial endeavor, we understand and respect that this material would be their private property.

However, the publication in question is not by some independent endeavor, it is by the Idaho Code Commission and the document is clearly labeled as the official Idaho Code. Your vendor states in its marketing materials that this document is “the only official

source” for Idaho law. The Idaho Code is a publication of the State and it is the definitive statement by the State of the law. Any lawyer would ignore this publication any of its components at his or her peril. Any citizen wishing to read the Official Idaho Code would have trouble distinguishing between the material you outlined in red and those materials outside the box. No matter how you slice that cheese, it all looks the same. The Official Idaho Code, every component of it, is the law.

A similar situation occurred in the great state of Oregon when we received a Cease and Desist notice on April 7, 2008 for publishing online the Oregon Revised Statutes. As with the present situation, lawyers for that state demanded licenses as a condition to publication and attempted to make a distinction between the law and the additional organization of that material by the Legislative Counsel of Oregon.

I am pleased to tell you that the State of Oregon decided that this was an issue that should be decided by the people of Oregon and their elected officials. The Speaker of the House and the Senate President called a hearing of the Legislative Counsel Committee, listened to citizens and to their own legislative counsel, kindly invited us to speak, and at the end of the day unanimously waived any assertion of copyright in the Oregon Revised Statutes.

Not only was copyright waived, something very special happened. With the restrictions on use of the Oregon Revised Statutes lifted, a law student at the Lewis & Clark Law School was able to take this material and develop a vastly better version of the Oregon Revised Statutes for the people of his state to use. Restricting use of the codes restricts innovation, making it harder to use the materials. Restrictions on the Idaho Code hurts democracy and the citizens of Idaho by making their laws less accessible.

In Oregon, the assertion of copyright dated back to the 1940s and the state had carried that policy forward. When the people of Oregon looked at the issue in the light of our modern era, the decision was very clear. Let us not forget that Section 73-210 of the Idaho Code, asserting copyright in the Idaho Code, was added in 1949 and this right was authorized and empowered in the Session Laws of 1947. Is it not time, in light of developments such as the Internet, to revisit those restrictions?

Our publication of the Idaho Code should be encouraged, not threatened. Our publication of the Idaho Code is the clean potato, not one that should be prosecuted by expensive law firms in federal courts. I would be more than happy to come to Idaho to discuss the matter with you, and would strongly encourage you to discuss the issue with the people of Idaho.

Sincerely yours,



Digitally signed by Carl
Malamud
DN: cn=Carl Malamud,
o=Public.Resource.Org, ou,
email=carl@media.org, c=US
Date: 2013.07.15 10:24:46
-07'00'

Carl Malamud
Public.Resource.Org

BRADLEE R. FRAZER
ADMITTED TO PRACTICE LAW IN IDAHO
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July 12, 2013

**Via Facsimile to: (707) 829-0104 and
Via Email to: carl@media.org and
Via U.S. Mail, Certified, Return Receipt
Requested**

Carl Malamud, President
Public.Resource.Org, Inc.
1005 Gravenstein Hwy. N
Sebastopol, CA 95472

RE: *DMCA Notice of Copyright Infringement at Public.Resource.Org*

Dear Mr. Malamud:

We act as intellectual property counsel to the State of Idaho, its agency the Idaho Code Commission and the Secretary of State, a constitutional executive officer of the State of Idaho (collectively, “**Idaho**”) and write to you relative to acts of copyright infringement on a website that is either on your servers, in your network, or within your control. This letter is directed to you as the ostensible Digital Millennium Copyright Act (“**DMCA**”) Designated Agent for sites located under the domain name resource.org, based on filings here:

<http://www.copyright.gov/onlinesp/agents/p/publicresorg.pdf> and information here: https://public.resource.org/copyright_policy.html. This is, accordingly, a Take-Down Notice issued pursuant to 17 U.S.C. Section 512(c)(3), which is part of the DMCA.

By way of background, Idaho owns the copyright in and to certain statutory compilations and the associated and accompanying analyses, summaries and reference materials (collectively, the “**Idaho Code**”). We discovered¹ that unauthorized PDFs containing scans of the Idaho Code

¹ Our discovery was admittedly aided by your May 30, 2013, letter, a copy of which is here: <https://law.resource.org/pub/us/code/id/idaho.letter.pdf>.

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appear, *inter alia*, in directories located at <https://law.resource.org/pub/us/code/id/idaho.scan.2012/>. A specific example of one such scan may be found at <https://law.resource.org/pub/us/code/id/idaho.scan.2012/gov.law.id.code.07.13.s.2012.pdf>. For illustration, selected pages from that file are enclosed herewith as Exhibit One.

You will note that certain specific sections in Exhibit One are enclosed within red boxes; the rest are not. The portions within red boxes illustrate the underlying, native statutory content that Idaho acknowledges may be used under license.² The other content not within red boxes and similar content located in each corollary file contained in the directory at <https://law.resource.org/pub/us/code/id/idaho.scan.2012/> constitute the analyses, summaries and reference materials mentioned above. To be clear, Idaho claims copyright in both the native statutory content and the analyses, summaries and reference materials contained in the linked directories (defined above as the Idaho Code) and as to which Exhibit One acts as an exemplar, and both are subject to this Notice.³

Accordingly, pursuant to the DMCA, we hereby provide Resource.org as the DMCA Service Provider and you as the DMCA Designated Agent with the following notification:

- (1) Certain infringing content residing on your servers or within your network has infringed and continues to infringe copyrighted works, specifically, the above-defined Idaho Code, to which Idaho owns the exclusive right to reproduce, adapt, display and distribute;
- (2) Exact scans of the Idaho Code are currently reproduced, adapted, displayed and distributed through the public.resource.org site as set forth above, all of which are literal or substantially similar copies of works to which Idaho owns exclusive rights to reproduce, adapt, display and distribute;
- (3) We believe in good faith that: (a) the material described in subparagraph (2) above infringes the copyrights in the materials described in subparagraph (1) above, and that (b) neither your nor public.resource.org's reproduction, adaptation, display and distribution of the materials described in subparagraph (1) above is authorized by Idaho, its agents or the law;

² We understand your position to be that such is not subject to copyright protection at all.

³ To the extent similar content is contained in the .xml files located in the directories here: <https://law.resource.org/pub/us/code/id/idaho.scan.2012/> and here: <https://law.resource.org/pub/us/code/id/idaho.xml.2012/>, such content is also covered by this Notice.

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- (4) The undersigned states that the information in this notification is accurate, and under penalty of perjury, that the undersigned is authorized to act on behalf of Idaho, who owns the exclusive rights to reproduce, adapt, display and distribute the infringed material described in subparagraph (2) above; and
- (5) You may contact me at the address stated above.

Pursuant to the DMCA, your expeditious removal of or prevention of access to the Idaho Code, as defined, may result in limiting your liability for your possible direct involvement in and/or contribution to the above-described acts of copyright infringement. We look forward to your compliance herewith by expeditiously suspending or disabling access to the Idaho Code, as required by the DMCA. Please provide your response to me (if anything other than the required “expeditious” removal action) within five (5) business days of the date of this letter.

Please know that we would grant a royalty-free copyright license to Resource.org to reproduce and display the native, underlying statutory code content such as that which is found here: <http://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm> and that which is within the red boxes in Exhibit One, and we can provide the electronic files to permit you to post that code. Having said that, the continuing reproduction and display of the Idaho Code as defined here, including the analyses, summaries and reference material, will not be tolerated, and Idaho reserves its rights to seek redress in federal court against the recipients of this letter to protect its intellectual property rights. In any such action, Idaho may seek to recover actual or statutory damages, attorney’s fees and injunctive relief.

Sincerely,
HAWLEY TROXELL ENNIS & HAWLEY LLP

/S/ BRADLEE R FRAZER ELECTRONIC
SIGNATURE FOR EMAIL PDF COPY

Bradlee R. Frazer

BRF/bf
cc: Client

Enclosures

Carl Malamud
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**IF A LAW ISN'T PUBLIC,
IT ISN'T A LAW.
JUSTICE STEPHEN BREYER**

EXHIBIT ONE

**2012
CUMULATIVE
POCKET SUPPLEMENT**

IDAHO CODE

Compiled Under the Supervision of the
Idaho Code Commission

RICHARD F. GOODSON
R. DANIEL BOWEN JEREMY P. PISCA
COMMISSIONERS

MAX M. SHEILS, JR.
EXECUTIVE SECRETARY

TITLES 7-13

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2012 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

If you have any questions or suggestions concerning the Idaho Code, please write or call toll free 1-800-833-9844, fax toll free at 1-800-643-1280, or email us at customer.support@bender.com.

Visit our website at <http://www.lexisnexis.com> for an online bookstore, technical support, customer service, and other company information.

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**ALWAYS CONSULT THE LATEST SUPPLEMENT IN
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**FAIR
USE**

TITLE 7
SPECIAL PROCEEDINGS

CHAPTER.
6. CONTEMPTS, § 7-602.

CHAPTER 4
WRITS OF PROHIBITION

7-402. When and how issued.

JUDICIAL DECISIONS

Adequacy of Other Remedy.

Idaho department of land's motion to dismiss the attorney general's writ of prohibition was granted, as there was a plain, speedy, and adequate remedy in the ordinary course of law, such that an extraordinary writ of prohi-

bition would be improper. Injunctive relief would be at least as effective as issuance of the writ, if not more so. *State v. Idaho State Bd. of Land Comm'rs (In re Verified Petition)*, 150 Idaho 547, 249 P.3d 346 (2010).

CHAPTER 6
CONTEMPTS

SECTION.
7-602. Reentry of dispossessed person on real

property — Procedure upon conviction.

7-602. Reentry of dispossessed person on real property — Procedure upon conviction. — Every person dispossessed or ejected from or out of any real property by the judgment or process of any court of competent jurisdiction, and who, not having right so to do, reenters into or upon, or takes possession of, any such real property, or induces or procures any person not having right so to do, or aids or abets him therein, is guilty of a contempt of the court by which such judgment was rendered, or from which such process issued. Upon a conviction for such contempt the court shall immediately issue an alias process directed to the proper officer, and requiring him to restore the party entitled to the possession of such property under the original judgment or process, to such possession.

History. § 5156; C.S., § 7384; I.C.A., § 13-602; am. C.C.P. 1881, § 831; R.S., R.C., & C.L., 2012, ch. 20, § 2, p. 66.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 20, substituted "the court shall immediately" for "or

justice of the peace must immediately" near the beginning of the last sentence.

7-610

SPECIAL PROCEEDINGS

2

7-610. Judgment — Penalty.

JUDICIAL DECISIONS

Inherent Power of Court.

When appellants' minor daughter was placed on probation for petit theft, the magistrate court violated appellants' Fourth Amendment rights by requiring appellants to submit to random urine testing for drugs. While the magistrate had the authority to impose a probation condition under subsec-

tion (1)(j) of § 20-520, a violation of the probation was punishable by criminal contempt under § 7-601 and the exclusionary rule applied. Requiring appellants to undergo urinalysis testing constituted a search that was presumptively invalid without a warrant. *State v. Doe*, 149 Idaho 353, 233 P.3d 1275 (2010).

CHAPTER 7

EMINENT DOMAIN

7-701. Uses for which authorized.

RESEARCH REFERENCES

A.L.R. — Validity of extraterritorial condemnation by municipality. 44 A.L.R.6th 259.

Zoning scheme, plan, or ordinance as temporary taking. 55 A.L.R.6th 635.

7-702. Estates subject to taking.

RESEARCH REFERENCES

A.L.R. — Validity of extraterritorial condemnation by municipality. 44 A.L.R.6th 259.

7-711. Assessment of damages.

RESEARCH REFERENCES

A.L.R. — Elements and measure of compensation in eminent domain proceeding for temporary taking of property. 49 A.L.R.6th 205.

Zoning scheme, plan, or ordinance as temporary taking. 55 A.L.R.6th 635.

7-717. Possession by plaintiff — Payment of damages — Appointment of commissioners.

JUDICIAL DECISIONS

Appeals.

Appellate court denied condemnee's motion to dismiss the state's appeal because the appeal was not moot even though the state tendered a check to the condemnee in satisfaction of the judgment before filing its appeal. If the appellate court determined that the jury rendered a verdict in excess of just

compensation and ordered the condemnee to refund to the state funds in excess of that amount, the appeal would not be moot because the judicial determination would have a practical effect on the outcome, in that the state would recover some of its money. *State Ex Rel. Winder v. Canyon Vista Family Ltd. P'ship*, 148 Idaho 718, 228 P.3d 985 (2010).

THE AMERICAN PEOPLE
HAVE THE RIGHT
TO KNOW
THE LAWS
THEY LIVE UNDER.

*
* *

JOHN D. PODESTA

**TITLE 8
PROVISIONAL REMEDIES IN
CIVIL ACTIONS**

CHAPTER.

5. ATTACHMENTS AND GARNISHMENTS, § 8-507C.

CHAPTER.

7. DEPOSIT IN COURT, § 8-705.

**CHAPTER 1
ARREST AND BAIL**

8-106. Time of making and contents of order.

JUDICIAL DECISIONS

Authority of Sheriff.

County commissioners' supervisory authority to control other constitutional officers did not extend to the sheriff's bail procedures. The commissioners' statutory duties under §§ 20-622 and 31-1503 do not encompass con-

trol of bail, which is a matter within the sheriff's authority under this section and §§ 19-817 and 31-2202(6). *Allied Bail Bonds, Inc. v. County of Kootenai*, 151 Idaho 405, 258 P.3d 340 (2011).

**CHAPTER 5
ATTACHMENTS AND GARNISHMENTS**

SECTION.

8-507C. Forms.

8-507C. Forms. — The notice of exemptions, instructions to debtors and third parties, and the claim of exemption shall be in a form substantially similar to the form hereinafter provided. The forms shall be made available in English and Spanish language translations in the offices of each county sheriff. Notice, written in Spanish, of the availability of these documents in Spanish translation shall be set forth on the notice of exemptions.

IMPORTANT LEGAL NOTICE/NOTICIA LEGAL IMPORTANTE
MONEY/PERSONAL PROPERTY BELONGING TO YOU MAY HAVE
BEEN TAKEN OR HELD IN ORDER TO SATISFY A COURT JUDG-
MENT. YOU MAY BE ABLE TO GET YOUR MONEY/PROPERTY
BACK SO READ THIS NOTICE CAREFULLY.

SI SOLAMENTE HABLA ESPANOL PUEDE OBTENER UNA FORMA
EN ESPANOL EN EL DEPARTAMENTO DEL SHERIFE.

The enclosed writ of execution and/or notice of garnishment has directed the sheriff to take custody by levying on your money and/or personal property in order to satisfy a court judgment.

The sheriff has levied on your money and/or personal property. You have



PUBLIC.RESOURCE.ORG ~ A Nonprofit Corporation

Public Works for a Better Government

May 30, 2013

Hon. Scott Bedke
Speaker of the House
Idaho State Legislature
P.O. Box 89
Oakley, ID 83346

Mr. Jeff Youtz, Director
Legislative Services Office
P.O. Box 83720
Boise, ID 83720

Dear Speaker Bedke and Mr. Youtz:

I am pleased to enclose for your consideration a George Washington USB Thumb Drive containing a scanned version of the Idaho Code as well as XML-encoded versions of the code. Our purpose in making these statutes available is to promote access to the law by citizens and to promote innovation in ways the statutes are made available so that public servants, members of the bar, citizens, and members of the business community have ready access to the laws that govern them.

Access to the law is a fundamental aspect of our system of democracy, an essential element of due process, equal protection, and access to justice. The Supreme Court of

"...the approval of every country...whether they are England, Spain, or Italy, as well as of those of foreign governments."

I would be pleased to answer any questions you may have and look forward to better access to the law by the citizens of Idaho.

Sincerely yours,

Carl Valarrod
Public.Resource.Org

PRO-001400