

From: "Bridy, Annemarie (abridy@uidaho.edu)" <abridy@uidaho.edu>
To: Ilana Rubel <IRubel@fenwick.com>
Cc: "Adams, Mark (marka@uidaho.edu)" <marka@uidaho.edu>, "Schumacher, Randi (randi.schumacher@vandals.uidaho.edu)" <randi.schumacher@vandals.uidaho.edu>, "Stott, Jordan (stot2975@vandals.uidaho.edu)" <stot2975@vandals.uidaho.edu>
Subject: Proposed Amendments to Idaho Code Copyright Provisions
Date: February 4, 2015 at 8:31:28 AM PST

Here's the missing third attachment: the policy rationale for the proposed amendments.
Sorry about that.

From: Bridy, Annemarie (abridy@uidaho.edu)
Sent: Wednesday, February 04, 2015 9:30 AM
To: 'Ilana Rubel'
Cc: Adams, Mark (marka@uidaho.edu); Schumacher, Randi (randi.schumacher@vandals.uidaho.edu); 'Jordan Stott'
Subject: Proposed Amendments to Idaho Code Copyright Provisions

Dear Ilana,

Attached are the first fruits of Randi and Jordan's work on the Idaho Code project.
Please let me know what else we can do for you.

All the best,

Annemarie

Annemarie Bridy
[Professor](#) | University of Idaho College of Law
[Affiliate Scholar](#) | Stanford Law School Center for Internet and Society
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POLICY RATIONALE FOR AMENDMENTS TO IDAHO CODE SECTIONS 9-352 & 73-210

The principle that ignorance of the law is no defense can only be fair if the laws by which members of the public are bound are readily available to them. As a matter of due process, people must have meaningful notice of the laws by which they are bound. Accordingly, those laws must be made available to the public with the least possible obstruction. The United States Fifth Circuit Court of Appeals recognized that "to say... that the law is 'free for publication to all' is to expand, not factually limit, the extent of its availability."¹ Further, citizens' ability to know and read the law is an essential element of a functioning democracy.²

It has been well settled for over one-hundred years that the law, including statutes, is in the public domain and thus not amenable to copyright.³ This is because laws are facts, and facts are not copyrightable.⁴ Facts are ineligible for copyright protection to ensure that no person or entity can "impede that harvest of knowledge so necessary to a democratic state."⁵ In a democracy, lawmakers enact rules and regulations only with the consent of those governed by those rules. In performing their duties, lawmakers represent the public, and the public is the ultimate "author" of the law.⁶ If the true "authors" of the laws of Idaho—the State's citizens, acting through their elected representatives—own the laws that govern them, those laws must be placed in the public domain and not claimed as the exclusive property of the State. It is impossible to reconcile Idaho citizens' due process right of free access to the law with the exclusivity afforded by copyright. Moreover, an assertion of copyright by the State of Idaho is not necessary to establish that the State of Idaho is the only official source of the Idaho Code. Dedicating the Idaho Code to the public domain for copyright purposes in no way compromises the authority of the government of the State of Idaho to say what the law in Idaho is.

Currently, access to the official version of the Idaho Code and the statutory annotations, even for non-commercial purposes, is impeded by the State's assertion of copyright in those materials. If one wishes to view the Idaho Code, one has three options to choose from. The first option is the State's free website, which is not the annotated, official version of the Idaho Code.⁷ The website contains a disclaimer that the version of the statutes provided may not be up-to-date

1. See *United States v. Bell*, *Miscala & Clark, Corp.*, 412 U.S. 558, 563 (1971) ("The principle that ignorance of the law is no defense applies whether the law be a statute or a rule, procedural or substantive.")
2. *Ward v. S. 34th Code Corp.*, 343 F.2d 741, 749 (5th Cir. 2012).
3. The law includes not only the statute, but also every provision that are part of Idaho's official state law.
4. *Hewlett-Packard v. E.I. du Pont de Nemours & Co.*, 439 U.S. 588, 593 (1979) ("Facts, whether stated or as part of a compilation, are not original and therefore may not be copyrighted.")
5. *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 546 (1982).
6. *Redding Office & Copy Adm. v. Data Tech., Inc.*, 628 F.2d 733, 734 (1st Cir. 1980) ("The citizens are the authors of the law, and therefore its source... regardless of who actually drafts the provision, because the law derives its authority from the consent of the public, expressed through the democratic process.")
7. See <http://www.idaho.gov/legislation> (last visited January 11, 2015).

mailcore:MessageHeader:0x76f7be1c440 Message-ID: DM2PR0401MB11337CE7BCB4B1E97B6162B3A00DM2PR0401MB11333aampd4.prod.outlook.com From: mailcore:Address:0x76f7be1c440 Bridy, Anemarie (abridy@uidaho.edu) sabridy@uidaho.edu To: [mailto:Address:0x76f7be1c20 Bana Rebel <RRebel@fenwick.com>] Cc: [mailto:Address:0x76f7be1c410 Adams, Mark (marka@uidaho.edu) amarka@uidaho.edu; mailcore:Address:0x76f7be1c410 Schumacher, Randi (randi.schumacher@vandal.uidaho.edu) randi.schumacher@vandal.uidaho.edu; mailcore:Address:0x76f7be1c410 Scott, Jordan (jordan2975@vandal.uidaho.edu) jordan2975@vandal.uidaho.edu] Subject: Proposed Amendments to Idaho Code Copyright Provisions X-MS-Exchange-CrossTenant:AuthAs:Anonymous; Content-Type: multipart/mixed; boundary="091.DM2PR0401MB11337CE7BCB4B1E97B6162B3A00DM2PR0401MB11333aampd4.prod.outlook.com"; x-deferred-antispam-report: SPV; X-MS-Exchange-CrossTenant:Organization:uidaho.edu; X-MS-Exchange-CrossTenant:AuthAs:Anonymous; X-MS-Exchange-CrossTenant:OriginalSource:04 Feb 2015 16:31:28.7696 (UTC) MIME-Version: 1.0 Thread-Topic: Proposed Amendments to Idaho Code Copyright Provisions X-OriginatingIP:uidaho.edu; X-MS-Exchange-CrossTenant:AuthAs:Anonymous; X-MS-Exchange-CrossTenant:OriginalSource:04 Feb 2015 08:31:39.4800 (PST) (envelope-from:abridy@uidaho.edu) X-MS-Exchange-Transport-CrossTenantHeaderStamped: DM2PR0401MB1293 x-deferred-priv: 0477EA191 Accept-Language: en-US x-exchange-antispam-report-test: UnScanned; X-MS-Exchange-CrossTenant-FromEntityHeader: Hosted x-exchange-antispam-report-cfa-test: BCL9-PCL9-RULED; SVR: DM2PR0401MB11333aampd4.prod.outlook.com; x-microsoft-antispam: BCL9-PCL9-RULED; SVR: DM2PR0401MB129311333aampd4.prod.outlook.com; x-deferred-priv: 0477EA191