

Fed. R. Evid. 408 – Discussion of Compromise

Proposed terms for settlement agreement between the Code Revision Commission and Public Resource.Org, Inc.

1. Both parties agree to dismiss their suits in *Code Revision Commission v. Public.Resource.Org, Inc.*, No. 1:15-cv-2594 (N.D. Ga.) without prejudice and not to re-file for one year (the “stand-down period”).
2. The Code Revision Commission agrees to provide to Public Resource to post on its website a current version of the annotated code, but without the summaries of judicial decisions, in a bulk format, such as a zip file of Microsoft Word files (“the Bulk Code”) and to provide any updates to the official code during the stand-down period. This can be raw data. Public Resource agrees to perform the processing to remove the judicial summaries if requested.
3. Immediately upon receiving the Bulk Code, Public Resource agrees to remove from public access the current scans of the O.C.G.A. that are available on its site and on the Internet Archive website and agrees not to post any more such scans during the stand-down period. It will instead post the Bulk Code on its website.
4. Public Resource agrees to provide advice on technical matters and to enlist other experts with experience making state codes and laws accessible to the public via the Internet to provide such advice, at no cost to the State, at the State’s request.
5. During the stand-down period, the Code Revision Commission will investigate how to make the Official Code available for use by members of the public without restriction, a process that both parties agree may require hearings or other proceedings with the Georgia Assembly, such as to state publicly and have printed in future editions of the O.C.G.A. that the copyrighted annotations are prepared by the publisher, not the Georgia Assembly, are not laws and are not official.
6. The parties agree to issue a joint press release stating that they are working together to make the Official Code available for use by members of the public without restriction.

Term Sheet Prepared by Counsel for Public Resource
Transmitted November 5, 2015



PUBLIC.RESOURCE.ORG ~ *A Nonprofit Corporation*

Public Works for a Better Government

November 5, 2015

Honorable Johnnie Caldwell, Chairman
Georgia Code Revision Commission
The Georgia Assembly
332 Capitol Avenue SW
Atlanta, Georgia 30334

Re: Code Revision Commission v. Public.Resource.Org, Inc.
No. 1:15-cv-2594 (N.D. Ga.)
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Dear Representative Caldwell:

I was pleased to hear through counsel that the State was interested in exploring settlement options in our dispute over the Official Code of Georgia Annotated (O.C.G.A.). I firmly believe that this is a matter that can and should be resolved through discussion, not litigation, so I welcome this opportunity.

When Public.Resource.Org (“Public Resource”) posted the O.C.G.A. online in May 2013, the first thing I did was send a letter and a copy of the scanned code to the attention of the Georgia Assembly. When Senator McKoon responded on behalf of the Code Commission, I offered to come to Georgia to discuss the matter, an offer I have repeated several times. That offer stands. While we clearly have a difference of opinion, I am confident that we both share a common goal to make the law available to the public, with a firm belief in the value of an informed citizenry.

The Complaint the State filed discusses a number of aspects over which copyright is claimed, but much of the Complaint seems to focus on judicial summaries, a particular form of annotation. I have to be frank: Public Resource is not particularly interested in the distribution of judicial summaries. What we care about is public access to the Official Code, which in the case of Georgia happens to include judicial summaries.

Lexis provides the judicial summaries to the State which have been folded into the Official Code. West Publishing creates its own judicial summaries, and it provides a version of the code for sale. Likewise, Fastcase, the electronic legal research platform provided as a benefit to all members of the State Bar of Georgia, also creates its own judicial summaries.

Our goal at Public Resource is a simple one, to ensure that the Official Codes of the 50 states are freely available to the public. The Complaint made a point that the State's vendor already provides free access to a version of the Georgia code. However, Public Resource's answer and counterclaim pointed out the onerous terms of use (such as New York State jurisdiction for disputes), and how cumbersome the State's web site is in terms of providing useful access to the law. Let me be frank about this as well: While Public Resource believes it would better serve citizens for the State to present the Official Code on a high-quality web site, that is not our principal concern. Our strongest concern is that any member of the public who so wishes can freely publish the Georgia Code, such as by including it on a website.

The issue for us is being able to retrieve in a relatively simple manner all the titles of the Code in order, by way of example, to create a new website or to enable others to do the same. This is called "bulk access" to differentiate it from using an existing web site to search and look at an individual section of the code.

We addressed a similar situation in the District of Columbia. The resolution there was simple and straightforward. The General Counsel, Mr. V. David Zvenyach, released a set of Microsoft Word files with the entire code, but with the judicial summaries removed. Note that other forms of annotations, the history, catchlines of Code sections; names of Titles, Chapters, Articles, Parts, and Subparts, and other components were not removed. That set of files was released on the D.C. web site with a "no rights asserted" license. When Mr. Zvenyach released these files, something very positive happened. A number of volunteers came together and started working with those very rough files and created a vastly better web site, which you can view at <dccc.org>.

In 2008, the State of Oregon sent me a takedown notice that was similar to the ones sent to me by the State of Georgia. As with Georgia, we politely declined to remove the materials, explained why, and offered to discuss the matter. While there were various threats of legal proceedings, what ended up happening was the Legislative Counsel Committee of the Oregon Assembly called hearings. They heard from me, but more importantly they heard from citizens of Oregon and from their own Legislative Counsel. At the end of the day, the Committee voted to waive assertions of copyright over the Oregon Revised Statutes.

Once again, something very positive happened. A law student at Lewis & Clark law school, who happened to have a computer science degree, put together a beautiful web site devoted to the Oregon Revised Statutes. The State continues to run its own web site, but now the citizens have some choices, each with its own set of features.

This "innovation effect" is something that I have had the privilege of witnessing all over the country. In Chicago, for example, the codification vendor is American Legal Publishing. I purchased a copy of the Chicago Municipal Code from them and posted the raw data on the Internet with the blessings of the vendor. A group in Washington, D.C. called the OpenGov Foundation took that raw data and created a wonderful website, which you can view at <chicagocode.org>. This effort was eagerly embraced by the Clerk of the City of Chicago.

Likewise, we saw a similar effect with the U.S. Federal Register when three young programmers in California put together a vastly better version of the Official Journal of Government, an effort that was embraced by the Office of the Federal Register, which is now running their code at federalregister.org.

My point here is that by making the fullCode available in a downloadable format, Georgia too would likely avail itself of the same “innovation effect” seen in those other states. This will surely lead to a better informed citizenry. I am confident that people will eagerly help the State accomplish this laudable goal.

My assumption as an outsider viewing the situation in Georgia is that the State very much wants to make the Code available, but is concerned about the relationship with its vendor Lexis, with a particular concern about the judicial summaries provided by Lexis. In addition, I recognize that any change in what constitutes the “Official Code” of Georgia is a matter that requires the attention of the Georgia Assembly, and that is a process that takes time. I am sensitive to both of those concerns and would like to suggest a few steps we might consider to resolve this situation. These are preliminary suggestions for a settlement, and I would welcome your feedback.

First, I suggest that both sides dismiss, without prejudice, our pending claims and counterclaims and declare a one-year stand-down period. Given Georgia’s sovereign immunity, dropping the counterclaim complaint is a significant move for us.

Second, we should emulate what happened in D.C. The State of Georgia would provide the public with a current copy of the Official Code in bulk (without the judicial summaries, but including the other components) and would release updates to over time. Public Resource in turn would disable public access to the current scans of the print books both on our site and on the Internet Archive and would refrain from processing any new versions of those volumes.

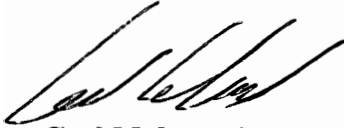
Third, the State of Georgia would undertake some kind of process to examine this issue, perhaps through hearings in the Georgia Assembly. The purpose of this process would be to make the situation outlined in step 2 permanent. Perhaps that might mean defining the Official Code of Georgia as one without the judicial summaries provided by Lexis.

Fourth, and this is entirely optional, I would be very happy to come to Georgia and discuss ways that its website could be made more accessible and usable. More importantly, I would be pleased to suggest a number of leading experts in this field from around the country, including some amazing talent that is based in Georgia, who I know would be very willing to help out.

If at the end of the year we have accomplished our goals, I would be more than happy to declare this episode over and continue to work with the State. One thing I have learned in many years of working with these kinds of large government databases is that this is not a contest; it is a mutual effort to make our government better. As such, I would suggest that we jointly announce the settlement so that we can underscore this as positive and productive step forward, not a “victory” or “defeat.”

I look forward to your suggestions and hope this is the beginning of dialogue that results in a better informed citizenry for the people of Georgia.

Best regards,

A handwritten signature in black ink, appearing to read 'Carl Malamud', written in a cursive style.

Carl Malamud

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Proposed terms for settlement agreement between the Code Revision Commission and Public.Resource.Org.

1. Parties agree to and will assist with the issuance of a consent injunction by the Northern District of Georgia Court, said injunction requiring that:
 - a. Public.Resource shall remove of all copies of the O.C.G.A. posted or uploaded on
 - i. any or all of its websites: <https://public.resource.org>, <https://bulk.resource.org>, and <https://law.resource.org>, and
 - ii. the third party website of www.archive.org, wherein “removal” means deletion from the website and wherein merely making the O.C.G.A. copies inaccessible does not amount to a removal of said copies, and
 - b. Public.Resource shall not copy or distribute the O.C.G.A. or create derivative works of the O.C.G.A. in the future.
2. Each year, the State of Georgia agrees to post on the Georgia General Assembly website (www.legis.ga.gov) a current version of the unannotated code in a searchable format that is downloadable.
3. Each year, the State of Georgia agrees to provide a CD-ROM version of the current O.C.G.A. to the over 400 public library facilities within the State of Georgia.

Response to Term Sheet from State of Georgia
Received December 7, 2015