

# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CODE REVISION COMMISSION	)	
on Behalf of and For the Benefit of the	)	
GENERAL ASSEMBLY OF GEORGIA,	)	CIVIL ACTION
and the STATE OF GEORGIA,	)	NO. 1:15-cv-2594-MHC
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
PUBLIC.RESOURCE.ORG, INC.,	)	
	)	
Defendant.	)	

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**DECLARATION OF CARL MALAMUD IN SUPPORT OF  
PUBLIC.RESOURCE.ORG'S MOTION FOR SUMMARY JUDGMENT**

I, Carl Malamud, declare as follows:

1. I am the founder of Public.Resource.Org ("Public Resource"). I have personal knowledge of the facts stated in this declaration and know them to be true and correct. I could competently testify to them if called as a witness.

2. I wish to explain why I purchased, scanned, and posted on the Internet the Official Code of Georgia Annotated.

3. As plaintiffs have mentioned that my name was considered for appointment as Public Printer of the United States and that President Obama did not appoint me to that position, I will explain the circumstances.

4. From 2005-2006, I served as Chief Technology Officer to John D. Podesta, the President and CEO of the non-profit research organization, the Center for American Progress (“CAP”). Although my main job was to help the institution and its people use technology effectively, John encouraged me to undertake initiatives around national technology policy.

5. My approach has always been hands-on, focused on building systems that provide solutions to real problems.

6. I am a self-taught computer expert, which affects my approach to technology policy. In the 1980s, I consulted for a number of federal agencies, such as the Department of Defense and the Board of Governors of the Federal Reserve System, on the use of databases and networks. I wrote eight advanced professional reference books and taught many engineers how these technologies work in practice. I have since placed all my books in the

public domain and they are available at [http://catalog.hathitrust.org/Search/Home?adv=1&type\[\]=author&lookfor\[\]=Carl+Malamud](http://catalog.hathitrust.org/Search/Home?adv=1&type[]=author&lookfor[]=Carl+Malamud)

7. In 1993, I created the first radio station on the Internet, under the auspices of a 501(c)(3) nonprofit I founded called the Internet Multicasting Service. I was inspired to make the radio station non-profit by the examples of National Public Radio and of Brian Lamb, who created C-SPAN. The New York Times described this effort in an article entitled “Turning the Desktop PC Into a Talk Radio Medium” which may be viewed at <http://www.nytimes.com/1993/03/04/us/turning-the-desktop-pc-into-a-talk-radio-medium.html>

8. As part of our programming, we did live streaming of speeches held at National Press Club luncheons, and also joined the Public Radio Satellite system, produced original programming such as my talk show “Geek of the Week,” and received rights from Harper Audio to post audio of authors such as T.S. Elliot and Robert Frost reading their own work. The archives of our programming are still available on the net and may be viewed at <http://museum.media.org/radio/>

9. In 1993, I applied for and was granted membership in the Radio TV Gallery of the U.S. House of Representatives and connected a feeds of the floors of the House and Senate to the Internet by installing dedicated lines from the basement of the U.S. Capitol to our offices. The Washington Post described this project in an article entitled “Superhighway Routed Through Capitol Hill” which may be viewed at <https://www.washingtonpost.com/archive/politics/1994/09/19/superhighway-routed-through-capitol-hill/0aba8ac6-e154-4bd5-8cb3-0a3b30b0e762/>

10. Being located in Washington, D.C. was fortuitous. Internet Service Providers UUNET and MFS Datanet donated a free 10 million bit per second link into the core of the Internet, one of the fastest links in Washington at the time. When President Clinton’s staff wanted to do an Internet demonstration but had not yet been able to get their own link installed, we ran an infrared link down to the White House lawn so the President could give his demonstration.

11. I always considered the Internet to be a new medium, and “radio” was only a metaphor. We did not hesitate to explore other ways of using the Internet. In 1993, Congressman Edward J. Markey asked me why the Securities and Exchange Commission’s EDGAR database was not available on the Internet. I told him I didn’t see any reason why it wasn’t. I proceeded

to get a grant from the National Science Foundation and put that database on the Internet. Dr. Eric Schmidt, then at Sun Microsystems, gave us equipment so we could run the service. The New York Times described the project in an article entitled “Plan Opens More Data To Public” which may be found at <http://www.nytimes.com/1993/10/22/business/plan-opens-more-data-to-public.html>

12. We also put the full U.S. Patent database on the Internet with full text capabilities. Not only the public, but also many patent examiners used this service extensively. Two years later, I loaned the SEC hardware and donated all our software so that they were able to take over the service. Our loaner agreement with the SEC and a letter of thanks from them is available at <https://public.resource.org/sec.gov/>

13. With this background in mind, 2006, when I moved back to D.C. to work for John Podesta, I set out looking for a new policy initiative that would further open government proceedings to the public. I decided to focus on the proposition that video from all congressional hearings should be streamed live on the Internet as high resolution video with closed captions and other modern features. As part of my investigation, I met with numerous congressional staff, and with Mr. Bruce James, the Public Printer of the United States, and became familiar with the working of the Government

Printing Office and their publication of the Official Journals of Government, including the Federal Register and the Code of Federal Regulations.

14. In 2007, I had moved the Center for American Progress from having no technical staff, being dependent on high-priced outside consultants and having only rudimentary capabilities to a full department working with modern technologies, such as the Python programming language and a properly hosted web system. I told John that my work was done, and moved back to California where I founded my current non-profit, Public.Resource.Org (“Public Resource”), where I have worked exclusively since then.

15. At Public Resource, I continued my interest in better access throughout the country to the proceedings of Congress. After C-SPAN issued a DMCA takedown notice to Speaker Nancy Pelosi for posting video of herself testifying in front of the House of Representatives, I was able to convince C-SPAN to allow far more liberal use of records of government proceedings. James Fallows described this incident in the Atlantic, a copy of which may be read at <http://www.theatlantic.com/technology/archive/2007/03/another-win-for-carl-malamud-or-news-you-won-apos-t-see-in-the-may-2007-issue-of-the-atlantic/7543/>

16. I continued my efforts from 2007-2010 to get Congress to make more video available. I began posting video of congressional hearings obtained from the few committees that were online and from C-SPAN, and wrote an unsolicited report to Speaker Pelosi. Those efforts are documented on the Public Resource web site at <https://public.resource.org/house.gov/>

17. In 2011, one of the first acts of Speaker Boehner on taking office was to ask me to work with Chairman Darrell Issa and his staff on congressional video. As part of that effort, we worked with the Committee on Oversight and Government Reform to post a full archive of their proceedings and to develop techniques to use official transcripts to create closed-captions, the first time Congressional video was accessible in this manner. We copied over 14,000 hours of video from all committees, an archive spanning the 100th to the 112th Congress and furnished that data to C-SPAN and the Internet Archive, as well as maintaining an extensive YouTube presence. A copy of the letter from Speaker Boehner may be viewed at <https://law.resource.org/rfcs/gov.house.20110105.pdf>

18. During this same period, from 2007-2011, we worked with David Ferriero, the Archivist of the United States. Public Resource donated equipment to the National Archives, and we sent in volunteers to duplicate approximately 6,000 government videos and post them to YouTube and the

Internet Archive, where they have received over 50 million views. The New York Times described this program in “Duplicating Federal Videos for an Online Archive” which can be viewed at <http://www.nytimes.com/2010/03/15/technology/15fedflix.html>

19. While online video and other government databases were important initiatives, when I started Public Resource, I felt the public suffered from the the absence on the Internet of primary legal materials, the raw materials of our democracy. These materials include judicial opinions (and the underlying dockets leading to those opinions), statutes and the codifications of those statutes (and the underlying hearings that led to those public laws) of the legislature, and regulations (and the underlying notices and comments that led to those regulations) of the executive branch.

20. In 2008, working with Professor Lawrence Lessig and Creative Commons, Public Resource posted on the Internet 1.8 million pages of case law, including all U.S. Court of Appeals opinions from 1950 on, as well as all U.S. Supreme Court opinions. This was the first time these judicial opinions were freely available on the Internet. A copy of that announcement may be viewed at [https://bulk.resource.org/courts.gov/0\\_Press\\_20080211.pdf](https://bulk.resource.org/courts.gov/0_Press_20080211.pdf)

21. Public Resource went on to post all the text of the First Series of the Federal Reporter, all of the Federal Cases, and to scan three million pages of briefs from the Ninth Circuit of the U.S. Court of Appeals dating from the beginning of the court to 1970. All of these materials are available for use without restriction. In addition, all of the Federal Cases and the first forty volumes of the Federal Reporter were retyped into HTML files so they can be viewed as web pages in the same format we used for other court opinions. An example is *Banks v. Manchester*, 128 U.S. 244, 9 S.Ct. 36, 32 L.Ed. 425 (1988) which may be viewed at <https://law.resource.org/pub/us/case/reporter/US/128/128.US.244.html>

22. In 2008, as part of posting the U.S. Court of Appeals opinions on the Internet, a member of the public alerted me that numerous Social Security Numbers appeared in court opinions. I redacted those privacy violations and sent a copy of my audit to the Committee on Rules and Practice of the Judicial Conference and to the Chief Judges of the Circuits. This effort received a letter of thanks from the Judicial Conference is available at <https://public.resource.org/scribd/7512576.pdf>

23. In 2008, I discovered Social Security Numbers (SSNs) of 232,000 military officers in the Congressional Record. I alerted the Government Printing Office, the Defense Department, and the Federal Trade Commission. The government redacted those Social Security Numbers from their computer systems and, after I contacted them, both West and Lexis redacted this information from their commercial services. The privacy breach was the subject of a front-page article in Stars and Stripes entitled “Military lags in safeguarding officers’ identities” which may be found at <http://www.stripes.com/news/military-lags-in-safeguarding-officers-identities-1.96079>

24. In 2008, an audit of the PACER system unveiled a large number of privacy violations in District Court dockets. A comprehensive audit of 20 million pages of filings from 32 District Courts was sent to the Chief Judges and the Judicial Conference. This effort led to changes in the privacy procedures for the PACER system as a whole and in specific District Courts. A copy of the letter of acknowledgement from the Honorable Royce C. Lamberth of the District Court for the District of Columbia may be found at <https://public.resource.org/scribd/11851306.pdf>

25. In 2010, Public Resource led a national effort entitled “Law.Gov,” which consisted of a series of fifteen workshops examining the availability

of primary legal materials in the United States. Major law schools, such as Harvard, Stanford, Duke, Cornell, and Colorado hosted these workshops. Over 600 people attended them, and speakers included government officials such as the Law Librarian of Congress, the Archivist of the United States, the Director of the Office of the Federal Register, several White House officials, and Professor Laurence Tribe from the Department of Justice. At the conclusion of the workshops, we posted a set of consensus principles with recommendations for access to legal materials. Details may be viewed at <https://law.resource.org/index.law.gov.html>

26. During this period, I continued to visit Washington and met on numerous occasions with officials responsible for the Official Journals of Government, including Mr. Ray Mosley of the Office of the Federal Register, and Robert C. Tapella, the Public Printer of the United States, and his Chief Technology Officer, Mr. Michael Wash. I came to appreciate the important role that the Government Printing Office plays and saw great potential in transforming the office to meet the needs of the Internet era.

27. When Barack Obama was elected President, I spent considerable time developing those ideas into a series of concrete actions the Government Printing Office could take, and published those ideas in a series of papers. I announced that I would be delighted to be considered as a possible candidate

for Public Printer, and posted a web site called “Yes We Scan.” A number of prominent individuals agreed to lend their name as supporters. A copy of that web page may be found at <https://yeswescan.org/index.gpo.html>

28. Advancing one’s name publicly for an appointed office is somewhat unusual, but one of my goals was to raise public awareness of the important role the Government Printing Office played since its founding in 1861. My campaign did so: a large number of people read the position papers and expressed their “tweets of support.” A “flip book” with 1,017 of those tweets may be found at [https://yeswescan.org/tweets\\_for\\_net.pdf](https://yeswescan.org/tweets_for_net.pdf)

29. I had several interviews at the Office of Presidential Personnel and was informed that I was on the short list. While I was not named to the position, I was asked by the Obama-Biden Transition effort to serve as a consultant and expand my thoughts on how the Federal Register could be transformed. A copy of the paper I submitted in January, 2009 may be viewed at <https://public.resource.org/change.gov/reboot.register.pdf>

30. That effort led to far-reaching changes in the publication of the Federal Register. I was pleased to help support Mr. Raymond Mosley of the Office of the Federal Register (OFR) in those efforts and to serve as the nominator for OFR as the winner of the first Walter Gellhorn Award for

innovation in government services from the Administrative Conference of the United States. A copy of the statement from the Office of the Federal Register may be viewed at <https://www.federalregister.gov/blog/2011/12/federalregister-gov-wins-award-for-innovation-best-practices>

31. Although availability of Federal information has been my primary focus since 1993, at Public Resource I also looked at the availability of primary legal materials published by states and municipalities. In 2008, Public Resource posted a copy of the California Code of Regulations, which previously was not available on the Internet. We also posted a copy of Title 24 of the California Code of Regulations, which consists of the building, electrical, fire, plumbing, and other public safety codes.

32. Since 2008, we have continued our efforts to post the public safety codes incorporated into law by state governments. In 2012, that effort was expanded to include technical public safety codes that are incorporated by reference into the Code of Federal Regulations. Neither of these actions was undertaken lightly, and I read deeply into the issue of promulgation of the law through history.

33. In most states, I found that state statutes and regulations, as well as the codification of the statutes and regulations, were available in some form on the Internet. In many cases, however, the technology employed did not make the information in a very useful fashion or take advantage of the Internet and its potential.

34. In 2008, the State of Oregon tried to prevent Internet sites, including the one run by Public Resource, from posting the Oregon Revised Statutes, and initially threatened to sue them. I was pleased to be invited, however, along with citizens of Oregon, to testify before a joint session of the Legislative Counsel Committee on June 19, 2008. At the conclusion of that hearing, the Legislative Counsel Committee resolved unanimously not to assert copyright over the Oregon Revised Statutes. Copies of my testimony, and press reports about the Oregon situation may be viewed at <https://public.resource.org/oregon.gov/>

35. A lecture I gave at Lewis & Clark Law School and the University of Oregon entitled “Three Revolutions In American Law” about the Oregon situation and the principle that the law has no copyright in the United States may be viewed at [https://public.resource.org/oregon.gov/3revolutions\\_pamphlet.pdf](https://public.resource.org/oregon.gov/3revolutions_pamphlet.pdf)

36. After Oregon ceased asserting copyright in its laws, a student at Lewis & Clark Law School who had majored in computer science as an undergraduate, was able to create a vastly better web presence for the Oregon Revised Statutes. Public Resource was pleased to provide some financial support and technical advice for this effort. The web site may be viewed at <http://www.oregonlaws.org/>

37. A similar situation occurred in April 2013 in the District of Columbia, where the D.C. Code was unavailable to download and had restrictions on use asserting copyright. I spent \$803 and purchased the Official DC Code, scanned the documents, and sent them on a USB Drive to V. David Zvenyach, the General Counsel of the DC Council, with a letter detailing the reasons D.C.'s copyright assertions were unfounded.

38. Mr. Zvenyach looked into the situation and in a September 13, 2013 letter to me acknowledged the importance to an informed citizenry of promulgation of the law. But, he went further. A few days later, the DC Council issued an unofficial version of the code that could be downloaded in bulk, and then Mr. Zvenyach and local volunteer programmers created a far better version of the Code on a public web site. A July 8, 2014 article in Government Executive described the project and may be viewed at <http://www.govexec.com/state-local/2014/07/ultimate-open-government->

[unlocking-laws/87997/](https://www.dccode.org/unlocking-laws/87997/). The DC Code site they created may be viewed at <http://dccode.org/>

39. I have repeatedly seen that making an official code available in bulk enables volunteers in the community to create a better web. In Chicago, for example, I worked with American Legal Publishing, the official codification contractor for the Chicago City Council, to make a copy of the Chicago Code available for download, with the active support of the City Clerk of Chicago, the Honorable Susana Mendoza. In August, 2013, Todd Meyers, the Vice President for Client Services of American Legal Publishing, worked with me to provide a custom version of the Chicago Code in bulk as a series of RTF files, making it easy for me to transform the entire code into other formats, such as HTML. We posted quarterly snapshots of the Chicago Building, Municipal and Zoning Codes from 2007-2013 on our site at <https://law.resource.org/pub/us/code/city/il/Chicago/>

40. After the data was made available, a nonprofit organization in Washington, D.C., the OpenGov Foundation, took that raw data and put together a beautiful web site which may be found at <http://chicagocode.org/>

41. I was pleased to be a speaker, along with Clerk Mendoza, when this new site was unveiled on November 25, 2013. Her press release about the event may be viewed at <http://www.chicityclerk.com/news/clerk-mendoza-joins-open-government-movement-leaders-tonight-help-crack-chicago-municipal-code>

42. In 2013, purchased paper copies of the official state codes of a number of states, including Arkansas, Colorado, Idaho, Mississippi, and Arkansas. I had those documents scanned. Then I put the files on a George Washington USB “thumb drive,” and sent them to the state officials charged with codification and promulgation of state law. On May 30, 2015, I sent such a letter to the Honorable David Ralston, Speaker of the House of the Georgia House of Representatives and Mr. Wayne R. Allen, the Legislative Counsel. That letter may be viewed at <https://law.resource.org/pub/us/code/ga/ga.gov.20130530.pdf>

43. I have encountered assertions, like the State of Georgia’s, that the State owns copyright in its Official Code, before. For example, in 2007, I created a mirror of the U.S. Copyright records, data used in services such as Google Book Search and the Internet Archive’s Open Library. The Library of Congress asserted copyright over that database. It was only after the Register of Copyrights, Marybeth Peters, stepped in and disclaimed

copyright protection for works of government that the Library of Congress dropped its assertions. The letter from Ms. Peters may be viewed at <https://public.resource.org/scribd/3319365.pdf>

44. During a break in the 2008 hearing before the Legislative Counsel Committee of Oregon, I was approached by Senate President Peter Courtney, who served seven terms in the Oregon House of Representatives before serving five terms in the Oregon Senate. Senator Courtney asked me why it was not enough that the State had a web site already for the Oregon Revised Statutes. He seemed unimpressed when I explained some of the technical flaws in the state-run site. I explained then that many of us that had a dream of being able to post the state laws of all states and allow people to compare them; if each state had special license agreements and restrictions, that could never be possible. Senator Courtney's eyes lit up. He told me that when he goes to write a law, the first thing he does is looks at similar laws in neighboring states, and that the service I described would be immensely useful.

45. By purchasing, scanning, and posting the O.C.G.A. volumes, we are striving to provide a significantly more useful version of the Official Code for people to read and share. Public Resource's purpose in scanning and posting the O.C.G.A. was to facilitate scholarship, criticism and analysis of

the official Code, to inform the public about the laws that govern it, for educational purposes and to encourage public engagement with the law.

46. A significant transformation in the O.C.G.A. is performed during this process, increasing the usability and accessibility of the Official Code. Each volume that is scanned also has Optical Character Recognition (OCR), which means it becomes significantly more accessible to people who are visually impaired. The process of posting each volume includes significant metadata, such as the names of the titles included in each volume, making them more easily discovered using search engines. In the process of posting the each volume, a version is created that is compatible with e-Book readers, smart phones, and tablets. In addition, the user interface provided on the Internet Archive allows users to search a volume, with “pins” being displayed for each page that contains the search term, allowing a reader to quickly look for key phrases in different locations. The user interface also allows a user to “bookmark” a particular page and send that link via email or social media, allowing other readers to quickly pull up that location. In addition, Public Resource provides on our own servers all the volumes in bulk, allowing a user to quickly access the entire code or a specific volume, then copy and paste relevant sections into their own documents.

47. I would like to do many more things with the Official Code of Georgia Annotated to make it more useful for citizens. There are numerous references in the O.C.G.A. to the U.S. Code. Section 1-2-5, for example, references 8 U.S.C. 1448, and it would be very help to link directly to that provision of the U.S. Code. Likewise, references to the Georgia Constitution, to acts of the legislature on the government's web site, and to judicial opinions can all be provided with links.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on May 14, 2016 in Sebastopol, CA,

/s/   
CARL MALAMUD