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Open Source America's Operating System

"It's Not Just A Good Idea—It's The Law!"

March 30, 2021

Hon. Philip Gunn, Speaker of the House
Hon. Angela Cockerham
Hon. Kevin Horan
Hon. John Thomas "Trey" Lamar, III
Hon. Thomas U. Reynolds
Hon. Jason White
Hon. Shanda Yates

Joint Committee on Compilation, Revision and Publication of Legislation
Mississippi House of Representatives
Mississippi State Capitol
400 High Street
Jackson, MS 39201

via Electronic Mail

Dear Members of the Joint Committee on Compilation, Revision and Publication of Legislation:

I am writing to you today regarding copyright restrictions and barriers to access currently placed on the Mississippi Code 1972 Annotated and the Mississippi Administrative Code. My purpose in writing is two-fold: to respectfully request that the Joint Committee remove these copyright restrictions and to inform the Joint Committee that our not-for-profit organization, Public.Resource.Org, has made both codes available for use without restriction.

As you may know, the Mississippi Code 1972 Annotated contains a provision asserting copyright on:

"All parts of any act passed by the Mississippi Legislature, or of any code published or authorized to be published by the Joint Committee on Compilation, Revision and Publication of Legislation, including, without limitation, catchlines or frontal analyses; numbers assigned to sections, articles, chapters and titles; historical citations or source lines; editor's notes; amendment notes; cross references; annotations; and summaries of judicial decisions and Attorney General's opinions, shall become and remain the exclusive property of the State of Mississippi, to be used only as the joint committee may direct." **Miss. Code Ann. § 1-1-9**

Copyright is also asserted on the Mississippi Administrative Code:

"[C]opyrights of the Mississippi Administrative Code, including, but not limited to, cross references, tables of cases, notes of decisions, tables of contents, indices, source notes, authority notes, numerical lists and codification guides, other than the actual text of rules or regulations, shall be taken by and in the name of the publishers of said compilation. Such publishers shall thereafter promptly assign the same to the State of Mississippi and said copyright shall be owned by the state." **Miss. Code Ann. § 25-43-2.101-6**

The Joint Committee has contracted with a private vendor who provides a “free” version of the Mississippi Code 1972 Annotated. However, this version is unannotated and has numerous technical defects. More serious, however, is the requirement that any person wishing to access this code must agree to extensive and complicated sets of terms of use.

Before entering the site, citizens must agree to the [January 7, 2013 Terms & Conditions](#), which contains 4,617 words of complicated legal provisions, such as Clause 22:

“The Terms of Use are governed by and construed in accordance with the laws of the State of New York and any action arising out of or relating to these terms shall be filed only in state or federal courts located in New York and you hereby consent and submit to the personal jurisdiction of such courts for the purpose of litigating any such action.”

These Terms and Conditions further incorporate [General Terms and Conditions for Use of the LexisNexis Services](#) and [LexisNexis Services Supplemental Terms for Specific Materials](#). The General Terms impose onerous restrictions on citizens wishing to read and speak the law, such as Clause 1.1(a):

“[A]n Authorized User may display a de minimis amount of the Materials on an incidental, infrequent basis for non-commercial purposes to other Authorized Users so long as the Authorized Users are in the same physical location and the mode of display is not through the Internet, an intranet or other types of networking communication like LANs or WANs.”

In the past, these restrictions on use have not been ignored or waived by the Government of Mississippi.

On [May 30, 2013](#), I informed Speaker Gunn and Attorney General Hood that my organization had posted the Mississippi Code “so that public servants, members of the bar, citizens, and members of the business community have ready access to the laws that govern them.” In that letter I referred to a long line of U.S. Supreme Court decisions and U.S. Copyright Office procedures 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.” [Banks v. Manchester, 128 U.S. 244 \(1888\)](#)

My letter was met with an [October 7, 2013](#) response from Special Assistant Attorney General Schemmel demanding that we “immediately remove the annotated version of the Mississippi Code of 1972 Annotated from any and all of your website(s) and from all sites and all types of written and electronic media over which you have control.”

Public Resource wrote an [October 10, 2013](#) response to Mr. Schemmel and spelled out our reasons we believed the copyright assertions were in error in a detailed letter with 12 exhibits. We respectfully declined to comply with his request to remove the materials, and I offered for the second time to travel to Mississippi to discuss the issue with him.

We did not hear back from the Attorney General’s office until [April 21, 2017](#). In the meantime, the State of Georgia had sued Public Resource over our posting of the Official Code of Georgia Annotated. In the U.S. District Court, the case of [Code Revision Commission, et al v. Public.Resource.Org, Inc.](#) had resulted in summary judgment against Public Resource and an injunction order against posting the Official Code of Georgia Annotated. Even though the case had been immediately appealed to the U.S.

Court of Appeals, Mr. Schemmel demanded that we immediately remove the Mississippi Code. We respectfully declined to comply.

As you know, the U.S. Court of Appeals **heard our case** and reversed the District Court judgment. In a 58–page opinion, the Hon. Stanley Marcus wrote:

Thus, we conclude that the annotations in the OCGA are attributable to the constructive authorship of the People. To advance the interests and effect the will of the People, their agents in the General Assembly have chosen to create an official exposition on the meaning of the laws of Georgia. In creating the annotations, the legislators have acted as draftsmen giving voice to the sovereign’s will. The resulting work is intrinsically public domain material, belonging to the People, and, as such, must be free for publication by all.

As a result, no valid copyright can subsist in these works. **Code Revision Comm'n for Gen. Assembly of Georgia v. Public.Resource.Org, Inc., 906 F.3d 1229 (11th Cir. 2018)**

After the State of Georgia **appealed the decision** to the U.S. Supreme Court, the State of Mississippi joined Arkansas in urging the court to **grant certiorari**. After the Supreme Court granted certiorari, the State of Mississippi joined Arkansas again to submit **another amicus brief**. Public Resource also asked the Supreme Court to hear the case.

The U.S. Supreme Court granted certiorari and heard argument. It then rejected the claims of Georgia and Mississippi that they could assert copyright over these codes. Writing for the Court, Chief Justice Roberts said:

The Copyright Act grants potent, decades–long monopoly protection for “original works of authorship.” 17 U. S. C. §102(a). The question in this case is whether that protection extends to the annotations contained in Georgia’s official annotated code.

We hold that it does not. Over a century ago, we recognized a limitation on copyright protection for certain government work product, rooted in the Copyright Act’s “authorship” requirement. Under what has been dubbed the government edicts doctrine, officials empowered to speak with the force of law cannot be the authors of—and therefore cannot copyright—the works they create in the course of their official duties. **Georgia, et. al. v. Public.Resource.Org, Inc. 590 U.S. __ (2020)**

My purpose in writing to you today is, as I said, two–fold. First, I believe it is inappropriate for the Joint Committee to continue to assert copyright over edicts of government. In the wake of the U.S. Supreme Court decision in the Georgia case, the U.S. Copyright Office has clearly stated that it “will not register a government edict that has been issued by any federal, state, local, or territorial government, including legislative enactments, judicial decisions, administrative rulings, public ordinances, or similar types of official legal materials.” **Compendium of U.S. Copyright Office Practices, Third Edition, § 313.6(C)(2), U.S. Copyright Office, January 28, 2021**

We thus request that the Joint Committee take affirmative steps to remove all copyright assertions and barriers to use, including taking legislative action to remove those provisions authorizing such assertions from the Mississippi Code 1972 Annotated.

The second reason for writing to you today is to notify you that Public Resource has posted Releases 72 through 78 of the Mississippi Code 1972Annotated, covering the period from December 2018 to July 2020. We will continue to post these materials, as

well as the Mississippi Administrative Code. The materials are posted in two locations. First, bulk access to word processing files is **provided by us** on the non-profit Internet Archive. Secondly, the annotated code has been transformed into modern HTML, including crosslinks, better structure, accessibility for the visually impaired, and permanent URLs. This transformed HTML is posted on a **GitHub repository** and is clearly marked as public domain material. The code that does the transformation is also **public domain and open source**, and we have applied this process to the codes of Georgia, Tennessee, and Arkansas, as well as Mississippi.

We were disturbed to learn that in December 2020, the Joint Committee and your vendor discontinued the electronic distribution of the Mississippi Code 1972 Annotated as quarterly DVDs, a format that was relatively conducive to extracting and transforming the Code for public use. This was done without any notice to customers. As of now, there are only two ways to purchase the Mississippi Code 1972 Annotated: either through the interactive Lexis Advance service, which is governed by onerous terms of use and technical measures to prevent the downloading of the code, or through purchase of the print edition. As such, Public Resource is now, once again, purchasing the print edition and updates, and we will scan all 39 volumes, do optical character recognition on the scans, and create HTML versions of the entire code. This is an extensive process compelled by decisions that make public access to the Mississippi Code more difficult, against the spirit of the Supreme Court's decision in the Georgia case. But we will continue to work to make the Mississippi Code available in a usable, accessible format.

As in my previous communications with you, I would like to once again offer to discuss these matters with you. I would also be happy to brief your technical staff on how we've transformed the codes and would be delighted if the Joint Committee would be able to make use of these materials to post the Code on government web sites.

I believe we all share a common goal, which is to further our democratic system of government by informing our fellow citizens of their rights and their obligations. The rule of law is founded on the principle of promulgation of the law, and an informed citizenry is crucial to the furtherance of these common goals.

However, if the Joint Committee is still uncertain as to the clear and compelling language of the Supreme Court, may I respectfully suggest that the Joint Committee or individual members consult the Opinions Division of the Office of the Attorney General. I believe what you will hear from them is that copyright assertions over the Mississippi Code 1972 Annotated are contrary to law.

Please do let me know if I can be of assistance and I look forward to affirmative steps by the Joint Committee.

With best regards,

DocuSigned by:

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Carl Malamud, President
Public Resource

cc: Mr. David Halperin, Of Counsel, Public Resource
Ms. Erin Saltaformaggio, Partner, Bradley Arant Boult Cummings LLP
Ms. Molly M. Walker, Counsel, Bradley Arant Boult Cummings LLP