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IN THE CHANCERY COURT FOR THE TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY, TENNESSEE

PUBLIC.RESOURCE.ORG and DAVID L. HUDSON, JR.,	)	
Petitioners,	)	
v.	)	No. 22-1025-III
MATTHEW BENDER & COMPANY, INC., *a division of the LexisNexis Group,*	)	
Respondent.	)	

PETITIONERS' REPLY IN SUPPORT OF PETITION FOR ACCESS TO PUBLIC RECORDS AND TO OBTAIN JUDICIAL REVIEW OF DENIAL OF ACCESS

Petitioners Public.Resource.org and David L. Hudson, Jr. (Petitioners), submit the following Reply in support of their Petition for Access to Public Records and to Obtain Judicial Review of Denial of Access and in response to the merits arguments raised in Intervenor-Respondent Tennessee Code Commission's (Commission) Memorandum of Law in Support of its Motion to Intervene (Mem.) and in response to Respondent Matthew Bender & Company, Inc.'s (Lexis) Corrected Response in Opposition to the Petition (Resp.):

INTRODUCTION

There is no dispute that Lexis "is responsible for researching, managing, creating, publishing, and distributing an annotated version of Tennessee state laws" as the Tennessee Code Annotated (TCA). Resp. at 4. Nor is there any dispute that Lexis performs these functions under a contract with the Commission, a statutorily created government entity, that specifies in exacting detail how, in what form, and with what content Lexis must publish the TCA. *Id.* at 5–7,

Ex. 1 (Ganten Aff.) at Ex. 1 (the Contract); *see also* Mem. at 5, Ex. B (Seals Aff.) at Ex. 1. And although Lexis concedes that publication of the TCA is "an important function," Resp. at 9, Lexis and the Commission assert that the TCA—the definitive, authoritative, authorized, and official version of all Tennessee statutory law—is *not* a public record subject to disclosure under the Tennessee Public Records Act (the Act) because Lexis is not performing a governmental function by producing and publishing the TCA.

Lexis and the Commission are wrong. Lexis is subject to the Act because it has assumed the task of publishing the TCA, and publication of the law of Tennessee is undoubtedly and undeniably a governmental function. By Lexis's own admission, the Commission's involvement with, regulation of, and control of that function is also so significant that Lexis is the functional equivalent of the Commission.

Contrary to Lexis and the Commission's arguments, no exceptions to the Act apply here. The General Assembly has not exempted the TCA from disclosure by Lexis under the Act. And under recent, binding U.S. Supreme Court precedent, the TCA is not eligible for copyright protection under the federal Copyright Act. And even if it was, the Tennessee Public Records Act includes no exception for copyrighted works owned by the State, and no Tennessee state or federal law forbids, prohibits, or prevents a copyright holder from disclosing its copyrighted work, as mandated by the Public Records Act.

The Petition should be granted.

ARGUMENT

I. The Act applies to Lexis because it is the functional equivalent of government for purposes of its contracted work creating and publishing the TCA.

A. Publishing the law of Tennessee is a traditionally and quintessentially governmental function because law-making is a traditionally and quintessentially governmental function and that function includes publication of the law.

There is no law without government, and the law must be published in order for it to be the law. "The law must be accessible . . . the successful conduct of trade, investment and business generally is promoted by a body of accessible legal rules governing commercial rights and obligations." Thomas Henry Bingham, *The Rule of Law* 37–38 (Penguin Press 2011). "Every citizen is presumed to know the law," and "it needs no argument to show . . . that all should have free access" to its contents. *Nash v. Lathrop*, 142 Mass. 29, 35, 6 N.E. 559, 560 (1886) (cited by *Banks v. Manchester*, 128 U.S. 244, 253–54 (1888)). *See also* Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* 34 (Cambridge Univ. Press 2004) ("Citizens are subject only to the law, not to the arbitrary will or judgment of another who wields coercive government power. This entails that the laws be declared publicly in clear terms in advance."). The law cannot be the law without being published, and thus publication of the law is a necessary and integral part of the government function of law-making.

Lexis attempts to escape this inescapable conclusion by arguing that "the editorial and publishing 'function' currently performed by Respondent under the Contract (and previously performed by other private publishing companies) is not, and has never been, a governmental function, but rather is a role performed by the private sector." Resp. at 5. But Tennessee courts have repeatedly found that other roles performed for the government by private entities that are decidedly less integral to government than establishing and maintaining the rule of law are nevertheless "government functions" under the Act. *See Memphis Publ'g Co. v. Cherokee*

Children & Family Servs., Inc., 87 S.W.3d 67 (Tenn. 2002) (brokering childcare services for indigent families and supervising child care placements); *Allen v. Day*, 213 S.W.3d 244, 251 (Tenn. Ct. App. 2006) (providing statutorily authorized management services to run the day-to-day operations of the Gaylord Entertainment Center (now the Bridgestone Arena), a sports and entertainment venue); *City Press Commc'ns, LLC v. Tenn. Secondary Sch. Athletic Ass'n*, 447 S.W.3d 230, 238 (Tenn. Ct. App. 2014) (supervising and regulating Tennessee public junior- and senior-high schools interscholastic athletic activities); *Wood v. Jefferson Cnty. Econ. Dev. Oversight Comm., Inc.*, No. E2016-01452-COA-R3-CV, 2017 WL 4277711, at *4 (Tenn. Ct. App. Sept. 26, 2017) (promoting economic development in Jefferson County).

Lexis claims that the State "has never actually published the TCA," Resp. at 5 and n.1, but the history that underlies that claim demonstrates that the General Assembly has traditionally considered it a governmental function to create and publish the law of Tennessee. There is no dispute that Tennessee has a history of collecting, organizing, and publishing the law as a function of government, with the assistance of private individuals and entities.

For example, in 1803, Tennessee's "Territorial Government appropriated $600 to George Roulstone as public printer, and he was to publish all the acts and proclamations of that government." Eddie Weeks, A History of Tennessee Statutory Law: Compilations, Codifications, and Complications 1 (Lexis 2021) ("It was a private effort of Mr. Roulstone . . .") (attached as Ex. A to the Commission's Motion to Intervene). Thus, from the very earliest days of Tennessee statehood—long before any Tennessee government contemplated providing childcare or sports arenas or high school athletics—state leaders recognized that publishing the law of Tennessee was necessary to the function of government and the rule of law in Tennessee.

More importantly, none of the decisions interpreting the Tennessee Public Records Act, including those cited above, has ever suggested that the function in question must be "traditionally" performed by a government employee in order for a private entity to be considered the functional equivalent of a governmental entity. It is enough, under the Act as interpreted in *Cherokee* and applied in *Allen, City Press, Wood,* and other decisions, that the function in question be a government function.

Indeed, the recent history of privatization—or "contracting out" services previously performed by the government—is why the functional-equivalence test was created. As the Tennessee Supreme Court observed in *Cherokee*, "[s]ince the 1980s, governmental entities in various parts of the nation have looked increasingly to privatization as a possible solution to perceived problems of inefficiency or expense in the provision of public services," and "private entities that perform public services on behalf of a government often do so as independent contractors." 87 S.W.3d at 76, 78. "Nonetheless, the public's fundamental right to scrutinize the performance of public services and the expenditure of public funds should not be subverted by government or by private entity merely because public duties have been delegated to an independent contractor." *Id.* at 78. And "a governmental agency cannot, intentionally or unintentionally, avoid its disclosure obligations under the Act by contractually delegating its responsibilities to a private entity." *Id.* at 79. This last principle is expressly codified in the Act. *See* Tenn. Code Ann. § 10-7-503(a)(6) ("A governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility to a private entity.").

Likewise, no Tennessee court interpreting the Act has held that the function in question must be "an *internal* governmental function," as Lexis suggests. Resp. at 5 (emphasis added). If by "internal" Lexis means that the function must traditionally have been performed by

employees of the government, there is no basis for this assertion in Tennessee statutory or decisional law.

B. The Commission controls the publication of the TCA and need not control Lexis itself for Lexis to be found the functional equivalent of government for purposes of publishing the TCA.

Lexis spills much ink to emphasize that the Commission "is not involved with, oversight, regulation of, or control over private Respondent's or its Affiliates' *businesses*" [sic], and that "[n]o portion of the Contract grants the Commission any right to regulate or control Matthew Bender *as an entity*." Resp. at 9, 11 (emphases added). But these facts are beside the point. Determining the extent of the government's involvement with, regulation of, or control of a private entity for purposes of functional equivalence is a self-evidently *functional* analysis and does not depend on the private nature of an entity as such.

Access rights under the Act follow the governmental function. Tennessee law under the functional-equivalence test has always focused on the governmental *function* at issue, not the identity of the entity that performs the function. No matter whether the governmental function performed is all that the non-governmental entity does (*e.g.*, childcare services performed by Cherokee in *Cherokee*), or is merely one portion of the broader work of a larger entity (*e.g.*, prison services performed by the Corrections Corporation of America in Tennessee in *Friedmann v. Corr. Corp. of Am.*, 310 S.W.3d 366 (Tenn. Ct. App. 2009)), the effect of the Act follows the function. Here, Petitioners seek only one public record—the TCA—not any other business records of Lexis. Further, Petitioners do not contend that a ruling in their favor would ever give them (or anyone else) any access rights under the Act to records of Lexis that have nothing to do with the function of publishing the TCA.

The State of Tennessee had no right to regulate or control the private businesses in *Cherokee*, *Allen*, *City Press*, *Wood*, or *Friedmann*. Yet each was found to be subject to the Act because of the nature and degree of the State's involvement with their respectively delegated public duties. And although the Court's holding in *Cherokee* "clearly is not intended to allow public access to the records of *every* private entity which provides any specific, contracted-for services to governmental agencies," 87 S.W.3d at 79 (emphasis added), it clearly applies to *some* private entities (like Lexis) that provide specific, contracted-for services to governmental agencies (like the Commission).

Lexis also argues that *Cherokee* "examined the 'extent of government involvement with, regulation of, or control over ***the entity***.' . . . not control over the provision of services in a vendor contract." Resp. at 11 (quoting 87 S.W.3d at 79) (emphasis in original). But "control over the provision of services in a vendor contract" was at the heart of the Court's analysis in *Cherokee* and fundamental to its holding: "although [the Tennessee Department of Human Services] did not exercise complete control or supervision over Cherokee, a significant level of governmental control and oversight is evidenced by the provisions in the 1992 and 1999 contracts requiring advance State approval of 'allowable costs' under the contracts and the provisions in all three contracts authorizing State audits of Cherokee's activities." 87 S.W.3d 67, 79–80. So, too, with Lexis.

A similarly significant level of governmental control and oversight of Lexis's creation and publication of the TCA is evident. As required by statute, the Contract prescribes numerous, detailed specifications for the publication of the TCA that may be changed only "with the written approval of the Commission." Pet. Ex. 1 at Ex. A ("General Requirements for the Publication of the Code and Code CD-ROM"); *see also id.* ("Style Guidelines for Codification of Public

Chapters"); Tenn. Code Ann. § 1-1-107; Mem. at 6 ("[Lexis] must submit proposed changes to the Code Commission by October 31 every year.") (citing section 2.2 of the Contract); Seals Aff. Ex. 2. The Commission must also approve numerous aspects of the TCA, and Lexis must submit the proposed-to-be-published TCA to the Revisor of Statutes in advance of publication to be "checked, proofread, verified and certified." Pet. Ex. 1 at Section 7; *see also* Mem. at 6–7 ("After the Commission approves the changes to the Tennessee Code, [Lexis] submits that year's proposed Tennessee Code publication to the Code Commission's Executive Secretary for proofreading, verification, and certification."). Like the contractually mandated submission of an independent audit after each reporting period in *Cherokee*, Lexis must also provide the Commission with the complete and electronic version of the TCA after each legislative session. Pet. Ex. 1 at Section 2.9.

Lexis candidly concedes the Commission's extensive involvement in the preparation and publication of the TCA:

> Any "control" by the Commission is not over the businesses of Respondent and its Affiliates, but instead solely over the agreed-on services provided by Respondent and creation and delivery of the TCA as outlined in the Contract including the General Requirements for the Publication of the Code and Code CD-ROM set forth in **Exhibit A** to the Contract (e.g., pertaining to type page size, type face, type size, etc.).

Resp. at 5 (citing Ganten Aff. ¶ 10). Contrary to Lexis's suggestion, however, these services are not "merely ministerial"; rather, according to Lexis, the preparation of the TCA is a "labor-intensive creative process" that includes reading, reviewing, and analyzing opinions and other materials, verifying sources, and drafting annotations—a process that Lexis admits is at all times subject to "the terms of [Lexis's] vendor Contract with the Commission." *Id.* at 6–7.

Unlike the private entities in *Gautreaux v. Internal Med. Educ. Foundation, Inc.* and *Memphis Publ'g Co. v. City of Memphis*, Lexis does not "merely act[ ] as a bookkeeper" for the

State, nor are its services "incidental" to "a task wholly assumed by the [Commission]." 336 S.W.3d 526, 529 (Tenn. 2011); No. W2016-01680-COA-R3-CV, 2017 WL 3175652, at *7 (Tenn. Ct. App. July 26, 2017). Indeed, both Lexis and the Commission claim that the work done by Lexis under the Commission's supervision is sufficiently creative to qualify for copyright protection. Subject to the Commission's ultimate approval, Lexis—not the Commission—selects cases for inclusion in the TCA and creates the content of the annotations. Resp. at 7, 12, 13 ("Pursuant to the terms of a vendor Contract, Respondent simply publishes hardcopy and on-line copies of the Tennessee Code the same as any other custom publisher of books and textbooks, and researches and drafts Annotations for the TCA in the same manner as a freelance writer hired to create content."). Lexis wholly assumed the task of publishing the TCA under the Contract, and that task is performed under the direct control and close supervision of the Commission.

C. The absence of direct government funding and the fact that Lexis was not created by the General Assembly are outweighed by the other factors.

In *Friedman*, the Tennessee Court of Appeals found that the Corrections Corporation of America was the functional equivalent of a governmental entity even though the private entity's affidavit was "silent as to how much of [its] total revenue generated in Tennessee comes from its contracts with the State and local governments." 310 S.W.3d at 376. The *Friedman* court also did not consider whether the corporation was created by the State, but still found that the Act's disclosure requirements applied to it.[1] Similarly, none of the private entities in *Cherokee*, *Allen*, *City Press*, or *Wood* were created by an act of the legislature or previously determined by law to

[1] *Friedmann* also omitted an analysis of the extent of the State's involvement with, regulation of, or control over the Corrections Corporation of America, but nevertheless found that it was the functional equivalent of the State.

be open to public access. Yet each was found to be the functional equivalent of the State under the Act. *See* 87 S.W.3d at 80; 213 S.W.3d at 260; 447 S.W.3d at 237; 2017 WL 4277711, at *7.

Because these factors are not—and have never been—dispositive, and their import in this case is outweighed by the undeniably governmental function performed by Lexis under the watchful supervision and control of the Commission, the absence of government funding and the fact that Lexis is not a creature of the State do not weigh against a finding of functional equivalence here.

II. The TCA is not exempt from disclosure under the Act.

The Commission argues that the TCA is exempt from disclosure or "reproduction" because Section 3-10-108(d) provides that "the reproduction, publication, and sale of Tennessee Code Annotated in any form, in whole or in part, shall be pursuant to the provisions of title 1, chapter 1," and title 1, chapter 1 vests the Commission with the sole authority to reproduce, publish, and sell the TCA, "including an electronically searchable database of such code." Mem. at 12–15.

This is a red herring. As is clear from its title and text, section 3-10-108(d) applies to the "Legislative computer system"—not the computer systems of the Commission or Lexis:

> (a) The joint legislative services committee shall consider each application for direct access to the legislative computer system in which confidential information is stored or processed, or that is connected to another computer in which confidential information is stored or processed, and solely shall determine whether or not to permit direct access by the applicant.
>
> (b) Direct access to such a computer may not be permitted unless protection of any confidential information is ensured.
>
> (c) The provisions of § 10-7-503 shall not apply to records or information otherwise available in printed form or to information or records otherwise exempt from the provisions of § 10-7-503.
>
> (d) If public information is stored in a computer-readable form, the committee has exclusive authority to determine the form in which the information

> will be reproduced for the requestor of the information; provided, that the reproduction, publication, and sale of Tennessee Code Annotated in any form, in whole or in part, shall be pursuant to the provisions of title 1, chapter 1. If access to such public information is also available in printed form, it need not be provided in an electronic readable form.
>
> (e) The committee shall designate the terminals, if any, at which public access is given to public information. The data processing equipment located in the offices of members of the general assembly and legislative staff need not provide such access if not so designated by the committee.

See also 1987 Tenn. Pub. Acts, ch. 163, § 8 (attached as Exhibit 1).

Neither the Commission nor Lexis are part of the General Assembly, of course, although the Commission is a State entity established by statute. *See* Tenn. Code Ann. § 1-1-101. But even assuming that the Commission is part of the legislature, it has repeatedly denied that it has access to an electronic version of the TCA. *See* Pet. Ex. 3 ("Please be advised that the Revisor of Statutes does not [have] an electronic version of the most current Tennessee Code Annotated *in its entirety*."); Ex. 5 ("To the extent you are now making a request for copies of these documents to the Office of Legislative Legal Services, including its Director, please be advised that neither the Office, nor its Director, has any documents responsive to this request."), *id.* ("[Y]our client requested a 'copy of each electronic version of the most current Tennessee Code Annotated, reproduced in its entirety.' . . . Ms. Seals, both in her capacity as the Revisor of Statutes and as Executive Secretary for the Tennessee Code Commission, does not have any records responsive to this request.").

The Commission takes great pains to emphasize its independence from the legislature. *See* Mem. at 3 ("The Code Commission is not part of the Legislature."). But Section 3-10-108(d) applies to the legislature, not the Commission or Lexis; thus, it cannot exempt the TCA from disclosure under the Act.

III. The TCA is ineligible for copyright protection, and even if it were eligible, there is no exemption under the Act for copyright.

Both the Commission and Lexis assert that "the State is the owner of the copyright rights in the annotations to the TCA." Mem. at 1, 8, 10, 16; Resp. at 7 ("Each Annotation is an original and creative work of authorship that is protected by copyrights owned by the State of Tennessee under the Contract and as a work for hire.").[2] And each asserts that the State, through the Code Commission, is the "author" of the TCA. Mem. at 1; Resp. at 7. But neither acknowledges a recent United States Supreme Court decision holding that protection under the federal Copyright Act does not extend to the annotations contained in a state's annotated code. *See Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1504 (2020) ("Because Georgia's annotations are authored by an arm of the legislature in the course of its legislative duties, the government edicts doctrine puts them outside the reach of copyright protection.") (attached as Exhibit 3).

The omission of any mention of *Georgia* in the Commission's motion and Lexis's response is striking. Petitioner Public.Resource.org and Respondent Lexis were parties to the *Georgia* case, and the decision resoundingly rejected the same arguments that the Commission and Lexis make here.

In *Georgia*, the Court announced a "straightforward rule based on the identity of the author":

> Under the government edicts doctrine, judges—and, we now confirm, legislators—may not be considered the "authors" of the works they produce in the course of their official duties as judges and legislators. That rule applies regardless of whether a given material carries the force of law. And it applies to the annotations here

[2] Lexis also appears to assert copyright protection even over the "unannotated statutory texts of Tennessee" that it "freely distribut[es]" on the Internet. *See* Terms and Conditions of Use at section 4.1 ("You agree that the Content and Web Site are protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws.") (attached as Exhibit 2).

> because they are authored by an arm of the legislature in the course of its official duties.

140 S. Ct. at 1506.

The first step in applying that rule is examining whether the purported author qualifies as a legislator. *Id.* at 1508. Here, as in *Georgia*, the annotations were prepared by Lexis under a work-for-hire agreement with the Commission, and "[a]though Lexis expends considerable effort preparing the annotations, for purposes of copyright that labor redounds to the Commission as the statutory author." 140 S. Ct. at 1508. Although here the Commission is "not identical" to the Tennessee legislature, it nevertheless "functions as an arm of it for the purpose of producing the annotations." *Id.* "The Commission is created by the legislature, for the legislature," and it "receives funding and staff designated by law for the legislative branch." *Id.*; Tenn. Code Ann. § 1-1-103; Mem. at 3 ("The Legislature's Office of Legal Services (OLS) provides staffing to the Code Commission."). The work of the Commission is also within the "sphere of legislative authority." *See, e.g.*, *State v. Gooch*, No. 01-C-01-9304-CR00139, 1994 WL 194263, at *2 (Tenn. Crim. App. May 19, 1994) ("The General Assembly authorized the Tennessee Code Commission to publish the Sentencing Commission Comments with the provisions of the Tennessee Criminal Sentencing Reform Act of 1989. Thus, the comments of the Sentencing Commission constitute strong evidence of the General Assembly's legislative intent when enacting the legislation that has been codified as Tenn. Code Ann. § 40-35-106.").

Under the holding in *Georgia*, "[t]he second step is to determine whether the Commission creates the annotations in the 'discharge' of its legislative 'duties.'" 140 S. Ct. at 1509. Here again, "the annotations provide commentary and resources that the legislature has deemed relevant to understanding its laws." *Id. See also* Mem. at 5; Pet. Ex. 1 at Sections 1.6 (requiring Lexis to "compile a complete annotation to each statute appearing in the TCA, from

all cases which are available up to the time work is completed" that "shall include all published opinions" of the courts of Tennessee and all federal courts "construing Tennessee statutes arising out of Tennessee"), 1.7 (requiring Lexis to provide references to law reviews, opinions of the Tennessee Attorney General, and any new annotations "as determined by [Lexis's] editorial staff and approved by the Executive Secretary or as recommended by the Commission or Executive Secretary"). And "annotations published by legislators alongside the statutory text fall within the work legislators perform in their capacity as legislators." 140 S. Ct. at 1509. "In light of the Commission's role as an adjunct to the legislature and the fact that the Commission authors the annotations in the course of its legislative responsibilities, the annotations . . . fall within the government edicts doctrine and are not copyrightable." *Id*. at 1509.[3] So, too, for the TCA.

That said, even if the TCA were eligible for and protected by copyright, that would in no way end the Court's inquiry in this case. Assuming *Georgia* does not apply here and the Commission does have a copyright in the TCA, no Tennessee authority holds that the Copyright Act is an exception to the access requirements of the Tennessee Public Records Act, or that providing access to the TCA under the Public Records Act would violate the Copyright Act. The Commission's reliance on *Seaton v. Johnson*, 898 S.W.2d 232 (Tenn. Ct. App. 1995), is misplaced because that decision addressed the confidentiality of railroad-crossing records under

[3] The Commission (or Lexis) may argue that the annotations—unlike the unannotated text of the Tennessee Code—are not the official law of the State. *See* Mem. at 2 ("However, and even as Petitioners concede, the Tennessee Code is the official law of the state, while the annotations are not.") (citing Pet. ¶ 16). Under *Georgia*, however, that is a distinction without a difference: "Instead of examining whether given material carries 'the force of law,' we ask only whether the author of the work is a judge or a legislator. If so, then whatever work that judge or legislator produces in the course of his judicial or legislative duties is not copyrightable." 140 S. Ct. at 1513.

the Federal Railroad Safety Act—not the accessibility of the TCA or any other public records under the Tennessee Public Records Act. *See* Mem. at 16.

The Commission's citations to the opinions of the Tennessee Attorney General and the Office of Open Records Counsel are similarly unpersuasive. *First*, those opinions are not the law in this State. *See id. Second*, like *Seaton*, the cited Attorney General's opinion also does not address the intersection of the federal Copyright Act and the Tennessee Public Records Act. It merely refers to federal law as possibly trumping the Act. *See* Tenn. Att'y Gen. Op. 18-23 (May 30, 2018) (attached as Exhibit 4) (acknowledging that "Tennessee courts have recognized that federal law can provide exceptions to Tennessee's Public Records Act by virtue of the Supremacy Clause of the United States Constitution," citing *Seaton*, and opining that, "[t]o the extent any state or federal law provides otherwise with respect to the openness of a record, then the Public Records Act does not require the records custodian to make that record available for public inspection."). *Third*, the non-binding Office of Open Records Counsel opinion only addresses a situation where the copyright owner is a private entity—not the State.

Nothing in the federal Copyright Act prohibits the State, as a copyright owner, from making a copyrighted work public, just as there is no federal law preventing the owner of a copyrighted book from passing it out to whoever they want or posting it on the Internet. Conversely, if the State has a valid copyright, and someone infringes that copyright by, for example, publishing the work without permission, the State would have remedies under the Copyright Act. Mere possession of a copy of a copyrighted work provided by the owner of the copyright, however, is not necessarily a violation of the Copyright Act.

CONCLUSION

Because the production and publication of the law of Tennessee is undeniably a governmental or public function, and the Commission exercises near-total control over Lexis's exercise of that function, Lexis is the functional equivalent of the Commission and its records—including the complete and current electronic version of the TCA—are subject to the disclosure requirements of the Tennessee Public Records Act. No exception under Tennessee or federal law applies, and the Petition should be granted.

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