

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.,)	
<i>a division of the LexisNexis Group,</i>)	
)	
Respondent.)	

DECLARATION OF CARL MALAMUD

I, Carl Malamud, declare and state the following:

1. I am over the age of 18 and competent to testify about the facts set forth in this declaration, which are true and correct to the best of my knowledge.
2. I am familiar with the facts of the above-captioned proceeding and make this declaration based upon my personal knowledge.
3. I am the president of Petitioner Public.Resource.org (Public Resource), a 501(c)(3) nonprofit corporation that I founded in 2007.
4. A key mission of our organization is to make edicts of government available more freely and more broadly. Just a few examples of our work over the past 15 years include:
 - a. assisting the U.S. Congress in placing over 14,000 hours of video from congressional hearings on-line, teaching the House Committee on Oversight and

Government Reform how to make hearings available in an accessible manner using closed-captions, and convincing C-SPAN to waive assertions of copyright over works of the U.S. government so that these proceedings could be more widely shared;

- b. sending volunteers into the U.S. National Archives and copying videos to place on-line for free access on YouTube and the Internet Archive;
 - c. receiving approximately 800 DVDs from the Assistant Secretary of Defense for Public Affairs and adding those to the YouTube and Internet Archive collection, where over 6,000 videos are now available and the YouTube channel has received over 89 million views;
 - d. making the full set of the opinions of the U.S. Court of Appeals, an archive of over 1.8 million pages of federal law, available on the Internet for the first time; and
 - e. convincing the Legislative Counsel Committee of the Oregon State Legislature to waive all assertions of copyright on the Oregon Revised Statutes.
5. In the 1990s, I founded and ran a non-profit corporation called the Internet Multicasting Service that was known for a variety of accomplishments including:
- a. placing live streams of the floors of the U.S. House and Senate on the Internet;
 - b. placing the Securities and Exchange Commission database of public filings (known as "EDGAR") on the Internet for the first time, then working with the SEC to transition that service back over to the government;

- c. creating the first radio station on the Internet, including live streaming from the National Press Club in Washington, DC and creating the first podcasts.
6. On July 21, 2015, the State of Georgia filed suit against Public Resource in the U.S. District Court for the Northern District of Georgia. The State of Georgia sought a declaration that Public Resource infringed the State's copyrights by scanning the Official Code of Georgia Annotated and posting it on the Internet.
7. After an adverse judgment in the District Court, Public Resource appealed to the United States Court of Appeals for the Eleventh Circuit, which reversed the District Court's decision. Two years ago, the Court of Appeals' decision was affirmed by the United States Supreme Court. *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498 (2020).
8. On April 14, 2021, the Vanderbilt Law School legal clinic, writing on behalf of Public Resource, wrote to the Tennessee Code Commission requesting removal of copyright assertions over the Tennessee Code Annotated (TCA) and informing the Commission that the TCA was available on an open repository in HTML format. Ex. A.
9. On April 17, 2021, Public Resource received a notice from Lexis that Tennessee was cancelling their DVD product, leaving only LexisAdvance and print as options. Ex. B. The letter from Vanderbilt Law School had been circulating for several weeks, allowing several hundred people to sign letters of support, and we can only surmise that the State and Lexis got wind of this and decided to take preemptive steps.
10. On August 11, 2021, the Office of the Attorney General of Tennessee wrote to the Vanderbilt Law School legal clinic, and asserted that the U.S. Supreme Court decision in

the Georgia case did not apply to the State of Tennessee. Ex. C. The Public Records Request at issue in this matter, Lexis's denial of the Request, and Petitioners' Petition for Access to Public Records and to Obtain Judicial Review of Denial of Access followed.

11. The prices to purchase edicts of government are often spectacularly high. To purchase the Tennessee Code in print, for example, Public Resource spent \$1,035.40 in 2021, and it expects similar charges in later years for the updates. The cost for the DVD service, before the State and Lexis cancelled electronic access, was \$1,771.18 in 2020.

12. In a great many instances, edicts of government are subject to copyright assertions by the state or by their vendors. In addition, the vendors, including Westlaw and Lexis, enforce stringent contractual terms of use and technical means, such as Digital Rights Management and monitoring users, to enforce their claimed exclusive hold on edicts of government.

13. Even when Public Resource and others make these edicts of government available, many citizens, perhaps vaguely aware of the threats being made by states and their vendors, worry they will be accused of breaking the law by reading the law. A volunteer firefighter wishing to copy the life-safety code, a law librarian wishing to make the official code of a state available, a business person wishing to understand equal-opportunity law, a factory worker wishing to understand occupational safety, or a parent wishing to understand laws governing educational institutions or nursing homes must pause and ask: "Is it legal for me to read this material without paying for it?"

14. Asserting copyright over edicts of government is not only deceptive to consumers, it has a huge chilling effect on competition. And the consumer deception includes more

than simply asserting baseless claims to copyright. The so-called “free” site operated by Lexis for the unannotated Tennessee Code is an example. Not only are onerous terms of use required to enter the site, with additional terms disclosed only after the user clicks “I Agree,” the site is unwieldy. Users can only print one sub-section of the Code at a time—they cannot print a section, much less a full chapter or title. Lexis’s site may be viewed at this URL:

<https://advance.lexis.com/container?config=014CJAA5ZGVhZjA3NS02MmMzLTRIZWQtOGJjNC00YzQ1MmZINzc2YWYKAFBvZENhdGFsb2e9zYpNUjTRalWVfyrur9ud&crd=7c1fd53a-7f23-4c1b-8841-995e3ad2b290>

15. By contrast, a copy of the Tennessee Code Annotated transformed into HTML to make it more accessible to the visually impaired and to work better on mobile devices is available on a public repository on GitHub at the following location: [https://](https://unicourt.github.io/cic-code-tn/)

unicourt.github.io/cic-code-tn/

16. Because the electronic version of the Tennessee Code was terminated, that site has only five releases, beginning with Release 72 from September, 2020, through Release 76, dated May, 2021, after which we were no longer able to access the code electronically, and are now scanning print volumes as they get released.

17. Presently, Public Resource has versions of the law of 13 states available, all of which

- a. are accessible to the visually impaired;
- b. work on mobile and other devices;
- c. are fully downloadable (so legal services can bring the code into their own sites);

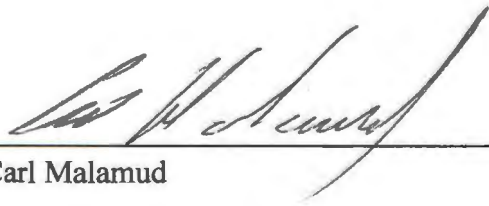
- d. provide multiple snapshots of the codes, allowing historical research, as well as redlines and other features;
- e. are available in Microsoft Word format; and
- f. have much better crosslinking and navigation than other proprietary platforms (for example, so references to the U.S. Code can link to the U.S. Code).

18. Notwithstanding these many and varied user-friendly features, Public Resource is always improving its publications. For example, it is now transforming the codes into XML format and loading it into an open-source code management system—a tool that states like Tennessee could one day use to publish their own codes.

19. In a democracy, the rule of law requires that the law be promulgated. Ignorance of the law is no excuse. When states and their vendors collude to improperly assert copyright, invoke onerous terms of use, and aggressively attempt to build walls around access to the raw materials of our democracy, we all suffer.

Pursuant to Tennessee Rule of Civil Procedure 72, I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 19, 2022



Carl Malamud

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon counsel for all parties by regular U.S. Mail, postage prepaid, and electronic mail at the following addresses:

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August 19, 2022

/s/ Joshua Counts Cumby
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