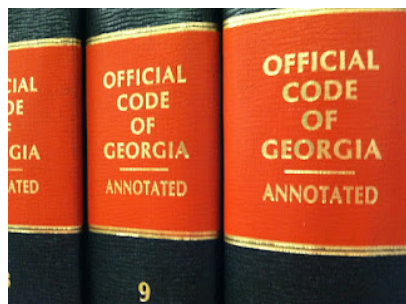


Georgia Becomes the First State to Mount a Direct Challenge Against Unauthorized Publishing of Annotated Code

Article By:

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In what has already become [news in the copyright community nationwide](#), the State of Georgia has launched a legal campaign against [Public.Resource.org, Inc.](#), a California non-profit corporation that dedicates itself to compiling, scanning, and publishing laws, codes, and rules from around the world.



"[I]n January of 2014, Carl Malamud, Defendant's founder and president, testified in front of the U.S. House of Representatives, House Judiciary Committee, to advance an amendment to the U.S. Copyright Act making state and local official legal documents uncopyrightable for reasons of public policy. No such amendment has been adopted by Congress. On information and belief, Carl Malamud has engaged in an 18 year long crusade to control the accessibility of U.S. government documents by becoming the United States' Public Printer – an individual nominated by the U.S. President and who is in control of the U.S. Government Printing Office. Carl Malamud has not been so nominated." (Compl. at para. 18.)

The complaint was filed by the Code Revision Commission, on behalf of the General Assembly of Georgia and the State of Georgia, on July 21, 2015 in the Northern District of Georgia, alleging that Public.Resource.org's act of publishing and making available on the internet over 140 volumes/supplements of the Official Code of Georgia Annotated (O.C.G.A.) violated U.S. copyright law.

According to the complaint, Georgia contracts with LexisNexis to publish an annotated version of Georgia's state laws. Under the contract, LexisNexis is required to make an unannotated version of

the code available to the public for free. In order to recoup its publishing costs, however, LexisNexis is responsible for drafting and making "additions to the statutory text," such as summaries of significant judicial decisions relating to various parts of the code. The complaint, which acknowledges that the laws themselves are uncopyrightable, refers to these additions as the "Copyrighted Annotations." The State of Georgia asserts that these Copyrighted Annotations are prepared as "works for hire" by LexisNexis and thus claims exclusive copyright ownership on that basis.

The State asserts that Public.Resource.org illegally copied the O.C.G.A. containing the Copyrighted Annotations and then uploaded copies to various websites, including its own sites and archive.org, even going so far as to post a notice that members of the public "can copy, modify, distribute and perform the work, even for commercial purposes, all without asking permission." (Compl. at para. 17, citing <https://archive.org/details/govlawgacode392000>, which indicates that O.C.G.A. Volume 39, 2000 Edition, Title 51 is subject to a "CC0 1.0 Universal" license.) The complaint goes on to allege that the defendant's actions are part of a larger plan to improperly influence the government to modify the copyright law and force government entities to "expend tax payer dollars in creating annotated state codes."

The State then criticizes the defendant's founder, Carl Malamud, claiming that:

The complaint alleges that the defendant also distributed copies of the O.C.G.A. by thumb drive and mail to various members of the State of Georgia Legislature. The State mailed a cease-and-desist letter to the defendant in July of 2013, with which the defendant openly refused to comply. The complaint seeks redress for alleged direct and indirect copyright infringement under 17 U.S.C. Sec. 106, and prays for injunctive relief, seizure, impoundment, and destruction of all unauthorized works in the defendant's possession, as well as costs and attorneys' fees.

On its face, the State of Georgia appears to have an open-and-shut case, but it does raise the question of whether the "Copyrighted Annotations," which are heavily-relied upon by legal practitioners and the public alike, are "officially" part and parcel of the law such that they should also be deemed uncopyrightable works. The complaint acknowledges that the "succinctness and accuracy of the judicial summaries are in large part what make them valuable to attorneys and others researching the Code." This recognition by the State along with the "official" blessing highlights the crux of the controversy: if the annotations are part of the "official" law of the state, can (or should) those annotations be protected by copyright law from free public dissemination? It may well require Congressional action to preclude states from obtaining copyright protection on works made for hire pursuant to contract.

The case is *Code Revision Commission et al. v. Public.Resource.Org, Inc.*, 1:15-cv-02594-MHC, filed July 21, 2015 in the Northern District of Georgia, Atlanta Division, and is assigned to Judge Mark Cohen.

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