



Written by [C. Mitchell Shaw](#) on July 31, 2015

## Georgia Sues Website for Publishing the Laws of Georgia

The Georgia legislature seems to have lost the idea of transparency in government. The Peach State is suing Carl Malamud, operator of the [Public.Resource.org](#) website, for copyright infringement. His transgression? He published the Official Code of Georgia Annotated (OCGA) and made it available to the public free of charge and without restriction.



Georgia has an agreement with Lexis-Nexis to make the annotated laws available in book form and on the Internet, but the Internet site is available only to users who agree to the “Terms and Conditions” of the website. When a user enters the site (after having been redirected from the [Georgia General Assembly website](#)) he is greeted with this notice:

Your use of this service is subject to [Terms and Conditions](#). These Terms and Conditions do not apply to the Statutory Text and Numbering contained in the Content of the site. However, the State of Georgia reserves the right to claim and defend the copyright in any copyrightable portions of the site. Please indicate your agreement to the [Terms and Conditions](#) by clicking “I Agree” below.

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This is troubling, because Lexis-Nexis refers to the OCGA as “the essential reference you need to guide you quickly and efficiently in understanding the Georgia statutory scheme.” Furthermore, those terms and conditions do not allow the information to be copied or shared. Section 2.1 warns,

You may not copy, modify, reproduce, republish, distribute, display, or transmit for commercial, non-profit or public purposes all or any portion of this Web Site, except to the extent permitted above. You may not use or otherwise export or re-export this Web Site or any portion thereof, or the Content in violation of the export control laws and regulations of the United States of America. Any unauthorized use of this Web Site or its Content is prohibited.

So, users of the website are allowed to read “the essential reference” needed for understanding the laws of the State of Georgia, but they “may not copy, modify, reproduce, republish, distribute, display, or transmit” it. As Carl Malamud told *The New American*, “In America, when we say that the law is available to citizens, that’s not only the right to read the law, but it’s also the right to speak the law. You should not need a ‘license’ to speak the Official Code of Georgia Annotated.”

Agreeing to the terms and conditions of the Lexis-Nexis website grants users a “limited license.” Section 1 says,

Web Site Limited License. As a user of this Web Site you are granted a nonexclusive, nontransferable, revocable, limited license to access and use this Web Site and Content in



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accordance with these Terms of Use. Provider may terminate this license at any time for any reason.

So, it is not only a “limited license,” it is also “revocable,” and Lexis-Nexis “may terminate this license at any time for any reason.” Since that severely limits the ability of citizens to “speak the law,” Malamud decided to make the law (annotations and all) freely available without restrictions. In doing this, he did not copy the information from the website. He instead went to what he calls the “only code of Georgia that’s available,” which is a printed book that “the law-making body of the state has issued under its own name with a copyright — State of Georgia — and that is the only code of Georgia which is official: this printed book. We purchased it, we copied it, and we posted it,” he told *The New American*.

As part of the agreement between Georgia and Lexis-Nexis, Lexis-Nexis handles the annotations and copyrights the finished product, but Georgia owns the copyright. Lexis-Nexis sells the OCGA books. The pricetag is \$378. On the Lexis-Nexis page for purchasing the book, it is described as follows,

The Official Code of Georgia Annotated (OCGA) provides users with the official Georgia statutes, fully annotated and including guidance from the Georgia Code Commission. If you live or work in Georgia, the OCGA is the essential reference you need to guide you quickly and efficiently in understanding the Georgia statutory scheme.

So in the absence of Malamud’s website, the only two ways for citizens to access the annotated code (including guidance from the Georgia Code Commission) are to read it from the Lexis-Nexis website (after obtaining a “Limited License,” which is revocable) or by laying out almost \$400 for the books (which are copyrighted to prohibit any copying or sharing).

As Mike Masnick pointed out in his excellent article for [TechDirt](#),

Furthermore, multiple parts of the Georgia government refer to the OCGA as the law of Georgia, rather than the unannotated version. Just as two quick examples, the Georgia Department of Community Affairs [cites the OCGA](#) to explain Georgia’s construction codes, rather than the unannotated law. And the Department of Banking and Finance [insists that](#):

Laws governing entities regulated by the Department are primarily found in the Official Code of Georgia Annotated (O.C.G.A.) Title 7.

This would certainly bear out Malamud’s claim that “this is the publication of the law-making entity of the state. It is therefore what’s technically know as an ‘edict of government.’ If you look at the [U.S. Copyright Office manual of office practices](#), [it is] very clear that in the United States, ‘edicts of government’ do not have copyright.”

That section declares plainly:

Edicts of government, such as judicial opinions, administrative rulings, legislative enactments, public ordinances, and similar official legal documents are not copyrightable for reasons of public policy. This applies to such works whether they are Federal, State, or local as well as to those of foreign governments.

So why is Georgia taking what is so obviously an untenable position? The reasons are unclear. Especially in light of the fact that the state of [Oregon](#) considered and then dismissed the same course of action when Public.Resource.org published the Oregon Revised Statutes. After Oregon threatened suit against Public.Resource.org, Public.Resource.org threatened a countersuit, and the state then held public hearings to decide how to handle the situation. Malamud was invited to speak. He told *The New*



*American,*

We testified, the citizens of Oregon testified, Oregon's lawyer testified, then the legislature deliberated and they unanimously voted to waive copyright. And this is how these things should be resolved. This is an issue between the citizens of Georgia and their government. They should be holding hearings, not filing suits.

But filing suits they are. [The paper trail](#) for this goes back to 2013 and includes letters back and forth. Finally, rather than resolving the issue the way Oregon did, Georgia has decided on the drastic action of suing Malamud. In a twist of logic that boggles the mind, the state claims that its agreement with Lexis-Nexis saves the taxpayers the cost of publishing the OCGA. It insists that without that agreement, it would be unable to publish the OCGA at all because it would be unfair to burden the taxpayers with the bill. Of course, it doesn't seem to be losing any sleep over burdening those same taxpayers with the bill for this lawsuit.

Malamud started Public.Resource.org as a 501(c)(3) in 2007. He describes himself as "an old Internet guy who started the first Internet radio station." In 1993, he launched Internet Talk Radio, a weekly program featuring interviews with computer experts. Programming was later expanded to include live feeds from the floors of both the House and the Senate. He has written nine professional reference books about the Internet and was credited in the early 1990s with posting copies of the databases of both the Securities and Exchange Commission and the U.S. Patent Office online for the first time. He was able to convince the U.S. government to take over his work on those databases and begin providing those services itself.

As he told *The New American*,

I have 30 years' experience (of public service, frankly) helping the government put things online. And I want to make a point that this issue is not a [matter of] Right vs. Left or copyright vs. not copyright. My work has been on both sides of the aisle. Speaker Boehner and Congressman [Darrell] Issa [R-Calif.] asked me to help them put 14,000 hours of congressional video on the Internet — which I did. I was also the chief technology officer for John Podesta at the Center for American Progress. So, this is very much an issue that spans partisan divides. It is very much about a core part of our [government], which is about making the law available to citizens.

As *The New American's* constitutional lawyer Joe Wolverton, II, J.D. noted about this case,

Secrecy is often the tool of tyrants, particularly in an Anglo-American legal system where notice of the law has been a key principle for over 1,000 years.

These annotations, while not part of the law, take on the color of law through the deference they are given. Thus, that which is *de jure* not the law, becomes the law *de facto* and will work to subtly diminish the civil liberties of all to whom these commentaries are applied.

If anything should be open-source, it is the law. Without free and unhindered access to it, citizens are the servants of government. With such access to it, citizens can hold government accountable.



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