

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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|-------------------------------------|---|--|
| AMERICAN EDUCATIONAL RESEARCH |) | |
| ASSOCIATION, INC., AMERICAN |) | |
| PSYCHOLOGICAL ASSOCIATION, INC., |) | |
| and NATIONAL COUNCIL ON |) | |
| MEASUREMENT IN EDUCATION, INC., |) | Civil Action No. 1:14-cv-00857-TSC-DAR |
| |) | |
| Plaintiffs/Counterclaim Defendants, |) | DECLARATION OF JONATHAN |
| |) | HUDIS IN SUPPORT OF |
| v. |) | PLAINTIFFS' MOTION FOR |
| |) | SUMMARY JUDGMENT AND ENTRY |
| PUBLIC.RESOURCE.ORG, INC., |) | OF A PERMANENT INJUNCTION |
| |) | |
| Defendant/Counterclaimant. |) | |
| |) | |

I, JONATHAN HUDIS, declare:

1. I am a partner with Quarles & Brady LLP, lead counsel to Plaintiffs, AMERICAN EDUCATIONAL RESEARCH ASSOCIATION, INC. ("AERA"), AMERICAN PSYCHOLOGICAL ASSOCIATION, INC. ("APA") and NATIONAL COUNCIL ON MEASUREMENT IN EDUCATION, INC. ("NCME") (collectively, "Plaintiffs") in the captioned action. I submit this Declaration in support of Plaintiffs' motion for summary judgment and entry of a permanent injunction against Defendant, Public.Resource.Org, Inc. ("Defendant" or "Public Resource").

2. Accompanying this Declaration as Exhibit A is a true copy of the transcript from the deposition of Carl Malamud ("Malamud"), taken in his personal capacity and as the Fed.R.Civ.P. 30(b)(6) representative of Defendant (see transcript, pp. 14-22), on May 12, 2015 (the "Malamud/Public Resource Deposition").

3. Accompanying this Declaration as Exhibit B is a true copy of the Articles of Incorporation of Public Resource, filed with the California Secretary of State on April 13, 2007, marked as Exhibit 16 during the Malamud/Public Resource Deposition.

4. Accompanying this Declaration as Exhibit C is a true copy of the Bylaws of Public Resource, having a "last revised" date of April 18, 2007 (see p. 23), marked as Exhibit 17 during the Malamud/Public Resource Deposition.

5. Accompanying this Declaration as Exhibit D are true copies of the home page and "About" page from Public Resource's website, <https://public.resource.org>, marked as Exhibits 19 and 20 during the Malamud/Public Resource Deposition.

6. Accompanying this Declaration as Exhibit E is a true copy of a representative list of projects Malamud/Public Resource has been involved in and publications he has written as author or co-author, marked as Exhibit 15 during the Malamud/Public Resource Deposition.

7. Accompanying this Declaration as Exhibit F is a true copy of a documented Kickstarter crowd-funding campaign launched by Public Resource in 2013, to obtain outside financial support for copying and posting third party standards and codes to the <https://public.resource.org> website. These captured Kickstarter web pages were marked as Exhibit 27 during the Malamud/Public Resource Deposition.

8. Accompanying this Declaration as Exhibit G is a true copy of the "Geneva" chapter from Malamud's book entitled *Exploring the Internet: A Technical Travelogue*, published in 1993, marked as Exhibit 22 during the Malamud/Public Resource Deposition.

9. Accompanying this Declaration as Exhibit H is a true copy of Malamud, C., *Liberating America's Secret, For-Pay Laws*, [boingboing](http://boingboing.net), March 19, 2012, marked as Exhibit 25 during the Malamud/Public Resource Deposition.

10. Accompanying this Declaration as Exhibit I is a true copy of Garfield, B., *Making Laws More Public Transcript - On The Media*, interview of Carl Malamud, The Media, April 13, 2012, marked as Exhibit 24 during the Malamud/Public Resource Deposition.

11. Accompanying this Declaration as Exhibit J to this Declaration is a true and accurate copy of “Public Safety Codes Incorporated by Law,” appearing on Defendant’s website at <http://law.resource.org/pub/us/code/safety.html> (last visited December 17, 2015).

12. Accompanying this Declaration as Exhibit K to this Declaration is a true and accurate copy of “Public Safety Standards United States (Federal Government),” appearing on Defendant’s website at <http://law.resource.org/pub/us/cfr/manifest.us.html> (last visited December 17, 2015).

13. Accompanying this Declaration as Exhibit L to this Declaration is a true and accurate copy of the Register of Copyrights’ online abstract for U.S. Copyright Registration No. TX 5-920-538, for the work “Safety standard for belt manlifts : ASME A90.1-2003.”

14. Accompanying this Declaration as Exhibit M to this Declaration is a true and accurate copy of the Register of Copyrights’ online abstract for U.S. Copyright Registration No. TX 5-181-138, for the work “Guidelines for the definition of onshore gas gathering lines.”

15. Accompanying this Declaration as Exhibit N to this Declaration is a true and accurate copy of the Register of Copyrights’ online abstract for U.S. Copyright Registration No. TX 427-109, for the work “Official methods of analysis of the Association of Official Analytical Chemists.”

16. Accompanying this Declaration as Exhibit O to this Declaration is a true and accurate copy of the Register of Copyrights’ online abstract for U.S. Copyright Registration No. TX 1-142-464, for the work “Classification in mental retardation.”

17. Accompanying this Declaration as Exhibit P to this Declaration is a true and accurate copy of the Register of Copyrights' online abstract for U.S. Copyright Registration No. TX 2-953-680, for the work "Glazing manual."

18. Accompanying this Declaration as Exhibit Q to this Declaration is a true and accurate copy of the Register of Copyrights' online abstract for U.S. Copyright Registration No. TX 6-062-476, for the work "Mobile and locomotive cranes : ASME B30.5-2004."

19. Accompanying this Declaration as Exhibit R to this Declaration is a true and accurate copy of the Register of Copyrights' online abstract for U.S. Copyright Registration No. TX 5-434-639, for the work "Drinking water system components: health effects: American national standard/NSF international standard for drinking water additives : ANSI/NSF 61-2001."

20. Accompanying this Declaration as Exhibit S to this Declaration is a true and accurate copy of the Register of Copyrights' online abstract for U.S. Copyright Registration No. TX 5-902-199, for the work "Minimum design loads for buildings and other structures."

21. Accompanying this Declaration as Exhibit T is a true copy of DEFENDANT-COUNTERCLAIMANT PUBLIC.RESOURCE.ORG, INC.'S AMENDED RESPONSES TO PLAINTIFFSCOUNTERDEFENDANTS' FIRST SET OF INTERROGATORIES (NOS 1-8), marked as Exhibit 29 during the Malamud/Public Resource Deposition.

22. Accompanying this Declaration as Exhibit U is a true copy of Public Resource's receipt, dated May 17, 2015, for its purchase of Plaintiff's Standards for Educational and Psychological Testing (1999 ed.), marked as Exhibit 30 during the Malamud/Public Resource Deposition.

23. Accompanying this Declaration as Exhibit V is a true copy of Plaintiffs' Standards for Educational and Psychological Testing (1999 ed.), marked as Exhibit 31 during the Malamud/Public Resource Deposition.

24. Accompanying this Declaration as Exhibit W is a true copy of a letter and Freedom of Information Action ("FOIA") request dated July 14, 2009 from Public Resource to the General Counsel of the National Archives, requesting a copy of, *inter alia*, Plaintiffs' 1999 Standards for free or at reduced cost pursuant to a "fee waiver," marked as Exhibit 32 during the Malamud/Public Resource Deposition.

25. Accompanying this Declaration as Exhibit X is a true copy of letter dated August 3, 2009 from the National Archives to Public Resource, marked as Exhibit 33 during the Malamud/Public Resource Deposition, in which the National Archives denies Public Resource's FOIA request of Exhibit W above.

26. Accompanying this Declaration as Exhibit Y is a true copy of the cover sheet, or self-made "Certificate," that Malamud appended to the front of the PDF file "aera.standards.1999.pdf," Defendant's unauthorized digital copy of Plaintiffs' Standards for Educational and Psychological Testing (1999 ed.), marked as part of Exhibit 34 during the Malamud/Public Resource Deposition.

27. Accompanying this Declaration as Exhibit Z is a true copy of the transcript from the deposition of James R. Fruchterman ("Fruchterman"), *Defendant's Expert*, taken on September 8, 2015 (the "Fruchterman Deposition").

28. Accompanying this Declaration as Exhibit AA is a true copy of the Fruchterman Expert Report, marked as part of Exhibit 64 during the Fruchterman Deposition.

29. Accompanying this Declaration as Exhibit BB is a true copy of portions of the transcript from the deposition of Christopher Butler ("Butler"), Office Manager of the Internet Archive (see transcript at pp. 5, 7-8 and 28-30), taken on December 2, 2014 (the "Butler/Internet Archive Deposition").

30. Accompanying this Declaration as Exhibit CC is a true copy of a Declaration of Internet Archive (C. Butler) and Stipulation of the Parties (the "Butler/Internet Archive Declaration") signed by Butler on January 20, 2015, subsequent to and as a supplementation of the Butler/Internet Archive Deposition.

31. Accompanying this Declaration as Exhibit DD is a true copy of Internet Archive's Terms of Use dated March 10, 2001, marked as Exhibit 5 during the Butler/Internet Archive Deposition.

32. Accompanying this Declaration as Exhibit EE is a true copy of Internet Archive's Item History for gov.law.aera.standards.1999, marked as Exhibit 7 during the Butler/Internet Archive Deposition.

33. Accompanying this Declaration as Exhibit FF is a true copy of Internet Archive's Logs pertaining to the Item History for gov.law.aera.standards.1999, marked as Exhibit 8 during the Butler/Internet Archive Deposition.

34. Accompanying this Declaration collectively as Exhibit GG are a true copies of screen captures of Plaintiffs' 1999 Standards in the form that they were uploaded by Public Resource to the Internet Archive website, marked as Exhibit 6 during the Butler/Internet Archive Deposition.

35. Accompanying this Declaration as Exhibit HH is a true copy of DEFENDANT PUBLIC.RESOURCE.ORG, INC.'S RESPONSES TO PLAINTIFFS' FIRST REQUESTS FOR ADMISSIONS, SET ONE (NOS. 1-8).

36. On December 15, 2014, Plaintiffs filed a motion to compel discovery of, *inter alia*, documentation verifying when Public Resource published or posted Plaintiffs' 1999 Standards to one of Public Resource's websites, as well documentation verifying the number of times Plaintiffs' 1999 Standards were viewed on, accessed from or downloaded from one of Public Resource's websites (i.e., Public Resource's Internet server logs). The parties' motion papers pertaining to Plaintiffs' discovery motion may found on the Court's docket at Dkt. Nos. 27, 29 and 30. Five months later, and without explanation, the Court (Robinson, M-J) denied these parts of Plaintiffs' discovery motion (Court Order, May 20, 2015, Dkt. No. 49).

37. Accompanying this Declaration as Exhibit II is a true copy of Internet Archive's screen capture of its query results to determine from its records the download count for the item with the identifier gov.law.aera.standards.1999, marked as Exhibit 11 during the Butler/Internet Archive Deposition.

38. Accompanying this Declaration as Exhibit JJ is a true copy of an e-mail dated December 16, 2013 from Mr. John Neikirk, Director of Publications of Plaintiff AERA, to Carl Malamud, requesting removal of Plaintiffs' 1999 Standards from Public Resource's <https://law.resource.org> website, marked as Exhibit 39 during the Malamud/Public Resource Deposition.

39. Accompanying this Declaration as Exhibit KK is a true copy of a letter dated December 19, 2013 from Carl Malamud (on Public Resource stationery) refusing to remove

Plaintiffs' 1999 Standards from Public Resource's <https://law.resource.org> website, marked as Exhibit 40 during the Malamud/Public Resource Deposition.

40. Accompanying this Declaration as Exhibit LL is a true copy of an e-mail dated June 10, 2014 from the undersigned to Carl Malamud regarding the initiation of this lawsuit, marked as Exhibit 42 during the Malamud/Public Resource Deposition.

41. Accompanying this Declaration as Exhibit MM is a true copy of a memorandum on Public Resource letterhead, signed by Carl Malamud on June 12, 2014, undertaking to remove Plaintiffs' 1999 Standards from Public Resource's <https://law.resource.org> website and from the Internet Archive <https://archive.org> website pending the outcome of this litigation, marked as Exhibit 43 during the Malamud/Public Resource Deposition.

I DECLARE, under the penalty of perjury, that the foregoing is true and correct.

Dated: December 21, 2015

/s/ Jonathan Hudis

Jonathan Hudis