

**Code Revision Comm. v. Public.Resource.Org, Inc.
No. 1:15-cv-02594-RWS (N.D. Ga. Mar. 23, 2017)**

Year	2017
Court	United States District Court for the Northern District of Georgia
Key Facts	Plaintiffs, the state of Georgia and its Code Revision Commission (comprised of state legislative and judicial officers), own the copyright to the Official Code of Georgia Annotated (“O.C.G.A.”), which is published and licensed by Lexis/Nexis. In addition to the statutory provisions, which plaintiff requires Lexis/Nexis to make available for free online, the O.C.G.A. includes annotations, editorial notes, chapter analyses, and other material, such as judicial decision summaries, notes on law review articles, and summaries of the opinions of the Attorney General of Georgia. In 2014, plaintiffs received over \$80,000 in licensing fee royalties from Lexis/Nexis’ licensing of the O.C.G.A.. Defendant, Public.Resource.Org, a nonprofit organization, “purchased all 186 printed volumes and supplements of the O.C.G.A., scanned them all, and then posted those copies on its website” to “make the O.C.G.A., including the annotations, available” for free to the public.
Issue	Whether it is a fair use to make available for free online a verbatim copy of a state’s official annotations to its statutory provisions without obtaining authorization from the copyright owner.
Holding	On cross-motions for summary judgment, the district court held that plaintiffs’ annotations to its statutory provisions, as included in the O.C.G.A., were “entitled to copyright protection,” and that it was not fair use for defendant to make a verbatim copy of the O.C.G.A. available online without authorization. To start its four-factor fair use analysis, the court held that the first factor, purpose and character of the use, weighed against fair use. Specifically, the court found that defendant did not transform the work because it did “not add, edit, modify, comment on, criticize, or create any analysis or notes of its own,” and that its use was “neither nonprofit nor educational,” noting, in particular, that defendant profited from “the attention, recognition, and contributions it receive[d] in association with its copying and distributing” of the work. Regarding the second factor, nature of the work, the court explained that the “annotations in this case contain[ed] exactly the evaluative, analytical, or subjectively descriptive analysis” described by the Eleventh Circuit as meriting a neutral, or even negative, weight against fair use. Next, the court found that the third factor, the amount of work used, weighed against fair use because defendant “misappropriated every single word of every annotation using a bulk industrial electronic scanner.” Lastly, the court held that the fourth factor weighed against fair use because “wholesale copying” and distribution of the work for free online “would hinder the economic viability of creating and maintaining the O.C.G.A. because people would be less likely to pay for annotations when they are available for free online.”
Tags	Eleventh Circuit; Education/Scholarship/Research; Textual Work; Used in government proceeding
Outcome	Fair use not found

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