

July 10, 2019

SCOTUS Grants Cert in Public Access Copyright Case

On June 24, the U.S. Supreme Court announced that it will decide whether annotated state codes and other state and local legal materials may be protected by copyright. The case, *Georgia v. Public.Resource.Org*, will be argued next term.

The case centers on the State of Georgia's statutory code with annotations (the "Official Code of Georgia Annotated" or "OCGA"). The OCGA contains the text of Georgia's official statutes along with explanatory materials such as statutory histories, guidance from the Georgia Code Revision Commission, judicial summaries, and opinions by the State Attorney General. While the state makes the unannotated version of the code available for free online, it gave a legal publisher exclusive rights to the annotated code, which sells for \$404. When the nonprofit organization Public.Resource.Org bought a copy of the OCGA, copied it, and posted it online, Georgia sued for copyright infringement.

The district court sided with the State in holding that Public.Resource.Org had infringed Georgia's copyright in the annotated code. But the 11th Circuit reversed, finding that the "government edicts doctrine" precludes copyright where the work in question is "sufficiently law-like" to be considered a sovereign work constructively authored by the People.

In its petition for certiorari, Georgia asked the Supreme Court to clarify whether "the government edicts doctrine extends to—and thus renders uncopyrightable—works that lack the force of law, such as the annotations in the Official Code of Georgia Annotated." The State argued that the rule that "government edicts" cannot be copyrighted has "proven difficult to apply when the material in question does not fall neatly into the categories of statutes or judicial opinions." And although Public.Resource.Org prevailed on appeal, it agreed that the Supreme Court should hear the case in order to clarify "confusing" case law whose "outcomes are difficult to predict."

While it is settled law that judicial opinions cannot be copyrighted, and while the Copyright Act excludes from copyright protection any work of the federal government, state and local government works are subject to conflicting copyrightability standards in the lower courts. The Supreme Court's decision in *Public.Resource.Org* should resolve that confusion.

Public.Resource.Org will mark the first time the Supreme Court will hear a "government edicts" case in more than 130 years. The Court last discussed the doctrine in *Callaghan v. Myers* in 1888 and *Banks v. Manchester* in the same year.

Whatever the outcome, the Supreme Court's decision will have widespread effects on the law of public access to public information. Roughly 20 other states currently claim copyright in similar annotated codes. Those copyrights will be invalid if the Supreme Court upholds the 11th Circuit's ruling.

AUTHORS:

[Benjamin J. Hodges](#)

[Bianca Chamusco](#)

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Briefing in the case will continue through the summer, and the Court will likely schedule oral argument for late 2019.

If you have any questions about the implications of this case on your municipality, please contact [Benjamin Hodges](#), [Bianca Chamusco](#) or any member of Foster Pepper's [Intellectual Property](#) group.

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