



**EJUSTICE:
ACCESSIONG THE LAW IN AN ELECTRONIC WORLD**

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I. INTRODUCTION

Two citizens, one statute.

Citizen A is an investment banker from Atlanta, Georgia, and a subscriber to all the legal research databases. When Citizen A needs to research a legal question, not only can they easily find the relevant statute, but they will also know its currency, how courts have interpreted the statute, and all additional guidance provided by regulations and secondary sources.

Citizen B¹ is a freelance journalist from Savannah, Georgia. Citizen B can only access laws made publicly available, for free, online, given they have no paid subscriptions to legal research databases. They can locate the statute, yes. But that is all they can do because the supplemental material Citizen A can access stands behind a paywall that Citizen B cannot enter.

In *Georgia v. Public.Resource.Org, Inc.*, the United States Supreme Court addressed such a situation when the state of Georgia sought copyright protection in the statutory annotations of its official code.²

Two citizens, one statute, but two very distinct interactions with the law. Citizen B could have been any Georgia citizen who also solely relied on free, publicly accessible legal material but was limited just to the statutes themselves, and not any of the annotations. Juxtaposed with Citizen A, whose economic freedom permits them an upper hand to access a more lucrative and advantageous side to the exact same law. Does this discrepancy accord with American democratic values? Especially considering that “to exercise their rights to participate in our democracy, citizens must have reasonable access to all legal material.”³

This commentary will address the accessibility of legal annotations, the accessibility of legal materials beyond annotations, and how the state of New Jersey approaches providing access to such materials. A decision like *Public.Resource.Org*, alongside the adoption of the Uniform Electronic Legal Material Act⁴, could update the current New Jersey accessibility scheme to provide the public with the requisite access to legal resources.

* I want to express my sincere gratitude to my Faculty Advisor, Barbara Hoffman, for her continued guidance and to my family for being my strongest supporters.

1. “The Reporters Committee for Freedom of the Press et al. (the “Committee) agrees, stressing the importance of having an official, publicly available, annotated code. It explains that the public—especially those not in the legal profession—can struggle to navigate the law. This struggle is alleviated, argues the Committee, by having an official annotated code that explains the law. The Committee notes that this is particularly important for journalists who often write about legal issues yet usually have no legal training or legal resources.” Prachee Sawant & Brandon A. Slotkin, *State of Georgia, et al. v. Public.Resource.Org, Inc.*, CORNELL LAW SCHOOL: LII SUPREME COURT BULLETIN, <https://www.law.cornell.edu/supct/cert/18-1150> (last visited Jan. 11, 2022).

2. *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498 (2020).

3. UNIF. ELEC. LEGAL MATERIAL ACT, § 8 cmt. at 15 (UNIF. L. COMM’N 2011), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentKey=22fde69f-4235-ed35-2823-76d632cf112d&forceDialog=0>, [hereinafter UELMA].

4. See *infra* Section IV.B.

II. COPYRIGHT PROTECTION OF LEGAL MATERIALS

Copyright is “a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression.”⁵ A copyright protects original works extending to “literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture.”⁶ The Copyright Act of 1976⁷ further defined copyright rules and established requirements for copyright protections.⁸ Section 105 is one of the most critical limitations of the Copyright Act as it expressly denies copyright protection to works of the United States government, or the federal government.⁹ There is no mirror rule for works of a state government under the Copyright Act.¹⁰ Accordingly, “state and local government bodies can obtain copyright for their works, subject to any state rules precluding or or[sic] restricting state copyright ownership.”¹¹

Government works are also subject to the government edits doctrine.¹² The doctrine is premised on the notion that “officials empowered to speak with the force of law cannot be the authors of—and therefore cannot copyright—the works they create in the course of their official duties.”¹³ And because of the federal work exception in Copyright Act, the doctrine does not apply to federal lawmaking officials like it does to state governments and state lawmaking officials.¹⁴ The rationale of the doctrine is because “no one can own the law,”¹⁵ and because citizens are presumed to know the law, then all citizens should have access to the law.¹⁶

5. *Copyright in General*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/help/faq/faq-general.html> (last visited Jan. 10, 2022); U.S. CONST. art. 1 § 8, cl. 8.

6. *Copyright in General*, *see supra* note 5.

7. 17 U.S.C. §§ 101–810.

8. Elizabeth Holland, Note, *Will you Have to Pay for the O.C.G.A.? Copyrighting the Official Code of Georgia Annotated*, 26 J. INTELL. PROP. L. 99, 103 (2019).

9. 17 U.S.C. § 105(a); *see also* PETER S. MENELL ET AL., INTELLECTUAL PROPERTY IN THE NEW TECHNOLOGICAL AGE: 2020: VOLUME II: COPYRIGHTS, TRADEMARKS AND STATE IP PROTECTIONS 599 (2020).

10. MENELL ET. AL., *supra* note 9, at 600.

11. *Id.*

12. *Id.*

13. *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1504 (2020). The Supreme Court in *Public.Resource.Org* stated that the force of law approach will no longer be followed. *Id.*

14. MENELL ET. AL., *supra* note 9, at 600.

15. *Public.Resource.Org*, 140 S. Ct. at 1507.

16. *Nash v. Lathrop*, 142 Mass. 29, 35 (1886).

A. Judicial Opinions

In 1834, *Wheaton v. Peters*¹⁷ became the first United States Supreme Court case to address copyright law.¹⁸ The Court held: “no reporter has or can have any copyright in the written opinions delivered by this court.”¹⁹ Similarly, no judge may give a reporter a right or an interest to copyright their opinions.²⁰ Fifty years later, the Court in *Banks v. Manchester* reached a similar outcome regarding state court opinions.²¹ The Court reasoned that a judge, in their official capacity, cannot “be regarded as their author or their proprietor” so as to have a claim of copyright in their own work.²² Accordingly, the Court concluded that “the whole work done by the judges constitutes the authentic exposition and interpretation of the law, which, binding every citizen, is free for publication to all.”²³

B. Explanatory Materials

Court reporters also produce explanatory materials. The Court in *Callaghan v. Myers* “upheld the reporter’s copyright interest in several explanatory materials that the reporter had created himself: headnotes, syllabi, table of contents and the like.”²⁴ The reasoning being that explanatory materials are a reporter’s independent work, a result of their intellectual labor.²⁵

Statutory annotations are a category of explanatory materials.²⁶ Typically, legislators do not research and draft the annotations themselves.²⁷ Rather, they reach out to other lawyers, legislative experts, and professional legal publishers, like LexisNexis and Westlaw, to “organize and annotate their enacted statutes into codified volumes for publication.”²⁸ The discussion in Part B will further explain how the government edicts doctrine applies to this form of legal material.

17. *Wheaton v. Peters*, 33 U.S. 591 (1834).

18. *Public.Resource.Org*, 140 S. Ct. at 1506.

19. *See id.*; *Wheaton*, 33 U.S. at 668.

20. *Id.*

21. *Banks v. Manchester*, 128 U.S. 244 (1888); *Holland*, *supra* note 8, at 101.

22. *See Public.Resource.Org*, 140 S. Ct. at 1506; *Banks*, 128 U.S. at 253.

23. *Public.Resource.Org*, 140 S. Ct. at 1506–07; *Banks*, 128 U.S. at 253 (citing to *Nash v. Lathrop*, 142 Mass. 29, 35 (1886)).

24. *Callaghan v. Meyers*, 128 U.S. 617, 645, 647 (1888).

25. *Public.Resource.Org*, 140 S. Ct. at 1507; *Callaghan*, 128 U.S. at 647.

26. *See* 17 U.S.C. § 101(1), (2).

27. *See, e.g.*, *Public.Resource.Org*, 140 S. Ct. at 1505.

28. Ed Walters, *Georgia v. Public.Resource.Org: Ending Private Copyright in Public Statutes: A Complete Guide to How the U.S. Supreme Court Will Rule on the Copyrightability of Public Law*, MEDIUM (June 27, 2019), <https://medium.com/@ejwalters/who-owns-the-law-5e356ea5b5f8>.

Notably, the government edicts doctrine extends to legislators as it applies to judges: legislators could also not be considered authors of the works they create, in their capacity as legislators, when they are drafting and making law.²⁹

C. Public and Private Sector Intersection

The government edicts scheme is complicated when a government body hires a private actor to produce a work. In such a work-for-hire agreement,³⁰ the commissioner retains their ownership interest in the work even though it is produced by another.³¹ Such an agreement was present in *Public.Resource.Org* between Georgia and LexisNexis³², providing that LexisNexis will both publish and create the annotations for the official Georgia code.³³

Section 105 of the Copyright Act “does not expressly prohibit copyright protection for products created for the federal government through work-for-hire agreements with private entities.”³⁴ Further, Section 201(b) of the Copyright Act states that unless the parties have agreed otherwise, “the employer or other person for whom the work was prepared is considered the author . . . and . . . owns all of the rights comprised in the copyright.”³⁵ However, as will be discussed in Part III, even though a private entity may produce and prepare annotations, copyright protection will ultimately depend on who is considered the author of the annotations.³⁶

29. See *Public.Resource.Org*, 140 S. Ct. at 1507; see also *Nash v. Lathrop*, 142 Mass. 29, 35 (1886); *Howell v. Miller*, 91 F. 129, 130–31, 137–38 (6th. Cir. 1898).

30. See 17 U.S.C. § 101(1), (2).

31. Elizabeth Scheibel, *No Copyright in the Law: A Basic Principle, Yet a Continuing Battle*, 7 CYBARIS 350, 365–66 (2016).

32. *Public.Resource.Org*, 140 S. Ct. at 1505; Scheibel, *supra* note 31, at 351–52. About 25 other jurisdictions use a similar scheme. *Public.Resource.Org*, 140 S. Ct. at 1513.

33. *Public.Resource.Org*, 140 S. Ct. at 1505. “The Agreement requires Lexis/Nexis to provide appropriate copyright notice on both the free public website and the online O.C.G.A. available as part of the Lexis/Nexis for-profit online services and to notify visitors that any reproduction of the O.C.G.A. other than the statutory text and numbering is prohibited.” *Code Revision Comm’n v. Public.Resource.Org, Inc.*, 244 F. Supp. 3d. 1350, 1354 (N.D. Ga. 2017).

34. Shellea Diane Crochet, Note, *Official Code, Locked Down: An Analysis of Copyright as it Applies to Annotations of State Official Codes*, 24 J. INTELL. PROP. L. 131, 136 (2016).

35. 17 U.S.C. § 201(b).

36. See *Public.Resource.Org*, 140 S. Ct. at 1508 (“Although Lexis expends considerable effort preparing the annotations, for purposes of copyright that labor redounds to the Commission as the statutory author.”).

III. THE IMPORTANCE OF PUBLIC.RESOURCE.ORG

Public.Resource.Org is critical because it expands the government edicts doctrine to include annotations of state codes created by legislative bodies.³⁷ The holding in *Public.Resource.Org* presents the opportunity to expand access to legal material. At issue in Public.Resource.Org are annotations that follow each statutory provision of the Official Code of Georgia Annotated (OCGA).³⁸ The annotations elaborate and expand upon each statute; for example, annotations provide “summaries of judicial decisions applying a given provision, summaries of any pertinent opinions of the state attorney general, and a list of related law review articles and similar reference material.”³⁹ The OCGA specifically established a Code Revision Commission tasked with recodifying the law, an exercise of legislative authority, and working with a third party, LexisNexis, to produce the annotations.⁴⁰ Ultimately, the Commission submits proposed text and annotations, drafted and researched by LexisNexis, to the Legislature for approval.⁴¹ Additionally, Lexis would have the “exclusive right to publish, distribute, and sell the OCGA. In exchange, Lexis has agreed to limit the price it may charge for the OCGA and to make the unannotated version of the statutory text available to the public online for free.”⁴²

A case arose when Public.Resource.Org, a non-profit, scanned and posted a digital version of the OCGA, with the annotations, on multiple online platforms to be downloaded for free.⁴³ Ultimately, the Court holds that no, Georgia cannot claim a copyright interest in its statutory annotations created by its legislature.⁴⁴ Reaching this conclusion, the Court laid out a clear and workable rule: “copyright does not vest in works that are (1) created by judges and legislators (2) in the course of their judicial and legislative duties.”⁴⁵

A. Legal Justifications

The Commission is considered the author of the annotations even though Lexis drafted them.⁴⁶ Also, while the annotations themselves are

37. *Id.* at 1507.

38. *Id.* at 1504.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 1505. A hard copy of the complete OCGA retails for \$412.00. *Id.*

43. *Id.*

44. *Id.* at 1504.

45. *Id.* at 1508.

46. *Id.*; see also 17 U.S.C. § 201(b). The State of Georgia even concedes that the Commission is the author of the annotations. *Id.*

not enacted into law, their preparation is considered an act of “legislative authority.”⁴⁷ Thus, the analysis is: “whether the author of the work is a judge or a legislator. If so, then whatever work that judge or legislator produces in the course of their duties is not copyrightable.”⁴⁸ Accordingly, Georgia may not copyright the annotations.

Other state bodies, such as universities, libraries, and tourism offices, can continue to maintain a copyright interest in their work⁴⁹ because the doctrine “does not apply to non-lawmaking officials.”⁵⁰ For example, because a public university (a non-lawmaking official) is funded by state and local government, typically through taxes, the university can retain a copyright protection in their work.⁵¹ Additionally, private actors, such as Westlaw and LexisNexis, are still permitted to claim a copyright in the annotations and materials they create if they are not works made for hire.⁵² Above all, the majority notes that “the whole point of the government edicts doctrine is that judges and legislators cannot serve as authors when they produce works in their official capacity.”⁵³

B. Policy Arguments

A state’s ability to copyright statutory annotations raises economic concerns, as well as concerns over access to accurate legal information.

First, should the government be allowed to put paywalls up for legal information?⁵⁴ Paywalls may create economic inequity where states are almost encouraged to “offer ‘first class’ and ‘economy-class’ access to important public information.”⁵⁵ The Court recognizes two potential users: a first class user, who can afford the access to the more lucrative information, versus the economy-user, who is not in the position to afford the annotations, and will only have access to the statute in its basic form.⁵⁶ If *Public.Resource.Org* was decided differently, it would create an

47. *Public.Resource.Org*, 140 S. Ct. at 1509 (citing *Harrison Co. v. Code Revision Comm'n*, 260 S.E.2d 30, 35 (Ga. 1979)).

48. *Id.* at 1513. The majority notes that this reasoning is aligned with years of copyright law precedent. *Id.*

49. *Id.* at 1510.

50. *Id.*

51. *State and Local Appropriations*, URB. INST., <http://collegeaffordability.urban.org/cost-of-educating/appropriations/#/> (last visited Feb. 9, 2022).

52. *Public.Resource.Org*, 140 S. Ct. at 1507.

53. *Id.* at 1509.

54. Bill Donahue, *3 Big Things: Supreme Court's 'Pay-Per-Law' Copyright Ruling*, LAW360 (Apr. 28, 2020, 8:51 PM), <https://www.law360.com/articles/1268132/3-big-things-supreme-court-s-pay-per-law-copyright-ruling>.

55. *Id.*

56. *Public.Resource.Org*, 140 S. Ct. at 1512.

“unfair opportunity to provide premium legal resources to those who could afford it, while depriving others of access to legislative works.”⁵⁷ Second, annotations are rich with information. Referring to the OCGA, the Court noted that “the annotations provide commentary and resources that the legislature has deemed relevant to understanding its laws.”⁵⁸ If a state could copyright the annotations, then individuals will have access to “antiquated laws” without the additional information that other courts have invalidated them.⁵⁹

The Court provided the following illustration: a Georgia citizen who can access the annotations and one who cannot.⁶⁰ The Georgia citizen using the free and unannotated version of the statute may be faced with old and antiquated laws that the Georgia Supreme Court has since held as unconstitutional.⁶¹ On the other hand, the citizen who can afford to pay for the annotated version will also see these otherwise antiquated laws, but will quickly realize that they are no longer enforced after reading the associated annotations.⁶² In other words, a person with access to the annotated version of statutes can identify that “these laws are, in crucial respects, unenforceable relics that the legislature has not bothered to narrow or repeal.”⁶³ The latter situation goes against the American legal system as it promotes and perpetuates unfairness in accessing the same laws. It may also result in a disproportionately informed public because different groups of people have different levels of accessibility to the law.

IV. TACKLING ACCESSIBILITY FROM AN ALTERNATE ANGLE: THE UELMA

Preventing a state from copyrighting statutory annotations functions is one step closer in granting more accessibility to the law. Other federal and state statutory efforts seek to address legal material accessibility.

57. Jason Bloom, *States Win Some and Lose Some on Copyright Front at Supreme Court this Term*, L. J. NEWSLETTERS (Aug., 2020), <https://www.lawjournalnewsletters.com/2020/08/01/states-win-some-and-lose-some-on-copyright-front-at-supreme-court-this-term/>; see also *Public.Resource.Org*, 140 S. Ct. at 1512–13.

58. *Public.Resource.Org*, 140 S. Ct. at 1509.

59. Bloom, *supra* note 57.

60. *Public.Resource.Org*, 140 S. Ct. at 1512.

61. *Id.*

62. *Id.*

63. *Id.*

A. Role of the NJLRC & the ULC

The New Jersey Law Revision Commission (“NJLRC”)⁶⁴ is tasked with promoting and encouraging “the clarification and simplification of the law of New Jersey and its better adaption to present social needs.”⁶⁵ The goal of the NJLRC and the New Jersey State Legislature, is to “better adapt the laws to present social needs, to ultimately lead to a better administration of justice.”⁶⁶

In addition to ensuring the statutes are revised, consolidated, and simplified, the NJLRC is also responsible for discovering any defects or anachronisms in New Jersey’s current statutes.⁶⁷ Upon discovering any defect, the NJLRC drafts and prepares bills to present to the Legislature to rectify and remedy the issue.⁶⁸ During this process, the NJLRC receives recommendations, suggestions, and guidance from sources such as the American Law Institute and the Uniform Law Commission (ULC).⁶⁹ The ULC drafts and proposes statutes that seek to promote uniformity among the states, but “no uniform law is effective until a state legislature adopts it.”⁷⁰ A uniform law is one that “seeks to establish the same law on a subject among the various jurisdictions.”⁷¹ A final and approved uniform act is proposed to each state, whose legislature can choose whether to enact the law.⁷²

B. New Jersey & UELMA

The Uniform Electronic Legal Material Act (UELMA)⁷³ is a uniform act drafted by the ULC whose goal is to ensure that electronic legal materials are properly authenticated and preserved.⁷⁴ The Act does not mandate or require that states actually begin publishing legal material

64. The NJLRC is made up of both Commissioners and Staff members. *Commissioners & Staff*, N.J. L. REV. COMM’N, <https://www.njlc.org/commissioners-and-staff> (last visited Feb. 9, 2022).

65. N.J. STAT. ANN. § 1:12A–8 (West 2020).

66. Laura C. Tharney et al., *Does the Uniform Fit?: The New Jersey Law Revision Commission’s Review of the Acts of the Uniform Law Commission*, 41 SETON HALL LEGIS. J. 45, 47 (2016).

67. *Id.* at 46.

68. *Id.*

69. *Id.*

70. *Overview: About Us*, UNIF. L. COMM’N, <https://www.uniformlaws.org/about-ulc/overview> (last visited Jan. 10, 2022).

71. *FAQs*, UNIF. L. COMM’N, <https://www.uniformlaws.org/aboutulc/faq> (last visited Mar. 11, 2021). The ULC has drafted over 300 uniform acts, in areas such as commercial law, family law, and real estate, and contract law. *Id.*

72. *Id.*

73. *UELMA*, *supra* note 3.

74. Tharney et al., *supra* note 66, at 78–79; *UELMA* prefatory note, *supra* note 3 at 2.

online.⁷⁵ Rather, UELMA seeks to enable end-users to verify the trustworthiness of the legal materials⁷⁶ as well as providing a “framework for states to preserve legal material in perpetuity in a manner that allows for permanent access.”⁷⁷ UELMA requires that official electronic legal material be: “(1) authenticated, by providing a method to determine that it is unaltered; (2) preserved, either in electronic or print form; and (3) accessible, for use by the public on a permanent basis.”⁷⁸

Currently, twenty-two jurisdictions have enacted and adopted the UELMA: 21 states and Washington D.C.⁷⁹ More recently, the act was introduced for consideration in Massachusetts and Indiana.⁸⁰ Efforts have been made in New Jersey to introduce and recommend the UELMA to the New Jersey State Legislature. However, it was never officially enacted by the Legislature.⁸¹

In 2013, Laura Tharney, the Executive Director of the NJLRC, sparked the movement to introduce UELMA in New Jersey by sharing a preliminary draft report to the Commission.⁸² This report referred to a fifty-state survey completed which looked at the status of each state’s

75. UELMA prefatory note, *supra* note 3, at 3. New Jersey has made many of its legal materials available online. See, e.g., *New Jersey Law Online*, RUTGERS L. SCH., <https://libguides.law.rutgers.edu/njinternet> (last updated Aug. 30, 2018, 2:36 PM).

The New Jersey State Constitution is available on the State Legislature’s website. *NJ State Constitution*, NEW JERSEY STATE LEG, <https://www.njleg.state.nj.us/constitution> (last visited Jan. 11, 2022). The Rutgers Law library guide also gives information on where to locate New Jersey Supreme, Appellate, and Trial Court decisions, oral arguments, court rules, and other judiciary material. *New Jersey Law Online*, *supra* note 75. New Jersey statutes are made available online by both the New Jersey State legislatures website and by the Rutgers-Newark Law Library. *New Jersey General and Permanent Statutes (UPDATED THROUGH P.L. 2020, ch. 136 and 2020, JR 2)*, New Jersey State Legislature, <https://lis.njleg.state.nj.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=Publish:10.1048/Enu> (last visited Jan. 10, 2022); *N.J. Statutes*, Rutgers Law School, <https://njlaw.rutgers.edu/collections/njstats/> (last updated Dec. 20, 2021, 9:26 AM).

76. UELMA prefatory note, *supra* note 3 at 2.

77. *Id.*

78. *Id.*

79. *Electronic Legal Material Act*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/communityhome?CommunityKey=02061119-7070-4806-8841-d36afc18ff21> (last visited Jan. 10, 2022). As of January 2022, the following states have enacted the UELMA: Texas, Michigan, Iowa, Utah, Ohio, West Virginia, Washington, Maryland, Arizona, Delaware, Idaho, Illinois, Pennsylvania, North Dakota, Oregon, Minnesota, Nevada, Connecticut, Hawaii, Colorado, California. *Id.*

80. *Id.*

81. The final stage of the UELMA was a Final Report which was never enacted by the Legislature. *Project Directory*, N.J. L. REV. COMM’N, <https://www.njlc.org/project-directory> (last visited Mar. 11, 2021).

82. *Draft Tentative Report: April 8, 2013*, N.J. L. REV. COMM’N, <https://static1.squarespace.com/static/596f60f4ebbd1a322db09e45/t/5e5e7dea2a0eb67cc5ab6a88/1583250923093/uelmaDTR040813.pdf> (last visited Jan. 10, 2022).

online legal resources. Regarding New Jersey, the survey identified that neither state session laws, statutes nor court opinions have a certification that the online versions of these sources are official and authentic.⁸³ After several revisions, the final report presented to the Legislature for enactment “proposes draft language that largely reflects UELMA, but also incorporates modifications addressing the concerns raised by the Commission and commenters” during the revision process.⁸⁴ One of these modifications included enforcement mechanisms imposed on official publishers failing to properly comply with the law.⁸⁵ Importantly, the report retained the core purpose of the UELMA and includes UELMA language to emphasize the importance of enacting such a law.⁸⁶

V. PROPOSED SOLUTION: INTERSECTION BETWEEN *PUBLIC.RESOURCE.ORG* & UELMA

In its Prefatory Note, the drafters of UELMA note that “providing information online is integral to the conduct of state government in the 21st century.”⁸⁷ Further, “[t]he ease and speed with which information can be created, updated, and distributed electronically, especially in contrast to the time required for the production of print materials, enables governments to meet their obligations to provide legal information to the public in a timely and cost-effective manner.”⁸⁸

The electronic platform has become the go-to method for distributing legal material, and in some cases, it is the official publication.⁸⁹ However, merely having online information does not on its own solve the problem of accessing the law; there is still the issue of the potential pay-per-law problem. “In an online world, requiring users to purchase access to the law violates the norms of access to the law.”⁹⁰ This notion of paying for the law is at the intersection of accessing

83. *Id.* at 3. Court opinions are made available on the Rutgers Law Library website; however, no statutory provision has identified the website as the official version of them. *Id.*

84. *Minutes of Commission Meeting: November 17, 2016*, N.J. L. REV. COMM’N, <https://static1.squarespace.com/static/596f60f4ebbd1a322db09e45/t/5d5c078f33833f0001ce6c68/1566312335842/dftMIN11716jjvjpsgt+-+R.pdf> (last visited Jan. 11, 2022).

85. *Final Report Relating to Uniform Electronic Legal Material Act: November 17, 2016*, N.J. L. REV. COMM’N, 7–9, <https://static1.squarespace.com/static/596f60f4ebbd1a322db09e45/t/5d5c08f27e5b4c0001dedeeec/1566312690423/uelmaFR110716c.pdf> (last visited Jan. 10, 2021) [hereinafter *Final Report*].

86. *Id.* at 2–3.

87. UELMA prefatory note, *supra* note 3, at 1.

88. *Id.*

89. *Id.*

90. Leslie A. Street & David R. Hansen, *Who Owns the Law? Why we must Restore Public Ownership of Legal Publishing*, 26 J. INTELL. PROP. L. 205, 234 (2019).

annotations, where a state can copyright them, and the ability to access legal material generally.⁹¹

Between the Court's holding in *Public.Resource.Org* and with further adoption of the UELMA, legal material will be more accessible in a state like New Jersey, and it will help provide equal opportunity to accessing information. “[L]egal material includes information essential to all citizens in a democracy, whether the legal material is effective currently, has been repealed or overruled, or is of historical value only.”⁹² Legal annotations provide such information, and it is why the framework in *Public.Resource.Org* is important and needed to identify when a state can and cannot reserve a copyright in legal annotations.

A. Accessibility of Annotations

What makes *Public.Resource.Org* even more notable is that it narrows the focus of what type of material can be copyrighted and what material may not be copyrighted.⁹³ Across the nation, no uniform method governs how states publish their laws.⁹⁴ There is also a lack of uniformity when it comes to how certain states refer to the law: some treat session laws differently from codified statutes.⁹⁵ Therefore, the holding in *Public.Resource.Org* seeks to create a rule that can help guide and determine the scope of legal material that can be published and disseminated on a larger basis.⁹⁶

Making annotations accessible touches on both due process and notice. In terms of due process, Malamud, the founder of Public.Resource.Org, said that his purpose in making the OCGA available to download was to “promote access for citizens ‘to the laws that govern them’ because, ‘access to the law is a fundamental aspect of our system of democracy, an essential element of due process, equal protection, and access to justice.’”⁹⁷ Additionally, under the American system of due process where the presumption exists that the citizens know the law, the citizens must also have sufficient notice of the law.⁹⁸

91. Holland, *supra* note 8, at 111. “You really need an annotated Code to practice law,” said McKenzie. McKenzie believed creating only an unannotated version would force lawyers to purchase both versions. Representative Walker concurred, adding that, in his opinion, ‘We could have an official code that wasn’t annotated . . . but you would have to have some annotations to find how to apply the law to your case.’” *Id.*

92. *UELMA*, *supra* note 3, at 15.

93. *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1503, 1513 (2020).

94. Street & Hansen, *supra* note 90, at 212.

95. *Id.*

96. *Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1513.

97. Holland, *supra* note 8, at 116–17.

98. See generally Street & Hansen, *supra* note 90. Sufficient notice can be explained as, “so long as the law is generally available for the public to examine, then everyone may be

The New Jersey Statutes are made available online by the NJ Legislature and are required to published online pursuant to N.J. STAT. ANN. § 52:11-78(a)(1).⁹⁹ While the statutes are available on the Legislature's database, the annotations are not.¹⁰⁰ A disclaimer clarifies that “[t]his statutory database is unannotated and as such may include laws that have not become operable due to unmet conditions, have expired, have been ruled inoperable by a court, or have otherwise become inoperable.”¹⁰¹

Why should New Jersey consider making the annotations available? The same reasons mirror those that the Eleventh Circuit identified on appeal in *Public.Resource.Org*.¹⁰² Most compelling is the notion that although annotations are not legally binding, they nevertheless have a “close association. . . with the legally-binding text of the statutes.”¹⁰³ Because the association between statutes and the annotations has become interwoven, it may not even be practical to separate them.¹⁰⁴ Statutory annotations are “imperative to understanding and interpreting the law.”¹⁰⁵

B. Accessibility of Electronic Information

Because the UELMA does not “deal with copyright issues, leaving those to federal law and state practice,”¹⁰⁶ no one approach seeks to broaden accessibility to the law. The decision of *Public.Resource.Org* is one method of giving more access to the law. Securing accessibility through the adoption of UELMA is another method.

considered to have constructive notice of it; any failure to gain actual notice results from simple lack of diligence.” *Id.* at 208; *see also* Bldg. Officials & Code Adm. v. Code Tech., Inc., 628 F.2d 730, 734 (1st Cir. 1980).

99. Digital Access to Legal Information: New Jersey, Am. Ass’n of L. Librs, <https://community.aallnet.org/digitalaccesstolegalinformationcommittee/stateonlinelegalinformation/newjersey> (last updated June 1, 2017) [hereinafter NJ Digital Access].

100. The disclaimer in the top right corner of the database indicates so. *New Jersey General and Permanent Statutes*, *supra* note 74.

101. *Id.*

102. Code Rev. Comm’n for Gen. Assemb. Of Ga. v. Public.Resource.Org, Inc., 906 F.3d 1229, 1248–53 (11th Cir. 2018).

103. *Id.* at 1249. *See also* Street & Hansen, *supra* note 90, at 225 (“[A] full understanding of the laws of Georgia necessarily includes an understanding of the contents of the annotations. In this way, the annotations are clearly laden with legal significance.”).

104. *See* Street & Hansen, *supra* note 90, at 226; *Public.Resource.Org*, 906 F.3d 1229, 1249–50.

105. *See* Sawant & Slotkin, *supra* note 1.

106. UELMA prefatory note, *supra* note 3, at 3; *see also* Draft Tentative Report: April 8, 2013, *supra* note 82, at 2 (“[the UELMA] gives states discretion in determining what categories of ‘legal material’ will be covered.”).

New Jersey is not one of the twenty-two jurisdictions that has adopted and enacted the UELMA.¹⁰⁷ However, adopting the UELMA will spring forward New Jersey statutes into the modern day. Street and Hansen strongly support that state governments play a critical role in “ensuring the public has access to official law in an electronic format. In an ideal world, state government would fully adapt and enforce UELMA as well as adapt laws that go beyond UELMA to explicitly state legal materials in their state could not be copyrighted. . . .”¹⁰⁸ From the initial draft report and up until the final version, it appears that the NJLRC shared the sentiment, as the reports discussed the idea of how the UELMA will harmonize preservation of electronic legal material.¹⁰⁹ The final report states recognizes that the “UELMA leaves the choice of technologies for authentication and preservation to the states, but seeks to harmonize standards for acceptance of electronic legal material across jurisdictional boundaries.”¹¹⁰

The goals of the UELMA—authentication, preservation, and accessibility—would be fully realized if adopted in New Jersey because the current scheme does not fully provide these essential elements.¹¹¹ The American Association of Law Libraries compiled information of six difference sources of legal information and their digital accessibility: the New Jersey Chapter Laws, New Jersey Statutes, New Jersey Register, New Jersey Administrative Code, Appellate Division Published Opinions, and Supreme Court Opinions.¹¹² As Table 1 demonstrates, the sources of law are not given much accessibility protection.¹¹³ New Jersey does not authenticate, preserve, or provide accessibility for any of the six above mentioned legal sources.¹¹⁴

107. *Electronic Legal Material Act*, *supra* note 79. Despite not adopting UELMA, New Jersey partnership with the Rutgers University Law Library provides state court documents. See Street & Hansen, *supra* note 90, at 244.

108. See Street & Hansen, *supra* note 90, at 243.

109. See *Draft Tentative Report: April 8, 2013*, *supra* note 82, at 2; *Final Report*, *supra* note 85, at 3.

110. *Final Report*, *supra* note 85, at 3.

111. *NJ Digital Access*, *supra* note 99; see also *infra* tbl. 1, which goes into further detail of six sources of legal information and how they are currently authenticated, preserved, and their accessibility level.

112. *NJ Digital Access*, *supra* note 99.

113. The information on *tbl.1, infra*, has been compiled and modified based on the information provided by the American Association of Law Libraries. *Id.*

114. *Id.* Note: there is *no* copyright claimed for the New Jersey Chapter Laws, New Jersey Statutes, Appeals Court Opinions, or Supreme Court Opinions. *Id.* The New Jersey Register and the Administrative Code are copyrighted because LexisNexis publishes them. *Id.*

Table 1. Online Accessibility to Legal Sources in New Jersey

	New Jersey Chapter Laws	New Jersey Statutes	New Jersey Register	New Jersey Administrative Code	App. Div. Published Opinions	Supreme Court Opinions
Official Status	Yes. Available online from NJ Legislature. Official by definition: mandated published online by statute. <i>See N.J. Stat. § 52:11-78(a)(7)</i>	Yes. Available online from NJ Legislature. Official by definition: mandated published online by statute. <i>See N.J. Stat. § 52:11-78(a)(1)</i>	No. Available online via LexisNexis.	No. Available online via LexisNexis states, "Please note that the online version of the Code is not the official Code and may not include the most recent changes."	No. Available online via Rutgers Law Library.	No. Available online via Rutgers Law Library.
Authentication	No. Has not been authenticated by NJ. (See also CAUTION disclaimer on NJ Legislature's Statutes Database)	No. Has not been authenticated by NJ. (See also CAUTION disclaimer on NJ Legislature's Statutes Database)	No.	No.	No.	No.
Online Preservation	No. NJ Legislature website chapter laws date back to 1996.	No.	No. New Jersey State Library provides access from first issue (1969) through 1995.	No.	No. Rutgers Law Library database covers 1995-present.	No. NJ Legislature website chapter laws date back to 1996.
Permanent Public Access	No. The above statute guarantees public access, but does not address permanency or preservation for pre-1996 chapter laws.	No. The above statute guarantees public access, but does not speak to permanency.	No.	No.	No. Opinions from 1995 to date are available online, but NJ has not guaranteed permanent public access, or access to pre-1995 opinions.	No. Opinions from 1995 to date are available online, but NJ has not guaranteed permanent public access, or access to pre-1995 opinions.

Both Table 1 and the Legislative database make clear that New Jersey laws are not readily accessible and lack authentication.¹¹⁵ This

115. *Id.*; see *New Jersey General and Permanent Statutes*, *supra* note 75.

current scheme should be updated to provide appropriate protection to legal information and to provide fair and equitable access to information. Even though the New Jersey Statutes are made public, not only do they lack annotations, but they have also not been made explicitly authentic by the NJ Legislature.¹¹⁶ Thus, users in New Jersey or any other jurisdiction that do not authenticate its publicly accessible material must turn to a provider, such as LexisNexis or Westlaw, for authentic information and for the annotations.¹¹⁷

C. Reconciling Copyright Protection and Accessibility

Despite the added value, information, and usefulness annotations offer, should annotations be copyrightable? Justice Thomas takes this position in his dissent in *Public.Resource.Org.*¹¹⁸ Annotations may be copyrighted without conflicting with the government edicts doctrine.¹¹⁹ Annotations, unlike statutes, are not law and do not “purport to embody the will of the people,”¹²⁰ the annotations are not enacted under the Georgia General Assembly legislative power.¹²¹ And “unlike judges and legislators, creators of annotations are incentivized by the copyright laws to produce a desirable product that will eventually earn them a profit.”¹²² Supporters of stronger copyright protections fear that prohibiting a private actor from seeking copyrights over annotations goes against the purpose of offering these rights in the first place.¹²³ Private actors may even hesitate before drafting and creating statutory annotations if they might lose out on compensation.¹²⁴

However, these arguments seem to be undercutting the genuine significance of annotations. Prohibiting statutory annotations from being copyrighted will help to provide accessibility to the law, a maxim that is engrained in America’s democratic system.¹²⁵ The Center for Democracy

116. *NJ Digital Access*, *supra* note 99.

117. See Street & Hansen, *supra* note 90, at 226. The author goes further to provide additional barriers to accessing protected legal information: “If such content were protectable, it would mean either paying Lexis for a copy or, at a minimum, agreeing to contractual terms of use that limit what the user can do with the law. Similarly, libraries and other information intermediaries that seek to post online free copies of the O.C.G.A. would not be able to because they could not practically separate the core text from the additions.” *Id.*

118. *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1517 (2020) (Thomas, J., dissenting).

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. See Sawant & Slotkin, *supra* note 1.

124. *See id.*

125. *See Walters*, *supra* note 28; *see also* Sawant & Slotkin, *supra* note 1.

and Technology and the Cato Institute buttress the importance of statutory annotations, recognizing that “copyrighting statutory annotations harms the public by hindering their access to the official version of the law.”¹²⁶ Reiterating that the government ultimately has the duty to create and distribute, “the government needs no financial incentive to produce and publish the official version of the law.”¹²⁷

When the NJLRC proposed the final report of the UELMA to the State Legislature, they did not include in the introduction or background the impact or intersection the UELMA has with copyright.¹²⁸ Should the NJLRC choose to present the UELMA to the Legislature again, it would be valuable to consider the impact of *Public.Resource.Org*. And it should consider how the overall goal of accessibility, preservation, and authenticity of the UELMA can be interwoven with making statutory annotations more available to the public.

VI. CONCLUSION

Ownership and publication are distinct concepts, and that is why both copyright and publication are both necessary to ensure accessibility. Publication of the law does not necessarily mean ownership of the law: “in the U.S. legal system, these two concepts have begun to merge: publishers now use powerful legal tools to control who has access to the text of the law, how much they must pay, and under what terms.”¹²⁹ Therefore, having both access to the legal materials and for the legal materials themselves to be available is essential.

One of the core functions of the UELMA is proving accessibility to the law.¹³⁰ Ultimately, the balance must be struck between balancing copyright protection in legal materials against ensuring the public has access to materials without the concern of certain material being “premium” or inaccessible because of financial concerns.¹³¹ This balance requires applying the principles of both and the UELMA.¹³²

126. Sawant & Slotkin, *supra* note 1.

127. *Id.*

128. “The Act does not affect any relationships between an official state publisher and a commercial publisher, nor does it affect copyright laws or the rules of evidence.” *Draft Tentative Report: April 8, 2013*, *supra* note 82, at 2.

129. Street & Hansen, *supra* 90, at 206.

130. See generally UELMA, *supra* note 3.

131. See Donahue, *supra* note 54.

132. Street & Hansen, *supra* note 90, at 220–22.