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Once Upon a Time: Everything was Copyrighted

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USA May 5 2020

Copyright is an engine for knowledge. Although copyright creates monopoly, it should not be considered as a good in itself, but as a tool which can be used to achieve societal desirable objectives. Against the current trend we have seen over the past decades, copyright can and should be curtailed in some circumstances. The U.S. Supreme Court, in a non traditional 5-4 vote, just did that when - on April, 20 2020- in Georgia vs. Public.Resource.org held that the official version of the law cannot be copyrighted. By this decision, access to knowledge and free expressions redeemed themselves by returning legislations where they belong; the public domain.

The case, which represented close call on copyright, involved the State of Georgia which has one official code—the Official Code of Georgia Annotated (OCGA) and Public.Resource.org, an organization which was established to make information widely available and easily accessible easily through the use of the Internet. This information includes court decision and official codes. The Code in the case at hand includes the text of every Georgia statute currently in force, as well as a set of non-binding annotations that appear beneath each statutory provision. The annotations typically include summaries of judicial opinions construing each provision, summaries of pertinent opinions of the state attorney general, and a list of related law review articles and other reference materials. The annotations in the OCGA were produced by Matthew Bender & Co., Inc., a division of the LexisNexis Group, pursuant to a work-for-hire agreement with the Code Revision Commission, a state entity composed mostly of legislators, funded through legislative branch appropriations, and staffed by the Office of Legislative Counsel. Respondent Public.Resource.Org (PRO), a nonprofit dedicated to facilitating public access to government records and legal materials, posted the OCGA online and distributed copies to various organizations and Georgia officials.

Georgia vs. Public.Resource.org is an odd case that it sits in the middle in some basic standards in copyright law. The first standard is that if the law is published in state legislative text, then the author of this document is the public who is speaking through the legislator. People are the authors under copyright law which in turns means that legislative texts are in the public domain. The second standard is that derivative works –such as annotations- can be attached to public domain content. These derivative works have copyright owned by private authors. The uniqueness in Georgia vs. Public.Resource.org is the state of Georgia hires a publisher- LexisNexis- to create the annotated Georgia code. Those annotations were produced under the direction of Code Revision Commission. The interesting fact is that the legislator in Georgia passes the law and then after annotation, the annotated code is represented to the Georgia legislative which re-enacts it as the official Georgia code. So, Georgia vs. Public.Resource.org case sits right in the middle between the above standards and prior precedents.

The District Court sided with the Commission, holding that the annotations were eligible for copyright protection because they had not been enacted into law. The Eleventh Circuit reversed, rejecting the Commission's copyright. The Eleventh Circuit reversed, rejecting the Commission's copyright assertion under the government edicts doctrine. The U.S. Supreme Court upheld the Eleventh Circuit decision.

The U.S. Supreme Court relied on the government edicts doctrine citing examples of reporters which cannot have copyright in court opinions. The U.S. Supreme Court also stated that judges cannot assert copyright in the work they perform in their capacity as judges. In simple term, there is no copyright in the laws themselves. It is the legislator's function is to create laws. The U.S. Supreme Court did not rely on the economic theories of copyright seeing copyright as an incentive mechanism, designed to encourage creators to produce material because they would be able to recover costs and make a profit. According to the U.S. Supreme Court, the economic theories of copyright does not apply to legislations as there is no incentive for the legislator to copyright their own legislations. The government is not an author who can have any form of natural rights over its labor. These legislations, understandably, serve public good in making informational equity and not for commercial use. Ordinary citizens should be to access freely the legislations they supposed to follow and abide by. Government works fall in the public domain.

There are previous cases that govern legislative texts. This first case was *Wheaton v. Peters* in which the court decided the reporter should have copyright over the entire text. However, in the last line of the court decision, the court stated that reporter do not own the judges' own words. In the second case *Banks v. Manchester*, the court stated there is no copyright in the law state or federal. In the third case, *Callaghan v. Myers*, in which the reporter created annotation and at least in the annotation part the author can claim copyright. Although those cases can be helpful, but they are very old precedents.

Works created by the U.S. government can be freely copied. Codes carry the force of law. Anything that carries government stamp should be in the public domain. However, in the OCGA case, the work included annotations that were created LexisNexis Group. Annotations required efforts and time to compile after each provision: 1) summaries of judicial opinions construing each provision, 2) summaries of pertinent opinions of the state attorney general, 3) and a list of related law review articles and other reference materials. This is "original works of authorship". The ways these annotations were compiled includes originality. Even assuming, for sake of argument, that the OCGA cannot be copyrighted, there are portions of the OCGA that contain copyrighted materials from non-government sources i.e. LexisNexis Group.

The U.S. Supreme court looked at the capacity of the person- not the person himself- authoring the legislative text. So, if the person does this in his official capacity as a lawmaker then the text loses its copyright. LexisNexis acted as commentator on the code and compiles sources and information and these annotations should be copyrighted. However, the act of LexisNexis was under the director of the legislative.

There are two questions to answer and which draw the line between different scenarios based on Georgia vs. Public.Resource.org. First, is text a legislative text? The second question is the legal text official? When it is official i.e. enacted by the legislative body, then it loses its copyright status. In this case, the Georgia legislative published the "official version" of the code. It is the "officialiness" that causes the text to fall in the public domain. Based on the decision in the case, the arrangement made between the Code Revision Commission and LexisNexis will have to change. There will be the "unofficial" version of the Georgia code which can be the result of collaboration between the Code Revision Commission and LexisNexis. However, the use of the "unofficial" version comes with a financial cost. The way things will be in the future is that there are two versions of the code; the official version which is available to everyone and the unofficial version which carries annotations and comes with a price.

It seems that the U.S. Supreme Court could not look at the individual elements of the OCGA as stand alone elements and decide that the OCGA is not copyrighted. In other words, the court cannot slice up the legislative text into pieces whereby the legislative text is not copyrighted while listing law reviews or other resources can be copyrighted. Copyright should not be applied to every single original thing that has ever written, recorded, or otherwise affixed to a medium. It is the government job to create laws. People should not be expected to pay the government to view these laws.

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