

EXHIBIT A

Case No. 1:14-cv-00857-TSC



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Federal Regulations Can Be Copyrighted, Court Rules

By **Bill Donahue**

Law360, New York (February 3, 2017, 4:54 PM EST) -- A D.C. federal court ruled Thursday that private standards-setting groups can claim copyright ownership of industry rules that are transformed into federal law, thwarting a nonprofit that wanted to post the regulations online for better public access.

The decision came in a long-running battle between transparency group Public.Resource.Org and standards groups like the American Society for Testing and Materials over so-called standards incorporated by reference — rules created by private industry groups like ASTM that are later adopted as federal regulations.

ASTM and other standards groups say such rules are protected by copyright law, even after they've become federal law, and the groups charge for all but bare-bones access to them; Public.Resource says the rules should be free and easy for all to read. The standards groups sued in 2013 after Public.Resource posted many of them online without permission.

On Thursday, the judge overseeing the case acknowledged the need of "an informed citizenry" to have access to laws, but ruled that Congress had deliberately chosen to allow standards groups to keep their copyrights when rules are incorporated into law.

"Copyright protection is a creature of statute, and as such is the result of careful policy considerations by Congress," U.S. District Judge Tanya S. Chutkan wrote. "In the view of this court, Congress has already passed on the question of revoking copyright protection for standards that have been incorporated by reference into regulations, and any further consideration of the issue must be left to Congress for amendment."

The ruling included an injunction ordering Public.Resource to pull the rules from the web. **Carl Malamud, the head of the group, said the group planned to appeal the ruling, but declined to comment further.**

The heart of Public.Resource's case rested on Section 105 of the Copyright Act, which states that protection isn't available for "any work of the United States Government." The group argued this meant the private rules were in the public domain the instant they were incorporated into federal regulations.

But Chutkan ruled Thursday that the provision only strictly applied to works outright written by government employees; anything else would be decided case by case, she said, and Congress chose to let standards groups keep protection by failing to say otherwise.

The judge also rejected various other defenses from Public.Resource, including arguments about due process, the merger doctrine and the fair use doctrine.

"Whatever merit there may be in defendant's goal of furthering access to documents incorporated into regulations, there is nothing in the Copyright Act or in court precedent to suggest that distribution of identical copies of copyrighted works for the direct purpose of undermining plaintiffs' ability to raise revenue can ever be a fair use," the judge wrote.

The ruling came in two different lawsuits that have been consolidated.

The first, filed in 2013, was lodged by ASTM; the National Fire Protection Association, Inc.; and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers over technical standards. The second, filed in 2014, was lodged by the American Educational Research Association, Inc.; the American Psychological Association, Inc.; and National Council on Measurement in Education, Inc. over educational standards.

The battle over standards isn't Public.Resource's only current court fight. The group was also sued by the state of Georgia in 2015 over its decision to scan and distribute online the "Official Code of Georgia Annotated," an annotated version of the state's code prepared by LexisNexis.

The case is pending.

The plaintiffs are represented by Nikia L. Gray, Jonathan Hudis and Jonathan P. Labukas of Quarles & Brady LLP.

Public.Resource is represented by Andrew Phillip Bridges, Sebastian E. Kaplan and Matthew B. Becker of Fenwick & West LLP, Mitchell L. Stoltz and Corynne McSherry of the Electronic Frontier Foundation and David Elliot Halperin.

The case is American Educational Research Association Inc. et al. v. Public.Resource.org, case number 1:14-cv-00857, and American Society for Testing and Materials et al. v. Public.Resource.org, case number 13-cv-1215, both cases in the U.S. District Court for the District of Columbia.

--Editing by Jack Karp.

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