

EXHIBIT A

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

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

3 _____
4 AMERICAN EDUCATIONAL RESEARCH)
5 ASSOCIATION, INC., AMERICAN)
6 PSYCHOLOGICAL ASSOCIATION, INC.,)
7 and NATIONAL COUNCIL ON)
8 MEASUREMENT IN EDUCATION, INC.,) Civil Action No.
9 Plaintiffs,) 1:14-cv-00857-TSC-DAR
10 v.)
11 PUBLIC.RESOURCE.ORG,)
12 Defendant.)
13 _____)

14

15

16 VIDEOTAPED DEPOSITION OF CARL MALAMUD

17

18

19 DATE: May 12, 2015
20 TIME: 9:33 a.m.
21 LOCATION: Fenwick & West
22 555 California Street
23 12th Floor
24 San Francisco, California 94104
25 REPORTED BY: Diane S. Martin, CSR 6464, CCRR

1 P R O C E E D I N G S

2 --oOo--

3 THE VIDEOGRAPHER: Good morning. We're on
4 the video record, ladies and gentlemen, at
5 9:33 a.m. I am Anthony Hensley from Alderson Court
6 Reporting in Washington D.C. The phone number is
7 202-289-2260.

8 This is matter pending before the court of
9 the United States District Court for the District
10 of Columbia in the case captioned American
11 Educational Research Association et al., versus
12 Public.Resource.Org, Incorporated, case number
13 1-14-cv-00857-TSC-DAR.

14 This is the beginning of Disc 1, Volume 1
15 of the deposition of Carl Malamud on 5/11/2015.

16 We're located at address 555 California
17 Street, San Francisco, California. This is taken
18 on behalf of the plaintiffs.

19 Counsel, would you please identify
20 yourselves starting with the questioning attorney.

21 MR. HUDIS: Jonathan Hudis, and Katherine
22 Cappaert for the plaintiffs.

23 MR. BRIDGES: Andrew Bridges and Matt
24 Becker of Fenwick & West for the defendant.

25 MR. SMITH: Corynne McSherry from the

1 Electronic Frontier Foundation for the defendant.

2 THE VIDEOGRAPHER: You may proceed.

3 MR. HUDIS: Just a correction for the
4 record. Today is May 12th, 2015.

5 BY MR. HUDIS:

6 Q. Sir, could I have your full name and
7 address for the record?

8 Oh, go ahead.

9 THE REPORTER: Thank you.

10 Sir, could I have you raise your right
11 hand, please.

12 CARL MALAMUD,
13 called as a witness, after having been duly sworn
14 by the Certified Shorthand Reporter to tell the
15 truth, the whole truth, and nothing but the truth,
16 testified as follows:

17 EXAMINATION

18 BY MR. HUDIS:

19 Q. Sir, if I could have your full name and
20 address for the record.

21 A. Carl Andrew Malamud, and my address is
22 1005, Gravenstein Highway North in Sebastapol,
23 California. Zip code is 95472.

24 Q. And is that your home address?

25 A. No, that's my work address.

1 Q. All right. And your home address, sir?

2 A. It's P.O. Box 361 in Bodega, California,
3 94992.

4 Q. Mr. Malamud, we're here to take your
5 deposition in the matter of American Educational
6 Research Association and its co-plaintiffs versus
7 Public.Resource.Org.

8 The parties all have long names. So I want
9 to establish some working acronyms between the two
10 of us.

11 So if I say AERA, do you understand that to
12 mean the American Educational Research Association,
13 Inc.?

14 A. Yes, I do.

15 Q. And if I use the acronym APA, that will
16 refer to the American Psychological Association,
17 Inc.

18 A. Yes.

19 Q. And if I use the acronym NCME, that will
20 refer to National Council on Measurement and
21 Education, Inc.

22 A. Yes.

23 Q. And if I refer to Public.Resource, that
24 will be a shorthand version of Public.Resource.Org,
25 Inc.?

1 with these organizations?

2 A. I was charged with investigating and
3 proposing mechanisms for the governance of the
4 Internet standards-making process.

5 Q. And if you could briefly describe what that
6 means, "mechanisms for the governance of the
7 Internet standards-making process"?

8 A. The core issue I investigated was the
9 proper institutional home for the Internet
10 Engineering Task Force, which at the time was an
11 unincorporated association.

12 Q. What did you mean by "proper institutional
13 home"?

14 A. That was actually the question I was
15 investigating, what should that institutional home
16 be.

17 Q. Well, what did you mean by "institutional
18 home"?

19 MR. BRIDGES: Objection. Lacks foundation.

20 THE WITNESS: I can tell you what the
21 conclusion was of that process.

22 BY MR. HUDIS:

23 Q. What was the conclusion of that process?

24 A. That the Internet society would provide
25 the -- the corporate framework that would then run

1 the Internet Engineering Task Force and the
2 associated standards-making process.

3 Q. Back to your consultancy with the
4 Architectural Board and the Internet Engineering
5 Task Force. What did you do for gainful
6 employment?

7 A. I worked at the Center for American
8 Progress.

9 Q. What's the nature of that business?

10 MR. BRIDGES: Objection. Lacks foundation;
11 vague and ambiguous.

12 THE WITNESS: It is a 501(c)(3) think tank.

13 BY MR. HUDIS:

14 Q. And what did you do there?

15 A. I was a senior fellow and the chief
16 technology officer.

17 Q. And what years was that?

18 A. 2005 to 2006.

19 Q. What did you do next for gainful
20 employment?

21 A. I founded Public.Resource.Org.

22 Q. And that was in 2007?

23 A. That's correct.

24 Q. Are you presently employed by
25 Public.Resource?

1 A. I am.

2 Q. And you are the founder of Public.Resource?

3 A. I am.

4 Q. What is your current title with
5 Public.Resource?

6 A. Founder and president.

7 Q. Is that the position you have held from
8 2007 until today?

9 A. It is.

10 Q. What is your -- what are your duties and
11 responsibilities as founder and president of
12 Public.Resource?

13 MR. BRIDGES: Objection. Vague and
14 ambiguous; compound.

15 THE WITNESS: I'm responsible for the
16 activities of Public.Resource.Org.

17 BY MR. HUDIS:

18 Q. What are those activities?

19 A. Well, there's the governance of the
20 corporation.

21 Q. What else?

22 A. There is the operation of websites and
23 Internet services.

24 Q. What types of websites and services does
25 Public.Resource provide?

1 A. That is a crawl of the Internet that's
2 available to others to openly use.

3 Q. Without restriction?

4 MR. BRIDGES: Objection. Vague and
5 ambiguous.

6 BY MR. HUDIS:

7 Q. When you say it is a crawl of the Internet
8 that's available to others to openly use, what did
9 you mean by for "others to openly use"?

10 A. The data is available on the Amazon hosting
11 service for any organization to use for analysis.

12 Q. Are you an employee of any other companies
13 today?

14 A. I am not.

15 Q. Besides Common Crawl and Public.Resource,
16 do you have any roles in any other nonprofit
17 organizations today?

18 MR. BRIDGES: Objection. Vague and
19 ambiguous.

20 THE WITNESS: No, I do not.

21 BY MR. HUDIS:

22 Q. And Public.Resource is an IRS 501(c)(3)
23 nonprofit corporation?

24 A. It is.

25 Q. And it was incorporated in California in

1 2007?

2 A. That's correct.

3 (PLAINTIFFS' EXHIBITS 16-18 WERE MARKED.)

4 MR. HUDIS: All right. Let's go off the
5 record. There's ten minutes left. So let's go off
6 the record.

7 MR. BRIDGES: Okay.

8 MR. HUDIS: And I'll do the marking with
9 you, Andrew.

10 THE VIDEOGRAPHER: This marks the end of
11 Disc 1, Volume 1 in the deposition of Carl Malamud.

12 The time is 11:34 and we are off the
13 record.

14 (Discussion off the record.)

15 THE VIDEOGRAPHER: This marks the beginning
16 of Disc 2, Volume 1 in the deposition of Carl
17 Malamud.

18 The time is 11:40, and we are on the
19 record.

20 BY MR. HUDIS:

21 Q. Mr. Malamud, what is the purpose of
22 Public.Resource?

23 MR. BRIDGES: Objection. Vague and
24 ambiguous and may lack foundation.

25 THE WITNESS: It's the creation and

1 maintenance of public works projects for the
2 Internet.

3 BY MR. HUDIS:

4 Q. What do you mean by "public works
5 projects"?

6 A. Operational services that have real
7 information that people can access.

8 Q. What do you mean by "operational services"?

9 A. Public works is a term that refers to a
10 creation of infrastructure that's used by the
11 public. And that is what we attempt to do for the
12 Internet.

13 Q. And in that regard what are the objectives
14 of Public.Resource?

15 MR. BRIDGES: Objection. Vague; asked and
16 answered; vague and ambiguous; lacks foundation.

17 THE WITNESS: I guess I don't understand
18 the difference between purpose and objective.

19 BY MR. HUDIS:

20 Q. Do you make no distinction between the two
21 terms, purpose and objectives?

22 MR. BRIDGES: Object -- objection.
23 Counsel, he needs to understand your question.

24 MR. HUDIS: Okay.

25 MR. BRIDGES: You need to explain what you

1 mean.

2 MR. HUDIS: Fair enough, Counsel.

3 MR. BRIDGES: You can ask him -- he can
4 answer the question.

5 MR. HUDIS: Fair enough.

6 BY MR. HUDIS:

7 Q. In creating an infrastructure for the
8 Internet, what objectives does Public.Resource have
9 towards that goal?

10 MR. BRIDGES: Objection. Vague and
11 ambiguous; confusing.

12 THE WITNESS: To create something that is
13 useful to the public.

14 BY MR. HUDIS:

15 Q. Could you give me an example?

16 A. Yes. The IRS database we created.

17 Q. Before the break you listed a number of
18 websites that are operated by Public.Resource. I
19 want to make sure that I have them all.

20 Public.Resource.Org, USCourts.gov,
21 House.Resource.org, WWLBD.org, YesWeScan.Org,
22 Law.Resource.Org.

23 Have I named them all?

24 MR. BRIDGES: Objection. Lacks foundation;
25 vague and ambiguous.

1 business record of Public.Resource?

2 MR. BRIDGES: I'll object to the extent it
3 calls for any kind of legal conclusion.

4 You can testify as to whether you think
5 it's an accurate reproduction of it.

6 THE WITNESS: This appears at first glance.
7 Obviously, I would want to go check my originals.
8 This appears at first glance to be a copy of our
9 articles of incorporation, yes.

10 BY MR. HUDIS:

11 Q. And these articles of incorporation were
12 prepared about the time of the founding of
13 Public.Resource.Org, Inc.?

14 A. Well, yes.

15 Q. And is Exhibit 16, the articles of
16 incorporation, kept on your company's website?

17 A. Yes.

18 Q. And is that website operated in the regular
19 course of Public.Resource's business?

20 MR. BRIDGES: Objection. Lacks foundation;
21 may call for a legal conclusion; argumentative.

22 BY MR. HUDIS:

23 Q. You may answer.

24 MR. BRIDGES: Vague and ambiguous.

25 BY MR. HUDIS:

1 Q. You may answer.

2 A. Yes.

3 Q. And the articles of incorporation were made
4 at the time that you founded Public.Resource?

5 A. The articles of incorporation are what
6 created the corporation.

7 Q. Let's look at Exhibit 17. What is this
8 document?

9 MR. BRIDGES: Check it out.

10 THE WITNESS: This appears to be a copy of
11 our bylaws.

12 BY MR. HUDIS:

13 Q. Do you have any reason to doubt that
14 Exhibit 17 is an authentic document?

15 MR. BRIDGES: Objection. Lacks foundation;
16 vague and ambiguous.

17 THE WITNESS: I do not.

18 MR. BRIDGES: Assumes facts not in
19 evidence.

20 I will note that this document has lines
21 without signatures on the final page.

22 THE WITNESS: The version of our bylaws
23 posted on our website has no signatures on it.

24 I have no reason to doubt. I would
25 obviously want to double-check this with the copy

1 that I have.

2 BY MR. HUDIS:

3 Q. I'll represent to you, Mr. Malamud, that I
4 obtained Exhibits 16 and 17 from your website.

5 A. Mm-hm.

6 MR. HUDIS: Counsel, can you stipulate that
7 Exhibit 17 is an authentic business record of
8 Public.Resource?

9 MR. BRIDGES: Let me get back to you after
10 a break when I'll have to confer with my client. I
11 anticipate that will not be a problem.

12 MR. HUDIS: Because I'd rather not have to
13 go through the foundation if I don't have to.

14 MR. BRIDGES: I understand. I just want to
15 confirm with him during a break.

16 MR. HUDIS: Do you want to -- I'll allow
17 you to do that right now if you'd like. We can go
18 off the record.

19 MR. BRIDGES: Sure.

20 MR. HUDIS: Andrew, do you want us to step
21 out of the room?

22 MR. BRIDGES: No. No. We need to go off
23 the record though.

24 THE VIDEOGRAPHER: The time is 11:58, and
25 we are off the record.

1 (Discussion off the record.)

2 THE VIDEOGRAPHER: The time is 12:02, and
3 we are back on the record.

4 MR. BRIDGES: So, Mr. Hudis, 18 we can
5 stipulate to the authenticity.

6 17 we can stipulate this does appear to be
7 a copy of what is posted on the website, and we
8 believe this is a genuine copy of the article of
9 incorporation -- of the form of the articles of
10 incorporation without the signatures.

11 So I think -- you know, if -- the problem
12 is --

13 THE WITNESS: Bylaws.

14 MR. BRIDGES: The bylaws, thank you.

15 The concern is if -- it's a long document
16 and needs to be compared. If there is an issue
17 with that, we can get back and let you know that.

18 So the stipulation is sort of a conditional
19 stipulation, subject to a correction at the time of
20 the transcript if we find after comparing it, there
21 is a material variance.

22 MR. HUDIS: Okay. So, Counsel, unless
23 there is a material variance, we can stipulate that
24 Exhibits 16 and 17 are authentic business records
25 of Public.Resource?

1 MR. BRIDGES: Yes, subject to our right to
2 correct the deposition to the extent we may need to
3 correct that stipulation if there is a material
4 variance on 17.

5 MR. HUDIS: Understood and agreed.

6 And Exhibit 18, you are stipulating that
7 that's an authentic document.

8 MR. BRIDGES: Yes.

9 MR. HUDIS: Can we stipulate that it's a
10 business record of Public.Resource?

11 MR. BRIDGES: We'll stipulate that it is a
12 document in the possession of Public.Resource. I
13 would consider it to be a business record, I would
14 think, of the Internal Revenue service.

15 MR. HUDIS: Satisfied.

16 BY MR. HUDIS:

17 Q. Turning, Mr. Malamud, to Exhibit 16.

18 Does paragraph II B of the articles of
19 incorporation accurately describe the purpose of
20 Public.Resource?

21 MR. BRIDGES: Objection. Lacks foundation;
22 vague and ambiguous and may call for legal
23 expertise and legal conclusion.

24 THE WITNESS: Yes.

25 BY MR. HUDIS:

1 Q. Turning to Exhibit 17. Does section 2.1 of
2 the bylaws of Public.Resource accurately describe
3 the objectives and purposes of Public.Resource?

4 MR. BRIDGES: Same objections.

5 THE WITNESS: Yes.

6 BY MR. HUDIS:

7 Q. Mr. Malamud, I show you what's been marked
8 as Exhibit 18. Could you please tell me what that
9 document is?

10 MR. BRIDGES: I'll object to the extent it
11 requires him to -- object to the extent it requires
12 legal expertise to characterize it or seeks a legal
13 conclusion.

14 The witness may testify as to what he
15 knows.

16 THE WITNESS: I don't know the official
17 title of this. It's a -- I believe it's called a
18 Form 1045. It's a notification of nonprofit
19 status.

20 BY MR. HUDIS:

21 Q. And does it indicate to you that
22 Public.Resource attained its nonprofit status in
23 September of 2007?

24 MR. BRIDGES: Objection. Vague and
25 ambiguous; may call for a -- may call for legal

1 expertise or conclusion.

2 BY MR. HUDIS:

3 Q. Should I repeat the question, Mr. Malamud?

4 A. Yeah.

5 Q. Does Exhibit 18 indicate to you that
6 Public.Resource attained its nonprofit status in
7 September of 2007?

8 MR. BRIDGES: Same objections.

9 THE WITNESS: The date of the letter is
10 September 25th. That's not the date of the
11 nonprofit status.

12 BY MR. HUDIS:

13 Q. What is the date of the nonprofit status?

14 A. April 13th, 2007.

15 Q. Fair enough. And I see that date.

16 A. Yeah.

17 Q. Thank you very much.

18 (PLAINTIFFS' EXHIBITS 19-20 WERE MARKED.)

19 BY MR. HUDIS:

20 Q. Mr. Malamud, please take a moment to look
21 at Exhibits 19 and 20.

22 A. Okay.

23 Q. Have you looked at the exhibits?

24 A. Yes, I have.

25 Q. Could you tell me what Exhibit 19 is?

1 I believe there are a number of other
2 agencies, I believe Office of Personnel Management,
3 I believe Department of Defense, a number of state
4 organizations, are all users of the standard
5 because they specify that it shall be used.

6 BY MR. HUDIS:

7 Q. Do you know of any non-governmental users
8 of the standards?

9 MR. BECKER: All the same objections.
10 Vague.

11 To the extent that there is any information
12 that the witness has learned from his attorneys, I
13 will instruct him not to divulge this privileged
14 information.

15 THE WITNESS: I know that the Educational
16 Testing Service, ETS and a number of organizations
17 that create tests, are users of the standard, and
18 the reason I know that is there's been a series of
19 procurements by government organizations that
20 require the use of the standard.

21 BY MR. HUDIS:

22 Q. Do you know of any other non-governmental
23 users of the standards?

24 MR. BECKER: All the same objections. Also
25 object for competence.

1 THE WITNESS: My sister read it in the
2 course of her doctoral course work.

3 BY MR. HUDIS:

4 Q. And what was your sister's doctoral course
5 work?

6 A. On, I want to state this properly. I
7 believe physical and rehabilitative therapy. A
8 subset of psychology.

9 Q. How did the standards first come to your
10 attention?

11 MR. BECKER: Objection. Vague. Objection.
12 Ambiguous.

13 THE WITNESS: I was looking at the
14 standards incorporated by reference under the Code
15 of Federal Regulations, and the standards at issue
16 were one of the ones that were specified.

17 BY MR. HUDIS:

18 Q. And what year was that?

19 A. Probably 2012. Early 2012.

20 Q. When did Public.Resource --

21 A. Might have been earlier. Might have been
22 earlier. I'm not sure.

23 Q. Sometime in 20 -- in 2012?

24 A. Coming to my attention in the sense of
25 remembering it now, yes.

1 Q. What, if anything, made you interested in
2 acquiring the standards?

3 A. It was --

4 MR. BECKER: Objection. Vague.

5 THE WITNESS: -- incorporated by reference
6 into the Code of Federal Regulations.

7 BY MR. HUDIS:

8 Q. When did Public.Resource first make the
9 decision to post the standards to one of its
10 websites?

11 MR. BECKER: Objection. Vague. Objection.
12 Lacks foundation. Objection. May call for a legal
13 conclusion.

14 THE WITNESS: So it would have been
15 sometime after obtaining a copy of the standard and
16 examining it and satisfying myself that, in fact,
17 it was the document that was incorporated by
18 reference, and sometime between the procurement,
19 which I believe was in May 2012, and the actual
20 posting, which I believe was in July 2012.

21 BY MR. HUDIS:

22 Q. So how did Public.Resource come to the
23 decision to post the standards on one of its
24 websites?

25 MR. BECKER: Objection. Vague and

1 ambiguous.

2 THE WITNESS: By determining that it was
3 incorporated by reference and that this particular
4 document that I held in my hand was the specific
5 document that had been incorporated by reference.

6 BY MR. HUDIS:

7 Q. On which of its websites did
8 Public.Resource post the standards?

9 A. Law.Resource.Org.

10 Q. Mr. Malamud, this question is directed to
11 you personally.

12 Do you claim any copyright ownership
13 interest in the Standards for Educational and
14 Psychological Testing?

15 MR. BECKER: Objection. Calls for a legal
16 conclusion. Objection. Argumentative; lacks
17 foundation; competence.

18 THE WITNESS: I do not.

19 BY MR. HUDIS:

20 Q. Does Public.Resource claim any copyright
21 ownership interest in the Standards for Educational
22 and Psychological Testing?

23 MR. BECKER: All the same objections.

24 THE WITNESS: We do not. We do not.

25 BY MR. HUDIS:

1 Q. When did you first procure the standards?

2 A. May 2012.

3 Q. What was the year of the publication of the
4 particular standards that you procured?

5 MR. BECKER: Objection. Vague; assumes
6 facts not in evidence.

7 THE WITNESS: I don't know the year of the
8 publication. I know it's a 1999 edition.

9 BY MR. HUDIS:

10 Q. That's what I wanted to know. Thank you.

11 Have you procured any earlier or subsequent
12 versions of the standards?

13 A. Subsequent to the commencement of
14 litigation, I purchased a copy of the 2014 and 1985
15 standards because I wanted to see what was in them.
16 I have not posted those documents.

17 Q. Mr. Malamud, did you personally procure the
18 1999 standards?

19 A. I did.

20 Q. From -- from what source did you procure
21 the 1999 standards?

22 A. It's --

23 MR. BECKER: Objection. Vague.

24 THE WITNESS: It's called the Amazon
25 Marketplace. So I paid my money to Amazon, and

1 that was through a used book seller that actually
2 had the document and sent it to me.

3 (PLAINTIFFS' EXHIBIT 29 WAS MARKED.)

4 BY MR. HUDIS:

5 Q. I marked the next document as Exhibit 29,
6 and it is Defendant's Amended Responses to
7 Plaintiff's Interrogatories.

8 Mr. Malamud, do you recognize this
9 document?

10 A. I do.

11 Q. Mr. Malamud, if you could turn to the last
12 page. On page 15, is that your signature?

13 A. Yes, it is.

14 Q. Mr. Malamud, could you please turn to the
15 question and answer to interrogatory number 1 on
16 page 4 of Exhibit 29.

17 A. I'm there.

18 Q. And it says in the third paragraph of that
19 interrogatory answer, "Public.Resource purchased a
20 printed copy from," quote, "The Book Grove,"
21 unquote, "a used book seller on May 17, 2012."

22 And does this interrogatory answer verify
23 the source from which you procured the 1999
24 standards?

25 A. Yes. The Book Grove was the used book

1 seller on the Amazon marketplace.

2 Q. And does interrogatory answer number 1 also
3 state the date of purchase?

4 A. It does.

5 Q. And that date is May 17th, 2012?

6 A. That is correct.

7 MR. BECKER: Objection. The interrogatory
8 speaks for itself.

9 (PLAINTIFFS' EXHIBIT 30 WAS MARKED.)

10 BY MR. HUDIS:

11 Q. Mr. Malamud, have you taken the time to
12 read what has now been marked as Exhibit 30?

13 A. I have.

14 Q. And the document Exhibit 30 bears
15 production pages PROAERA 446 through 5 --
16 through -- well --

17 A. 446.

18 MR. HUDIS: PROAERA 446, PROAERA 447 and
19 PROAERA 544.

20 Counsel, just so we have an understanding,
21 this is a part of a much larger document of many
22 other purchases that Carl Malamud made. We are
23 only concentrating on a specific purchase.

24 THE WITNESS: I don't have 544 here. I
25 have two pages.

1 BY MR. HUDIS:

2 Q. Okay. So my colleague, Ms. Cappaert, has
3 told me that I've misspoken. So I'm going to
4 re-identify the document.

5 Exhibit number 30 should contain production
6 pages PROAERA 446 and 447.

7 A. That's correct.

8 Q. I apologize, Mr. Malamud. That was my
9 error.

10 A. Oh, that's okay.

11 Q. Okay. So, Mr. Malamud, if you could take a
12 look at the document. Do you have any doubt that
13 this document is authentic?

14 A. No, I do not.

15 MR. HUDIS: Counsel, can you stipulate that
16 Exhibit 30 is a business record of
17 Public.Resource?

18 MR. BECKER: It appears to be a document
19 produced by Public.Resource that is a receipt.

20 MR. HUDIS: I'll take that representation.
21 Thank you.

22 BY MR. HUDIS:

23 Q. Mr. Malamud, Exhibit 30, is this the
24 receipt for the 1999 standards book that you
25 purchased?

1 A. Yes, it is.

2 Q. And for what purpose did you procure the
3 1999 standards?

4 A. To look at the document and ascertain that
5 it was, in fact, the document incorporated by
6 reference into the Code of Federal Regulations.

7 (PLAINTIFFS' EXHIBIT 31 WAS MARKED.)

8 BY MR. HUDIS:

9 Q. Mr. Malamud, I show you what's been marked
10 as Exhibit 31. It bears production numbers
11 AERA_APA_NCME 1 through 201.

12 A. Do you want me to read the document?

13 Q. No, I do not.

14 A. Okay.

15 Q. Mr. Malamud, is this the book that you
16 purchased from The Book Grove on May 17, 2012?

17 MR. BECKER: Objection. Vague. Objection.
18 The witness has been instructed not to read the
19 document. Objection. Misleading.

20 BY MR. HUDIS:

21 Q. Mr. --

22 A. I don't know if this is the one that I
23 bought, but this appears to be a copy of the
24 standards at issue.

25 Q. Did you buy the standards at issue from the

1 Book Grove?

2 A. Yes.

3 Q. Mr. Malamud, according to Exhibit 30, you
4 paid \$64.48 for the book plus shipping and
5 handling.

6 A. 68.47, including shipping and handling,
7 yes.

8 Q. Mr. Malamud, did you ever attempt to
9 acquire a copy of the 1999 standards for free?

10 A. I think the answer to that is yes.

11 Q. From where?

12 A. See, I'm not sure "free" is the right term.
13 I submitted a Freedom of Information Act request
14 that included the standards at issue. That request
15 was denied. So I have no idea if there would have
16 been a charge or not in making that data available.
17 So that's a qualified yes.

18 (PLAINTIFFS' EXHIBIT 32 WAS MARKED.)

19 BY MR. HUDIS:

20 Q. Mr. Malamud, I show you what's been marked
21 as Exhibit 32 bearing pro -- pages PROAERA 10153
22 through 10195.

23 Do you recognize the document?

24 A. It appears to be a Freedom of Information
25 Act request I submitted to Mr. Stern, who is the

1 general counsel of the National Archives.

2 Q. Is the National Archives and Records
3 Administration also known as NARA, N-A-R-A?

4 A. Yes, it is.

5 Q. And this letter of July 14th, 2009, Exhibit
6 32, this was a freedom of information request by
7 Public.Resource?

8 A. Yes, it was.

9 MR. HUDIS: Counsel, can you stipulate that
10 Exhibit 32 is a business record of Public.Resource?

11 MR. BECKER: I'm not certain if it
12 constitutes a business record by Public.Resource,
13 but it is a document produced by Public.Resource.

14 BY MR. HUDIS:

15 Q. Mr. Malamud, so was this document, Exhibit
16 32, created on or about July 14th, 2009?

17 A. It's when I sent it, it is.

18 Q. Have you kept a copy of Exhibit 32 in
19 Public.Resource's records?

20 A. Yes, we disclosed it to you.

21 Q. And writing such letters such as Exhibit 32
22 is the regular practice of Public.Resource?

23 MR. BECKER: Objection. Vague.

24 THE WITNESS: I don't know about regular
25 practice, but it was certainly not unusual for me

1 wait for a question to be asked by counsel.

2 THE WITNESS: Yes.

3 BY MR. HUDIS:

4 Q. Mr. Malamud, at the end -- well, it's not
5 the end. On page 10248 of Exhibit 33 at the
6 bottom, Mr. Mosley says in his letter to you,
7 "Although many of our library holdings are in the
8 public domain as products of employees or agents of
9 the federal government, some documents incorporated
10 by reference do or may have copyright protection.
11 You are responsible for obtaining any necessary
12 permission for use, copying and publication from
13 copyright holders and for -- and for any other
14 applicable provisions of the Copyright Act." And
15 he cites Title 17 of the United States code.

16 Do you agree or disagree with that
17 statement?

18 MR. BECKER: Objection. Calls for a legal
19 conclusion. Objection. Form.

20 THE WITNESS: It says, "some documents
21 incorporated by reference do or may have copyright
22 protection." It is my understanding that the law
23 in the United States has no copyright. It is owned
24 by the people. Not by the government agencies.

25 BY MR. HUDIS:

1 Q. So the moment any standard is incorporated
2 by reference into a federal regulation, it loses
3 its copyright protection; is that correct,
4 according to your view?

5 MR. BECKER: Objection. Calls for a legal
6 conclusion. Objection. Argumentative. Objection.
7 May misstate prior testimony.

8 THE WITNESS: I think words like "loses its
9 copyright" are loaded. I do believe that the Code
10 of Federal Regulations has no copyright. It's a
11 law. And that standards incorporated by reference
12 into the Code of Federal Regulations are an
13 integral part of the code and therefore have no
14 copyright.

15 BY MR. HUDIS:

16 Q. Mr. Malamud, once you procured the 1999
17 standards in May of 2012, what, if anything, did
18 you do with them?

19 MR. BECKER: Objection. Form.

20 THE WITNESS: I examined the standard to
21 determine that it was, in fact, the document that
22 was specified and incorporated by reference.

23 BY MR. HUDIS:

24 Q. What else did you do with the standards
25 once you had them?

1 A. I scanned the standard and turned it into a
2 PDF file.

3 Q. So I would like to draw your attention back
4 to Exhibit 29, which is the interrogatory answers.
5 And I draw your attention to interrogatory answer
6 number 3 at the bottom of page 5 in Exhibit 29. Do
7 you see that?

8 A. Yes, I see that.

9 Q. All right. Now, do you see
10 Public.Resource's answer that starts at the bottom
11 of page 5 and continues on page 6?

12 A. I do.

13 Q. Does this interrogatory answer accurately
14 state what you did with the 1999 standards once you
15 procured them?

16 MR. BECKER: Objection. Form.

17 THE WITNESS: It does.

18 BY MR. HUDIS:

19 Q. All right. So as I understand, you
20 disassembled the book; correct?

21 A. Mm-hm.

22 MR. BECKER: Objection. Form.

23 BY MR. HUDIS:

24 Q. You removed the spine and any other
25 extraneous materials. You trimmed the document.

1 Do you see that?

2 A. I do.

3 Q. All right. And then you scanned it on a
4 Xerox 4250 scanner at 30 or 40 dots per inch. Do
5 you see that?

6 A. At 300 or 400 dots per inch. Yes, I do.

7 Q. And then you named the file
8 AERA.standards.1999.PDF?

9 A. That's correct.

10 Q. Now, the book that you got from the
11 reseller on Amazon, you said it was a used book?

12 A. I really don't recall if it was used or
13 new.

14 Q. Did you check the quality of the pages of
15 the book before you scanned them?

16 A. Yes, I did.

17 Q. Did you notice -- did you compare your
18 copy -- your procured copy of the 1999 standards to
19 a new version of the standards?

20 MR. BECKER: Objection. Vague and
21 ambiguous; possibly misleading and misstates the
22 testimony.

23 THE WITNESS: So again, I'm not sure
24 whether it was new or used. I simply have no
25 recollection. I know I was able to obtain it on

1 the Amazon Marketplace.

2 What was the rest of your question?

3 BY MR. HUDIS:

4 Q. Did you compare the used version that you
5 procured with a new version of the standards?

6 MR. BECKER: Same objections.

7 THE WITNESS: So again, I'm not sure if it
8 was a used or a new. Did I compare it to another
9 copy of the standards?

10 BY MR. HUDIS:

11 Q. Correct.

12 A. No, I did not.

13 Q. And in interrogatory answer number 3 you
14 talk about a quality check process. Could you tell
15 me what that quality check process was?

16 A. In the case of a scan, making sure all the
17 pages are there and that the scan was successful.

18 Q. Did you check to make sure all the pages
19 were there?

20 A. I believe I did, yes.

21 Q. And then you say, "The files are post
22 process to optimize the scan and to generate
23 optical character recognition on the text."

24 Did you do that?

25 A. Yes, I believe I did.

1 Q. And then it says, "Public.Resource then
2 double checks the IBR." That's incorporation by
3 reference?

4 A. That's correct.

5 Q. "The incorporation by references, puts a
6 cover sheet on the files and stamps metadata into
7 the headers."

8 What kind of metadata did you stamp into
9 the headers?

10 A. I have not examined the AERA standard
11 recently, but the normal practice is to stamp in
12 the name of the standard and possibly the CFR site
13 that we have there. And the name of the original
14 publisher, I believe, was also in the metadata.

15 Q. Did you or anyone on Public.Resource's
16 behalf use graphic design web tools to post the
17 1999 standards to the Internet?

18 MR. BECKER: Objection. Compound.
19 Objection. Vague.

20 THE WITNESS: I created the cover sheet,
21 the certificate of incorporation using graphic
22 design tools. I did not apply any graphic design
23 tools to the core document, because it was simply a
24 scan.

25 (PLAINTIFFS' EXHIBIT 34 WAS MARKED.)

1 BY MR. HUDIS:

2 Q. Mr. Malamud, I show you a document that has
3 been marked as Exhibit 34, bearing production
4 numbers AERA_APA_NCME 31528 through 31738.

5 Do you recognize this document?

6 A. It appears to be a copy of the standards at
7 issue with the certificate of incorporation on the
8 top.

9 Q. All right. And is this the cover sheet
10 that you appended on top of the 1999 standards
11 posted on Public.Resource's website?

12 A. Yes, it appears to be.

13 Q. Who prepared this cover sheet?

14 A. I did.

15 Q. And who chose the language for the cover
16 sheet?

17 A. I did.

18 Q. What was your intention, Mr. Malamud, for
19 appending this cover sheet of Exhibit 34 on top of
20 the 1999 standards posted on Public.Resource's
21 website?

22 A. I wanted to be very clear that this was a
23 posting of a standard incorporated by reference
24 into the Code of Federal Regulations. I wanted to
25 place this document in context.

1 Q. And what was your purpose on the cover
2 sheet of using the medallion that had the word
3 "Repeatedly Approved."

4 A. To signify that the executive director of
5 the Office of the Federal Register had explicitly
6 and deliberately approved this incorporation by
7 reference.

8 Q. We just went through the process that you
9 used. We asked you the question, did you digitize
10 or convert to a digital format the 1999 standards,
11 and we went through that process.

12 My question is, who participated in the
13 process of disassembling the paper version of the
14 1999 standards, scanning them and processing them,
15 as you described here in interrogatory answer
16 number 3 and posting them to the Internet?

17 MR. BECKER: Objection. Compound.

18 THE WITNESS: That was me.

19 BY MR. HUDIS:

20 Q. Did Point.B Studio participate in this
21 process?

22 A. No.

23 Q. Did Rebecca Malamud participate in this
24 process?

25 A. She did not.

1 Q. Did HTC Global participate in this process?

2 A. They did not.

3 Q. Did anyone else besides yourself
4 participate in this process?

5 A. It's just me.

6 Q. I'd like you to look in Exhibit 29,
7 interrogatory answer number 4 on page 6.

8 So consistent with your -- your prior
9 testimony, does this interrogatory answer number 4
10 in Exhibit 29 accurately identify all the persons
11 and entities who were involved in disassembling the
12 paper version of the 1999 standards, scanning them,
13 processing them and posting them to the Internet?

14 MR. BECKER: Objection to form.

15 THE WITNESS: Yes, it was me.

16 BY MR. HUDIS:

17 Q. I just want to go a little bit into depth
18 about quality control.

19 So what quality control procedures did you
20 use to ensure the quality of the textual comment --
21 content of the 1999 standards that you posted to
22 the Internet?

23 MR. BECKER: Objection. Vague.

24 THE WITNESS: This is a scan of a document.

25 BY MR. HUDIS:

1 Q. Mm-hm.

2 A. It's a pixel-by-pixel replication of what
3 was on the printed page.

4 Q. I'll be more specific.

5 Did you check for missing or incorrectly
6 scanned pages?

7 A. I believe I did.

8 Q. Did you check for pages that may have had
9 blurred text?

10 A. I believe I did.

11 Q. Now, you say, "I believe I did." Do you
12 know for sure that you did?

13 A. My standard procedure is to do those
14 things. I don't know this specific document simply
15 because I don't recollect back to that period in
16 May 2012. So I can't testify under oath that I
17 did, in fact, do that. But that certainly is my
18 standard procedure.

19 Q. Mr. Malamud, what is search engine
20 optimization?

21 A. Search engine optimization is a technical
22 term of art that has to do with how documents that
23 are on a web server show up in search engine
24 results.

25 Q. Please continue.

1 So in that sense, large print, we did not
2 retype the documents into a large print edition.

3 BY MR. HUDIS:

4 Q. Mr. Malamud, do you have any materials in
5 your -- in Public.Resource's possession documenting
6 the process you went through of disassembling the
7 paper version of the 1999 standards, scanning them,
8 processing them and posting them to the Internet?

9 MR. BECKER: Objection. Compound.

10 THE WITNESS: No, there's no intermediate
11 process. That's a book and then it gets scanned.

12 THE REPORTER: Did you say "there's no
13 intermediate product"?

14 THE WITNESS: Intermediate process.

15 BY MR. HUDIS:

16 Q. Mr. Malamud, once you converted the 1999
17 standards from paper to the PDF format, what did
18 you do with the contents of the file?

19 A. I posted the file to Law.Resource.Org and
20 to the Internet Archive.

21 Q. Mr. Malamud, could you please return your
22 attention to Exhibit 29, interrogatory answer
23 number 2.

24 A. Okay.

25 Q. Does interrogatory answer number 2

1 accurately state when and where you posted the 1999
2 standards to the Internet?

3 A. It does.

4 Q. And what was the date that you posted the
5 standards to the Internet?

6 MR. BECKER: Objection. Form.

7 THE WITNESS: As our interrogatory says,
8 July 11, 2012 on Law.Resource.Org and ...

9 BY MR. HUDIS:

10 Q. All right. And --

11 A. Yeah.

12 Q. And as you said, you posted the standards
13 to Law.Resource.Org, and you also posted the
14 standards to the Internet Archive; correct?

15 A. That is correct.

16 Q. Mr. Malamud, what is the name of the
17 Public.Resource web server to which you saved the
18 file containing the contents of the 1999 standards?

19 A. Law.Resource.Org.

20 Q. That's the name of the server?

21 A. Yes.

22 MR. BECKER: Please give me time to object.

23 MR. HUDIS: I'm sorry.

24 THE WITNESS: That was my fault.

25 MR. HUDIS: I don't want to be rude,

1 Counsel, seriously. Okay.

2 BY MR. HUDIS:

3 Q. Is the file containing the 1999 standards
4 still saved on that web server?

5 MR. BECKER: Objection. Vague and
6 ambiguous; assumes facts not in evidence.

7 THE WITNESS: It is not in the document
8 tree of the web server, no.

9 BY MR. HUDIS:

10 Q. Do you still have that file still saved
11 somewhere within Public.Resource's computer
12 systems?

13 A. Yes, I do.

14 Q. Where?

15 A. One copy on my desktop. One copy in the
16 not published directory. I don't know what the
17 exact name of it is. Someplace on our server, but
18 it's a private area that's not accessible to -- to
19 anybody but myself and our systems administrator.

20 Q. Mr. Malamud, does Public.Resource have any
21 logs from its web servers documenting the date on
22 which the 1999 standards were posted to
23 Public.Resource's website?

24 MR. BECKER: Objection. Vague and
25 ambiguous. Objection. Lacks foundation. And

1 assumes facts not in evidence.

2 THE WITNESS: There's no logs, but there
3 was a file creation date on the file.

4 BY MR. HUDIS:

5 Q. Has any documentation noting the file
6 creation date ever been produced to us?

7 A. I don't know.

8 MR. HUDIS: Counsel, if that document has
9 not been provided to us, it should be provided to
10 us now.

11 THE WITNESS: So the file creation date was
12 the date that the standard was posted. And when at
13 your request we removed that standard and replaced
14 it with a stub, that's going to be the new creation
15 date. So I don't believe there's going to be a
16 record.

17 BY MR. HUDIS:

18 Q. What about the old creation date when the
19 original standards file was -- was posted to your
20 web server?

21 A. I moved it to a different area. I mean,
22 you can make the request and we'll go look and see
23 if that's there, but it's --

24 Q. Thank you, Mr. Malamud, I appreciate that.

25 Did you post the entirety of the 1999

1 standards to Public.Resource's website?

2 A. Yes.

3 Q. Mr. Malamud, as it pertains to the Internet
4 Archive, what is a collection?

5 MR. BECKER: Objection. Asked and
6 answered.

7 THE WITNESS: A collection is a set of
8 items that often have a common theme.

9 BY MR. HUDIS:

10 Q. And you said you posted the 1999 standards
11 to Internet Archive's website; correct?

12 A. That is correct.

13 Q. And did you post the entirety of the 1999
14 standards to Internet Archive's website?

15 A. I did.

16 Q. Under which collection at the Internet
17 Archive did you post the 1999 standards?

18 MR. BECKER: Objection. Form.

19 THE WITNESS: The current name of that
20 collection is Codes of the World.

21 BY MR. HUDIS:

22 Q. How did you choose this particular
23 collection to which to post the 1999 standards?

24 A. It's the --

25 MR. BECKER: Objection. Assumes facts not

1 in evidence.

2 THE WITNESS: It's the collection I created
3 to hold the standards incorporated by reference.

4 BY MR. HUDIS:

5 Q. All right. So you created the Codes of the
6 World collection on Internet Archive's website?

7 A. I did.

8 Q. Mr. Malamud, I show you what was previously
9 marked at Internet Archive's deposition in this
10 case as Butler Exhibit 6.

11 Do you see that?

12 A. I do. Let me correct a misstatement. It
13 wasn't called Codes of the World. It was called
14 Global Public Safety Codes is the name of the
15 collection.

16 Q. And what types of materials did you post to
17 the Global Public Safety Codes collection on
18 Internet Archive?

19 A. Standards incorporated by reference in the
20 law.

21 Q. Do you recognize Butler Exhibit 6?

22 A. This is a document you created?

23 Q. It's a document we printed from the
24 Internet Archive.

25 A. This appears to be a series of screen dumps

1 from that item in which you are paging through the
2 standards at issue, is what this appears to be.

3 Q. That's exactly correct. And you just saved
4 me about five minutes of explanation.

5 A. Oh, sorry about that.

6 Q. That's fine. Thank you very much,
7 Mr. Malamud.

8 What is the web tool, if you know, that
9 creates the ability for a user to turn the pages of
10 the 1999 standards like a book?

11 MR. BECKER: Objection. Vague and
12 ambiguous; confusing.

13 THE WITNESS: I have heard it called book
14 reader, but I don't know the details of what the
15 code is or how it's embedded or anything of that
16 sort.

17 BY MR. HUDIS:

18 Q. So you've heard it referred to as a book
19 reader application?

20 A. Yes.

21 Q. All right. Have you ever heard of a DjVu
22 Reader?

23 A. Yes, I have.

24 Q. And what -- what is its function, to the
25 best of your knowledge?

1 A. DjVu is another format for creating
2 documents, and a DjVu Reader is one that enables
3 one to page through a document in a DjVu format.

4 Q. When you posted the 1999 standards --
5 skip -- strike that.

6 Looking at Exhibit Butler 6, does this look
7 like the '99 -- 1999 standards --

8 MR. BECKER: Objection. Form.

9 MR. HUDIS: I didn't finish.

10 BY MR. HUDIS:

11 Q. -- were presented in page-turning format
12 using either book reader or DjVu Reader?

13 MR. BECKER: Same -- same objection.

14 THE WITNESS: Yeah, if this is the standard
15 Internet Archive screen, this is a PDF file that is
16 being used for the -- the page turning capability.

17 BY MR. HUDIS:

18 Q. Now I'll continue with my next question.

19 When you posted the 1999 standards to the
20 Internet Archive website, did you input the
21 following information to go with the file? And
22 I'll take them one at a time. Author?

23 A. I did. That's actually a standard Internet
24 Archive field that I believe is required.

25 Q. And did you input that information?

1 A. I did in the sense of the API call that
2 created this -- this item.

3 Q. The API call is?

4 A. API is application programming interface,
5 and it is a mechanism to write a command script
6 that talks to a remote system and creates an item,
7 in this case at the Internet Archive.

8 Q. So when you use the API call to post the
9 1999 standards to the Internet Archive website, did
10 you input the information under author?

11 MR. BECKER: Objection. Form.

12 THE WITNESS: Yes, although I believe in
13 the API call, it's called creator. And the
14 Internet Archive images it as author.

15 BY MR. HUDIS:

16 Q. And did you input the language for subject?

17 A. I did.

18 Q. Did you input the language for language?

19 A. Yes.

20 Q. Did you input the language for collection?

21 A. I specified which collection this item
22 would be, and this field here is automatically
23 generated, I believe, by the Internet Archive.

24 Q. Now, if you would please turn to the next
25 page of Exhibit Butler 6.

1 Did you input the information for
2 identifier?

3 A. Yes, I specified the identifier.

4 Q. Did you input the information for the
5 credits?

6 A. The phrase uploaded by Public.Resource.Org,
7 yes, I did.

8 Q. Did you input the information for license
9 URL?

10 A. Yes, I did.

11 Q. And what was the purpose of you inputting
12 the URL for CreativeCommons.org?

13 MR. BECKER: Objection. Form.

14 THE WITNESS: Any specification of
15 providence on the Internet Archive uses the
16 Creative Commons mechanism.

17 BY MR. HUDIS:

18 Q. And what is the significance of using the
19 Creative Commons mechanism?

20 MR. BECKER: Objection. Vague and
21 ambiguous.

22 THE WITNESS: In this case it's a Creative
23 Commons CC0 license.

24 BY MR. HUDIS:

25 Q. What is a Creative Commons 0 license?

1 A. CC.

2 MR. BECKER: Objection. Vague and
3 ambiguous; may call for a legal conclusion.

4 THE WITNESS: CC0, again, I'm not a lawyer,
5 is no rights asserted. The creator of this
6 identifier is not asserting any rights over this
7 item.

8 BY MR. HUDIS:

9 Q. And that would have been you?

10 A. That's correct.

11 Q. And did you insert the language for media
12 type?

13 A. Yes, I specified in the API call that this
14 was a object of type text.

15 Q. And did you insert the information for
16 identifier access?

17 A. That's automatically generated based on the
18 name of the identifier.

19 Q. And what is identifier ark?

20 A. I have no idea.

21 Q. Did you insert that information for
22 identifier ark?

23 A. No, I don't know what that is.

24 Q. In what format did you post the 1999
25 standards to the Internet Archive website?

1 MR. BECKER: Objection. Form.

2 THE WITNESS: A PDF document.

3 BY MR. HUDIS:

4 Q. Did you post the 1999 standards to the
5 Internet Archive website in any other format?

6 A. The API call that created that item ID
7 uploaded a PDF file.

8 Q. When Public.Resource posts standards
9 incorporated by reference by a governmental agency
10 to one of its websites, is it Public.Resource's
11 policy to always post the same standard to a
12 collection on the Internet Archive website?

13 MR. BECKER: Objection. Vague and
14 ambiguous; may assume facts not in evidence.

15 THE WITNESS: Not always, but it's a
16 general practice.

17 BY MR. HUDIS:

18 Q. Turning back to Exhibit Butler 6. Please
19 turn to the first page, Mr. Malamud.

20 A. Okay.

21 Q. And I'd like you to look on the left-hand
22 side of the page. I'd like to know what the
23 following entries mean, if you know.

24 PDF 4.2 M?

25 A. Where does it say that?

1 Q. To the very --

2 A. Oh, I see. I see what you're talking
3 about.

4 Q. All right. What does the entry PDF 14.2 M
5 mean?

6 A. 14.2 M is 14.2 megabytes.

7 And PDF is the item in PDF format. In this
8 case it's the one that I uploaded.

9 Q. And then the next entry is EPUB 335.4 K.
10 What does that entry mean?

11 A. It is the same item in EPUB format, which
12 is an e-book format.

13 Q. And what does the next entry mean here,
14 full text 6.86. -- I'll start again. 68 -- full
15 text 686.0 K. What does that mean?

16 MR. BECKER: Objection for
17 mischaracterizing the document.

18 THE WITNESS: That file is 686 kilobytes in
19 size. And the full text is derived from an OCR
20 process that the Internet Archive conducts on all
21 text items.

22 BY MR. HUDIS:

23 Q. And the next entry I believe is a shorthand
24 for DjVu. Do you understand that?

25 A. I do.

1 MR. BECKER: Objection. Form.

2 BY MR. HUDIS:

3 Q. And so the next entry DjVu 8.2 M, what does
4 that mean?

5 A. It's the item in DjVu format 8.2 megabytes.

6 Q. And then what does -- what does it mean
7 when it says, "All files HTTPS"?

8 A. By clicking on that link, you can see all
9 the files in that item, such as the PDF file, the
10 EPUB file, but also a metadata file, for example.

11 Q. Besides Law.Resource.Org and Internet
12 Archive, did you post the 1999 standards to any
13 other website?

14 A. I did not.

15 Q. Mr. Malamud, in your opinion what value did
16 Public.Resource add to the 1999 standards by
17 disassembling the paper version, scanning it,
18 processing it, as you described in interrogatory
19 answer number 3, and posting the file to the
20 Internet?

21 MR. BECKER: Objection as compound -- the
22 question is compound; may misstate prior testimony;
23 vague and ambiguous.

24 THE WITNESS: The value we provided is to
25 make a document that was incorporated by reference

1 under the Code of Federal Regulations available on
2 the Internet for people to read.

3 BY MR. HUDIS:

4 Q. For free?

5 MR. BECKER: Also object as argumentative
6 to that last question.

7 BY MR. HUDIS:

8 Q. For free?

9 A. We never charge for content.

10 Q. Mr. Malamud, did Public.Resource anticipate
11 incurring legal liability for posting the 1999
12 standards on the Internet?

13 MR. BECKER: Objection. I will instruct
14 the witness not to answer as to any attorney-client
15 privileged communications. And moreover, object to
16 any legal conclusions.

17 THE WITNESS: We did not.

18 BY MR. HUDIS:

19 Q. Mr. Malamud, you scanned and posted the
20 1999 standards to the -- to the Internet, did you
21 consult with educational or psychological
22 professionals?

23 MR. BECKER: Objection as vague and
24 ambiguous; argumentative; potentially objection
25 towards competence.

1 thing, then I would certainly consider strongly
2 posting that document.

3 BY MR. HUDIS:

4 Q. What is -- what distinction do you make
5 between substantive and offhand?

6 A. I look for an explicit and deliberate
7 incorporation by reference.

8 Q. If I asked you this before, Mr. Malamud,
9 and certainly your counsel will tell me, I
10 apologize.

11 Even though the 1999 standards have been
12 removed from public view on Public.Resource's
13 website, is the digital file containing the text of
14 the 1999 standards still stored somewhere on
15 Public.Resource's computer systems?

16 MR. BRIDGES: Objection. Vague and
17 ambiguous.

18 THE WITNESS: Yes.

19 BY MR. HUDIS:

20 Q. Even though the 1999 standards were removed
21 from public view on Internet Archive's website, to
22 the best of your knowledge is the digital file
23 containing the text of the 1999 standards still
24 stored somewhere on Internet Archive's computer
25 systems?

1 A. I do not --

2 MR. BRIDGES: Same objection. Vague and
3 ambiguous.

4 THE WITNESS: I don't --

5 MR. BRIDGES: And lacks foun -- I'm sorry.

6 THE WITNESS: I'm sorry.

7 MR. BRIDGES: And maybe competence and may
8 call for speculation.

9 THE WITNESS: I do not have access to that
10 document. And so I do not know.

11 (PLAINTIFFS' EXHIBIT 39 WAS MARKED.)

12 BY MR. HUDIS:

13 Q. Mr. Malamud, I show you what's been marked
14 as Exhibit 39 bearing production number
15 AERA_APA_NCME 5129.

16 Do you recognize this document?

17 A. I do.

18 Q. What is this document of Exhibit 39?

19 A. It is a take-down notice from John S.
20 Neikirk.

21 Q. I believe he pronounces it Neikirk.

22 A. I've never met the gentleman.

23 Q. Do you have any reason to doubt the
24 authenticity of Exhibit 39?

25 MR. BRIDGES: Objection. Lacks foundation.

1 THE WITNESS: I do not.

2 BY MR. HUDIS:

3 Q. Do you recall receiving this e-mail from
4 Mr. Neikirk?

5 A. I do.

6 Q. When you received this e-mail from
7 Mr. Neikirk, do you know with which organization he
8 was affiliated?

9 MR. BRIDGES: Objection. You're asking
10 him -- sorry. Objection. Competence; may call for
11 speculation; lacks personal knowledge.

12 THE WITNESS: His signature line said
13 American Educational Research Association.

14 BY MR. HUDIS:

15 Q. And do you remember receiving this e-mail
16 of Exhibit 39 --

17 A. I do.

18 Q. -- from Mr. Neikirk?

19 A. I received this e-mail, yes.

20 Q. What did you do in response to
21 Mr. Neikirk's e-mail?

22 MR. BRIDGES: Objection. Argumentative;
23 lacks foundation.

24 THE WITNESS: I sent him a letter a couple
25 days later.

1 BY MR. HUDIS:

2 Q. In either December 2013 or January 2014 did
3 you consult with counsel after receiving
4 Mr. Neikirk's e-mail?

5 MR. BRIDGES: Objection. That's --
6 contains the -- an implication that the
7 consultation would be regarding the e-mail.

8 Further, the question calls for
9 attorney-client privileged information. Objection.
10 I instruct the witness not to answer.

11 BY MR. HUDIS:

12 Q. In either December 2013 or January 2014 did
13 you remove the 1999 standards from public view
14 where you had posted them on the Internet?

15 MR. BRIDGES: Objection. Vague and
16 ambiguous; lacks foundation.

17 THE WITNESS: I did not.

18 BY MR. HUDIS:

19 Q. Did you reply to Mr. Neikirk's e-mail?

20 MR. BRIDGES: Objection. I think that's
21 asked and answered.

22 THE WITNESS: Yes, I did.

23 MR. BRIDGES: Vague and ambiguous and
24 argumentative.

25 BY MR. HUDIS:

1 Q. Do you remember -- do you remember when you
2 responded to Mr. Neikirk's e-mail of Exhibit 39?

3 A. I believe it was on December 19th.

4 (PLAINTIFFS' EXHIBIT 40 WAS MARKED.)

5 BY MR. HUDIS:

6 Q. Mr. Malamud, I show you what has been
7 marked as Exhibit 40 bearing production numbers
8 AERA_APA_NCME 5127 through 5128.

9 Do you recognize Exhibit 40?

10 A. I do.

11 Q. Is Exhibit 40 your response to
12 Mr. Neikirk's e-mail of Exhibit 39?

13 A. It is.

14 Q. Is this your digital signature at the
15 bottom of the second page of the letter of Exhibit
16 39 on page 5128?

17 MR. BRIDGES: Objection. Misformed
18 question; lacks foundation.

19 THE WITNESS: It is.

20 BY MR. HUDIS:

21 Q. Did anyone --

22 MR. BRIDGES: Sorry, I'll ask the witness
23 to listen carefully to the question. That was a
24 question about Exhibit 39.

25 MR. HUDIS: Thank you, Counsel. I

1 appreciate it.

2 BY MR. HUDIS:

3 Q. Is this your digital signature at the
4 bottom of the second page of the letter of Exhibit
5 40, page 5128?

6 A. Yes, it is.

7 Q. Did anyone help you write this letter of
8 Exhibit 40?

9 MR. BRIDGES: Objection. To the extent
10 this calls for an implicit revelation of
11 attorney-client communications, I would object on
12 the grounds that it's privileged, and I would
13 instruct the witness not to answer. But only to
14 that extent.

15 THE WITNESS: I'm not going to be able to
16 answer that question.

17 BY MR. HUDIS:

18 Q. In the first paragraph of Exhibit 40 on the
19 first page, there is a word missing. I believe it
20 should say, "I am in." Do you see that?

21 A. I do.

22 Q. All right. So I'm going to read the
23 sentence with the word "in" in it.

24 "Dear Mr. Neikirk, I am in receipt of your
25 communication of December 16 regarding the

1 publication of the AERA publication standard for
2 Educational and Psychological Testing," in parens
3 1999, at
4 [HTTPS://Law.Resource.Org/pub/US/US/IBR/001/AERA.
5 standards.1999.PDF."](https://law.resource.org/pub/US/US/IBR/001/AERA_standards.1999.pdf)

6 "We are responsible for uploading this
7 document. In addition, you will find this document
8 at [HTTPS://archive.org/details/thegov.law.AERA.
9 standards.1999."](https://archive.org/details/thegov.law.AERA_standards.1999)

10 Do you see that?

11 MR. BRIDGES: Objection. Misquotes the
12 letter.

13 THE WITNESS: I do.

14 BY MR. HUDIS:

15 Q. Specifically in this first paragraph what
16 did you mean when you used the term "publication"
17 the first time it appears in the sentence?

18 MR. BRIDGES: Objection to the extent it
19 may imply a legal conclusion or legal expertise or
20 opinion; vague and ambiguous.

21 THE WITNESS: There's a couple typos in
22 this sentence. I meant posting.

23 BY MR. HUDIS:

24 Q. All right. So when you used the term
25 publication, you meant posting?

1 A. In this sentence, yes.

2 Q. What did you mean by "We are responsible
3 for uploading this document"?

4 A. It meant that I was the person that
5 uploaded that document.

6 Q. To where? The two URLs in that paragraph?

7 A. Yes, that's what the --

8 MR. BRIDGES: Object.

9 THE WITNESS: Sorry.

10 MR. BRIDGES: Objection. Lacks foundation;
11 vague and ambiguous.

12 THE WITNESS: Yes.

13 BY MR. HUDIS:

14 Q. If you could on Exhibit 40 please go on
15 page 5127 to the third paragraph.

16 A. Okay.

17 Q. And I will read the first sentence. "While
18 the standards drafted by the American Educational
19 Research Association were entitled to copyright
20 protection when issued, once they were incorporated
21 into regulations, these standards became the law,
22 and thus, have entered the public domain."

23 Do you see that?

24 A. I do.

25 Q. What did you mean when you said, "the

1 standards drafted by the American Educational
2 Research Association were entitled to copyright
3 protection when issued"?

4 MR. BRIDGES: Objection to the extent it
5 calls for a legal opinion; legal expertise; legal
6 conclusion; vague and ambiguous; lacks foundation.

7 THE WITNESS: So I'm not a lawyer. I know
8 one thing. That the law in the United States has
9 no copyright. And thus a standard incorporated by
10 reference into the Code of Federal Regulations has
11 no copyright.

12 BY MR. HUDIS:

13 Q. Mr. Malamud, could you turn to the next
14 page of Exhibit 40. Page 5128. And I am directing
15 your attention to the last paragraph of the letter.

16 As you can see by looking at the document
17 in question, a cover sheet has been prepended
18 clearly spelling out the section of the Code of
19 Federal Regulations that has incorporated by
20 reference this document into law.

21 Do you see that?

22 A. I do.

23 Q. And referring you back to Exhibit 34, is
24 this the cover sheet to which you were referring in
25 your letter of Exhibit 40?

1 A. 34?

2 Q. Yes.

3 A. Yes, it is.

4 Q. Mr. Malamud, at the end of your letter of
5 Exhibit 40, did you decline to remove the 1999
6 standards from the websites where you posted the
7 document on the Internet?

8 MR. BRIDGES: Objection. Are you asking
9 him if that's what the letter says?

10 MR. HUDIS: Yes.

11 MR. BRIDGES: Or are you asking him
12 something -- okay.

13 MR. HUDIS: No. Yes. Yes, I am asking him
14 if that's what the letter says.

15 MR. BRIDGES: The letter -- objection. The
16 letter speaks for itself. The document speaks for
17 itself.

18 THE WITNESS: The letter says, "We
19 respectfully decline to remove this document."

20 BY MR. HUDIS:

21 Q. At the end of your letter of Exhibit 40,
22 did you also decline to seek permission from anyone
23 to post the 1999 standards on the Internet?

24 MR. BRIDGES: Objection. Argumentative;
25 lacks foundation; vague and ambiguous.

1 THE WITNESS: The letter states, "We
2 respectfully decline to request permission."

3 BY MR. HUDIS:

4 Q. Mr. Malamud, had Mr. Neikirk sent you his
5 e-mail of Exhibit 39 a year earlier in 2012, would
6 Public.Resource have removed the 1999 standards
7 from where you posted the document on the Internet?

8 MR. BRIDGES: Objection. A hypothetical;
9 calls for speculation; vague and ambiguous.

10 THE WITNESS: So you're asking if the date
11 of his letter was December 19th, 2012, we would
12 have changed our answer?

13 BY MR. HUDIS:

14 Q. Correct.

15 MR. BRIDGES: Same objections.

16 THE WITNESS: No.

17 (PLAINTIFFS' EXHIBIT 41 WAS MARKED.)

18 BY MR. HUDIS:

19 Q. Mr. Malamud, I show you a document marked
20 Exhibit 41 bearing production number PROAERA 810.

21 Do you recognize the document?

22 A. I do.

23 Q. What is this document?

24 A. It is -- it's an incomplete electronic
25 mail. So it is a electronic mail from me to

1 Mr. Butler at the Internet Archive.

2 Q. All right. So Mr. -- to the best of your
3 knowledge Mr. Butler, Christopher Butler, is an
4 employee of Internet Archive?

5 A. I believe --

6 MR. BRIDGES: Objection. Calls for --
7 sorry. Objection. Lacks competence.

8 THE WITNESS: Yes.

9 BY MR. HUDIS:

10 Q. And you cc'd Brewster -- how do you
11 pronounce that?

12 A. Kahle.

13 Q. Kahle. And you cc'd Brewster Kahle in your
14 e-mail to Mr. Butler of Exhibit 41?

15 A. I did.

16 Q. And who is Brewster Kahle?

17 A. He is the founder and librarian of the
18 Internet Archive.

19 Q. What, if anything, was attached to this
20 e-mail of Exhibit 41?

21 MR. BRIDGES: I instruct the witness not to
22 speculate. I object to the extent it calls for
23 speculation.

24 THE WITNESS: The attachments line in the
25 header says AERA.org, and a date. So this appears

1 to be the correspondence with Mr. Neikirk.

2 BY MR. HUDIS:

3 Q. And is that the correspondence of exhibits
4 39 and 40?

5 A. Based on the file names, I would say yes.

6 Q. Why did you send this e-mail of Exhibit 41
7 to Mr. Butler at the Internet Archive?

8 A. Because I keep Mr. Butler informed on any
9 take-down activity, and he keeps me informed on any
10 take-down activity.

11 Q. What do you mean by take-down activity?

12 A. A letter invoking the DMCA or otherwise
13 complaining about copyright violations.

14 Q. At this time in December 2013 did you make
15 the 1999 standards go dark on Internet Archive's
16 website?

17 MR. BRIDGES: Objection. Lacks foundation;
18 vague and ambiguous.

19 THE WITNESS: No, I did not.

20 BY MR. HUDIS:

21 Q. Why not?

22 MR. BRIDGES: Objection. Argumentative;
23 lacks foundation; vague and ambiguous.

24 THE WITNESS: Because I did not believe
25 there was any copyright violation involved.

1 BY MR. HUDIS:

2 Q. So after you refused to remove the 1999
3 standards from public view on the Internet in
4 December 2013, why did you then remove the 1999
5 standards from public view on Public.Resource's
6 website and the Internet Archive's website in June
7 2014?

8 MR. BRIDGES: Objection. To the extent the
9 question might call for disclosure of
10 attorney-client privileged communications, I would
11 object on the grounds of privilege and instruct the
12 witness not to answer.

13 If he can answer beyond that objection and
14 instruction, he may.

15 THE WITNESS: That would involve
16 discussions with counsel. I'm not going to answer
17 that question.

18 (PLAINTIFFS' EXHIBIT 42 WAS MARKED.)

19 BY MR. HUDIS:

20 Q. Mr. Malamud, I show you what's been marked
21 as Exhibit 42 bearing production numbers PROAERA
22 820 and PROAERA 821.

23 Do you recognize the document?

24 A. I do.

25 Q. Do you have any reason to doubt the

1 authenticity of Exhibit 42?

2 MR. BRIDGES: Objection. Vague and
3 ambiguous; lacks foundation.

4 THE WITNESS: I do not.

5 BY MR. HUDIS:

6 Q. Do you remember receiving this e-mail of
7 Exhibit 42 from me on June 10th, 2014?

8 A. I do.

9 Q. What did you do after receiving this e-mail
10 of Exhibit 42?

11 MR. BRIDGES: Objection. To the extent
12 this question calls for an answer that would
13 disclose attorney-client communications, I would
14 object on the grounds of privilege and instruct the
15 witness not to answer.

16 In addition, it's vague and ambiguous and
17 lacks foundation.

18 BY MR. HUDIS:

19 Q. Can you answer my question, Mr. Malamud,
20 without revealing the substance of attorney-client
21 communications?

22 A. No.

23 Q. Mr. Malamud, could you return to Exhibit
24 38. Why did you send the e-mail of Exhibit 38 to
25 Alexis Rossi the day after receiving my e-mail of

1 Exhibit 42?

2 MR. BRIDGES: Object. Asked and answered,
3 and argumentative and lacks foundation.

4 THE WITNESS: Because that was the day that
5 I made that item go dark.

6 (PLAINTIFFS' EXHIBIT 43 WAS MARKED.)

7 BY MR. HUDIS:

8 Q. Mr. Malamud, I show you what's been marked
9 as Exhibit 43.

10 Do you recognize this document?

11 A. I do.

12 Q. What is this document of Exhibit 43?

13 A. This is a memorandum concerning the posting
14 of the standards at issue.

15 Q. Is that your signature at the bottom left
16 of Exhibit 43?

17 A. It is.

18 Q. Did anyone help you write this memo Exhibit
19 43?

20 MR. BRIDGES: Objection. To the extent the
21 question calls for disclosure of attorney-client
22 communications, I would object on the grounds of
23 privilege and would instruct the witness not to
24 answer.

25 THE WITNESS: I'll be unable to answer that

1 question.

2 BY MR. HUDIS:

3 Q. Who was this memo of Exhibit 43 intended
4 for?

5 MR. BRIDGES: Objection. Lacks foundation.

6 THE WITNESS: I believe it was for you.

7 BY MR. HUDIS:

8 Q. "You," meaning me, plaintiff's counsel?

9 A. Plaintiffs.

10 Q. Thank you.

11 Mr. Malamud, could you read the first
12 paragraph of the memo to yourself. Tell me when
13 you're done.

14 A. Okay.

15 Q. I am not going to read the whole paragraph.
16 "This memorandum is in reference to the lawsuit
17 named above," and I'm skipping, "and specifically
18 in response to the stated intention to file a
19 preliminary injunction motion."

20 What did you mean?

21 A. Well, I believe you had said you were going
22 to file a preliminary injunction motion.

23 Q. And I will read in full the second sentence
24 of the second paragraph of Exhibit 43.

25 "Public.Resource also believes that this

1 case deserves the Court's fullest attention without
2 a rush to reach an interim ruling in the absence of
3 a full record."

4 What did you mean by that?

5 MR. BRIDGES: Objection. Lacks foundation;
6 vague and ambiguous.

7 THE WITNESS: As I state in the next
8 paragraph, "In order to focus this case on
9 developing an appropriate record for a decision on
10 the merits, Public.Resource.Org has voluntarily
11 removed the document in question from the websites
12 under its control."

13 And as you had stated in a previous
14 sentence, this was so it was done without a rush to
15 reach an interim ruling in the absence of a full
16 record.

17 BY MR. HUDIS:

18 Q. I'd like to now direct your attention,
19 Mr. Malamud, to the fourth paragraph of Exhibit 43.
20 And it says, "Until the conclusion at trial on the
21 merits in this case, Public.Resource.Org will keep
22 the document in question off of the websites under
23 its control and will not disseminate the document
24 in whole or in part, including any revisions, and
25 will maintain the status on the Internet Archive to

1 prevent any public access to the document from the
2 archive's websites." Do you see that?

3 MR. BRIDGES: Objection. The document
4 speaks for itself.

5 THE WITNESS: I do.

6 BY MR. HUDIS:

7 Q. What did you mean by that sentence?

8 MR. BRIDGES: Objection. The document
9 speaks for itself; lacks foundation; vague and
10 ambiguous; argumentative.

11 THE WITNESS: I think the sentence is very
12 clear; right?

13 BY MR. HUDIS:

14 Q. What did you mean?

15 A. I meant "Until the conclusion of trial on
16 the merits of this case, Public.Resource.Org will
17 keep the document in question off of the websites
18 under its control and will not disseminate the
19 document in whole or in part, including any
20 revisions, and will maintain the status on the
21 Internet Archive to prevent any public access to
22 the document from the archive's websites."

23 Q. And this memo was written by you on June
24 12th, 2014?

25 MR. BRIDGES: Objection. Lacks foundation;

1 vague and ambiguous.

2 THE WITNESS: Yes.

3 BY MR. HUDIS:

4 Q. Since the time of this memo of Exhibit 43,
5 have the 1999 standards been reposted to a website
6 under Public.Resource's control?

7 MR. BRIDGES: Objection. Vague and
8 ambiguous; argumentative.

9 THE WITNESS: Yes.

10 BY MR. HUDIS:

11 Q. Why?

12 A. There was a technical malfunction in one of
13 our servers and by mistake a copy of the full
14 standard was posted in place of the stub.

15 Q. And when was that?

16 A. That was in January 2015.

17 Q. Mr. Malamud, during the two-year period
18 that the 1999 standards were posted to
19 Public.Resource's website, was a record kept of how
20 many Internet users viewed or accessed the
21 standards from that website location?

22 MR. BRIDGES: Objection. Utterly lacks
23 foundation; argumentative; vague and ambiguous,
24 and -- yeah. And competence.

25 THE WITNESS: Our server log's document

1 retention policy was a two-week window until
2 litigation commenced in the ASTM case when we began
3 keeping the logs permanently. And so we -- we did
4 not keep a record prior to that.

5 BY MR. HUDIS:

6 Q. Do you know the earliest date on which you
7 kept such logs?

8 MR. BRIDGES: Objection. Again, lacks
9 foundation; argumentative; vague and ambiguous and
10 competence.

11 THE WITNESS: So again, the document
12 retention policy was a two-week window on the logs,
13 and in September -- August or September of 2013 we
14 changed that policy because litigation had
15 commenced. And so at that point we began keeping
16 the logs permanently.

17 BY MR. HUDIS:

18 Q. And do you still have those logs today?

19 MR. BRIDGES: Same objections. I think I
20 missed a compound objection to the underlying
21 question.

22 THE WITNESS: Yes.

23 BY MR. HUDIS:

24 Q. In what form are the logs kept?

25 MR. BRIDGES: Same objections.

1 1999 standards to the Internet, did you ever
2 receive written correspondence complaining that
3 someone could not obtain a copy of the 1999
4 standards on his or her own?

5 MR. BRIDGES: Same objections;
6 argumentative.

7 THE WITNESS: I did not.

8 BY MR. HUDIS:

9 Q. During the two-year period that the 1999
10 standards were posted to Public.Resource's website,
11 was a record kept of how many Internet users
12 downloaded the standards from that website location
13 to their computer hard drives?

14 MR. BRIDGES: Objection. Lacks foundation;
15 argumentative; assumes facts not in evidence; vague
16 and ambiguous.

17 THE WITNESS: We would have no way of
18 determining that.

19 BY MR. HUDIS:

20 Q. During the two-year period that the 1999
21 standards were posted to Public.Resource's website,
22 did Public.Resource deploy any protocols or use any
23 settings on its web server to prevent Internet
24 users from downloading the 1999 standards to their
25 computer hard drives?

1 MR. BRIDGES: Objection. Argumentative;
2 lacks foundation; possibly competence; vague and
3 ambiguous.

4 THE WITNESS: The only thing we know about
5 is access to the data and the fact that the data
6 left our computer in response to a request. So I
7 don't know about downloads. It's technically
8 impossible to determine that.

9 BY MR. HUDIS:

10 Q. I didn't want to -- my last question was
11 not about logging downloads. What I wanted to know
12 is once an HTTP request or an FTP request or an
13 rsync request was made of Public.Resource's server
14 where the 1999 standards were, did Public.Resource
15 deploy any protocols or use any settings on its web
16 server to prevent Internet users from downloading
17 the 1999 standards to their computer hard drives?

18 MR. BRIDGES: Objection. Argumentative;
19 lacks foundation; assumes facts not in evidence.

20 THE WITNESS: I have no idea how one would
21 do that.

22 BY MR. HUDIS:

23 Q. During the two-year period that the 1999
24 standards were posted to Public.Resource's website,
25 did Public.Resource deploy any protocols or use any

1 settings on its web server to prevent Internet
2 users from printing to paper the 1999 standards
3 accessed from that website?

4 MR. BRIDGES: All the same objections,
5 plus, Mr. Hudis, I've been -- you've been prefacing
6 many of your questions with the phrase, "During the
7 two-year period that the 1999 standards were posted
8 to Public.Resource's website." It's not clear to
9 me that they were posted to the website for two
10 years.

11 So every time you ask that question, I'm
12 going to object on the grounds that it lacks
13 foundation; argumentative and misstates -- it
14 misstates evidence.

15 So in addition to that, the other
16 objections apply to this question. Mainly lacks
17 foundation; argumentative; vague and ambiguous;
18 possibly competence.

19 THE WITNESS: No, we did not.

20 MR. HUDIS: Counsel, just for the record,
21 so we can avoid some disagreements, if possible,
22 interrogatory answer number 2 says the 1999
23 standard was first posted to the Law.Resource.Org
24 website on July 11, 2012. And then it says the
25 1999 standard was last posted to a Public.Resource

1 website on June 10, 2014.

2 BY MR. HUDIS:

3 Q. Mr. Malamud, during the two-year period
4 that the 1999 standards were posted to
5 Public.Resource's website, or any time after that
6 until today, did Public.Resource receive any
7 communications from people who claimed to have
8 accessed a copy of the 1999 standards from
9 Public.Resource's website?

10 MR. BRIDGES: Mr. Hudis, you've just given
11 me dates that are not two years. And then you
12 immediately ask a question that says, "during the
13 two-year period."

14 I'm not sure why you insist on using
15 two-year period, but every time you ask a question
16 that says "during the two-year period," I'm going
17 to object as misleading, misstating the facts, and
18 deceptive.

19 MR. HUDIS: Counsel.

20 MR. BRIDGES: Yes.

21 MR. HUDIS: Would you accept an
22 introductory phrase "approximate two-year period"?

23 MR. BRIDGES: I will not. If you want to
24 say, "during the period," fine.

25 MR. HUDIS: I'll accept that.