

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN EDUCATIONAL RESEARCH
ASSOCIATION, INC., AMERICAN PSYCHOLOGICAL
ASSOCIATION, INC., and NATIONAL COUNCIL ON
MEASUREMENT IN EDUCATION, INC.,

Plaintiff-Counterdefendants,

v.

PUBLIC.RESOURCE.ORG., INC.,

Defendant-Counterclaimant.

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

PUBLIC RESOURCE'S SECOND MOTION FOR SUMMARY JUDGMENT

Defendant-Counterclaimant Public.Resource.Org, Inc. ("Public Resource") respectfully moves for summary judgment against Plaintiffs American Educational Research Association, Inc., American Psychological Association, Inc., and National Council on Measurement In Education, Inc. because Public Resource's reproduction, display, and distribution of the Plaintiffs' 1999 Standards does not constitute copyright infringement and because the Plaintiffs have not provided any facts or argument in support of their motion for a permanent injunction.

As Public Resource describes in the accompanying memorandum of law in support of its motion for summary judgment and opposition to Plaintiffs' motion for summary judgment and permanent injunction, there are no genuine issues of material fact that would preclude summary judgment in favor of Public Resource. Public Resource's use of the incorporated standards is a non-infringing fair use. Moreover, Plaintiffs have not articulated any facts or made any argument to carry their burden of establishing all requirements for a permanent injunction under *eBay Inc. v.*

MercExchange, L.L.C., 547 U.S. 388 (2006), and thus conclusively fail to show any right to the relief they seek in the case.

Public Resource further asserts that the Plaintiffs cannot assert copyright in the laws by incorporation at issue because the complete works they claim are binding laws of the United States and at least one state; because they are not copyrightable subject matter, excluded by 17 U.S.C. § 102(b); because the merger doctrine precludes enforcement of copyright in the 1999 Standards, which have become government edicts and political facts as laws by incorporation; and because enforcement of the copyrights through the prior restraint that the Plaintiffs seek in this case would violate the First, Fifth, and Fourteenth Amendments of the United States Constitution. Because the United States Court of Appeals for the District of Columbia Circuit reserved a ruling on these issues in the recent appeal and remanded the case to this Court for re-evaluation of the fair use doctrine, and because Public Resource wishes to preserve these issues for a further appeal if necessary, Public Resource formally reasserts its earlier arguments on these points and incorporates here by reference the filings in support of its first motion for summary judgment at Docket Nos. 66-71, 76-83, 84, 85-88, 96-99, 102, 103, 105, 112, and 113.

Public Resource requests an oral hearing on its motion and its opposition to Plaintiffs' second motion for summary judgment.

This motion relies on the attached memorandum of points and authorities; the declarations of Carl Malamud and Matthew Becker; Public Resource's request for judicial notice; the index of consolidated exhibits and the exhibits accompanying this motion; Public Resource's proposed order, the pleadings and papers on file, specifically including Public Resource's filings on its earlier summary judgment motion; and any further material and argument that the parties may present to the Court at the hearing.

Dated: November 8, 2019

Respectfully submitted,

/s/ Andrew P. Bridges

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