

**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.

C.A. No. 1:14-cv-00857 (TSC)

**DEFENDANT PUBLIC RESOURCE'S CONSOLIDATED INDEX OF EXHIBITS IN  
OPPOSITION TO [134] PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND  
PERMANENT INJUNCTION, AND IN SUPPORT OF PUBLIC RESOURCE'S SECOND  
MOTION FOR SUMMARY JUDGMENT**

Defendant-Counterclaimant Public.Resource.Org, Inc. (“Defendant”) submits the following Consolidated Index of Exhibits in Opposition to [134] Plaintiffs’ Motion for Summary Judgment and Permanent Injunction and in Support of Defendant’s Cross Motion for Summary Judgment:

Exh. No.	Document Title
1	John Markoff, “Turning the Desktop PC Into a Talk Radio Medium,” New York Times, March 4, 1993
2	John Markoff, “Plan Opens More Data To Public,” New York Times, October 22, 1993
3	Correspondence from the Securities and Exchange Commission on August 31, 1995 , stating in part: “Looking forward to your support as we continue down the road you’ve paved.” Service available at <a href="https://www.sec.gov/edgar.shtml">https://www.sec.gov/edgar.shtml</a> .
4	John Schwartz, “Superhighway Routed Through Capitol Hill,” Washington Post, September 9, 1994
5	Correspondence from Senator Connie Mack on June 16, 1995, concerning the first congressional hearing on Internet.
6	Katie Hafner, “The Man With Ideas: The Robert Moses of Cyberspace Plans a 1996 World’s Fair,” Newsweek, July 24, 1995.
7	“Foreword by His Holiness the Dalai Lama,” A World’s Fair for the Information Age, MIT Press (1997).
8	John Schwartz, “Ideas Whose Time for Free Access Has Come,” Washington Post, June 29, 1998.
9	John Markoff, “U.S. to Release Patent Data On a World Wide Web Site,” New York Times, June 25, 1998.
10	Correspondence from the Public Printer of the United States on July 27, 2006.
11	Correspondence from Hon. Nancy Pelosi, the Speaker of the House of Representatives, on April 17, 2008, supporting “FedFlix” initiative.
12	James Fallows, “Another Win for Carl Malamud,” Atlantic Monthly, March 9, 2007.

Exh. No.	Document Title
13	Correspondence from Speaker Boehner and Chairman Issa on January 5, 2011.
14	Remarks of Congressman Issa titled “Commemorating the Tenth Anniversary of Public.Resource.Org,” Congressional Record, Page E285, March 7, 2017.
15	Suzanne Perry, “IRS Plans to Begin Releasing Electronic Nonprofit Tax Forms Next Year,” Chronicle of Philanthropy, June 30, 2015.
16	Robert Ambrogi, “1.8M Pages of Federal Case Law To Go Public,” Law Sites, November 14, 2007.
17	Correspondence from the Hon. Lee H. Rosenthal, Chair of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, on July 16, 2008
18	Correspondence from Chief Judge Royce C. Lamberth, U.S. District Court for the District of Columbia, on January 28, 2009.
19	Correspondence from U.S. Senator Joseph I. Lieberman to Hon. Lee H. Rosenthal, on February 27, 2009.
20	Prepared statement by Carl Malamud before the U.S. Court of Appeals for the Ninth Circuit on June 23, 2010.
21	Submission by Carl Malamud to the Presidential Transition Effort (“Change.Gov”), titled “Federal Register 2.0,” on January 5, 2009.
22	Correspondence from the Hon. David Ferriero, Archivist of the United States to me, on April 2, 2019.
23	Prepared statement by Carl Malamud before the Oregon State Legislature Legislative Counsel Committee on June 19, 2008.
24	The Editorial Board, “The Law©?,” New York Times, June 25, 2019.
25	“Notice of Incorporation,” dated March 15, 2012.
26	Carl Malamud Response to SMACNA, on January 11, 2013.
27	Response to SMACNA, on January 11, 2013.
28	ANSI website, titled “ANSI Launches Online Portal for Standards Incorporated by Reference,” dated October 28, 2013.

Exh. No.	Document Title
29	Prepared remarks by Carl Malamud before the ABA House of Delegates on August 9, 2016.
30	Lorelei Laird, “After debate, ABA House calls for publication of privately drafted standards used in legislation,” ABA Journal, August 9, 2016.
31	Hon. David Ferriero, “Federal Register 2.0,” The White House Blog, July 26, 2010.
32	History of the Federal Register, March 14, 2006.
33	Cornell Legal Information Institute, “Worth A Thousand Words: We’re Upping Our Game for Images,” April 4, 2019.
34	Email correspondence on March 1, 2016, with Amy Bunk, Director of Legal Affairs and Policy at the Office of the Federal Register.
35	John Adams’ “Dissertation on the Canon and Feudal Law.”
36	Deposition of Felice Levine dated August 16, 2019.
37	Exhibit 1305 from the deposition of Felice Levine August 16, 2019, Plaintiffs’ Responses to Public Resource’s Second Set of Interrogatories.
38	Exhibit 1306 from the deposition of Felice Levine dated August 16, 2019, 1999 Standards’ sales report bates stamped AERA_APA_NCME_RFP2_0000027.
39	SEALED Exhibit 1307 from the deposition of Felice Levine dated August 16, 2019, Plaintiffs’ updates sales reports bates stamped AERA_APA_NCME_RFP2_0000001-26.
40	Exhibit 1308 from the deposition of Felice Levine dated August 16, 2019, website printout for the 2014 Standards.
41	Exhibit 1309 from the deposition of Felice Levine dated August 16, 2019, website printout for the 1999 Standards.
42	Exhibit 1310 from the deposition of Felice Levine dated August 16, 2019, mail order form necessary to purchase a copy of the 1999 Standards.
43	Signed agreement between Plaintiffs and the New York State Education Department dated May 11, 2011, bates stamped ERA_APA_NCME_0032528-9.
44	Plaintiff APA’s memorandum titled “Litigation Report,” dated August 8, 2014.
45	Office of the Federal Register’s “IBR Handbook,” dated July 2018.
46	U.S. Government Accountability Office titled “Proprietary Schools: Stronger Department of Education Oversight Needed to Help Ensure Only Eligible Students Receive Federal Student Aid,” dated August 2009.

Exh. No.	Document Title
47	Federal Bureau of Investigations Press release, “FastTrain Owner and Admissions Representative Convicted of Federal Student Aid Scheme,” dated Nov. 24, 2015, available at <a href="https://www.fbi.gov/miami/press-releases/2015/fasttrain-owner-and-admissions-representative-convicted-of-federal-student-aid-scheme">https://www.fbi.gov/miami/press-releases/2015/fasttrain-owner-and-admissions-representative-convicted-of-federal-student-aid-scheme</a> .
48	Complaint in the action <i>U.S. vs. FastTrain II Corp.</i> , Case No.: 1:12-cv-21431, Dkt. 54, filed Dec. 2, 2014, available at <a href="http://www.justice.gov/sites/default/files/usao-sdfl/legacy/2014/12/03/141203-01.FasttrainIICorpCaseComplaint.pdf">http://www.justice.gov/sites/default/files/usao-sdfl/legacy/2014/12/03/141203-01.FasttrainIICorpCaseComplaint.pdf</a> .
49	SEALED Deposition transcript of Diane L. Schneider, dated April 23, 2015.
50	SEALED Deposition transcript of Marianne Ernesto, dated April 29, 2015.
51	Deposition transcript of Wayne Camara, dated May 1, 2015.
52	SEALED Deposition transcript of Felice Levine, dated May 4, 2015.
53	Deposition transcript of Laress Wise, dated May 11, 2015.
54	SEALED Deposition transcript of Kurt F. Geisinger, dated September 10, 2015.
55	SEALED Deposition transcript of S.E. Phillips, dated September 22, 2015.
56	Deposition transcript of Carl Malamud, dated May 12, 2015.
57	Deposition transcript of Christopher Butler, dated December 2, 2014.
58	SEALED Exhibit 1205 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0004818, “American Educational Research Association   Standards of Educational and Psychological Testing   Statement of Revenue and Expenses   (FY2000 – 12/31/2013)”.
59	SEALED Exhibit 1211 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0032527, “American Educational Research Association   Standards of Educational and Psychological Testing   Statement of Revenue and Expenses   (FY2000 – 12/31/2014)”.
60	Exhibit 1207 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0031848, “Standards for Educational and Psychological Testing   Sales Report, 1999 Edition.”
61	Exhibit 1208 in the deposition of Felice Levine, produced by Plaintiffs bearing control number AERA_APA_NCME_0005137, “Standards for Educational and Psychological Testing   Sales Report.”
62	Expert Report of James R. Fruchterman, dated June 13, 2015.

Exh. No.	Document Title
63	National Archives website, titled "Incorporation by Reference", available at <a href="http://www.archives.gov/federal-register/cfr/ibr-locations.html">http://www.archives.gov/federal-register/cfr/ibr-locations.html</a> (accessed and printed Jan. 22, 2016).
64	Declaration of Carl Malamud dated January 21, 2016, previously filed at Dkt. 69-5.
65	Declaration in Support of Probable Cause, <i>California v. Harris</i> , No. 17-CR-017349A (Cal. Super. Ct. June 5, 2017), available at <a href="https://www.scribd.com/document/350446988/Ghost-Ship-fire-criminal-charges">https://www.scribd.com/document/350446988/Ghost-Ship-fire-criminal-charges</a> .
66	Criminal Complaint, <i>California v. Harris</i> , No. 17-CR-017349A (Cal. Super. Ct. June 5, 2017), available at <a href="https://web.archive.org/web/20170729051241/https://cbssanfran.files.wordpress.com/2017/06/almena-and-harris-complaint.pdf">https://web.archive.org/web/20170729051241/https://cbssanfran.files.wordpress.com/2017/06/almena-and-harris-complaint.pdf</a> .)
67	Deposition transcript of James Fruchterman, dated September 8, 2015.
68	OCR Issues Draft Guide on Disparate Impact in Educational Testing TIP October 1999
69	SEALED APA memorandum produced by Plaintiffs bates labeled AERA APA-NCME 0031518-20.

Dated: November 8, 2019

Respectfully submitted,

/s/ Andrew P. Bridges

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