

EXHIBIT 61

1 UNITED STATES DISTRICT COURT
2 for the
3 DISTRICT OF COLUMBIA

4 AMERICAN EDUCATIONAL)
5 RESEARCH ASSOC., INC.,)
6 et al.)
7 Plaintiffs)
8) Civil Action No.:
9 v.) 1:14-cv-00857-TSC
10)
11 PUBLIC.RESOURCE.ORG, INC.,)
12 Defendant.)

13
14 San Francisco, California
15 Tuesday, December 2, 2014

16 Videotaped deposition of CHRISTOPHER BUTLER,
17 a witness herein, called for examination by counsel
18 for Plaintiffs in the above-entitled matter, the
19 witness having been by me first duly sworn, taken
20 at the offices of Harvey Siskind, LLP, Four
21 Embarcadero Center, 39th Floor, San Francisco,
22 California at 9:10 a.m., on Tuesday, December 2,
23 2014, and the proceedings being taken down by
24 Stenotype by CINDY TUGAW, RPR, CSR and transcribed
25 under her direction.

Page 54

1 meetings at Internet Archive was those other four
 2 or five times?
 3 A. No.
 4 Q. What else do you know about Mr. Malamud?
 5 MS. AHMAD: Objection, outside the scope
 6 of the deposition topics.
 7 MR. HUDIS:
 8 Q. You may answer.
 9 A. I know he's involved with Public Resource.
 10 Q. That was my next question.
 11 What, if anything, do you know about
 12 Mr. Malamud's relationship to Public Resource?
 13 A. As I understand it, he -- he's very
 14 central at Public Resource. I don't know his exact
 15 title and responsibilities at the organization.
 16 Q. Is that the extent of your knowledge of
 17 the relationship between Mr. Malamud and Public
 18 Resource?
 19 A. Yes.
 20 Q. Is Public Resource allowed to post content
 21 to Internet Archive's website?
 22 A. Yes.
 23 Q. Is Carl Malamud allowed to post content
 24 into Internet Archive's website?
 25 A. Yes.

Page 55

1 MS. LU: Objection, vague and ambiguous.
 2 MR. HUDIS:
 3 Q. When was Public Resource given access to
 4 publish content to Internet Archive's website?
 5 MS. LU: Vague and ambiguous.
 6 THE WITNESS: I don't know.
 7 MR. HUDIS:
 8 Q. When was Carl Malamud given access to post
 9 content to Internet Archive's website?
 10 MS. LU: Lack of personal knowledge, vague
 11 and ambiguous.
 12 MR. HUDIS:
 13 Q. You may answer.
 14 A. I don't know.
 15 Q. Is there a formal agreement between
 16 Internet Archive and Public Resource that
 17 memorializes, if there is one, posting rights to
 18 the Internet Archive website?
 19 MS. LU: Objection, lack of personal
 20 knowledge, assumes facts not in evidence.
 21 MR. HUDIS:
 22 Q. You may answer.
 23 A. If a -- if a user account was set up
 24 through the -- through the site and our terms of
 25 use were agreed to, then our terms of use would

Page 56

1 fall under that description. I'm not aware of any
 2 other agreements.
 3 Q. Do you know whether the terms of use were
 4 agreed to by Public Resource or Carl Malamud or
 5 both?
 6 MS. LU: Objection, lack of personal
 7 knowledge, assumes facts not in evidence.
 8 MR. HUDIS:
 9 Q. You may answer if you know.
 10 A. I don't know.
 11 Q. Other than the terms of use of Exhibit 5,
 12 you said there was no formal agreement between
 13 Public Resource or Carl Malamud and Internet
 14 Archive for posting rights.
 15 Was there any informal agreement?
 16 MS. LU: Objection, misstates prior
 17 testimony.
 18 MR. HUDIS:
 19 Q. You may answer.
 20 A. Can you define "posting rights"?
 21 Q. Permission to upload content to Internet
 22 Archive's website.
 23 A. I'm not aware of any.
 24 MR. HUDIS: Off the record.
 25 VIDEO OPERATOR: The time is 10:33 a.m.

Page 57

1 We are off the record.
 2 (Discussion off the record.)
 3 (Plaintiffs' Exhibit 6 marked for
 4 identification.)
 5 VIDEO OPERATOR: The time is 10:41 a.m.
 6 We are on the record.
 7 Mr. HUDIS: I've now marked as Exhibit 6 a
 8 web page with different views which I will discuss
 9 with the witness in a moment. It's a total of
 10 eight pages.
 11 Q. Mr. Butler, what we did -- it's on the
 12 date stamped up in the upper left-hand corner,
 13 March 14, 2014.
 14 The way that we understand the material
 15 which we call the 1999 standards was uploaded to
 16 Internet Archive's website. The material in this
 17 frame here, showing the witness, has the ability so
 18 that electronically you read it like a book.
 19 So we took a first shot of the web page
 20 with the first page of the '99 standards, and then
 21 the second page which is the front cover of the
 22 '99 standards, and then we took another shot,
 23 screenshot, of the inside cover and copyright page,
 24 and then finally the table of contents.
 25 Do you see that?

Page 58

1 A. Yes.
 2 Q. So these are, in fact, different shots of
 3 the same page with different turns, electronically,
 4 of the book.
 5 Do you understand that?
 6 A. I understand.
 7 Q. Okay. So --
 8 MS. AHMAD: Yes. So you should answer
 9 questions about this exhibit assuming that that
 10 description is accurate.
 11 THE WITNESS: I understand.
 12 MR. HUDIS:
 13 Q. Mr. Butler, do you recognize Exhibit 6 as
 14 a web page from Internet Archive's website that
 15 existed at one time?
 16 MS. LU: Objection, lack of personal
 17 knowledge.
 18 THE WITNESS: This has the layout of an
 19 Internet Archive details page. I recognize it as
 20 the layout and design of an Internet Archive
 21 details page.
 22 MR. HUDIS:
 23 Q. Do you know what material is posted on
 24 this web page of Exhibit 6?
 25 MS. LU: Objection, lack of personal

Page 59

1 knowledge.
 2 THE WITNESS: I see a title for the
 3 material.
 4 MR. HUDIS:
 5 Q. What title is that?
 6 A. The title is "AERA: Standard for
 7 Educational and Psychological Testing," and then
 8 there's a date in parentheses following that,
 9 "1999."
 10 Q. According to this exhibit, the bottom of
 11 the second page, who posted the 1999 standards to
 12 this web page?
 13 MS. LU: Objection, lack of personal
 14 knowledge.
 15 THE WITNESS: On the -- on the second
 16 page, I see a metadata tag entitled, "Credits" that
 17 reads "Uploaded by Public.Resource.Org."
 18 As I understand the function of our
 19 website, the submitter would have submitted that
 20 tag and the text displayed beside it, reading
 21 "Uploaded by Public.Resource.Org."
 22 MR. HUDIS: Counsel, can you stipulate
 23 that Exhibit 6 is a business record of Internet
 24 Archive that existed at one time, at least on
 25 March 14th, 2014?

Page 60

1 MS. AHMAD: No, I can't.
 2 MR. HUDIS:
 3 Q. On the second page of Exhibit 6, it says,
 4 "Identifier-access."
 5 Do you see that?
 6 A. Yes.
 7 Q. Based upon your knowledge of an Internet
 8 Archive details page, who created this identifier
 9 access string?
 10 MS. LU: Objection, vague and ambiguous,
 11 lack of personal knowledge.
 12 MR. HUDIS:
 13 Q. You may answer.
 14 A. I don't know. I don't know whether a
 15 submitter would have created that or whether the
 16 Internet Archive's automated processes created it.
 17 Q. To the best of your knowledge it's one or
 18 the other?
 19 MS. LU: Objection, lack of personal
 20 knowledge.
 21 THE WITNESS: To the best of my knowledge,
 22 it would either have been performed by Internet
 23 Archive's automated processes or an account holder
 24 with requisite permission to edit this item's
 25 metadata.

Page 61

1 MR. HUDIS:
 2 Q. To the best of your knowledge, if you
 3 could look on Page 1, beneath the -- beneath the
 4 frame containing the 1999 standards, who wrote the
 5 text under where it says, "Description"?
 6 MS. LU: Objection, lack of personal
 7 knowledge.
 8 THE WITNESS: The service requires a
 9 description to be provided by the submitter at the
 10 time of upload. That information may subsequently
 11 be edited by an account that has permissions to do
 12 so.
 13 MR. HUDIS:
 14 Q. And in this context, that account would
 15 have been by Public.Resource.Org?
 16 MS. LU: Objection, lack of personal
 17 knowledge and argumentative.
 18 THE WITNESS: Sorry, could you repeat the
 19 question, please?
 20 MR. HUDIS:
 21 Q. Yes, yes.
 22 Is it correct to say that the text on this
 23 web page of Exhibit 6, beneath the frame containing
 24 the 1999 standards, was provided by the submitter?
 25 MS. LU: Objection, lack of personal

Page 126

1 MR. HUDIS:
 2 Q. So your company defines download count.
 3 Does the download count distinguish between an
 4 Internet user's view of a page versus capturing and
 5 copying content to go to another computer?
 6 MS. LU: Objection, vague and ambiguous.
 7 THE WITNESS: The download count does not
 8 distinguish between, for example, a visit to a web
 9 page without, for instance, saving that file
 10 through the -- a browser's downloader or selecting
 11 files' save-as from the browser.
 12 MR. HUDIS:
 13 Q. Does Internet Archive's download count
 14 distinguish between visits from human beings over
 15 the Internet versus Internet crawling robots, or
 16 bots, or uploaders, or internal visits from
 17 Internet Archive processes or staff?
 18 MS. LU: Objection, vague and ambiguous.
 19 THE WITNESS: No. The download count does
 20 not distinguish between all of those different
 21 types of access.
 22 MR. HUDIS:
 23 Q. For the purposes of my next question, I
 24 need your definition of what an IP address is.
 25 A. Okay.

Page 127

1 Q. What is an IP address?
 2 MS. LU: Objection, to the extent it calls
 3 for expert testimony.
 4 THE WITNESS: What I know about an
 5 IP address is that it is a unique number associated
 6 with a computer that is connected to a network.
 7 MR. HUDIS:
 8 Q. Does Internet Archive's download count
 9 include or exclude multiple visits from the same
 10 IP address during a given day?
 11 MS. LU: Objection, vague and ambiguous.
 12 THE WITNESS: During a day, as defined by
 13 UTC time, Internet Archive's systems are designed
 14 to log multiple visits from the same IP -- count,
 15 excuse me, count multiple visits from the same
 16 IP address as only one download.
 17 MR. HUDIS:
 18 Q. Does Internet Archive maintain any records
 19 or other information that would enable it to be
 20 more specific about what is included or excluded
 21 from a download count?
 22 MS. LU: Objection, vague and ambiguous.
 23 THE WITNESS: Can you read the question
 24 again, please?
 25 MR. HUDIS: Yes.

Page 128

1 Q. Does Internet Archive maintain any records
 2 or other information that would enable it to be
 3 more specific about what is included or excluded
 4 from a download count?
 5 MS. LU: Same objection.
 6 THE WITNESS: I'm not aware of any further
 7 information that we would be able to supply.
 8 MR. HUDIS:
 9 Q. How does Internet Archive obtain the
 10 download count of a specific web page after the
 11 uploaded content is removed?
 12 MS. LU: Objection, lack of personal
 13 knowledge, assumes facts not in evidence. Counsel,
 14 if you want to ask him about how someone retrieved
 15 this Exhibit 11, then I would not object to that.
 16 MR. HUDIS:
 17 Q. All right. I'm going to ask you
 18 specifically about Exhibit 11. I'd like to know
 19 generally how the information was obtained.
 20 We've established that a make_dark command
 21 was run for the content of the 1999 standards in
 22 June of 2014, correct?
 23 MS. LU: Objection, misstates prior
 24 testimony, lack of personal knowledge.
 25 MR. HUDIS:

Page 129

1 Q. When was this make_dark command of
 2 Exhibit 9 run?
 3 A. The date listed on the task log for this
 4 task which has a command listed of make_dark.php is
 5 June 11th, 2014.
 6 Q. I've now marked as Exhibit 11 a one-page
 7 document that's in front of you.
 8 What is the date of this document?
 9 A. The date of Exhibit 11 is November 25th,
 10 2014.
 11 Q. What is this document?
 12 A. This document is a screen capture of the
 13 Mac Terminal application. The Terminal was used by
 14 myself to submit a query to archive.org's systems
 15 to obtain archive.org's records for the download
 16 count for the item with identifier gov.law.aera
 17 .standards.1999.
 18 Q. The make_dark command of Exhibit 9
 19 associated with that identifier was run in June of
 20 2014, correct?
 21 A. The task log lists that date -- the task
 22 log associated with the make_dark command lists
 23 that date.
 24 Q. And the same identifier you got at a
 25 download -- a set of download information on

Page 142

1 CERTIFICATE OF DEPONENT
2
3 I hereby certify that I have read and examined the
4 foregoing transcript, and the same is a true and
5 accurate record of the testimony given by me.
6 Any additions or corrections that I feel are
7 necessary, I will attach on a separate sheet of
8 paper to the original transcript.
9
10
11 _____
12 Signature of Deponent
13
14 I hereby certify that the individual representing
15 himself/herself to be the above-named individual,
16 appeared before me this _____ day of _____,
17 2014, and executed the above certificate in my
18 presence.
19
20 _____
21 NOTARY PUBLIC IN AND FOR
22
23 _____
24 County Name
25 MY COMMISSION EXPIRES:

Page 143

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN FRANCISCO)
3 I, CINDY TUGAW, a Certified Shorthand
4 Reporter of the State of California, duly
5 authorized to administer oaths pursuant to Section
6 8211 of the California Code of Civil Procedure, do
7 hereby certify that
8 CHRISTOPHER BUTLER,
9 the witness in the foregoing deposition, was by me
10 duly sworn to testify the truth, the whole truth
11 and nothing but the truth in the within-entitled
12 cause; that said testimony of said witness was
13 reported by me, a disinterested person, and was
14 thereafter transcribed under my direction into
15 typewriting and is a true and correct transcription
16 of said proceedings.
17 I further certify that I am not of counsel
18 or attorney for either or any of the parties in the
19 foregoing deposition and caption named, nor in any
20 way interested in the outcome of the cause named in
21 said caption.
22 Dated the 11th day of December, 2014.
23
24 CINDY TUGAW
25 CSR NO. 4805