

August 20, 2007

A Quest to Get More Court Rulings Online, and Free

By [JOHN MARKOFF](#)

SEBASTOPOL, Calif., Aug. 14 — The domination of two legal research services over the publication of federal and state court decisions is being challenged by an Internet gadfly who has embarked on an ambitious project to make more than 10 million pages of case law available free online.

The project is the latest effort of Carl Malamud, an activist who founded [public.resource.org](#) in March, with the broad intent of building “public works” accessible via the network, and with the specific plan to force the federal government to make information more publicly accessible.

Last week, Mr. Malamud began using advanced computer scanning technology to copy decisions, which have been available only in law libraries or via subscription from the [Thomson](#) West unit of the Canadian publishing conglomerate Thomson, and LexisNexis, a division of [Reed Elsevier](#), based in London.

The two companies control the bulk of the nearly \$5 billion legal publishing market. (A third, but niche, player is the Commerce Clearing House division of [Wolters Kluwer](#)).

He has placed the first batch of 1,000 pages of court decisions from the 1880s online at the [public.resource.org](#) site. He obtained the documents from a used Thomson microfiche, he said.

Mr. Malamud, who is a self-styled Robin Hood of the information age, has confounded executives and administrators at organizations as diverse as the [Smithsonian Institution](#), the House of Representatives and the Commerce

Department by asserting the public's right to government information and then proceeding to digitize it and place it in the public domain.

"I don't mind people making billions," Mr. Malamud said, "but I hate barriers to entry."

Mr. Malamud has a significant track record in battling publishers over public information. In 1994 he began a crusade that ultimately persuaded the federal government to make records from the Securities and Exchange Commission and the Patent and Trademark Office available online to the public at no cost.

He said the free availability of that digital information did not undercut the businesses that were making money from the information at the time.

"The market for commercial services based on those databases actually increases once the core underlying data has been made widely available," he wrote in a letter to the chief executive of Thomson North American Legal last week, informing the company of his actions.

Mr. Malamud is not the first person to attempt to unravel the control of West and LexisNexis. The issue of whether the companies have copyright protection over the published and online versions of the legal research reference materials led to legal challenges in the 1980s and '90s. During the '90s, a New York lawyer, Alan D. Sugarman, successfully challenged West, winning a ruling in a copyright protection lawsuit. However, Mr. Sugarman's company, Hyperlaw, ultimately failed.

"It cost me a lot of money, and when it was all said and done I was wiped out financially, so I went back to the practice of law," Mr. Sugarman said.

West's electronic and print influence over the legal profession became so valuable that Thomson paid \$3.4 billion for the company in 1996. The West books contain major court decisions, and they have been adopted as the standard in the nation's courts and law firms, and the West method of identifying cases has remained the standard for citations in decisions and legal briefs.

However, Mr. Malamud and a diverse group of backers argue that the control of publishing court rulings subverts the original intent of the framers of the Constitution by making the nation's laws difficult to obtain by those outside the legal profession.

In a letter to West Publishing last Wednesday, Mr. Malamud said his intent was to make federal and state court decisions available to a population that cannot afford the subscription costs.

Legal codes and cases are the “operating system” of the nation, he said. “The system only works if we can all openly read the primary sources,” he said in the letter. “It is crucial that the public domain data be available for anybody to build upon.”

John Shaughnessy, a spokesman for Thomson, said: “We have received the letter from Public Resource and Mr. Malamud raises a number of interesting but complex points. We are looking at them now and then will be in touch directly with Mr. Malamud.”

The Public Resource effort is one of several attempts to make the nation's laws more accessible. One project, AltLaw (altlaw.org) is a joint effort by Columbia Law School's Program on Law and Technology and the Silicon Flatirons program at the University of Colorado Law School to permit free full-text searches of the last decade of federal appellate and Supreme Court opinions.

“I'm a legal academic and I woke up one day and thought, ‘Why can't I get cases the same way I get stuff on Google?’ ” said Tim Wu, a Columbia law professor who is one of the leaders of the project. “People should be able to get cases easily. This is a big exception to the way information has opened up over the past decade.”

The challenge faced by the various public interest and commercial efforts is the lack of standardization in the court system that makes it a technical nightmare for those who want to place information online for the public.

“There is supposed to be no ignorance of the law, and yet it’s not even accessible to most people,” said Tim [Stanley](#), the chief executive of Justia, a Palo Alto, Calif., provider of online information.

Justia is spending about \$10,000 a month to send people to copy documents at the Supreme Court so the company can place it online for free access, he said.

The unifying vision of all of the challengers to the current system is a [Wikipedia](#)-like effort to make the nation’s laws freely searchable by Internet search engines. They believe this will lead to a public system of annotation of the laws by legal scholars as well as bloggers, giving the American public much richer access to the nation’s laws.