

Remedies Spring 2014 Coyne  
Draft Complaint for Injunctive Relief

NHCheap, Inc., a Massachusetts corporation located on 1 North Main Street, Andover, Massachusetts, is a retail and consumer services company that pushes ads, marketing information and discount offers to its subscribers regarding deals and discounts in New Hampshire. It runs the website called [NHCheap.com](http://NHCheap.com). All of its employees sign non-compete/nondisclosure agreements that preclude them from using any of the proprietary information belonging to the company and from working for any company in a similar business in New England for one year after they leave NHCheap. Its proprietary and copyrighted technology have allowed NHCheap, Inc. to quickly grow to having reviews of over 3 million dollars per year.

Recently, Joe Shmoe, one of the early employees of NHCheap, Inc., left and started a competing company at 60 State Street in Boston, Massachusetts, next to his condominium at Harbor Towers in Boston. Shmoe has been encouraging a number of employees to leave NHCheap and join him at Cheap247.com, a Delaware corporation with a principal place of business in Boston. Cheap247.com, promises similar services for companies and consumers throughout the United States. Two of NHCheap's employees, Beverly Anthony and Charlie Douglas, recently left and joined Cheap247.com. Douglas resides in Westwood, MA.

Beverly Anthony is a real star of the web design business who rarely leaves her home in Greenwich, Connecticut. Shmoe encouraged Anthony to break her contract and agreement with NHCheap by giving her a salary of \$550,000 per year, allowing her to continue to work from Greenwich, Connecticut and submit her completed work through the Internet, as she had done with NHCheap.com. Anthony denies having any contract with NHCheap.

NHCheap's revenues have recently started to decline significantly. NHCheap consults with you and asks you to file suit to stop this damage to its business.

Beverly Anthony resides at 2 Bay Road, Greenwich, Connecticut.

Charlie Douglas resides at 25 Elm Street, Westwood, Middlesex County, MA.

## HOW TO DRAFT A COMPLAINT IN FEDERAL COURT

All suits in federal court must begin with the filing of a complaint. Although you may file a complaint without the assistance of an attorney, you should draft your complaint so that it conforms generally to the accepted practice.

The basic guide for drafting a complaint in federal court is the Federal Rules of Civil Procedure, especially Rule 8, which sets forth the essential elements of a complaint.

In general, your complaint should have the following elements: a statement of your location; a statement of the defendant's identity and location; and a statement invoking federal jurisdiction, that is, why you are suing in federal court. You should try to list the specific statutes under which you are claiming jurisdiction, such as: federal question, 28 U.S.C. § 1331 or diversity of citizenship, 28 U.S.C. § 1332. Actions for violations of civil rights would be pursuant to 42 U.S.C. § 1983. After your statement of federal jurisdiction you should set forth, clearly and concisely the facts of your claim. Names, dates and events should be described accurately and briefly. Lastly, you should make your claim for relief which may include money damages, injunctive relief or both. You should then sign your complaint and give your address and telephone number.

The charge for filing a complaint is \$120.00 and service of the summons and complaint upon the defendant may require the payment of fees to a process server. If you cannot afford these fees you should apply for pauper status by completing a separate in forma pauperis (IFP) affidavit which is available in the Clerk's Office. If the judge allows you to proceed as a pauper, you do not have to prepay the filing fees; and, service of the summons and complaint will be made, without charge, by the U.S. Marshal.

A sample complaint form is attached.

UNITED STATES DISTRICT COURT

COMPLAINT INSTRUCTIONS

1. Form of the complaint:

- a. This court will only accept 8 1/2 by 11 papers.
- b. It must be typed or neatly printed in ink and in English.
- c. It must begin with a caption (sample below) giving your name as plaintiff and the names of all defendants. If you do not know the name of one or more of your defendants, you can describe the defendant's position, give the position and "John Doe" or "Jane Doe."
- d. The complaint may only be written on one side of the page. Complaints written on both sides of each page will not be accepted.
- e. It must be signed by all plaintiffs at the end.

2. Number of copies you must submit to the Pro Se Clerk's Office:

- a. Original containing plaintiff's original signature in ink.
- b. Two copies for each defendant named in the caption.
- c. Three additional copies if the United States or any United States agency is a defendant.

3. Statements that should be made in the complaint:

- a. The full name and address of each plaintiff.
- b. The full name and address of each defendant.
- c. Why each defendant is being sued.
- d. Why this court has jurisdiction.
- e. Specifically what remedy is sought from each defendant.

SAMPLE CAPTION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

"John Doe,"

Plaintiff,

-against-

COMPLAINT

"Ralph Doe,"

Defendant.

-----X

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8 *Attorneys for Plaintiffs*

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10  
11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 PUBLIC.RESOURCE.ORG, JUSTIA INC.,

14 Plaintiffs,

15 v.

16 STATE OF OREGON LEGISLATIVE  
17 COUNSEL COMMITTEE,

18 Defendant.

CASE NO.

COMPLAINT FOR DECLARATORY  
RELIEF RE NON-INFRINGEMENT OF  
COPYRIGHT

19 1. This is a civil action seeking declaratory relief. Defendant the Legislative Counsel  
20 Committee of the State of Oregon (hereafter "the Committee") – in contrast to the vast majority  
21 of states – has taken the position that it is the copyright owner of the Oregon Revised Statutes and  
22 thus has a copyright interest in basic information about that state's laws. The Committee claims  
23 that such basic information as the arrangement and subject-matter compilation of the Oregon  
24 Revised Statutes, leadlines and numbering for each section, and tables and indexes can be  
25 copyrighted. Plaintiffs – whose mission is to make the law widely available to people who are  
26 expected to comply with it – take issue with the state's broad assertion of rights over such basic  
27 information, and contend that the state cannot acquire copyright over the laws in the first  
28 instance. This declaratory relief action seeks to resolve that dispute.

1 PARTIES

2 2.Plaintiff Public.Resource.Org is a 501(c)(3) non-profit corporation headquartered in  
3 Sebastopol, California, which makes the text of laws available to the public over the Internet.

4 3.Plaintiff Justia, Inc. is a corporation headquartered in Mountain View, California which  
5 likewise makes available laws to the public over the Internet and otherwise.

6 4.Defendant the Legislative Counsel Committee of the State of Oregon, which is counsel  
7 to the Legislature of the State of Oregon, headquartered in Salem, Oregon, has claimed that it is  
8 the copyright owner of the Oregon Revised Statutes. The Committee is a financially self-  
9 sufficient agency which generates its own revenue and pays its own debts. This action does not  
10 seek an affirmative financial judgment paid out of the state treasury, although it does seek an  
11 award of attorneys' fees.

12 JURISDICTION AND VENUE

13 5.This Court has subject matter jurisdiction over this claim pursuant to the Copyright Act,  
14 17 U.S.C. section 101 et seq., 28 U.S.C. sections 1331 and 1338, and the Declaratory Judgment  
15 Act, 28 U.S.C. section 2201.

16 6.Plaintiffs are informed, believe, and thereon allege that Defendant has sufficient contact  
17 with this district generally and, in particular, with the events herein alleged, including but not  
18 limited to its promulgation over the Internet of the Oregon Revised Statutes in a form available to  
19 millions of Californians, so as to subject it to both personal jurisdiction in this Court and to make  
20 this Court a proper venue pursuant to 28 U.S.C. section 1391. Defendant also sells to California  
21 residents and ships to California. Defendant maintains an Internet E-Commerce website at  
22 securepay.oregon.gov which sells to residents of all states including California and Plaintiffs are  
23 informed, believe and thereon allege that the securepay.oregon.gov e-commerce server used by  
24 Defendant is physically located in San Jose, California. Venue is also proper in this district under  
25 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the  
26 claim occurred in the Northern District of California: defendant sent "take down" notices to and  
27 affecting parties residing in the Northern District of California, and residents of the Northern  
28 District of California are alleged to have infringed copyright.

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## FACTUAL ALLEGATIONS

7. On April 7, 2008, the State of Oregon Legislative Counsel Committee (hereafter "Committee") wrote a "take-down notice" to plaintiff Justia, Inc. asking it to remove all copies of Oregon Revised Statutes from the Internet and claiming a copyright in (1) the arrangement and subject-matter compilation of Oregon statutory law, (2) prefatory and explanatory notes, (3) leadlines and numbering for each statutory section, and (4) the tables, index and annotations of those laws. A copy of the Committee's letter is attached hereto as Exhibit A. [[link to document on scribd.](#)]

8. On April 13, 2008, plaintiff Public.Resource.Org wrote the committee explaining that (1) there is a right to read public law which precludes the state's assertion of copyright, and (2) the state was asserting a copyright over non-copyrightable material. Carl Malamud, the president and CEO, stated that Public.Resource.Org had posted, but had currently restricted, both 2005 and 2007 copies of the Oregon Revised Statutes. Mr. Malamud pointed out that section 173.763(1)(a)(H) of the Oregon Revised Statutes spelled out a mandate of making available a number of items including bills, bill histories, and "all Oregon Laws enacted on and after September 9, 1995." A copy of his April 13 letter is attached as Exhibit B. [[link to document on scribd](#)]

9. Mr. Malamud followed up his April 13 letter with an April 15 letter explaining to the Committee that its own website "does not meet broadly accepted standards of functionality and validity." He pointed out that ORS section 173.763 mandates that the law "shall be made available to the public through the largest nonproprietary, nonprofit cooperative public computer network. The information shall be made available in one or more formats and by one or more means in order to provide the general public in this state with the greatest feasible access." A copy of his April 15 letter is attached hereto as Exhibit C.

10. The Committee replied to the April 13 and April 15 letters by promulgating, on or about April 29, a so-called "Public License" which would allow plaintiffs to post the Oregon Revised Statutes on the Internet only if they acknowledged that portions of the Oregon Revised Statutes "are protected by copyright and other applicable law to the extent stated in this license."

1 The "Public License" stated, "Any copying, reproduction, download or other use of the ORS  
2 Website Edition as provided on this website other than as authorized under this License or under  
3 copyright law is prohibited." A copy of the "Public License" is attached hereto as Exhibit D. A  
4 day later, the Committee wrote to Tim Stanley, the head of Justia, informing him that it would not  
5 require him to remove content "at this time," but it did not back down from or renounce its claim  
6 of copyright over portions of the Oregon Revised Statutes ("ORS"), nor did the Committee rule  
7 out future legal action to remove the ORS from Justia's website. A copy of the state's April 30  
8 letter is attached hereto as Exhibit E.

9 11. Plaintiffs' counsel wrote to the Committee on May 2, 2008 informing the Committee  
10 that plaintiffs had reached an impasse with the Committee, and that plaintiffs intended to post the  
11 entirety of the Oregon Revised Statutes, including the material the Committee had asserted a  
12 copyright over, on June 2, 2008. A copy of the May 2 letter is attached hereto as Exhibit F.

13 12. It is generally recognized that the Oregon Revised Statutes are the definitive statement  
14 of Oregon law as enacted by the elected representatives of the citizens of Oregon. The Wikipedia  
15 entry for "Oregon Revised Statutes" says it is the "codified body of statutory law governing the  
16 U.S. state of Oregon, as enacted by the Oregon Legislative Assembly." [Oregon Revised  
17 Statutes, Wikipedia, [http://en.wikipedia.org/wiki/Oregon\\_Revised\\_Statutes](http://en.wikipedia.org/wiki/Oregon_Revised_Statutes), last accessed May  
18 13, 2008]. That the Oregon Revised Statutes is official is reinforced throughout the government.  
19 (See, e.g., Oregon Department of Revenue which links to the Oregon Revised Statutes as  
20 controlling law at <http://www.oregon.gov/DOR/adminrules.shtml>, last accessed May 13, 2008  
21 and City of Medford, Oregon, which also links to the Oregon Revised Statutes at  
22 <http://www.ci.medford.or.us/Page.asp?NavID=1484>, last accessed May 13, 2008.)

### 23 **COUNT I: DECLARATORY RELIEF OF NON-INFRINGEMENT**

24 13. Plaintiffs repeat and incorporate as though fully set forth herein each and every  
25 allegations in paragraphs 1 through 12 above.

26 14. There is a real and actual controversy between plaintiffs and the State of Oregon  
27 Legislative Counsel Committee regarding whether the Committee owns a copyright over portions  
28 of the Oregon Revised Statutes ("ORS").

1           15.The Committee contends that it owns a copyright on the arrangement and subject-  
2 matter compilation of ORS, the prefatory and explanatory notes, the lead-lines and numbering for  
3 sections, and tables, indexes and annotations.

4           16.Plaintiffs contend that the Committee’s assertion of copyright is precluded by the First  
5 Amendment to the United States Constitution, by Oregon law, by United States copyright law,  
6 and by such authorities as *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S.  
7 340 (1991) [alphabetical listings of names, accompanied by towns and telephone numbers, in  
8 telephone book white pages held not copyrightable] and *Matthew Bender & Co. v. West*  
9 *Publishing*, 158 F.3d 674, 676 (2d Cir. 1998) [alterations to judicial opinions, such as annotating  
10 to reflect subsequent procedural developments and choices on selection and arrangement, “can  
11 reasonably be viewed as obvious, typical, and lacking even minimal creativity”]. Plaintiffs also  
12 contend that the Oregon Revised Statutes are in the public domain and that any use they are  
13 making or propose to make of the ORS is a fair use pursuant to 17 U.S.C. section 107. Indeed,  
14 the Committee itself in its April 7 letter (Exhibit A) conceded that the entirety of the Oregon  
15 Revised Statutes is freely available online at the Oregon Legislative Assembly’s own website.

16           17.Since the ORS is used by the executive branch, legislative branch, courts and lawyers  
17 as a statement of the law (the Committee calls the printed version the “official legal text” on its  
18 website, [www.leg.state.or.us/ors](http://www.leg.state.or.us/ors) ), it has “enter[ed] the public domain and [is] not subject to the  
19 copyright holder’s exclusive prerogatives.” *Veck v. Southern Building Code Congress Intl., Inc.*,  
20 293 F.3d 791, 793.

21           18.Plaintiffs therefore request that the Court determine and adjudge that each and every  
22 one of the propositions stated in paragraphs 16 and 17 above states the law applicable to the facts  
23 stated in this action, and that plaintiffs have a right to post the Oregon Revised Statutes including  
24 the organizational scheme of the statutes, the numbers and leadlines, editorial notes, source notes  
25 and prefatory material, the index, the annotations, tables, and other material as to which the  
26 Committee claims copyright ownership.

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1 PRAYER FOR RELIEF

2 WHEREFORE, plaintiffs pray for relief as follows:

3 1. A declaratory judgment that the use they have made and propose to make of the  
4 Oregon Revised Statutes is not an infringement of copyright;

5 2. Injunctive relief restraining Defendant, and its agents, servants, employees,  
6 successors and assigns, and all those in privity with it, from bringing any lawsuit or threat against  
7 plaintiffs for copyright infringement for their use of the Oregon Revised Statutes, including but  
8 not limited to plaintiffs' publication, distribution, display, licensing, arrangement, or the ability to  
9 host it online or link to it from any website;

10 3. Attorney's fees pursuant to, *inter alia*, 17 U.S.C. section 505, on a private attorney  
11 general basis according to California Code of Civil Procedure section 1021.5, or otherwise as  
12 allowed by law;

13 4. For plaintiffs' costs and disbursements; and

14 5. For such other and further relief as the court may deem just and proper.

15 Dated: May 16, 2008

LEVY, RAM & OLSON LLP

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17 By:

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