

2016

National Conference on Copyright of State Legal Materials

Roger V. Skalbeck

University of Richmond, rskalbeck@richmond.edu

Follow this and additional works at: <http://scholarship.richmond.edu/law-faculty-publications>

 Part of the [Intellectual Property Law Commons](#), [Legal Writing and Research Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Roger V. Skalbeck, *National Conference on Copyright of State Legal Materials*, 21 AALL Spectrum 37 (2016).

This Article is brought to you for free and open access by the School of Law at UR Scholarship Repository. It has been accepted for inclusion in Law Faculty Publications by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

NATIONAL CONFERENCE ON COPYRIGHT OF STATE LEGAL MATERIALS

BY ROGER V. SKALBECK

A surge in legislation and lawsuits on the copyright status of state legal materials raises concerns about principles of open government and free accessibility and use of these materials. On December 2, 2016, the American Association of Law Libraries (AALL) and Boston University School of Law are convening the National Conference on Copyright in State Legal Materials at BU Law. At this conference, all participants will be able to explore the issues surrounding state legal materials access through parallel goals of: *Education, Inspiration, and Conversation.*

Education

Under *Education*, participants will explore legal theories of ownership and usage of state legal materials. An update on the latest legal disputes, as well as a thorough discussion of the *how, why, and where* issues surrounding copyright and access will also be discussed.

Within the United States Code, copyright status of federal government works is unambiguous: “[c]opyright protection under this title is not available for any work of the United States Government” (17 U.S.C. § 105). The challenge is that this says nothing about any work of the state governments, including state legal materials like cases, codes, and regulations.

In *Wheaton v. Peters*, 33 U.S. 591,667 (1834), the Supreme Court held that nobody “has or can have any copyright in the written opinions of [the Supreme Court].” Additionally, in *Matthew Bender & Co. v. West Publ’g Co.*, 158 F.3d 674 (2d Cir. 1998), the courts held that page numbers, selection, and arrangement of cases are not eligible for protection. Expanding this beyond cases, in *Veeck v. Southern Bldg. Code Congress Int’l.*, 293 F.3d 791, 800 (5th Cir. 2002), a federal appeals court held that “‘The law,’ whether it has its source in judicial opinions or statutes, ordinances, or regulations, is not subject to federal copyright law. Challenges arise when there are additional components of authorship or compilation that “require the exercise of intellectual thought and skill,” as stated in *Banks Law Publ’g Co. v. Lawyers’ Co-Operative Publ’g Co.*, 169 F. 386,388 (2d Cir. 1909).

This background helps us understand the legal landscape, but these cases don’t resolve complex questions at the state level, especially when copyright law is complicated by contractual relationships

and license agreements. These agreements may cover questions of preferential or exclusive rights, touching on official status and source authenticity.

Inspiration

Through written examples and sessions, the conference will present sources of *Inspiration* to highlight people and organizations providing new and innovative tools to access state legal materials. These will feature practical benefits and aspirational examples for expansive, reliable, and open access to state legal materials. We hope they’ll inspire new projects and initiatives. Here are two brief examples:

- In 2012, when a software developer wanted a copy of the DC Code to host online, nothing was available in a suitable format. Responding to this need, David Zvenyach, then general counsel of the DC Council, worked with volunteer developers at the end of the publishing contract to build an open-source, restriction-free version of the DC Code, releasing the software under an open-source license on GitHub.
- The Sunlight Foundation provides a collection of tools for people to track legislative activity for all 50 states, as well as Washington, DC and Puerto Rico. This Open States project provides ways to systematically find and follow legislation and the legislators who author these bills.

These and other projects are used to inspire others who can create new analytical tools and access methods to encourage more ways to access state legal materials.

NATIONAL CONFERENCE ON COPYRIGHT OF STATE LEGAL MATERIALS

December 2, 2016

Boston University School of Law

Featuring Keynote

Corynne McSherry, Legal Director, Electronic Frontier Foundation

Hosted by AALL and Boston University School of Law

bit.ly/AALLCopyrightCon16

Conversation

Through this conference, AALL hopes to foster *Conversation* between people who use, access, create, and maintain state legal materials. The goal is to bring together legal information professionals, policymakers, copyright experts, and others to explore policy and practical issues related to copyright questions for state legal materials. Conversations will help all participants understand shared challenges and strategies for promoting open access to state legal materials in a way that is sustainable. At the same time, it is recognized that authentication, reliable access, and economic impact remain central questions of shared interest.

Members of the National Conference on Copyright in State Legal Materials Planning Committee are: Steve P. Anderson (Maryland State Law Library); Kyle K. Courtney (Harvard Library); Meg Kribble (Harvard Law Library); Kelly Leong (UCLA Law Library); David Mao (Library of Congress); and Roger V. Skalbeck (Richmond School of Law). All content is coordinated through Emily Feltren, AALL’s director of government relations and AALL President, Ronald E. Wheeler Jr. (Fineman & Pappas Law Libraries at Boston University School of Law).



ROGER V. SKALBECK
ASSOCIATE DEAN FOR LIBRARY
& INFORMATION SERVICES
ASSOCIATE PROFESSOR OF LAW
University of Richmond School of Law
Richmond, VA
rskalbeck@richmond.edu

© 2016 BY ROGER V. SKALBECK