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Authorized use of Online Bluebook content

Frank Bennett <biercenator@gmail.com>

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To: editor@legalbluebook.com

From: biercenator@gmail.com

Messrs & Mesdames,

I have a couple of specific questions concerning the Terms of Use for the Bluebook Online service, prompted by the exceptionally broad terms in which that agreement is cast. The text of the agreement (as of this writing) is here:

<https://www.legalbluebook.com/public/TermsOfUse.aspx>

In particular, I am concerned with the following clause:

"Except as expressly provided by this Agreement, any use of the Site and its content is strictly prohibited without our written consent."

In the remainder of the license text, the only express permissions granted appear to be the following:

- (a) An explicit permission: "... you may add Bookmarks and Annotations ..."
- (b) A proviso: "You may not use the Site for any unlawful purpose or for any commercial purpose other than your own law practice."

All other such statements in the license either restrict the rights of the user, or exclude the Harvard Law Review Association from some form of liability. My starting point, then, is that, should I sign up for an account, any action other than contributing "Bookmarks and Annotations" or referring to the site in connection with a law practice potentially exposes me to legal liability for violation of the Terms of Use.

As I do intend to use the Site for purposes other than submitting "Bookmarks and Annotations" or as a reference in connection with a law practice, I thought it best to write to you directly, explain in advance the use of the Site that I am contemplating, and -- as suggested in the clause quoted above -- seek an explicit undertaking from the Harvard Law Review Association (on behalf of its principals) that such use is exempted from the general principle that any act other than adding "Bookmarks and Annotations" or referring to the Site in connection with a law practice constitutes a violation of the agreement.

Here is what I have in mind.

I am the author citeproc-js [1], an implementation of the Citation Style Language [2]. The tool is designed to receive structured input of citation elements from a database, and produce properly formatted citations, as specified by an XML "style file" (an XML file that serves as a configuration template). I have invested a significant amount of time over the past two years in the refinement and extension of both the CSL formatting language and the citeproc-js processor, with a view to producing correctly formatted citations to legal

materials.

The processor is now stable, and running in the core of the Zotero and Mendeley reference manager products. In the next phase of this long-running project, I plan to produce a set of CSL style templates for the major legal styles used in North America. This will ultimately result in a published volume that sets forth standard forms of data entry, so that users can maintain Zotero databases of legal references, and format those references automatically in any of the supported styles. This will enable users in multiple jurisdictions to exchange and share references in electronic form.

I assume that the preparation and sale of the volume referred to the previous paragraph constitutes a "commercial purpose" within the Terms of Use. I note, however, that such a project has utility beyond the mere convenience of automatically formatting citations for a particular citation style: it is intended to enable collaborative scholarship across national boundaries, and across academic disciplines, which is currently hampered by the complexity of legal citation conventions.

Quite clearly, I will need to refer to the citation guide published by your organization in order to accomplish the tasks outlined above. I am concerned that, should I subscribe to the "Bluebook Online" service, the Terms of Use will prohibit this activity. I am also concerned about the following statement:

"You agree not to use or display the trademarks BLUEBOOK ONLINE, THE BLUEBOOK or THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION or any confusingly similar or dilutive words without our prior written consent."

Naturally, after completing the non-trivial task of automating the various rules contained in your publication, I will want to refer to the style defined therein as the "Bluebook Style, 19th edition" or similar. I will also want to indicate, in my own companion publication, that one of the styles that Zotero is capable of producing is the "Bluebook" style defined by your organization.

In my understanding, if I buy a paper copy of your publication, and use it for reference when undertaking the work described above, that act would not violate the copyright of the Harvard Law Review Association and its principals.

This brings me to my questions:

1. Within the context outlined in this message, do we share the same understanding with respect to the extent of copyright in the volume published as "THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION"?

2. Within the context outlined in this message, by the Terms of Use of the Bluebook Online do you intend to extend the rights of the Harvard Law Review Association and its principals beyond the ordinary scope of copyright protection?

I would be grateful if you could confirm receipt of this message. If I receive no response within a week after receipt, I will assume that

the answers to the questions above are "yes" as to (1), and "no" as to (2), and act in reliance on that assumption.

Many thanks for your attention. I will look forward to your response.

Links:

[1] <https://bitbucket.org/fbennett/citeproc-js/overview>

[2] <http://citationstyles.org/>

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