

Are Westlaw and Lexis Violating Lawyer Copyrights By Publishing Legal Briefs and Memoranda In Their Databases?

Well, this seems silly. As a lawyer, whenever I filed something in the public record of a court case - and I did this for over 20 years - never once did I think WAIT: I better make sure I've protected copyright on this thing.

I mean *really*.

However, two lawyers up in New York are suing both West Publishing Company and LexisNexis for having the audacity of taking documents like briefs and legal memoranda, copying them, and placing them on their databases. That's right. The lawyers are arguing that they are due actual and punitive damages for a violation of federal copyright laws because West and Lexis have digitally collected and sold these public records to their clients.

Oh my, oh my.

The lawsuit isn't new. It was filed as *White v. West Publishing Company & Reed Elsevier Inc.* in the Southern District of New York back on February 22, 2012. You can read the complaint online.

UCLA Law Professor Eugene Volokh wasted no time in writing about this, and his blog post is worth your time to read.

From Professor Volokh's perspective, the issue here isn't the existence of a copyright -- he argues that the briefs are copyrighted material of the lawyers who wrote them (or maybe the law firm, or maybe the client, too - but this is a rabbit trail and Prof. V argues work for hire doesn't extend this far) -- it's the question of **whether or not the fair use doctrine will apply** here to allow the two big legal research companies the ability to share these briefs for their own profit under the fair use defense to copyright infringement under federal law.

Meanwhile, up in Canada there's another case dealing with a similar issue of copyright violation of lawyers whose briefs have been copied and then placed into legal software databases and it's been certified as a class action. [More on that case here.](#)

Another law professor shares his take on things over at the Law Librarian Blog; it comforted me to read that he thought this to be a little silly, too.

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