Annotated state laws

CONTINUED FROM PAGE 1

puts them outside the reach of copyright protection," Chief Justice John Roberts wrote for the majority.

Dorsey & Whitney attorney Jeffrey Cadwell said the justices' decision does not mean no works created by government actors will be protected by copyright law.

Public.Resource.Org Inc., an advocate for improving public access to government records, had argued that government officials cannot hold copyrights in works they create in the course of their duties.

The opinion contained two dissents, one by Justice Clarence Thomas and one by Justice Ruth Bader Ginsburg.

UNINTENDED CONSEQUENCES?

Attorneys not involved in the case offered their interpretations of the holding.

"A key takeaway is that authorship matters," Dorsey & Whitney attorney Jeffrey Cadwell said. He clarified that the justices' decision does not mean no works created by government actors will be protected by copyright law.

"As the court notes, works prepared by non-lawmaking officials employed by public universities, libraries and tourism offices, for example, can still benefit from copyright protection," he said.

Robins Kaplan LLP attorney David Martinez said it was interesting that the Supreme Court's reason for leaving annotated codes unprotected was that they were "created by a legislative body."

Yet, "the real author of the annotations was Matthew Bender & Co., a division of the LexisNexis Group, which was retained by the Georgia Code Revision Commission pursuant to a work-for-hire agreement," he said. "Moreover, the annotations are not law. They are nonbinding, explanatory legal materials."

Martinez said the Supreme Court may have unintentionally created a system whereby states are "disincentivized" to publish annotations, so "unofficial" annotated codes, which are often more expensive, might become a more available resource.

Robins Kaplan LLP attorney David Martinez said it was interesting that the Supreme Court's reason for leaving annotated codes unprotected was that they were "created by a legislative body."

Dykema attorney Marsha G. Gentner theorized that, because the Supreme Court's holding applies only to annotated codes "authored" by state legislators, "there might be a way around this."

"Perhaps a state, instead, could contract out for a 'preferred vendor' to create the annotations, with the requirement that the copyright be assigned to the state with an (exclusive, with the right to sublicense?) license back tied to a lower price," she said.

Dykema attorney Marsha G. Gentner theorized that "a state could contract out for a 'preferred vendor' to create the annotations."

B. Brett Heavner, an attorney at Finnegan, Henderson, Farabow, Garrett & Dunner, said "If state code annotations are widely available to the public without charge, then private legal publishers will have little incentive to continue to create such legal resources."

He noted that the Supreme Court's decision in *Callaghan v. Myers*, 128 U.S. 617 (1888), provides private publishers with copyright protection for annotations and commentary if they are created "independent of state cooperation."

Heavner predicts that various parties could try to "tinker" with the current relationships the states have with private publishers so annotations and commentaries might become owned by the publishers and licensed to the states.

"This carries the risk that courts will find this new arrangement to simply be a legal