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Public Works for a Better Government

May 31, 2013

Mr. Jon Kirke
Senior Copyright and Licensing Executive, Licensing
British Standards Institution
389 Chiswick High Road
London, W4 4AL, United Kingdom

Dear Mr. Kirke:

I write in response to your email of May 28, 2013, with the subject line "DMCA Notice of Copyright Infringement," demanding that Public.Resource.Org remove from the Internet a publication entitled "Design of buildings and their approaches to meet the needs of disabled people – Code of practice, BS 8300:2009+A1:2010" ("BS 8300:2009" or "the standard"), which we posted on the Public Resource website.[1] We have also made this standard available on the Internet Archive.[2]

Public Resource respectfully declines to remove the document. The law permits us to post this standard, and we strongly believe that doing so is in the public interest.

Public Resource, a U.S. non-profit organization, has posted BS 8300:2009, which is a BSI Standards Publication, along with 0ver 10,000 other public safety standards from around the world that have become part of a country's laws. We have done so, as we state as a preamble to each standard we have posted, in order to promote public education and public safety, equal justice for all, a better informed citizenry, the rule of law, world trade and world peace. We lawfully purchased BS 8300:2009, and we have made it available on a noncommercial basis, because it is the right of all people to know and speak the laws that govern them.

The BSI standard specifying building design for the disabled is an important rule governing activities and determining obligations in the U.K. The purpose of BS 8300:2009, as stated in the standard, is allow builders "to anticipate, and overcome, restrictions that prevent disabled people making full use of premises and their surroundings." As you know, the standard addresses disabled access issues related to doors, stairs, ramps, lifts, parking, signs, toilets, and other important building features critical to meeting the needs of disabled people.

The standard is relied upon heavily by cities and towns throughout the United Kingdom, including (to name just a few) the Southwark Council, the London Borough of Waltham Forest, the Islington Council, the City of Edinburgh, and the Exeter City

[1] https://law.resource.org/pub/uk/ibr/bs.8300.2010.pdf

[2] http://archive.org/details/bs.8300.2010

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Council. The Harrogate Borough Council posts the entire standard. A search in Google reveals over 40,000 references to BS 8300 by U.K. government agencies.

In addition, the U.K. Building Regulations 2010, Access to and use of buildings (known as "AD M"), "issued by the Secretary of State for the purpose of providing practical guidance with respect to the requirements of Schedule 1 to the Regulation 7 of the Building Regulations 2010 for England and Wales (SI 2010/2214)" makes numerous references to the 2001 edition of BS 8300.

The 2009 version of 8300 is substantially different from the 2001 version, taking these requirements in a new direction and away from the more traditional approach taken by many EU standards. Accordingly, broad public awareness of the 2009 version—among builders, homeowners, advocates, and government officials—seems especially important. Citizens need to know if and how the 2009 version conflicts with the 2001 version as well as the numerous EU-wide requirements for disabled access. This is particularly important given the status of BS 8300:2009 as the flagship standard being advanced and heavily promoted by the British Standards Institution, the designated national standards-making body for the U.K.

That BS 8300:2009 creates obligations for people in the U.K., and should be freely available to people in the U.K., is underscored by the fact that the British Standards Institution is an instrument of the government. As you know, the BSI was created by a Royal Charter in 1929 and represents the United Kingdom in numerous international forums, including the International Organization for Standardization (which it helped create) and the European Union's European Committee for Standardization (CEN). As the duly delegated agent under an agreement with the United Kingdom government for this form of European Union regulation, the British Standards Institution is required to adopt and publish EU standards without change, making the law available to citizens. The official United Kingdom repository of statutes lists hundreds of statutory instruments that require British Standards Institution standards.

The right to know and speak the law has been, since ancient times, an essential component of a society governed by the Rule of Law. That the law should be known to all was fundamental, but equally important was that the law should not be for sale. When the Barons of England confronted King John in 1215 on the meadow of Runnymede, one of their chief complaints was that access to the courts had become matter of access to money and that judgments were for sale to those who chose to pay for them. This led to the most long-lasting provision of Magna Carta (1297 c. 9), one still in force in the United Kingdom and many other common law jurisdictions, Article 29: "We will sell to no man, we will not deny or defer to any man either Justice or Right."

In the 20th and 21st centuries, governments all over the world have repeatedly reaffirmed the importance of the Rule of Law and of fundamental human rights, which include the right to know what our governments require of us. This right has been particularly important in the formation of the European Union. Article 15 of the Treaty on the Functioning of the European Union emphasized the "right of access to documents of the Union's institutions," the Charter of Fundamental Rights of the European Union guarantees a "right of access to documents," and the Treaty of Amsterdam firmly reaffirmed the principle: "The Union is founded on the principles of

liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States."

The courts in Europe have repeatedly reaffirmed these principles. In the United Kingdom, in Blackpool v. Locker (1948, 1 KB 349), the King's Bench refused to enforce regulations that were not available for the public to read. In Fothergill v. Monarch Airlines (1981, AC 251, 279 G), the House of Lords stated that "the need for legal certainty demands that the rules by which the citizen is bound should be ascertainable by him." In Sunday Times v. United Kingdom (1979, 2 EHRR 245, 271, para 49), the European Court of Human Rights stated that "[T]he law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case."

The Rule of Law unites our world around a basic truth, that all human beings have basic rights. Article 19 of the Universal Declaration of Human Rights (1948) states: "Everyone has the right to freedom of opinion and expression; this right includes … to seek, receive and impart information and ideas through any media and regardless of frontiers." The rights of speech and expression are fundamental to any declaration of human rights. The right of access to justice is equally fundamental. There can be no human rights in any meaningful sense if we limit who is allowed to read the law and who is allowed to speak it. Human rights begin with all citizens knowing their duties and their rights under the law.

The fact that the standard at issue here concerns technical matters does not change the imperative of providing it to the public. Law has always been technical. Regulation of public safety has always stood hand-in-hand with the regulation of the procedures of justice. When the Barons at Runnymede forced King John to agree to Magna Carta, the articles guaranteeing access to justice came right after the article proclaiming a system of uniform weights and measures.

In my country, the United States, the U.S. Copyright Office has stated that the law, including the law of other nations, cannot be protected by copyright:

> "Edicts of government, such as judicial opinions, administrative rulings, legislative enactments, public ordinances, and similar official legal documents are not copyrightable for reasons of public policy. This applies to such works whether they are Federal, State, or local as well as to those of foreign governments."

Compendium II of Copyright Office Practices § 206.01 (1984).

United States case law strongly supports the principle that copyright claims cannot override the right of citizens to speak and read the law. Wheaton v. Peters, 33 U.S. 591 (1834); Banks v. Manchester, 128 U.S. 244 (1888). In Veeck v. Southern Building Code, 293 F.3d 791 (5th Cir. 2002) (en banc), cert denied, 539 U.S. 969 (2003), our Court of Appeals held that a citizen had the right to post on the Internet a model building code, because that code had been incorporated into the law of a town, and thus was binding on citizens.

Keeping the law hidden, or behind expensive pay walls, has no place in a free and open society. Principles of open government, due process of the law, and free speech

demand that the law be available to all to read and speak. Charging fees for access to the texts of the law itself is like charging voters to vote.

Public Resource is not simply publishing codes and standards, but improving their readability and usability. With the Internet, governments and individuals have the power to link standards directly to the laws that incorporate them, to make the standards searchable, to present the information in new ways that enhance public understanding, to create new businesses and spur innovation.

By making standards available and useful to all, we can make society better. Public safety officials can do more to protect citizens. Researchers can enhance their knowledge of technical fields. Small businesses can more easily comply with the law and increase commerce and trade.

Innovation and education will benefit by opening up this world, but at the root are basic issues of democracy and justice. Government cannot tell people that they must obey laws that are only available in exchange for money. And government should not punish people for speaking the law to others.

Availability of public safety standards is a crucial issue for our modern era. The British Standards Institution plays a vital role in the regulatory and legislative framework for citizens of the United Kingdom and those individuals and institutions wishing to do business in the United Kingdom.

A discussion of how to better protect the public safety by making standards available to the public is an issue that should not be ignored. Indeed, it is important that the issue receive increased attention. We are hopeful that the topic will be taken up by Her Majesty's Government as part of the ongoing consultations by the Cabinet Office, the Open Standards Board, the National Archives, and other agencies that have been at the forefront of making the United Kingdom the leader in how to make information available to citizens.

I would be delighted to discuss this matter further with you and others at the British Standards Institution if you wish.

Best regards,

/signed/

Carl Malamud
Public.Resource.Org

cc: Rt. Hon. Francis Maude, MP
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