

I. Parties

- Applicants:* (1) Public.Resource.Org, Inc., 1005 Gravenstein Hwy. North
Sebastopol, CA 95472, USA
(2) Right to Know CLG, 25 Herbert Place, Dublin 2 Ireland
- Representatives:* Dr Fred Logue, Solicitor
Dr Jens Hackl, Lawyer
Christoph Nüßing, Lawyer
- Defendant:* European Commission
- Interveners:* European Committee for Standardisation (CEN), and others, in support
of the European Commission

II. Form of order sought

1. Set aside the judgment of the General Court of 14 July 2021 in Case T-185/19 and grant access to the requested documents (EN 71-4:2013, EN 71-5:2015, EN 71-12:2013, and EN 12472:2005+A1:2009),
2. In the alternative, refer the matter back to the General Court, and
3. Order the European Commission to pay the costs of the proceedings.

III. Pleas in law and main arguments

1. Error in assessment of the application of the exception in Article 4(2) first indent of Regulation (EC) No 1049/2001.
 - a. In the first part, the General Court committed an error in law in incorrectly assessing copyright protection by:
 - Failing to recognise that the requested harmonised standards cannot be protected by copyright since they are part of EU Law and the rule of law requires free access to the law.
 - Failing to recognise that even if the requested harmonised standards can be protected by copyright, free access to the law must have priority over copyright protection.
 - Wrongly holding that the European Commission was not authorised to examine whether the requested harmonised standards were protected by copyright.
 - Wrongly holding that the requested harmonised standards constituted an intellectual creation and hence a copyrightable “work”.
 - b. In the second part, the General Court committed an error in law in its assessment of the effect on commercial interests by:

- Wrongly applying a presumption that the requested harmonised standards would undermine the interest protected by the first indent of Article 4(2) of Regulation (EC) No 1049/2001.
- Not assessing the specific effects on commercial interests.

2. Error in law in not recognising an overriding public interest.

The General Court committed an error in law in not recognising an overriding public interest by:

- Wrongly finding that the Applicants did not demonstrate specific reasons to justify their request.
- Taking account of an irrelevant factor, namely the functioning of the European standardization system.
- Finding that the decision in *James Elliott* (Case C-613/14) does not create an obligation of proactive dissemination for harmonised standards.
- Finding that harmonised standards produce only legal effects with regard to the persons concerned.