



[Public.Resource.Org](http://Public.Resource.Org)

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October 5, 2015

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Office of the Parliamentary Counsel  
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First Class Mail: LJ 858 694 515 US

Dear Sir or Madam:

You will find attached a petition on the Safety of Toys being submitted to Her Majesty's Government on behalf of Public.Resource.Org, a registered charity in the United States. We are joined in this submission by nine co-signatories, many of whom are citizens of the United Kingdom. The purpose of the petition is to request a public consultation on the question of broader public accessibility and availability of public safety standards that are required by the European Union and have the force of law.

You may also find the materials on the Internet at the following location:

<https://law.resource.org/pub/eu/toys/en.petition.html>

I was inspired to submit this petition to the Office of the Parliamentary Counsel by the [Good Law](#) effort that your office has spearheaded. I am fully in support of the principles advanced that good law should be "necessary, clear, coherent, effective and accessible." I was particularly impressed with the [panel session on April 19, 2013](#), in

which Mr. Richard Heaton and Mr. John Sheridan participated to launch the effort. Mr. Heaton traced the frustration that users of the law—from Edward VI to ordinary citizens of today—have faced as they navigate the increasingly complex labyrinth of laws, regulations, and court decisions. Mr. Sheridan gave an eloquent testimonial on the importance of making the laws available to everybody, a goal that he has helped to advance in a remarkable way with the [legislation.gov.uk](http://legislation.gov.uk) effort he leads at the National Archives.

The subject of our petition is the Safety of Toys, but this is just one of the areas of public safety for which the European Union has mandated specific and important technical specifications to protect the public safety. In our technical world, these public safety standards are crucial, ensuring that we have adequate protection in crucial areas such as toys, the safety of machinery, the transportation of hazardous materials, the safe construction of dwellings, the provision of personal protective equipment, the safety of medical implant devices, and other areas that touch on our daily lives. In our modern world, these technical public safety requirements are some of our most important laws, yet they have been inaccessible to citizens who cannot afford the absurdly high costs to access these documents. Even more disturbing, the technical standards are under strict assertions of control, preventing the kinds of reuse, innovation, and transformation that the Open Government License makes possible on other forms of the law in the United Kingdom.

To accompany the petition, and to demonstrate the dramatic transformations and increase in accessibility and ease of use that is possible if access to the law is not tightly controlled, we have made available the nine key documents required by the European Union for the Safety of Toys and transposed into law in the United Kingdom through [The Toys Safety Regulations of 2011](#).

We believe that this is a subject that needs to be discussed in public. As the Good Law effort states, the digital age brings new opportunities, and one of the opportunities is to make sure that all of the law is available to all of the people. Considering this issue in a public consultation will allow the Office of the Parliamentary Counsel and Her Majesty's Government to understand the views and needs of ordinary users of the law and discuss the proper policies which should be set in place to provide meaningful access for all.

I hope very much that this public discussion can occur on this important matter of public policy. In Germany and the United States, private parties have brought suit against Public.Resource.Org to prevent efforts to make legally-mandated technical

documents more broadly available despite our repeated requests that the matter be discussed as an issue of public policy not private property. The United Kingdom has shown remarkable leadership in the area of open government, from the pioneering work of the Government Digital Service to the full and open consultations that have led to a number of far-reaching reforms, leadership that has made Her Majesty's Government the standard to which other countries aspire in their own efforts. We thus hope that the United Kingdom can extend its leadership role to this critical issue of making the law, including public safety standards, available to all.

Respectfully Submitted,



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# Petition to Her Majesty's Government on the Safety of Toys

## Manifest

Initial Posting Date: 4 September 2015 (Call for Co-Signatories, [See Annex C](#))

Submission Date: 5 October 2015 (Transmittal to Office of the Prime Minister)

Submission To:

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Joined By: Co-Signatories Listed in [Annex C: Table of Affected Parties](#)

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EN 71-2:2011+A1:2014: [Safety of toys - Part 2: Flammability.](#)

EN 71-3:2013: [Safety of toys - Part 3: Migration of certain elements.](#)

EN 71-4:2013: [Safety of toys - Part 4: Experimental sets for chemistry and related activities.](#)

EN 71-5:2013: [Safety of toys - Part 5: Chemical toys \(sets\) other than experimental sets.](#)

EN 71-7:2014: [Safety of toys - Part 7: Finger paints - Requirements and test methods.](#)

EN 71-8:2011: [Safety of toys - Part 8: Activity toys for domestic use.](#)

EN 71-12:2013: [Safety of toys - Part 12: N-Nitrosamines and N-nitrosatable substances.](#)

EN 71-13:2014: [Safety of toys - Part 13: Olfactory board games, cosmetic kits and gustative games.](#)

## **§ 1. Introduction and Statement of Purpose**

*By this petition, we respectfully request Her Majesty's Government to conduct a public consultation on the availability of EU-mandated harmonised standards on the safety of toys with an aim towards taking steps to making these crucial documents more broadly accessible under the same terms as other legislation and regulations binding the citizens of the United Kingdom.*

The European Union has mandated that each country adopt and enact a series of technical safety standards into a law concerning the safety of toys, a series of documents known as “EN 71” (EN stands for “European Norm.”)

Nine of the documents in this series have been mandated in [EU Directive 2009/48/EC](#) on the safety of toys, and in five subsequent Directives and Regulations of the Commission.

These EU-mandated safety regulations have in turn been transposed into UK law in [The Toys Safety Regulations of 2011](#). Despite the critical nature of these mandated safety standards, the cost to purchase the nine parts is an eye-popping £1766.

Even more disturbing than the high prices are the restrictions on use. Under the policies advanced by the National Standards Body, people may not make copies or otherwise inform their fellow citizens about these important safety provisions without an explicit license from the authorities.

Restrictions on the right of the people of the United Kingdom to read and speak the legally-mandated standards for the safety of toys is a violation of the rule of law, the principle that we must all know the laws by which we as democratic societies choose to bind ourselves.

Accompanying this petition, Public.Resource.Org has transformed and posted the EU-mandated toy safety standards for public use on the Internet on a non-commercial basis. The transformation retains all the text and other elements of the standards, with a significant improvement in usability and accessibility of the presentation format. Our purpose in transforming and posting the standards in connection with this petition is to highlight the benefits of greater public access to the standards. More broadly, we seek to promote public education and public safety and a better informed citizenry.

## **§ 2. The Safety of Toys Is an Issue of Pressing Public Concern**

Toys are big business in Europe. The market for traditional toys and games in Europe was €15.8 bn in 2011; in the United States that market was only €14 bn during the same period. The toy industry in Europe employed 51,000 people in 2011 and generated €5.8 bn in revenue. Again, these numbers are larger than in the United States, which employs 35,000 workers and generated €4.4 bn in revenue. China is the world's largest toy producer, employing 128,000 people and generated €16 bn in revenue. [1]

Europe is the largest single market for goods and services worldwide. But, let us leave aside the economic importance of the toy sector for now and talk instead about what happens when toys go bad. The European Union is the home to 80 million children. When the toys they play with are not safe, we all pay attention. Just a few examples that have made the headlines:

1. In 1997, Mattel recalled the Cabbage Patch Kids Snacktime Kids dolls from the market. The toys used a pair of one-way metal rollers behind a plastic slot and rubber lips to have the dolls “eat,” but those rollers had a disturbing tendency to catch a child's hair or fingers as well. [2]
2. In 2007, Mattel recalled over 94,000 toys for toddlers in the UK because they contained unsafe levels of lead, part of a recall of over 1.5 million products worldwide. [3]
3. In 2007, Bindeez (a craft kit with beads) were recalled after children swallowed the beads, which when ingested metabolised in the stomach into the sedative drug, GHB, known as a “date rape drug.” [4]
4. In 2008, a death and four serious injuries led to the recall of the Magnetix building sets. Magnets inside the plastic building pieces could fall out and be swallowed or aspirated, leading to intestinal blockage. [5]
5. In 2008, clackers were discontinued after the heavy and fast-moving hard acrylic plastic balls would shatter when striking each other. [6]
6. In 2010, Fischer-Price was forced to recall high chairs, inflatable balls, and the Little People® Wheelies™ Stand ‘n Play™ Rampway from all UK stores over safety concerns including falls, cuts, choking, and other injuries. [7]



7. In 2011, the Telegraph reported that one in three toys in China contains heavy metals, with one in 10 containing excessive levels of lead. [8]
8. In 2014, the BBC reported on Manchester children swallowing “button” lithium batteries, with five children suffering life-changing injuries as a result. [9]
9. In 2014, Trading Standards seized 1,960 fake “Disney Frozen Dolls” at the Port of Dover because the cheap counterfeits were highly flammable. [10]

The problem goes far beyond a few headlines. It is a daily concern. The European Commission maintains a Rapid Alert System known as [RAPEX](#), which allows the 31 participating countries (the EU countries, Norway, Iceland, and Liechtenstein) to exchange information with each other and the commission on products posing risk to health and safety which are protected by relevant EU legislation.

In 2014, there were 633 such critical notifications involving the safety of toys. Since 2005 there have been 4,283 entries for toys (which account for 25% of the total 16,978 entries in the database). Just a few examples are listed in [Table 1](#).

**Table 1: Selected RAPEX Toy Safety Incident Reports**

| Notification                | Name of Toy                      | Description of Issue  |
|-----------------------------|----------------------------------|---|
| <a href="#">A11/0096/13</a> | The Fun Kit Water Bomb           | Poses a risk of injuries because it can easily explode and pieces of plastic may cause injuries.  |
| <a href="#">A11/0047/14</a> | Rubie's Disney Rapunzel          | The fancy-dress wig poses a risk of fire and burns due to high flammability.  |
| <a href="#">A11/0039/14</a> | Offertissima Maska               | Due to the presence of sharp edges around the mask's eye holes, children may be injured while playing with the product. Also, The product poses a chemical risk because it contains 0.65 % by weight of di-(2-ethylhexyl) phthalate (DEHP). |
| <a href="#">A11/0042/14</a> | Scentos Perfumed Soap Bubbles    | The yellow/orangey coloured bubble bath liquid perfumed with a citrus scent may, due to the characteristic form, colour and size, be mistaken for foodstuff.  |
| <a href="#">A12/0002/14</a> | Unknown Brand Wooden Rattle      | The product poses a risk of choking because small parts (the wooden balls) can easily detach and be swallowed by small children.  |
| <a href="#">A12/0199/14</a> | GOODMaRK Brilliez Pour Les Fetes | The product can easily break leaving the small button batteries accessible. If ingested by children, the batteries may pose a chemical risk.  |
| <a href="#">A12/0536/14</a> | Creactiva Magic Pens             | The product poses a chemical risk because the brown ink releases an excessive amount of copper (measured value: 309 mg/kg).   |
| <a href="#">A12/1436/14</a> | Air Bang Rocket                  | The product exceeds the maximum permissible emission of sound and consequently can cause damage to hearing.   |

Table 1: Selected RAPEX Toy Safety Incident Reports

| Notification                | Name of Toy                              | Description of Issue   |
|-----------------------------|--|--|
| <a href="#">A12/1382/14</a> | Popular Front Plastic Doll               | Plastic material of the head of the doll contains 37.6 % by weight di-(2-ethylhexyl) phthalate (DEHP). This phthalate is toxic and harmful for the health of children, causing possible damage of the reproductive organs.   |
| <a href="#">A12/0523/14</a> | Brasil Flag Caterpillar Puffer Ball      | The toys pose a risk of choking due to the presence of small parts (such as the eyes of the caterpillar, the nose of the hedgehog and parts of the balls) which can be easily detached and swallowed by small children.  |
| <a href="#">A12/0259/14</a> | Pistola Laser–Eagle                      | The laser associated with the toy gun is Class 3B and could cause damage to sight.   |
| <a href="#">A12/0392/14</a> | Play Go Afternoon Tea Set for Two        | The cups release an excessive amount of nickel (0.40 mg/dm <sup>2</sup> ). Children can put food into the cups and drink.  |
| <a href="#">A12/1239/14</a> | Fantastiko Tool Set                      | The product poses a risk of choking because fragments of the saw, screwdriver and hammer can easily break, creating small parts that may be swallowed by small children. Furthermore, the nuts and bolts are small parts that are supplied loose in the blister packaging.   |
| <a href="#">A12/0499/14</a> | Keela Mini-Speeder Freestyle Rider       | The product does not have a back brake operating system, only a front brake, which could prevent the user from being able to stop safely and adequately. In addition, the steering column is not strong enough and could break, and there are gaps capable of injuring fingers on the adjustable and folding steering tubes.                     |
| <a href="#">A12/0502/14</a> | Knights of the Realm Fancy Dress Costume | The shoulder pads on the shirt form a strong flat loop in the hood and neck area of the garment. The loop formed is too large and, therefore, it is possible for a child to get stuck in it whilst playing, posing a risk of strangulation or other injuries.  |
| <a href="#">A12/0956/14</a> | Supermag Tricycle+Driver                 | The product poses a risk of injuries (intestinal blockage) because the magnets have a high magnetic flux value and if more than one small magnet is swallowed they can be attracted to one another through the gut wall, causing perforation or blockage.  |
| <a href="#">A12/1573/14</a> | Hobby Hall 3-Unit Outdoor Play Gym       | Children may collide with the swing element because the double seat and regular swing are too close to each other.   |
| <a href="#">A12/1827/14</a> | JAC Brand Toy Duck                       | The plug in the bottom can easily come off. If small children put it in the mouth, it can obstruct the airways. Furthermore, the plastic material of the ducks contains bis(2-ethylhexyl) phthalate (DEHP) (measured value: 20 % by weight). This phthalate may harm the health of children, causing possible damage of the reproductive system. |
| <a href="#">A12/1106/14</a> | Super Duper Glitter Ball                 | The product poses a microbiological risk because the liquid in the balls contains an excessive content of aerobic mesophilic flora, yeast and moulds (measured values: aerobic mesophilic flora: 2.2 x 10 <sup>7</sup> cfu/ml; yeast and moulds: 1.4 x 10 <sup>7</sup> cfu/ml).  |
| <a href="#">A12/0508/14</a> | My Baby Toy Pushchair                    | The product poses a risk of injuries and cuts because the pushchair collapses extremely easily, despite the presence of the safety lock, with consequent risk of injury due to entrapment, mainly of fingers, between moving parts.  |

People demand that our governments take aggressive and prompt steps to insure the safety of toys. This is not an area where people want their governments to step lightly. Too much is at stake.

### **§ 3. EU and UK Activities Mandating the Use of the Toy Safety Standards**

In 1988, when the European Union formally adopted the “new approach” to harmonised standards, the very first directive issued for public safety was *“Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys.”* As a subsequent Commission staff report explained:

*“The proliferation of different safety provisions across the Member States had led to barriers to trade and marketing. This went hand in hand with the recognition that a proliferation of different national safety regimes across the EU did not necessarily afford consumers in the EU, especially children, with effective protection against hazards arising from toys.*

*The result was a far-reaching directive, including publication of mandated standards, adoption of those standards by each and every country in the European Union as a National Standard—with no changes whatsoever in content—and transposition of requirements in the Directive into national law. The safety criteria include protection against health hazards or physical injury in general, and risks associated with the physical and mechanical, flammability, chemical, electrical, hygienic and radioactive properties of toys in particular.” [11]*

The subject of the safety of toys continued to receive sustained attention from the European Union, which convened a special Expert Group. A 2004 commissioned study concluded that the 1988 Directive suffered from numerous inadequacies, in particular gaps in essential requirements as well as deficiencies in enforcement. Some toys (such as slides and trampolines) were not covered under the existing standards. Analysis of the hazards of new toys was not considered adequate, for example the roller-skating “fad” was not properly anticipated. Minimum age requirements were not being properly handled, putting at risk toddlers (who are the group at the highest risk of toy-related accidents). [12]

A decision was thus made to revise the directive, which led to the issuance of [Directive 2009/48/EC](#). This directive did not arise in a vacuum. It was the result of a wide-ranging public consultation in May 2007. Over 1500 replies were received. That consultation did not materialise out of thin air. It was the direct result of the highly-publicised recall by Mattel of toys with excessive lead levels and loose magnets, a recall that led Mrs. Meglena Kuneva to announce a "two-month stocktaking exercise of the consumer product safety mechanism in place in the EU." [\[13\]](#)

Issuing the directive was not the end of the involvement of the government. The Commission then issued on 9 July 2009 [Mandate M/445](#), "Standardisation Mandate Addressed to CEN and CENELEC Within The Framework of [Directive 2009/48/EC](#) Revising [Directive 88/378/Eec](#) Concerning The Safety Of Toys."

Mandate M/445 is very specific, directing CEN to:

- *§ 3, ¶ 1: "Make the necessary adjustments to standards to take account of the fact that [Directive 2009/48/EC](#) revised [Directive 88/378/Eec](#) with the effect that new definitions and warnings have been introduced, in particular the definition of activity toys and design speed and warnings for toys in food, imitations of protective masks and helmets, packaging for fragrances, toys intended to be strung across a cradle, toy scooters, toy bicycles and skateboards;"*
- *§ 3, ¶ 2: "Ensure that the standards take account of the new physical and mechanical, chemical, electrical, hygiene and flammability requirements;"*
- *§ 3, ¶ 3: "In particular, make the necessary adjustments to standards to take account of the fact that the [Directive 2009/48/EC](#) contains new requirements, to limit the maximum values both for impulse noise and continuous noise emitted by toys in order to adequately protect children from the risk of impairment of hearing;"*
- *§ 3, ¶ 4: "The revised directive foresees that more stringent and comprehensive standards should be established to limit the maximum values for noise levels for all toys that emit sound, both due to high continuous noise and to impulse noise. The measurement result is as a rule be given as the highest value recorded. [sic] The emission of sound pressure levels should not impair children's hearing and should be revised taking into account that children are the most vulnerable age group and that their auditory channel is smaller than in adults."*

- § 3, ¶ 5: “Address the hazard presented by books made of cardboard and paper in order to cover adequate testing. The requirements must in particular ensure that there is no choking risk as regards books intended for children less than 36 months;”
- § 3, ¶ 6: “Ensure that the harmonised standards intended to support [Directive 88/378/Eec](#) fully satisfy the relevant essential safety requirements of the revised Directive or, failing that, include an indication as to which of the requirements are not satisfied;”
- § 3, ¶ 7: “Ensure that the standards intended to support the [Directive 2009/48/EC](#) include an annex providing information with regard to the relationship between its clauses and the essential safety requirements of the Directive in order to allow the users of the standard to establish to what extent the standard provides for a presumption of conformity with the essential safety requirements in accordance with the agreement on this subject between the Commission and the European Standardisation Organisations;”
- § 3, ¶ 8: “Ensure that the harmonised standards intended to support the Directive include an informative annex with the background and justification for the requirements.”

The Commission stayed directly involved in this process, requiring a work plan to be submitted by CEN within three months, an interim report within 12 months, and set deadlines for execution of the work.

Once the revised standards were completed, the list of the revised and mandated standards is published in the Official Journal of the European Union. The Commission then required that every country in the EU adopt each standard—unchanged—as a national standard within six months. There have been 12 such notifications under the current directive, as listed in [Table 2](#).

**Table 2: Official Journal Notifications of Specific Toy Safety Harmonised Standards**

|  |  |  |
|--|--|--|
| <a href="#">OJ C 196</a> of 2015-06-12 | <a href="#">OJ C 087</a> of 2015-03-13 | <a href="#">OJ C 181</a> of 2014-06-13 |
| <a href="#">OJ C 317</a> of 2013-10-31 | <a href="#">OJ C 187</a> of 2013-06-29 | <a href="#">OJ C 149</a> of 2013-05-28 |
| <a href="#">OJ C 349</a> of 2012-11-15 | <a href="#">OJ C 307</a> of 2011-10-19 | <a href="#">OJ C 307</a> of 2011-10-19 |
| <a href="#">OJ C 235</a> of 2011-08-11 | <a href="#">OJ C 215</a> of 2011-07-21 | <a href="#">OJ C 178</a> of 2011-06-18 |

The implementation of each of the standards listed in the Official Journal as a National Standard, without any changes, is not discretionary. Each document states clearly in the front matter:

*“CEN members are bound to comply with the CEN/CENELEC Internal Regulations which stipulate the conditions for giving this European Standard the status of a national standard without any alteration.”*

This requirement to implement the standard as a National Standard goes far beyond the internal regulations of the CEN standards consortium; it is a governmental requirement established by the European Union.

The Commission involvement does not end with publication in Official Journal. It maintains an extensive set of Guidance Documents which it develops in conjunction with the Expert Group on Toy Safety and publishes periodic Recommendations and Protocols from the Coordination Group of Notified Bodies (see Annexes [B.2](#) and [B.3](#)).

[\[14\]](#)

The European Commission continues to update the legal requirements, and has issued five supplemental Directives and Regulations elaborating on the subject of Toy Safety:

1. [Commission Directive 2012/7/EU](#) of 2 March 2012 amending, for the purpose of adaptation to technical progress, part III of Annex II to [Directive 2009/48/EC](#) of the European Parliament and of the Council relating to toy safety
2. [Commission Regulation \(EU\) No. 681/2013](#) of 17 July 2013 amending part III of Annex II to [Directive 2009/48/EC](#) of the European Parliament and of the Council on the safety of toys
3. [Commission Directive 2014/79/EU](#) of 20 June 2014 amending Appendix C of Annex II to [Directive 2009/48/EC](#) of the European Parliament and of the Council on the safety of toys, as regards TCEP, TCPP and TDCP
4. [Commission Directive 2014/81/EU](#) of 23 June 2014 amending Appendix C of Annex II to [Directive 2009/48/EC](#) of the European Parliament and of the Council on the safety of toys, as regards bisphenol A



5. [Commission Directive 2014/84/EU](#) of 30 June 2014 amending Appendix A of Annex II to [Directive 2009/48/EC](#) of the European Parliament and of the Council on the safety of toys, as regards nickel

Similar activity is conducted by each national government in the European Union. In addition to publishing each document of the EN 71 series as a British Standard, the United Kingdom is obligated to transpose the requirements of the directives and regulations in to national law. These national laws have included, since 1988:

1. The Toys (Safety) Regulations 2011, ([2011 No. 1881](#))
2. The Toys (Safety) (Amendment) Regulations 2010, ([2010 No. 1928](#))
3. The Magnetic Toys (Safety) (Revocation) Regulations 2009, ([2009 No. 1347](#))
4. The Magnetic Toys (Safety) Regulations 2008, ([2008 No. 1654](#))
5. The Toys (Safety) Regulations 1995, ([1995 No. 204](#))
6. The Toys (Safety)(Amendment) Regulations 1993, ([1993 No. 1547](#))
7. The Toys (Safety) Regulations 1989, ([1989 No. 1275](#))

As with the government of the European Union, Her Majesty's Government does not stop with legislation. Extensive guidance is provided by the Department for Business, Innovation & Skills and throughout other Ministries of Her Majesty's Government and by many municipalities throughout the United Kingdom. [\[15\]](#) The government is assisted in this effort by British Toy & Hobby Association, which also publishes extensive binding guidance documents under the Trading Standards Primary Authority Scheme. [\[16\]](#) ([Annex B](#) contains a listing of published official guidance materials from various governmental authorities.)

That the EN 71 series of standards are an important part of the law of the European Union and the United Kingdom is underscored by looking in the standards themselves. In the nine toy safety standards can be found references to 40 different EU Directives and 20 different EU Regulations. The EN 71 series of toy safety standards are an integral component of the law. One cannot have toy safety without referring directly to these legally-mandated documents.

## § 4. Lack of Availability and Restrictions On Use

Despite the crucial public nature of the EN 71 mandated toy safety standards, they have not been made available to the public. Each national standards body in the European Union is granted a monopoly of sales on these documents, and they do not come cheap. In the United Kingdom, the cost is £1766 to purchase these documents, a cost of £3.39 per page (see [Table 3](#)). To put that in perspective, if the Oxford University Press charged the same rates, the Oxford Shakespeare (Second Edition) would cost £4,547 instead of £30.

**Table 3: Price For Mandated Toy Safety Standards from the British Standards Institute**

| Standard             | Title  | Pages      | Price        |
|----------------------|--|------------|--------------|
| EN 71-1:2011+A3:2014 | Safety of toys - Part 1: Mechanical and physical properties                        | 147        | £288         |
| EN 71-2:2011+A1:2014 | Safety of toys - Part 2: Flammability  | 22         | £152         |
| EN 71-3:2013         | Safety of toys - Part 3: Migration of certain elements                             | 52         | £212         |
| EN 71-4:2013         | Safety of toys - Part 4: Experimental sets for chemistry and related activities    | 33         | £174         |
| EN 71-5:2013         | Safety of toys - Part 5: Chemical toys (sets) other than experimental sets         | 91         | £226         |
| EN 71-7:2014         | Safety of toys - Part 7: Finger paints - Requirements and test methods             | 66         | £204         |
| EN 71-8:2011         | Safety of toys - Part 8: Activity toys for domestic use                            | 59         | £212         |
| EN 71-12:2013        | Safety of toys - Part 12: N-Nitrosamines and N-nitrosatable substances             | 27         | £152         |
| EN 71-13:2014        | Safety of toys - Part 13: Olfactory board games, cosmetic kits and gustative games | 25         | £146         |
| <b>Total</b>         |  | <b>522</b> | <b>£1766</b> |

These prices put the standards beyond the reach of any concerned parent or caregiver. The prices also put them beyond the reach of most small businesses, journalists, researchers, or students.

But, the price is only one of the issues. Each standards body imposes strong restrictions on the use of standards, even those that are the law. The British Standards terms and conditions of use are very specific and very restrictive:

- *“A British Standard purchased in electronic format is licensed to a sole named user who is permitted to install a single electronic copy of it for use on a single computer.*



- A sole licensed user of a British Standard purchased in electronic format may print off a single hard copy for their own, non-commercial purposes. Further reproduction of the single printed copy is not permitted.
- A British Standard purchased in hardcopy format may not be further reproduced—in any format—to create an additional copy.” [17]

We used the [WorldCat](#) library card catalogue search service to look for copies of the British Standards Institution version of the Safety of Toys standards in libraries in the United Kingdom. As [Table 4](#) demonstrates, the results were meagre.

Table 4: Availability of Safety of Toys in Libraries (WorldCat Catalog)

| Document  | Year | Libraries   |
|---|------|---|
| Safety of Toys, Part 2 (Flammability)                       | 2002 | Perth & Kinross Libraries, Perth<br>Swindon Libraries, Central Library, Swindon |
| Safety of Toys, Part 1 (Mechanical and Physical Properties) | 2011 | Cleveland Public Library (United States)  |
| Safety of Toys, Part 3 (Migration)                          | 1988 | Dumfries & Galloway Libraries, Ewart Library,<br>Dumfries                       |
| Safety of Toys, Part 2 (Flammability)                       | 1988 | Dumfries & Galloway Libraries, Ewart Library,<br>Dumfries                       |

By way of contrast, the government publication “Life in the United Kingdom” was found in 123 libraries on this same search service. Even expensive law books, such as Clayton and Tomlinson's magisterial “The Law of Human Rights” was found in 277 libraries. (We note in passing that Public.Resource.Org produced an open version of [Life in the United Kingdom](#), including the study guide and practice tests. This publication was produced by the Home Office and is covered under [Crown copyright](#) and distributed under the [Open Government License](#).)

A search of the [British Library main catalogue](#) for “Safety of Toys” yielded 53 results. However, 44 of those entries were for European Union official publications, such as copies of the directives and staff reports. The only actual physical copies of the standards are 1995 editions of Part 2 (Flammability) and 3 (Migration). Likewise a search of the COPAC catalogue for [“Safety of Toys.”](#) which covers 90 libraries, found only 11 hits, all of which are Cabinet Office or other governmental publications, with the one exception of an ISO standard 8124-1:2000, the International Organization for Standardization's standard on the Safety of toys.

Public institutions, such as libraries and universities, must either purchase paper copies or subscribe to the British Standards Online (BSOL) service. Prices are not published for this BSOL service, and to find those prices involves a lengthy application process involving filling out a web form, followed by a telephone interview by BSI personnel, a quotation, a contract, and finally access to the service. Once access is granted, the terms of use are highly restrictive:

- *“Users may copy a maximum of 10% of the content of any of the British Standards and paste it to another document for internal use within the licensed Customer site. The copied content in the new document must contain “Copyright BSI © Date (where date is the date of copyrighted material)”. Such content is licensed for use only for the duration of the Subscription Agreement. Such copied extracts of the British Standards must be deleted from the internal document on expiry and subsequent non-renewal of the Subscription Agreement.*
- *Users are not authorised to transmit the British Standards electronically or by any other means in any form to any party who is not an Authorised User.*
- *Users may not copy, transfer, sell, licence, lease, give, download, decompile, reverse engineer, disseminate, publish, assign (whether directly or indirectly, by operation of law or otherwise), transmit, scan, publish on a network, or otherwise reproduce, disclose or make available to others or create derivative works from, the British Standards or any portion thereof, except as specifically authorised herein. Users must not remove any proprietary legends or markings, including copyright notices, electronically encoded information, watermarks, or any BSI-specific markings.” [18]*

The BSOL service is a subscription service for all British Standards, adopted European standards, and adopted International standards, not just the very limited subset of legally-mandated harmonised standards that are the subject of this petition. We submitted an inquiry to BSI as to the cost of the BSOL service for a small business and were informed that for the charge of £1900 per year, a single user is allowed to access up to 25 standards, subject to the restrictions noted above. The cost for access to all 72,000 British, adopted European and International standards is £42,000 per person per year. It should be noted that only a small percentage of the standards that BSI maintains fall within the category addressed by this petition, standards that are legally mandated by the European Union for public safety purposes.

It is clear that it is difficult for an average citizen, such as a concerned parent worried about the safety of a particular toy, to access the EN 71 standards in a library or on the Internet. Access requires a great deal of advance planning and a great deal of money or time.

## **§ 5. The Posting of the EN 71 Standards by Public.Resource.Org**

### **§ 5.1. The Nine Documents That Were Posted**

Accompanying this petition, Public.Resource.Org has transformed and posted the EU-mandated toy safety standards for public use on the Internet on a non-commercial basis. We are a registered not-for-profit organisation based in the U.S. and we do not charge for, nor assert control over, any resources we post. Our purpose in doing so is clearly stated in the preamble of each document:

*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, this legal document is hereby made available on a noncommercial basis, as it is the right of all humans to know and speak the laws that govern them.*

These nine documents include:

1. [EN 71-1:2011+A3:2014: Safety of toys - Part 1: Mechanical and physical properties.](#) The key standard in this series contains a wealth of information about toy safety, including balloons, rocking horses, masks, bicycles, scooters, projectiles, and many others. It details the mechanical and physical requirements for each of these categories and includes safety testing requirements.
2. [EN 71-2:2011+A1:2014: Safety of toys - Part 2: Flammability.](#) This safety standard deals with the flammability of toys in general with special provisions for costumes, beards, moustaches, wigs, free-hanging ribbons, masks, toys intended to be entered by a child, and soft-filled toys.
3. [EN 71-3:2013: Safety of toys - Part 3: Migration of certain elements.](#) This safety standard deals with toys that have dry, brittle, powder-like or pliable materials, as well as scraped-off materials and liquid or sticky materials. This is particularly important for coatings on toys, liquid ink in pens, bubbles and

slimes formed from toys, and other such materials. Migration is when the materials leave the toy and, for example, enter the saliva of a child who puts the toy in her mouth.

4. [EN 71-4:2013: Safety of toys - Part 4: Experimental sets for chemistry and related activities.](#) This safety standard details requirements for packaging and closures, container, test tubes, and glassware, as well as eye protection, test tube stands, and requirements for crystal growing sets, carbon dioxide generating sets, and chemistry sets. It includes important advice for supervising adults and safety rules everybody should know.
5. [EN 71-5:2013: Safety of toys - Part 5: Chemical toys \(sets\) other than experimental sets.](#) This category includes adhesives, paints, lacquers, varnishes, thinners and cleaning agents in model sets, as well as oven-hardening modelling clay sets, plastic mould sets, and miniature workshop sets that use ceramic and enamelling materials.
6. [EN 71-7:2014: Safety of toys - Part 7: Finger paints - Requirements and test methods.](#) Finger paints are intended for use by fingers or hands by small children. Prolonged skin contact or ingestion of the paint materials are real possibility, so this document covers requirements like the mandatory use of an embittering agent to discourage ingestion.
7. [EN 71-8:2011: Safety of toys - Part 8: Activity toys for domestic use.](#) Activity toys are items such as swings and slides. This document carries important safety requirements and tests for any activities involving climbing, jumping, swinging, sliding, rocking, spinning, paddling, crawling and creeping, or any combination thereof.
8. [EN 71-12:2013: Safety of toys - Part 12: N-Nitrosamines and N-nitrosatable substances.](#) This standard deals with chemical substances that are found in finger paints as well as elastomers, which are a substance with extreme flexibility which are often used as a form of synthetic rubber in toys such as chew toys, bouncing rubber balls, and balloons. At high levels, these substances are carcinogens. [\[19\]](#)
9. [EN 71-13:2014: Safety of toys - Part 13: Olfactory board games, cosmetic kits and gustative games.](#) This document deals with toys that can be eaten and give off odours. It deals with subjects such as food allergens, the use of

containers for fragrances, cosmetic products and food, the proper use of glassware, eye protection, and warning labels.

Posting of these documents was based on the listing in the Official Journal of [OJ C 181 of 2014-06-13](#). This one of a series of such notifications. A more recent notification was [OJ C 196 of 2015-06-12](#), and Public.Resource.Org will update the documents at a future date to reflect the later listing.

## **§ 5.2. The Nature of the Transformation**

The documents that have been posted have all been precisely transcribed with no changes in content, but with a significant transformation in usability and accessibility of the presentation format:

1. Documents are all marked up in the HTML 5 standard using a fluid design that is well adapted to different presentation formats, such as mobile phone, tablets, and different browsers. [\[20\]](#) This process included careful attention to tables, section headers, lists, and other features in the standards that provide structure to the document.
2. Mathematical formulas have all been marked up using the MathML specification. Doing so has significant benefit for the presentation of formulas, and also allows a screen reader to speak the semantic content of the math for people with visual impairments. [\[21\]](#) Many modern browsers (including Microsoft Internet Explorer, Apple Safari, and Mozilla Firefox) have native MathML support. In order to support additional browsers, such as Google's Chrome, a call has been added to the header of each document to the MathJax library, which provides rendering of mathematics over a variety of platforms. [\[22\]](#)
3. Drawings have all been carefully and precisely converted from low-quality bitmap graphics to the Scalable Vector Graphics (SVG) format, a set of specifications supported in most modern browsers. [\[23\]](#)
4. The presentation of the documents is specified using Cascading Style Sheets (CSS) and is placed in an [external file](#), allowing a user to easily replace the style specifications we have developed with their own. [\[24\]](#) Note that this Petition uses the same style sheet as the standards. Note that this petition uses the same style specification as for the standards themselves and we

are beginning to use this same format for American [regulations](#), [standards](#), and [petitions](#).

5. A standard system of ID attributes have been added to key document elements, so that each section of the clause of the document can be easily addressed. This allows easy navigation within a document, so that if a table, figure, equation, clause, section, or footnote is referenced, the user can click on it. This also allows bookmarks to specific sections of a document to be sent to another user, who can go directly to the section being discussed. For example:
  - Section 3.1 of EN 71-2 (flammability) can be addressed as <https://law.resource.org/pub/eu/toys/en.71.2.2014.html#s3.1>
  - Table 2 of EN 71-3 (migration) can be addressed as <https://law.resource.org/pub/eu/toys/en.71.3.2015.html#t2>
  - Figure 1 of EN 71-4 (chemistry sets) can be addressed as <https://law.resource.org/pub/eu/toys/en.71.4.2013.html#f1>
  - Equation 2 of EN 71-5 (chemical toys) can be addressed as <https://law.resource.org/pub/eu/toys/en.71.5.2013.html#eq2>
6. The original page numbers have been set in place, so a reader of the HTML version can make citations that conform to the original pagination. For example:
  - Page 24 of EN 71-7 (finger paints) may be addressed as <https://law.resource.org/pub/eu/toys/en.71.7.2014.html#p24>
7. Links and other document components have been coded with "ARIA" attributes, provided increased accessibility for users who are visually impaired. [\[25\]](#) An example is the use of the *aria-describedby* attribute for a footnote reference. A footnote is presented by a screen reader in the main text as a simple number (e.g., "[25]") which does not provide a lot of meaning. By adding an *aria-describedby* tag to that hyperlink, and then pointing to a portion of the footnote that describes what it is about (such as the title of the document), a user of a screenreader can get a quick understanding of what the footnote is about without leaving the flow of the main document.

8. One of the biggest challenges in accessibility is providing meaningful access to graphics. The standards at issue have not been designed with accessibility in mind and many of the graphic images are somewhat cryptic or contain information within them that is not accessible to those who cannot see the images. As part of our transformation of EN 71, we provided added a <title> and <desc> element to each SVG graphic, and put a verbal description of each graphic in the as the description. We then used the aria-labelledby attribute on the <svg> element so a screen reader can describe the diagram. An example can be found in [Figure 10 of EN 71-1](#):

```
<svg id="f10" aria-labelledby="f10.title f10.desc">
<title id="f10.title">Figure 10</title>
<desc id="f10.desc">
The diagram shows pedals, a chain, and a cover. Side A on the
components is the side where the limb of the child is nearest the
chain. Side B is the side where the chain or belt is separated
from the limb of the child.</desc>
```

Note that while we take great pains not to change any of the visible text of the document, the descriptions inside the SVG source code are written by Public.Resource.Org. It is our hope that standards developers at CEN (and at all other standards development organisations) will pay more attention to accessibility in the future and will write these descriptions themselves.

9. Because the documents use the CSS specification, it is easy to transform the document into other formats, such as a PDF file. We have provided special support in our CSS style sheet for the Prince XML system, [\[26\]](#) which supports a number of CSS 3 extensions for professional-quality printing (e.g., page headers, careful specification of widows and orphans, generation of bookmarks), and other pagination-oriented features that are not used in screen-based media. [\[27\]](#)
10. Our formatting of the documents places all graphics and other content inline. We deliberately place few calls to outside resources. In addition to the MathJax library and our CSS style sheet, we have placed two calls to [Google Open Source Fonts](#) in the header section. These fonts conform to the CSS Fonts Module. [\[28\]](#)



11. Where an EU directive, regulation, or other resource is mentioned in the toy safety standards, we have added an external hyperlink. Where other standards are referenced within the body of a document, if that other standard is available on our server, we also place a hyperlink.

This transformation of these key toy safety standards is a work in progress. Our hope is very much that other users will take these standards and continue to transform them, making them usable and accessible for an ever-wider variety of applications. Making the law available for all to read and speak is partly about fundamental values such as the ability of citizens to read and speak the laws by which we are governed, it is also about innovation. By making the law available to all, we encourage these kinds of transformations of the presentation and navigation of documents, making it easier to inform our fellow citizens.

### § 5.3. The Broader Context

Providing a complete set of the [EU-mandated harmonised standards](#) for the public to use, all set in a common format, facilitates accessibility, usability, and reusability. There are over 72,000 standards in the BSI portfolio of British, European, and International standards, the vast majority of which do not have the force of law. Our only interest in this effort is in those standards governing the public safety that have the force of law. In the European Union, these standards are all developed, promulgated, and noticed in a manner very similar to the Safety of Toys documents discussed in the present petition (see [Table 5](#)).

**Table 5: Key Public Safety Functional Areas Regulated By the European Union**

| Functional Area of EU Regulation                | Base Regulations and Directives <sup>1</sup>  |
|---|---|
| <a href="#">Chemical substances (REACH)</a>     | <a href="#">Regulation (EC) No. 1907/2006</a>   |
| <a href="#">Explosives for civil uses</a>       | <a href="#">Directive 93/15/EEC</a>   |
| <a href="#">Pyrotechnic articles</a>            | <a href="#">Directive 2007/23/EC</a><br><a href="#">Directive 2013/29/EU</a>  |
| <a href="#">Construction products (CPD/CPR)</a> | <a href="#">Regulation (EU) No. 305/2011</a><br><a href="#">Directive 89/106/EEC (CPD)</a>  |
| <a href="#">The Eurocode<sup>2</sup></a>        | <a href="#">Regulation (EU) No. 305/2011</a><br><a href="#">Directive 89/106/EEC (CPD)</a><br><a href="#">DIRECTIVE 2014/24/EU</a><br><a href="#">DIRECTIVE 2006/123/EC</a><br><a href="#">Directive 98/34/EC</a> |
| <a href="#">Cosmetics products</a>              | <a href="#">Regulation (EC) No. 1223/2009</a>   |



Table 5: Key Public Safety Functional Areas Regulated By the European Union

| Functional Area of EU Regulation   | Base Regulations and Directives <sup>1</sup>                               |
|--|--|
| <a href="#">General product safety</a> <sup>3</sup>  | <a href="#">Directive 2001/95/EC</a>                                       |
| <a href="#">Personal protective equipment (PPE)</a>  | <a href="#">Directive 89/686/EEC</a>                                       |
| <a href="#">Active implantable medical devices</a>   | <a href="#">Directive 90/385/EEC</a>                                       |
| <a href="#">In vitro diagnostic medical devices</a>  | <a href="#">Directive 98/79/EC</a>   |
| <a href="#">Medical devices (MDD)</a>  | <a href="#">Directive 93/42/EEC</a>  |
| <a href="#">Inspection of pesticide application equipment</a>  | <a href="#">Directive 2009/128/EC</a>                                      |
| <a href="#">Machinery (MD)</a>   | <a href="#">Directive 2006/42/EC</a>                                       |
| <a href="#">Pressure equipment (PED)</a>   | <a href="#">Directive 97/23/EC</a>   |
| <a href="#">Rail system: interoperability</a>  | <a href="#">Directive 2008/57/EC</a>                                       |
| <a href="#">Recreational craft</a>   |  |
| <a href="#">Simple Pressure Vessels (SPVD)</a>   | <a href="#">Directive 2009/105/EC</a>                                      |
| <a href="#">Packaging and packaging waste</a>  | <a href="#">Directive 94/25/EC</a><br><a href="#">Directive 2013/53/EU</a> |
| <p><sup>1</sup> Only the base directives and regulations are listed, not modifying or superseded directives and regulations.</p> <p><sup>2</sup> A transformed version of the Eurocode may also be <a href="#">viewed online</a>. UK National Annexes for the Eurocode may also be <a href="#">viewed online</a>.</p> <p><sup>3</sup> Product safety standards for <a href="#">baby soothers (pacifiers)</a> and <a href="#">bicycles</a> are <a href="#">currently offline</a>.</p> |  |

In addition, we aim to allow people to compare standards set in a similar format in a given subject matter over different geographic regions. As such we are preparing similar transformations of other toy safety standards, including:

1. In the United States, ASTM F963-2011 has the force of law in the United States as specified in § 106 (“Mandatory Toy Safety Standards”) of the Consumer Product Safety Improvement Act of 2008 ([Pub. Law 110-314](#)).
2. In India, government-issued mandatory standards include [IS 9873-1](#) (Safety Requirements for Toys, Part 1: Safety Aspects related to Mechanical and Physical Properties), [IS 9873-2](#) (Safety Requirements for Toys, Part 2: Flammability), and [IS 9873-3](#) (Safety Requirements for Toys, Part 3: Migration of Certain Elements).

We note that the Indian documents are part of a [broader effort](#) to make all government-published technical standards from the Bureau of Indian Standards more broadly

available, including a [Petition to the Honorable Ministry of Consumer Affairs](#) which was submitted 1 November 2014.

By placing all these standards in a common format, readers will be able to begin comparing the requirements across different jurisdictions. We provided a similar transformation of standards for the accessibility of buildings and other public facilities:

1. In the U.S., these requirements are governed in part by the provisions of [ANSI A117-1](#) (*Accessible and Usable Buildings and Facilities*),
2. In New Zealand by [NZS 4121](#) (*Design for access and mobility: Buildings and associated facilities*),
3. In South Africa by [SANS 10400-S](#) (*The application of the National Building Regulations Part S: Facilities for persons with disabilities*),
4. In India by [IS SP 7](#) (*The National Building Code of India 2005*).

More information about Public.Resource.Org activities to make laws more accessible may be found on our site, in particular the 2012 essay entitled [Twelve Tables of Codes](#) and in Table 1, [Table of Codes](#). The aim of all these activities is to make technical safety requirements mandated by law more broadly available and in a common format that is more usable and accessible than existing presentations. This activity is about innovation that will better inform citizens about their rights and obligations.

When a single organisation is given a monopoly on the ability to present the law, no matter how technically capable that organisation may be, innovation will necessarily suffer. When dozens of organizations each stake a claim to different parts of the law, each presenting the information in different formats and refusing permission to reuse the materials without a license, it becomes difficult if not impossible for citizens to find, read, and communicate the provisions of the law. We should encourage the broadest possible dissemination of crucial public safety laws.

## **§ 6. The 30-Year-Old “New Approach”**

### **§ 6.1. The Genesis of the Presumption of Conformity**

There is an elaborate fiction that the legally-mandated standards are not the law, they are voluntary standards. The argument goes that the law states that one must not harm children, and if one adheres to the mandated standards for the safety of toys, there is a

“presumption of conformity” that the toy is safe. However, a manufacturer of a toy may choose not to harm children using any other mechanism, thus making the EN 71 standards “voluntary.”

This elaborate dance to establish that the documents are voluntary (and thus may be sold for high prices) is practiced not just by standards bodies but by some officials of the Commission. Take, for example, a press release on the harmonised standards for the safety of machinery, which states in part:

*“These European standards provide solutions for compliance and presumption of conformity with the essential health and safety requirements of the Machinery Directive that they cover.*

*However, the use of harmonised standards remains voluntary and manufacturers can choose whether or not to follow a harmonised standard to manufacture their products. Manufacturers may thus use other technical solutions providing for an equivalent level of safety. In that case, they must be able to prove that their products are in conformity with the mandatory essential health and safety requirements, taking due account of the state of the art.” [29]*

This “presumption of conformity” dates back to a [1985 Council Resolution](#), the “New Approach to technical harmonisation and standards.” That resolution began by underscoring “the urgent need to resolve the present situation as regards technical barriers to trade” and recognised the “that the objectives being pursued by the Member States to protect the safety and health of their people as well as the consumer are equally valid in principle, even if different techniques are used to achieve them.” The Council then laid out an approach in which Directives would state the “essential safety requirements (or other requirements in the general interest)” but that:

- *“the task of drawing up the technical specifications needed for the production and placing on the market of products conforming to the essential requirements established by the Directives, while taking into account the current stage of technology, is entrusted to organisations competent in the standardisation area,*
- *these technical specifications are not mandatory and maintain their status of voluntary standards,*

- *but at the same time national authorities are obliged to recognise that products manufactured in conformity with harmonised standards (or, provisionally, with national standards) are presumed to conform to the "essential requirements" established by the Directive. (This signifies that the producer has the choice of not manufacturing in conformity with the standards but that in this event he has an obligation to prove that his products conform to the essential requirements of the Directive."* [\[30\]](#)

The basic instinct was that government should not be overly intrusive and develop specifications that are beyond the expertise of the bureaucracy. The hard technical work should be left to the experts. This is an admirable instinct, and it makes sense for a manufacturer to have the option of going beyond the standard to test for safety in ways that are not specified. However, this does not make the standard voluntary, because it is the specification of the standard that is the baseline for the law. These specifications are part and parcel of the process of governing, and these are the documents one must consult to understand the minimum standards for achieving safety of toys.

## **§ 6.2. The Elaborate and Compulsory Process of EU Mandates**

A close look at the process for creating standards shows that there is no line between the law-making of government and an independent, voluntary, consensus-based standards process. When it comes to the mandated harmonised standards, the firm hand of the European Commission guides this process every step of the way.

The process in force today is guided by [Regulation \(EU\) No. 1025/2012](#), which outlines the roles of the key players, namely the three European standards bodies, CEN, CENELEC, and ETSI and the national standards bodies of each of the Member States. This regulation stresses that "standards can have a broad impact on society, in particular on the safety and well-being of citizens, the efficiency of networks, the environment, workers' safety and working conditions, accessibility and other public policy fields."

Some of the key provisions include:

1. The regulation recognizes and underscores the important role that Small and Medium Enterprises (SMEs) play in the economy of Europe, which is particularly relevant for toys.

2. The regulation specifies a procedure where the Commission requests (mandates) one of the European standards organisations to develop a harmonised standard.
3. Specific requirements are laid out for the member states and their appointed national standards bodies to involve appropriate stakeholders, such as consumer representatives, Small and Medium Enterprises, and the disabled.
4. The regulation requires each member state to withdraw any conflicting national standards after the promulgation of a European standard, and to adopt such European standards as their new national standard.
5. The delegation of power is limited. The regulation explicitly states that national standards bodies are subject to EU antitrust regulations, and reserves the right to Parliament to object to any harmonised standard.
6. The regulation provides for financing by the Union for “the development and revision of European standards or European standardisation deliverables which is necessary and suitable for the support of Union legislation and policies” as well as a wide variety of other activities, including financing of the central secretariats of the European organisations, the translation of European standards, and the funding of a wide variety of “preliminary or ancillary work.”

The process that leads to these harmonised standards is an elaborate one. It begins each year with the Annual Work Programme issued by the Commission. [31] The plan incorporates by reference items from previous work plans, then advances new priorities. For example, in the area of child safety, the plan states that the Commission “may request the development of European standards for children's clothing and accessories as well as for children's shoes.” That clause then reaffirms the ongoing work from the previous year, which states:

*“The Commission will request the development of European standards for baby slings, soft and framed carriers, baby bouncers, swings and similar articles in support of the General Product Safety Directive (GPSD). Standards on playgrounds and playing field equipment may also be requested.” [32]*

The real work of specification and guidance by the Commission is in the mandates process. The concept of mandates was spelled out in the Regulation, and further laid out in an agreement between the Commission and the central standards bodies:

*“Although standardisation is a voluntary and independent activity, CEN, Cenelec, ETSI, the European Commission and EFTA recognise that it has an effect on a number of areas of public concern, such as the competitiveness of industry, the functioning of the single market and the environment. On various occasions the EU institutions and EFTA have recognised that standardisation can play a role in public policy and support legislation.” [33]*

These guidelines include an agreement by the European Commission that once a mandate has been issued, a group such as CEN has a guarantee that the Commission will “refrain from drawing up technical regulations on subjects covered by mandates assigned to the European Standards Organisations.” In other words, a mandate is more than a requirement by the Commission to draw up a particular standard, it is an exclusive delegation of authority for an important area of public regulation.

### **§ 6.3. The Vademecum and Notification in the Official Journal**

These mandates cover a broad swath of public safety regulation, each relevant to a directive or regulation. The official [EU Mandates database](#) is quite difficult to use, but Public.Resource.Org [maintains a mirror](#) with 370 of the mandates. The role of mandates is spelled out in an EU-issued document known as the [Vademecum on European Standardisation](#), which is the vehicle to “enable [Commission officials] to use European standardisation as a tool for the implementation of European policies and legislation.”

Chapter 4.1 of the Vademecum deals with the role and preparation of mandates:

*“Through a mandate, the public authorities ask the European standardisation bodies to draw up technical specifications of a normative nature that meet ‘their’ requirements. In practice, these standards must enable manufacturers to design and manufacture products that comply with the legal requirements. On the one hand, it is up to the public authorities to lay down strict requirements in order to safeguard the public interest. On the other hand, it is up to those responsible for preparing the standards to draw up suitable*

*standards that meet these requirements and take account of 'the state of the art'." [34]*

The Vademecum then goes to state, somewhat unconvincingly, that this “is not a question of delegating power but of recognising the specific competencies of each operator.” The Commission is of course correct that they have not delegated power, evidenced by the fact that the formal requirements for the adoption of standards by each Member state take effect only upon publication in the Official Journal. And, before that publication occurs, the Commission takes a firm hand on the rudder.

Take, for one example, the drafting of EN 71-4:2013 by CEN Technical Committee 52, which is charged with the Safety of Toys. The 2013 revision of EN 71-4 was drafted under the provisions of Mandate M/445 as work item 52083, and the work page for that standard lists an important series of implementation dates:

1. On 2013-01-05, the Technical Board of CEN approved the draft submitted by the Technical Committee.
2. On 2013-02-27, the document became officially available in a definitive version and is distributed by the Central Secretariat.
3. On 2013-05-31, the date of announcement was reached, the last date by which the existence of the European Norm must be announced at the national level.
4. On 2013-08-31, the date of publication was reached, which is the latest date by which the European Norm must be implemented at the national level by publication of an identical national standard or by endorsement of the European Norm.
5. On 2013-08-31, the date of withdraw was reached, which is the latest date by which each member state must withdraw any national standards conflicting with the European Norm.

While the EU has not delegated authority, they have certainly subcontracted some of the work out to others, who have developed a financial attachment to the enterprise. CEN Technical Committee 52 operates under a “business plan,” as do all CEN committees. [35] The CEN Committee recognises that their work has great legal import and is “mostly based on mandates from the EU Commission” and are “thereby



responsible for establishing requirements and test methods, which support the essential requirements of the Toy Safety Directive." Participation in the TC 52 is under the control of the CEN national members, each of which is entitled to nominate delegates. Outside experts wishing to participate must apply to and be nominated by their national body.

There are thus two levels of coordination across the EU. At one level, the Commission promulgates Directives and Regulations which are transposed into national law. At another level, the Commission coordinates a process, in cooperation with the European Standards Bodies, which involves each National Standards Body in the creation of standards, then requires each National Standards Body, on behalf of their national government, to publish each such required standard and to withdraw any documents that conflict.

#### **§ 6.4. The Franchise of the British Standards Institution**

As part of the New Approach fiction that these are somehow voluntary standards, each National Standards Body is given the exclusive right to sell these standards within their geographical territory. In the case of the United Kingdom, this dual role of helping formulate the EU-mandated standards and then the exclusive assertion of a right to sell and license these documents is maintained by the British Standards Institution (BSI). BSI operates under the purview of a Royal Charter, first awarded in 1929 to its predecessor the British Engineering Standards Association. The current Royal Charter was issued in 1981 and has been amended five times since. [36]

It is important to note that the activities surrounding the creation of European Norms is a very small part of BSI standardisation efforts. There are over 72,000 standards in the organisation's portfolio, only a small number of which are mandatory under law. And, standards are only a small part of the overall financial picture for BSI. The vast majority of the revenue for BSI comes from certification, professional services, software, and other revenue streams.

BSI is a large enterprise, with operations in 172 countries and gross revenue in 2014 of £287.1m, up 6% over the previous year and part of a steady climb in revenues over the last 15 years. [37] This is a big business, and as part of its not-for-profit charter, the organisation also does public service representing the United Kingdom as the official standards body, a position which confers upon it great legitimacy and reach for the many other businesses they are in. But one must not conflate those two roles: As the



national standards body, BSI represents the people of the United Kingdom, not just business opportunities.

Selling standards for large amounts of money misplaces priorities. There are 220,000 people directly employed in the EU in the toy sector. Europe is the largest toy market in the world with 27% of all toys sold in the world. The European toy industry consists of some 5,000 different companies, over 99% of which are Small and Medium Enterprises. Despite a stagnant overall economy, the toy industry has been growing by 3-6% per year. [38]

One of the prime purposes of harmonised standards is to promote a unified market and to stimulate economic activity, both for producers within Europe but also for those from other countries wishing to sell into the vast European market. The toy standards are not a commodity to be sold at the highest price the market will bear, they are rules and regulations that help enable a much larger market. Indeed, it is widely recognised on an international basis that if technical standards are not widely available, they become a technical barrier to trade. This is why in the Uruguay Round of of Multilateral Trade Negotiations, the World Trade Organization adopted an Agreement on Technical Barriers to Trade, which states:

*“Members shall ensure that all technical regulations which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in other Members to become acquainted with them.” [39]*

Technical standards are an example of an enabling form of information that makes our markets more efficient and dynamic. In the United States, as the Internet was beginning to take hold, there was a move by our government to make crucial market information a product to be sold. These included public reports of corporations filed to the Securities and Exchange Commission, a system known as EDGAR. By making that database available for free, then donating our source code to the government, the founder of Public.Resource.Org was able to convince the United States government that this database was not an opportunity to sell \$30 documents, it was a fundamental tool to make our markets more transparent and efficient. [40] We had a similar experience with the U.S. Patent Database. [41]

While it is tempting to treat legal documents such as EN-71 as a product to be sold, it is a short-sighted approach that hurts the economy of the United Kingdom. Furthermore,

this policy has a disastrous effect on public safety. Documents governing the safety of toys should be promulgated as widely as possible, so any parent, journalist, government worker in civil parishes, teacher, or small business owner can, should they so desire, consult the mandated technical specifications for the safety of toys.

When we put the Patent and SEC databases on the Internet in the United States, one of the prime arguments used to discourage our efforts was that these were technical documents, of interest only to a few highly-trained professionals. The same argument has been advanced for the safety of toys, with officials making the case that the only people who need to see safety of toys standards are the government regulators charged with directly enforcing them and the product manufacturers who make those toys.

We have been told that consumers, and parents in particular, do not have the technical expertise to read standards such as this. Having worked on the Internet since the early days, we can only say that we have always found the public to be smart, curious, and desirous of reading the fundamental documents that affect their daily lives.

The myth of the New Approach is that standards are voluntary. They are voluntary in one sense: a manufacturer may read the standard, then develop another method of meeting the overall requirements of safety. In that instance, the manufacturer loses the presumption of conformity. In this sense, the heavy hand of government regulation is not preventing commerce from developing new and better ways of making toys safe, and EN 71 is thus voluntary.

It is clear, however, that EN 71 is the baseline of the law. One cannot make a toy that is not safe and the detailed specifications of what “not safe” means are contained in EN 71. One cannot obey the requirements of the law without having consulted EN 71. Any consumer wishing to know the detailed specifications of what the law is must begin there.

## **§ 7. The Regulation of Public Safety and Commerce in the United Kingdom Dates Back to the Earliest Days of the Realm**

When many people speak about Magna Carta—particularly when Americans speak about Magna Carta—they speak in terms of fundamental constitutional rights such as “due process, habeas corpus, trial by jury, and the right to travel.” [\[42\]](#) This of course pours great meaning into a document, meaning that was not present in 1215 when the Barons met King John. The broader symbolic meaning of Magna Carta was established

much later, when Lord Coke wrote his Institutes between 1628 and 1644. [43] Rather, Magna Carta was, as Lord Sumption so aptly put it, a “technical catalogue of feudal regulations.” [44]

A prime example of this kind of feudal regulation, indeed one of the most important jobs of government in that era, was assuring the orderly progress of commerce, in particular the establishment in Clause 35 of a uniform system of weights and measures:

*“Let there be one measure of wine throughout our kingdom and one measure of ale and one measure of corn, namely the London quarter, and one width of cloth whether dyed, russet or halberjet, namely two ells within the selvedges. Let it be the same with weights as with measures.” [45]*

Long before the rebirth of democracy in our modern age, one of the prime functions of government was the orderly progress of commerce and the assurance of the public safety. While much attention has been paid to the correction of criminal behaviour through mechanisms such as trial by ordeal, the daily interaction of government and the people was much more mundane. It was a process very similar to the day-to-day regulation of commerce and public safety in our modern age.

Take, for example, the regulation of building. Looking through the records of the London Assize of Nuisance (1301-1431), we see “elaborate regulations for the settlement of disputes between neighbours concerning walls, gutters, windows, privies and paving.” For example:

- On 24 May 1301, the rector of All Hallows the Less upon the Cellar was ordered to repair, within 40 days, a stone wall which was “on the verge of ruin, to the great peril” of passersby.
- On 3 September 1322, the common serjeant appeared on behalf of the commonality to plead that a stone wall in front of a house was “ruinous, and in danger of collapsing, to the peril of all living there or passing by.” The wall was ordered to be destroyed within 40 days. [46]

Standards for the public safety of water were equally important, both to protect against flooding and also to insure the safety of the water supply. For example, in 1371, the prioress of Kilburn was ordered to clean a ditch “that by her default the flow of water

disturbs passers by.” [47] Likewise, numerous cases can be found where authorities insisted that sewer drains be properly cleaned so that they did not flood neighbouring lands. [48]

As the towns and cities of England continued to develop, the purity of the water supply became a pressing concern. In his *Sylva Sylvarium*, Sir Francis Bacon described methods of percolation, filtration, boiling, distillation and clarification of water by coagulation. [49] England and Scotland were the pioneers in water filtration, with the first filtered water supply for a whole town being in Paisley, Scotland in 1804. This soon spread to Glasgow, the Greenock, then by 1829 to London. [50] While methods of filtration were subject to patents, the public safety aspects of protecting our water supply were a subject of general interest and public import. It was John Snow, working to find the origins of a cholera outbreak in London, who documented the spread of the disease through the contamination of drinking water by sewage effluents. [51]

The laws were very specific, prohibiting, for example:

*Public Health Act, 1875 c. 55, “§ 68. Penalty for causing water to be corrupted by gas washings*

*Any person engaged in the manufacture of gas who—*

*(1) Causes or suffers to be brought or to flow into any stream reservoir aqueduct pond or place for water, or into any drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas ; or,*

*(2) Wilfully does any act connected with the making or supplying of gas whereby the water in any such stream reservoir aqueduct pond or place for water is fouled,” [52]*

and:

*Public Health (Scotland) Act, 1897 c.38, “§ 30. Penalty for injuring closet, &c. so as to cause nuisance*

*If a person causes any drain, watercloset, earth-closet, privy, urinal, or ashpit to be a nuisance or injurious or dangerous to health, by wilfully destroying or damaging the same or any water-supply, apparatus, pipe, or work connected*

*therewith, or by otherwise wilfully stopping up, or wilfully interfering with, or improperly using the same, or any such water-supply, apparatus, pipe, or work, he shall be liable to a penalty not exceeding five pounds.” [53]*

When it came to food and alcohol, regulation of public safety joined with the regulation of commerce, and these standards were widely known. In York, for example, the civic ordinances of 1301 specified the four types of wheat bread as well as the specifications of the bolting cloth used to sieve the different grades of flour for each type. The City of York continued to take a strong interest in the regulation of commerce and the protection of safety, working closely with each of the guilds to establish standards, which were then inscribed not only in the city's ordinance books but also in the guild's ordinary books. [54]

While the governmental concern with public safety began in the early days of the realm, this process accelerated greatly as society became ever technical and ever more dangerous. Railroads, water mills, mines, and factories all contributed horrific examples of lax public safety. In one area, however, it was impossible to ignore public safety and that was fire. Because everybody had to be involved in fighting conflagrations, municipal governments worked hand-in-hand with private companies, stewards of great estates, and volunteers. Homeowners were encouraged to use brick, slate, and stone to reduce the risk of fire. Fire-proof partitions began to be required to keep combustible stocks from spreading fires. Insurance companies worked hand-in-hand with factories and municipal authorities to spread detailed information about fire prevention.

Fire prevention, of course, was a municipal activity that far predated the dawn of the modern age. For example, in one of his early acts as the first Lord-Mayor of London, Henry Fitz-Ailwin issued his assize concerning buildings between neighbours which provided:

*“Item—That all persons who well in great houses within the ward have a ladder or two ready and prepared to succor their neighbours in case misadventure should occur from fire.*

*“Item—That all persons who occupy such houses have in summertime and especially between the Feast of Pentecost and the Feast of St. Bartholomew before their doors a barrellful of water for quenching such fire, if it be not a house which has a fountain of its own.*

*“Item—That ten reputable men of the ward, with the alderman, provide a strong crook of iron with a wooden handle, together with two chains and two strong cords and that the beadle have a good horn and loudly sounding.”*

*[55]*

The last item was an important safety specification. When a fire would start, thatch roof of a house would invariably burn. The crook (or fire pick) would be used to drag the roof off the house, thereby preventing the spread of fire to neighbouring homes.

As the beginning of the 20th century dawned, a number of not-for-profit organisations formed across the globe in response to the needs of industry for standardisation and in response to fires, factory accidents, a tainted food supply, and the spread of disease in crowded cities. In the United Kingdom, one of these groups was the Engineering Standards Committee, “approved and supported by the Government, and aiming at the preparation and publication of technical standards.” [\[56\]](#) It is important to understand that the early work of the Engineering Standards Committee, which would evolve into the British Standards Institution, was focused on facilitating commerce such as standardisation of automobile parts including wheel rims. [\[57\]](#) A great deal of the public safety information was provided by other groups. For example, Captain Eyre Massey Shaw, the creator of the Metropolitan Fire Brigade, published a popular and detailed volume about firefighting that was widely used across the country by volunteers. [\[58\]](#)

No matter the source of technical information used to facilitate commerce or to ensure the public safety, in the age of the printed book, with a non-profit and public education mission to undertake, books and pamphlets were reasonably priced, and widely available in libraries. In many cases, the creators of these standards and safety codes were able to subsidise the printing, as when early fire insurance distributed fire prevention literature in towns. It is only in recent times that the sale of standards have become an end unto themselves, a profit opportunity instead of an opportunity to educate.

A fundamental question is whether people need information such as the Safety of Toys and whether they are capable of understanding that material once they have received it. When the publication is an end in itself, as it would be for a novel or newspaper placed in commerce by a private party, then it is perfectly appropriate (though perhaps not wise) to price a document at the highest price the market will bear. When information

has a broader purpose, such as the safety of children, restricting the supply through high prices and stringent terms of use hurts the public safety.

Public safety laws and the technical specifications underlying them that are also enacted into law are far too valuable to be treated as a private commodity and short-term profit opportunity. The proper price for this particular set of documents should be £0 as that is the price that maximises the value of this crucial information to society. In addition, making this important subset of the broader collection of standards that BSI maintains in its portfolio is also in the best economic interests of BSI, which can leverage its favoured position as the official publisher of UK toy safety standards into a large number of ancillary revenue streams, such as training, commentary and redlines, certification of personnel and products, and consulting and software. Holding the safety of toys standards hostage is not in BSI's long-term economic interests and it is certainly not in the interests of the children of the United Kingdom.

## **§ 8. Edicts of Government Play a Special Role In Democratic Societies**

### **§ 8.1. The Rule of Law**

It was noted in the previous section that Americans tend to have read too much symbolic significance into Magna Carta, a tendency that Americans can at least partially blame on Lord Coke's *Institutes* and then Professor Blackstone, who made his attractively-priced and easy-to-read summary of the law into a standard text for frontier lawyers such as Abraham Lincoln, who practiced in the newly formed United States.

[59] Nonetheless, Magna Carta does deal with a very specific technical situation that is directly relevant to the present petition. If we look at the United Kingdom's official legislative web site, we see that there are three clauses that are still in effect, including clause 29, which reads in part:

*"We will sell to no man, we will not deny or defer to any man either Justice or Right."* [60]

At the time the King's Court was an arbitrary affair. The King could decide whether or not to grant a trial, and could decide on an ad hoc base how much would be charged for the privilege of justice. One reading of Clause 29 is that it is about the fees that are charged for access to justice, and for access to the law. Charging arbitrary (and very



dear) amounts before one can access legal materials is dangerous. Being able to decide who is able to access the law on a case-by-case basis, and to deny that access without reason, is exactly the kind of issue that Clause 29 was about.

The right to read (and speak) the law is a fundamental underpinning of the doctrine of rule of law. In his classic work on the subject, Lord Bingham stated:

*“The core of the existing principle of the rule of law [is] that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made.”* [61]

Lord Bingham stated that the prime requirement for rule of law to be effective is that “the law must be accessible.” This is clear to any layman, for if ignorance of the law is no excuse, then one must know what the law says.

In the United States this fundamental aspect of rule of law has been expressed in the doctrine of edicts of government. In the United States, edicts of government have no copyright since the law is owned by the people. This has led to some controversies over how the principle should be applied to technical standards that have been incorporated by reference into law. [62]

The principle is quite clear and has been reiterated several times by the U.S. Copyright office, most recently in the Third Compendium of U.S. Copyright Office Practices:

*“As a matter of longstanding public policy, the U.S. Copyright Office will not register a government edict that has been issued by any state, local, or territorial government, including legislative enactments, judicial decisions, administrative rulings, public ordinances, or similar types of official legal materials. See Banks v. Manchester, 128 U.S. 244, 253 (1888) (‘there has always been a judicial consensus, from the time of the decision in the case of Wheaton v. Peters, 8 Pet. 591, that no copyright could under the statutes passed by Congress, be secured in the products of the labor done by judicial officers in the discharge of their judicial duties’); Howell v. Miller, 91 F. 129, 137 (6th Cir. 1898) (Harlan, J.) (‘no one can obtain the exclusive right to publish the laws of a state in a book prepared by him’).* [63]



## **§ 8.2. The Open Government License in the United Kingdom**

While the holdings we cite in the prior section derive from American law, the principle that the law must be available is universal. In the United Kingdom, this is expressed in the concept of Crown Copyright and the Open Government License. For example, [legislation.gov.uk](http://legislation.gov.uk), which is widely considered to be one of the best legislative information sites in the world, has made the entire site available under terms that allow a user to:

- *“copy, publish, distribute and transmit the Information;*
- *adapt the Information;*
- *exploit the Information commercially and non-commercially for example, by combining it with other Information, or by including it in your own product or application.”* [\[64\]](#)

The Open Government License in turn stems from the provision of the UK Government Licensing Framework. [\[65\]](#) This framework applies to “use and re-use of public sector information both in central government and the wider public sector.” The document states that removal of barriers to re-use will:

- *“promote creative and innovative activities that will deliver social and economic benefits and enhance job creation for the UK;*
- *provide stimulus to the knowledge and digital economy, especially in the information and publishing industries;*
- *make government more transparent and open in its activities, ensuring that the public are better informed about the work of the government and the public sector;*
- *equip people and organisations with the power and resources they need to make a real difference in their communities;*
- *help government achieve its objectives through active involvement, participation and contribution by businesses and the public;*
- *enable users, both professional and non-professional, to obtain information in formats and ways not necessarily offered by the public sector; and*

- *improve the flow of information from the public sector to the public leading to better informed decisions, efficiency and compliance with the law and regulations.”*

### **§ 8.3. Accessibility of the Law in the United Kingdom**

The concept that the law must be accessible to all is not just good modern public policy, it is deeply rooted in the decisions of the courts of the United Kingdom. In 1761, in the law merchant case of *Hamilton v. Mendes*, Lord Mansfield stated:

*“The daily negotiations and property of merchants ought not to depend upon subtleties and niceties; but upon rules easily learned and easily retained.”*

[\[66\]](#)

In 1948, when an interpreter of languages in Blackpool wanted to sell a house that was too big for him, the town clerk told him he could not sell the house and cited as authority a circular that could not be made available to the public. The court firmly rebuked the clerk, ruling that the law must be disclosed before it can be enforced.

[\[67\]](#) The Blackpool Corp case was cited by Sir Alfred Denning in his 1949 Hamlyn Lecture, which he opened by stating that he was there to speak:

*“To the common people of England and to further against them the knowledge of their laws so that they may realise their privileges and likewise their responsibilities.”* [\[68\]](#)

In a 1975 case in the House of Lords looking at the question of whether statements made in the Houses of Parliament could be taken into account when construing a statute, Lord Diplock stated:

*“The acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal principles which flow from it.”* [\[69\]](#)

Promulgation of the law is important not just for ordinary citizens, it is vital for government workers. While some government officials have ready access to standards,

this is only a small subset of those who should be aware of the technical aspects of the laws they must enforce.

Take the example of the *R. v. Chambers*, a 2008 decision in a tobacco smuggling case. On the eve when an opinion was going to be handed down by the Court of Appeals, it was discovered that a new set of regulations applicable to the case had been issued in the past, but nobody knew of them: the trial judge, the prosecutor, the defending counsel, and the judges of the Court of Appeals were all ignorant of the relevant binding law.

Lord Justice Toulson stated:

*“There is no comprehensive statute law database with hyperlinks which would enable an intelligent person, by using an search engine, to find out all the legislation on a particular topic. This means that the courts are in many cases unable to discover what the law is, or was at the date with which the court is concerned, and are entirely dependent on the parties for being able to inform them what were the relevant statutory provisions which the court has to apply. [70]*

If judges are not able to find regulations, imagine how tough the problem is at the municipal level, where a park official might wish to look at the safety standards for slides in the playground, or a teacher may wish to confirm a hunch that a yo-yo ball shouldn't have a string so long it wraps around a child's neck?

#### **§ 8.4. The European Union and Open Government**

That the law must be available for all to know is a principle that is universal. In discussing the International Covenant on Civil and Political Rights, Justice Michael Kirby of Australia stated:

*“The principle obliging the people to take the ultimate responsibility for matters affecting themselves, and not to leave difficult decisions to an elite of ‘experts,’ is one that constitutions enshrine and that human rights instruments uphold.” [71]*

The principle of the law is most deeply embedded in the European Union, the creator of the standards at issue. As Professor Jacobs of Kings College London stated:

*“The European Union is based on the rule of law to a far greater extent than any previous or contemporary international or transnational organisation.”*

[\[72\]](#)

This commitment to the rule of law can be found in many of the founding documents of the EU:

1. Article 3 of the [1949 Statute of the Council of Europe](#) requires that every member state “must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms.” [\[73\]](#)
2. Article 10 of the [1950 European Convention on Human Rights](#) states “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.” [\[74\]](#)
3. Article 1 of the [1997 Treaty of Amsterdam](#) states “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.” [\[75\]](#)
4. Article 42 of the [2000 Charter of Fundamental Rights](#) guarantees a “right of access to documents” throughout the European Union [\[76\]](#)

Posting transformations of toy safety standards is a clear form of freedom of expression. The law is a fundamental a form of information and ideas.

## § 9. Prayer for Relief and Conclusion

As we have shown, the argument that the standards are voluntary and somehow not the law is a fiction. The presumption of conformity merely allows a manufacturer to come up with new ways of making toys *even more safe*, but the baseline technical specification of *what is safe* is contained in EN-71, the Safety of Toys.

These documents were created at the behest of the European Union, with the supervision of the European Union, and the United Kingdom was obliged to promulgate these specifications, without change. The citizens of the United Kingdom should be able to read and speak these important safety specifications, for they are indeed the law.

The United Kingdom has set the global standard for open government. The [Government Digital Service](#) is universally admired for the dramatic effect the organisation has had on government IT. The [UK legislative database](#) uses the best of modern web standards to provide access to legislation and regulation. Given this remarkable record of accomplishment, hiding critical public safety laws behind expensive paywalls is a particularly glaring weakness.

For the reasons stated herein, we respectfully request that this matter be taken under consideration.

Submitted by Public.Resource.Org and on behalf of the listed co-signatories on 5 October 2015:

// signed //



Digitally signed by Carl Malamud  
DN: cn=Carl Malamud,  
o=Public.Resource.Org,  
ou, email=carl@media.org,  
c=US  
Date: 2015.10.05 09:04:32  
-07'00'

Carl Malamud  
President and Founder  
[Public.Resource.Org](#)

// sealed //



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Sebastopol, CA, USA

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- [61] Lord Tom Bingham, The Rule of Law, Penguin Books (2010), pp. 37-39.
- [62] Carl Malamud, [Testimony on the Scope of Copyright Protection](#), House Judiciary Committee, U.S. House of Representatives, 14 January 2014. Public.Resource.Org is currently engaged in litigation in the United States on the subject of posting of technical standards that have been incorporated into reference into the U.S. Code of Federal Regulations, the codification of general and permanent rules and regulations of the federal government. See American Society for Testing and Materials et. al. v. Public.Resource.Org, [D.D.C. 1:13-cv-01215](#); American Educational Research Association et. al. v. Public.Resource.Org, [D.D.C. 1:14-cv-00857](#). In each of case, plaintiffs claim that Public.Resource.Org has infringed their copyrights, a charge that Public.Resource.Org firmly denies.
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- [64] The National Archives, [Open Government License for Public Sector Information](#), Version 3.0.
- [65] The National Archives, [UK Government Licensing Framework](#), Edition 4.1, October 2014.
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- [76] European Union, [The Charter of Fundamental Rights of the European Union](#), 7 December 2000.

## **Annex B: Table of Official Guidance Materials**

### **B.1. EU Guidance Documents from the Expert Group on Toy Safety**

1. Item N° 1: [Guidance document on scooters](#) (2012-01-20)
2. Item N° 2: [Community legislation applicable to "floating seats"](#) (2001-04-26)
3. Item N° 3: The guidance document on the relationship between the Safety of Toys Directive and the Cadmium Directive (Directive 91/338/EEC) has become obsolete after the Court of Justice has given its [judgment in case C-9/04](#) (2003-02-03)
4. Item N° 4: [Guidelines on the treatment of "grey zone" products—is a specific product covered by Directive 88/378/EEC or not?](#) (2007-03-14)
5. Item N° 5: [Guidelines on the treatment of "grey zone" products—criteria to classify products consisting of miniatures to be assembled and painted and their support products](#) (2003-02-13)

6. Item N° 6: [Guidelines on the treatment of "grey zone" products—criteria for differentiating dolls for adult collectors from toys](#) (2003-02-13)
7. Item N° 7: [Guidance document on toys used in and on the water](#) (2014-01-15)
8. Item N° 8: [Guidance document on pools covered by the Toys Safety Directive](#) (2008-06-30)
9. Item N° 9: [Guidance document on books](#) (2013-12-10)
10. Item N° 10: [Guidance document on the classification of music instruments](#) (2010-12-21)
11. Item N° 11: [Guidance document on the classification of toys intended for children under 3 years](#) (2009-04-06)
12. Item N° 12: [Guidance document on packaging](#) (2012-07-09)
13. Item N° 13: [Guidance document on crafts](#) (2011-04-19)
14. Item N° 14: [Guidance document on sports equipments](#) (2012-01-18)
15. Item N° 15: [Guidance document on writing instruments and stationary](#) (2012-10-09)
16. Item N° 16: [Guidance document on electronic equipment](#) (2012-07-09)
17. Item N° 17: [Guidance document on disguise costumes](#) (2012-12-04)
18. Item N° A1: [Guideline on the interpretation of the concept “which can be placed in the mouth” as laid down in the entry 52 of Annex XVII to REACH Regulation 1907/2006](#) (2014-01-08)
19. Item N° A2: [TSD explanatory guidance document in ENGLISH \(Rev 1.7\)](#) (2013-12-13)
20. Item N° A3: [Technical documentation guidance document in ENGLISH \(Version 1.3\)](#) (2013-12-02)
21. Item N° B1: [Template of the EC Declaration of Conformity](#) (2011-07-13)
22. Item N° B2: [Overview of the warnings required by the Toy Safety Directive 2009/48/EC in the different languages](#) (2013-06-11)

23. Item N° C1: [Toy Safety Brochure](#) (2010-10-06)

24. Item N° C2: [Toy Safety Tips](#) (2010-09-29)

## **B.2. Recommendations of the Official Notified Bodies-Toys (NB-Toys) Group**

1. [Recommendation No. 1 : format EC type examination certificate \(Rev 3\)](#)
2. [Recommendation No. 2 : NoBo identification number affixed to the toy](#)
3. [Recommendation No. 3 : failure of safety limit](#)
4. [Recommendation No. 4 : transitional period](#)

## **B.3. Protocols of the Official Notified Bodies-Toys (NB-Toys) Group**

1. [Protocol No. 1 : Toys submitted to EC Type-Examination](#)
2. [Protocol No. 2 : Microbiological safety of toys](#)
3. [Protocol No. 3 : Rotor blades in helicopter toys](#)
4. [Protocol No. 4 : Washability of toys approval](#)

## **B.4. United Kingdom Explanatory Memoranda and Guidelines**

1. [The Toys \(Safety\) Regulations 2011: Guidelines on the Appointment of UK Notified Bodies](#) (August 2011)
2. [Toy manufacturers, importers and distributors: your responsibilities](#)
3. [The Safety of Toys: Consultation on the Toys \(Safety\) Regulations 2011](#), (February 2011)
4. [UK Government Official Explanatory Memorandum](#) To The Toys (Safety) Regulations (2011 No. 1881)
5. [Government response document](#) to the Department for Business, Innovation and Skills' public consultation on the transposition of European Directive on the Safety of Toys 2009/48/EC
6. Revised Toy Safety Directive Guidance, [FAQ—Obligations Of Economic Operators—Version 5](#) (12.12.11)

7. Revised Toy Safety Directive Guidance, [FAQ—Markings & Warnings Version 2](#) (06.11.11)

## **B.5. United Kingdom Official Guidance**

1. Revised Toy Safety Directive Guidance, [Part 01—Toy Safety Directive Guidance](#) (27.10.10)
2. Revised Toy Safety Directive Guidance, [Part 02—Obligations Of Economic Operators Version 6](#) (27.10.10)
3. Revised Toy Safety Directive Guidance, [Part 03—Technical Documentation Version 3](#) (12.12.11)
4. Revised Toy Safety Directive Guidance, [Part 04—Markings & Warnings Version 2](#) (22.02.12)
5. Revised Toy Safety Directive Guidance, [Part 05—Conformity Of Series Production Version 2](#) (22.05.12)
6. Revised Toy Safety Directive Guidance, [Part 06—Bill Of Materials—Version 1, \[Excel Format\]](#) (08.03.11)
7. Revised Toy Safety Directive Guidance, [Part 07—Safety Assessments—Version 3](#) (30.05.12)
8. Revised Toy Safety Directive Guidance, [Part 08—Hygiene And Textile Toys](#) (01.12.11)
9. Revised Toy Safety Directive Guidance, [Part 09—Product Monitoring—Version 1](#) (27.02.12)
10. Revised Toy Safety Directive Guidance, [Part 10—Conformity Assessment](#) (13.06.12)
11. Revised Toy Safety Directive Guidance, [Part 11—CMR Guide](#) (02.08.13)
12. Revised Toy Safety Directive Guidance, [Part 12—Chemical Compliance Strategies](#) (11.12.13)



## **B.6. Guidance and Research from ANEC, Official EU Consumer Voice**

1. ANEC-CHILD-2014-G-064: [ANEC Position Paper on the Effectiveness of the Toy Safety Directive](#) (2014-07-17)
2. ANEC-CHILD-2012-G-094: [ANEC-BEUC position paper: EU Subgroup on chemicals in toys fails its mission—Critical review](#) (2012-11-28)
3. ANEC-CHILD-2012-G-081: [ANEC/BEUC position on reducing children exposure to lead from toys](#) (2012-10-18)
4. ANEC-CHILD-2012-G-004: [ANEC/BEUC position paper: flame retardant TCEP should be banned from all toys](#) (2012-02-22)
5. ANEC-CHILD-2011-G-002: [ANEC proposal for the coverage of organic CMR substances in toys for children below 36 months and for mouth actuated toys](#) (2011-02-28)
6. ANEC-CHILD-2011-G-015: [Draft ANEC proposal on a Barium limit value for toys](#) (2011-02-28)
7. ANEC-CHILD-2010-G-093: [ANEC position on SCHER opinion: Evaluation of the migration limits for chemical elements in toys \(July 2010\)](#) (2010-12-01)
8. ANEC-CHILD-2010-G-092: [ANEC position on SCHER opinion: Risk from organic CMR substances in toys \(May 2010\)](#) (2010-12-01)
9. ANEC-SG-2010-G-007: [ANEC position on the possible streamlining of the legal and standardisation frameworks for toy safety](#) (2010-09-06)
10. ANEC-CHILD-2009-S-012: [Toys: 12 Tips for a Safe Christmas](#) (2009-12-02)
11. ANEC-CHILD-2009-G-062: [ANEC/BEUC factsheet on the new toy safety legislation](#) (2009-09-23)
12. ANEC-CHILD-2008-G-063: [Toys: Find \(and understand\) the warnings!](#) (2008-11-05)
13. ANEC-CHILD-2008-G-010: [Final ANEC/BEUC position paper on the proposal for a revised Toy Directive](#) (2008-04-01)
14. ANEC-CHILD-2007-G-072: [ANEC/BEUC letter concerning the Resolution on Product and particularly Toy Safety](#) (2007-09-25)

15. ANEC-CHILD-2007-G-045: [ANEC and BEUC input to the consultation on the revision of the Toy Safety Directive](#) (2007-08-09)
16. ANEC-CHILD-2007-G-043: [ANEC and BEUC input to the consultation on the impact of revising the chemical requirements of the Toy Safety Directive](#) (2007-08-09)
17. ANEC-CHILD-2004-G-059: [Revision of the Toy Safety Directive—Key issues from an ANEC and BEUC perspective](#) (2004-11-16)
18. ANEC-CHILD-2001-G-112: [Further comments from ANEC and BEUC on the Commission's Discussion paper "Issues to consider in a possible revision of the Safety of Toys Directive \(88/378/EEC\)"](#) (2001-12-19)
19. ANEC-CHILD-2001-G-156: [Revision of the toy safety directive. Preliminary views from ANEC and BEUC](#) (2001-05-01)

## **Annex C: Table of Affected Parties Who Are Co-Signatories to This Petition**

The undersigned affected parties do hereby respectfully petition Her Majesty's Government to undertake a public consultation on the subject of broader public availability of the legally-mandated specifications for the Safety of Toys.

### **Co-Signatories**

| <b>Name</b>    |
|----------------|
| Danny O'Brien  |
| Sam Smith      |
| Lisbet Rausing |
| Peter Baldwin  |
| Alice Taylor   |
| Cory Doctorow  |
| Graham Klyne   |
| John Howard    |
| Edmund Dumbill |

We wish to remind citizens of the United Kingdom that they may directly petition Her Majesty's Government at [petition.parliament.uk](https://petition.parliament.uk).

Citizens of the European Union have [the right to petition the European Parliament](#) as granted under Article 227 of the Treaty on the Functioning of the European Union

## **Annex D: Transmittal**