



Public Works for a Better Government

September 22, 2014

Dr. Juni Nomura, President
International Electrotechnical Commission
3, rue de Varembé
CH - 1211 Geneva 20
Switzerland

Dear Dr. Nomura:

I am in receipt of and am responding to the September 17, 2014 electronic mail message from Mr. Karlheinz Ulmer of the IEC Copyright Protection Department on the subject "Cease and desist - archive.org (IS/IEC, IS/ISO/IEC, IS)." The documents Mr. Ulmer was referencing may be viewed using the following search:

<https://archive.org/search.php?query=iec+AND+collection%3Apublicsafetycode>

I am responsible for posting those documents to the Internet Archive and am the maintainer of that collection. All of those documents are from the India public safety collection which Public.Resource.Org maintains at the following location:

<https://law.resource.org/pub/in/manifest.in.html>

Let me first say that as a long-time participant in the process of standardization in the field of computer networks, I am very aware and appreciative of the wonderful work of the IEC. The Internet builds on a base of technical standards for the underlying infrastructure and we stand on the shoulders of giants, including the rigorous and innovative work produced by over 10,000 volunteers who participate in the IEC standardization process. The IEC produces technical standards that are essential to the public safety in numerous fields. I have been particularly impressed by the recent work of **TC 82 JWG1** which produced the **IEC TS 62257 Series** on "Recommendations for Small Renewable Energy and Hybrid Systems for Rural Electrification."

As you know, the work of IEC is used for many purposes. One of those purposes is to serve as the basis for national governmental initiatives. In the United States, for example, numerous IEC standards have been **Incorporated by Reference into the Code of Federal Regulations** and thus have the status of law. Examples include:

- **IEC 62301** ("Household Electrical appliances—Measurement of Standby Power") has been incorporated into law in **10 CFR 430.3** by the Department of Energy.
- **IEC 61993-2** ("Maritime Navigation and Radiocommunication Equipment and Systems, Automatic Identification Systems (AIS)") has been incorporated into law in **33 CFR 164.03** by the United States Coast Guard.

- **IEC 1097-1** (“Global Maritime Distress and Safety System (GMDSS)--Part 1: Radar transponder--Marine Search and Rescue (SART)--Operational and Performance Requirements, Methods of Testing and Required Test Results”) has been incorporated into law in **47 CFR 80.1101** by the Federal Communications Commission.

Rules concerning how U.S. laws are used, which was not the subject of Mr. Ulm’s inquiry, are of course subject to U.S. law. In the United States, as a long-standing matter of public policy, the law is not subject to copyright. This principle was established by our Supreme Court in *Wheaton v. Peters*, **33 U.S. (8 Pet.) 591 (1834)** and has been repeatedly reaffirmed by our courts.

This public policy is set down by the U.S. Copyright Office in the **Compendium of U.S. Copyright Office Practices, Third Edition** which states in §313.6(c)(2):

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. Likewise, the Office will not register a government edict issued by any foreign government or any translation prepared by a government employee acting within the course of his or her official duties.

However, the subject of the notice from Mr. Ulmer was not about standards incorporated under U.S. law. Instead, he was writing about documents issued by the **Bureau of Indian Standards**, each of which has been duly issued as an edict of government of the Republic of India. Each Indian Standard clearly labels the issuer as the Bureau of Indian Standards and any copyright assertions are in their name.

The Bureau has functioned as a government department since before independence, opening its doors on January 6, 1947. In India, all government departments are subject to the stringent requirements of the seminal **Right to Information Act (Act No. 22 of 2005)**, which secures to citizens “access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.” As the act so eloquently states in the preamble:

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

The Right to Information Act has deep roots in the Constitution of India, emanating from the basic Fundamental Rights of **Article 19**, which guarantees protection for the freedom of speech and expression. As the Supreme Court of India forcefully noted in **S.P. Gupta v. Union of India, A.I.R. 1982 S.C. 149**:

The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. (¶55)

In the case of the Bureau of India Standards, the urgency of disclosure to the citizenry of India is further underscored by Article 19(1)(g) of the Indian Constitution which guarantees the right “to practise any profession, or to carry on any occupation, trade or business.” Indian Standards are a crucial underpinning to the ability to safely and effectively practice one’s profession.

A small or medium enterprise in the field of textiles, for example, cannot practice in India without full knowledge of and compliance with the thoughtful and comprehensive edicts issued by the **Textiles Division** of the Bureau of Indian Standards. Likewise, any person engaged in the practice of agriculture as a profession will need to fully understand the edicts governing the **Sugar Industry, Apiary Industry, Fish and Fisheries Products, Dairy Products and Equipment, or Farm Irrigation and Drainage Systems**.

I am sure you will join me in my appreciation for the crucial role these important standards play in the promotion of industry in the Republic of India and in the protection of the safety of those practicing professions and of the general public. Yukichi Fukuzawa said in “**Gakumon no Susume**” that “since the government has become the representative of the people and has acquired the right to act in their behalf, its measures are the people’s measures.”

Access to the people’s measures is in no case more important than the crucial technical standards that govern the creation and operation of our cities and villages, and of our homes, public spaces, and workplaces. Our purpose in **posting these important standards** for non-commercial use is to allow citizens, students, journalists, and others to read the technical specifications that govern our daily lives and make our world a safer place.

I understand that the promulgation of public safety standards required by law and issued by governments is an important and difficult subject that has implications for the operation of standards development organizations including the International Electrotechnical Commission. However, I believe this conversation cannot take place in a vacuum and needs to proceed in the context of India, as this is the subject that has been raised by Mr. Ulmer.

I would respectfully suggest and request that you or a representative of the IEC begin that conversation in New Delhi with myself and Mr. Sam Pitroda, who is chair of the **All-India Advisory Committee for the Promulgation of Standards and the Protection of Public Safety**. I would also recommend that this conversation include Sri Sunil Soni, Director-General of the Bureau of Indian Standards. If it is useful, perhaps the

conversation could be broadened further. I do not know if they would have any interest in participating or if their schedules would permit, but I would be happy to invite some of my colleagues who have experience in these matters, such as Professor Jun Murai, Dr. Vinton G. Cerf, or Sir Tim Berners-Lee. I'm sure you might also have some additional suggestions for attendees for this broader conversation.

These are important issues and I am confident we both share **the important values** of the promotion of trade and economic growth and of a world that is safe, efficient and environmentally friendly upon which the IEC is founded. I know we also share an appreciation for the vital importance of the work of the IEC in our increasingly technical world. I hope we can meet in New Delhi and I look forward to our conversation.

Respectfully yours,



Carl Malamud
Public.Resource.Org