

From: Carl Malamud <carl@media.org>
Subject: **Re: Copyright Violations**
Date: November 3, 2012 12:02:34 PM PDT
To: Chris Butler <butler@archive.org>
Bcc: David Halperin <davidhalperindc@gmail.com>, Brewster Kahle <brewster@archive.org>

Dear Chris –

Thanks for forwarding this notice to my attention. Public.Resource.Org is responsible for uploading these documents to the Internet Archive.

All of these documents have been incorporated into federal law in the Code of Federal Regulations by the United States government. As such, the standards contained in these documents are the law of the United States, and people in the United States are compelled to obey them. Long-standing precedent of the United States Supreme Court holds that copyright claims cannot prevent citizens from reading and speaking the law. See *Wheaton v. Peters*, 33 U.S. 591 (1834); *Banks v. Manchester*, 128 U.S. 244 (1888).

While the standards drafted by the American Petroleum Institute were entitled to copyright protection when issued, once they were incorporated into federal regulations these standards became the law, and thus have entered the public domain. Chief Judge Edith H. Jones of the 5th Circuit expressed this principle clearly in her opinion in *Veeck v. Southern Building Code Congress*, which concerned a model building code incorporated in the law of two Texas towns:

"The issue in this en banc case is the extent to which a private organization may assert copyright protection for its model codes, after the models have been adopted by a legislative body and become "the law." Specifically, may a code-writing organization prevent a website operator from posting the text of a model code where the code is identified simply as the building code of a city that enacted the model code as law? Our short answer is that as law, the model codes enter the public domain and are not subject to the copyright holder's exclusive prerogatives. As model codes, however, the organization's works retain their protected status." 293 F.3d 791 (5th Cir. 2002) (en banc).

As you can see by looking at each of these documents, a cover sheet has been prepended to each clearly spelling out the section of the Code of Federal Regulations that have incorporated by reference these laws. Incorporation into the Code is not a casual affair and requires that the regulator follow a carefully prescribed procedure and that the incorporation be approved by the Director of the Office of the Federal Register. In each of these cases, the government followed that procedure. See 1 CFR section 51.

Please note also that all of these documents are also currently available on <https://law.resource.org/> from which they were uploaded to the Codes collection on the Internet Archive. That collection includes a large number of other public safety codes incorporated into the Code of Federal Regulations and into state and local laws. Public.Resource.Org has not received any objections from any of the other standard development organizations to the noncommercial efforts of our nonprofit organization to make the law available for citizens to read.

In addition, you should be aware that these standards are incorporated by the Pipeline and Hazardous Materials Safety Administration and are considered critical HazMat standards by that agency. Congress passed and the President signed into law the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, and Section 24 of that act states that all regulations and guidance promulgated by the Secretary of Transportation requires that all standards "are made available to the public on the Internet for free." See Public Law 112-90, January 3, 2012. This legislation reflected the decision of Congress that it is not acceptable for federal law to remain behind controls asserted by private organizations. Indeed, it is my understanding that the statute arose after the American Petroleum Institute itself responded to a request from a congressional committee to review one of the API standards with a request for payment of over \$1000 to obtain the standard.

Finally, I would like to note that the American Petroleum Institution also now makes these standards available for free on their web site to anybody who registers and such registration is automatic and without qualification. Thus, making the documents available on the Internet Archive does not impact the revenues of API as they already are giving these documents away. See "Government-cited & Safety Documents" which is linked from the API.Org home page which reads "The purpose of this site is to provide the public with access to key industry standards, particularly those standards that are safety-related or have been incorporated into federal regulation."

Needless to say, maintaining these standards on the Internet Archive web site is a decision you'll have to make. I'm not a lawyer, so you may wish to consult your legal counsel, but I do hope that for the purpose of informing the public about critical HazMat standards, you leave these documents online. As we learned during, for example, the Deepwater Horizon spill and during the tragic natural gas explosion in San Bruno, California, HazMat issues are fundamental to public safety and are of critical interest and importance to first responders and other government officials, as well as the larger public .

If API wishes to contact us on these issues, we'd be more than happy to discuss the matter.

Best regards,

Carl Malamud

Public.Resource.Org

1005 Gravenstein Highway North

Sebastopol, CA 95472

On Nov 2, 2012, at 4:41 PM, Chris Butler wrote:

Hi Carl,

Please see take down notice below for some standards docs incorporated by reference into federal code.

Thanks,
Chris Butler
Office Manager
415.561.6767

----- Original Message -----

Subject: Fwd: Copyright Violations
Date: Fri, 02 Nov 2012 13:52:32 -0700
From: internet archive <info@archive.org>
To: b >> "Butler@archive.org" <Butler@archive.org>

----- Original Message -----

Subject: Copyright Violations
Date: Fri, 2 Nov 2012 14:02:04 -0400
From: Heavner, B. Brett <b.brett.heavner@finnegan.com>
To: 'info@archive.org' <info@archive.org>

VIA EMAIL

Internet Archive Copyright Agent
Internet Archive
300 Funston Ave.
San Francisco, CA 94118

info@archive.org

Re: Cease and Desist Copyright Violations
Dear Archive.org:

We write on behalf The American Petroleum Institute ("API"). API is the owner of all right, title, and interest, including copyright, in the technical standards relating to petroleum products. All API technical standards are registered with the U.S. Copyright Office.

It has come to our attention that infringing copies of API's technical standards, as well as other API works, are available on the website Archive.org. This website is registered in the name of Internet Archive. All API works on Archive.org, including downloadable API content made available at the following URLs, is unauthorized and infringing and must be disabled and deleted immediately:

<http://archive.org/details/gov.law.api.1104.1999>

<http://archive.org/details/gov.law.api.1130.2002>

<http://archive.org/details/gov.law.api.1162.2003>

<http://archive.org/details/gov.law.api.12f.1994>

<http://archive.org/details/gov.law.api.14c.2001>

<http://archive.org/details/gov.law.api.14f.2008>
<http://archive.org/details/gov.law.api.17j.2008>
<http://archive.org/details/gov.law.api.2000.1998>
<http://archive.org/details/gov.law.api.2003.1998>
<http://archive.org/details/gov.law.api.2350.2005>
<http://archive.org/details/gov.law.api.2510.2001>
<http://archive.org/details/gov.law.api.2int-met.2007>
<http://archive.org/details/gov.law.api.510.2006>
<http://archive.org/details/gov.law.api.511.2002>
<http://archive.org/details/gov.law.api.5l.2004>
<http://archive.org/details/gov.law.api.620.2002>
<http://archive.org/details/gov.law.api.650.2007>
<http://archive.org/details/gov.law.api.651.1997>
<http://archive.org/details/gov.law.api.652.1997>
<http://archive.org/details/gov.law.api.653.2003>
<http://archive.org/details/gov.law.api.6a.2004>
<http://archive.org/details/gov.law.api.6d.2008>
<http://archive.org/details/gov.law.api.80.2000>
<http://archive.org/details/gov.law.api.rp14g.2007>

...

Pursuant to 17 U.S.C. § 512(c), please immediately delete or remove all API materials and/or disable the website. We hereby certify that we: (1) are authorized to act on behalf API, (2) have provided an e-mail address to contact the undersigned, (3) have identified the infringing materials, (4) have a good-faith belief that use of the copyrighted material described above is not authorized by the copyright owner, its agent, or the law; and (5) swear, under penalty of perjury, that the information in this notification is accurate to the best of our knowledge.

Unauthorized downloads from your website have damaged API, as API has lost revenues from the sales of each document viewed or downloaded unlawfully from Archive.org. API waives no rights against Archive.org or any individual involved in violating API's copyrights. We will follow up with appropriate legal action should Archive.org fail to cease and desist the above actions and respond in writing as to its

intent within seven (7) days of receiving this letter.

Thank you for your attention to this matter.

Yours very truly,

B. Brett Heavner

Attorney at Law

Finnegan, Henderson, Farabow, Garrett & Dunner, LLP

901 New York Avenue, NW, Washington, DC 20001-4413

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