

From: Carl Malamud <carl@media.org>
Subject: **Re: Our Standards - Posted**
Date: January 24, 2013 10:58:35 AM PST
To: Christopher Butler <butler@archive.org>
Cc: David Halperin <davidhalperindc@gmail.com>

Dear Chris -

Thanks for forwarding this communication from Mr. Fisher to my attention. Mr. Fisher references "two of our ANSI/ASSE copyrighted standards" but his note only specifies one standard, ANSI A10.5 (2006). Public.Resource.Org is responsible for uploading this document to the Internet Archive.

ANSI A10.5, Safety Requirements for Material Hoists, was incorporated by reference by the Industrial Commission of Arizona into the Arizona Elevator Rules in the Arizona Administrative Code, Title 20, Chapter 5, Article 5. Incorporation by reference is not a casual affair and requires a carefully followed procedure and explicit action by the Secretary of State as specified in R1-1-414 of the Arizona Administrative Code.

As this vital public safety standard has been incorporated into law, the standard contained in this document is the law of the United States, and people in the United States are compelled to obey it. 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 Society of Safety Engineers were entitled to copyright protection when issued, once they were incorporated into 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 the document in question, a cover sheet has been prepended to each clearly spelling out the section of the Arizona Code that have incorporated by reference these laws. Please note that we were careful to only publish the specific document incorporated by law, and that ASSE continues to sell more current versions. 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 been required to remove any documents from any of the other standard development organizations in response of the noncommercial efforts of our nonprofit organization to make the law available for citizens to read.

Maintaining these standards on the Internet Archive web site is a decision you'll have to make, but I hope you will continue in your efforts to help citizens read laws critical to the public safety.

If American Society of Safety Engineers 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 Jan 24, 2013, at 10:37 AM, Christopher Butler wrote:

Hi Carl,

Please let me know if you would like us to relay a response for you.

-Chris

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

Subject: Our Standards – Posted
Date: Thu, 24 Jan 2013 15:11:01 +0000
From: Tim Fisher <tfisher@asse.org>
To: info@archive.org <info@archive.org>

Greetings:

Two of our ANSI/ASSE copyrighted standards are currently posted on your website. Can we ask that you take these materials down from the website to help us in stopping the inappropriate distribution of our standards and products.

http://archive.org/stream/gov.law.ansi.a10.5.2006/ansi.a10.5.2006_djvu.txt

http://archive.org/stream/gov.law.ansi.a10.5.2006/ansi.a10.5.2006_djvu.txt

Thank you for your attention to this matter

Tim Fisher, CSP, CHMM, CPEA, ARM
Director, Practices and Standards
American Society of Safety Engineers (ASSE)
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847/768-3411
TFisher@ASSE.Org

ASSE – Home of the ANSI/ASSE Z359 Fall Protection Code

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