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Public Works for a Better Government

February 10, 2013

Mr. Neil Savery, General Manager
Australian Building Codes Board
Level 12, SAP House
Cnr Bunda & Akuna Streets
Canberra ACT 2601
Commonwealth of Australia

Dear Mr. Savery:

I write in response to your letter of February 8, 2013, demanding that Public.Resource.Org immediately remove from the Internet Australia's National Construction Code, which we posted on the Public Resource and Internet Archive websites at <https://law.resource.org/pub/au/mainfest.au.html> and <http://archive.org/details/au.ncc.2.2012>.

Public Resource declines to remove the National Construction Code. The law permits us to post the code, and we strongly believe that doing so is in the public interest.

On December 30, 2012, Public Resource posted the National Construction Code, along with many other public safety standards that have been incorporated into law by nations around the world. We did so, as we state as a preamble to each standard we have posted, 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. We lawfully purchased the National Construction Code, and we have made it available on a noncommercial basis, because it is the right of all people to know and speak the laws that govern them.

The National Building Code is unquestionably the law in Australia. As your website states, "The National Construction Code (NCC) is produced and maintained by the Australian Building Codes Board (ABCB) on behalf of the Australian Government and each State and Territory Government.... The National Construction Code (NCC) is given legal effect by relevant legislation in each State and Territory.... Each State's and Territory's legislation consists of an Act of Parliament and subordinate legislation which empowers the regulation of certain aspects of building work or plumbing and drainage installations, and contains the administrative provisions necessary to give effect to the legislation." <http://www.abcb.gov.au/about-the-national-construction-code/the-regulatory-process>

The Honourable Murray Gleeson, AC QC, former Chief Justice of Australia, has stated that the rule of law requires that “the content of the law should be accessible to the public.” “Courts and the Rules of Law,” Melbourne University, November 2011 http://www.hcourt.gov.au/assets/publications/speeches/former-justices/gleeson/cj_ruleoflaw.htm

His predecessor The Honourable Sir Gerard Brennan, AC KBE QC, has said, “By reminding ourselves of characteristic features of the rule of law, we can identify the risk to our freedom which is posed by any law or practice which eliminates or diminishes those features.... [One feature is] public promulgation of laws made by the democratic process ... To maintain confidence in the rule of law, the laws must be publicly promulgated.” “The Role of the Legal Profession in the Rule of Law,” Supreme Court, Brisbane, 31 August 2007 <http://www.lawcouncil.asn.au/fms/speeches/Rule%20of%20Law/Keynote%20Gerard%20Brennan.pdf>

In my country, the United States of America, the U.S. Copyright Office has stated that the law, including the law of other nations, cannot be protected by copyright:

Edicts of government, such as judicial opinions, administrative rulings, legislative enactments, public ordinances, and similar official legal documents are not copyrightable for reasons of public policy. This applies to such works whether they are Federal, State, or local as well as to those of foreign governments.

Compendium II of Copyright Office Practices § 206.01 (1984).

United States case law supports the principle that copyright claims cannot override the right of citizens to speak and read the law. *Wheaton v. Peters*, 33 U.S. 591 (1834); *Banks v. Manchester*, 128 U.S. 244 (1888). In *Veeck v. Southern Building Code*, 293 F. 3d 791 (5th Cir. 2002) (en banc), cert denied, 539 U.S. 969 (2003), our Court of Appeals held that a citizen had the right to post on the Internet a model building code, because that code had been incorporated into the law of a town, and thus was binding on citizens.

Keeping the law hidden, or behind expensive pay walls has no place in a free and open society. Principles of open government, due process of the law, and free speech demand that the law be available to all to read and speak. Charging fees for access to the texts of the law itself is like charging voters to vote.

Public Resource is not simply publishing codes and standards, but improving their readability and usability. With the Internet, governments and individuals have the power to link standards directly to the laws that incorporate them, to make the standards searchable, to present the information in new ways that enhance public understanding, to create new businesses and spur innovation.

By making standards available and useful to all, we can make society better. Public safety officials can do more to protect citizens. Researchers can enhance their knowledge of technical fields. Small businesses can more easily comply with the law and increase commerce and trade.

Innovation and education will benefit by opening up this world, but at the root are basic issues of democracy and justice. Government cannot tell people that they must obey laws that are only available in exchange for money. And government should not punish people for speaking the law to others.

I would be happy to discuss this matter further if you wish.

Best regards,

/signed/
Carl Malamud
Public.Resource.Org