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"It's Not Just A Good Idea—It's The Law!"

April 9, 2013

Commander James R. Cassata, Executive Director
National Council on Radiation Protection and Measurements
7910 Woodmont Avenue, Suite 400
Bethesda, Maryland 20814-3095

Dear Commander Cassata:

I received a message that a Ms. Ottman of your staff telephoned the Internet Archive with an oral takedown request for several NCRP documents we were responsible for posting to the Public Safety Codes collection which we maintain. We are also responsible for posting those same documents to our server where they are available for bulk access without restriction. For your convenience, the Internet addresses of those two locations are as follows:

<https://archive.org/search.php?query=ncrp%20AND%20collection%3Apublicsafetycode>
<https://law.resource.org/pub/us/cfr/ibr/005/>

All 3 of the documents in question have been Incorporated by Reference into the Code of Federal Regulations in 42 CFR 37.43. These documents are:

- **NCRP 33:** Medical X-ray and Gamma-Ray Protection for Energies Up to 10 MeV--Equipment Design and Use (1968).
- **NCRP 48:** Medical Radiation Protection for Medical and Allied Health Personnel (1976).
- **NCRP 49:** Structural Shielding Design and Evaluation for Medical Use of X-Rays and Gamma-Rays up to 10 MeV

As these standards have been incorporated into law, they are 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 National Council on Radiation Protection and Measurements, were perhaps 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 *Veck 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 documents in question, a cover sheet has been prepended clearly spelling out the section of the Code of Federal Regulations that has incorporated by reference this document into law. Please note that we were careful to only publish the specific document incorporated by law. As these are the ones required by law and have been duly incorporated into law, we respectfully decline to remove these documents and respectfully decline to request permission.

I wish to address 3 additional points. First, I am somewhat astounded that you would have your receptionist place a phone call to issue a takedown notice instead of sending a letter or email. When you ask somebody to remove a document from the Internet, this is a big thing and you should treat the procedure with significantly more care and gravitas. That was unprofessional.

Second, the 3 documents you are referring to are dated from 1968 and 1976. NCRP 33 has been superseded by NCRP 102 (1989), which you **sell for \$45** (\$36 for a PDF document) and it does not appear that you currently sell or make available NCRP 33, even though it is still on the books in the Code of Federal Regulations as indicated by the National Institute of Standards and Technology in their **SIBR Database**. The same holds for NCRP 48, which does not appear to be available. You do **sell NCRP 49** for \$40 (\$32 for a PDF).

Third, NCRP is an instrumentality of the United States, chartered by the U.S. Congress in 1964 under Public Law 88-376. Your very purpose is to "disseminate in the public interest information and recommendations." Your **2012 Form 990** shows \$1,574,672 in revenue, of which \$1,059,944 are government grants.

I am frankly amazed that you would try and remove these legally binding documents from the Internet. It is a perversion of your mission and of the trust that the U.S. Congress and the public has placed in you to carry out your vitally important mission of helping protect the public safety.

Sincerely yours,



Digitally signed by Carl
Malamud
DN: cn=Carl Malamud,
o=Public.Resource.Org,
ou, email=carl@media.org,
c=US
Date: 2014.04.09 11:18:27
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Carl Malamud