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Open Source America's Operating System

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

March 10, 2014

Ms. Busisiwe Mqingwana
Senior Legal Advisor
South African Bureau of Standards (SABS)
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Dear Ms. Mqingwana:

I am responding to your [letter of March 7, 2014](#) regarding the posting for noncommercial purposes of [public safety standards](#) in legal force in South Africa. As is clearly marked on each of the documents in question, our purpose in doing so is "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."

Before addressing the substance of your letter, please allow me to clarify some points. First, you had indicated in point 1 that "we refer to the above matter and to previous correspondence." (Emphasis added.) We are not in receipt of any previous correspondence and if such communication did occur, please be so kind to bring those letters to my attention.

Secondly, the standards in question include both SABS publications and so-called Compulsory Specifications obtained from the [National Regulator for Compulsory Specifications](#) (NRCS). I am assuming your communication is only in reference to the SABS publications.

Thirdly, I wanted to make sure you are aware that we have posted these standards for noncommercial purposes both on our site at [law.resource.org](#) and also on the Internet Archive in the [global public safety collection](#) we maintain. You will note that considerable effort has been extended to make these documents more useful, such as transforming them into HTML so they are easier to use on different kinds of devices, including mobile phones. You will note also that the PDF documents are considerably easier to read online through the use of the display technologies employed on the Internet Archive collection. Our purpose in all these cases is to make these crucial public safety standards more accessible to those that must obey them.

As to the substantive issues, let me first state that all of the standards selected were done so because they directly impact the safety of the general public and their ability to exercise their socio-economic rights, in particular the right of access to adequate housing as specified in §§ 26(1) and 26(2) of the **South African Constitution** as further detailed in the South Africa **Promotion to Access of Information Act 2 of 2000** (PIAA) “to give effect to the constitutional right to access any information that is held by another person that is required for the exercise or protection of any rights.” (PIAA § 9(a))

In particular, the right of a citizen “to have access to adequate housing” is specifically impacted by such crucial public safety documents as SANS 10400, Parts A through XA, the application of the National Building Regulations. This well-drafted and comprehensive building safety specification is crucial to public safety of housing and of all other structures which are used by people on a daily basis. Likewise, standards such as SANS 10252 (Water supply and drainage for buildings), SANS 10263, (Warehousing of dangerous goods), and the standards for safety of water including SANS 5203 et. seq. are all important and crucial to the public safety.

In addition to protecting the public safety and public welfare, promulgation of edicts of government such as mandated safety codes is an integral part of the efforts in organizations such as the World Trade Organization to “minimize obstacles to trade” as specified in the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 of the **Uruguay Round Agreement on Technical Barriers to Trade**.

The right to know and to promulgate the technical regulations and other edicts of government that guarantee our public safety has long been an integral part of the rule of law, a principle that is fundamental to the operation of the governments of our modern society, including the Republic of South Africa. This principle was enshrined in Article 19 of the **Universal Declaration of Human Rights** which states “everyone has the right to freedom of opinion and expression; this right includes ... to seek, receive and impart information and ideas through any media and regardless of frontiers.” If this provision did not encompass crucial public safety standards such as the important work published by SABS, it would have no meaning. The law is perhaps the clearest example of “information and ideas” that must be known to all, and public safety standards are the laws that most clearly touch our daily lives.

In the United States, edicts of government have long been held to have no copyright. This principle is firmly enshrined in U.S. Copyright policy, which states in Section 206.01, Compendium of Office Practices II, U.S. Copyright Office (1984) that:

“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.” (Emphasis Added.)

As the U.S. Court of Appeals for the Fifth Circuit held in considering the issue of copyright in technical standards enacted into law, such as building codes, “public ownership of the law means precisely that ‘the law’ is in the ‘public domain’ for whatever use the citizens choose to make of it. Citizens may reproduce copies of the law for many purposes, not only to guide their actions but to influence future legislation, educate their neighborhood association, or simply to amuse.” **Veeck v. Southern Building Code Congress International, Inc.**, 293 F.3d 791 (5th Cir. 2002).

For these reasons, we respectfully decline your request to remove the named standards from our web site. However, I would be more than happy to discuss this matter with you further. I believe we share a common goal of promoting the health, welfare, and safety of people and the promotion of free trade throughout the region and the world, and I would thus welcome further dialogue on this important topic.

Respectfully yours,



Carl Malamud
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