

From: Carl Malamud <carl@media.org>
Subject: **Re: This is a verified DMCA Removal Request from Contributor**
Date: January 11, 2013 9:14:47 AM PST
To: remedies@contributor.com
Cc: David Halperin <davidhalperindc@gmail.com>

Dear Mr. Siddiqui:

* * * Sent via Electronic Mail and World Wide Web * * *

I am in receipt of your communication of January 13, 2013 in regards to smaccna.hvac.1985.pdf, the HVAC Air Duct Leakage Test Manual as published by the Sheet Metal and Air Conditioning Contractors National Association.

The HVAC Air Duct Leakage Test Manual has been incorporated by reference and is legally mandated by the United States in Title 10 of the Code of Federal Regulations, Section 434.403.2.9.3. The HVAC Air Duct Leakage Test Manual has also been incorporated by reference and is required by law in Title 19, New York City Rules and Regulations, Part 1240 as well as Chapter 7676 of the Minnesota Energy Code.

As this document has been incorporated into both Federal and State law, long-standing precedent of the United States Supreme Court holds that copyright claims cannot prevent citizens from reading, knowing, 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 Sheet Metal and Air Conditioning Contractors National Association were entitled to copyright protection when issued, once incorporated into state or federal law 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 clearly spell out the section of the law--in this case the Code of Federal Regulations--that created the incorporation by reference into the law. Incorporation into the Code of Federal Regulations is not a casual affair and requires that the regulator follow a carefully prescribed procedure and that the incorporation be approved specifically by the Executive Director of the Office of the Federal Register.

The purpose of requiring the HVAC Air Duct Leakage Test Manual is to help promote the public safety. It was incorporated into the law because of the high quality and integrity of the work and it is the very purpose of the law that the citizens should know and follow the requirements. I'm sure you will agree that our noncommercial posting of these legally mandated regulations helps to inform citizens and promote the public safety.

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

Best regards,

Carl Malamud
Public.Resource.Org
1005 Gravenstein Highway North
Sebastopol, CA 95472

On Jan 10, 2013, at 7:23 PM, remedies@attributor.com wrote:

*** Sent via Email – DMCA Notice of Copyright Infringement ***

Dear Sir/Madam,

I certify under penalty of perjury, that I am an agent authorized to act on behalf of the owner of the intellectual property rights and that the information contained in this notice is accurate.

I have a good faith belief that the page or material listed below is not authorized by law for use by the individual(s) associated with the identified page listed below or their agents and therefore infringes the copyright owner's rights.

I HEREBY DEMAND THAT YOU ACT EXPEDITIOUSLY TO REMOVE OR DISABLE ACCESS TO THE PAGE OR MATERIAL CLAIMED TO BE INFRINGING.

This notice is sent pursuant to the Digital Millennium Copyright Act (DMCA), the European Union's Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society (2001/29/EC), and/or other laws and regulations relevant in European Union member states or other jurisdictions.

My contact information is as follows:

Organization name: Attributor Corporation as agent for Rights Holders listed below
Email: counter-notice@attributor.com
Phone: 650-340-9601
Mailing address:
119 South B Street
Suite A,
San Mateo, CA 94401

My electronic signature follows:

Sincerely,
/Eraj Siddiqui/
Eraj Siddiqui
Attributor, Inc.

*** INFRINGING PAGE OR MATERIAL ***

Infringing page/material that I demand be disabled or removed in consideration of the above:

Rights Holder: Sheet Metal and Air Conditioning Contractors National Association

Original Work: HVAC Air Duct Leakage Test Manual

Infringing URL: <https://law.resource.org/pub/us/cfr/ibr/005/smaccna.hvac.1985.pdf>