

Update to the Members



Dominic Sims
Chief Executive Officer
International Code Council

As you have read throughout this issue of the *Building Safety Journal Online*, the 2015 International Codes are available for jurisdictions and Members to begin preparing for adoptions and application.

The professional expertise involved with ICC's code development process is truly a team effort that ensures safety, resiliency and cost effectiveness in the built environment. It is an effort that involves the private and public sectors to benefit public safety while supporting the industry need for one set of regulations without regional limitations.

Proceeds from the sale of ICC's codes, standards, and related products and services help fund the ongoing code development process. As a result, there is virtually no cost to government or the public it serves to use the codes to help create safer communities.

Today's digital age, however, threatens the business model used by ICC and its fellow standards developing organizations. ICC's leadership is keenly aware of the challenges this presents, and we believe there is a win-win solution that is governed by laws that are already in place. The following outlines a fair and balanced solution.

Striking a Fair Balance between Copyright Protection and Public Access to Codes and Standards

By Stephen D. Jones, CBO, President, ICC Board of Directors and Dominic Sims, CBO, ICC Chief Executive Officer

For more than 75 years, the Members of the International Code Council (ICC) and its legacy organizations have volunteered their time and expertise to develop critical codes and standards relating to building safety. Those codes and standards have helped produce the

best building safety and code compliance system—and the safest buildings—in the world today.

The hallmark of that system is that its regulatory backbone—the code content itself—is not initially produced in a governmental setting, but by Members

of the ICC and other private sector “standards developing organizations” (SDOs), working in collaboration with industry, government and other experts in the building sciences. Like many other SDOs, ICC develops its codes through a public-private collaboration that

Update to the Members

continued

course, is not free. ICC, like other SDOs, funds its code development activities and associated organizational costs largely through the sale of its codes and other published material, both printed and electronic. Copyright protection of its codes and standards is essential to ICC's ability to generate the revenue necessary to support its code development activities. Moreover, this funding model enables ICC to make the codes available for adoption and use by governmental jurisdictions at no cost to taxpayers.

Over the past few years there has been considerable discussion and commentary about public access to adopted codes and standards, and about the tension in the Internet age between a standard developer's copyright interest and the growing public expectation that everything should be available for free online.

ICC fully recognizes the public's right to know what the law is. That's why ICC offers free online access to its codes in read-only format. Offering unlimited free access to all codes and standards would undermine ICC's ability to exist, support its Members' work and produce codes, an outcome that ultimately would not be in the public interest. ICC's approach strikes a balance that allows easy and meaningful public access,

while preserving ICC's ability to carry out its code development mission that many governments across the U.S. rely on.

The alternative would drop the responsibility for code development into the laps of governmental entities, which are not in a position to have all of the expertise of the multitude of ICC Members or resources to carry out this function. Building safety would suffer, regulations would become less consistent between communities, and important ancillary products and services such as training, education and certification that ICC Members and professionals in the building safety industry rely on would disappear.

In addition, taxpayers in some fashion would have to start footing the bill. Perhaps most importantly the code development process would inevitably become subject to well-funded special interests that more and more have come to dominate the political process at all levels of government.

The federal government recently took a long look at the issue of public access to adopted codes and standards. The backdrop of this inquiry lies in part in the "National Technology Transfer and Advancement Act of 1995." In that law, Congress recognized the long and

beneficial history of governmental reliance on private sector standards, and codified the requirement that federal agencies use "standards that are developed or adopted by voluntary consensus standards bodies" except where "inconsistent with applicable law or otherwise impractical."

The Office of Management and Budget (OMB) implemented the requirements of the Act in "Circular A-119." It reiterated that wherever possible, agencies had to use private sector standards "in lieu of government-unique standards." Significantly, Circular A-119 also provided that agencies "must observe and protect the rights of the copyright holder" with respect to any standards they used.

Fast forward to 2012 when OMB requested comment on possible changes to Circular A-119, and 2014 when OMB published its proposed changes and a summary of the many public comments received. Significantly, the revised Circular reiterates the preference for voluntary consensus standards over government-unique standards, and reaffirms that agencies must observe and protect the rights of copyright holders. To address the public access issue, OMB added a directive that agencies work with SDOs to "promote the avail-



Update to the Members

continued

ability” of copyrighted material. OMB made it clear, however, that ignoring the SDOs rights in their content is clearly not in the public interest:

“OMB does not believe the public interest would be well-served by requiring standards incorporated by reference to be made available ‘free of charge.’...[T]he costs of standards development are substantial, and requiring that standards be made available ‘free of charge’ will have the effect of either shifting those costs onto others or depriving standards developing bodies of the funding through which many of them now pay for the development of these standards. Such changes could have serious adverse consequences on important governmental objectives, including the ability of U.S. regulators to protect the environment and the health, welfare, and safety of U.S.

workers and consumers.”

OMB’s position is consistent with comments in a 2011 report by the Administrative Conference of the U.S., an independent federal agency that provides non-partisan research and advice on improving federal agency procedures:

“The public-private partnership in standards...has reaped extraordinary benefits for both government and the private sector. In addressing the important public policy question of how to ensure the reasonable availability of incorporated, copyrighted materials, these benefits must be kept in mind. Any solution must preserve and improve—and not undermine—the valuable public-private partnership in standards.”

The American building regulatory system has served

the nation exceedingly well. ICC will continue to build on that legacy by continuing to do what it does best:

- Provide the means by which its Members may produce the highest quality model codes and commentary by a voluntary consensus process;
- Promote and sustain the public-private partnerships that allow periodic code development and revision without burdening taxpayers with the cost; and
- Continue to work toward a balanced approach on the issue of public access—making content available to the public while ensuring ICC remains fully capable of carrying out its mission of promoting public safety in the built environment. **bsj**