



Building Codes and the Public Domain

By David L. Pierson, S.E., SECB

A short time ago, I started working on a project that will be designed for construction in Europe. As such, I decided that I ought to know European construction law. I quickly found my way to the Eurocode, the governing building code for the European Union. Thinking that I ought to purchase it, I turned to the Internet. I discovered that it is not available from Amazon, and no online version shows up on any search engine. I need it in English, so there is only one place to buy it.

What is the cost? Well, if I want individual volumes – one covers snow loads, another wind loads, etc. – they run between \$250 and \$350 each. As it turns out, there are a total of 52 volumes. But wait – I get a discounted price of \$9,971 if I buy all of them together! I am still looking for alternatives – otherwise, I could be using 20% of my fee just to purchase the required code. If there is a silver lining here, it is that they do not update the Eurocode every three years.

This was the catalyst for me to start inquiring about things that I should have questioned when I was a younger engineer. I do not mind paying for textbooks, design guides, seminars, etc. To every squirrel his nut, I say. If you create value, then protect it, and make others pay for it. That is free-market activity. However, I have always been somewhat bothered when, in the course of my design work, I find that there is a code with which I need to comply that I do not already have, and it is going to cost me part of my fee to acquire it. Even worse, that code often references other codes or standards that I may not already have.

The key question is this: Is it right, in a country governed as a representative republic, that the government can create a law with which persons must comply (under threat of state-sanctioned penalties) and then not make the complete text of that law available for free in the public domain? Is it proper that the government forces a person to purchase the law – from a private organization – in order to find out exactly what the law requires? Is

this not where we find ourselves now with building codes and referenced standards?

I am somewhat astonished that our profession has acquiesced to the situation in which we currently find ourselves. Does every jurisdiction that mandates a building code make it available to design professionals in the public domain? Or are you required to buy it, and then buy it again and again, every three years? I have tried to figure out if there are any similar situations in other professions or occupations, but so far I have been unable to come up with any.

In 2002, there was a legal case (Veeck vs. Southern Building Code Congress) in which the U.S. Fifth Circuit Court of Appeals held that a building official was not violating copyright law when he put the adopted building code online for free access. This case essentially held that the model codes themselves are protected by copyright, but once they are enacted into law, they become part of the public domain. Because of that case, the organization Public Resource tries to publish the enacted building codes for every state online, making them available as free PDF files. However, in general, they only have the text of the code itself.

My next question is a simple extension: What about the various industry standards that are referenced within that code? Those standards bind me legally as part of the building code. Just because they are published in different books does not diminish the fact that I, as a design professional, am bound to

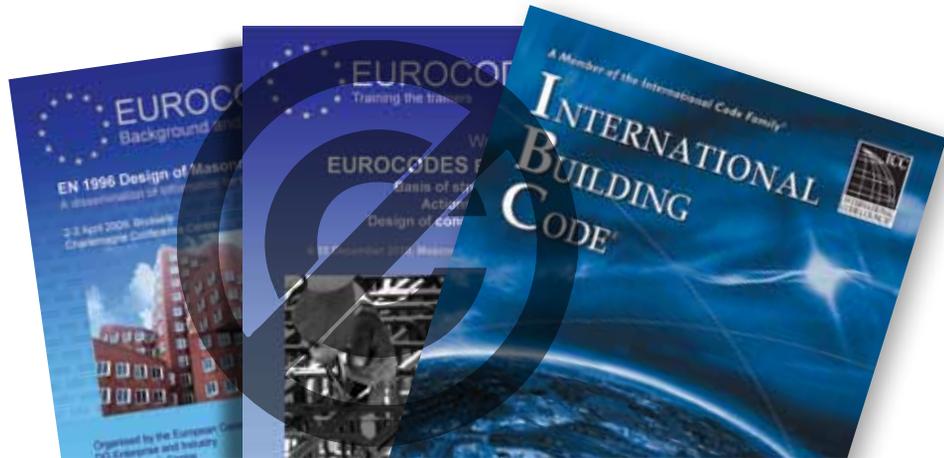
know what is in them and to comply with them. Yet the total cost to purchase all of the referenced standards could easily exceed the \$10,000 that is being asked for the Eurocode. Under what legal doctrine can I be compelled to engage in commerce with a third party in order to determine what is in the law?

I submit that once a building code is adopted by any authority having jurisdiction, then that jurisdiction should be required to make available in the public domain, free of charge, not only the code, but also all referenced standards within that code that are legally binding.

Perhaps this would require changes to how building codes are developed and promulgated. I think it is time that we address this. And before anyone goes jumping to the conclusion that the solution is elimination of the building codes, I would argue that this is not the correct answer. A staunch political libertarian may claim otherwise, but I maintain that building codes do have a necessary place in our society.

It is completely proper, however, to debate what the scope of the building codes should be, what their objectives ought to be, and how they should be developed. But that sounds like a topic for another time and place. In the meantime, does anyone know someone willing to trade a complete Eurocode for, say, a kidney?*

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