

CASE 120

Rule 41(c), Outside Help

‘Information freely available’ in rule 41(c) is information that is available without monetary cost and that may be easily obtained by all boats in a race. Rule 41(c) is a rule that may be changed for an event provided that the procedure established in the rules is followed.

Question 1

What is the meaning of the term ‘information freely available’ as used in rule 41(c)?

Answer 1

‘Information freely available’ means information that is available without monetary cost and that may be easily obtained by all boats in a race. ‘Easily obtained’ means the information is available from a public source that competitors can reasonably be expected to be aware of and can locate with little effort. An example of information found by little effort is information that can be found near the top of the list of internet addresses identified by conducting a search for the information using a widely-used internet search program. Information for which a fee has been paid (even if that fee is very small) or that is not easily obtained by all boats in a race is not ‘freely available’. Examples are information supplied only to those boats that have paid a subscription fee or other fee for the information, and information whose location on the internet is hidden or obscure.

The costs of equipment or software and fees for communication services are not costs for the information that can be obtained with that equipment, software or communications service. For example, a cost to a competitor for a computer or cell phone and for internet access is not considered a cost for the information that the competitor can obtain with that equipment. If there is no charge for access to that information, the information is ‘freely available’.

However, information is not ‘freely available’ if access to it is limited to persons who have purchased special-purpose equipment or software from the person or organization that provides the information. Such information is not ‘freely available’ even if there is no additional charge made for receiving the information using the special-purpose equipment or software.

For example, any data or information that can be retrieved at no cost using an existing internet access account is ‘freely available.’ However, data or information is not ‘freely available’ if it is only accessible if one pays the person or organization that provides the information for special-purpose hardware or application software.

In addition to the above considerations, information is not ‘freely available’ if it becomes available so close to the start of a race that competitors do not have a reasonable period of time to find it and familiarize themselves with it. This prevents one competitor from arranging for data to be posted just before a race, with other competitors not having the time to find it and familiarize themselves with it.

Note that, in addition to the provisions in rule 41, a class rule may prohibit certain equipment from being on board a boat, and such a class rule may, therefore, limit information that a boat may use.

Assumed Facts for Question 2

Boat A is a large boat with plenty of space for equipment and a large crew with a dedicated navigator/weather router on board. She has an Inmarsat or VSAT system and pays a monthly communications fee of \$5000, enabling large amounts of downloads and browsing of the internet. The boat’s objective in having very good access to the internet is to have access to digital weather information for use in routing. All the data used by the boat are available throughout the year at no charge, to anyone with internet access. None of the data that is downloaded comes from the Inmarsat or VSAT communications provider themselves.

Boat B is a 40-foot boat with a crew of eight. She uses a tablet computer with a mobile data card for which she pays a small monthly communications fee similar to a phone communications fee. The crew purchased a routing and weather analysis application for use during the race. The application costs \$2000 and is available on the open market for purchase by anyone. The application includes a paid-in-advance subscription to weather data that can be downloaded during the race. The weather data is the same for all boats that have purchased the application. The weather data is race-specific. The weather data cannot be used with other weather or routing applications and is not usable without purchasing the routing and weather analysis application.

Boat C is a 40-foot boat with a crew of eight. She uses a tablet computer with a mobile data card for which she pays a small monthly communications fee similar to a phone communications fee. The crew is

downloading hi-resolution weather files for a small monthly subscription fee. The files are not tailored to the boat; all boats subscribing to the files receive the same data. Nobody, even ashore with internet access, could access this data without subscribing and paying for it.

Boat D is a 40-foot boat with a crew of eight. She uses a tablet computer with a mobile data card for which she pays a small monthly communications fee similar to a phone communications fee. She additionally contracts for a subscription for private weather data for \$15,000 for the race. That private weather data includes extremely high resolution satellite imagery on which every squall can be seen and tracked. This imagery is not customized for the particular boat and is available to any boat that pays for it and has the ability to download it.

Question 2

Do any of these boats break rule 41(c) if they receive information using the services described?

Answer 2

Boat A does not break rule 41(c). She does not pay a fee for the information she receives. Paying a fee for a communications system, such as an Inmarsat or VSAT system, and a monthly communication fee that enables her to communicate and access information on the internet does not break rule 41(c).

Boat B breaks rule 41(c). The routing and weather information that Boat B downloads cannot be accessed without the special-purpose software that Boat B purchased. Therefore she is receiving information that is not freely available to boats that have not made that purchase.

Boats C and D break rule 41(c). The fees that they pay enable them to receive weather information that they would not be able to receive if they had not paid the fees. The requirement to pay a fee for information, whether it is large or small, means that that information is not available at no monetary cost, and therefore the information is not ‘freely available’.

Question 3

Can rule 41(c) be changed for a particular event?

Answer 3

Yes. See rule 86.1. Rule 41(c) is a rule that may be changed for an event provided that the procedure established in the rules for such changes is followed. Case 121 discusses that procedure.

Question 4

Can the restriction stated in rule 41(c) be changed for an event without changing the rule?

Answer 4

No.

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