

To: Editors in Chief of IEEE Transactions and Journals; Editors in Chief of IEEE Magazines, Editors in Chief of Newsletters, and Society publications officers

Dear Colleagues,

IEEE has always encouraged articles on a broad range of topics in its publications to provide timely, accurate, and useful scientific and technical literature to the global engineering and scientific communities. Such articles are presented in support of the IEEE mission through an impartial forum with editorial independence free from influence by outside organizations. Occasionally these articles may deal with sensitive subjects such as cyber security, military technology, or the application of technology by law enforcement or national intelligence agencies. In such articles it is possible that the manuscript may appear to disclose or even contain material that is classified or protected as a matter of national security. This is especially so given the growing dissemination of classified or other national security information over the Internet, such as the materials recently disclosed through WikiLeaks by Julian Assange or by former NSA contractor Edward Snowden. Those restricted materials may originate from anywhere. In all instances they raise a number of issues that require careful legal consideration.

Although I have not had the pleasure of meeting many of you, I thought it advisable to reach out to you, as the head of the IEEE Legal and Compliance Department, with this note regarding your legal protection as editors, as well as the protection of IEEE as a publisher, in connection with this matter, and to seek your essential cooperation in preventing situations resulting in potential legal risks to yourselves and IEEE. In particular, if during the review process of a manuscript any of the associate editors or reviewers brings to your attention potential classified or other national security information, or if you yourself have concerns about any manuscript, please contact me or any other lawyer on my staff in the IEEE Legal and Compliance Department as soon as possible and, in any case, prior to acceptance of that manuscript for publication.

This is important since, while IEEE is an international organization with about 200,000 members outside of the U.S., it is incorporated in the U.S. and, therefore, it is bound to operate under its laws. A few key points to note in connection with this matter are:

- IEEE is a U.S. nonprofit corporation and, therefore, is considered a U.S. "person" subject to U.S. laws, including those dealing with the possession or publication of classified or other national security information.**
- U.S. laws do not treat such classified or other national security information as being "in the public domain" just because they become available through the Internet or other media. Instead, they remain classified or otherwise protected materials and government property in spite of that availability.**
- Legal precedent in the United States has held that the government may not prevent the publication of leaked classified or otherwise restricted government**

information, which is protected under the First Amendment of the U.S. Constitution relating to the freedom of the press. However, after such publication, the government may in certain cases still prosecute the publisher for possession or publication of such materials as criminal violations of applicable U.S. law.

-- The national security laws of other countries may, of course, also be implicated if the classified or other protected government information comes from a non-U.S. jurisdiction. Given that IEEE is a truly international organization, which is committed to legal compliance on a worldwide basis, an analysis of applicable laws, keeping in mind governing principles regarding freedom of the press, would be applied in providing advice in such situations.

Please alert your editorial boards to these issues. If it comes to your attention that a manuscript submitted for publication in your journal or magazine appears to rely on or include classified or national security information, whether of the U.S. or any other nation, the IEEE Legal and Compliance Department will be happy to provide you with the assistance you need. To obtain it please contact me at the email address indicated below, so that we may help you analyze the pertinent issues and ensure that a sound editorial decision can be made.

We would be pleased to discuss with you any questions you may have regarding this matter.

Sincerely,

Eileen M. Lach
General Counsel and Chief Compliance Officer
IEEE
3 Park Avenue, 17th Floor
New York, NY 10016-5997 U.S.A.
T: 212 705 8990
F: 212 705 8915
Email: e.m.lach@ieee.org