

Racing Rules of Sailing

New Case – Rule 41(c)

A submission from the Chairman of the Racing Rules Committee

Purpose or Objective

To provide a case that answers frequently asked questions concerning the meaning of the term ‘information freely available’ as used in rule 41(c).

Proposal

CASE YYY

Rule 41(c), Outside Help

Rule 86.1, Changes to the Racing Rules

Rule J1.2, Notice of Race Contents

Rule J2.2(3), Sailing Instructions Contents

The case provides an interpretation of the term ‘information freely available’ and guidance on the procedure for changing a racing rule for an event.

Question 1

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

Answer 1

The term ‘information freely available’ is not defined in Definitions in the racing rules, nor is it a nautical term. Therefore, as stated in Terminology in the Introduction, the term is used in rule 41(c) ‘in the sense ordinarily understood in general use.’ According to an authoritative dictionary of English as spoken in the United Kingdom, the term ‘information freely available’, in the context in which it is used in rule 41(c), 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 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. Thus, 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.' Data or information that is only accessible with if one pays for special-purpose hardware or application software is not 'freely available'.

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 and familiarize themselves with it.

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 to run routes and to view and analyze weather data during the race. The routing and weather analysis application costs \$2000 and is available on the open market for purchase by anyone. The routing and weather analysis 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 is not able to be used in conjunction 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 weather files are not tailored to the boat; all boats subscribing to the hi-resolution 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 visible and infrared imagery on which every squall can be seen and tracked. This extremely high resolution satellite 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, 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, but only if the process described here is followed. Under rule 86.1, rule 41, or any part of it, may be changed by the sailing instructions. The sailing instructions, which are published by the race committee under rule 90.2(a), can change rules in compliance with rule 86.1(b). A change in rule 41 that permits the receipt of otherwise prohibited information or restricts the information that can be received by a boat while racing would certainly help competitors decide whether to attend the event or convey information competitors will need before the sailing instructions become available (see rule J1.2). Therefore, if the sailing instructions will change rule 41, the notice of race, which is published by the organizing authority under rule 89.2(a), must comply with the three requirements in rule J1.2(1). In addition, as required by rule J2.2(3) a sailing instruction must also specifically identify the rule that is being changed and state the change. Note that, as stated in Terminology in the Introduction, a 'change' to any rule includes an addition to it or deletion of all or part of it.

Question 4

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

Answer 4

No. See Answer 3. Rule 41 must be changed. To do so the organizing authority must make the statements about the change in rule 41 required by rule J1.2(1), and the race committee must comply with rule J2.2(3) (see Answer 3).

Current Position

None. The proposed case is a new case.

Reasons

1. The case provides a detailed interpretation of the term 'freely available' as used in rule 41(c). Organizing authorities often wish to allow or prohibit the use of certain information. The case
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sets out in detail what information is permitted under rule 41(c). By way of four examples, it clarifies questions that are frequently asked by competitors in oceanic races.

2. Organizing authorities frequently wish to change rule 41, and so the case clearly points out that, under rule 86.1, rule 41(c) may be changed for any event, and it states in detail the steps that must be taken by the organizing authority and the race committee to do so.
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