

**PROTECTING U.S. LEADERSHIP IN CODES
DEVELOPMENT AND ENHANCING PUBLIC ACCESS**

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, INTELLECTUAL
PROPERTY, ARTIFICIAL INTELLIGENCE, AND
THE INTERNET

OF THE

COMMITTEE ON THE JUDICIARY
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PROTECTING U.S. LEADERSHIP IN CODES DEVELOPMENT AND ENHANCING PUBLIC ACCESS

Tuesday, April 21, 2026

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND
ARTIFICIAL INTELLIGENCE, AND THE INTERNET

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcommittee met, pursuant to notice, at 10:07 a.m., in Room 2141, Rayburn House Office Building, the Hon. Darrell Issa [Chair of the Subcommittee] presiding.

Present: Representatives Issa, Jordan, Fitzgerald, Gooden, Lee, Fry, Johnson, Raskin, Lofgren, and Ross.

Also present: Representative Kiley.

Mr. ISSA. The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time.

We welcome everyone here today for a hearing on codes and standards development and public access.

Without objection, Mr. Kiley, when he arrives, will be able to participate in today's hearing for the purpose of questioning the witnesses and will receive five minutes for that purpose.

I now recognize myself for an opening statement.

Earlier in the back, I welcomed everyone to Ground Hog Day because it is seldom that we have a bill that wins overwhelmingly on the House floor by nearly two-thirds, having had full hearings and markups, having some of what you see on the screen, the 8,000-plus entities that helped create what we often call the building codes. In fact, these how-to manuals, which are included by reference in many laws but, ultimately, are far more than simply statements of fact for the law.

It was with some surprise that we found that we narrowly lost a suspension vote. We expect to come back again shortly. For that purpose, today's hearing will, in fact, try to cover some new information, if we possibly can, and particularly a new approach to explaining how we got here.

James Madison, in fact, argued the need to grant limited terms of exclusive rights to inventors and authors, as he said in the *Federalist* 43. Ultimately, his argument became Article I, Section 8, Clause 8 of our Constitution.

Let me be very clear, it does not bestow a right. There is no absolute right to copyright. There is no absolute right to patent. Those are creations, as our Constitution says, to promote progress of science and useful arts by securing for a limited time to authors and inventors that exclusive right to the respective writings and discoveries.

That is so important today, because the bill that is being considered and will be back on the floor is a balance. How do we continue to have the promotion that causes over 8,000 entities to work, in many cases completely as volunteers, to produce some of these great—and, of course, I'm using old books because most of its on-line today—but the building codes. More than the codes, building the how-to manuals, the what is right, what are the cautions, what should you know. These are educational books, broadly.

Many say because they are included by reference, by cities, and others, that somehow that diminishes their legitimate copyright. For purposes of this bill, we have sought to find a middle ground. We have sought to say, because you must comply with the law and because municipalities and States often simply refer to a copyrighted material, that making that available for purposes of knowing what the law is referring to is reasonable.

Just as a copy in the library is free to read, the bill that we propose makes it possible for you to, in fact, find out what that reference is, but it stops short of allowing you to simply make a xerox copy and include it with your application. It stops short of saying that all the information that helps you produce a better, safer product, to know the risk involved if you choose to do something one way versus another and so on is, in fact, still protected.

That balance is not easy, but it is a balance that our Founders gave us. They gave us the responsibility to make this a promotion, to make it for a limited period of time, but, in fact, to make it ultimately available to the public. That's what we're doing here in this legislation.

It's also a reflection. I serve on the Science Committee. Scientific works have had many of the same sort of comments, that there is somehow fact not something that is a work. Well, you're just stating what is science. When somebody discovers the genome, maps it, it was argued that shouldn't be patented. That argument fell short because, although we all have those genes in us, finding a way to map them, finding a way to create a useful work in science that has led to amazing development had to be promoted, and we are having the same situation here today.

We have people today that will be testifying to who disagree, who believe that, in fact, everything should be free, and have a fairly diminished view of what a copyright is. They are entitled to that. We also have panelists that agree with the basic language of the bill, and we have panelists, some of them are from those 8,000 names you see scrolling here, who want more. They want an outright rejection of any use in the public domain. They don't want it to be available.

Others, quite frankly, will argue that their association members are different, that they don't promote, even though they get included. Let me be clear. Having looked at that extensively, the taking by a city or a State or even the Federal Government and in-

cluding it in a statutory requirement you comply with would have the exact same effect, an effect that says the public has a right to see the law.

Mr. Massie will be here later, and I side with him and others on the dais in saying, if it becomes the law, you should be able to find it, see it at no cost. How that is facilitated is open to debate but not whether or not you should. For that reason I find it—and I'm not trying to be argumentative here, that comes later—I'm trying to make the point that it's moot whether you promote it to be in the law or it ends up in the law.

Ultimately, we believe, on this side of the dais, that the American people have a right to see their laws. It doesn't mean they have a right to take it all, to use it, to resell it, and to monetize it. That's short of what you have with the law. For that reason, we have the grand compromise of H.R. 4072, the Pro Codes Act.

We want to preserve copyright for a reason. If I were to stack up every book, many of them thicker than this one, that is produced by these 8,000 companies, we would have this dais filled. When you look at those books—and I'll ask some of the witnesses here today—when you look at those books carefully, you see some things that clearly look like the law, but you also see an amazing amount of information, warnings, how-tos, things that, in fact, would be in any good manual.

We are not in another country. In the U.S., we go it our own way. I want to be clear. Reference to other countries and how they do it really doesn't matter, and it doesn't matter because America is where we are because of our respect and balance for intellectual property.

Last, I'll close with this and recognize the Ranking Member—there are those who will argue that once something is fact and everyone knows it's not copyrightable. For those like me who love to cook, does that mean that when Betty Crocker tells you how to make cookies and she gives a set of ingredients, and those are the same ingredients and sometimes the exact same measurements that other recipes have, that somehow the Betty Crocker book should not be copyrighted and anyone should be able to monetize it while it's still under copyright?

I disagree that is the reason that it was so important to have a second hearing to make it clear that when this goes to the floor, this will be a statement by the U.S. Congress that we believe in those original principles of promoting while balancing these works of these authors.

With that, I recognize the Ranking Member for his opening statement.

Mr. JOHNSON. Thank you, Mr. Chair, and thank you to the witnesses for your appearances today for this very important hearing.

When I get home to Georgia after a long week, I get off the plane, take the airport rail to my car, and pick up my car from the parking area. Once I get home, I park the car, walk into my house, and cut the lights on. I might fix some hot tea after pouring some water and heating it up in the microwave. I rarely think about it, but all these steps from the airport to my house are governed by codes, developed by standards developing organizations, or SDOs.

Standards governing everything from light rail and parking garages to home fire codes and water piping touch each of us in our everyday lives. When a contractor works on your house or a firefighter inspects your workplace for fire safety, they have to consult their respective codes. While most of us know that these codes exist, we rarely consider where those codes come from.

An important part to you and me is that the standards in those codes work. They keep us safe. They keep our lives running with us none the wiser.

SDOs regularly get together and come up with the state-of-the-art guidelines for their trades. These best practices govern everything from consumer safety and household utility installation to home electrical wiring and plumbing. SDOs make sure your house won't catch on fire, your plumbing is up to code, your water boiler is installed correctly, and everything in between.

If you live in an area that might be affected by floods or by earthquakes, you want to ensure your house is built to withstand natural disasters. You rely on your local contractor, and your contractor relies on their SDO standards.

Now, so far as this sounds like a great hearing for the Transportation and Infrastructure Committee, which I also serve on, the reason why this is in the Intellectual Property Subcommittee of Judiciary is because this Subcommittee cares about standards, and it's because of a recent circuit court decision—actually, recent court decisions that have made it harder for SDOs to assert their copyright when others post their codes online.

States and local governments frequently adopt SDO-developed codes by reference into law. They do this for a few reasons but primarily because the government doesn't have the funds to employ experts to develop a unique building code and do not update the law often enough to keep up with the changes of society and in best practices.

Georgia, for example, can refer to the National Fire Protection Association's most updated—or up-to-date code in their laws. That way the law is always up to date, and they don't have to pay experts to develop something new. This is the point where intellectual property issues arise.

Some point to the *Supreme Court's Georgia v. Public.Resource.Org* decision and say, quote, "that no one owns the law." If you can't access the code, you don't know what the law says, and Americans have a reasonable interest in knowing they can access the laws that govern them.

Others point out that SDOs fund their work by selling their copyrighted material to experts who use it to make necessary evaluations, repairs, and installations. Without this rigorous development and dedication to constant improvement, they argue American standards would fall behind.

We find ourselves in a dilemma. Once the code is law, it seems only reasonable that Americans should be able to figure out what the law says. On the other hand, SDOs fund their work, which we rely on to keep us safe, through the sale of their copyrighted works. We also have an interest in ensuring these codes always reflect the highest possible standards, and they can't do that without income or revenue.

Multiple circuit court decisions have found that publication of codes incorporated by reference is fair use. If we want to ensure that SDOs retain their copyright, legislation is necessary. The question is, what kind of legislation?

Last Congress, I voted in favor of the Pro Codes Act, but at the time I expressed concern that we hadn't had a fact-finding hearing to listen to all the different sides to this issue. I understand that there are quite a few different perspectives represented here, and I commend my colleague, Chair Issa, for working with me to put together a panel of witnesses that can speak to the many facets of the copyright problems with incorporation by reference.

I look forward to hearing from the witnesses, and I yield back the remainder of my time.

Mr. ISSA. I thank the Chair—or the Ranking Member. I now recognize the Chair of the Full Committee, Mr. Jordan.

Chair JORDAN. I just want to thank the Chair for this hearing, for our witnesses who are here today, and for the Chair's persistence in trying to get this legislation across the finish line.

With that, I would yield back.

Mr. ISSA. I thank the gentleman. I now recognize the Ranking Member, the gentleman from Maryland, Mr. Raskin.

Mr. RASKIN. Thank you, Chair Issa. Thanks to all our witnesses for joining us today.

We have got two competing principles in play today, both of them deeply rooted in our constitutional culture, and one of them is the protection and incentivization of creators through copyright, and the other is the idea that public laws must be available to the public on a universally accessible and free basis.

The Pro Codes Act introduced by the distinguished Chair, Mr. Issa, and our esteemed colleague, Representative Ross, seeks to reconcile these principles by promoting innovation alongside a legal system that the public can access. I recognize there's no shortage of strong, divergent opinions on all sides of this issue, sometimes held by the exact same person, as people change their minds over time about this question, which sometimes can seem kind of esoteric. It's incumbent on this Committee to study the details here where the answer is going to lie.

We've got to be sure that we are reconciling these two principles. The devil's in the details, Mr. Chair, and I look forward to hearing from our excellent witnesses today.

Mr. ISSA. Would the Ranking Member mind yielding just a moment to the coauthor of the bill, Ms. Ross?

Mr. RASKIN. By all means. Ms. Ross has arrived. Please, happy to yield to you.

Ms. ROSS. OK. Thank you so much for that, Mr. Chair and the Ranking Member, and thank you to our witnesses for being here.

I think it is very important that we have a full and robust conversation about this issue. Representative Issa and I have been through this in Committee. We've had a markup in Committee, but we haven't had this kind of philosophical debate with outside folks coming in. I'm really glad that we're doing that.

I do want to let people know who may be tuning in to this for the first time, last Congress, there was a lot of activity on this bill, and there were a lot of changes made with the input of people who

had ideas for how to improve public access, particularly input from the disability community, and I sponsored those amendments.

When I get my opportunity to ask our witnesses some questions, you'll hear a little bit more about how I view this, but I do think that the bill in its current form has only been getting better and fairer and more inclusive of the public, while protecting the intellectual property of the people who have put their blood, sweat, and tears in it and promote our safety.

It will give that kind of balance and, I hope, encourage the people who have been doing this amazing work on these codes for decades the incentive to keep doing their work and keeping the public safe while providing that access to people who need to know what's in the law.

Thank you so much, Mr. Chair, and I look forward to the discussion.

Mr. ISSA. Thank you. The Ranking Member yields back. We now introduce our panel of experts for their opening statements.

We begin with Mr. James Pauley. Mr. Pauley is President and Chief Executive Officer of the National Fire Protection Association, a nonprofit association that develops standards and codes related to fire prevention. The NFPA also engages in research, training, education, outreach, and advocacy.

Mr. Keith Kupferschmid is the President and Chief Executive Officer of the Copyright Alliance, a nonprofit organization that advocates on behalf of creators and innovators. He previously served as the General Counsel and Senior Vice President for intellectual property at the Software and Information Industry Association.

Mr. John Delli Venneri is the General Counsel at the American Society of Mechanical Engineers, ASME, a professional association for mechanical engineers. The ASME develops codes and standards and provides professional resources like publications, conferences, continuing education, professional development, and resources to its members.

Mr. Jonathan Band is an attorney and advocate who works on matters related to intellectual property. Today, he is representing the Library Copyright Alliance, which consists of American Library Associations and Associations of Research Libraries. Both organizations consist of librarians and research librarians.

We welcome all our witnesses and thank you for appearing here today.

As I said earlier, we have a—and Ms. Ross said very well—we have a well-balanced group that we believe represent the entire spectrum of those involved in this issue.

Pursuant to the Committee rules, I would ask that all witnesses rise to be sworn in, and raise your right hand.

Do you solemnly swear or affirm under penalty of perjury that the testimony you're about to give will be true and correct to the best of your knowledge, information, and belief, so help you God?

Thank you. Please be seated.

Let the record reflect that all witnesses answered in the affirmative.

Mr. Pauley, we'll go from your side to that side, if that's all right. You know the routine here, five minutes. We're not going to cut

you off mid-sentence, but please stay as close to that so we can have plenty of time for questions.

The gentleman's recognized.

STATEMENT OF JAMES PAULEY

Mr. PAULEY. Chair Issa, Ranking Member Johnson, and the distinguished Members of the Subcommittee, thank you for this opportunity to testify today. My name is Jim Pauley. I'm the President and CEO of the National Fire Protection Association.

I want to start today with a number: 54 percent. That's how much fire incidents have declined in this country since 1980. Home fire deaths over that same time period are down 44 percent. Now, those numbers didn't happen by chance. They happened because of rigorous safety standards developed by independent nonprofit organizations like National Fire Protection Association (NFPA), and they represent the lives saved, the families spared, and the disasters prevented.

Now, for nearly 130 years, the NFPA has developed codes and standards that protect lives and property from fire, electrical, and life safety challenges. We develop and update more than 300 of these in an open, transparent, and consensus-based process. These standards are used by a wide range of stakeholders: Insurance companies, manufacturers, contractors, designers, and government.

We don't develop them for any one group. We also don't take money from industries that are affected by our standards, and we don't rely on taxpayer funding to create them. We fund this work by selling our standards to the professionals who use them. That's the copyright model at work, and it's produced one of the most successful public—private partnerships in American history.

The need for this system, it's accelerating. From devastating wildfires to new risk from lithium-ion batteries, the NFPA is developing standards to address challenges that didn't exist just 10 years ago, not to mention our efforts to continuously update the hundreds of critical existing standards like the National Electrical Code that has protected Americans for generations.

Now, don't take my word that the system is working. Governments at every level regularly turn to the work of nonprofit standards developers because that work can be trusted. There are tens of thousands of incorporations by reference across American law and regulation. Every home, every school, and every office building. Americans benefit from these standards whether they know it or not.

I want to be clear about something. Government comes to us, not the other way around. When lawmakers and regulators are trying to solve a safety problem, they turn to organizations like NFPA because they value what it is that we can provide. Those solutions only exist if the system that produces them can be independently funded. If you take away copyright protection, the funding disappears and, with it, the system that has made Americans safer for more than a century.

That's where the Pro Codes Act comes in. This bipartisan bill reaffirms the copyright protections for standards incorporated by reference while promoting transparency for the public.

Now, I know the Subcommittee will hear from critics of the legislation, and I'd like to address some of those claims directly. Most common is that the Pro Codes Act puts the law behind a pay wall. Codes and standards are not the law. They are privately authored works created by independent nonprofits to solve safety problems. Governments recognize their value and choose to reference them, but that doesn't make them the government's work.

Others argue that Congress doesn't need to worry about this, that the courts are handling this just fine. Records say otherwise. Lower Federal courts have reached inconsistent conclusions without definitive resolution. This is a policy question, and the Constitution commits that policy question to Congress.

Then there's the argument that none of this matters because the SDOs have not gone out of business. I believe this misses the point entirely.

The current system is like a dam, and the court decisions are putting cracks in that dam, and those of us downstream, right now it's just our feet that are wet, but if Congress waits for the dam to break, we can't come back from this.

There's no alternative that is nearly as effective. Other models, standards that are written by government or by industry, either force taxpayers to foot the bill or let the regulated industries write their own standards.

Every year, the standards that NFPA and organizations like us develop prevent tragedies that no one will ever hear about: Fires that don't start, buildings that don't collapse, and families that come home safe. That's what we stand to lose if Congress doesn't act.

I urge you to pass the Pro Codes Act and ensure that the system that has protected Americans for more than a century can continue to do so. Thank you and I look forward to your questions.

[The prepared statement of Mr. Pauley follows:]

Statement of

Jim Pauley

President and Chief Executive Officer

National Fire Protection Association

before the

House Committee on Judiciary

Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet

Hearing on the

**Protecting and Enhancing Public Access to Codes Act
(Pro Codes Act) H.R. 4072**

April 21, 2026

Chairman Issa, Ranking Member Johnson, and distinguished members of the Subcommittee — thank you for the opportunity to submit this testimony on behalf of the National Fire Protection Association (NFPA).

Most Americans do not realize how much their safety depends on a public-private partnership that has worked for more than a century: independent, nonprofit standards development organizations (SDOs) create consensus safety standards; governments at every level incorporate those standards by reference; and the public benefits from technical standards that are expert-built, frequently updated, and broadly accessible.

This system works. It has made Americans significantly safer, reduced fire incidents and deaths, and delivered high-quality standards without burdening taxpayers. And there is no viable alternative that preserves independence and maintains the quality and responsiveness that this system provides.

NFPA is a nonprofit. As the technology and complexity of life has evolved over the decades, NFPA is proud to have made the people of our country safer from fire and electrical risks. NFPA's work is ongoing. The public needs and benefits from that work now more than ever.

NFPA strongly supports enactment of the Pro Codes Act. The Act will preserve and strengthen the private-public partnership. It will do this by reaffirming that privately authored, consensus-based standards retain their copyright protection when they are incorporated by reference. The Act will promote free online public access to the text that has been incorporated. The Act balances important considerations of copyright policy, public safety, and public access to incorporated works. That balance will sustain the funding that makes the creation of consensus-based standards possible in the first place; ensure that taxpayers do not have to bear the significant costs of creating and sustaining that work; and will promote meaningful public access.

Congress has the power to set national policy in this area. Congress has the expertise committed to it by the Constitution to balance all the interests at stake. NFPA strongly urges Congress to pass the Pro Codes Act.

NFPA's History and Mission

NFPA was founded in 1896 to reduce deaths, injuries, and loss from fire and electrical-related hazards. At its origin, NFPA was a committee of insurers, engineers, and others who wanted to address the lack of uniform standards for fire sprinkler installation. The lack of uniformity caused huge problems, most notably, the inability to effectively fight fire in turn-of-the-century Boston. Those founders issued a report that evolved into NFPA 13, the *Standard for the Installation of Sprinkler Systems*. From that success, the founders formally organized as the National Fire Protection Association. NFPA has always been a self-funded, nonprofit association.

For nearly 130 years, NFPA has developed codes and standards that protect lives and property across this country and around the world. We develop and update more than 300 of them through a transparent, consensus-based process that is open to participation by the public. Our standards address fire, electrical, and life safety problems. They are used by insurance companies, industry, manufacturers, contractors and government, though we do not develop them for the government or any one stakeholder. We develop them to solve safety challenges in furtherance of our nonprofit mission. These standards are the subject of continued research and innovation to stay current with technology and evolving risk.

NFPA's flagship work, the National Electrical Code® or NEC® (NFPA 70®), is the world's leading standard for electrical safety and provides the benchmark for safe electrical design, installation, and inspection to protect people and property from electrical hazards. Federal agencies, state and local governments, public and private organizations, and similar parties throughout the world rely on the NEC precisely because of its technical rigor and public safety value.

No one disputes that NFPA's standards have helped make the United States significantly safer: while wildfire risks have continued to take prominence, fire incidents since 1980 have declined by 54 percent, and home fire deaths have declined by 44 percent over the

same period. These are improvements in public safety that reflect NFPA's continual work to update its state-of-the-art codes and standards and broader awareness and reliance on those works.

NFPA's history is also one of continuous innovation in response to emerging risks. In recent years, we have led the development of standards addressing active shooter and hostile event preparedness (NFPA 3000). We have maintained NFPA 1600, *Standard on Continuity, Emergency, and Crisis Management*, which has been recognized as a national preparedness benchmark. We have also recently developed NFPA 855 to address the safe installation of stationary energy storage systems. In addition, NFPA 800 a new battery safety code is currently under development. These efforts illustrate NFPA's longstanding commitment to anticipate hazards and provide practical, consensus-based tools to protect communities.

How NFPA's Consensus, Self-Funded Model Works

NFPA develops standards through an open, balanced, consensus-based process accredited by the American National Standards Institute (ANSI). ANSI accreditation signifies that development procedures satisfy essential requirements for openness, balance, consensus, and due process, including broad participation, consideration of all views, and rights of appeal.¹

NFPA's process of standards development is rigorous and transparent. NFPA convenes more than 250 Technical Committees composed of thousands of volunteers from the public, industry, academia, and government. The Technical Committees review public input, deliberate in public meetings, and ballot on draft text, all under a framework that prevents any single interest from dominating. This multi-stage process typically spans two or more years for a given standard and repeats on a three-to-five-year update cycle to ensure that requirements reflect current science, technology, and field experience.

NFPA independently funds our standards-development model. This is by design. We do not take money from industries affected by our standards. We do not rely on government funding for standards development. Instead, we recoup the substantial cost of creating and updating our works the same way that countless other copyright authors do: by selling and licensing the right to copy and distribute our works to the professionals and enterprises that use those works as day-to-day tools of their trade. Our self-funded model ensures neutrality because we do not need to take money from industry. It also widens participation because we do not operate a "pay to play" set of committees that require payment for participation. The result is that standards are independent from undue influence and a technical meritocracy with broad participation.

¹ <https://www.ansi.org/american-national-standards/ans-introduction/essential-requirements>.

I want to be clear: the work of creating and maintaining our standards is resource-intensive. NFPA does not pay the volunteers who participate in our process. But we bear the costs of technical staff, program managers, editorial and production teams, information technology, and hundreds of multi-day meetings each year. NFPA fronts the investment costs, but then is able to generate revenue from professional formats and uses while still providing public reading access, as well.

Who Benefits—and How

The Public: The public benefits directly from safer homes, workplaces, and communities produced by clear, current, and careful technical standards that are used broadly (whether incorporated by reference or not). Well-funded standards are high quality. The decades-long declines in fire incidents and home fire deaths underscore the life-saving value of rigorous codes implemented at scale.

Beyond safety, standards deliver everyday benefits that most Americans take for granted. The reason you can charge an electric vehicle at any charging station in all 50 states or plug a phone charger into the same type of electrical outlet anywhere in the country is because of nationally consistent standards. That consistency doesn't happen by accident—it's the product of the consensus-based process that SDOs like NFPA have maintained for more than a century.

The public also benefits when standards are independently self-funded by the SDO, because the standards are not subject to undue corporate or special-interest influence. The neutral system as it exists today benefits public safety in ways that cannot be replicated with a different funding model.

The public also benefits from SDOs that make their standards accessible online for read-only access without charge, like NFPA. Federal law requires that incorporated materials be “reasonably available” to the class of persons affected thereby. Reasonable availability can be met through reasonably priced published or online materials. Some SDOs—including NFPA—make incorporated standards available for free online, read-only access. This ensures transparency to the broader public while at the same time protecting our works from copying by people who would simply copy and sell them.

The Government: Governments benefit by leveraging expert-developed standards instead of duplicating expensive, specialized, and rapidly evolving technical work through the political or agency process. The funding model is incredibly efficient for government. Rather than requiring taxpayers to fund this safety benefit, costs are borne by the professionals and industries that rely on and work with these standards. Those professionals have to pay relatively little money for copies of or access to our works that the professionals use in their trade. That relatively low cost is properly paid by professionals and businesses that benefit from the standardization and from having clear,

high-quality standards. There is no better system: it is not efficient or better for government to take on the task of creating and updating standards.

National standards also prevent the fragmentation that would result if each state developed its own codes independently. In a world where every state maintained its own electrical code, for example, manufacturers would have to develop state-specific products, interstate commerce would be seriously disrupted, and the burden of developing and maintaining those codes would fall on state governments—and ultimately on taxpayers. The current system avoids all of that.

Industry: Industry benefits from high-quality and neutral standards. Builders, electricians, engineers, manufacturers, insurers, and facility operators all rely on NFPA standards because they trust them as professional tools. The widespread adoption and quality of the standards ultimately lowers compliance costs as compared to a more fragmented, unpredictable system. Because many consensus standards reflect best practices, incorporation by reference aligns regulation with industry best practice, which is economically efficient.

Industry also benefits from the speed and responsiveness of the consensus model, as compared to a political process. SDOs that have sufficient funding can pivot quickly to address emerging technologies and risks, like wildfires, lithium-ion battery safety, and solar power. That agility depends on sustained investment funded through copyright.

The Public-Private Partnership: Incorporation by Reference

As a matter of both longstanding practice, and intentional steps by Congress and federal agencies over time, the United States has embraced a public-private partnership with SDOs that create public safety codes and standards. This has historically worked—benefiting all sides—precisely because of incorporation by reference (IBR).

Governments at every level rely on these standards because they work. They turn to organizations like NFPA to solve safety challenges—not the other way around. The decision to incorporate standards by reference is made by lawmakers and regulators, based on their judgment that these standards provide the best available solutions.

I am not a lawyer or a historian, but I have come to understand a lot about the process and how it evolved.

First passed in the late 1960s, the Freedom of Information Act statute permitted agencies to rely on codes and standards and still meet federal publication requirements through IBR.

The requirement was that the material be “reasonably available to the class of persons affected thereby,” ensuring transparency and notice.²

Then, in the National Technology Transfer and Advancement Act of 1995 (NTTAA), Congress reinforced the public-private partnership by directing all federal agencies to use voluntary consensus standards and to participate with standards bodies except where doing so would be impractical or contrary to law. Congress thereby gave express recognition to the crucial role standards play in health, welfare, and competitiveness. Congress affirmed that the decentralized, consensus-based system has “served [the country] well for over a century.”³

More current and ongoing Executive Branch policy aligns with these statutes. Office of Management and Budget (OMB) Circular A-119 urges agencies to use private standards to eliminate taxpayer costs of government-unique standards, promote efficiency, and harmonize requirements. The 2017 revision to that Circular told agencies that they “must observe and protect the rights of the copyright holder.”⁴ The Office of the Federal Register considered the question of whether IBR’d codes and standards must be made available for free online posting, and concluded that such a requirement would weaken agencies’ ability to rely on voluntary standards and be contrary to the policies set forth in NTTAA and Circular A-119.⁵

Today, there are more than 23,000 references to privately developed standards in the Code of Federal Regulations alone — a number that only grows when state and local incorporations are included.

The long history of federal legislation and regulation makes codes and standards, and particularly those that are incorporated by reference, unique in a very practical way. The federal government has already decided that it will protect copyright through IBR. Until relatively recently, courts also respected the rights of private parties like SDOs. The Supreme Court’s government-edicts doctrine turns on the question of who authors a work. The doctrine bars copyright protection for works authored by judges and legislators in the course of their official duties. But voluntary consensus standards are not authored by government officials. They are authored by the SDOs who create them. The government-edicts doctrine does not strip copyright from such privately authored standards merely because a government later references them.

² 5 U.S.C. § 552(a)(1)(E). The final regulations required that agencies discuss the ways in which those materials are reasonably available, and explain how interested parties can access the materials. 1 C.F.R. § 51.5(b). But, critically, OFR did not require that agencies post the full text of standards on which they relied online. Instead, the agency specifically concluded that “Federal law [does not] require[] that all IBR’d standards . . . be available for free online.” 78 Fed. Reg. 60,784, 60,787 (Oct. 2, 2013) (notice of proposed rulemaking).

³ H.R. REP. NO. 104-390, pt. VII, at 23-24 (1995); Pub. L. No. 104-113, § 12, 110 Stat. 775, 782-83 (1996).

⁴ <https://www.whitehouse.gov/wp-content/uploads/2017/11/circular-119-1.pdf>

⁵ OFR, Final Rule on Incorporation by Reference, 79 Fed. Reg. 66,267, 66,268 (Nov. 7, 2014).

Recently, however, some courts have confused the issues and the policy considerations and found in favor of venture-backed private parties that want to build a business by copying and repackaging these standards. Those parties claim their conduct is justified because IBR'd standards are “the law.” That oversimplification ignores the special and unique circumstances surrounding voluntary consensus standards and IBR.

Codes and standards are not the law. They are privately authored works created by independent nonprofits to solve safety problems. Governments recognize their value and choose to reference them—but that does not make them governments’ work. The standard existed before any law referenced it, and the SDO that authored it still owns it.

The “Access” Argument Is a Manufactured Crisis

Access has never been a genuine issue. The real dispute is not over whether the public should be able to read incorporated standards; it is whether third parties should be allowed to copy, redistribute, repackage, and monetize those standards without permission. Those are very different things.

In the court proceedings, we have seen ideological organizations and for-profit businesses, but we have never seen genuine evidence of a member of the public unable to read an incorporated standard to any actual consequence. That is because NFPA and some other peer SDOs provide free read-only online access to all incorporated standards precisely to ensure transparency. Paid copies are also reasonably available: professionals who use standards in their work pay under \$170, for one of these works (even for the 900-page *NFPA 70: National Electrical Code*), or a reasonable monthly subscription fee for access to the entire NFPA catalog.

While trumpeting the slogan of public access to “the law” is convenient for parties on the other side of this issue, the result they are pushing for would create real harms. Counterfeit copies are a safety risk. If SDOs cannot protect their rights in their standards, counterfeits become that much more common. Businesses that rely on NFPA’s standards but pay nothing toward the substantial cost of creating them erode the entire model, jeopardizing independence and leading to fewer standards (or standards that cannot keep pace with technological advancements). This too undercuts safety and the strong benefits I have already discussed.

In short, there is a critical difference between the public’s interest in access to these works, and the present trajectory that includes permitting for-profit companies to appropriate, repackage, and commercially exploit privately authored standards in ways that supplant the funding model. The Pro Codes Act recognizes that difference by preserving copyright while promoting free online access to the incorporated text.

Why Now Is the Right Time for Congress to Solve This Issue

Congress should act now because balancing public access to incorporated standards with the copyright incentives that fund their creation is a quintessential policy judgment for Congress. Courts are addressing these disputes through doctrines that were not designed to resolve the full policy balance at issue here. Some decisions have suggested that incorporation by reference may alter copyright protection; others have turned to fair use; still others have emphasized different factual distinctions. That uncertainty emboldens infringers and threatens the sustainability of a system that the political branches have repeatedly endorsed. Think of the current system like a dam. These court decisions are putting cracks in it—and right now, only our feet are wet. But if Congress waits for the dam to break, the standards development system is not something that can be rebuilt after the fact.

There is no viable alternative to the current system. Government-developed standards would burden taxpayers and create a massive bureaucracy with no guarantee of matching the quality, breadth, or speed of what nonprofit SDOs produce today. An industry-funded model would place the cost of developing standards on the parties with the greatest financial interest in the outcome—an obvious conflict of interest that would compromise the independence on which the system's credibility depends.

Congress has already set the core framework and preference for voluntary consensus standards in the NTTAA. What remains is ensuring this framework is not undone. The Pro Codes Act offers the right balance of copyright protection, practical governance, responsible conservation of taxpayer money, and long-term public safety in a relatively simple statute. The Pro Codes Act confirms that privately authored, consensus standards do not lose copyright protection simply because they are incorporated by reference. The Act promotes free online access to the incorporated text for public reading, including in accessible formats. That is the pragmatic middle ground approach, and the one Congress should adopt.

Conclusion

The United States leads the world in safety and technical standards because it chose a public-private partnership that ensures the experts can be the leaders in their field, and the government can benefit through incorporation by reference. Copyright is the engine that sustains this system and ensures the best results in the standards that are created. Efforts by for-profit companies that want to freeride on this system have created uncertainty that must be fixed. Courts cannot reconstruct this policy. Congress can, and should, resolve the uncertainty by passing the Pro Codes Act, and reaffirming a partnership that enhances public safety.

Mr. ISSA. Thank you. Mr. Kupferschmid.

STATEMENT OF KEITH KUPFERSCHMID

Mr. KUPFERSCHMID. Chair Issa, Ranking Member Johnson, and the distinguished Members of the Subcommittee, thank you for holding this hearing and for inviting me to testify on this very, very important issue.

In addition to over two million individual creators that we represent, the Copyright Alliance also represents the copyright interest of motion picture studios, record labels, and publishers of books, music, and newspapers, to name just a few, that are commonly associated with copyright.

We also represent organizations that the typical person may not associate with copyright but who, likewise, rely heavily on its protections for their businesses. One such group is standard development organizations, or SDOs for short. Importantly, we also represent numerous organizations that use and license these standards.

The urgent issue we are here to discuss today is how we could ensure that high-quality copyrightable standards continue to be developed and updated while also promoting public access to those standards when they are incorporated by reference into the law, or IBR'd for short. When a standard is IBR'd, the public should have access to that standard.

To be clear, that access is being provided today. Standards are widely available. They're available for free online and for reasonable prices via print and through subscription. Significantly, there is absolutely no record of individuals not being able to access these standards.

The cases that have been litigated all involve either commercial enterprises, like UpCodes, or ideological organizations like public resources, not individuals. While UpCodes and public resources claim they are promoting public access, the records of these cases do not reflect any true lack of access or availability.

As to the copyrightability part of the issue, I've not heard anyone suggest that the standards are not protected by copyright on creation. There is no existing copyright doctrine under which standards would or should lose their copyright protection when they are IBR'd. In other words, IBR'd standard presents a totally unique issue, one in which the courts are ill-fitted to solve.

Litigation in Federal courts has created uncertainty regarding the copyright status of standards that have been IBR'd. This lack of clarity and misapplication of law threatens to destabilize the entire standards development ecosystem. Moreover, when these courts misapply standards for copyrightability or fair use, the resulting analysis and decision by these courts have a ripple effect that harms not only SDOs but also has the potential to harm many other copyright owners.

Congress, not the courts, is best positioned to establish a consistent and fair approach to this issue. Only Congress can address this tension by interpreting the law as it is written and setting the record straight when courts misinterpret the law and stretch it in ways that are unbalanced, unfair, and misguided.

The Pro Codes Act attempts to directly address this tension by ensuring that the public has access to standards that are IBR'd without cost while clarifying the copyright protections that make the development of these standards possible in the first place.

The benefits of this approach are substantial and far reaching.

First, it preserves the incentives that drive the creation of high-quality standards. By maintaining copyright protection, the Act would ensure that SDOs can continue to fund their operation, to invest in research and development, and to update standards to reflect new technologies and best practices.

Second, it promotes public access. Anyone who must use these standards will be able to view the relevant standard online at no cost. This enhances transparency.

Third, it benefits taxpayers and governments. Without this system, the burden of developing complex, technical standards would likely fall on government agencies, requiring significant public funding and the creation of new bureaucratic infrastructure.

Fourth, it supports effective governance. Legislators and regulators can continue to rely on expert-developed standards, rather than attempting to replicate that expertise within the government, a task that they are ill-suited for and would be both costly and ineffective.

In conclusion, the Pro Code Act represents a pragmatic middle ground. It does not require choosing between public access and copyright protection. Instead, it achieves both. It ensures that the public can access standards when IBR'd, while preserving a system that produces the law's technical content. This is the kind of legislative solution that is most effective, one that recognizes the legitimate interest on all sides and crafts a balanced approach while also serving the broader public good.

The timing of this legislation is critical. Courts are actively grappling with these issues, and the risk of divergent and incorrect interpretations is real. Acting now allows Congress to provide guidance before a patchwork of conflicting decisions take hold. For these reasons, I respectfully urge this Subcommittee to advance the Pro Codes Act in some form.

Thank you for your time and consideration. I look forward to answering your questions.

[The prepared statement of Mr. Kupferschmid follows:]



Statement of

**Keith Kupferschmid
Chief Executive Officer
Copyright Alliance**

before the

**House Committee on Judiciary
Subcommittee on Courts, Intellectual Property,
Artificial Intelligence, and the Internet**

Hearing on

***Protecting U.S. Leadership in
Codes Development and Enhancing Public Access***

April 21, 2026

Chairman, Ranking Member, and distinguished Members of the Subcommittee:

Thank you for the opportunity to appear before you today to discuss Protecting U.S. Leadership in Codes Development and Enhancing Public Access and in particular, the Protecting and Enhancing Public Access to Codes Act, commonly known as the Pro Codes Act, H.R. 4072. I appreciate the Subcommittee's attention to this important issue, which sits at the intersection of copyright law, public access, and the continued safety and well-being of communities across the United States.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization that is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. We represent the copyright interests of over 2 million individual creators, including established authors and artists, performers and photographers, and software coders and songwriters, as well as a new generation of creators. We also represent the copyright interests of over 15,000 organizations in the United States, across the spectrum of copyright disciplines. These include motion picture and television studios, record labels, music publishers, book and journal publishers, newspaper and magazine publishers, video game companies, software and technology companies, visual media companies, sports leagues, radio and television broadcasters, database companies, standard development organizations and many more. While each of these organizations may come to the Copyright Alliance with somewhat different experiences, views, and interests, they all fall under the Copyright Alliance umbrella for one unifying reason—their strong support for the value and importance of copyright and protecting the rights of human creators and copyright owners.

At its core, the Pro Codes Act addresses a fundamental and increasingly urgent question: how can we ensure that the high-quality copyrightable codes and standards that underpin modern American life continue to be developed and updated, while also promoting public access to those standards when they are incorporated by reference into the law?

The history of safety codes and standards is a testament to what copyright can accomplish. For more than a century, America has relied on a unique and highly effective public-private partnership to develop the technical standards that govern everything from the buildings we occupy to the electrical systems we depend upon and the fire safety measures that protect our lives and the lives of our friends and family. These standards are created by Standards Development Organizations (SDOs), which are typically private, nonprofit entities composed of engineers, scientists, safety experts, industry stakeholders, and public representatives.

The valuable work performed by these SDOs cannot be overstated. Developing a modern building code or electrical standard requires extensive research, testing, technical drafting, and consensus-building among diverse stakeholders with high levels of knowledge and expertise. It

involves incorporating evolving scientific knowledge, adapting to new technologies, and learning from past failures and safety incidents. This process is time-consuming, laborious, resource-intensive, and requires a high level of expertise. It is a process that produces codes and standards that are invaluable to the safety and well-being of Americans across the United States that is both costly to produce and difficult, if not impossible, for government entities to replicate.

SDOs fund this work through a self-sustaining model. They invest their own resources into the creation of these standards and recoup those investments through the publication, licensing, and sale of their copyrighted codes and standards and materials based on those works. As a result, copyright protection is essential to SDOs and the creation and dissemination of codes and standards. Copyright protections provide the economic incentive that allows SDOs to undertake the substantial costs associated with developing and continually updating these works of critical importance to the nation.

It should come as no surprise to anyone on this Subcommittee, that federal, state, and local governments throughout the country have come to rely heavily on the expertise of SDOs and the standards and codes they produce. Rather than attempting to draft highly technical standards from scratch, legislatures and regulatory bodies frequently incorporate these privately developed codes and standards into law by reference. This practice allows federal, state, and local government entities to leverage expert-driven, consensus-based standards while maintaining flexibility to update regulations as those standards evolve.

This long and successful marriage between SDOs and government bodies has been under attack by for profit companies like UpCodes that freeride on that work and undercut the SDO's ability to recoup the extensive costs necessary to create those works and future works. While UpCodes and certain groups like EFF claim they are promoting public access, the records of these cases do not reflect any true lack of access or availability. That position seems largely convenient in an effort to strip or weaken copyright more generally. The analyses and holdings from the resulting federal court decisions cannot assess the broader policy implications and reflects a growing lack of clarity in how copyright law applies when standards are incorporated by reference into the law.

Congress—not the courts—is best positioned to establish a consistent and fair approach to this issue. Congressional action is urgently needed to preserve the economic infrastructure that has facilitated the private development of world-class codes and standards for more than a century. Only Congress can address this tension by interpreting the law as it is written and setting the record straight when courts misinterpret the law and stretch (or threaten to stretch) it in ways that are unbalanced, unfair, and misguided.

Recent court cases underscore the problem. Litigation in federal courts has created uncertainty regarding the copyright status of standards that have been incorporated by reference into law. Some decisions have suggested that such incorporation could extinguish copyright protection entirely, while others have strained to deal with policy rationales on both sides in the inapt context of the fair use defense. This lack of clarity and misapplication of the law threatens to destabilize the entire standards development ecosystem. Moreover, when these courts misapply standards for copyrightability or fair use, the resulting analysis and decisions by these courts have a ripple effect that harms not only SDOs but also has the potential to harm other copyright owners too.

A clear example of this problem comes from a case decided earlier this month, in which the Court of Appeals for the Third Circuit concluded that UpCodes' distribution of ASTM's copyrightable standards was a transformative use (and on this basis wrongly found the use to be a fair use). The court found the UpCodes' use to be transformative because UpCodes was making ASTM's standards available to the public for free, while ASTM was making their standards available for a fee. According to the Court, the difference between "for free" and "for a fee" was the only thing that made their purposes different, which in turn made the use a transformative fair use. One can easily see how this bastardization of the transformative use could be misapplied to other copyrighted cases involving other types of works in a way that could result in court-sponsored run-of-the-mill piracy.

As courts continue to strain to balance these policy considerations, this situation threatens to only get worse. And as these court decisions get more skewed, it emboldens groups like UpCodes and

others to go even further, threatening the business model that SDOs, government bodies, and American citizens have come to rely on for decades. It is therefore imperative that Congress step in before even more damage is done.

The Pro Codes Act attempts to directly address this tension by providing that when a code or standard developed by an SDO is incorporated into law by reference, it does not lose its copyright protection solely by virtue of that incorporation. At the same time, it imposes an important condition: the portions of the code or standard that are incorporated into law must be made publicly accessible online, free of charge.

This approach ensures that the public has access to codes and standards that are incorporated by reference without cost, while clarifying the copyright protections that make the development of those standards possible in the first place. The benefits of this approach are substantial and far-reaching.

First, it preserves the incentives that drive the creation of high-quality standards. By maintaining copyright protection, the Act would ensure that SDOs can continue to fund their operations, invest in research and development, and update standards to reflect new technologies and best practices.

Second, it promotes public access. Anyone who must comply with these standards will be able to view the relevant standard online at no cost. This enhances transparency and promotes compliance.

Third, it benefits taxpayers and governments. Without this system, the burden of developing complex technical standards would likely fall on government agencies, requiring significant public funding and the creation of new bureaucratic infrastructure.

Fourth, it supports effective governance. Legislators and regulators can continue to rely on expert-developed standards rather than attempting to replicate that expertise within government, a task that would be both costly and inefficient.

On the other hand, if the Pro Codes Act is not passed in some form, copyright protection will continue to be undermined, with significant actual and potential consequences. SDOs may no longer be able to sustain the financial model that supports their work. The development of new standards and codes could slow or cease altogether. Existing standards may become outdated, failing to keep pace with advances in science and technology. Ultimately, this would have direct adverse implications for public safety, economic efficiency, and regulatory effectiveness.¹

The Pro Codes Act would provide the certainty that is currently lacking in the courts. By clearly affirming that copyright protection is preserved and that free public access is necessary, it helps to reduce the risk of inconsistent judicial outcomes.

While we think the general framework set forth on the Pro Codes Act is a good one, we caution against any bill requires that an SDO (or any other copyright owner) comply with a formality—making the code or standard publicly available—in order for the SDO to maintain its copyright protection in their code or standard that has been incorporated by reference. The United States is a long-time member of the Berne Convention or the Protection of Literary and Artistic Works, the preeminent international agreement governing copyright standards in the world. Article 5(2) of the Berne Convention prohibits member states from imposing formalities—such as mandatory registration, renewal, or notice—on the enjoyment and exercise of copyright for foreign works. This ensures copyright is automatic upon creation, rather than conditioned on administrative procedures. Requiring that the standard or code be made available on a publicly accessible website could be construed as a formality to copyright protection in violation of our Berne Convention obligations. Even if a workaround was to make this bill applicable to U.S. copyright holders only (so that the United States does not violate its international obligations), taking this approach would put U.S.-based SDOs at a disadvantage to their foreign counterparts who would have no such obligation. Obviously, that is less than ideal. A better approach for all parties, not just SDOs, would be to tie making the code or standard publicly available to copyright

¹ Also, when outdated standards and codes are posted online, then scraped and ingested for AI training, this will result in incorrect and potentially dangerous outputs that AI users will rely on.

enforceability instead of copyrightability because by doing so we would avoid potential Berne Convention formality problems.

It is also important to emphasize that the Pro Codes Act is consistent with Constitutional principles and existing Supreme Court precedent. The legislation respects the distinction between works created by government officials in the course of their duties—which are not subject to copyright—and works created by private entities, which are entitled to protection. SDOs are private actors that lack the authority to make or interpret the law; their works therefore fall squarely within the scope of copyrightable subject matter.

The Act also advances, rather than undermines, due process and First Amendment values. By incentivizing free online access to standards and codes that have been incorporated by reference, it enhances fair notice and public awareness. At the same time, individuals remain free to engage in commentary, criticism, and scholarship related to codes and standards.

Some critics have suggested that the Pro Codes Act is unnecessary or that the issue should be left to the courts. Respectfully, that approach makes no sense. Litigation is inherently slow, expensive, and uncertain. It produces outcomes that are limited to specific cases, may vary across jurisdictions, and can lead to skewed interpretations of the law. In contrast, Congress has the authority and responsibility to establish clear, uniform rules that provide stability and predictability.

Some critics have also said that the Pro Codes Act is not necessary because the public already has access to codes and standards that are incorporated by reference through organizations, like UpCodes and Public.Resource.org, that are posting unauthorized copies of codes and standards online. But the Pro Codes Act provides a more balanced approach to ensuring free online access to all standards that are incorporated by reference, while also providing the necessary copyright protections to SDOs that will allow them to continue to focus resources on creating and updating vital health and safety standards. Third parties that post SDO works online for public download without authority harm the ability of SDOs to self-fund the creation and updating of codes and

standards. Moreover, some codes and standards are *not* currently available online. The Pro Codes Act will encourage more standards developers to increase public access to their publications.

Others have argued that eliminating copyright protection for incorporated standards would make compliance easier and less expensive. In reality, the opposite is true. Without the infrastructure provided by SDOs, governments would face the daunting task of developing and maintaining standards themselves, or risk relying on less rigorous, potentially biased alternatives. This could increase costs, reduce quality, and compromise safety.

In sum, the Pro Codes Act represents a pragmatic middle ground. It does not require choosing between public access and copyright protection. Instead, it achieves both. It ensures that the public can access the law while preserving the system that produces the law's technical content. This is the kind of legislative solution that is most effective: one that recognizes the legitimate interests on all sides and crafts a balanced approach while also serving the broader public good.

The timing for this legislation is critical. Courts are actively grappling with these issues, and the risk of divergent and incorrect interpretations is real. Acting now allows Congress to provide guidance before a patchwork of conflicting decisions takes hold.

In closing, the Pro Codes Act preserves a system that has worked effectively for more than a century. It ensures continued innovation in the development of safety standards, promotes transparency and access to the law, protects taxpayers, and supports sound governance.

For these reasons, I respectfully urge the Subcommittee and the full Committee to advance H.R. 4072. Doing so will provide the clarity, balance, and stability needed to ensure that America's system of codes and standards continues to serve the public interest for generations to come.

Thank you for your time and consideration. I look forward to answering your questions.

Mr. ISSA. Thank you. Mr. Delli Venneri.

STATEMENT OF JOHN DELLI VENNERI

Mr. DELLI VENNERI. Chair Issa, Ranking Member Johnson, and the Members of the Subcommittee, thank you for the opportunity to testify today. I'm John Delli Venneri, General Counsel of the American Society of Mechanical Engineers, abbreviated as ASME.

ASME is a 501(c)(3) nonprofit standards development organization, commonly referred to as an SDO, that has served the engineering profession and the public since 1880. Broadly speaking, our standards help ensure that construction cranes do not collapse, nuclear facilities do not fail, oil and gas pipelines do not rupture, and the turbines used in civilian and defense applications are cutting edge.

ASME's flagship boiler and pressure vessel code—here I have one volume out of 33—is used by manufacturers as a foundation for many civilian and defense technologies.

The Pro Codes Act harms ASME's copyright and that of other SDOs materially, perhaps existentially. It does so by fundamentally reshaping copyright law to benefit a single type of SDO while eroding the copyrights of others. Because of this, nobody should make the blank statement that this bill is universally good for copyright because it isn't good for ASME's copyright and other SDOs like it.

Let me make three points to demonstrate this:

First, the Pro Codes Act picks winners and losers.

Second, it weakens U.S. national security and leadership and standards development at a time of increasing geopolitical competition.

Third, it rewrites fundamental copyright law by introducing the concept of a conditional copyright.

First, this bill is a mandate that picks winners and losers. The scope of this bill is broad. The standards ASME is trying to protect are not local building and fire standards. The standards that I'm asking this Committee to protect are broader in scope, aimed at a different audience and used in a different way.

The operation of the Pro Codes Act is automatic. There's no due process attached anywhere to this legislation. There's no limit to the number of codes that can be incorporated by reference or how many of these codes can be referenced. Here is an important point: Under current copyright law, a standards holder has no way of preventing incorporation by reference.

To put things simply, the Pro Codes Act has no mechanism to distinguish between the standards of a set of rules for the erection of a carport and a set of differential equations used by nuclear engineers to design a safe, small, and modular nuclear reactor. This is not to suggest that these other standards do not play an important role in our society, but that is why organizations like ASME and the Society of Automotive Engineers oppose this bill.

Second, the Pro Codes Act risks national security and leadership and standards development. Technological standards are not simply a set of rules. They enable the development of cutting-edge technology that is safe, repeatable, and interoperable.

The United States leads the world in standards development because of a system built on private sector expertise, voluntary consensus, and sustained investment. Because of ASME and other organizations like us who create complex standards, the United States leads the world in technologic and scientific innovation. In a new geopolitical world where rival countries have recognized that standards can be used to affect how technology evolves, we should not cede this important U.S. leadership role.

Third, the Pro Codes Act fundamentally changes the law of copyright, rendering it contingent on the decisions of any governmental body. Copyright has long provided creators with exclusive defined rights, including the ability to control the distribution of their works. The Pro Codes Act fundamentally changes that framework. It now interjects an entirely new concept of copyright, which is conditioned on the decisions of government. The result is force publication—force public distribution of privately developed works, without compensation. This is not protection. It's compelled forfeiture.

In conclusion, the Pro Codes Act is presented as a balanced solution. It is not. It's a mandate that, (1) picks winners and losers; (2) weakens U.S. national security and leadership in standards development; and (3) fundamentally rewrites copyright law to erode, not protect, copyright.

If Congress is going to pass legislation, it must not contort the law to protect one set of private actors while potentially destroying others. I ask this Committee to reject the Pro Codes Act.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Delli Venneri follows:]

**Written Testimony of John Delli Venneri
General Counsel, The American Society of Mechanical Engineers**

**Before the House Judiciary Committee
Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the
Internet**

**Hearing: "Protecting U.S. Leadership in Codes Development and Enhancing
Public Access"**

April 21, 2026

Chairman Issa, Ranking Member Johnson, and Members of the Subcommittee:

Thank you for the opportunity to testify today. I am John Delli Venneri, General Counsel of The American Society of Mechanical Engineers, or ASME.

ASME is a 501(c)(3) nonprofit standards development organization (SDO) that has served the engineering profession and the public for more than 140 years. We develop technical safety standards that underpin critical infrastructure across the United States and around the world.

Broadly speaking, our standards help ensure that construction cranes do not collapse, nuclear facilities do not fail, oil and gas pipelines do not rupture, and the turbines used in civilian and fighter jets are cutting edge. These include, for example:

- HRT-1 Rules for Hoisting, Rigging, and Transporting Equipment for Nuclear Facilities
- RA-S-1.2 – Severe Accident Progression and Radiological Release (Level 2) PRA Standard for Nuclear Power Plant Applications for Light Water Reactors (LWRs)
- AG-1 – Code on Nuclear Air and Gas Treatment
- B1.22M – Gages and Gaging for MJ Series Metric Screw Threads
- B31.8S – Managing System Integrity of Gas Pipelines

ASME's flagship Boiler and Pressure Vessel Code is used as a foundation for many civilian and defense technologies. The history of that code goes back to 1911 and was an outgrowth of tragedy following the 1905 Grover Shoe Factory explosion that killed 58 people in Brockton, Massachusetts.

Our standards are developed through rigorous, consensus-based processes involving thousands of experts and significant private investment. ASME, and organizations like us, promote both safety and commerce by establishing widely accepted engineering rules so that systems work as intended and failures are prevented before they occur.

With that background, I am here today to express ASME's strong opposition to the Pro Codes Act.

This testimony proceeds in three parts:

1. The Pro Codes Act harms ASME's copyright materially, perhaps existentially. It does so by creating a system of "winners and losers" by business model, disproportionately burdening one segment of standards developers while benefiting another. Because of this, nobody should make the blanket statement that the bill 'is good for copyright' because it is not good for ASME's copyright or other similarly positioned SDOs.
2. The Pro Codes Act poses risks to U.S. national security and leadership; and
3. The Pro Codes Act does not protect copyright – it undermines it, in an unprecedented fashion that creates broader legal, constitutional, and policy concerns.

I. The PRO Codes Act Is Not Neutral – It Picks Winners and Losers

The Pro Codes Act is often described as a “common-sense” effort to balance copyright protections with the need for public access to the law. In practice, however, it does something far more consequential.

We agree that members of the public should have meaningful access to the laws that govern them. The question is not whether access matters, but how to provide it without undermining the system that produces standards that industry and commerce rely on in the first place.

The bill provides that when a privately developed standard is incorporated into law or regulation, the standards organization must make the text of that standard available online for free. On paper, that may sound straightforward. In reality, it fundamentally changes how copyright works.

The PRO Codes Act effectively creates an entirely new copyright framework, imposing a blunt, one-size-fits-all mandate that falls unevenly across private actors. Though presented as a neutral rule, its practical effects are anything but neutral: it systematically advantages certain business models while undermining others. This results in three fundamental problems.

First, the Act applies a single, uniform rule to all privately developed standards that may be incorporated by reference, regardless of subject matter or context. It draws no meaningful distinctions between highly technical engineering standards as opposed to the text of laws, or between standards incorporated in their entirety as opposed to standards incorporated only in part, or to standards used extensively as opposed to standards used rarely. The Act has no mechanism to account for these differences.

Second, that one-size-fits-all rule does not operate evenly across the standards community. It reflects a “balance” between copyright protection and public access that works only for a subset of organizations – mainly those that draft codes written as laws and seek to have them adopted word for word as the actual text of the law. For SDOs like ASME, whose technical standards are intended for private industry and simply referred to in the law (and that reference can be unlimited in scope), the Pro Codes Act imposes its most severe burdens, requiring access without compensation and without any meaningful due process protections.

Third, the Act’s consequences are triggered not by any action of the copyright holder, but solely by the independent decision of a governmental entity at any level (federal, state, or local) to incorporate a standard by reference. Standards developers have no ability to prevent that incorporation. Yet once it occurs, they face a stark choice: publish the work online for free or lose copyright protection altogether. This structure places privately developed intellectual property at the mercy of government action. A single decision by, for example, a local government official to cite a standard – something the standards organization cannot control – could strip that organization of copyright in its most critical standards.

For organizations like ASME, the form of interaction with government is not a trivial matter. ASME funds the creation of future safety standards through sales and licensing of existing standards to which it holds the copyright. The Pro Codes Act is thus a direct threat to a model that supports the development and maintenance of critical safety standards – a structural change with far-reaching consequences.

This is not a balanced solution. It picks winners and losers within the standards community. The Committee now has an opportunity to step back and work toward a solution that works for all SDOs.

II. The Pro Codes Act Poses Risks to U.S. National Security and Leadership

The Pro Codes Act also raises important concerns about U.S. national security and its leadership in global standards development. Standards are not simply a set of rules, they enable the development of cutting-edge technology that is safe, repeatable, and interoperable.

Technical standards are foundational to the safe and reliable operation of critical infrastructure, including energy systems, manufacturing, transportation, and defense-related applications. They also shape global markets by establishing the rules that govern how technologies are designed, built, and deployed.

The United States has long led the world in standards development through a system that relies on private-sector expertise, voluntary consensus, and sustained investment. That leadership is not guaranteed. Other countries, including strategic competitors, are actively working to expand their influence on global standards-setting bodies and processes. For example, the 2025 annual report to Congress by the congressionally created US-China Economic and Security Review Commission cites a number of important areas where China seeks to diminish American interests through a concerted effort to influence technical standard setting. These include technical standards for navigation systems, operations in space, and the energy sector.

The Pro Codes Act risks undermining the model that has enabled U.S. leadership. By weakening the intellectual property protections that support standards development, the Act will erode the resources needed to maintain and advance high-quality technical standards. Because standards development is resource-intensive and depends on sustained private investment, weakening IP protections will erode the resources needed to maintain and advance these standards. Over time, that risks forcing U.S. SDOs to cede ground to geopolitical competitors.

Who writes the rules matters. The United States should not adopt policies that weaken its own standards system at a time of increasing global competition.

III. The Pro Codes Act Does Not Protect Copyright

Finally, this bill does not protect copyright—it puts it at risk. ASME develops critical safety standards, including those governing nuclear facilities, and under this legislation we would face the loss of copyright protection for those works. We are not alone. Other leading standards organizations, including those supporting aerospace and defense systems, share these concerns. This bill does not protect these SDOs' interests.

Copyright has long provided creators with defined exclusive rights, including the ability to control the display and distribution of their works. Those rights are not incidental – they are what allow SDOs like ASME to invest in developing complex, highly technical materials.

The Pro Codes Act alters this framework by conditioning copyright protection on government action that the creator does not control. A standards developer may invest substantial resources

in creating a work, only to have a government entity incorporate it by reference, thereby triggering the obligation to provide free public access.

The practical effect is to require uncompensated public distribution of privately developed works. Over time, this approach risks undermining the economic model that supports the development, maintenance, and continuous improvement of critical safety standards.

Taken together, these provisions do not clarify or preserve copyright – they weaken it. They transform copyright from a stable legal right into one that is contingent on government action and conditioned on surrendering control over one’s work.

That is not protection. It is compelled forfeiture. And it places the Act on questionable Constitutional ground and would have far-reaching consequences for copyright law more broadly.

The Fifth Amendment prohibits the taking of private property for public use without just compensation. The Pro Codes Act presents a substantial risk of such a taking. The Act allows any federal, state, or local government to incorporate a privately developed standard, thereby triggering the requirement that the standard be made freely available online. Because standards developers cannot prevent such incorporation, and because the Act provides no mechanism for compensation, the resulting loss of exclusivity and economic value may constitute a taking of private intellectual property. The government should not be able to take private intellectual property simply by referencing it in law.

The Pro Codes Act also sets a concerning precedent for copyright law more broadly. It introduces a novel principle: where the government chooses to provide public access, it may require copyright holders to provide their works for free – or risk losing protection. That principle is not limited to technical standards. It could extend to other copyrighted works incorporated into legal or regulatory frameworks, including legal research tools, citation systems, and educational materials. Such a shift would represent a fundamental departure from established copyright principles, with consequences across the broader intellectual and creative economy.

Conclusion

The Pro Codes Act is presented as a balanced solution to a perceived tension between copyright protection and public access. In reality, it is a blunt instrument that:

1. Picks winners and losers by benefitting one subset of stakeholders at the expense of others;
2. Risks ceding U.S. leadership in standards development, with broader implications for national security; and
3. Does not protect copyright but instead conditions it on forced public disclosure.

In addressing issues related to public access and legal transparency, Congress should pursue solutions that are carefully tailored, consistent with existing law, and respectful of the rights of private creators. The Pro Codes Act, as currently drafted, does not meet that standard. It is, quite simply, the wrong tool for the problem before the Committee.

Mr. ISSA. Thank you. Mr. Band.

STATEMENT OF JONATHAN BAND

Mr. BAND. Chair Issa, Ranking Member Johnson, and the Members of the Subcommittee, thank you for the opportunity to share the library perspective on the Pro Codes Act.

I represent the Library Copyright Alliance. Today, I'll discuss our concerns with pro codes and how it interferes with public access to the law, then I'll propose a better way forward: Governments directly incorporating standards into the law rather than just incorporating them by reference.

Libraries are strongly committed to the government edicts doctrine, the principle that no one can own the law. We believe that once a portion of a standard is incorporated into the law, whether directly or by reference, that portion enters into the public domain and can be posted freely online. Pro codes are an attempt to reverse the government edicts doctrine in a narrow but significant way by affirming copyright ownership over IBR standards.

I have four points concerning pro codes.

First, pro codes are unconstitutional. The government edicts doctrine is rooted in the Constitution. Allowing a private entity exclusive ownership of the law would run contrary to the rights of free expression and due process.

I acknowledge the bill's attempt to limit its adverse effect by requiring a degree of public access, but this public access requirement is insufficient to cure the bill's constitutional infirmity. The bill does not require the full text of the public access version to be searchable, downloadable, or reproducible. The bill would still interfere with a person's ability to understand and comment on their legal obligations.

Second, pro codes would limit public access to the law. Because of the limited read-only nature of its public access requirement, pro codes would make it difficult for members of the public to access the law in IBR situations. Also, the Act would codify existing restrictive practices of SDOs that require users to create an account and agree to terms of service to access the material online. The net result is the bill would restrict public awareness of the law, escalate the cost of homeownership by increasing costs to builders, and inhibit commentary and criticism, among other negative impacts.

Third, pro codes are based on an incorrect premise. The basic premise of pro codes is that without the incentive provided by copyright, SDOs would not undertake the costly standard development process. This premise is incorrect. In the vast majority of cases, industry participants have an economic incentive to participate in the development of standards. Often, SDOs lobby government entities to adopt their standards as law. In the absence of copyright protection, SDOs would still develop standards and then request government entities to adopt them as regulations.

Also, in the recent fair use litigation, courts have found that the reposting of IBR standards has not caused harm to the market for those standards.

Fourth, pro codes would not achieve the certainty its supporters seek. Even if pro codes were enacted, the SDOs would not necessarily be able to prevent the reposting of IBR standards with any

certainty. A court might still find that the reposting of an IBR standard was a fair use. In the recent litigation concerning the reposting of standards, the courts have permitted the reposting under a fair use theory.

Direct incorporation is a better way to address this issue. IBR is an analog-era solution that was necessary when voluminous standards were available only in printed publications that were expensive to produce. Now, that standards can be made available digitally, it would be more efficient and effective to require government agencies to incorporate standards directly into codes and to make the complete codes available online from the official agency website.

Before direct incorporation, the agency might have to request a royalty-free license from the SDO. We expect that most SDOs would eagerly grant such a license because their objective in creating the standard in the first place was for it to be adopted by an agency as a regulation.

I'm happy to answer any questions the Subcommittee may have.
[The prepared statement of Mr. Band follows:]



**Before the United States Congress
House of Representatives
Committee on the Judiciary
Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet
Hearing on Protecting U.S. Leadership in Codes Development and Enhancing Public
Access
April 21, 2026**

Testimony of Jonathan Band on Behalf of the Library Copyright Alliance

Chairman Issa, Ranking Member Johnson, and Members of the Subcommittee:

Thank you for the opportunity to share the library perspective on the Pro Codes Act. I represent the Library Copyright Alliance (LCA), which consists of the American Library Association (ALA) and the Association of Research Libraries (ARL). ALA is a nonprofit professional organization of more than 50,000 librarians dedicated to providing and improving library services and promoting the public interest in a free and open information society. ARL is a nonprofit association of 123 research libraries in North America, including university libraries, public libraries, government and national libraries.

My testimony has three parts. First, I will explain the library interest in this issue; how libraries rely on the government edicts doctrine to provide public access to the law. Second, I will discuss our concerns with the Pro Codes Act and how it could interfere with public access to the law. Third, I will propose a better way forward: governments directly incorporating standards into the law, rather than just incorporating them by reference.

I. Libraries Rely on the Government Edicts Doctrine to Provide Public Access to the Law

Libraries rely on the government edicts doctrine to provide meaningful access to government information for researchers, students, and the general public. The doctrine holds, as Chief Justice Roberts explained in *Georgia v. Public.Resource.Org, Inc.*, 590 U.S. 255 (2020), that “no one can own the law.” Because every citizen is presumed to know the law and should have free access to it, this principle that copyright does not extend to the law is rooted in the constitutional rights to due process and free expression.¹

Libraries equip citizens with the information required to participate in democracy.² This is a core library function. Through their collections and services, libraries help patrons exercise their First Amendment right of access to information and “ensure that [the] constitutionally protected ‘discussion of governmental affairs’ is an informed one,” enabling “citizen[s] to effectively participate in and contribute to our republican system of self-government.” *Globe Newspaper Co. v. Super. Ct. for Cty. of Norfolk*, 457 U.S. 596, 604–05 (1982). On dedicating his presidential library, President Franklin Delano Roosevelt noted that, when examining the recorded history of “the building of permanent institutions like libraries and museums for the use of all the people, it has been among democracies that such building has flourished”; and that the link between libraries and democracies was especially clear in the United States, “because we believe that people ought to work out for themselves, and through their own study, the determination of their best interest.”³

Throughout the United States, citizens rely on libraries for access to information. To help patrons exercise their rights and responsibilities as citizens, libraries must be able to provide access to, and preserve, government edicts. Law libraries, public libraries, and research libraries all play a role in this effort.

Law libraries serve legal professionals, academics, and, in particular, community residents with pressing legal needs or simple intellectual curiosity about the law. A study at the Arthur Neef Law Library at Wayne State University in Detroit, for example, showed that more than 70 percent of walk-in reference requests came from individuals unaffiliated with the

¹ See also U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices*, Sec. 313.6(C)(2) (2021).

² This section of the testimony is based on the *amicus* brief LCA associations filed with the Supreme Court in *Georgia v. Public.Resource.Org*.

³ Franklin Delano Roosevelt, *Speech of the President: Dedication of the Franklin D. Roosevelt Library, June 30, 1941*, 4–5 Franklin: Access to the FDR Library’s Digital Collection, <https://perma.cc/W4RB-GYMG> (from transcript, omitting phrases included in prepared remarks but omitted from the delivered address).

university, and 45 percent of those requests came from community patrons.⁴ The experience at Wayne State is typical. Another survey found that 98 percent of law libraries offer reference or research services to self-represented litigants and that 70,500 of them take advantage of those services each month.⁵

Public libraries partner with law libraries to provide legal information to citizens. Patrons view their public libraries as a “comfortable entry point” to access all kinds of information, “thus making [the library] a known and comfortable place to seek legal information.”⁶ Public libraries are thus a primary gateway for citizens interacting with their government. Nearly all public libraries—97 percent—assist patrons in completing online government forms.⁷ And more than 75 percent of American public libraries assist patrons who need to access and use online government services, providing information about, for example, “Medicare, Immigration, Social Security, and Taxes.”⁸

Access to information and assistance is particularly important in states like Georgia, where, according to one legal needs assessment, a majority of households experienced one or more civil legal problems, and almost three-quarters of those households attempted to solve these problems without formal legal assistance.⁹

Research libraries, law libraries, and other memory institutions also preserve government edicts, maintaining a reliable record as governments and laws change over time.¹⁰

⁴ Beth Applebaum *et al.*, *Bringing Law to the Community: Facilitating Access to Justice in Metropolitan Detroit*. Paper presented at the 2016 International Federation of Library Associations (“IFLA”) World Library and Information Congress (“WLIC”) Conference, Columbus, Ohio, 3 (2016), <https://perma.cc/5L42-HVRA>.

⁵ Self-Represented Litigation Network, “Key Findings and Takeaways,” *Open to the Public: How Law Libraries Are Serving Self-Represented Litigants Across the Country* (2019), <https://arclg.is/1LfmT5>.

⁶ Brian D. Anderson, *Meaningful Access to Information as a Critical Element of the Rule of Law: How Law Libraries and Public Libraries Can Work Together to Promote Access*. Paper presented at the 2016 IFLA WLIC Conference, Columbus, Ohio, 4 (2016), <https://perma.cc/V6EH-5G4H> [hereinafter “*Meaningful Access*”].

⁷ American Library Association (“ALA”), *State of America’s Libraries 2019: A Report of the American Library Association*, 11 (Kathy S. Rosa ed., 2019), <https://perma.cc/W5A3-AKKD>.

⁸ John Carlo Bertot *et al.*, *2014 Digital Inclusion Survey: Survey Findings and Results*, Information Policy and Access Center 52 (2015), <https://perma.cc/L24W-NYNY>.

⁹ A.L. Burruss Inst. of Pub. Serv. and Research at Kennesaw State Univ., *Civil Legal Needs of Low and Moderate Income Households in Georgia* 11–12, 25 (2009), <https://perma.cc/3GUL-9SJ3> (sponsored by the Committee on Civil Justice, Supreme Court of Georgia Equal Justice Commission).

¹⁰ ARL’s membership includes 21 Federal depository libraries that serve as stewards for collecting, preserving, and providing free access for all users to Government information as part

Preservation, while crucial to the development of law and public institutions, is an endeavor that private publishers “may not have the interest, financial incentive or expertise” to undertake.¹¹ For example, the Georgetown University Law Library, with contributions from many other libraries, has pursued several projects to preserve historic state legal codes in a user-friendly format.¹² Preservation requires the making of multiple copies.

In addition to preservation, libraries participate in projects that transform legal records into datasets that can be put to a range of uses through application programming interfaces.¹³ Through these and similar efforts, libraries serve citizens who seek access to the law for diverse reasons. *See Veeck v. S. Bldg. Code Cong. Int’l*, 293 F.3d 791, 799 (5th Cir. 2002) (“Citizens may reproduce copies of the law for many purposes, not only to guide their actions but to influence future legislation, educate their neighborhood association, or simply to amuse.”). Accordingly, partial access to the law is insufficient. To support the full range of needs and interests that move citizens to seek access to the law, libraries depend on a clear, comprehensive, and administrable government edicts doctrine.

II. The Pro Codes Act Interferes with the Government Edicts Doctrine

The Supreme Court in *Georgia v. Public.Resource.Org* made crystal clear that edicts of government of all levels were uncopyrightable elements of the public domain. The Pro Codes Act would attempt to reverse this foundational legal principle in a narrow but significant way: by affirming copyright ownership over standards that are incorporated by reference. It has long been the policy of the U.S. Government to rely on the expertise of standards development organizations (SDOs) to develop voluntary consensus standards that are then incorporated by reference in the Code of Federal Regulations.¹⁴ State and local governments follow the same practice. The reliance on the expertise of private sector experts in the development of legal obligations is good public policy, and that’s what is occurring right now in this hearing.

However, incorporating standards into regulations by reference, as opposed to directly incorporating the standards by verbatim copying into the text of the regulation, is a historical

of the Federal Depository Library Program (FDLP). These libraries maintain free, no-fee access to print and digital collections. In addition, information specialists are available at these libraries to assist researchers with locating Federal information.

¹¹ Statement of James G. Neal, Vice President for Information Services and University Librarian, Columbia University, Before the Subcommittee on Courts, Intellectual Property and the Internet, U.S. House of Representatives Committee on the Judiciary, Apr. 2, 2014 at 2, <https://perma.cc/Y9BL-R3GT> (hearing on preservation and reuse of copyrighted works).

¹² Hilary T. Seo, *Preserving Print Legal Information*, 96 Law Libr. J. 581, 588–89 (2004).

¹³ See Library Innovation Lab, *Project: Case Law Access Project*, <https://perma.cc/9747-L2FV>.

¹⁴ See Circular A–119 of the Office of Management and Budget, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities” (Jan. 27, 2016).

practice based in large measure on the cost of physical printing. It was less expensive for the Government Printing Office (now the Government Publishing Office) to publish—and thus for the users to buy—a slimmer Code of Federal Regulations with many provisions incorporated by reference. If the user needed to consult a specific incorporated standard, the user could find it in a library¹⁵ or purchase a copy of the standard, without having to purchase all the other incorporated standards.

The problem with incorporating standards by reference is that it created a legal grey area. If a standard were directly incorporated by verbatim copying into the text of the regulation, the copied portions unquestionably would fall under the government edicts doctrine, and would enter the public domain. But the copyright status of a standard that was only incorporated by reference is less obvious. Although LCA members believe that such a standard enters the public domain, the Supreme Court has not yet ruled directly on this issue.¹⁶ As a practical matter, this ambiguity was not that consequential during the analog era because the law was fairly inaccessible. If the user wanted to consult law, the user either had to go to the library, which had purchased a copy of the standard; or the user could buy a copy of the standard himself. Regardless of the copyright status of the standard, there typically was little economic incentive for a competing publisher to publish the standard because of all the costs associated with physical publishing, which would have to be passed on to the user.

In the digital era, all this changed. Now, public interest organizations such as Public.Resource.Org could scan a standard and place it online at virtually no cost, which enabled it to provide free access to the law. The cost barrier imposed by the expense of physical printing had been eliminated, thereby elevating the importance of the copyright status of the incorporated standard.

LCA strongly supports the broadest availability of the law. We believe that once a portion of a standard is incorporated into the law, whether by verbatim copying into the text of a statute or by reference, that portion enters into the public domain and can be posted freely online. Obviously, this means that users are less reliant on libraries than they have been in the past to learn what the law is; users can find the law on sites maintained by public interest groups such as Public.Resource.Org. But libraries remain interested in the public domain status of standards incorporated by reference for the purpose of preserving and researching the historical record of what the law has been, as well as promoting the public interest in access to the law.

¹⁵ Indeed, the Administrative Conference of the United States specifically recommended that government agencies promote the availability of incorporated materials by making “incorporated materials available in libraries.” Administrative Conference of the United States, *Incorporation by Reference* (Dec. 8, 2011), [acus.gov/document/incorporation-reference#-fn6](https://www.acus.gov/document/incorporation-reference#-fn6).

¹⁶ *Id.* at n.3 and 4.

The Pro Codes Act attempts to claw standards incorporated by reference out of the public domain by including the following provision in a new 17 U.S.C. § 123:

A standard to which copyright protection subsists under section 102(a) at the time of its fixation shall retain such protection, notwithstanding that the standard is incorporated by reference, if the standards development organization, within a reasonable period of time after obtaining actual or constructive notice that the standard has been incorporated by reference, makes all portions of the standard so incorporated publicly accessible online at no monetary cost and in a format that includes a searchable table of contents and index, or equivalent aids to facilitate the location of specific content.

The claimed purpose of this amendment is ensuring that standards development organizations have the financial incentive to develop standards important for health, safety, and technological progress. LCA has the following observations concerning the proposed legislation.

1. The Pro Codes Act is Unconstitutional

The Government Edicts Doctrine is rooted in the constitution. As noted above, allowing a private entity exclusive ownership of the law would run contrary to the rights of free expression and due process enshrined in the First and Fifth Amendments. The constitutional argument is developed further in the various amicus briefs ALA and ARL have joined in copyright cases concerning incorporation of standards by reference.¹⁷ Although copyright is authorized by the Constitution, the intellectual property clause does not empower Congress to overturn fundamental constitutional rights. See *Silvers v. Sony Pictures Ent., Inc.*, 402 F.3d 881, 883–84 (9th Cir. 2005).

We acknowledge the bill’s attempt to limit its adverse impact on the public by requiring a degree of public accessibility, but this public accessibility requirement is insufficient to cure the bill’s constitutional infirmity. In particular, the bill does not require the full text of the publicly accessible version to be searchable, downloadable, or reproducible. Thus, the bill, if it were enacted, would still interfere with individuals’ ability to understand, and comment upon, their legal obligations.

2. The Pro Codes Act Would Limit Public Access to the Law.

Because of the limited, read-only nature of its public accessibility requirement, the Pro Codes Act would make it more difficult for members of the public to access the law when provisions have been incorporated by reference.

¹⁷ See, e.g., Brief of *Amici Curiae* Public.Resource.Org, *et al.*, in *American Society for Testing & Materials, v. Upcodes*.

Rather than improve the problem of access to the law, the Pro Codes Act would codify existing restrictive practices of SDOs that provide read-only access through websites with limited functionality, and require users to create an account and agree to the terms of service in order to access material online. The Act explicitly permits the SDO to condition access to the standard on the user agreeing to terms of service unilaterally imposed by the SDO, and the collection of personally identifiable information. Conceivably, the terms of service could require the user to waive the ability to make a fair use copy of the material, or to copy unprotected ideas. Libraries have long warned that terms of service and license agreements are a mechanism by which publishers restrict uses that copyright law would otherwise permit.¹⁸

In short, the conditional copyright retention scheme that Pro Codes envisions would extend to SDOs sole copyright ownership over the law itself, allowing SDOs to further restrict users from downloading, printing, copying, annotating, translating, text-mining, incorporating into secondary works, sharing the standard with colleagues, or other uses that are lawful under copyright law. This could:

- Restrict public awareness of the law—including by consumers, workers, and businesses;
- Create unnecessary barriers to legal compliance;
- Impede first responders and safety professionals from understanding critical regulations;
- Escalate the cost of home ownership by increasing costs to builders;
- Restrict access for researchers, libraries and archives;
- Inhibit commentary and criticism; and
- Stifle innovation and economic growth.

3. The Pro Codes Act is Based on an Incorrect Premise

The basic premise of the Pro Codes Act is that without the incentive provided by copyright, SDOs would not undertake the costly process of developing standards, to the detriment of the public. This premise is incorrect. In the vast majority of cases, industry participants have an economic incentive to participate in the development of standards. Often, after they develop the standard, the SDOs lobby government entities to adopt the standards as law. The voluntary, consensus standards process is a critical element of what is in effect a system of self-regulation, which industry vastly prefers to regulation originating from government entities. In the absence of copyright protection, most SDOs would still develop standards and then request government entities to adopt them as regulations.

¹⁸ In *X Corp. v. Bright Data Ltd.*, No. 23-cv-03698-WHA (N.D. Cal. 2024), a federal court found that a claim for breach of terms of service was preempted by the Copyright Act, and that enforcing the terms of service would effectively give X Corp. de facto copyright ownership over content it didn't own. However, this preemption theory has not yet been widely adopted by other courts.

Moreover, in the recent copyright litigation concerning the unauthorized online posting of standards incorporated by reference, the SDOs have been unable to show that this posting caused any harm to the market for their publications incorporating their standards.¹⁹ This is in part because these publications typically include explanatory material that is not incorporated by reference and therefore remains within the scope of copyright protection.

4. The Pro Codes Act Would Not Achieve the Certainty its Supporters Seek

Even if the Pro Codes legislation were enacted, the SDOs would not be able to prevent the reposting of their standards incorporated by reference with any certainty. Assuming *arguendo* that the legislation was constitutional, a court might still find that the reposting of a standard incorporated by reference was a fair use under 17 U.S.C. §107. After all, in the recent litigation concerning the reposting of standards, the courts have assumed that copyright still protected the standards, but permitted their reposting under a fair use theory. To be sure, the adoption of the legislation, including the Congressional findings concerning the benefits of copyright protection for standards incorporated by reference, might tilt the fair use calculus against the user in a particular case. But because of the continued availability of fair use, the legislation would just render this area of the law more confusing.

III. A Better Idea: Direct Incorporation

As noted above, incorporation by reference was an analog-era solution that was necessary when voluminous standards were available only in print. Today, reducing the volume of material in print is no longer an important consideration. Nonprofits like Public.Resource.Org and startups like UpCodes have demonstrated the ease and efficiency of providing public access to standards digitally. Now that standards are available digitally, and not only in print, it would be more efficient and effective for government agencies to incorporate standards directly into federal, state, local, tribal, or territorial codes, and to make the complete codes available online from the official agency website.

Accordingly, perhaps OMB Circular A-119 should be revised to encourage direct incorporation of standards. Or Congress could amend 5 U.S.C. § 552(a)(1) to require that agencies incorporate standards directly into regulatory text rather than by reference, and to define “reasonably available” as freely and publicly accessible online without account creation or terms of service conditions.

Before direct incorporation, the agency probably would have to request a royalty free license from the SDO. We expect that most SDOs would eagerly grant such a royalty-free license because their objective in creating the standard in the first place was for it to be adopted

¹⁹ See *American Society for Testing & Materials v. Upcodes*, __ F.4 __ (3rd Cir. 2026); *American Society for Testing & Materials v. Public.Resource.Org*, 82 F.4 1262 (D.C. Cir. 2023).

by an agency as a regulation. Once the standard was incorporated into the regulation, the copyright in the incorporated portion of the standard would be extinguished.

In the rare circumstance where the SDO would not grant a royalty-free license, the agency could: 1) pay a royalty for a license if one were available; 2) incorporate the standard without permission, and pay “reasonable and entire compensation” under 28 U.S.C. § 1498(b) (or its state equivalent); or work with a more reasonable SDO.

I am happy to answer any questions the Subcommittee may have.

Mr. ISSA. Thank you. We'll start off with Mr. Fitzgerald.

Mr. FITZGERALD. Chair, thank you very much.

Mr. Pauley, let me start with you. These numbers are what you laid out, but fire incidents since 1980 have declined by 54 percent, and home fire deaths have declined by 44 percent over the same period. Because of the work of the standards development organ—the SDO, like NFPA—in other words, when Americans go to bed tonight, they're safer because of the standards your organization has developed. Do you think that's correct?

Mr. PAULEY. I would agree with that statement, sir.

Mr. FITZGERALD. Your standards development process is currently self-funded, right?

Mr. PAULEY. That's correct.

Mr. FITZGERALD. On average, how many do you think—how much do you think it costs—that's a tough one to answer maybe—of what it costs for an NFPA to develop a new standard or update a current standard that might be in place?

Mr. PAULEY. I appreciate that question. It is a tough one to answer. The vast majority of our expenses that we incur do go to the development of standards, because it's not just—I realize people think of it as just words on paper, but I have engineering staff that have to staff technical committees. I have IT staff that has to put the systems in place to be able to update those standards.

We have to operate as an entire function to be able to carry out this work. The vast majority of our expenses do go—we don't track it by individual standards. We look at it as an entire process.

Mr. FITZGERALD. The copyright attached to the code is the primary revenue that's generated to fund that process.

Mr. PAULEY. Yes, sir, Representative Fitzgerald. It makes up about 70 percent of our revenue comes from the sales and licensing of our codes and standards.

Mr. FITZGERALD. You think you could continue to have the self-funded model absent the Pro Codes Act?

Mr. PAULEY. No, sir. I believe that's exactly what's at risk today, is that the model works not only because it's self-funded, but because it also allows us to be independent, and that's such a critical part in the development of codes and standards. We put people around the table so that no one entity or interest can control the outcome of that standard. Us being independent is what's important to do that. If we have to do that by taking money from industry, it won't be independent. If we have to take money from government, it won't be independent.

This model's worked for a century, and it has worked well and it has served the public well.

Mr. FITZGERALD. Very good. Thank you.

Mr. Venneri, I don't want to put words in your mouth, but your association's concerns with the proposed Pro Codes Act, a lot of it seems to be centered around the mandated posting of the codes online. Is that an accurate statement?

Mr. DELLI VENNARI. That is correct.

Mr. FITZGERALD. OK. That's because some of the codes are for national security, critical industries, and specific types of technologies. Is that correct?

Mr. DELLI VENNARI. It's not necessarily just the technologies, Mr. Fitzgerald. The question and the problem with the Pro Codes Act is that the person or the entity that decides whether or not my copyrighted material must be posted online for free is not the copyright holder. It's not ASME. It's the, roughly, 50,000–90,000 jurisdictions in the United States that decide what they want to incorporate and what they don't want. Because the premise pooled commission can take my 33-volume standard and say we're incorporating by reference, it automatically puts a mandate on me to publish that out on the web, and I don't have control over that.

Incorporation by reference is not a copyright violation. I have no way to stop anybody from incorporating by reference. If you've got enough jurisdictions out there incorporating this, incorporating that, you're going to essentially wind-up with having the whole out there.

The other piece of our standards that are different than Mr. Pauley's is our standards are for manufacturers. By the time our standards—by the time a product gets into the hands of a consumer, all the compliance is done by the manufacturer, not by the consumer.

They're different, and that's part of the reason why I have an issue with the bill as drafted, because it's one size fits all no matter what kind of standard you're dealing with.

Mr. FITZGERALD. One more followup, I guess, would have been some discussion about national security implications. Can you just reference that quickly? What could they be?

Mr. DELLI VENNARI. Absolutely. Manufacturers come to us because we're a 501(c)(3), and they donate their time. The concept that I'm trying to get around is it costs a lot of money to do these very highly technical codes. If you take away my revenue source, I leave the field. Then, who is going to come into that field? It's going to be geopolitical rivals.

Mr. FITZGERALD. Thank you, Chair. I yield back.

Mr. ISSA. I thank the gentleman. We now go to the gentleman from Maryland for five minutes.

Mr. JOHNSON. Thank you—

Mr. ISSA. Oh, I'm sorry. The gentleman from Georgia.

Mr. JOHNSON. I'm sorry. I didn't catch it. Mr. Delli Venneri, I'm having trouble understanding how the legislation could be improved to accommodate your criticisms, which are that it draws no meaningful distinctions between highly technical engineering standards as opposed to the text of laws, or between standards incorporated in their entirety as opposed to standards incorporated only in part, or to standards used extensively as opposed to standards used rarely.

Why do these differences matter in terms of adoption of the Pro Codes Act as written, and how could it be written differently to accommodate your concerns?

Mr. DELLI VENNARI. The Pro Codes Act, again, is blind as to the type of standard that is being incorporated by reference, and the incorporation is not done with our permission, right. It's just done by governments anywhere.

Mr. JOHNSON. That's true with the other organizations as well.

Mr. DELLI VENNERI. With different models, it may work, right. My issue is it doesn't work for my organization.

Mr. JOHNSON. Why?

Mr. DELLI VENNERI. Well, let me explain to you a little bit about the codes business. Not every one of our codes makes money. As a matter of fact, the vast majority, overwhelming majority don't. There's a handful that do. If I have governments, 90,000 governments out there deciding what needs to go out in the public domain and what doesn't, I could lose my entire royalties.

Mr. JOHNSON. OK. Thank you. A standards developing organization's primary function is to create uniformity across producers, consumers, government agencies, and other relevant parties concerning a product's specifications and protocols. These groups perform this coordination to ensure that products may be used and can perform according to their intended purposes.

Mr. Pauley, I'm interested in how a standard is developed from inception through adoption and who participates in that process and how are the participants in the process selected.

Mr. PAULEY. Thank you, Ranking Member Johnson, for that question.

Let me start a little—I've been involved in the standards process for a really long time, so I'll try to compress it and be as brief as I can in its explanation.

Standards generally have to come from an idea. In NFPA's case, it is, unfortunately, often been on the backs of tragedies that standards have been developed because of some event or some occurrence, and we recognize the need for a standard to be able to put in place.

One of the examples I'd like to use for you in this is a standard we are working on right now called NFPA 800, the battery safety code. I don't think I have to tell this Committee about issues that have been seen with batteries, lithium-ion batteries, and batteries used throughout our entire society.

We published that we were going to produce this code, and we received public comments back from people that would say, this is a good idea, it's not a good idea, I would like to serve on the committee. We take all that input in. We draft a scope for that particular standard, and then we begin to assemble the committee.

What's very important in what we do in this process, as governed by the rules of our own rules and the rules of the American National Standards Institute that accredits standards developers, open, transparent, and consensus-based. What we look for are people that have an interest in the topic and that can bring expertise to the table, but we create a balanced committee. That battery committee can consist of manufacturers, of insurers, of designers, and of installer-maintainers of those systems. The list can go—we have about nine different classifications.

What's a very important part of this process is, in our case, no more than one-third of an interest can make up the committee, but two-thirds of that committee has to agree before you can actually add something or agree to the standard. We've created this balanced, transparent process. From there, the draft of that standard can be put out for public review, and it takes public inputs.

This document that I have in front of me, the National Electrical Code, every three years gets about 5,000 public inputs for changes to this document. The committee operates on every one of those. They have to address every one of those inputs that comes in.

Mr. JOHNSON. Is that what drives revisions and updates?

Mr. PAULEY. That is exactly what drives revisions and updates. We will update this document every three years, regardless of what is happening from the standpoint of whether government is using it or not or whether it's incorporated by reference.

What's important also, not only do they address all those inputs, that result goes back out transparently for public review. In this document, about another 5,000 public comments come in. Those get addressed by the committee, voted on, balloted. That result gets produced, and ultimately the standard finishes our process by going through the final steps.

What's also very important in this process is we have to operate an appeals process. There has to be an appeals mechanism where somebody can say, we believe I was treated unfairly. We have an entire appeals body that does that.

Mr. JOHNSON. All right.

Mr. PAULEY. I'll finish by answering your last question. The group that appoints the members of that committee is not NFPA staff. We have a group called our Standards Council that is made up of 13 voluntary members. They are from various walks of industry. That council is responsible for the appointments on the committee to ensure that we have open and balance inside of that process.

Mr. JOHNSON. Thank you. I yield back.

Mr. ISSA. Thank you. The gentleman yields back. We now go to the gentlelady from Florida, Ms. Lee.

Ms. LEE. Thank you, Mr. Chair.

Codes and standards are around us everywhere, from the buildings we live in to the systems that keep us safe, and for decades, the United States has relied on successful public-private partnership where expert standards are developed by private organizations and then incorporated into law.

As we're hearing today, that system today is under strain. Courts are sending mixed signals about whether those standards retain copyright protection once incorporated by reference, creating uncertainty that risks undermining both public access and the incentives that are needed to develop high-quality standards.

At the same time, we cannot lose sight of the core principle that Americans should be able to access and understand the laws that govern them.

Today, I know we work to try to strike the right balance between protecting innovation and public safety while ensuring meaningful access. I appreciate very much the Chair for convening this hearing and all of you for helping us with this important and complex discussion.

Mr. Kupferschmid, I'd like to start with you. One of the things you mentioned earlier was that recent court decisions have created uncertainty around whether standards incorporated by reference remain protected and that courts have developed some inconsistent

rulings. Could you tell us a bit about what some courts are getting wrong in your view?

Mr. KUPFERSCHMID. Yes. Thank you very much. I work in all different areas of copyright. I can tell you this particular area is more chaotic than any other in terms of when the courts take on issues relating to copyrightability or fair use. There are direct and conflicting decisions on copyrightability, on fair use, throughout the country in different circuits.

On copyrightability, we have differences between the Second Circuit and the Ninth Circuit agree. We have a bunch of courts that is copyrightable. We have courts in the Third Circuit, I think the Eastern District of Missouri, D.C. Circuit, which are either ambiguous or silent on the copyrightability issue.

Then we have the *Veeck* case of the Fifth Circuit, which was decided about 25 years ago, in about a quarter century. No other court outside of the Fifth Circuit has decided to adopt that rationale and say, look, these codes and standards lose their copyrightability.

On fair use, we have a similar challenge, right. The Supreme Court came out with this big, very, very important case in May 2023, I think it was, the *Warhol Foundation* case, and in that case it set standards for how the first factor of fair use should be interpreted.

Since that case came out, we now have two separate cases, both saying completely opposite things on fair use. That's why ultimately we're here. We're here because we need some clarity. We understand there needs to be a compromise; there needs to be balance. We realize that not everyone is going to be happy. We have extreme views sitting here. On one end of the table, we have someone who doesn't want any copyright protection at all. The other one is kind of ignoring all these cases that are threatening us.

We need to find a compromise. We need to find a balance. The pro codes is a good step in the right direction.

Ms. LEE. A related question. One of the things too that you mentioned was that this was an area where Congress needed to step in and needed to do so, I believe, more imminently. Would you explain why you believe congressional action is important rather than allowing that case law to continue to develop?

Mr. KUPFERSCHMID. Well, it's not just me that thinks that way. We've had at least three, I should say, courts in different jurisdictions say, Congress, please help us out here, right. They have said in the actual decision, in absence of congressional direction here, we're going to do our best to try to figure this out, and they are not doing a good job. There are a lot of uneven, inconsistent decisions. What's going to happen is those decisions aren't going to hurt just SDOs. They are going to hurt and be applied in other copyright context and hurt.

Really this is a type of issue that Congress has in the past jumped in and legislated on, and it would be appropriate—very, very appropriate for Congress to jump in and legislate here as well.

Ms. LEE. Thank you. I'll yield the balance of my time to the Chair.

Mr. ISSA. Thank you. I'll followup on that with Mr. Delli Venneri. If we made changes—and you know we've been negotiating with

your organization to try to find common ground, and as we can tell by your opening, we didn't find it. If we said, for example, that only if you give consent to be included by reference, then this would act, would that be acceptable to you? If not, why not?

In other words, you often say that you don't try to get included by reference, but when you do, you don't sue them and say, how dare you include my copyright, and please don't. The question is, on those occasions in which you are to be included by reference, would you agree that if, in fact, you consent to it, you sign onto this bill, if you openly reject it and try not to, that you would, in that case of notice, you would not give up your right and have to post it?

Mr. DELLI VENNARI. I would like to first just add one thing, that our process is almost identical jot for jot with Mr. Pauley's process. I don't want to bore the Committee with that same testimony again. OK.

Mr. ISSA. We do appreciate the work that all your organizations do. That is not the conundrum we face here today.

Mr. DELLI VENNARI. Understood. I think we're only going half-way. Yes, a fundamental problem is the mandatory posting. Absolutely. That would go a long way to getting where we need to go.

I'm actually interested in some of the statements that were made today about inconsistent court cases and inconsistent results. There are always inconsistent results in court cases, but the courts have consistently used fair use to decide the issue. Now, fair use is a case-by-case decision, right? It's based on the standard, the use, the infringement, all the rest. It's not surprising that you're going to have different results applying that same rule.

I would say, I'm not ignoring the law. One of the problems that I've had since day one with the Pro Codes Act is it's not addressing the fundamental doctrine that the courts are using to decide this issue, and that's fair use.

Understand that fair use—for fair use is even to be invoked as a defense—which is what it is—you have to have a copyright violation, which means you had a valid copyright to begin with. The Pro Codes Act doesn't go anywhere near protecting copyright. It just restates the predicate that you need for fair use to be actionable, or to be invoked by a defendant.

Mr. ISSA. To be continued. We now go to the gentlelady from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chair. For many years, I have been involved in this issue to protect access to the law. I filed amicus briefs in cases where SDOs sued *Public.Resource.Org* for posting legal standards online.

As you've mentioned, sir, the courts have consistently defeated the idea that you can copyright protection of the law, that there is fair use. In fact, in 2023, in *ASTM v. PRO*, the circuit twice held that the noncommercial dissemination of such standards are incorporated—as incorporated by referencing the law are fair use. The circuit in 2026 found the same thing.

The Supreme Court in Georgia v. PRO found that this is fair use. Justice Roberts said no one can own the law. Justice Thomas said, "statutes and regulations cannot be copyrighted." I think the law is clear.

I just think, Mr. Band, in the amicus brief in *ASTM v. Public Resource*, the NAACP noted that—and this is a quote, “Without the information contained within the technical standards at issue, Black and low-income communities are fighting blind against landlords and other powerful, well-resourced adversaries. For these communities, access to the standards is access to justice.”

Does this bill create a two-tiered system where some people get limited access to the law and those who pay can get better access?

Mr. BAND. Yes. Thank you for the question, Representative Lofgren. Yes, it absolutely would create a two-tiered system, or at least a two-tiered system because the reading rooms that the SDOs have established and that this legislation would, in essence, bless typically involve access that just doesn’t make sense in 2026.

Ms. LOFGREN. Right.

Mr. BAND. The fact that these standards are—or that these standards—you can’t download them. You can’t cut and paste them. It makes it much, much more difficult to use. Just having a PDF online really is not access.

Ms. LOFGREN. Really, tenants or homeowners or workers would not have the same access. Let me just move on to another issue.

Mr. Pauley, you mentioned that these reference standards don’t really have legal effect, but I would like unanimous consent to put into the record the fact sheet from NFPA which says this: “The code references various organization standards within their requirements, and once the code is implemented by the authority having jurisdiction, those reference standards are a legally enforceable part of the code.”

I would ask unanimous consent to put that into the record.

Mr. ISSA. Without objection.

Ms. LOFGREN. I would like to ask unanimous consent to put the amicus brief into the record.

I just would like to note there have been comments made about whether or not these standard-setting organizations can survive, but I would just like to note, since all the cases have been lost in the courts, the financials are still going forward. I mean, ICC financials—their revenue in 2024, after they lost the court decisions, was \$100 million. NFPA, after they lost, the courts precluded what they are asking to change now, their revenue was \$115.1 million, and I would ask unanimous consent to put these financials into the record, Mr. Chair.

Mr. ISSA. Without objection, all 990s of all nonprofits will be placed in the record.

Ms. LOFGREN. That will be fine. I just think it’s not that we don’t care about what the SDOs do. Obviously, we do. What we care most about is upholding what the court found and what the public deserves, which is free and full complete access to the law that they are bound by. The idea that we should charge people or impede access to what people are bound to live by is just inconsistent with due process and the American system of justice.

I see my time has expired, Mr. Chair, so I yield back.

Mr. ISSA. The gentlelady yields back. We now go to the gentleman, Mr. Gooden, for five minutes.

Mr. GOODEN. Mr. Pauley, could you touch on the last comment about the accessibility to the codes, PDF versus searchable, and

how they wouldn't necessarily be accessible to all? I just want to understand that because I hear that often.

Mr. PAULEY. Thank you, Representative Gooden, for the question.

For NFPA, we have placed our codes and standards online for free access for coming up on 20 years now. By the way, just to be clear, we don't do that with just the standards that have been incorporated by reference, we do that with our entire library of standards, whether they have been incorporated by reference or not. We do believe that the transparency access to this is important, but it's also a balance.

In the case of NFPA's free access model, you can go to our website. You can pick any of those 350 codes and standards, click on the free access button. We ask for minimal information, typically an email address and so forth to get in, and you can read that entire standard, everything, from cover to cover. It has a searchable table of contents. There's an index in the back for it to be used. It is not downloadable or printable or, in this case, either searchable at least by full text other than those things I mentioned.

That's the balance that we're talking about in this case. The reason why that model has worked is because it allows people that want to have access to read the standard to have access.

The professionals that utilize the document, they subscribe or they buy a copy of the standard that it is that we're talking about. If I put, as was suggested, everything online completely for free, downloadable, or if a government did that on their website, why would anybody pay me for a copy of the standard? Suddenly, the funding model that has funded the entire standards system is now gone.

We believe that transparency and access to the standards is important, and we've been doing it with a two-decade track record as was brought up, we've been able to do that, and yes, we are still in existence as an SDO in that process.

Mr. GOODEN. If we fail to pass the Pro Codes Act, how would you argue that this impacts the health and safety of Americans?

Mr. PAULEY. What's most important about the Pro Codes Act—I understand a lot was talked about the court cases. I am not a lawyer that's up here in front of you. What is at risk is the copyright protection that we have in place. If that copyright protection goes away, then the safety and health of Americans are affected because we can no longer produce the standards.

I agree with Mr. Delli Venneri. Copyright is important to us. By the way, I share the same thing that he does. A few of our standards actually generate the revenue. The vast majority of them do not.

What's important about the Pro Codes Act, from NFPA's perspective, are two basic principles: It reinforces the fact that you don't lose copyright just because your standard is incorporated by reference, and it promotes transparency to the public of those particular elements.

Again, without it, I'll go back to my dam analogy. The courts are really putting cracks in the dam. The problem with copyright is, if the dam breaks, we lose copyright. You can't come back from that.

It's gone. That, I believe, is the reason why it's imperative that Congress act.

Mr. GOODEN. Thank you. I yield back to you, Mr. Chair.

Mr. ISSA. Thank you. Mr. Pauley, I'm going to followup on that. Earlier, we quickly glanced at one of your books, and I asked you to keep track of that, and would you just briefly read it? It's on iron-air storage related to electric EV stations.

Mr. PAULEY. Yes, Mr. Chair. This is out of NFPA 855, which is our Standard for the Installation of Stationary Energy Storage Systems. The particular section: Hazard conditions for iron-air batteries under normal operating conditions are as follows:

Fire hazards. There is the potential for concentrations of hydrogen from iron-air batteries if the area where the batteries are located is not properly ventilated.

Mr. ISSA. Without objection, I'm going to consider that whole paragraph inserted in the record.

Now, is any part of what you started reading a code, a law?

Mr. PAULEY. Mr. Chair, it is not the law. It is a set of elements that the committee has put forward.

Mr. ISSA. The guidance, the how-to that I'll find in every one of these and thousands of other books—including Mr. Delli Venneri's company's organizations—we're not talking just about statute. If, in fact, we only were—these court cases, if they were only dealing with a very narrow gobbledygook that we see in U.S. 35 blah, blah, blah, it wouldn't tell you how to do it. It wouldn't tell you some of the concerns. It wouldn't educate you in the way that your books and standards books do for all of you, from what I understand. Is that correct?

Mr. PAULEY. I would agree with that.

Mr. ISSA. OK. I'm just going to yield back the time I was so nicely granted by making the point that Mr. Delli Venneri made—which I agree with—which is one of the problems here is that what's being referenced as a law is only a small part of the documents that all your organizations are producing.

With that, I would go to the gentlelady, Ms. Ross, for her five minutes.

Ms. ROSS. Thank you, Mr. Chair, I want to thank the Ranking Member for letting me go before he does.

I'm thrilled that we're having this conversation and that we have the whole range of opinions about how to solve this problem, but the fact of the matter is, it is a problem. It may not be a problem in certain areas where—certain jurisdictions where both the people who make the codes and the people who want to create access have come to some agreement. I thought it was very interesting that Mr. Band actually talked about the concept of a license. We talked about that a lot.

What I'm seeing here is that there are two things that are going on. (1) A fundamental tension that we've always had in our law, and (2) is a looming problem. This fundamental tension that I'm seeing—and I served on the Uniform Codes Committee in the North Carolina General Assembly for many years. People thought it was the most boring committee. I actually thought it was very interesting to see all the work that goes into producing these independent codes.

Well, of course, the North Carolina General Assembly wanted to adopt some of these codes and not do the work itself, but a good thing about doing that is the lobbyists don't get involved. The industry doesn't get involved. You really get a better, more scientific, more truthful way of doing it.

When a government takes property, even for public good—which is a taking under the Fifth Amendment—they compensate the landowner. If the General Assembly in North Carolina wants to build a highway and they want to take somebody's front yard, they pay fair market value or fair value for it because there's a public good. Because they recognize that property right. Copyright is a property right. It's a temporal copyright. It has an expiration date. It is a property right.

For that reason, a really easy way to resolve this—but nobody seems to want to do it—is to actually pay people like you pay them when you take their front yard for a highway. Then, their license fees, they don't even have to be big license fees. Just enough to support this. Nobody wants to pay. They want to hide behind fair use.

I love fair use. I was a professor. I use fair use all the time. When I taught my students, I did copies of things. I taught the law. We went out and did it. However, to really get good access to the law, you actually had to pay, by the way, Lexis or somebody else.

When you are going to say that fair use covers something that can be further monetized, like what we see with UpCodes, then that is not fair use anymore; that is taking the industry of somebody who has copyright protection, using everything that the wonderful libraries are talking about for your own benefit, and monetizing it.

That is exactly what is going on right now with AI. What is going on with AI, is they are saying, "Oh, there's a public good for us to use newspapers and artists' work, and we shouldn't have to pay for that because we're doing so much and AI is so wonderful." Well, AI is wonderful when it produces a public good, but when you're get to make money off it, no can do. That's why Anthropic lost its lawsuit.

What we're doing here is trying to have that balance, trying to provide people in libraries and people who need information with information, but also, compensate people for their industry.

I want to turn to Mr. Kupferschmid because he does represent people in a broader way and ask him whether I'm seeing this in a reasonable way, and whether expanding the fair use doctrine is a further threat to copyright.

Mr. KUPFERSCHMID. Yes. As you were speaking, I was just thinking—sort of nodding in agreement with everything you said because your approach to the issue and your statements are spot on in terms of this is about balancing. If you don't have the correct balance, you may see the SDOs disappear, or a real threat to their industry for certain. I think that is something that is very significant.

The AI issues you mentioned, obviously, we're in agreement there. We hope the courts agree with what you just said as well and come out on that.

We're big supporters of fair use. There's nothing that's sort of categorically fair use one way or the other. There certainly will be instances where using codes and standards will be fair use and other instances where it should not—certainly should not be fair use.

Ms. ROSS. OK. Thank you, and I yield back.

Mr. ISSA. I thank the gentlelady. We now recognize the gentleman from California, Mr. Kiley.

Mr. KILEY. Thank you, Mr. Chair. Thank you for convening this hearing and for this legislation.

There are a few questions that we need to consider at a higher level here.

First, do we want to do something or nothing as a Congress in the face of the courts handling this matter in a way that has created uncertainty? The clear answer is we want to do something to produce some level of certainty.

Second, whether we want to empower or weaken the process of standard setting, which has served to tame the complexity of modern life and allow coordination to triumph over chaos. The clear answer is that we want to strengthen that process.

Third, do we want to strengthen or weaken the voluntary associations that have allowed the process of standard setting to play out with a broad range of expertise that would be very hard to replicate through some government-engineered process? Again, the answer is that we want to empower those organizations.

With that in view, that we have a pretty clear set of goals here, and the question just is how do we strike the balance? This legislation is aiming to do that. Perhaps it could use a little more refinement. That's why we're having this hearing.

Just to followup on the Chair's questions a little bit, Mr. Pauley—so, when you incorporate by reference, you're incorporating the standard, but the work product of the standard-setting organization encompasses commentary, drawings, illustrations, prefaces, everything else. There is that distinction, right?

Mr. PAULEY. I'm sorry. You mean with respect to or as compared to what?

Mr. KILEY. If a standard is incorporated by reference, the only thing that's sort of part of the public body of law, then, is the standard itself. It's not all the supplementary material that your organization produces.

Mr. PAULEY. Well, I would agree with you. This is part of the issue, I believe, and the lawyers on the panel can help me. The problem with some of the courts are they have taken a long—even some of the supplementary information that's in the standard and included that to say it's the entire standard, and that is indeed one of the challenges.

One of the points that was made along the path that's saying—there is a lot of what we refer to in the standards world as annex material, which is important material to have but not necessary to apply the rules of this standard itself. The courts have taken this thing in great—or in whole, again, is why I believe it really begs for a policy question for Congress to really deal with.

Mr. KILEY. Yes. Do you think—and I'll take your opinion on this as well, Mr. Kupferschmid—that this bill, as we've written it,

makes that distinction in the right way? Let's forget standards for a second. You can look at the U.S. Code, the Code of Federal—the Book of Federal Regulations. There's a lot there that wouldn't make a lot of sense if you just kind of read it. The language of the law itself, it's cross-referencing this section and that section.

There's all kinds of materials that exist that help people interpret and give them advice on that this isn't necessarily part of the law itself. Are we creating the right distinction here?

Mr. PAULEY. Well, I do believe that Pro Codes does strike the right balance between these things. If we can ensure that the copyright is protected overall, the access part of this of whatever it is that you want to try to call the standard is an important piece of the transparency that we talked about.

What would result, if I understood your question correctly, would be trying to separate those two pieces out into separate elements. I don't want to speak for my standards committees, but what the standards committees would say on top of that is, we've tried to assemble something that's useful for the people that professionally use the standard, and our standards committees are not thinking about this in terms of public access or anything else. That's something we as the organization have to be able to do.

Does Pro Codes strike the right balance between those? I suspect there's all flavors of that. What's not clear to me is how you would bifurcate those pieces with all the variations that are out there.

Mr. KILEY. Mr. Kupferschmid? Thank you.

Mr. KUPFERSCHMID. I agree with Mr. Pauley. When you're talking about balancing these interests, there's definitely different ways to do it. We are on record, and in the testimony, I mentioned the fact that maybe it's better—instead of attaching to copyright or kind of tying public accessibility to copyright protection to copyright enforcement instead, right? That might address some of the copyright infringement cases that are coming out recently. Perhaps that's a way to do it. Maybe there's additional tweaks or something to the bill that can be made.

Ultimately, Congress is going to have to realize not everyone is going to be happy here. This is about compromise and trying to address individual interests and balance those interests. The Pro Codes Act coming out of the gate is a very, very good approach. Could it be better? Sure. I'm sure that it could be tweaked this way and that way, and it should be, but we are very supportive of the framework established by the Pro Codes Act.

Mr. KILEY. Thanks very much. I yield back.

Mr. ISSA. I thank the gentleman. We now go to the distinguished Ranking Member of the Full Committee, the gentleman from Maryland.

Mr. RASKIN. Mr. Chair, thank you very much, and please bear with me because I'm really just trying to figure this thing out. This is complicated, OK?

My first question—and I'm not even sure who it's directed to—is why do the government bodies not actually embody the standards explicitly in the codes rather than incorporate them by reference? I don't know.

Yes, Mr. Band.

Mr. BAND. Again, that is a historical legacy from the print days. Remember when we used to have to go to the physical libraries to do all our research and nothing was online?

Mr. RASKIN. OK.

Mr. BAND. It was just voluminous to print.

Mr. RASKIN. Has anybody ever challenged legislative incorporation by reference? We use it when we file a complaint, but has anybody ever said that's not law? Along those lines, if somebody updates their code, does that need to go back to the legislative body or is that just automatically incorporated by reference?

Mr. Pauley.

Mr. PAULEY. If I could, generally, when an incorporation by reference is done, it is usually done by standard and by the edition of the standard that is particularly stated. In the case—I'm holding up the National Electrical Code. This is the 2026 edition. They would normally say, "we're going to incorporate by reference the 2026 edition of the National Electrical Code."

My understanding is, in the vast majority of cases, it would go back to the legislature for whatever the next update would be at some point in time.

Mr. RASKIN. Gotcha. OK.

Mr. KUPFERSCHMID. Can I answer the question from a copyright law standpoint?

Mr. RASKIN. Yes. I'm going to come back to you, but let me just pursue Mr. Pauley for one second.

When you described how your system works—and you said it's pretty much the same with—you've got the two-thirds requirement. You try to bring in all the different players and so on. That sounds kind of like a public process where you've got your own rules and regulations, and then this legislation makes it even more public. It essentially says that we're going to allow people to incorporate by reference. We're going to make it the law. We're going to grant you the continuance of your copyright protection as long as you put it up online. Is that basically right?

Mr. PAULEY. Yes. I think you've basically described that as correct.

Mr. RASKIN. OK.

Mr. PAULEY. It is certainly more transparent access—

Mr. RASKIN. All right. Has this ever been challenged as a delegation of public power to a private entity? Has the constitutionality of this been upheld?

Mr. DELLI VENNARI. Well, certainly, it depends on the code, and that's why I've been raising these distinctions, right?

Mr. RASKIN. Yes.

Mr. DELLI VENNARI. For example, if you want to go to the New Jersey electrical code, you can't find it. There's no posting on the New Jersey—

Mr. RASKIN. It just incorporates by reference. Is this right? OK.

Mr. DELLI VENNARI. It just says go to their website, essentially, OK? It really depends, that is the law jot for jot, word for word—electrical code.

Mr. RASKIN. Yes. Right. All right. Are your concerns assuaged by either of these two things? (1) You've got the right to opt out of this. I can see you don't like being compelled to put your stuff up

online just because a third party—a legislature or city council or something—incorporates by reference your work. You have no control over that. (2) Suddenly, you are compelled to put your stuff online in order to protect your copyright.

Are you OK with this: (1) if you're allowed to opt out or, (2) if there is simply a statement that your copyrights are unaffected by this? That is that they are neither impaired or increased. It is just neutral. It's what the status-quo ante was.

Mr. DELLI VENNARI. Well, I would say that your question assumes that this isn't the right solution for everyone, and this should be a solution for everyone.

Mr. RASKIN. That's what I'm asking. How do you make it a solution for everyone?

Mr. DELLI VENNARI. Well, you write a different law, right? One that doesn't compel—

Mr. RASKIN. What is your solution?

Mr. DELLI VENNARI. My solution is that we're going to have to take a look at fair use. We're going to have to look at those factors. We're going to have to give some guidance to the court. I also want to, if I may, talk to what the—

Mr. RASKIN. You mean change all the fair use doctrine?

Mr. DELLI VENNARI. Absolutely not. Just do it in such a way to help the court get to perhaps different decisions. Also, there's another couple of issues here that I—

Mr. RASKIN. Well, do you disagree with Mr. Band that it's obviously fair use when people access what's been defined as a law in a particular jurisdiction? That's got to be fair use, right? That's what the courts are saying, as I understand it.

Mr. DELLI VENNARI. Well, that's really sort of an interesting question, OK?

First, the way that people use standards is to read them, right? To Ms. Ross' point, AI—forcing people to put their standards on the web, under the Anthropic decision, gives the Anthropic—the agentic agent the ability to read it and exposes us to all kinds of AI dangers, right? In certain respects, this bill goes in the wrong direction with respect to AI, No. 1, OK?

Second, think about the precept here. Everybody wants the public to have access to laws that govern them, right? The act that makes people compelled to follow laws is the act of the sovereign. What this bill basically says is that the sovereign has a duty to give fair notice to its citizens, and it's really saying, Oh, and by the way, we're not going to pay for that. We're going to compel the SDO—the private SDO to finance it through perhaps the loss of their standards.

If you think about it, who has that fair notice requirement? It's the State. You are now under this bill saying, OK, now you are ASME and you foot that bill, you lose the sale of your standards. There's real problems with the way that this bill is approaching it.

Mr. RASKIN. Gotcha. Mr. Chair, I want to yield back. I am afraid I cutoff Mr. Kupferschmid. Maybe someone else—

Mr. ISSA. If he has a short answer, he is certainly free to give it to us.

Mr. KUPFERSCHMID. Yes. I will just say very quickly that, under fair use analysis, a court should look at has the SDO made it avail-

able to themselves, right? Is it publicly accessible already, the standard, and if it is, that should work against fair use. The problem is the courts don't really understand that or aren't using that.

Mr. ISSA. I thank the gentleman and yield back. Mr. Fry.

Mr. FRY. Thank you, Mr. Chair, for having this hearing today.

Mr. Pauley, if Congress passes this act, in what ways would this be beneficial to the health and safety of our citizens? I think we're mired in kind of an exercise in intellectual property and kind of nuanced legal issues, but for people watching back home, or who may be tuning in, what is the practical effect for them?

Mr. PAULEY. Well, look, thank you for the question. The practical effect, Representative Fry, is that, over this past century, we have shown that private sector standards development—those independent standards bodies—have produced standards that have been beneficial to the public.

Whether you want to look at it in the fire numbers that I quoted earlier and those reductions, or whether you want to look at it from across the spectrum of standards that people interact with every day—interoperability, safety standards, whatever those may be—the reason why we're sitting here today—and I would like to really reiterate this point. Nobody that has been involved along this process—the court cases and otherwise—has argued I don't have access to the standard as an individual that I need to access it.

We're here because commercial actors want to take the intellectual property that has been developed by folks like NFPA and others, and they want to use it for their purposes to generate revenue. That's why the court cases are in existence today. They are not here because we've had some access problems along the way with this.

That's an important point to remember because, if those commercial actors can take mine or any other SDO's intellectual property and use it the way that they want and make it fully available, I'm not going to survive.

I can certainly speak for NFPA, but, obviously, I'm biased. For a lot of other SDOs that deal with it as well, the public suffers if the private sector SDO community ends up going away in this process, and that is the reason why I think this is such a policy issue for Congress.

Mr. FRY. Pivot a little bit. Talk about the code and standard development process that you all have and maybe some of the associated costs that are involved in that.

Mr. PAULEY. Yes. All of our costs when we look at—the vast majority of what costs we have as NFPA—and you can look at our revenue. You can look at our expenses across that entire spectrum. The vast majority of those costs are involved with that development and that distribution of those standards in some particular manner.

For a lot of people, they think of it in terms of, hey, look, doesn't somebody just got to put the words on a piece of paper? No, I have to have engineers that have to staff all those technical committees. I have IT groups that have the systems in place to do this. There is a cost every time we develop those standards.

I would reiterate, out of the 350 or so codes—

Mr. FRY. You mean it's not free?

Mr. PAULEY. Yes. You are correct. It is not free. These are the costs that we incur every day, and they are important. We think they are important for society. We are self-funded, so if we're not generating revenue, I can't pay those bills.

Mr. FRY. Let me ask you something. We've been told that if we pass this it will create a system in which special interest lobbyists would have an effective veto over the health and safety standards in the country. Is this accurate?

Mr. PAULEY. No, it's not accurate at all. I go back to the process that is so critical under the guise of open, transparent, and consensus-based processes. We put those processes in place, and we run those committees to keep special interests from having a sway over that particular committee.

Earlier, I mentioned—if you just want it in round numbers—in NFPA's case, no more than a third of the committee can be made up of an interest, and it takes two-thirds of the committee to actually change the document. The beauty of what we do is we bring people to the table to have them have debate.

Mr. FRY. Can you imagine doing that in Congress? My gosh. Two-thirds on anything, I don't know if we could do that.

If the Pro Codes Act was enacted, what steps would you all take to make sure that the codes and standards are accessible to the public?

Mr. PAULEY. Well, this is probably in one case where NFPA probably has a little bit of an advantage only because we've been making all our codes and standards—not just those IBR, but all our codes and standards—available online for full public access for free for the last 20 years.

For us, we're trying to continue along down the path. I do think what our track record shows is that there is a way to do this, make public access available, and not suffer the loss of revenue, because professionals still purchase the document or purchase a subscription. I would just reiterate that's the beauty of this process. It's not taxpayer dollars that are funding it. It's not big industry dollars that are funding it. The cost of the system is spread out across the people that actually use the standards in their work every day. It's a beautiful public-private partnership in action.

Mr. FRY. Thank you for that. Mr. Chair, I see my time is up. I yield back.

Mr. ISSA. Thank you. That just leaves me now to close this thing up, and I'm going to try and bring together as much as I can as quickly as I can. I appreciate, Mr. Pauley, that your organization is posting online, but as you can tell by Mr. Delli Venneri, he posts online but not the same way. His is not open and free. There are multiple models at work here.

Mr. Band, you haven't gotten enough attention, so I'm going to ask you. Do you think Napster was fair use?

Mr. BAND. No.

Mr. ISSA. OK. Fair use has its limit, right?

Mr. BAND. Of course.

Mr. ISSA. OK. When somebody monetizes somebody else's copyrighted material, that's not fair use, is it?

Mr. BAND. Well, it depends, but in this situation—

Mr. ISSA. Well, in the case of the two that are monetizing it now, they both have a form of monetizing in their formula. They are not giving it away without either collecting data or actually charging a subscription fee. Isn't that correct?

Mr. BAND. I don't know exactly the—

Mr. ISSA. Well, the lawsuits that were—

Mr. BAND. Right. I'm not familiar with the UpCodes business model. I don't know the—

Mr. ISSA. They collected 11 million in A round money. They have a subscription model—a premium subscription model to provide other people's material.

Mr. BAND. Yes, but to some extent, that's something that the standards bodies could do themselves, and indeed—

Mr. ISSA. Well, wait a second. Wait a second. They do it themselves. They have subscription models. They have programs.

I'll go back to Napster. In Napster, the recording industry didn't have to prove they were going out of business, although they sometimes allege that it would kill them. They only had to show the violation of the copyright.

Mr. BAND. Right. The difference here is we're talking about the law.

Mr. ISSA. Wait a second. We already went through this in detail. You are a taxpayer, I assume?

Mr. BAND. Yes.

Mr. ISSA. Have you ever read the Tax Code?

Mr. BAND. God forbid.

Mr. ISSA. Have you any idea what it would be like to try to comply with the law by only reading the Tax Code?

Mr. BAND. No.

Mr. ISSA. Doesn't everybody read supplemental copyright material to comply with the Tax Code?

Mr. BAND. Yes.

Mr. ISSA. Aren't these, as demonstrated at least briefly, in fact, supplemental materials as much as the law that they are how-tos and they are teaching and therefore—even if we were to narrowly say that—if you say that a—Mr. Massie wasn't here today—but, if you say that every three feet there has to be 110-volt plug to comply with the law in some jurisdiction, even if you say that, the rest of it is not, in fact, the law, is it? It's a how-to.

Mr. BAND. As a general matter, that's right. That's why when Mr. Pauley holds up that book, I don't think—certainly not in my view and the view of my clients—that the whole book is not the law and therefore would not be freely available. That's also the advantage of—

Mr. ISSA. That is one of the problems with the two that are monetizing it in lawsuits, is they are monetizing the entire code, including the how-to. They are not clawing through it.

Mr. BAND. Right. If that's the case, then that's a problem.

Mr. ISSA. In the case of Pro Codes, how do we define that in a way that provides guidance to the courts? This is really for you and Mr. Delli Venneri.

We are here trying to pass a law that, one, gives a safe haven to people who want to get access to information and provides clear guidance to the court. I've got two proponents and I've got two non-

proponents. First, to be honest, one on the right of it and one on the left of it. You are not in agreement. You simply would like more than we're doing.

My question to you and the question that this dais needs as we go into our markup is: How do we preserve the copyright, which everyone is pretty well-agreed exists within these manuals, even if small portions are, quote, "the law." How do we preserve that and provide guidance to the court, so they make consistent decisions, particularly as to this misguided interpretation of fair use?

Which I think I got your point that depends—a lot of these cases—when Mr. Pauley's stuff is online already, and then somebody monetizes a copy of it, where did the fair use get into that? They are simply duplicating and providing for revenue what he is already doing. It may be they are making it machine searchable, but, of course, that just means they are making it easier to take copyrighted material, isn't it?

Mr. BAND. Well, the solution that I offered will really take care of your concern. In other words, if let's say Congress said that incorporated by—directly incorporated instead of incorporated by reference, then whatever was directly incorporated, that's the law, and whatever is not incorporated directly is not the law.

Mr. ISSA. I agree with you.

Mr. BAND. That would make a very clear distinction, whereas now—

Mr. ISSA. For the other three that are actually putting stuff out to these municipalities, States, and so on, do you see them actually—if you give them, quote, "the statute portion of it," do you see them actually doing it, and wouldn't it be burdensome economically for them to do so?

Mr. BAND. I'm sorry. I don't understand the question.

Mr. ISSA. Basically, what you are suggesting is that they take subsets of every one of these 45,000 different books and manuals and put them online and, of course, also print books and so on. That's what you are suggesting to comply.

Mr. BAND. Well, the government has put them online, yes.

Mr. ISSA. Right.

Mr. Delli Venneri, our suggestion that, in fact, a PDF be printable, not full machine searchable, AI advance—get everything you want and have it tell you how to write an application for a permit, because I know that's a concern of you that these codes can be turned into AI, producing an entire permit, and bypassing everybody with dubious accuracy.

Where is the middle ground? Because, for the Ranking Member who has left and for the Ranking Member of the Subcommittee, we need to know—we cannot—inaction is a problem. It's a big problem here because of those cases. We're going forward with action.

Mr. Pauley, I will commend that two-thirds are hard to get to. We got within one vote of it last Congress.

Mr. DELLI VENNERI. Mr. Chair, could I help? I mean you asked that question.

Mr. ISSA. Please.

Mr. DELLI VENNERI. There are ways to deal with fair use in a relatively light manner, right, because folks—that turns into a real issue, right?

First, for example, there is the holding in the cases that—when somebody reads a standard to comply with the law or somebody reads a standard to comply with the—to use in the manufacturing—that suddenly that same standard is transformed, right? They say that it's transformative. Everybody reads the standard to comply with it, right?

One thing the Committee might want to think about is when you are looking at whether or not it's transformative, right? That's one approach, right, to have the courts go in a slightly different way.

There's another line of cases—and I disagree with Mr. Kupferschmid—in a case in the Fifth Circuit, which was an en banc decision called *Veeck*, but then recently followed in a case called *CSA v. Knight*—I think in 2024—where the court is making a more in-depth analysis, right, of what kind of standard is it? How is it going to be used? Is this a law of general application, or is this a law that governs nuclear facilities, right?

There are fragments in the case law that helps this Committee. There is also—if you look at the case law, there are certain doctrines that are now being built into fair use that has extended beyond its traditional parody news reporting type of things. It's turned into quite a different animal in the case law.

Putting some bumpers on those fair use is the right way to do it, but it still allows the court to make a decision—a just decision based on the specific facts.

Mr. ISSA. I appreciate that.

As I close, I'll simply say that the bill is going to be amended as we bring it to the Committee. It will be an amendment in the form of a substitute. Many of you have given us input that we expect to already be in that. I would say that I would commend you all to engage and reengage if you have additional ideas.

I will say this in closing. If I had my way and I could speak to Chief Justice Roberts and he could speak to 677 District Court judges, I would ask them to find fair use when somebody uses the information—wherever gleaned for purposes of compliance for themselves and to, in fact, not consider it fair use when it is reprinted for a monetization or some other use other than the historic, truly educational uses that often happen, as Ms. Ross said.

Now, I don't get to meet with the Chief Justice more than once a quarter, and when I do, Mr. Johnson and I are very brief. I don't expect to do it except through this upcoming law, and I would ask all of you to help us make that bill—which is the one we're talking about and we will get across the finish line by two-thirds—make it as good as we possibly can and meet compromises that do not compromise the concerns that we heard here today.

Then, as sometimes happens, I have a few UCs. I ask unanimous consent that the draft bill—or the bill, H.R. 4072, to be placed in the record for everyone.

Then, additionally, I have letters of support from another large group of organizations. First, I will not read them all—is the IEEE. I would ask all those be placed in the record. Without objection, so ordered.

Last, to be brief, I would also include the subscription information on UpCodes and how they do, in fact, find a way to monetize that, which is already, in the case of Mr. Pauley, freely given away.

Additionally, as we close, all Members may have five legislative days in which to include additional information. I would extend that to all our witnesses that they may also do it.

Last, if you receive within five legislative days additional questions, would you agree to answer them for the record?

All those responded in the affirmative.

With that, the Subcommittee stands adjourned.

[Whereupon, at 2:00 p.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on Courts, Intellectual Property, and the Internet can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=119195>.

