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EXHIBIT 43
From: Carl Malamud
Sent: Fri 10/18/2013 3:41 PM (GMT -7)
To: Marshall Rose
Cc:
Bcc:
Subject: Re: the tweet

thanks! I'm definitely winging it here, playing major league hardball. I'm probably going to break more windows than necessary. You saw his 20 minute interview I tweeted about? They're very serious about this. Single biggest threat he sees.

On Oct 18, 2013, at 3:39 PM, Marshall Rose <mrose17@gmail.com> wrote:

> understood.
> 
> /mtr
> 
> On Oct 18, 2013, at 15:23 , Carl Malamud <carl@media.org> wrote:
> 
> >> There's a very long back and forth with, in particular, the NFPA, on how their models will change, what will they do, should they charge the government, etc, etc ... We did a bunch of hearings, I've posted video from many of those.
> >>
> >> Many people have said I should say what their answer is, and I think that's a strategic mistake. I can open up the possibilities, talk about the economics, but I can't tell them the way to do their business. That's a definite loss, I can't win that discussion. Our policy is very deliberately focused on "it doesn't matter, we have the right to speak it." It's an absolutist position, but it's the only way we can possibly win this fight ... the minute I walk down the slippery slope of "what exactly should we do" we lose sight of the key proposition, which is the law isn't theirs to control.
> >>
> >> But, I hear you about it coming off harsh! :)
> >>
> >> The message is that government and the SDOs are truly going to have to deal with it at some point, and this time they'll need to factor in the basic fact that they can't own the law, since that would be unconstitutional. I can offer options, but I can't back off on the basic point.
> >>
> >> On Oct 18, 2013, at 3:15 PM, Marshall Rose <mrose17@gmail.com> wrote:
> >>
> >>> I was looking at "the way of life" tweet and trying to figure out a way to get the point across to them that the world changed.
> >>>
> >>> saying "deal with it" is kind of harsh. it's true, but still harsh.
> >>>
> >>> saying "time to evolve" is perhaps more constructive.
> >>>
> >>> take a look at this scene from "other people's money", in particular what devito's character says at 1:45m into it about buggy whips.
> >>>
> >>> http://www.youtube.com/watch?v=62kxPyNZF3Q
> >>>
> >>> his character is, of course, unsympathetic and ruthlessly capitalistic. nonetheless, there is a certain resonance with respect to the situation the SDOs find themselves in. in the print age, one could perhaps justify the infrastructure and overhead; however, that train doesn't run in the digital age.
> >>>
>>> manufacturers should fund the SDOs voluntarily because competent standards make for robust marketplaces. If the manufacturers aren't willing to do this, then one has to either question the utility of the standards or the efficacy of the SDOs.

>>> just a thought.

>>> /mtr

>>> ps: I think the captions in your photos were a hoot.

ASTM D975: Standard Specification for Diesel Fuel Oils

Author: American Society for Testing and Materials
Subject: federalregister.gov.public.resource.org
Language: English
Collection: publicsafetycode: USGovernmentDocuments: additional_collections

Description
BY ORDER OF THE EXECUTIVE DIRECTOR
Office of the Federal Register
Washington, D.C.

By Authority of the Code of Federal Regulations: 40 CFR 1065.701
Name of Standards Organization: American Society for Testing and Materials

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This document has been duly INCORPORATED BY REFERENCE into federal regulations and shall be considered legally binding upon all citizens and residents of the United States of America.

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Reviews
Be the first to write a review
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EXHIBIT 45
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR TESTING AND MATERIALS, d/b/a ASTM INTERNATIONAL;
NATIONAL FIRE PROTECTION ASSOCIATION, INC.; and
AMERICAN SOCIETY OF HEATING, REFRIGERATION AND AIR CONDITIONING ENGINEERS,

Plaintiffs and Counter-Defendants,

vs.
PUBLIC.RESOURCE.ORG, INC.

Defendant and Counter-Plaintiff.

________________________________________
Videotaped 30(b)(6) Deposition of NATIONAL FIRE PROTECTION ASSOCIATION, INC., BY BRUCE MULLEN, taken at 42 Chauncy Street, Boston, Massachusetts, commencing at 9:59 a.m., Tuesday, March 31, 2015, before Jeanette N. Maracas, RPR, Notary Public.

JOB No. 2038640
PAGES 1 - 234
Q. How did the overall revenues to NFPA on its training programs compare to the overall revenues on its publications department?

A. Training revenues are, in total -- this is open registration on site -- approximately in this last year, we're approximately $8 million, and publication sales would be in the order of 50 to 60 million, so about 12 percent, 15 percent of -- as a percentage of overall revenues, training revenues are in the order of 10 percent of total revenues, 10 to 12.

Q. What options do you see for NFPA if the Court rules that NFPA lacks copyright to enforce against Public.Resource?

MR. REHN: Object to the form, vague.

Q. And by that, I mean what business options, I don't mean what legal options.

MR. REHN: I will maintain my objection to form.

A. The -- this is a hypothetical, but the volume of revenue from standards and codes and our handbook -- and our related handbook
material, I mean, that is 60 to 70 percent of our overall revenue, so it would have -- if we were unable to generate that revenue, it would obviously have a substantial impact on the organization.

Q. Well, that wasn't my question. My question is, what options -- what business options would NFPA have if the Court determined that NFPA lacked copyright in its codes and standards? That question does not include losing copyrighted handbooks.

MR. REHN: Object to the form, argumentative, hypothetical, asked and answered.

A. Well, regarding to business options, this is something that the -- since my entire career with the NFPA, NFPA has been looking for other ways of generating revenue other than or in addition to the sale of codes and standards. And in my tenure at NFPA, we haven't discovered any potential source of revenue that could replace that revenue.

So in terms of business options, there would -- I mean, one business option would be a radical reduction in staff to get
expenses down to a -- to stop the -- a 07:05:31
deficit would be one business option. It's 07:05:38
not a sustainable option to replace that 07:05:40
revenue source.

VIDEOGRAPHER: There are ten minutes 07:05:48
remaining on the record.

MR. BRIDGES: Thank you. 07:05:50

Q. What alternatives has NFPA considered as 07:05:51
sources of revenue if it were to lose 07:06:01
copyright -- let me change the question. 07:06:04
Is the same thing true if NFPA loses 07:06:11
copyright only in the codes incorporated by 07:06:15
reference?

MR. REHN: Object to the form, 07:06:18
hypothetical.

A. I wouldn't be able to answer that question 07:06:34
without having some idea of what that revenue 07:06:36
impact would be on those individual documents 07:06:39
in terms of the magnitude of that. 07:06:42

Q. Do you have an idea of what the revenue 07:06:46
impact would be on those individual 07:06:48
documents?

A. No. I wouldn't even be able to give you a 07:06:51
range. I just -- I don't know. 07:06:57

Q. Do you have any idea how -- strike that. 07:07:01
Do you have any idea whether NFPA would need to change its business model if a Court rules that the defendant's activities in this case are fair use and not an infringement of the NFPA codes and standards that are incorporated by reference?

MR. REHN: Object to the form, calls for a legal opinion, hypothetical, calls for speculation.

A. Just go back to the status quo, the existing case is NFPA generates revenue around the codes and standards that it develops, so if we lost copyright to all or a portion of those standards or there was no requirement for people to purchase those codes and standards from us, ultimately, the entire code development system would unravel. And then all our training which is about the codes and standards, because we develop the codes and standards, we wouldn't have the money to develop the codes and standards. So it would be a sort of slow unraveling process.

Q. My question is a different one. Would NFPA need to change its business model in that...
eventuality?

MR. REHN: Object to the form, hypothetical, argumentative.

A. NFPA's business model would cease to exist. And I'm not sure whether there is a logical thing is to change the business model, but I don't think there is that business model out there for us to change to. Our existing business model would cease to exist.

Q. Have you given any thought to other sources of revenue to NFPA to replace any loss of revenue arising from a Court determining that codes and standards incorporated by reference are in the public domain?

A. There's been an ongoing initiative at NFPA for many years now to develop electronic tools and services that are solution based, so where it delivers a solution to an individual so without -- makes life easy for them. They don't have to read the code to understand or to work in their sort of work flow, whether it's a design or inspection and we could -- that is something we have been working on for many years. It has not
generated substantial revenues, but that's something we continue to work on, but it is -- it in no way would ever replace the kind of revenue loss that we would anticipate.

Q. What innovative tools and services has NFPA developed in the past decade to gain more revenue?

MR. REHN: Object to the form.

A. We have current electronic digital products that are under development at the moment that enable inspectors to customize routine problems that they have and build their own customized work flows. That's a pilot test at the moment. We don't have -- we haven't developed anything substantial in that area.

Q. How long has NFPA been working on that?

A. On this particular development, NFPA started working on it in late 2013 -- this particular product, late 2013, early 2014.

Q. After this litigation began?

A. I think so. That's my recollection. I think so.

Q. What effect on NFPA's revenues did the free access to read-only documents cause?