

# **EXHIBIT 1**

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR : NO.  
TESTING AND MATERIALS : 1:13-cv-01215-TSC-  
d/b/a ASTM : DAR  
INTERNATIONAL; :  
NATIONAL FIRE :  
PROTECTION :  
ASSOCIATION, INC.; :  
and AMERICAN SOCIETY :  
OF HEATING, :  
REFRIGERATION, AND :  
AIR CONDITIONING :  
ENGINEERS, :  
Plaintiffs :  
vs. :  
PUBLIC.RESOURCE.ORG, :  
INC., :  
Defendant :

Videotaped deposition of JOHN C.  
JAROSZ taken at the law offices of Veritext  
Legal Solutions, 1250 I Street NW,  
Washington, DC, commencing at 10:09 a.m.  
THURSDAY, AUGUST 27, 2015, before Debbie  
Leonard, Registered Diplomate Reporter,  
Certified Realtime Reporter.

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1 a quantitative estimate. I think that  
 2 there -- with reasonable probability I  
 3 can draw this conclusion, but I can't  
 4 be any more precise than that.  
 5 BY MR. BRIDGES:  
 6 Q. What do you mean, "with  
 7 reasonable probability"?  
 8 A. Based on the information that I  
 9 have and the training and logic I bring to  
 10 it, I think there is a -- I say with some  
 11 confidence what I have said here.  
 12 Q. And when you say "likely," do  
 13 you mean more than 50 percent likely?  
 14 A. Not necessarily, no.  
 15 Q. Are you aware of other  
 16 standards development organizations active in  
 17 the same field as the plaintiffs?  
 18 MR. FEE: Objection. Vague.  
 19 Form.  
 20 THE WITNESS: Perhaps you could  
 21 tell me what you have in mind with  
 22 your use of the term "fields."  
 23 BY MR. BRIDGES:  
 24 Q. Well, are you familiar with  
 25 AHRI?

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1 A. I have perhaps seen reference  
 2 to that.  
 3 Q. Do you know with which of these  
 4 plaintiffs it -- do you -- do you know what  
 5 field it's in?  
 6 A. I don't recall, sitting here  
 7 right now, no.  
 8 Q. Are you familiar with NFRC?  
 9 A. I may have seen reference to  
 10 that acronym.  
 11 Q. Do you know what field it's in?  
 12 A. Not sitting here right now.  
 13 Q. Are you familiar with ICC?  
 14 A. I have seen reference to that.  
 15 I don't recall what it is, sitting here now.  
 16 Q. Do you know whether other  
 17 standards developments organizations would be  
 18 in a position to step forward and to continue  
 19 the maintenance and preservation and further  
 20 development of the standards of plaintiffs  
 21 here if plaintiffs lose this case?  
 22 MR. FEE: Objection to form.  
 23 THE WITNESS: I don't know.  
 24 BY MR. BRIDGES:  
 25 Q. Have you done any investigation

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1 to see what alternatives there are among  
 2 standards development organizations currently  
 3 in existence to carry forward the work of  
 4 plaintiffs if plaintiffs chose to stop  
 5 standards development as a result of the loss  
 6 of this case?  
 7 MR. FEE: Same objection.  
 8 THE WITNESS: Not that I  
 9 recall, but I am of the understanding  
 10 that each SDO has a different charter,  
 11 so I don't know that any SDO has an  
 12 identical charter to that of any of  
 13 the three plaintiffs.  
 14 BY MR. BRIDGES:  
 15 Q. Are you aware that these  
 16 plaintiffs compete with other SDOs in the  
 17 creation of standards in particular fields?  
 18 MR. FEE: Objection to form.  
 19 Vague.  
 20 THE WITNESS: What do you mean  
 21 by the term "compete with" in this  
 22 context?  
 23 BY MR. BRIDGES:  
 24 Q. That they consider others  
 25 rivals for the same market, in part.

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1 MR. FEE: Objection to form.  
 2 Vague.  
 3 THE WITNESS: I don't recall  
 4 seeing reference to that, but my  
 5 memory is not perfect.  
 6 BY MR. BRIDGES:  
 7 Q. The -- in paragraph 131, you  
 8 say, "Simply put, freely-distributed,  
 9 unrestricted versions of Plaintiffs'  
 10 standards that are or could be incorporated  
 11 by reference can be expected to adversely  
 12 impact the market for Plaintiffs' standards  
 13 that are incorporated by reference and to  
 14 displace sales of these standards by the  
 15 Plaintiffs - which can be expected to have a  
 16 material adverse effect on Plaintiffs'  
 17 revenues."  
 18 Do you see that?  
 19 A. Yes.  
 20 Q. By "expected," do you mean more  
 21 than 50 percent likely?  
 22 A. Not necessarily. I don't have  
 23 a quantitative assessment of what I mean by  
 24 "expected."  
 25 Q. Do you mean more than 5 percent

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1 likely?  
 2 A. I haven't quantified that, but  
 3 I would expect that it's -- more than  
 4 5 percent would be a reasonable definition of  
 5 "expected."  
 6 Q. More than 10 percent?  
 7 A. I don't know. I've not  
 8 quantified that number.  
 9 Q. And what amount of an effect on  
 10 plaintiffs' revenues have you identified as  
 11 "material"?  
 12 A. I haven't --  
 13 MR. FEE: Objection to form.  
 14 THE WITNESS: -- been able to  
 15 quantify the specific effects, so I  
 16 don't know the amount.  
 17 BY MR. BRIDGES:  
 18 Q. Well, what -- I'm not asking  
 19 for your quantification of a specific effect,  
 20 but how large would an effect have to be for  
 21 to you consider it "a material adverse effect  
 22 on Plaintiffs' remedies"?  
 23 MR. FEE: Objection to form.  
 24 THE WITNESS: I don't know that  
 25 I have a particular quantitative

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1 guideline in mind.  
 2 BY MR. BRIDGES:  
 3 Q. Have you ever -- are you  
 4 familiar with audit inquiry letters regarding  
 5 litigation?  
 6 A. Generally, yes.  
 7 Q. And you're familiar with the  
 8 fact that auditors will often specify to  
 9 those they send the letters to what amounts  
 10 would be material for purposes of the audit  
 11 response?  
 12 A. Yes.  
 13 Q. So you understand the concept  
 14 of certain amounts being material to certain  
 15 companies or entities?  
 16 A. Yes, for certain purposes.  
 17 Q. So I'd like to know what amount  
 18 you have identified as being material as an  
 19 adverse effect on plaintiffs' revenues for  
 20 each of the three plaintiffs, please.  
 21 MR. FEE: Objection. Compound.  
 22 Asked and answered.  
 23 THE WITNESS: I have not  
 24 considered a particular amount.  
 25 BY MR. BRIDGES:

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1 Q. Do you consider \$100,000 to be  
 2 material as an adverse effect on plaintiffs'  
 3 revenues?  
 4 MR. FEE: Objection to form.  
 5 Compound.  
 6 THE WITNESS: I haven't  
 7 considered that question. I don't  
 8 know the answer to it.  
 9 BY MR. BRIDGES:  
 10 Q. Have you considered whether  
 11 50,000 is a material amount as an adverse  
 12 effect on plaintiffs' revenues?  
 13 MR. FEE: Same objections.  
 14 THE WITNESS: Same answer.  
 15 BY MR. BRIDGES:  
 16 Q. Starting at page -- sorry.  
 17 Strike that.  
 18 Starting at paragraph 139, you  
 19 make several references to Mr. Malamud's  
 20 theory.  
 21 A. I'm sorry. To -- I missed a  
 22 word that you said. References to his what?  
 23 Q. To Mr. Malamud's theory --  
 24 A. Okay.  
 25 Q. -- T-H-E-O-R-Y. You refer to

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1 it in paragraph 139; 140; 144, with the word  
 2 "theorized"; 145, "theory"; 146, "theory."  
 3 What facts do you have that  
 4 have disproved the theory in paragraph 139?  
 5 A. Perhaps most important is the  
 6 revealed preference information. If the  
 7 plaintiffs believed they were better off by  
 8 lack of copyright protection, they would have  
 9 pursued such a model.  
 10 They don't believe they're  
 11 better off. Moreover, they're expending  
 12 tremendous resources in bringing and pursuing  
 13 this litigation to halt the activity at  
 14 issue.  
 15 Q. What other facts, if any, do  
 16 you have that have disproved Mr. Malamud's  
 17 theory in paragraph 139?  
 18 A. That's what comes to mind right  
 19 now.  
 20 Q. What facts do you have or are  
 21 you aware of that have disproved  
 22 Mr. Malamud's theory as you refer to it in  
 23 paragraph 140?  
 24 A. That's the same theory that's  
 25 being referenced in 139, so there's nothing

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1 not thought about that particular  
2 topic.  
3 MR. BRIDGES: Okay. I think  
4 we'll pause here and reserve the rest  
5 of the time for a later visit with  
6 you, Mr. Jarosz.  
7 Kevin, this is in reliance on  
8 an exchange of correspondence between  
9 Matt and you, I believe. If, for some  
10 reason -- well, no. I think that's  
11 all.  
12 Anything else?  
13 MR. FEE: Well, I don't have  
14 any questions.  
15 Do you guys have any questions?  
16 MR. REHN: Not at this time.  
17 MR. CUNNINGHAM: No.  
18 MR. BRIDGES: Great. Thank  
19 you.  
20 THE WITNESS: Thank you.  
21 THE VIDEOGRAPHER: All right.  
22 Off the record at 4:31. This ends  
23 media unit number 3 and ends testimony  
24 for August 27th, 2015.  
25 \* \* \*

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1 (Witness excused.)  
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3 (Off the record at 4:31 p.m.)  
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1 CERTIFICATE  
2  
3 I do hereby certify that I am a Notary  
4 Public in good standing, that the aforesaid  
5 testimony was taken before me, pursuant to  
6 notice, at the time and place indicated; that  
7 said deponent was by me duly sworn to tell  
8 the truth, the whole truth, and nothing but  
9 the truth; that the testimony of said  
10 deponent was correctly recorded in machine  
11 shorthand by me and thereafter transcribed  
12 under my supervision with computer-aided  
13 transcription; that the deposition is a true  
14 and correct record of the testimony given by  
15 the witness; and that I am neither of counsel  
16 nor kin to any party in said action, nor  
17 interested in the outcome thereof.  
18  
19 WITNESS my hand and official seal this  
20 11th day of September, 2015.  
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<%signature%>  
*Dustin Howard*  
Dustin Howard, NDR, CRR  
Notary Public

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