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Liberating America's secret, for-pay laws

By Carl Malamud at 10:29 pm Monday, Mar 19

[Editor's note: This morning, I found a an enormous, 30Lb box waiting for me at my post-office box. Affixed to it was a sticker warning me that by accepting this box into my possession, I was making myself liable for nearly \$11 million in damages. The box was full of paper, and printed on the paper were US laws -- laws that no one is allowed to publish or distribute without permission. Carl Malamud, Boing Boing's favorite rogue archivist, is the guy who sent me this glorious box of weird ([here are the unboxing pics for your pleasure](#)). I was expecting it, because he asked me in advance if I minded being one of the 25 entities who'd receive this law-bomb on deposit. I was only too glad to accept -- on the condition that Carl write us a guest editorial explaining what this was all about. He was true to his word. -Cory]



BOING BOING OFFICIAL GUEST MEMORANDUM OF LAW

To: The Standards People
 Cc: The Rest of Us People
 From: Carl Malamud, Public.Resource.Org
 In Re: Our Right to Replicate the Law Without a License

I. "Code Is Law"—Lessig

Did you know that vital parts of the US law are secret, and you're only allowed to read them if you pay a standards body thousands of dollars for the right to find out what the law of the land is?

Public.Resource.Org spent \$7,414.26 buying privately-produced technical public safety standards that have been incorporated into U.S. federal law. These public safety standards govern and protect a wide range of activity, from how bicycle helmets are constructed to how to test for lead in water to the safety characteristics of hearing aids and protective footwear. We have started copying those 73 standards despite the fact they are festooned with copyright warnings, shrinkwrap agreements, and other dire warnings. The reason we are making those copies is because citizens have the right to read and speak the laws that we are required to obey and which are critical to the public

Apps for Kids 014: Combing

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safety.

When Peter Veeck posted the Building Code of Savoy, Texas on the Web, the standards people came after him with a legal baseball bat. The standards people run private nonprofit organizations that draft model laws that states then adopt as law, through a mechanism known as incorporation by reference.

Peter thought the people of his town should be able to read the law that governed them. But the standards people were adamant that the model building codes were their copyright-protected property and that nobody could post this information without a license, nobody could copy their property without paying the tollmaster.

The U.S. Court of Appeals disagreed, saying that there is a "continuous understanding that 'the law,' whether articulated in judicial opinions or legislative acts or ordinances, is in the public domain and thus not amenable to copyright." *Veeck v. Southern Building Code Congress*, 293 F.3d 791 (5th Circuit, 2002).

II. "If a Law Isn't Public, It Isn't a Law"—Justice Stephen Breyer

Based on the Veeck decision—and a long line of other court opinions that steadfastly maintain that public access to the text of the laws that govern us is a fundamental aspect of our democratic system—Public.Resource.Org has been posting the building, fire, plumbing, and other **state public safety codes** since 2007. For the last two years, we've taken the **public safety codes of California** and converted them to HTML. A group of students in the RDC rural mentoring program have **converted the formulas and graphics** to SVG and MATHML, and we put the whole thing into an **open code repository**.

However, the building, fire, and plumbing codes are just a subset of the technical standards that have become law. Despite the 2002 Veeck decision, standards incorporated by reference continue to be sold for big bucks. Big bucks as in \$65 for a 2-page standard from the Society of Automotive Engineers, required as part of the Federal Motor Vehicle Safety Standards in **49 CFR § 571**. Big bucks as in \$847 for a 48-page 1968 standard from Underwriters' Laboratories required as part of the OSHA workplace safety standards in **29 CFR § 1910**.

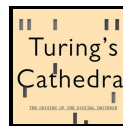
Public.Resource.Org has a mission of making the law available to all citizens, and these technical standards are a big black hole in the legal universe. We've taken a gamble and spent \$7,414.26 to buy 73 of these technical public safety standards that are incorporated into the U.S. Code of Federal Regulations. We made 25 print copies of each of these standards and bound each document in a red/white/blue patriotic *CERTIFICATE OF INCORPORATION* stating that the documents are legally binding on citizens and residents of the United States and that "criminal penalties may apply for noncompliance!"



III. Our \$273.7 Million Gamble on Print



Apps for Kids 013: Match Panic

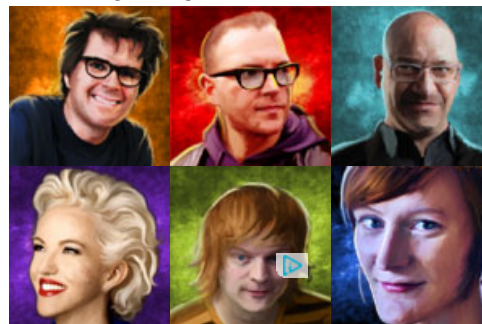


George Dyson's history of the computer: *Turing's Cathedral*

COMICS



HAPPY MUTANTS



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Why print copies you may ask? Frankly, because we're scared and wanted to take a cautious and prudent first step in duplicating these legal documents. With a print edition, we are able to limit distribution with none of those infinite-copy side effects we know and love about our digital world. Print seemed to be a medium the standards people and the legal people could relate to.

Ed Szylo
Insurance

We know from all the copyright warnings, terms of use, scary shrink wrap agreements, and other red-hot rhetoric that accompanies these documents that the producers continue to believe that copies may not be made under any circumstances. Those of you familiar with **copyright math** know that statutory damages for unlawful replication of a document is \$150,000 per infraction. So, even though we strongly believe that the documents are not entitled to copyright protection, and moreover that our limited print run is in any case definitely fair use, if a judge were to decide that what we did was breaking the law, 25 copies of 73 standards works out to \$273,750,000 in potential liability. While whales may make bigger bets, we draw the line at \$273 million.

Those copies were bound up in 27.9-pound boxed sets and dispatched to 3 classes of recipients:

10 sets were sent to the Standards Development Organizations (SDOs) with a *NOTICE OF INCORPORATION*, stating that comments must be received by Public.Resource.Org by May 1, 2012. The recipients include the **American National Standards Institute, American Society of Mechanical Engineers, American Society for Testing and Materials, British Standards Institute, IEEE, International Organization for Standardization, National Fire Protection Association, National Sanitation Foundation, Society of Automotive Engineers**, and the **Underwriters' Laboratories**.

7 sets were sent to U.S. government offices, including the White House, Senate (Senators Grassley and Whitehouse), House (Representatives Issa and Lofgren), National Archives, Administrative Conference of the United States, Federal Trade Commission, and the Copyright Office raising 21 points of law and policy ranging from excessive CEO compensation to cahootenizing in restraint of trade.

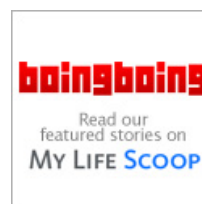
The remaining copies have been reserved for public exhibition and legal defense, including copies furnished to EFF, the Harvard Law School faculty, two copies for the Mainstream Media, and one to our legal counselor, **David Halperin**.

Upon the close of the May 1 comment period, it is our intention to begin posting these 73 standards in HTML and begin the process of providing a unified, easy-to-use interface to all public safety standards in the Code of Federal Regulations. It is also our intention to continue this effort to include all standards specifically incorporated by reference in the 50 states. That the law must be available to citizens is a cardinal principle of law in countries such as India and the United Kingdom, and we will expand our efforts to include those jurisdictions as well.

IV. A Poll Tax on Access to Justice

The argument for the status quo is that it costs money to develop these high-quality standards and that it is the stated public policy of government that these standards shall be developed by the private sector using a voluntary, consensus-based approach. (Having spent a lot of time with these documents, we can vouch that many of these standards are very high-quality technical documents. This is important stuff and groups like ASME and NFPA do a great job.)

All nonprofits need money and SDOs are no exception. But, no matter how you slice the cheese, you can't do this on the backs of the informed citizenry. Access to the law is a fundamental legal right.



Unizilla: Ape Lad's BB T-Shirt



Our exclusive Unizilla T-shirt, from Adam "Ape Lad" Koford, is **\$14.95 for men's sizes** and **\$16.95 for women's sizes**.

Posted by Boing Boing — [Comment](#)

Do these organizations need the revenue from standards sales in order to keep making high-quality standards? While SDOs have come to rely on this very lucrative monopoly over pieces of the public domain, a look at their revenue streams and executive compensation levels indicates that perhaps they don't need quite as much as they're getting. They all have a variety of revenue streams in addition to document sales ranging from membership fees to conferences to training and directed research (often done with grants, subsidies, or direct support from government). As 501(c)(3) nonprofits with an explicit goal of making their standards into law, SDOs have moral and legal obligations to make those standards that have already become law available to the public and in no case can they prohibit others from doing so.

The scale of these operations is indicated in Table 1, which lists the CEO compensation for ten leading standards-making nonprofits. (ISO refuses to divulge executive compensation despite their status as a nongovernmental organization based in Switzerland.)



Table 1: Compensation of Major Nonprofits Involved in Standards Setting

Rank	Name of Nonprofit Organization	Name of Leader	Year	Amount
1.	Underwriters' Laboratories	K. Williams	2009	\$2,075,984
2.	National Sanitation Foundation	Kevin Lawlor	2009	\$1,140,012
3.	British Standards Institution	Howard Kerr	2010	\$1,029,161
4.	National Fire Protection Association	James M. Shannon	2009	\$926,174
5.	American National Standards Institute	Saranjit Bhatia	2010	\$916,107
6.	ASTM International	James A. Thomas	2009	\$782,047
7.	IEEE	James Prendergast	2009	\$422,412
8.	Society of Automotive Engineers	David L. Schutt	2009	\$422,128
9.	American Society of Mechanical Engineers	Thomas G. Loughlin	2009	\$420,960
10.	The United States of America	Barack Obama	2011	\$400,000

The status quo assumes that the only way to fund a standards-making process is to charge lots of money for the end product. But that is a self-serving self-delusion. The SDOs would actually grow and prosper in an open environment, and they would certainly carry out their mission more effectively. They might need to change their business models, but hasn't the Internet made the rest of us change our business models?



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V. “Let Every Sluice of Knowledge Be Set A-Flowing”— John Adams

The Internet was built on open standards that are freely available. Many readers may not realize it, but there were originally two Internets. The one we use is based on TCP/IP and was developed by the IETF and other groups such as the W3C. But, there was another Internet called Open Systems Interconnection (OSI) which was being pushed in the 1980s and early 1990s by the International Organization for Standardization (ISO) and other SDOs. The OSI Internet was based on very expensive standards and it failed miserably. It was open that won and open that scaled.

It is our contention that the physical standards that we're posting are just as important as Internet standards. By making things like the National Fuel and Gas Code, the standard for safety in wood and metal ladders, or the standards for safety and hygiene in water supplies readily available to all without restriction, we make society better. People can read the standards and learn, they can improve upon them by making searchable databases or better navigational tools, they can build new kinds of businesses.

Innovation and education are just two of the benefits of opening up this world, but at the root are basic issues of democracy and justice. We cannot tell citizens to obey laws that are only available for the rich to read. The current system acts as a poll tax on access to justice, a deliberate rationing and restriction of information critical to our public safety. That system is morally wrong and it is legally unconstitutional.

VI. Supporting Materials

In response to a petition drafted by Professor Strauss of Columbia Law School, the Office of the Federal Register is **taking comments from the public** as to whether they should provide greater public access to standards incorporated by reference. **You have until March 28 to respond. Please let them know what you think!**

The Administrative Conference of the United States recently **considered the issue** of Incorporation by Reference, but ended up not taking any significant action. A **particularly strong letter of protest** was submitted by EFF.

For makers and doers interested in the craft of public printing, we posted **photographs of the construction** of these boxes of in our print factory.

A copy of the **packing slip that was in the boxes**, including the *NOTICE OF INCORPORATION*, the shipping manifest, and the 7 letters of transmittal to government officials is available for your review as a PDF file as is a sample *CERTIFICATE OF INCORPORATION*.



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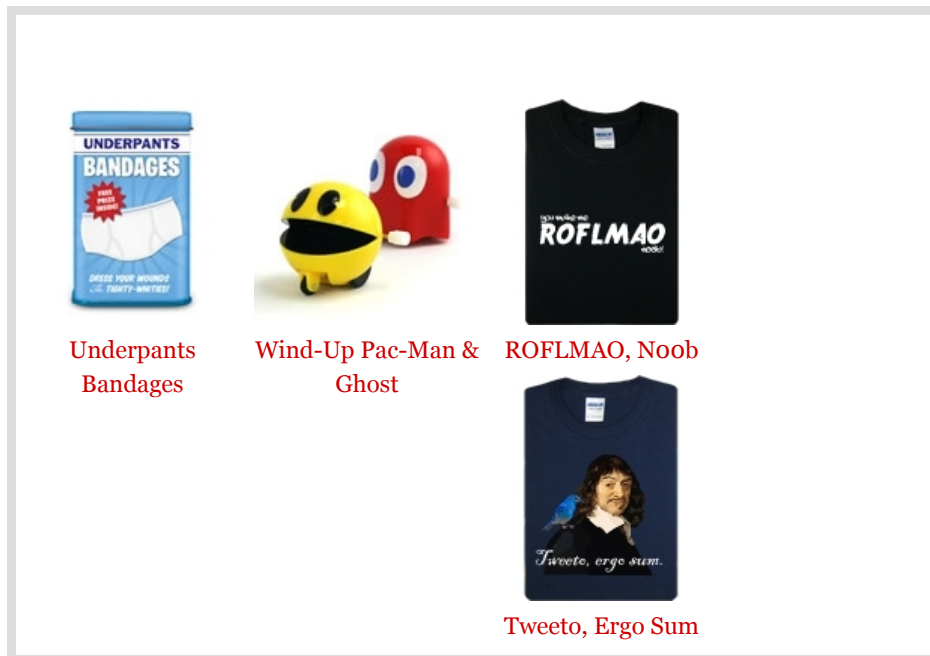
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CARL MALAMUD

← PREVIOUS POST!

NEXT POST! →



Like and 42 others liked this.

Showing 123 of 125 comments

Sort by oldest first



Gene Poole, I'm not arrogant; I'm just right.

Either make all laws freely available to the public or accept ignorance of the law as a valid defense. Seems cheaper to make the law available.

03/19/2012 10:47 PM 87 Likes

Like Reply



Lemoutan, Semi-wit from demi-monde on hemisphere

By the principle of "*If you want to achieve something, legislate for its opposite*" I suppose you could also level the playing field by making *all* laws pay-per-view. And you wouldn't get a free pass simply because you were a law-maker.

03/20/2012 01:03 AM in reply to Gene Poole 7 Likes

Like Reply



guanto

They are not exactly laws. It's more along the lines of a law saying, "If you want to make protective shoes you have to adhere to standard 123 by standards organization XYZ." This is, of course, still outrageous but is typically intended for professionals and enterprises for whom this isn't a huge expense.

There are real secret (criminal) laws whose mere existence is completely hidden from the public. Not sure if we should use the same words to

describe those and standards.

Edit: Also, read Bahumat's comment below; he's spot-on, standards are important and expensive to produce. Difficult to solve; if everything were funded by the public you'd have people complaining that they shouldn't have to pay just so some protective shoe manufacturer (evil corporation!) can do his work.

03/20/2012 01:08 AM in reply to Gene Poole 5 Likes Like Reply



Diogenes

If you want to do A, the government demands that you do B.

Sure sounds like a law to me.

03/20/2012 in reply to 17 Likes Like Reply
04:38 AM guanto



guanto

If you want to become a lawyer, the government demands that you adhere to the rules of your state Bar (and pay thousands of dollars). Are their guidelines law too or is that just common sense? Terminology matters. Laws delegate things to non-government entities all the time, there's no way around it.

The sad truth is, you don't want bureaucrats in charge of technical standards because they know jack squat about them. What's your alternative? Publicly funding everything with the taxpayer footing the bill for complex niche technical standards that benefit a few select companies? No standards at all?

If it was easy it wouldn't be a problem.

03/20/2012 in reply to 9 Likes Like Reply
04:45 AM to Diogenes



Diogenes

My solution? Publish the law at no cost to the reader. I'm sorry if you don't like having to raise taxes to do it. I don't like paying taxes when mega-corps like GE get to slide. Private laws favor the wealthy; our nation favors them more than enough already.

03/20/2012 in reply to 23 Likes Like
05:06 AM to guanto

**guanto**

If you are okay with paying for any and all mandatory standards (again, not laws) with your tax dollars that's totally cool. Something tells me this isn't entirely realistic in the US of A though...

That said, we aren't talking about jaywalking laws here or other things that directly affect the public at large; standards apply to a specific group of professionals. In effect, your suggestion would end up subsidizing "mega-corps," as you put it, who are the main beneficiaries of industry standards.

(Just as an aside, there's something to be said for truly independent standards bodies though. They usually know what they're doing and don't easily bow to government pressure. It's no coincidence that most of them have been private for ages.)

Edit: It's good to see that some posters below (professionals who deal with and are aware of the importance of standards in their jobs) offer a much more measured stance than the average knee-jerker. This ain't no evil government conspiracy.

If you want useful opinions on this, ask people and engineers who use (and pay for) standards in their jobs, not writers or random members of the public who are unlikely to ever come in direct contact with them.

03/20/2012
05:13 AM
4 Likes

in reply
to guanto

Like

**Pope Ranzo**

No, the sad truth is you absolutely want bureaucrats in charge of technical standards. Just make sure they're professionals.

Bureaucrats are the only ones we can trust. Tell me one trustworthy thing about private industry besides the fact that you can trust them to do absolutely anything for a dollar.

03/20/2012
06:47 AM
18 Likes

in reply
to guanto

Like

**eeyore**

I would love to respond directly to the post, but I can't - so here we go.

Standards that carry the force of law are Laws. The law of the land *MUST* be available and accessible for all citizens to read. Period. End of discussion. No further arguments. I don't care if they are also technical standards, and the particulars of their creation are completely irrelevant to this constitutional question. I don't care if we have to find a different way to fund the standards makers - there simply isn't any room to debate one of the founding principles of any democracy.

03/20/2012 10:58 AM
19 Likes

in reply to guanto

Like



cavillis

if you want to become a lawyer you know you need to satisfy the requirements of the state bar

you dont need to pay a private company to send you a paper document telling you that you can become a lawyer by following the state bar

03/20/2012 02:46 PM
1 Like

in reply to guanto

Like



Stephen Rice

cavillis

Nor do you need to pay a private company to find out you need to comply with standards to make a product. It's what the standards are that you need to pay to find out.

03/20/2012 07:08 PM

in reply to guanto

Like



rkolb86

eh

03/20/2012 07:48 PM

in reply to guanto

Like



Robert G

You want technical standards to be published and given away, lol....useless, needless. There are many different standards. Do you publish the FM guidelines for fire protection and say that is the law or NFPA? "Shall follow NFPA 13" means if you build it, you build it to this standard. NOBODY goes to jail for not building what the architect demanded. They just don't get paid.

These standards are the base operating procedures for hundreds if not thousands of individual and niche trades and the people who need to know them have no trouble paying for them. They had to learn them as they apprenticed or trained and were likely given a copy by their employer to use as their design bible. This entire complaint is as innane as someone trying to get the recipe for the colonel's chicken, because they have a right to know what they are eating.

The standards change sometimes yearly, sometimes monthly. To keep the government from needing to become it's own expert testing and compliance office for all construction, production, and manufacturing in the United States of America (which is basically reinventing the wheel) municipalities adopt standards which have been PROVEN through hundreds of years of testing in the case of the ASME boiler code (Which was the first such standard to be adopted as a law by a state), states and the U.S. do this also. When that standard became law, boiler explosions decreased to near non-existence. Fly-by-night installations and shoddy installation practices to save a buck were snuffed out.

So now "boing boing" wants to say "ENOUGH!" I just have one question, who the hell are they and what do they know about this topic whatever? How many centuries have they been testing the metal of what they claim? These are not tax laws or laws about having handrails on staircases. These are requirements and limitations to the coverage of a certain type of sprinkler head over a certain type of hazard at a certain height and orientation. These are requirements and limitations regarding the wiring of cooling towers and the how many BTU's of cooling may be applied to a certain volume of space. Kudos for getting 900 responses, but this Double major in Criminal Justice and Mechanical Engineering with fifteen years in construction will argue with anyone who wants to compare this to some freedom of information beef.

#INNANE.

03/20/2012
08:52 PM
3 Likes

in reply
to guanto

Like



twency

Robert G: " This entire complaint is as innane as

someone trying to get the recipe for the colonel's chicken, because they have a right to know what they are eating."

Except nobody gets fined or goes to jail for not knowing what's in the colonel's chicken.

03/20/2012 10:44 PM 1 Like
in reply to guanto Like



catsforcancer

This comment was flagged for review.

03/20/2012 08:15 AM in reply to Gene Poole Like Reply



EH

Yeah, I'm clicking that blind link.

03/20/2012 08:31 AM 11 Likes
in reply to catsforcancer Like Reply



James King

It goes to something called the "Manhood Academy," whatever that is.

03/20/2012 09:35 AM 4 Likes
in reply to EH Like Reply



catsforcancer

This will help your tiny brain out:

<http://www.youtube.com/watch?v...>



Today 12:32 PM in reply to EH Like Reply



YanquiFrank

Exactly. On a related topic, Obama claims he has the right to keep certain law secret. Specifically, he claims that the interpretations of law he uses to decide whether to assassinate US citizens can be kept secret.

These are interpretations of law, not the laws themselves. However, I would ask what the difference is: if we don't know how the law is used how do we know what the law is? His claims to secret law seem to contradict this Supreme Court decision. Hmmm...

Yesterday 11:26 PM in reply to Gene Poole Like Reply

**Lisa Wensmann**

Not to mention the fact that he claimed he was going to be more transparent in his governing

Today 11:48 AM in reply to YanquiFrank

Like Reply

**Brainspore**

I used to get in arguments with people who thought there must be something wrong with our penal system if inmates are allowed to access an on-site law library. I always countered that knowledge of the law is one of the few things that no person—criminal, cop, lawyer, layperson, whatever—should ever be denied.

If it's in the rulebook we all have to abide by then it's something that should be shared with all the players.

03/19/2012 11:04 PM 24 Likes

Like Reply

**GrumpyFan**

Add on to your last sentence, "should be shared with all the players openly and freely."

03/20/2012 06:46 AM in reply to Brainspore 12 Likes

Like Reply

**Jim Saul**

I guess the Vorgons weren't parody after all.

03/19/2012 11:14 PM 24 Likes

Like Reply

**TimRowledge**

I think that if you check with the relevant standards document (available at a small but charming fee) you will find that the proper spelling is 'Vogons'.

03/20/2012 06:34 PM in reply to Jim Saul 5 Likes

Like Reply

**TWX**

No, they're not.

I attempted to find information for TIA/EIA 568-C and related standards for "Structured Cabling", which is for the installation of telephone and Ethernet cabling using fiber optic and copper media, and it's about \$1300 for the documents. FRIGGIN' RIDICULOUS.

03/20/2012 08:17 PM in reply to Jim Saul 3 Likes

Like Reply

**Jim Saul**

I'm surprised this post has gotten to 100 comments without anyone mentioning that this is basically a modern version of the original utility of freemasonry... maintenance of tradecraft control by strict defense of asymmetric information.

Now, of course, like everything else, the value margin of that asymmetry has been colonized by an infestation of parasitic arbitrageurs.

03/20/2012
08:29 PM

in reply to TWX 4 Likes Like Reply



Bahumat

As an Occupational Health and Safety professional, I run into this bullshit all the time. The common public has NO IDEA how much of their day-to-day lives are governed by pay-for-knowledge laws.

Thank goodness for folks like you and your group! (Can you guys do Canada next?)

As an aside, I don't *entirely* begrudge the standards-setting bodies. They lobby for inclusion into legislation, yes, but it is ultimately legislators who are incorporating standards into law that are to blame.

The solution would seem to be that the government should just negotiate a license with the standards body for infinite reprint of the standard, but that then leads to a business model where the standards bodies can potentially charge the government for each update.

No party is innocent in the state of affairs (and to be fair, there are some legitimate reasons for this model existing, mostly under the "lesser of two evils" line of reasoning), but I would say the balance of blame rests on legislators.

Unfortunately, the cleanest solution is also the least fair: Have the government pass a law allowing them to, at a flat fee, purchase reprinting rights from a standards setting body for unlimited reprint and inclusion in legislation. But that opens an ugly can of worms over the government then getting to dictate the price of your intellectual property. And unlike a very great deal of bullshit IP out there, a great deal of the work set out by these standard-setting bodies is legitimate and required hundreds or thousands of hours of professional work and consultation, alongside engineering tests, etc.

Another solution is to prevent or forbid the government from legislating in private code at all. But the problem there is that legislators aren't engineers, they aren't health and safety professionals, and they don't have industry experience or background education to fundamentally understand the particulars of niche industries or highly technical subjects. And having the government fund all this instead leads to burdening more cost onto the general taxpayer base, and inevitably slows the rate of legislation keeping pace with technology / work practices.

I don't want to defend the practice as a whole, but it has some strong advantages; especially in highly technical and specialized fields that are frequently evolving. Many of the private codes that end up incorporated into legislation update regularly, every three to five years. This is equal parts evolution and profit margin driven.

And if you thought the DRM on movies and games is obnoxious, y'all ain't seen NOTHING until you're dealing with the DRM they slap on most digital access

for codes and standards, ugh!

03/19/2012 11:15 PM 22 Likes

Like Reply



Greg Miller

Possible idea: Have them produced as a fixed-price contract for the government, at a price that meets, say, half the cost of producing these things. Have them freely available to the citizenry. However, in order to use them commercially, you must license them from the standards organizations (which meets the other half of their costs). Maybe also restrict the non-licensed publishing of them (though that probably opens a whole nother can of worms)?

This allows easy public viewing/comment/improvements, while keeping the standards organizations supported.

Would this be viable? Any thoughts?

03/20/2012 06:18 AM in reply to Bahumat 5 Likes

Like Reply



EH

I think public works should be usable by the public, so just have the gov't pay as a work for hire. No licensing garbage.

Like normal countries do.

03/20/2012
08:33 AM
6 Likes

in reply to Greg
Miller

Like Reply



zoink

How about the government simply pay the experts to develop the standards on a work-for-hire basis? In that case, the work is performed on behalf of the government, and is therefore automatically in the public domain. The experts get paid for their time, and so have no right to complain.

03/20/2012 09:39 AM in reply to Bahumat 9 Likes

Like Reply



Tynam

This. I've written industrial standards documents for companies I worked for, in difficult and critical areas. There's no reason professionals can't do the same for government.

03/20/2012
10:19 AM

in reply to zoink 2 Likes

Like Reply



Elizabeth Rubenstein

Thank you for making this material available!

Our "leaders'" system of entitlement and exclusion and the desire for monetary profit above all other needs is running our country into the ground.

I hope that by my grandchildren's generation they'll be able to shake their heads and laugh at the ridiculous profiteers and knowledge hoarders. By then, instead

of living by the credo of "mine, mine, mine!" adults will understand that ideas belong to us all...

03/19/2012 11:18 PM 5 Likes

Like Reply



rageaholic

95 theses for the information-sharing age

03/19/2012 11:51 PM 2 Likes

Like Reply



Brent Bucci

Where is the torrent?

03/20/2012 12:04 AM 9 Likes

Like Reply



wibbled_pig

420,960..

so close, yet so far away

03/20/2012 01:12 AM

Like Reply



PaulMorel

Wow, great post. I can't disagree with a single word. Very ballsy.

03/20/2012 01:14 AM 3 Likes

Like Reply



tw1515tw

Erskine May, the rule book for the British parliamentary democracy, is only available in £244 (or £238 from Amazon) paper format. It's copyrighted, exempt from Freedom of Information requests, and there's no legally available copy online (though you'll find an illegal copy by googling "Parliament Blown Open by Hackers").

So if you're a UK citizen and you want to know how your country's parliament is run, you need to go to your local library and see if they have a copy or stump up £244.

03/20/2012 01:46 AM 4 Likes

Like Reply



Cynical

My first thought was: "Why stop at \$273 million? Print so many that the projected damages would be more than US GDP, then they will never be able to claim for it."

...Turns out it would take about 13.6m copies to outweigh a GDP of \$150 trillion at \$11 million a pop. Still, 380 million lbs of paper = 190,000 tons @ \$1000/ton wholesale = \$190,000,000.

I say go for it. Print double-sided and it's only \$95 million dollars, or a third of your projected losses if a judge, flying in the face of tradition, decides to back corporate interests over the public good. You'd only have to post one to every single person in New York, Los Angeles and Chicago combined to get away with

it too. Show those motherfuckers you mean business.

03/20/2012 01:48 AM 2 Likes

Like Reply



The Rizz

Or, they could just scan them and transfer it back and forth between two computers a few billion times... after all, damages are always per copy, not per person looking at it, right?

03/20/2012 02:36 AM in reply to Cynical 12 Likes

Like Reply



jandrese

Just put it up on the Pirate Bay or something. Copyright damages are always calculated off of every copy made, which is why the music industry always claims that a single album suffered 3 trillion dollars in damages from being put up in a torrent.

Your premise that this would somehow prevent the copyright holder from suing is wrong however. We have seen outrageous claims like that many times in the past.

03/20/2012 08:31 AM in reply to Cynical 2 Likes

Like Reply



Jim Saul

Use the file name "Christina Hendricks Sex Tape" and you'll have your 13 million copies before you're done seeding.

03/20/2012
07:35 PM

in reply to
jandrese

3 Likes Like Reply



invictus

I think you've got an extra zero in there, given that the planet's GDP in 2010 was USD63.12 trillion. The World Bank puts the US GDP for 2010 at USD14.59 trillion, so it'd "only" take 1,327 copies.

03/20/2012 08:56 AM in reply to Cynical 3 Likes

Like Reply



Cynical

Right you are; maths and lack of sleep are never a winning combination...

All the more reason to go for it!

Yesterday 07:14
AM

in reply to
invictus

Like Reply



James Agenbroad

Keep in mind that these are copyrights, not patents. So, like receipts, only the "expression" is protected, not the underlying ways of doing things. The idea that there is anything "expressive" about saying something like "2x4s placed 16" on center" seems to be pretty absurd. If it isn't possible to express something in

another way, it isn't protected by copyright.

03/20/2012 03:03 AM 7 Likes

Like Reply



teapot

Bad. Ass.

All the best to public.resource.org - I commend your dedication to the free access of **public** information. The US taxpayer payed for the creation of these documents so the US taxpayers should have unlimited access to them. I know that the boxes you sent EFF & Harvard Law School will help many people in the future

03/20/2012 03:35 AM 6 Likes

Like Reply



guanto

That's the problem, public funding (usually for certain specific standards) is usually a rather small part of the income of standards bodies. You could argue that these standards should be freely available (and I'd agree) but that doesn't even begin to solve the problem of privately funded and developed standards (at great cost!) being referenced in laws. Not an easy problem to solve...

03/20/2012 03:45 AM in reply to teapot 1 Like

Like Reply



teapot

Hm... I see where you're coming from. The thing that confuses me is that many standards were developed through the R&D of private companies.. private companies that used the R&D to create products for profit.

Perhaps there should be some sort of write-off deal where if the government includes standards in a law then the company which funded development of those standards can apply for a tax write-off in exchange for their work - and the scale of the write-off could be pegged to how much of a loss the company incurred to develop standards that did not result in a profitable product.

It is quite a conundrum indeed but, like commenter #1 (whose comment I liked purely for having an awesome avatar), it seems to me that if you expect people to live by the laws of the land then you should allow people to know what those laws are (without having to employ legal counsel).

03/20/2012
04:59 AM

in reply to
guanto

2 Likes

Like Reply



Pope Ranzo

We are paying for every one of these standards. Every single penny. One way or the other, we pay for it.

And the notions that these standards are developed "at great cost" is weak. Those costs are entirely passed along to consumers.

Maybe it's less efficient to have these things done publicly, but considering the potential for corruption and wrongdoing in letting standards with the force of law remain secret, we're better off just paying for them.

I'm a lot more concerned about allowing industry groups and lobbyists to write actual laws, as is common on Capital Hill (sic). Why are energy companies involved in policy-making? And worst of all is groups like ALEC. Secretive (yes, they are secretive) organizations that push an anti-democratic, anti-worker, anti-family agenda.

03/20/2012
06:55 AM

in reply to
quanto

6 Likes Like Reply



Jens Pettersen

What you are advocating is hence a massive expansion of public sector employment so that government employees can set mandated designs for everything from soda cans to bicycle helmets.

03/20/2012
09:32 AM

in reply
to Pope
Ratzo

Like Reply



eeyore

Dear Jens.

In any economic discussions, it is important to keep in mind certain basic, fundamental economic truths.

In this case, you need to remember that it is possible to do work for someone WITHOUT being directly employed by them. It is, in fact, the basis of much of our economy.

Thus, it is COMPLETELY possible for the government (or private entity) to fund an activity, and not employ a single person that is engaged in it.

If this concept still seems fuzzy, let me point you to the tiny, obscure field of Manufacturing, where huge companies like Apple and the US Military, that ostensibly "make things" actually do no such thing.

They contract with other companies - Like Lockheed Martin and Foxconn - to actually make them. More importantly - and you'll want to pay close attention to this part - they don't directly employ a single soul on the production line.

So, with that little misunderstanding out of the way, we can put away your cute little straw man, and get to the business of real debate.... So... do you have a substantive argument against the idea that the law

should be freely and openly available to all people who are expected to abide by it?

03/20/2012

Like

11:44 AM

in reply

4 Likes

to Jens

Pettersen



Jens Pettersen

Dear eeyore,

that was a nice and condescending little solo speech, except that Pope Ratzos explicitly said earlier in this discussion, as a reply to a post you have yourself replied to:

"No, the sad truth is you absolutely want bureaucrats in charge of technical standards. Just make sure they're professionals. Bureaucrats are the only ones we can trust. Tell me one trustworthy thing about private industry besides the fact that you can trust them to do absolutely anything for a dollar. "

It is hence difficult to envision that Pope Ratzos is advocating anything but a massive increase in public sector employment.

Certainly, if the current situation where bureaucrats decide which private sector standards to adopt (with or without amendments) is unsatisfactory to him and distinctly different from a situation where "professional" bureaucrats are "in charge of" the standards, a reasonable reading of "in charge of" can only imply direct bureaucratic creation or technical control.

Don't let the door hit you or the straw man you're carrying on the ass on the way out.

Edit: And I do have a substantive argument against the cause described, but I can't be bothered to write it here. The level is pretty low as evident per the above and I expect you to remain marginal.

03/20/2012

Like

12:02 PM

in reply

to Jens

Pettersen



Antinous / Moderator

There are already rules for most of that. That's why we don't make our soda cans out of lead.

03/20/2012

Like

02:17 PM

in reply

2 Likes

to Jens

Pettersen



Jens Pettersen

Antinous/Moderator: If there 'already were rules for most of that' set by the government alone, referring to 'everything', then the topic of discussion would not have come up at all. Yes, there are rules, but obviously not the same type of rules as other rules being discussed.

03/20/2012

Like

03:11 PM

in reply

to Jens

Pettersen



Todd Newman

I don't know if I agree with your statement "US taxpayer payed for the creation...". I'm on a committee for ASTM. My company pays for my annual membership, so I don't see how the US taxpayers paid for the creation of the standard that I help produce. That might not be the case with all of these, but I suspect it is the case with most.

That being said, the cost of the documents can be a burden to engineers.

03/20/2012 09:29 AM in reply to teapot

Like Reply



Joey Seiler

Obviously, the standard caveats apply (this is a question for [Public.Resource.org](#)'s lawyer; this isn't legal advice; I'm not a lawyer), but I think they've got the statutory damages gamble wrong. The law doesn't apply statutory damages for each infringing act related to a work, but rather to each work that is infringed, regardless of how many times: "the copyright owner may elect ... to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work." 17 U.S.C. 504(c)(1)

In other words, their gamble is \$10,950,000 (\$150,00 x 73 works) regardless of how many copies are made. That's a lot bigger than the current estimate, but the risk is the same whether it's done in a limited print run or a single copy is made online. Of course, that could be higher or lower depending on whether the orgs opt to identify actual damages.

03/20/2012 04:56 AM 1 Like

Like Reply

weldeng



I'm conflicted about this. As a welding engineer, I deal with standards that are incorporated into law every day such as requirements that pressure vessels be built to ASME standards, or structural members be built to American Welding Society (AWS) standards, etc. I'm a member of these groups, so my dues go to pay for some of this stuff, which I then in turn have to pay for (or my company does) to make use of. These groups are private organizations that create peer reviewed standards for construction.

While these are incorporated into law by reference, I think it's a bit fair for the organizations that create them to charge a fee for them. For one, it's their bread and butter. AWS has made no secret it makes most of it's money on publishing standards. If these were to be free to the public, these organizations would have to either be paid via taxpayer money or some other method, or they would have to find a new revenue source or risk folding, and then who's going to publish the standards? Alternatively, you could change the law to not reference them specifically, and make it mandatory to follow some "nationally recognized standard", but this could result in sub-par manufactured items.

I could go on about this, but I have to go find who stole my copy of one of these standards so I can write a procedure in accordance with it.

03/20/2012 05:09 AM 4 Likes

Like Reply



Marktech

While these are incorporated into law by reference, I think it's a bit fair for the organizations that create them to charge a fee for them.

This was the way I was thinking as well. What might work is if the government mandates release of standards on a not-for-profit licence. You can look at them for nothing: if you're using them commercially, you pay a fee.

I was struck by seeing several standards in the package which have been superseded; not that it addresses the point of the article, but I wondered how out-of-date some of the legislation must be.

03/20/2012 05:58 AM in reply to weldeng 2 Likes

Like Reply



weldeng

The government doesn't always adopt the latest standard. Look at nuclear fabrication. Last I heard the NRC only adopts the 1998 Edition through 2000 Addenda for ASME Section III (Nuclear Vessels). The 2012 Edition will be coming out here soon. They just approved the 2009 Addenda of ASME NQA-1, a jump from the 1994 Edition.

03/20/2012
06:11 AM

in reply to
Marktech

Like Reply



HarveyBoing

You're right, the current business model assumes profit made on publishing. So? What's that got to do with the price of tea in China?

There are a host of problems caused by the current model (summarized neatly by the article here), not the least of which include the constitutional need for a person to have free access to laws that affect them, and the inhibiting effect the model has on those who want to operate within those laws but aren't necessarily able to afford the fees charged by such organizations (imagine, for example, a software entrepreneur who wants to write a program that assists in the design of systems that incorporate legally required standards).

Innovation is fostered by open access to knowledge, and in any case the moral and constitutional duty of the government to provide free access to *all* law, even that which was incorporated by reference, trumps any concerns about business model.

The answer is to fix the business model, not to continue this backwards "pay up if you want to know what laws apply to you" approach. Standards organizations have an important place in our legal system, but not at the expense of making the governed ignorant of the laws imposed on them.

03/20/2012 07:59 AM in reply to weldeng 4 Likes Like Reply



helleman

Americans are so scared of taxes. Kind of cute, really.

Its easier to take if you remember that taxes buy you a functional society. Invest in things that serve the public good.

Do having laws that everyone can access serve the public good? Yep? Pay taxes for it. Suck it up buttercup.

03/20/2012 05:59 AM 15 Likes Like Reply



msbpodcast

Anything that becomes a law **must** have **all** of the relevant text included into it, otherwise its **not** a law.

We then demand (because we're the ones footing the bill with out tax dollars,) that the law be distributed electronically as PDFs.

Let the organizations that keep the standards and develop new standards keep their standards (bottled up as tight as they want, under lock and key, in a safe at the bottom of the Marianas trench if that's what they want,) right up until it becomes **public domain** at which point the legislators buy ONE copy for inclusion into an official .PDF.

03/20/2012 06:31 AM in reply to helleman 7 Likes Like Reply



Guest

Comment removed.

03/20/2012 07:49 AM in reply to helleman Like

**EvilTerran**

Nice work strawmanning straight from "functioning society" to "eutopia" (sic). I don't see where [helleman](#) said taxes would lead to perfection.

You're also kinda stretching the definition of "redistribution of wealth" when you imply that it means any tax. The dole? Sure, that's wealth redistribution. Using taxes to pay for, say, public highways? Not so much.

03/20/2012

in reply to Guest 4 Likes Like Reply

08:19 AM

**Marja Erwin**

Well, it's redistribution from people who walk or ride bikes to people who have cars. Even local streets are often impassable to bikes because the left-turn lanes use pressure plates or metal detectors, and they are calibrated to cars, not bikes. And federal highways are closed entirely and often require multi-mile detours to find a crossing. And it's redistribution from local farmers to the agriconglomerates. And it's redistribution from local stores to the big-box stores.

03/20/2012

in reply to Like Reply

10:32 AM

EvilTerran

2 Likes

**eeyore**

No, it isn't redistribution of wealth. Guess why you can walk, or ride a bike, and still get enough food to keep from starving? Even if you are a "locavore", guess how those farmers get to and from the farmers market. Guess how their equipment, their seed, and their fertilizer (yes, even the "organic" safe kind) were delivered to their farms.

Guess how their kids get to and from school, and the teachers that teach them. Guess how the power company gets to you, and your local farmers and small businesses to install service and handle outages - how about sanitation. Guess how the customers and employees for most small businesses get to them everyday (yes, even if they use public transportation, there is still a road or rail under them).

Yes, those evil, terrible roads that make it possible for people like you to choose to not own a car.

Clearly, society is picking your pocket to no conceivable benefit to you.

03/20/2012
11:57 AMin reply
to Marja

Like

Erwin

2 Likes

**David Craig**

Everything is redistribution. When you pay Macdonalds for a burger, that's redistribution. When you open your paycheck, that's redistribution. When you pay your taxes, that's redistribution.

The whole economy relies on redistribution.

Society has a right (and duty) to adjust that distribution, for the interests of society as a whole, and the individuals within it. There's no state of holy, natural distribution.

03/20/2012
12:20 PMin reply
to Marja
Erwin

Like

3 Likes

**Jellodyne**

I'm afraid of people like yourself who honestly believe your own absurdo reductio. Do you not believe there are at least some things which should be done on a civic basis -- ie done by a government, funded by taxes? If not, you're an anarchist, and if so, now we're just having a reasonable discussion on what those things should be.

03/20/2012
08:56 AM

in reply to Guest 3 Likes

Like Reply

**Erico142**

Aren't all these referenced standards typically available at a public library? I know the building code stuff has been every time I've had to consult it.

03/20/2012 05:59 AM

Like Reply

**Andrew Singleton**

It depends on the librry and how well funded it is. Sure it's Nice to Have information, but it might not have been purchased yet.

Granted it IS something that'd recieve foot traffic for since it's expensive and also professionally usefu. However it'd probably be one of those thigns that you would have to leave IN the library rather than lend out.

03/20/2012 06:46 AM in reply to Erico142 1 Like

Like Reply

**Carl Malamud**

One of the more frustrating aspects of technical standards is that they are not in most public libraries because of the cost. Indeed, they aren't in most university libraries either. Last time I looked, I saw 4 libraries in the entire U.S. that had a reasonable collection of ANSI and other tech

standards.

03/20/2012 11:46 AM in reply to Eric0142

Like Reply



eeyore

From experience, no.

We are a small specialty manufacturer and we just started making puzzles that fall under the special regulations for children's toys. The standard was *not* available in our local library system (and we are in one of the largest metroplexes in the country). We had to spend \$90 for a crippled PDF version. The print version was more than twice as much... all to learn that our volume is small enough that we qualified for an exception to the (one) rule in question.

03/20/2012 12:01 PM in reply to Eric0142 2 Likes

Like Reply



TheMadLibrarian

I really wish we could afford copies of all the relevant codes and standards, or just be able to give someone an address where they could find them online. As it is, much of it is behind paywalls we can't afford to breach, and paper copies would easily fill much of the library's shelving.

From a personal standpoint, you would not believe the amount of digging I had to do to determine the necessary legal steps to build a small addition to my house. Even then, my building permit might be denied because I was unaware of some obscure point to which I didn't have access.

03/20/2012 04:29 PM in reply to Eric0142 2 Likes

Like Reply



weldeng

I'm not afraid of paying taxes. I'm just saying it has to be paid for one way or the other. These are private organizations who publish for the greater good. The ASME pressure vessel code was created because people blew themselves up with pressure vessels.

03/20/2012 06:09 AM 3 Likes

Like Reply



weldeng

Also, I object to the title implying that these are "secret". They are hardly that. They're referenced in the law, so it's not like they're hidden. Do you really want the law books full of formulas, diagrams, and all that? The main argument is that you have to buy them. So what? Most people looking at these standards are the people using them to manufacture or comply with. I'm not against putting them online in some format for reference, but as I've said before, the authors need to get paid. Hit an engineering library if you need.

This also isn't an American thing. I pay for ISO standards, European standards (PED, etc), Canadian standards. Remember, the law references these because the people who write are subject matter experts and know better than some Senator who thinks the interwebs are a series of tubes.

Lost my train of thought. Writing at work is hard.

03/20/2012 07:17 AM 1 Like

Like Reply

**Brainspore**

Do you really want the law books full of formulas, diagrams, and all that? The main argument is that you have to buy them.

I don't think every American should necessarily get a free hardbound copy of every law book out there. But I do think they should have free and convenient *access* to those books (at the library, city hall or wherever). More importantly, all the information about those laws should be available online, for free.

I'm not against putting them online in some format for reference, but as I've said before, the authors need to get paid.

By "authors" do you mean the legislators and aides who write the laws? They do get paid. By our tax dollars. **They aren't entitled to freaking ROYALTIES.**

03/20/2012 10:43 AM in reply to weldeng 1 Like

Like Reply

**mdhattero3**

A lot of these standards are developed by the stakeholders, so yeah, a lot of those people are on the public dime, and those in the private sector should be thankful that they've been invited to help set their own rules.

03/20/2012
09:56 PMin reply to
Brainspore

Like Reply

**Ken Arnold**

I agree that there are complications in how to fund the development of standards if they are then free to the public. But that's true because this is how it has always been done.

One right way to build a new system is to take those things that **should** be true and require by law that they **be** true. Then things have to change, but in ways that you want.

People are clever. They will find a way. There have been many good ideas in this single thread that might be starting points and nobody here has said they build non-profit business models for a living. I'm sure the pros can figure it out. And yes, it may require that we the people pay for things we the people require of we the people to benefit we the people, but then that does seem fair. Fairer anyway than charging only a few affected individuals (such as welders) for a benefit that we all get (standard welding standards that protect public safety).

03/20/2012 07:44 AM 1 Like

Like Reply

**Joel Smith**

If it's law, it has to be freely and publicly available. Period. If it's a government document, it has to be free of a copyright. Copyright implies private ownership and privileged control over content. I don't care what the business model is that allows the creation of the documents, but once they're law, whether by reference or any other mechanism, to declare them anything but free and open is a perversion of the basic principals of an open society, and a free government. Sell commentaries. Sell opinions. Sell guides for idiots. But if it's law, it must be open and freely available.

03/20/2012 07:45 AM 5 Likes

Like Reply

**Mark Courtney**

The government needs to get out of the standards business and stick to its constitutionally laid out guidelines. The free market can regulate its own standards.

03/20/2012 07:46 AM 2 Likes

Like Reply

**Mister44**

The Libertarian in me says "Fuck yeah!" The realist in me says noooooooooo.

Think *CHINA*. If they had their way everything they sent over would be full of lead. Cheap knock offs of safety gear that don't perform the same would flood the market. Corp. America already shows it doesn't give much of a fuck about its customers. Slashing safety for profits would be seen as reasonable in some cases.

03/20/2012 07:54 AM in reply to Mark Courtney 9 Likes Like Reply

**EvilTerran**

Sure. And I'm the Prince of Wales.

Or has the Almighty Free Market dealt with, for instance, Trafigura or Dow Chemicals since I last looked?

<http://en.wikipedia.org/wiki/2...>

<http://en.wikipedia.org/wiki/B...>

03/20/2012 08:25 AM in reply to Mark Courtney 4 Likes Like Reply

**Winkyboy**

Yes, I say that all laws ARE by nature public and must be accessible without impediment by anyone whom they apply to. (Also, I was unable to comment on the

Office of the Federal Register because their form is broken. Not surprising from a government-created website, I suppose.)

03/20/2012 09:03 AM

Like Reply

**Guest***Comment removed.*

03/20/2012 10:07 AM

Like

**Sean Mangan**

You need some relevance to the article - go check if the free market has any.

03/20/2012 11:15 AM in reply to Guest

Like Reply

**spectrewriter**

Seems quite simple: If compliance is mandatory, then it is a law, public for free. This is NOT just a big-business thing. The very argument and those fees are how they KEEP making safety shoes a big-business thing. Free market also finds this objectionable. The everyman, the old-fashioned cobbler, should know what is required to make shoes that qualify as Safety Shoes without laying out \$800 to read the standard.

The research that goes into writing the standard? Part and parcel. If We The People don't care to foot the bill, then We The People don't need/want a law that badly. Either way, requiring anyone to pay a fee for a law that ANY entity/person is required to comply with, is patently unacceptable.

Final thought: Do you REALLY think they did that research and standard-setting on the hope/expectation that there would be people paying those enormous copyright fees? No, this is a Work For Hire in that regard, commissioned by We The People, so We The People do not have to pay to see or use it.

03/20/2012 10:13 AM

Like Reply

**Keith Seymour**

I think the point most people are missing is that we pay either way! As it stands today if a company wants to manufacture safety shoes they buy the standard they are required to and pass the cost on to consumers. It would be more cost effective for the government to fund the development of the standards and make them publicly available, pay once rather than over and over.

The issue with digital public documents then becomes anyone can access them. This means manufacturers in China would have access (for free) to the requirements for safety shoes in America. They would be able (without paying) to compete in our market with an equivalent product. That's both a benefit and a problem, cheap products would be safer and we'd be helping other countries leapfrog our learning curve for free.

Would that be a bad thing?

Keith

03/20/2012 11:05 AM

Like Reply

**Mat_t**

eh, not worth explaining.

03/20/2012 11:19 AM 1 Like

Like Reply



DewiMorgan

As an engineer who's work relies on these standards... this release scares me. Because, as pointed out above, if all standards must be open and public (like the internet ones - free RFCs are a delight), then the government must pay the standards organizations to release them publicly if they wish to add a closed standard to open law.

And that's true no matter how niche the industry, or how few people need access to the standards and how very able those few are to pay the fees.

In such a world, who's standards will they use?

- 1) The industry best standards, crafted by the best people in the industry to do so?
- 2) The lowest bidder?
- 3) The one with the most deep-pocketed lobbyists?

So, eh, it's nice you're potentially saving me a few bucks, but you may actually be damaging the standardization of those industries.

I also think you're barking up the wrong tree unless you've already printed the laws under which the TSA works and are scraping the barrel for other things to print.

Having laws I can't read and can't even *buy* applied to me whenever I go anywhere is scarier than having laws I that can buy applied to my work.

03/20/2012 11:22 AM

Like Reply



StumptownGeek

The standards don't just apply to your work, they apply to anybody who might want to do similar work and the application of those standards affects everyone who uses a product or service resulting from your work.

How am I able to know if you're violating the law when you do your work if I am unable to reasonably know that law?

03/20/2012 11:48 AM in reply to DewiMorgan 1 Like

Like Reply



StumptownGeek

This problem is basically one of unfunded privatization.

The government could set up its own standards creating department, hire people to create the standards, use those standards for legislation and make them readily available. For the US Federal Government there some such entities, most prominently the National Institute of Standards and Technology (NIST).

However, there are a lot of things that government has decided need standards and the full scope of all of them would require expanding the NIST and similar institutions by several orders of magnitude, something the government has

chosen not to do. The government has instead decided to have these activities done for the most part in the private sector.

Some people might object to this activity not being under direct government control but as a practical matter the expertise exists in the people who work in these fields on a day-to-day basis and those who conduct research in these fields. Limiting the standard setting to a government agency would fail to incorporate much of this knowledge and the resulting regulations would likely be inferior both from a technical aspect and in practicality.

However, having outsourced standard setting to the private sector the government needs to pay for those standards if it intends to use them. If the standards are incorporated into law then the government needs to pay to provide free access to them for all affected by the law. It could either pay in advance to have standards developed for public use and made freely available (if no such standards exist, existing standards aren't adequate for the intended purposes or the rights to existing standards are not available) or it could buy the rights to existing standards.

However it chooses to do so, if government privatizes standard setting incorporated into law it needs to pay for that service.

03/20/2012 11:40 AM 2 Likes

Like Reply



jin choung

right. it should just be a different kind of CONTRACTOR.

you pay them to do the work and then you (the govt in this case) own the work product.

i am completely mystified that that is not how it ended up being and instead became our current ludicrous state of affairs. it's completely ass backwards...

03/20/2012 06:44 PM in reply to
StumptownGeek

Like Reply



Scott Jones

Funny that supposed non-profit standards groups are concerned about their "profits" from published standards. Seems to me that the definition of "non-profit" needs to be revisited, and maybe eliminated soon, what with all these groups non-profiting their way to riches via licensing fees.

Regarding these standards becoming law, once they do, they need to immediately and forever more become public domain. Even laws which are no longer in effect remain available for review so that people can study them for their historical and/or cultural impacts on society. If we don't study our past we will surely repeat it.

03/20/2012 11:42 AM

Like Reply



Crede'sCrew

How to you expect company like UL to pay their engineers and standards

underwriters if they can't charge?

03/20/2012 11:49 AM

Like Reply



cavillis

how about the government pays engineers and standards underwriters

03/20/2012 02:54 PM in reply to

Crede'sCrew

Like Reply



Crede'sCrew

Our government is broke. I highly doubt that they will have any money to spend on developing public safety standards. They rather use the money in military related issues. Also, UL is not a non-profit company anymore. They do not get hand me down money from the government (tax payers \$\$\$) and they pay taxes like everybody else.

Today 07:05 AM in reply to
cavillis

Like Reply



JeanClellandMorin

Do I have time to read everything that comes to me via facebook - including this article? Have legislators read all the laws that exist? On paper, our laws probably stretch to the moon and back!!!! Can we just have a big bonfire (lots of fire-trucks standing by) and start over with fair laws and citizen-juries? // Jean Clelland-Morin

03/20/2012 12:36 PM

Like Reply



Shawn Webb

It'd be nice if they put the copies on GitHub.

03/20/2012 01:20 PM

Like Reply



S Halayka

I shall forever get on one knee and bow to you, great sir.

03/20/2012 01:53 PM

Like Reply



S Halayka

P.S. I wonder if the government will make an issue of it. The cascading result would most likely be very interesting, given Anonymous' habit of attacking people who do annoying things with the law.

03/20/2012 01:58 PM

Like Reply



S Halayka

P.P.S. I guess what I'm saying is that this could lead to war if not handled properly. That's not good.

03/20/2012 01:59 PM

Like Reply

**S Halayka**

P.P.P.S. JUST CALLING IT AS I SEE IT. Humans are kind of predictable.

03/20/2012 02:01 PM

Like Reply

**Jim**

Most of you seem to be assuming the value in this equation flows from the authors of the standards to the government and you've got it backwards. By adopting standards from the Southern Building Congress, the state of Texas allows the Southern Building Congress to set the ground rules of the commerce in which its' members are engaged (with non-members).

It's very roughly like letting a player at a black-jack table set the rules of black-jack and then claiming that the dealer is gaining the largest benefit from the situation.

In fact, the US Government should put standards development out for bid in a reverse auction. The association that offers the government the most money, gets to write the standards....

03/20/2012 03:16 PM 1 Like

Like Reply

**mdhattero3**

What Jim said.

03/20/2012 09:57 PM in reply to Jim

Like Reply

**James Fischer**

Nice idea, but check your facts - any lawyer will tell you that the plaintiff is entitled on ONE award of statutory damages for any one registered copyrighted work in any one action, and the number of copies made of the same work would not allow the plaintiff to multiply statutory damages.

The plaintiff may also seek actual damages, the retail cost of the books or pamphlets, and in this case, the number of copies made would matter.

But if you are going to challenge copyright, you should at least read 17 USC § 504(c)(1) Cornell has a very well-formmated set of law book pages online: <http://www.law.cornell.edu/usc...>

"...an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable..."

In the above "an award" means a single award of the statutory damages, not multiple awards.

03/20/2012 03:43 PM

Like Reply

**Jim Williams**

NFPA makes its standards available on the Internet. They are in the form of

read-only, no copy files. I forget if they have indexing available. They are not in the most easily used form, but you can read them. The National Electrical Code costs about \$50--\$100 in written form. Thousands of electricians and inspectors use it evryday.

03/20/2012 04:15 PM 1 Like

Like Reply



Carl Malamud

NFPA and ANSI are the two groups that seem most engaged with the outside world. I'm a really big fan of the NFPA standards. They do a really great job on some really fundamental public safety issues. They also talk to people like me, even though we disagree on some issues. And, both NFPA and ANSI have been actively engaged in the public policy encounters in forums like ACUS.Gov and have been willing to talk about the issues.

The big problem is that the law is ambiguous. On the one hand, we say the law must be available. On the other hand, we incorporate by reference in a fairly arbitrary and bureaucratic matter. You can't have it both ways. I think public access trumps the other considerations, but it is clear that the Veeck decision didn't give a lot of guidance.

In our transmittals, we identified two big issues that need to be resolved.

The first is that standards already incorporated by reference should be available since they are the law. Maybe they shouldn't have been incorporated in the first place, but now that they are the public needs to be able to read them.

The second is that public policy should be examined and revised in light of the advent of the Internet. Our current policies in this area are decades old and obviously don't reflect the reality of our modern life.

03/20/2012 04:55 PM in reply to Jim Williams 1 Like Like Reply



James Penrose

Thirty years ago, I took an oath to protect and defend the Constitution. You guys, by doing this, are doing more than I have done in my thirty years. Keep doing it and we may yet keep the Constitution's head above water and keep the Republic we all love alive and healthy. (Or at least healthier than she has become these last few decades.)

03/20/2012 05:54 PM 1 Like

Like Reply



VE7NDE

See "Edict of government" on Wikipedia.

03/20/2012 06:17 PM

Like Reply



jin choung

wait... cart's WAAAAaaaay before the horse.

WHY are there independent bodies making up standards willy nilly in the first

place?!

that may be a niche they carved out to make a living from "it's the way we've always done it" but who the fuck cares about THAT? if the niche carved out was ass backwards and nonsensical to begin with?

if it's a standard that's enforceable by law, it should be commissioned by law and the standards made property of the state. WTF is so hard about that to understand?

and if it's not a standard enforceable by law, then it's of no concern to the people of the state or its laws.

this is fucking insanely stupid.

03/20/2012 06:39 PM 2 Likes

Like Reply



Marya

I thought a pdf of the NEC was free, but it may be that someone just gave me a copy of theirs, that or there is a free android app.

03/20/2012 07:26 PM

Like Reply



Karl Best

As someone who has spent a greater part of his career in the development of standards and the management of that process, and is employed by a standards developing organization, I feel that I need to weigh in on this issue.

I'll start by stating my agreement with the proposition that any law should be freely available to those who are bound by it. If a standard is referenced as part of the law, and thus acts in a regulatory manner, it should also be freely available.

However, the developer of the standard has the right to be compensated, just as creators or inventors of other works need to be compensated.

A standards developing organization, just as any other for-profit or not-for-profit organization, needs revenue in order to operate. Staff, such as myself, need to be paid in order to do our work. I'd love to be able to volunteer full time to do the work that I do, but I need to pay the rent and buy groceries just as anyone else. The CEO salaries shown in Table 1 may seem excessive at first glance, but ought to be compared to CEO salaries of other organizations of similar size. Just because the organization is performing some sort of service to the public or a specific industry doesn't mean that the organization's staff and management shouldn't be compensated. (I will note, however, that I don't get paid anywhere near those amounts :-)

Standards are generally developed by teams or committees of volunteer experts who are members of the organization that publishes the standard. These volunteer experts usually always work for free; they are paid by their employers to participate, or work on their own time. The standards developing organization provides administrative services and staff to ensure that the work is done according to an approved process, that the standard complies with certain criteria of quality, and provides editorial and publication services, etc.

While any group of people can develop a document and call it a standard, unless it is developed under the auspices and direction of an organization with a recognized process, and is of a certain level of quality, that "standard" is not likely to be accepted by the market.

Not all organizations develop standards that are used in a regulatory manner. Many consortia in the high tech space develop standards that are used as the basis for product development, and oftentimes these standards are distributed at no cost. Product manufacturers pay to join the organization and to send their employees to participate because the companies will benefit from the work produced. But other organizations, such as NFPA, develop mostly standards that are used in regulation, which is not income producing, so the standards must be sold by the organization in order to generate revenue. (Note also that ANSI doesn't develop standards itself; it accredits other organizations who do.)

It is true that most of the work of the development of standards is done by volunteers while all of the profit goes to the organization. But what the organization provides must be paid for; the organization needs a source of revenue in order to be able to provide its support to the standards development process. Some organizations supplement their revenue from sales of standards by also providing certification or conformance test services, educational programs or conferences. But sales of publications remains the largest source of revenue for many organizations. Most organizations can't afford to give away their standards for free.

So I suggest that when a standard is codified into law, either by inclusion or by reference, that the organization be compensated, just as if the government itself had developed the standard. The federal government used to develop its own standards but decided some time ago that industry organizations were better suited for doing this, so the government abdicated this responsibility to these organizations. It's time for government to start paying for this work again.

03/20/2012 08:40 PM

Like Reply



Athox

Opening up a monopoly doesn't make the monopolist any less powerful. Think of it as giving them a head start over the competition. A giant head start. More than enough of a head start to adapt to changes that may occur.

And as we all know, competition makes everyone better who wants to play the game.

And I do believe the article is about the FEW standards that are adopted as law. That can't possibly be the majority of what you folks do.

03/20/2012 09:28 PM in reply to Karl Best 1 Like

Like Reply



Karl Best

What monopoly? As I pointed out, anyone can create a standard.

But the market adopts those standards that are the best quality and meet specific needs, and are developed by organizations that have a reputation for developing quality work. Just like any consumer product that you buy.

As to *few*, that varies based on the organization, as I also pointed out. Different organizations develop different types and quantities of standards. But again, why should any entity have to give away, for free, work that it has produced? That might work in an ideal world, but last I checked we don't live there.

Yesterday 03:22 AM in reply to Athox Like Reply



gadzooks

There is a fundamental issue that has been missed in this entire discussion. Consider that you spent your blood, sweat, and tears for a long time to create a great document, a standard of some sort. It is your work and you should decide if it is open sourced, kept secret, available for a fee, or any other choice among thousands.

The proposition in this article is that if you publish your work in some form that is available for a fee and the government references your document it immediately is placed in the public domain. How is that fair to you? Isn't that a violation of the 5th Amendment, "nor shall private property be taken for public use, without just compensation."

All ANSI standards are written by volunteers who are experts in their field. By rule, they cannot be compensated. These volunteers contribute their time and effort to benefit a standards-writing organization they want to support. The employer of the volunteer typically pays for the travel. If the SRO had to pay for the time and travel it would cost several million dollars to create the first edition of a typical standard. After all of the work, the SRO owns a document that is very valuable and taking it from them is theft. I've worked for a standards-writing organization managing committees of experts, I'm an expert who volunteers on such committees, and I'm an engineer who pays thousands of dollars per year to keep current standards on my desk. I believe the current system is the optimum solution. Consensus standards, written by volunteers, are the best technical documents available. Writing technical laws in lieu of consensus standards is dumb. Stealing others' work is wrong.

03/20/2012 10:05 PM 1 Like Like Reply



mdhattero3

If this process worked that way, you'd be right. It doesn't though,

03/20/2012 11:30 PM in reply to gadzooks Like Reply



Albert Kart

"The proposition in this article is that if you publish your work in some form that is available for a fee and the government references your document it immediately is placed in the public domain"

Suppose the government references the work and puts penalties for non-compliance to the standards provided in that work. I don't think that's very fair for anyone being penalized for non-compliance if the only way they can know is through significant \$\$\$\$.

"Writing technical laws in lieu of consensus standards is dumb. Stealing others' work is wrong."

Agreed. However, if you can be penalized for non-compliance to consensus standards, it might as well act as a law.

Yesterday 02:26 AM in reply to gadzooks

Like Reply



Karl Best

Excellent point, gadzooks, regarding the Fifth Amendment. If the government wants to reference a standard, and if therefore that standard needs to be made available to public for free (which I agree with) then the owner of the standard needs to be compensated. The issue of CEO salaries is irrelevant.

(We compensate vendors who manufacture e.g. military hardware, don't we? And don't some of those CEOs make a good salary? Why should the government not compensate the developers of standards when they are being used for the public good while they are at the same time paying for military hardware?)

I'll note further that in most other countries of the world standards activities are funded, wholly or in part, by the government. The US is the largest and richest country that doesn't do this. So here's where I don't agree with you, gadzooks: I don't believe that the current system is the optimum; government should purchase licenses to distribute the standard for free to the public when it incorporates the standard into laws and regulations.

Yesterday 03:37 AM in reply to gadzooks

Like Reply



1234abcd

@ Carl Malamud,

Generally speaking, I agree with your sentiment and ideas.

However, statutory damages for copyright infringement is per work regardless of how many times a single work is reproduced. Thus, your third heading should read "III. Our \$10.95 Million Gamble on Print." Just sayin...

Yesterday 02:32 AM

Like Reply



Marya

As a follow up to my previous post, I was informed by my electrician, when he got home last night, that the NEC, NFPA-70 can be found at

2011NECoffer.org

It is behind a survey, where they try to learn why it is you want their little code.

Yesterday 06:10 AM

Like Reply



Christopher Osburn

Incorporation by Reference should be prohibited outright. If the Congress, in its legislative function, wishes to include the text of a standards body, that text must be incorporated in the law or relevant regulation *in toto*, and made available through the regular GPO channels.

In this way the texts of these standards can be examined by the people and be debated in the legislature and subject to the same examination and amendment processes as any other law.

Any standards organization requiring remuneration for their work may of course apply to the Congress for that remuneration, and the Congress can approve it by legislation.

I realize that this will make the United States Code and Code of Federal Regulations quite a bit thicker. No matter. Democracy isn't easy and there really are no shortcuts.

Yesterday 10:47 AM

Like Reply



Joel Otto

I am surprised that the basis of requiring standards hasn't come up in these comments. There is a difference between certification and licensing. Why does the government need to set manufacturing standards at all? The public interest would be better served through voluntary certification than mandatory licensing.

It is unrealistic to expect legislators to keep up with our accelerated rate of technological change. Various industries and manufacturers should be free to innovate, to succeed or fail. Why do we think we have the right to have the government protect us from our own mistakes, either of making a faulty product, or buying one?

The greatest benefit that could come of publishing these standards is to completely push them out of mandatory use and into a system of voluntary compliance such as certification, where they belong.

Yesterday 01:09 PM

Like Reply



Crede's Crew

I love how UL president is #1 on the Compensation of Major Nonprofits Involved in Standards Setting table. UL is no longer a non-profit organization with the exception of the Standard section (and that is truly a small margin of their core business). Otherwise, they are for profit. His Compensation is tiny compare to other for-profit organizations involving Standards.

Second, if they don't get pay then they can't keep hiring engineers to develop or improve new standards to keep the general public safe. How would you like it if your contractor build your house not comply to the standards and your house burn down or collapse and your family died as the result of that. Without

standards, you are better off living in a mud hut. You want the government to write standards and make them free now? Sure, just watch your taxes go up.

Today 07:09 AM

Like Reply



In-A-Limbo

Ha? I don't get your complaint. If you dig hard enough you can get most of these standards for free. Seriously people!

Today 07:27 AM

Like Reply



Katie P

I've run into these standards in my private life, as a prospective entrepreneur trying to run the numbers for a small U.S. manufacturing facility. But to know the guidelines to which my factory would need to be built, I need to buy that big OSHA doc before I can even finish my feasibility study. As my product is for children, there are also standard docs relating to children's' goods that need purchasing. This standards-for-pay system is a barrier to small business-- it keeps the knowledge in the hands of those with the power.

Today 12:20 PM

Like Reply



catsforcancer

Finally someone making sense about the government: <http://goo.gl/obiC>

Today 12:33 PM

Like Reply

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