

David Pritzker

From: Leigh Maltby <[REDACTED]>
Sent: Thursday, May 02, 2013 10:38 AM
To: Emily Bremer
Subject: Re: Introductions
Attachments: ~~Leigh Maltby CV 2013.pdf~~ Redacted (b)(6) Ex.

Dear Ms. Bremer,

Thank you for the primary source documents! The regulatory cooperation section was actually exactly what I was looking for!

Although my project is due on Monday, would you be to spare a few moments to meet with me for an informational interview after 15 May? International regulatory cooperation has developed into a passion of mine, and I would love the opportunity to be able to speak with you about career opportunities in the field, as well as how best to eventually continue my research in order to produce an useful product for stakeholders in the regulatory process.

I have attached my CV for your reference, and will be happy to forward my finished product to you. If you have any questions, please feel free to contact me either by e-mail at _____ or by phone at _____.

(b)(6) Ex .

Thank you,

Leigh J. Maltby

On Wed, May 1, 2013 at 9:07 AM, Emily Bremer <ebremer@acus.gov> wrote:

Thank you for the introduction, Jeff!

Leigh, I'd be happy to help in whatever way I can. You might be interested in the materials associated with our projects on Incorporation by Reference (<http://www.acus.gov/research-projects/incorporation-reference>) and International Regulatory Cooperation (<http://www.acus.gov/research-projects/international-regulatory-cooperation>). If I can help you locate any specific resources or answer any questions, please don't hesitate to contact me at this email address or [202.480.2086](tel:202.480.2086).

All the best,

Emily

From: Grove, Jeff [mailto:jgrove@astm.org]
Sent: Friday, April 26, 2013 5:07 PM
To: Emily Bremer

Cc: Leigh Maltby
Subject: Introductions

Redacted (b)(6) Ex.

Dear Emily,

Please allow me to introduce you to Leigh Maltby. Leigh is completing her undergraduate degree at American and recently interviewed me in regards to the capstone that she is writing on standards, regulatory convergence and trade. I suggested that Leigh review some of the work that has been published by ACUS. And I think she would benefit from meeting you due to your tremendous knowledge and insight.

Thank you.

Sincerely,

Jeff Grove

David Pritzker

From: Scott Cooper <SCooper@ansi.org>
Sent: Wednesday, November 21, 2012 10:06 AM
To: Emily Bremer; James R. Schufreider
Cc: Matt Wiener
Subject: RE: Lunch today
Attachments: Draft Agenda -FINAL.doc; EnforceableCodesAgenda.pdf.pdf

Thanks Emily,

It is always fun to view from upwind, someone else's kerfuffle. What I hate, is when someone drops a kerfuffle in my own back pocket...

Thanks to all for a really nice lunch yesterday!

As promised –back at you—here is the draft agenda for the CEA-ANSI Dec 11th event (Mary Saunders has agreed to be on the 3rd panel), and the FTC Nov 29th event on global supply chains & 3rd party...

Please follow this link to see the registration page for the December 11 workshop. .
<http://standardsworkshop.eventbrite.com>

Best

Scott

From: Emily Bremer [mailto:ebremer@acus.gov]
Sent: Tuesday, November 20, 2012 2:33 PM
To: Scott Cooper; James R. Schufreider
Cc: Matt Wiener
Subject: RE: Lunch today

Scott and Jim,

As promised, here are some of the materials we discussed at lunch:

1. Third-Party Programs to Assess Regulatory Compliance. The Conference will be debating and voting on a proposed recommendation coming out of this project at the upcoming Plenary, scheduled for December 6-7. The proposed recommendation and the underlying research report are available here: <http://www.acus.gov/events/57th-plenary-session/> (see the second item under “Recommendations”). Further information about the Conference’s project on this, including previous versions of the recommendation and report, is available here: <http://www.acus.gov/research/the-conference-current-projects/third-party-certification/>.

2. Republican Study Committee Copyright Memo. The memo that caused the kerfuffle I told you about is available here: <http://www.scribd.com/doc/113633834/Republican-Study-Committee-Intellectual-Property-Brief>. In addition, the story has been picked up by the media—one discussion is available on Slate here: http://www.slate.com/articles/business/moneybox/2012/11/rsc_copyright_reform_memo_derek_khanna_tries_to_get_republican_study_committee.html.

Thanks again for lunch, Scott. And Jim, it was a pleasure to meet you. We look forward to working with you both on the Hill event and, hopefully, other projects down the road.

All the best,

Emily

P.s. Our acus.gov email is working again, as you can see.

From: Scott Cooper [mailto:SCooper@ansi.org]
Sent: Tuesday, November 20, 2012 8:36 AM
To: James R. Schufreider;
Cc: Matt Wiener; Emily Bremer
Subject: RE: Lunch today

1 (b)(6) Ex. Redacted

Excellent! I will make reservations for four for noon.

Looking forward

Scott

From: Schufreider, James R. [<mailto:jim.schufreider@nist.gov>]
Sent: Tuesday, November 20, 2012 8:31 AM
To: 'emilysbremer@gmail.com'; Scott Cooper
Cc: 'mwiener@acus.gov'; 'ebremer@acus.gov'
Subject: Re: Lunch today

I'm good with that.
Jim Schufreider
Director, Office of Congressional and Legislative Affairs
National Institute of Standards and Technology
301-975-5675 (Direct)
301-922-1366 (Bberry)
202-320-3272 (Cell)

From: Emily Bremer [<mailto:>] (b)(6) Ex.
Sent: Tuesday, November 20, 2012 08:23 AM
To: Scott Cooper <SCooper@ansi.org>
Cc: Schufreider, James R.; mwiener@acus.gov <mwiener@acus.gov>; Emily Bremer <ebremer@acus.gov>
Subject: Re: Lunch today

Scott,

Sounds good to me, unless Jim objects. Matt is going to join us, too, I believe.

Thanks for emailing me at this address--we're having server problems again today at work. You must be psychic!

Best,

Emily

On Tue, Nov 20, 2012 at 8:18 AM, Scott Cooper <SCooper@ansi.org> wrote:

Dear Emily and Jim,

I can't remember if we had decided on a place for lunch today. I don't have one down (and didn't make one).

Therefore, (be it resolved), I would suggest Trattu -Italian—at 1823 Jefferson Place (block above M st between 18th & 19th).

Quiet, continental, friendly. If this is OK I will make reservations. For noon?

Scott

(faint handwritten text)

--

Emily S. Bremer

3/11/2000

1

2

3

4

(b)(6) Ex.



Consumer Electronics Association
1919 South Eads Street
Arlington, VA
22202 USA
(866) 858-1555 toll free
(703) 907-7600 main
(703) 907-7601 fax
www.CE.org

Addressing National Priorities Through Standards

In 2010 the White House Office of Science and Technology Policy concluded that it was "more important than ever" for Federal agencies to work in a more responsive and timely fashion with the private sector to ensure meaningful standards are developed and put into practice to meet urgent national needs. As a result, the Federal government established an interagency group to provide high-level leadership encouraging Federal agencies to strategically focus, and actively engaged, on critical standards-related issues.

Millions of products and services rely on industry standards, including standards related to public policy goals such as energy efficiency, accessibility, and product safety. For decades, the private sector has committed significant funding and countless hours of their experts' time in developing the comprehensive, detailed and evolving network of standards in use today.

The National Technology Transfer and Advancement Act of 1995 directs the Federal government to adopt private sector standards wherever possible, in lieu of creating proprietary, non-consensus standards. This workshop will explore the use of private sector standards by agencies. Industry and government leaders will discuss the opportunities and challenges associated with identifying - and then referencing - private sector standards in Federal regulations. Industry case studies highlighting the Federal use of private sector standards will be reviewed. Mechanisms to improve the private sector standards developer's responsiveness to the needs of Federal regulators and agencies will also be explored. The workshop is part of the ongoing exploration of the government's participation in standards development, including whether and how the Office of Management and Budget should consider supplementing OMB Circular A-119 to improve industry/government collaboration.

Date: Tuesday, December 11, 2012, 9:00 AM – 2:45 PM

Location: CEA Grand Conference Room

1919 South Eads Street

Arlington, VA

Schedule:

PRODUCER OF



- 9:00 – 9:30 AM Onsite Registration and Badge Pickup
- 9:30 – 9:45 AM Opening Keynote: Joe Bhatia, President and CEO, ANSI
- 9:45 – 10.45 AM **Panel 1 – Success Is Possible**
- The need for cooperation in standards development has never been greater. Coordinated standards development, aligned with government priorities when necessary, is critical to a healthy economy. Successful standards-setting fosters innovation by enabling new products to come to market quickly and encouraging interoperability with existing devices. More, industry standards can be used effectively to address public policy initiatives. This panel will explore past and present successful cooperation in standards-setting. How can these positive examples offer guidance for future collaboration?
- Moderator:** XXXXX
- Panelists:** XXXXX
- 10:45 – 11:00 AM Coffee Break
- 11:00 – 12:00 PM **Panel 2 – Challenges To Overcome**
- The Federal government is the single largest consumer of goods and services within the US. As such, the government benefits greatly from a standards-setting environment that fosters cooperation between itself and industry. This panel will discuss the barriers to government participation in industry standards-setting and adoption of the results. What are the current communication paths between government agencies and industry, should they evolve, and if so, how? How can greater participation in the private sector standards-setting process encourage the use of those standards in regulations?
- Moderator:** XXXXX
- Panelists:** XXXXX
- 12:00 – 1:00 PM Lunch
- 1:00 – 1:15 PM Afternoon Keynote: Gary Shapiro, President and CEO, CEA

1:15 – 2:15 PM

Panel 3 – Towards Greater Government and Industry Cooperation

OMB is studying responses to its Request for Information regarding whether and how to supplement OMB Circular A-119, *“Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.”* This panel will discuss some of the questions raised in the RFI. What factors should government agencies take into consideration when determining that the use of industry standards is practical for regulatory purposes? How can the regulatory process be structured to ensure industry standards are written or modified in time to be considered for reference in a regulation? What are some of the future opportunities for industry/government cooperation in standards-setting?

Moderator: XXXXX

Panelists: XXXXX

2:15 – 2:30 PM

Closing Remarks



ENFORCEABLE CODES OF CONDUCT

Protecting Consumers Across Borders

AGENDA **November 29, 2012**

Fueled by the Internet and global trade, transactions between businesses and consumers increasingly cross national boundaries. Governments, international organizations, business interests, civil society groups, standards organizations, and self-regulatory bodies are turning to cross-border codes of conduct to supplement traditional legal regimes. Some or all of the following elements characterize these code-based systems: multi-stakeholder engagement, consensus-based rulemaking and decisions, accessibility, non-exclusiveness, standards, impartiality, transparency, capacity building, efficiency, accountability, consistency, enforceability, government oversight, and periodic re-evaluation. This forum will examine these systems in a variety of cross-border contexts, focusing on the legal and policy implications for the global consumer.

8:30 **Registration**

9:00 **Introductory Remarks**

Commissioner Edith Ramirez
Federal Trade Commission

9:10 **Panel**

The Rise of Cross-Border Codes of Conduct

Why have cross-border codes of conduct arisen? How do they fit with more traditional approaches to regulation? What are the core elements of effective and legitimate cross-border codes? What can we learn from systems that have some, but not all, of the elements mentioned above?

MODERATOR:

Stacy Feuer

Assistant Director for International Consumer Protection
Federal Trade Commission

PANELISTS:

Sungjoon Cho

Professor
Chicago-Kent College of Law

Joseph N. Mariano

President
Direct Selling Association

Robin Simpson

Senior Policy Adviser
Consumers International

David C. Vladeck

Director
Bureau of Consumer Protection
Federal Trade Commission

David Zaring

Assistant Professor
University of Pennsylvania



10:25 Speaker

Antitrust Implications of Cross-Border Codes

How might cross-border code systems dampen innovation or create barriers to entry? How can stakeholders mitigate these problems at the design and implementation phases? How does the cross-border context affect competition concerns?

William E. Kovacic

Professor

George Washington University Law School

Former Chairman

Federal Trade Commission

10:45 Break

11:00 Case Study

APEC's Cross-Border Privacy Rules (CBPR) System

The APEC CPBR is a new, multi-layered system built on an enforceable privacy code of conduct. Participating businesses submit their corporate privacy policies and practices for review and certification by third parties, and are subject to ongoing compliance monitoring and supervision as well as government enforcement. How does APEC's CBPR system protect consumers' personal information in cross-border data flows? What roles do the major stakeholders – industry, civil society, government, and consumers – play at each stage?

MODERATOR:

Markus Heyder

Counsel for International Consumer Protection

Federal Trade Commission

PANELISTS:

Paula J. Bruening

Vice President

Global Policy Centre for Information

Policy Leadership

Hunton & Williams LLP

Daniele Chatelois

Chair

APEC Data Privacy Subgroup

Senior Policy Advisor

Digital Policy Branch

Industry Canada

Joshua Harris

Vice Chair

APEC Data Privacy Subgroup

Chair

APEC's CBPR Joint Oversight Panel

Associate Director

Office of Technology and E-Commerce

U.S. Department of Commerce

Frances J. Henderson

National Director

Privacy Initiatives

Council of Better Business Bureaus

Melissa Higuera Pérez

Federal Institute of Access to Public

Information and Data Protection of

Mexico

Saira Nayak

Director of Policy

TRUSTe

Scott Taylor

Chief Privacy Officer

Hewlett-Packard Co.

12:15 Lunch

1:30 Case Study

OECD Guidelines for Multinational Enterprises (MNE)

The OECD MNE Guidelines provide guidance for corporations on responsible business in several areas, including human rights, employment, the environment, competition, and consumer interest. Observance of the Guidelines by businesses is voluntary and legally unenforceable; however, there are governmental National Contact Points (NCPs) that address complaints and encourage compliance. What types of consumer issues have the NCPs addressed? How does the non-binding nature of the Guidelines impact the ability of interested parties to settle their issues? What lessons are there from other multi-stakeholder initiatives on corporate social responsibility?

MODERATOR:

Peter Avery

Secretariat

OECD Committee on Consumer Policy

PANELISTS:

Clifford Henry

Member

Stakeholder Advisory Board to the U.S. NCP

Associate Director

Corporate Sustainable Development

Proctor & Gamble

Alan K. Yu

U.S. NCP for the OECD Guidelines

Office of Economic Policy Analysis and Public

Diplomacy: Corporate Social Responsibility Unit

U.S. Department of State

Jonathan Kaufman

Member

Stakeholder Advisory Board to the U.S. NCP

Staff Attorney

EarthRights International

Thea Mei Lee

Vice Chairwoman

U.S. State Department Advisory Committee on
International Economic Policy

Deputy Chief of Staff

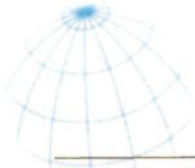
AFL-CIO

Gwenann Manseau

Senior Attorney

Office of the Chief Counsel for International
Commerce

U.S. Department of Commerce



2:45 Case Study

Toy Safety and Food Safety

U.S. agencies increasingly use a mixture of enforcement and policy tools to achieve their consumer protection objectives in areas that involve global supply chains, such as food and product safety. To what extent do the Consumer Products Safety Improvement Act (CPSIA) (2008) and the Food Safety Modernization Act (FSMA) (2011) sanction the use of third-party standards and codes to certify compliance with U.S. consumer safety laws? What criteria should the CPSC and the FDA use to recognize bodies that accredit third-party auditors and laboratories that certify compliance with U.S. law? What lessons are there for other areas of consumer protection?

MODERATOR:

Scott Cooper

Vice President

Government Relations and Public Policy

American National Standards Institute

PANELISTS:

Charlotte Christin

Senior Policy Advisor

Office of Policy

U.S. Food and Drug Administration

Caroline Smith DeWaal

Food Safety Director

Center for Science in the Public Interest

Alan P. Kaufman

Senior Vice President

Technical Affairs

Toy Industry Association, Inc.

Richard W. O'Brien

Director

Office of Int'l Programs and

Intergovernmental Affairs

U.S. Consumer Products Safety Commission

Joseph A. Scimeca, PhD

Vice President

Global Regulatory and Scientific Affairs

Corporate Food Safety and Regulatory Affairs

Cargill, Inc.

4:00 Break

4:15 Panel

Best Practices and Metrics

Which of the elements discussed in the forum determine the legitimacy and effectiveness of cross-border codes of conduct? Are certain indicators more important than others? What role does enforceability play? Is there a systematic way to measure and compare code-based systems? What are the core best practices?

MODERATOR:

Keith Fentonmiller

Senior Attorney

Division of Advertising Practices

Federal Trade Commission

PANELISTS:

Anne Meuwese

Professor

Tilburg University Law School

Robin Simpson

Senior Policy Adviser

Consumers International

Sheila A. Millar

Vice-Chair

Commission on Marketing and Advertising

International Chamber of Commerce

Partner

Keller and Heckman

Norma Tregurtha

Senior Policy Manager

ISEAL Alliance

C. Lee Peeler

President and CEO

National Advertising Review Council

Executive Vice President

National Advertising Self-Regulation

Council of Better Business Bureaus

5:30 Closing Remarks

This Forum Is Presented in Conjunction with the 2012 Biennial Meeting of the American Society of International Law International Economic Law Interest Group

Federal Trade Commission | November 29, 2012

David Pritzker

From: Emily Bremer <emilysbremer@gmail.com>
Sent: Tuesday, November 20, 2012 7:15 AM
To: Emily Bremer
Subject: Fwd: FW: Planning for a Hill event on standards and public-private partnerships.

----- Forwarded message -----

From: Emily Bremer <____ > (b)(6) Ex.
Date: Wed, Nov 7, 2012 at 7:50 AM
Subject: Re: FW: Planning for a Hill event on standards and public-private partnerships.
To: Scott Cooper <SCooper@ansi.org>

Ha, great! Matt Wiener, our executive director, is going to join us, too. Congressional relations are his specialty and primary responsibility, so it will be very helpful to have him at the table.

FYI, I think acus.gov is back to accepting external emails, though there may still be some hiccups over the next 24 hours.

On Tue, Nov 6, 2012 at 4:58 PM, Scott Cooper <SCooper@ansi.org> wrote:

OK We are on for the 20th. I will find a nice quiet spot for us to ~~conspire~~ discuss and develop constructive ideas.

From: Emily Bremer [mailto:____] (b)(6) Ex.
Sent: Tuesday, November 06, 2012 2:28 PM
To: Scott Cooper
Subject: Re: FW: Planning for a Hill event on standards and public-private partnerships.

Lunch on Tuesday the 20th works for me!

Thanks,

Emily

On Tue, Nov 6, 2012 at 1:55 PM, Scott Cooper <SCooper@ansi.org> wrote:

Scott Cooper

Vice President

Government Relations and Public Policy

American National Standards Institute

1899 L St, NW, 11th Floor

Washington, DC 20036

Office: [202-331-3610](tel:202-331-3610)

Cell: [413-687-1788](tel:413-687-1788)

scooper@ansi.org

From: Scott Cooper

Sent: Tuesday, November 06, 2012 1:54 PM

To: James R. Schufreider; Emily Bremer

Subject: RE: Planning for a Hill event on standards and public-private partnerships.

Thanks Jim,

I believe Emily may be out early next week, so how about lunch together on Tuesday the 20th?

Best

Scott

From: Schufreider, James R. [mailto:jim.schufreider@nist.gov]

Sent: Tuesday, November 06, 2012 1:48 PM

To: Scott Cooper; Emily Bremer

Subject: RE: Planning for a Hill event on standards and public-private partnerships.

Tuesdays I usually have a 10:30 mtg at Commerce. So before or after that would be great.

From: Scott Cooper [mailto:SCooper@ansi.org]

Sent: Tuesday, November 06, 2012 11:17 AM

To: Emily Bremer; Schufreider, James R.

Subject: Planning for a Hill event on standards and public-private partnerships.

Dear Emily & Jim,

Since every other politico will pivot instantaneously at midnight tonight from stressing over the election, to stressing over the new Congress, I wanted to reach out to you-two early, before All Is Revealed to suggest a get-together.

In the past we have organized Hill events around a "Standards 101" theme, and had pretty good attendance. I think that is probably still part of any event (a rebuttable presumption), but other issues like IBR, public-private partnerships, stewardship obligations, etc also need to be in the mix. I think. (I hope you-two have some less-obvious ideas.)

Since you have to commute from Gaithersburg Jim, are there any dates in the near future that work for you? I am thinking lunch or coffee downtown. I'm glad it can be the three of us to plan this. Looking forward to getting together.

Best

Scott

Experts Discuss Incorporation by Reference at the ANSI Legal Issues Forum

New York, November 5, 2012: On October 10, 2012, nearly 100 legal experts, government officials, and members of the standards and conformity assessment community came together for the 2012 Legal Issues Forum: *Incorporation by Reference, Reasonable Availability, and Copyright* to examine issues related to the incorporation of standards into U.S. laws and regulations. The forum was held by the [American National Standards Institute](#) (ANSI) as part of the [2012 World Standards Week](#) (WSW) series of events.

“The incorporation by reference of privately developed standards into law has attracted increasing attention in recent years,” said Patricia Griffin, ANSI vice president and general counsel. “Participants in the Legal Issues Forum addressed the various issues at play and highlighted the challenges and opportunities of incorporation by reference, while also examining a number of possible options that hold the potential to address related issues without undermining a system that has worked so well for so long.”

In his keynote address to the forum, John Cooney, a partner at Venable LLP, argued that a growing expectation among the public that government information should be available for free on the Internet had complicated the traditional use of incorporation by reference. Mr. Cooney described the issue as a “wicked question,” noting both the belief that individuals should not be required to pay for access to portions of the laws they live under and the important role that the sale of standards plays in funding the work of many standards developing organizations (SDOs).

Emily Bremer, the attorney advisor to the Administrative Conference of the United States (ACUS), moderated an interactive panel discussion on the issue featuring eight expert speakers:

- Michael Goldenberg, Senior Counsel, Federal Energy Regulatory Commission
- Rae McQuade, President and COO, North American Energy Standards Board
- Thomas O’Brien, Vice President and General Counsel, ASTM International
- Esa Sferra-Bonistalli, Senior Attorney, U.S. Coast Guard
- Clark Silcox, General Counsel, NEMA
- Peter Strauss, Professor, Columbia Law School
- Vanessa Allen Sutherland, Chief Counsel, Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation
- Rachel Weintraub, Director of Product Safety and Senior Counsel, Consumer Federation of America

Panelists discussed a range of recent activities, including the proposed revision of the Office of Management and Budget's [Circular A-119](#), "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities;" a petition filed by Professor Strauss with the Federal Register arguing that current use of incorporation by reference failed to provide reasonable availability; and recent legislation requiring PHMSA to make privately developed standards available for free, among other related topics.

During the discussion, Ms. Sferra-Bonistalli and Ms. Allen Sutherland discussed the U.S. government's reliance on incorporation by reference and expressed skepticism that the expert work currently done by independent SDOs could be easily replicated by the government. Mr. Silcox noted that many regulations incorporated only a small part of a standard and suggested that agencies ask SDOs in those cases to make the relevant portion publicly available. Mr. O'Brien told the group that even if the government could find the funds to pay for independent standards development, some SDOs may be reluctant to become involved in such a system, due to concerns that it would complicate their relationships with other countries and organizations. Ms. Weintraub raised concerns about the lack of participation in standards development by consumer advocates and other non-technical experts, an issue she linked to the financial costs of taking part.

Ms. McQuade and Mr. Goldenberg noted that the North American Energy Standards Board (NAESB) developed standards at the request of the Federal Energy Regulatory Commission (FERC), which approved its budget, and discussed NAESB's decision make read-only copies of its standards available online.

Professor Strauss recommended several potential solutions to the "wicked question," including pricing only the most recent version of a standard, offering read-only access to incorporated standards, and encouraging government agencies to list multiple standards that would satisfy regulatory requirements.

S. Joe Bhatia, ANSI CEO and president, closed the discussion with remarks that highlighted the importance of reaching an effective compromise.

"As coordinator of the U.S. standardization system, ANSI is working with the SDO community to explore the possibility of hosting a website focused on standards that have been incorporated by reference," said Mr. Bhatia.

For more information about the Legal Issues Forum, please visit the [event page](#); a photo slideshow from the forum is [available here](#).

About ANSI

The [American National Standards Institute](#) (ANSI) is a private non-profit organization whose mission is to enhance U.S. global competitiveness and the American quality of life by promoting, facilitating, and safeguarding the integrity of the voluntary standardization and conformity assessment system. Its membership is comprised of businesses, professional societies and trade associations, standards developers, government agencies, and consumer and labor organizations. The Institute represents the diverse interests of more than 125,000 companies and organizations and 3.5 million professionals worldwide.

The Institute is the official U.S. representative to the International Organization for Standardization (ISO) and, via the U.S. National Committee, the International Electrotechnical Commission (IEC), and is a U.S. representative to the International Accreditation Forum (IAF).

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Emily S. Bremer

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(b)(6) Ex.

David Pritzker

From: Elizabeth Neiman <eneiman@ansi.org>
Sent: Monday, November 05, 2012 12:16 PM
To: John F. Cooney; Emily Bremer; Michael Goldenberg; Rae McQuade; Clark Silcox; Peter L. Strauss; Esa L. Sferra-Bonistalli; Esa L. Sferra-Bonistalli; Thomas B. O'Brien, Jr.; Rachel Weintraub; Vanessa Allen Sutherland
Cc: Patricia Griffin; Scott Cooper; Joe Bhatia; Fran Schrotter
Subject: ANSI Legal Issues Forum

To: Speakers at ANSI's Legal Issues Forum

Dear colleagues:

Thank you once again for your terrific participation in the Legal Issues Forum held during World Standards Week. I wanted to share with you our summary press release, which was released today after being delayed by Hurricane Sandy:

http://www.ansi.org/news_publications/news_story.aspx?menuid=7&articleid=3412#.UJfzG2c0N8E

You may also be interested in our photo slideshow, which is available here:

<http://www.flickr.com/photos/ansidotorg/sets/72157631784556414/with/8093792669/>

Thank you for your many contributions to the success of the Forum. I look forward to working with you again in the future.

Best regards,
Liz

Liz Neiman
Director of Communications and Public Relations
American National Standards Institute
25 West 43rd Street, Fourth Floor
New York, NY 10036

T 212.642.4911
F 212.398.0023
eneiman@ansi.org



David Pritzker

From: Elizabeth Neiman <eneiman@ansi.org>
Sent: Monday, October 01, 2012 11:59 AM
To: Peter L. Strauss
Cc: Emily Bremer
Subject: RE: ANSI Legal Issues Forum - attendees and panelist questions

Thanks very much, Peter. Indeed, the loss of titles is a function of the merge from our registration system. I'll make sure to get the titles in.

Thanks!
Liz

From: Peter Strauss [mailto:strauss@law.columbia.edu]
Sent: Monday, October 01, 2012 11:58 AM
To: Elizabeth Neiman
Cc: Emily Bremer
Subject: Re: ANSI Legal Issues Forum - attendees and panelist questions

Thanks for these, Liz.

I notice that on the attendees sheet you have not listed some positions, many of which I am sure you know -- mine, Emily's, etc. Probably it's the result of some automatic merge operation, but if this list is to be distributed I wonder if you would not want to fill in as many blanks as you can.

If you do do this, my title is Betts Professor of Law, and it is at Columbia Law School (which of course IS an element of Columbia University).

If it's not too late, here's another general question I would be happy to hear asked:

ANSI's business model is, understandably, built around the important market for voluntary consensus standards, not the market for law. If a VCS is changed but an earlier version remains incorporated in a regulation, isn't any charge for that earlier version a departure from the model and just a charge for law? How can one defend the practice of continuing to charge those who must obey it for access to a formulation that now is ONLY law, and no longer the prevailing voluntary consensus standard?

Peter

Peter L. Strauss strauss@law.columbia.edu
Betts Professor of Law
Columbia Law School phone: (212) 854-2370
435 W. 116th St. fax: (212) 854-7946
New York, N.Y. 10027

▼ "Elizabeth Neiman" ---10/01/2012 11:16:47 AM---To: Moderator and panelists for ANSI's Legal Issues Forum on October 10

From: "Elizabeth Neiman" <eneiman@ansi.org>
To: <ebremer@acus.gov>, "Michael Goldenberg" <michael.goldenberg@ferc.gov>, "Rae McQuade" <mcquade@naesb.org>, "Veronica Thomason" <vthomason@naesb.org>, "Thomas B. O'Brien, Jr." <tobrien@astm.org>, "Esa Sferra-Bonistalli" <esa.l.sferra-bonistalli@uscg.mil>, <esaferra@naesb.org>

(b)(6) Ex. ↓

"Clark R. Silcox" <cla_silcox@nema.org>, "Peter Strauss" <strauss@law.columbia.edu>, <Vanessa.Sutherland@dot.gov>, "Rachel Weintraub" <rweintraub@consumerfed.org>, Cc: "Patricia Griffin" <PGriffin@ansi.org>, "Scott Cooper" <SCooper@ansi.org>, "Fran Schrotter" <fschrotter@ansi.org>
Date: 10/01/2012 11:16 AM
Subject: ANSI Legal Issues Forum - attendees and panelist questions

To: Moderator and panelists for ANSI's Legal Issues Forum on October 10

Dear all,

Thank you so much for your participation in our recent panelist teleconferences! I wanted to follow up with a few attachments for you.

- Event agenda
- Discussion questions
- List of registered attendees
- English translation of the Netherlands Supreme Court decision on IBR

Please let me know if there is anything else you need. I look forward to seeing you next week!

Best,

Liz

Liz Neiman
Director of Communications and Public Relations
American National Standards Institute
25 West 43rd Street, Fourth Floor
New York, NY 10036

T 212.642.4911

F 212.398.0023

eneiman@ansi.org <<mailto:eneiman@ansi.org>>

ANSI World Standards Week 2012 <<http://www.ansi.org/wweek>>

October 9-12 • • • Washington, DC <<http://www.ansi.org/wweek>>

BEGIN-ANTISPAM-VOTING-LINKS

Teach Email if this mail (ID 01I5Pgy05) is spam:

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END-ANTISPAM-VOTING-LINKS

[attachment "Agenda-LIF_2012.pdf" deleted by Peter Strauss/CLS] [attachment "LIF 2012 discussion questions 10-1-12.docx" deleted by Peter Strauss/CLS] [attachment "lif attendees_10-1-12.xls" deleted by Peter Strauss/CLS] [attachment "Judgment Supreme Court Knoble v State and NEN English transl_1 09 July 2012.doc" deleted by Peter Strauss/CLS]

David Pritzker

From: Elizabeth Neiman <eneiman@ansi.org>
Sent: Monday, October 01, 2012 11:17 AM
To: Emily Bremer; Michael Goldenberg; Rae McQuade; Veronica Thomason; Thomas B. O'Brien, Jr.; Esa L. Sferra-Bonistalli; Esa L. Sferra-Bonistalli; Clark Silcox; Peter L. Strauss; Vanessa.Sutherland@dot.gov; Rachel Weintraub
Cc: Patricia Griffin; Scott Cooper; Fran Schrotter
Subject: ANSI Legal Issues Forum - attendees and panelist questions
Attachments: Agenda-LIF_2012.pdf; LIF 2012 discussion questions 10-1-12.docx; lif attendees_10-1-12.xls; Judgment Supreme Court Knooble v State and NEN English transl_1 09 July 2012.doc

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ANSI World Standards Week 2012

October 9–12 ● ● ● Washington, DC



AGENDA

Legal Issues Forum 2012: Incorporation by Reference, Reasonable Availability, and Copyright

Wednesday, October 10, 2012 | 9 a.m. – 1 p.m.

Newseum, 555 Pennsylvania Ave. NW, Washington DC
 (Please use Freedom Forum Entrance on 6th Street)
 703.416.1600

Wednesday – October 10, 2012	
9:00 – 9:05 am	<p>Welcoming Remarks</p> <ul style="list-style-type: none"> ▪ Joe Bhatia, President and CEO, American National Standards Institute (ANSI)
9:05 – 9:35 am	<p>Keynote Address The Public-Private Partnership: Government Reliance on Voluntary Consensus Standards</p> <p>20 minutes followed by a 10-minute interactive Q&A session</p> <ul style="list-style-type: none"> ▪ John Cooney, Partner, Venable LLP
9:35 – 12:55 pm	<p>Discussion Incorporation by Reference, Reasonable Availability, and Copyright</p> <p><i>A moderated discussion on issues surrounding the incorporation by reference of voluntary consensus standards into government regulation. Topics will include reasonable availability, copyright concerns, and more.</i></p> <p>Interactive roundtable discussion – no presentations. A coffee break will be called by the moderator at a suitable time.</p> <p>Introduction</p> <ul style="list-style-type: none"> ▪ Patricia Griffin, Vice President and General Counsel, ANSI <p>Moderator</p> <ul style="list-style-type: none"> ▪ Emily Bremer, Attorney Advisor, Administrative Conference of the United States <p>Panelists</p> <ul style="list-style-type: none"> ▪ Michael Goldenberg, Senior Counsel, Federal Energy Regulatory Commission ▪ Rae McQuade, President and COO, North American Energy Standards Board ▪ Thomas O’Brien, Vice President and General Counsel, ASTM International ▪ Esa Sferra-Bonistalli, Senior Attorney, U.S. Coast Guard

	<ul style="list-style-type: none"> ▪ Clark Silcox, General Counsel, NEMA ▪ Peter Strauss, Professor, Columbia Law School ▪ Vanessa Allen Sutherland, Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation ▪ Rachel Weintraub, Director of Product Safety and Senior Counsel, Consumer Federation of America
12:55 – 1:00 pm	<p>Conference Wrap-up / Closing Remarks <i>Overall response to Forum</i></p> <ul style="list-style-type: none"> ▪ Joe Bhatia, ANSI

Part of the World Standards Week 2012 series of events



ANSI Legal Issues Forum 2012

Moderated Discussion Questions

General Questions for All Panelists

- What kinds of things do SDOs already do to make their standards available? Is this enough?
- Why don't SDOs just change their business model? Companies are forced to do that all the time and they survive. Just look at the music industry.
- If standards and codes were given away for free, what would the impact really be on the U.S. standardization system? Wouldn't everyone just adapt?
- What if the U.S. government just develops its own standards? This doesn't seem to be an issue in other countries.
- What if the government pays SDOs for all standards that it incorporates by reference?
- Why is protecting intellectual property in standards so important? Is it just about the money?
- How does your organization define reasonable availability?
- How should agencies and regulated parties handle secondary and tertiary references to standards?
- Standards developed by international organizations like ISO and IEC have also been incorporated by reference. Is it reasonable to expect these organizations to make their standards available when they are not under the U.S. government's jurisdiction?
- The cost of a standard is one aspect of reasonable availability. But what about the cost of participation in standards development? Should participation also be "reasonably available?" ANSI's *Essential Requirements* state that there should be "no undue financial barriers to participation" – but how is undue defined? And how is this issue handled by SDOs that are not accredited by ANSI?

Targeted Questions

For Michael Goldenberg, FERC

- How many standards has FERC incorporated by reference into regulation?
- Has FERC considered developing its own standards instead of relying on the private sector? What was the result of that analysis?
- What would happen if FERC had to pay SDOs to develop standards so they could be made freely available?

- What can government agencies do to make sure that the most current versions of standards are incorporated by reference?

For Rae McQuade, NAESB

- Your organization's response to the Federal Register petition was very detailed in outlining exactly how NAESB makes its documents available for review. Could you please share that information with the audience?
- Is versioning an issue when NAESB standards are incorporated by reference? (For example, a 2003 version is referenced when a newer version exists.) How do you handle this?
- Does NAESB make incorporated standards available today, in some form (read-only, etc.)? If NAESB was required to make all of its incorporated standards available for free, what would happen?
- Do you often receive requests for information on incorporated standards? How do you handle these requests?

For Tom O'Brien, ASTM International

- ASTM International does a lot of work with small and medium-sized enterprises. Do you have any special programs in place for these groups to enhance their access?
- Is versioning an issue when ASTM's standards are incorporated by reference? (For example, a 2003 version is referenced when a newer version exists.) How do you handle this?
- Does ASTM International make incorporated standards available today, in some form (read-only, etc.)? If ASTM International was required to make all of its incorporated standards available for free, what would happen?
- Do you often receive requests for information on incorporated standards? How do you handle these requests?

For Esa Sferra-Bonistalli, USCG [pronounce: EE-sah sph-EHRA bon-is-TALL-ee]

- The Coast Guard has developed a well-regarded approach to the incorporation of standards. How many standards has the Coast Guard incorporated by reference into regulation?
- Has the Coast Guard considered developing its own standards instead of relying on the private sector? What was the result of that analysis?
- What would happen if the Coast Guard had to pay SDOs to make incorporated standards freely available?
- What can government agencies do to make sure that the most current versions of standards are incorporated by reference?

For Clark Silcox, NEMA

- When a NEMA standard is incorporated by reference, does the regulation typically make reference to the full standard or just a portion of it?
- Is versioning an issue when NEMA standards are incorporated? (For example, a 2003 version is referenced when a newer version exists.) How do you handle this?
- Does NEMA make incorporated standards available today in some form (read-only, etc.)? If NEMA was required to make all of its incorporated standards available for free, what would happen?
- Do you often receive requests for information on incorporated standards? How do you handle these requests?

For Peter Strauss, Columbia Law School

- You coordinated the Federal Register petition, which included some discussion about the criteria for reasonable availability. Can you please elaborate on your views?
- In its comments on the Federal Register petition, the American Bar Association's Section on Administrative Law and Regulatory Practice suggested that it would be sufficient for incorporated standards to be available in "read-only" format, and acknowledged that some SDOs already do this. I understand that you were involved in preparing these comments. Your petition to the Federal Register seems to take a similar position, urging that documents must be "electronically accessed for reading without cost." Others have taken a different approach, arguing that standards are the law and should be available for free without the limitations of a "read-only" format. Can you please explore this distinction?

For Vanessa Allen Sutherland, PHMSA, DOT

- In July, PHMSA hosted a workshop on incorporation by reference that focused on the implementation of section 24 of the Pipeline Safety Bill. In your view, what were some of the key takeaways from the discussion at the workshop?
- How many standards has PHMSA incorporated by reference into regulation?
- Has PHMSA or the Department of Transportation considered developing its own standards instead of relying on the private sector? What was the result of that analysis?
- What would happen if PHMSA had to pay SDOs to develop standards so they could be made freely available?
- What can government agencies do to make sure that the most current versions of standards are incorporated by reference?

For Rachel Weintraub, Consumer Federation of America

- In response to the Office of Management and Budget's request for information on Circular A-119, your organization stated that citizens should have "unfettered access" to standards that have been incorporated by reference into U.S. law. How do you define "unfettered?"
- Consumer groups contribute to standards development through involvement in individual standards creation efforts and through international efforts such as ISO's Committee on Consumer Policy. Given time and resource constraints, do you have any suggestions for how consumer groups and SDOs can most effectively work together in standards development activities?

2012 ANSI Legal Issues Forum

Registered Attendees as of 10/1/2012

First Name	Last Name	Title	Organization
Janet	Busch	Association Services Coordinator	Accredited Standards Committee X9, Inc. Financial Industry Standards
Cynthia	Fuller	Executive Director	Accredited Standards Committee X9, Inc. Financial Industry Standards
Susan Emily	Blaeser Bremer	Standards Manager	Acoustical Society of America
Jean-Paul	Emard	Director, Industry Forums	Administrative Conference of the United States
John Sharon	Adey Stanford	Technical Director Director, Standards Administration	Alliance for Telecommunications Industry Solutions American Boat & Yacht Council American Dental Association
Scott	Cedarquist	Director of Standards and Technical Activities	American Society of Agricultural and Biological Engineers
Claire	Ramspeck	Director of Technology	American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.
William	Berger	Managing Director Technical Codes & Standards	American Society of Mechanical Engineers
Carol	Herman	Sr. Vice President, Standards Policy & Programs	Association for the Advancement of Medical Instrumentation
Mary	Logan	President	Association for the Advancement of Medical Instrumentation
Thomas Stephen	O'Brien Lee	Vice President Reporter	ASTM International Bloomberg BNA
Ben	Brown	Intellectual Property Strategy and Protection Specialist	Boeing Company
Luann Peter	Ochs Strauss	Senior Vice President - Operations	Clinical and Laboratory Standards Institute Columbia University
Ben	Sparks	CMC Engineering Manager	Connector Manufacturing Co
Shazia Bill	McGeehan Belt	Director, Standards Programs & Compliance Senior Director, Technology & Standards	Consumer Electronics Association Consumer Electronics Association
Leslie	King	Manager Technology & Standards	Consumer Electronics Association
Rachel	Weintraub	Director of Product Safety & Assistant General Counsel	Consumer Federation of America
Ellen	Pekilis	Dir., Corporate Legal Affairs	CSA Group
Michael Andrew	Goldenberg Updegrove	Partner	Federal Energy Regulatory Commission Gesmer Updegrove LLP
Jodi	Haasz	Standards Strategist International Programs	IEEE
Terry	DeCourcelle	Dir, International Stds Program	IEEE
Yvette	Ho-Sang	Risk Management Analysis	IEEE
Susan Philip	Tatiner Wennblom	Director Director	IEEE Standards Activities Intel Corp
Matt	Sigler	Plumbing Code Development Admin	International Association of Plumbing & Mechanical Officials
Aimee	Mckane		Lawrence Berkeley National Laboratory

David	Thompson	Technical Coordinator	Manufacturers Standardization Society
Jim	Hughes	Director	Microsoft
Clark	Silcox	General Counsel	National Electrical Manufacturers Association
Christian	Dubay	Vice President and Chief Engineer	National Fire Protection Association
Amy	Cronin	Division Manager, Codes & Standards	National Fire Protection Association
Greg	Cade	Division Director of Government Affairs	National Fire Protection Association
Cindy	Squires	Regulatory Counsel	National Marine Manufacturers Association
Mary	Donaldson		NIST - US Department of Commerce SCCG
Rae	McQuade	Executive Director	North American Energy Standards Board
Jonathan	Booe		North American Energy Standards Board
Valerie	Crockett	NAESB Vice Chairman	North American Energy Standards Board
Scott	McGrath	COO	North American Energy Standards Board
James	Pauley	Senior Vice President, External Affairs and Government Relations	OASIS
Elizabeth	Bille	Associate Counsel	Schneider Electric
Henry	Hart	General Counsel	Society for Human Resource Management
Mike	Aitken	VP, Government Affairs	Society for Human Resource Management
Stephen	Oksala	Vice President, Standards	Society of Cable Telecommunication Engineers
Michael	Thompson		The Boeing Company
Kenneth	Jackson	Program Administrator	The NELAC Institute
Joan	Lawrence	Vice President, Standards and Regulatory Affairs	Toy Industry Association, Inc.
Donald	Snyder	Director - US Standards	Underwriters Laboratories Inc.
Paul	Brown	Assistant General Counsel, Intellectual Property	Underwriters Laboratories Inc.
Esa	Sferra-Bonistalli		US Coast Guard
Rebecca	Orban	Attorney	US Coast Guard
Peter	Shebell	Standards Policy Manager	US Department of Homeland Security
Vanessa	Allen Sutherland		US DOT - PHMSA
Kurt	Cozens		US Nuclear Regulatory Commission

[Translation]

Ruling
22 June 2012
First Chamber
11/01017
RM/MD

Supreme Court of the Netherlands

Judgment

in the case of:

KNOOBLE B.V.,
established at Arnhem,
CLAIMANT in cassation,
attorney: M.E. Gelpke LL.M.¹

versus

1. THE STATE OF THE NETHERLANDS (Ministry of Infrastructure and the Environment),
headquartered at The Hague,
RESPONDENT in cassation,
attorneys: M.W. Scheltema LL.M. and S.M. Kingma LL.M.,
2. STICHTING NEDERLANDS NORMALISATIE-INSTITUUT,
established at The Hague²,
RESPONDENT in cassation,
attorney: originally R.A.A. Duk LL.M., currently P.A. Ruig LL.M.³

Parties will also be referred to as 'Knooble', 'the State' and 'NNI'.

1. The case on its merits

For the course of the case on its merits the Supreme Court refers to the following documents:

¹ Instructed by Dirkzwager advocaten & notarissen, attorneys in first instance and in appeal

² This is an error in the judgment and should be "Delft"

³ Instructed by Ploum Lodder Princen, attorneys in first instance and in appeal

- a. the judgment in the case 274010/HA ZA 06-3308 of The Hague District Court of 31 December 2008;
 - b. the judgments in the case 200.029.693/01 and 200.031.136/01 of The Hague Appeals Court of 9 June 2009 and 16 November 2010.
- The judgments of the Appeals Court of 16 November 2010 is appended to this judgment.

2. The case in cassation

Against the judgment of the Appeals Court of 16 November 2010 Knooble lodged an appeal in cassation. The notice of appeal in cassation is appended to this judgment and forms part of it.

The State and NNI have independently filed for rejection of the appeal.

The attorneys of Knooble and the State explained the case to the Court both orally and in writing.

On behalf of NNI V. Rorsch LL.M., attorney at Amsterdam, explained the case to the Court both orally and in writing.

The conclusion of the Advocate General F.F. Langemeijer is that the appeal must be dismissed.

In letters of 13 April 2012 Gelpke LL.M. attorney on behalf of Knooble and V. Rorsch LL.M. attorney at Amsterdam on behalf of NNI have responded to said conclusion.

3. Assessment of the arguments

3.1 In cassation the following may be taken as given:

(i) Knooble is involved with giving advice about and conducting supervision of building projects. Through its website it provides data useful for preparing and carrying out building projects.

(ii) *De Stichting Nederlands Normalisatie-Instituut* (hereinafter: NNI) [= The Netherlands Standardization Institute (NEN)] has as its goal the realisation of standards, establishing and maintaining standards and promoting the introduction of standards. In doing so it describes standardization as the process whereby rules become established voluntarily through agreement between interested parties.

(iii) The standards that come about in the context of NNI are referred to as "NEN standards". They are available for inspection at NNI's offices. NNI provides the NEN standards in exchange for payment without prejudice to copyright.

(iv) Article 2 of the *Woningwet* [= 1992 Housing Act] stipulates that building regulations can be given by or pursuant to governmental decree. Under Article 3 of the *Woningwet* reference may be made to (parts of) standards. In this connection pursuant to Article 1 paragraph 1, preamble and under 'h' (till 1 October 2010: under 'i') *Woningwet* understood under "standard": a document, issued by an expert, independent institute,

which describes what criteria a building material, building part or building construction must meet or in which a description is given of a method of testing, measuring or calculating.

(v) In the *Bouwbesluit* [= Buildings Decree] 2003 (that meanwhile has been replaced by the *Bouwbesluit* 2012, and that hereinafter for the sake of brevity will be referred to as the *Bouwbesluit*) and the *Regeling Bouwbesluit* [= Building Regulations] 2003 based on it (that meanwhile has been replaced by the *Regeling Bouwbesluit* 2012, and that hereinafter for the sake of brevity will be referred to as the *Regeling Bouwbesluit*) in many places refer to the NEN standards, often though not exclusively to establish the method by which is to be decided whether instructions contained in the *Bouwbesluit/Regeling Bouwbesluit* have been carried out.

(vi) The State did not publish the NEN standards referred to in the *Bouwbesluit* or in the *Regeling Bouwbesluit* in the *Staatsblad* [= the Bulletin of Acts and Decrees], the *Staatscourant* [= the Government Gazette], or in any other place, standard.

3.2 Knooble has taken the State and NNI to Court and, after a change of claim on appeal briefly restated here, has claimed the following:

1. that it should be stated in Court, primarily that the NEN standards to which reference is made in the *Bouwbesluit/Regeling Bouwbesluit*, or at least the contents thereof, are not binding because they are generally binding regulations that do not accord with the stipulations contained in the *Bekendmakingswet* [= 1988 Publication Act] and have therefore not come into effect or alternatively that these NEN standards, or at least the contents thereof, form no part of the *Bouwbesluit/Regeling Bouwbesluit*, and are not generally binding on the relevant parties;
2. that it should be declared in Court that the NEN standards to which reference is made in the *Bouwbesluit/Regeling Bouwbesluit*, or at least the contents thereof, as far as concerns the basic text of said standards, in accordance with Article 11 *Auteurswet* are free of copyright;
3. that the State, NNI respectively will be ordered to place at the disposal of Knooble a copy of all the NEN standards to which reference is made in the *Bouwbesluit/Regeling Bouwbesluit*, or at least the contents thereof, in writing or in digital form, irrespective of the question whether said generally binding regulations have already come into force.

3.3 The District Court awarded only the primary claim under 1. On appeal the Appeals Court quashed the judgment of the District Court and dismissed Knooble's claims as altered on appeal.

3.4 In the judgment under 7. the Appeals Court has assumed - in cassation not contested on specific grounds - that NEN standards come into existence as follows: after it has been pointed out that there is a need for a standard in a specific area, a NEN

standard is designed by a standard committee consisting of representatives of organisations who have an interest in said standard coming into existence, such as manufacturers, traders, users, governments or consumer organisations. NNI arbitrates when weighing up the various interests, arranges impartial process supervision and monitors consistency between the already existing standards. The design of the standard is published to subject it to a public round of criticism. Once any criticisms have been processed the standard committee acting on the basis of consensus then fixes the standard. NNI manages the fixed standards and arranges for the NEN standards to be available to the interested parties in exchange for payment and without prejudice to copyright. Moreover interested parties may take cognizance of the NEN standards in NNI's own library.

3.5 The Appeals Court based its dismissal of Knooble's claims as altered on appeal on the following grounds.

The *Woningwet* (whereby the Appeals Court apparently has its eye on Articles 2 and 3) makes provision for reference being made to standards such as NEN standards in implementing regulations. The reference in said implementing regulations, which are generally binding regulations (the *Bouwbesluit* and the *Regeling Bouwbesluit* based on it), to NEN standards does indeed make said standards under public law generally applicable standards (for example as standards which have at least to be fulfilled or fulfilled in an equivalent way) but does not make them generally binding regulations in the more limited sense in which that is understood in the *Grondwet* [=Constitution] or the *Bekendmakingswet*. For the latter to occur it would be necessary to have said standards laid down based on a regulatory power. The NEN standards do not fulfil said criterion because they are not laid down by the agency authorised to set regulations established by the *Bouwbesluit/Regeling Bouwbesluit* but on the grounds of agreements made under private law by representatives of organisations who have an interest in everyone using the same standard and who have no regulatory powers under public law (ground 8).

The ability of representatives of regulatory bodies to initiate the laying down or the altering of NEN standards does not mean that NNI as a private organisation has regulatory powers. A regulatory body referring to NEN standards that have been implemented based on private law agreements thus making the standards generally applicable does neither mean that NNI has regulatory powers (ground 9).

Not all generally applicable standards with external effect are generally binding regulations in the legal sense and nor can it ever have the intention of the legislator to have the current NEN standards become such regulations. Such is clear because many of the said NEN standards set no demands whatsoever but only standardize technical methods of calculating, measuring or regulating. The standard used to determine whether any generally binding regulation is complied with does not itself constitute the generally binding regulation also not when a legislator refers to said standard in a

generally binding regulation and so draws in said standard into the assessment framework (ground 10).

In addition under Article 1.5 of the *Bouwbesluit* that refers to the NEN standards these do not have to be met where an at least equivalent result as intended by the regulation can be achieved by some other means rather than application of said standards (ground 11).

The Appeals Court also sees no reason for any other opinion. The NEN standards are aimed at persons and companies who are professionally involved in building work and the costs of taking cognizance and observing the NEN standards is discounted in the design, building and maintenance processes. Cognizance of the NEN standards can be taken at NNI and you can acquire them for a fee. This way the NEN standards become sufficiently widely known. It has neither been argued nor shown that this system has unacceptable consequences for society nor that this threatens the continued existence of companies such as Knooble (ground 12).

The circumstance that, as Knooble has argued, many have expressed their endorsement of its position and that the government is being urged by society to have the “standards referred to” made available to the public free of charge, does not bring the Appeals Court to any other opinion. It would be up to the legislator to bring about any such system change, as this would fall beyond the remit of the judge whose task it is to focus on the development of the law (ground 13).

Whilst the NEN standards referred to in the *Bouwbesluit/Regeling Bouwbesluit* must indeed be regarded as generally applicable, the stipulations in the *Bekendmakingswet* are not applicable. The State has not breached any rules that apply to it in terms of notification/publication of any generally binding regulations. Knooble’s claims under I primarily and alternatively will not be allowed (ground 14).

NNI carried out notification/publication of the NEN standards. Knooble did not provide any arguments to support its position that NNI would have to be regarded as forming part of the public authorities if it cannot be determined that the relevant NEN standards have been recorded in the *Bouwbesluit/Regeling Bouwbesluit*. The second part of Knooble’s claim will therefore also not be allowed (ground 15).

Given the above, the points of departure for Knooble’s third and fourth claims are incorrect so that these claims too will not be eligible to be awarded (ground 16).

3.6 Part 1a is a ground for appeal to the effect that the Appeals Court has stepped beyond the ambit of the legal dispute or has provided an incomprehensible explanation of Knooble’s claims and arguments in the grounds 7-15 of its judgment by assuming that Knooble bases its claims on the argument that the NEN standards that NNI has laid down would in and of themselves have to be designated generally binding regulations that NNI has laid down as the public law body authorised for the purpose with regulatory powers and that in accordance with the *Bekendmakingswet* should be

notified/published prior to their coming into force. This ground for appeal is lacking in factual foundation because neither from the Appeals Court's grounds as mentioned nor from its judgment can be deduced that the Appeals Court held that Knooble bases its claims on any such argument.

3.7 Part 1b relates to the central issue in the dispute.

The ground for appeal amounts to this: the Appeals Court's judgment that a reference to NEN standards in a generally binding regulation whilst this does make them generally binding standards in public law but does not make them generally binding regulations in the limited sense of the *Grondwet* or the *Bekendmakingswet*, is incorrect and argues that the NEN standards referred to in the *Bouwbesluit* or in the *Regeling Bouwbesluit*, or at least the relevant parts thereof, by said reference become an inseparable part of the relevant generally binding regulations in the sense of the *Grondwet* or the *Bekendmakingswet*, and that pursuant to Article 1.4 of the *Bouwbesluit* the same holds for NEN standards that on the grounds of the European guideline for building products are replaced by NEN-EN standards, emanating from a European Standardization Institute.

3.8 The ground for appeal is without foundation. The generally binding regulations in Article 89 paragraph 4 of the *Grondwet* and Articles 3 and 4 of the *Bekendmakingswet* are rules that have external effect, are binding on citizens, and emanate from a body that derives its regulatory powers from an Act of Parliament. Article 2 of the *Woningwet* makes provision for technical terms and conditions to be given about such things as the construction of a building by or by virtue of governmental decree. Article 3 *Woningwet* adds to this that by or by virtue of governmental decree as under Article 2 reference may be made to standards or part standards. By doing so Article 3 does not intend, as confirmed by the parliamentary history as cited in the conclusion of Advocate General under Nos. 3.16-3.18, to empower the institute that sets up said standards to establish generally binding regulations. Where in other respects NNI does not by or pursuant to an Act of Parliament establish generally binding regulations the NEN standards cannot be designated generally binding regulations as under Article 89 paragraph 4 *Grondwet* and Articles 3 and 4 *Bekendmakingswet*, not even to the extent that the *Bouwbesluit/Regeling Bouwbesluit* refer to it. The judgment by the Appeals Court that said reference does not make the relevant NEN standards into generally binding regulations in the limited sense of the *Grondwet* or the *Bekendmakingswet*, that would first come into force on publication/notification as arranged in the *Bekendmakingswet*, is thus correct. The circumstance that, as Knooble has argued, some prior attuning takes place as between the minister and the NNI as to whether a NEN-standard will be used for reference in the *Bouwbesluit/Regeling Bouwbesluit*, such that the terminology and NNI's elaboration of the standard is attuned to the legislative regulations, does nothing to change this.

3.9 Part 1c assumes that the NEN standards referred to in the *Bouwbesluit/Regeling Bouwbesluit*, are part of the generally binding regulations emanating from the central government i.e. substantive law. It follows from the above that this point of departure is incorrect due to which the grounds of appeal of this part, namely, that the Appeals Court has ignored the fact that only a clear statutory provision or an apparently unambiguous meaning on the part of the legislator recorded in a formal statutory provision arising out of the history of how the *Bekendmakingswet* or *Woningwet* came into existence could bring about a situation whereby with due regard for the *Bekendmakingswet* the standards would not have to be published, fail.

3.10 The opinion held in this part as well as under part 2 that on the grounds of Article 11 *Auteurswet* no copyright rests on the NEN standards referred to in the *Bouwbesluit/Regeling Bouwbesluit* is incorrect. As deliberated upon earlier in 3.8 said standards do not emanate from the public authorities and they cannot be designated as generally binding regulations in the sense in which that is understood in the *Grondwet* or the *Bekendmakingswet*. It would therefore not hold that the public authorities had issued them as intended in Article 11 of the *Auteurswet*.

3.11 Alongside parts 1a-1c, part 1d is lacking in independent significance.

3.12 Part 1e is a grievance to the effect that the Appeals Court incorrectly disallowed the claim (under 1 alternatively) that it should be declared in Court that the NEN standards referred to are not generally binding on the parties concerned. This part is without foundation. The Appeals Court correctly judged that there are generally applicable standards that are not at one and the same time "generally binding regulations" in the sense of the *Bekendmakingswet*, and that in the current case it concerns such standards. As a corollary the Appeals Court correctly disallowed the claim under 1 alternatively.

3.13 The remaining grounds for appeal from part 2 as well as those of part 3 are also not allowed because of the above reasons.

3.14 NNI has claimed costs to cover the legal proceedings at the end of Article 1019h Rv. [= *Rechtsvordering* = Code of Civil Procedure] because it is essentially defending the enforcement of its intellectual property rights. This claim, that Knooble disputes, is well founded because NNI adopts the position that it is entitled to copyright in respect of the NEN standards, in cassation has conducted a defence aimed at preventing Knooble's claim to have declared in Court that the NEN standards referred to in the *Bouwbesluit/Regeling Bouwbesluit* are free of copyright. At the same time Knooble argued that if Article 1019h can be applied in the case, NNI has neglected to make clear

what part of the costs it has incurred relates to the copyright aspects in the case. This argument, that apparently extends to it only having to pay a part of NNI's costs at the end of Article 1019h, is unfounded because points of dispute relating to Article 89 paragraph 4 *Grondwet* and Articles 3 and 4 *Bekendmakingswet* determine the result of the copyright point of dispute (see under 3.10 above for this).

3.15 NNI finds an amount of €60,000 in legal costs as reasonable and proportionate. Knooble disputed the amount NNI specified, though without providing any arguments for so doing, such that the legal costs that fall on the side of NNI as mentioned hereinafter will be allowed.

4. Ruling

The Supreme Court hereby:

dismisses the appeal;

orders Knooble to pay the costs of the case in cassation, to the point of this judgment on the State's side estimated at €781.34 in disbursements and €2,200 in attorney fees and at €60,000 on NNI's side.

This judgment is made by the vice-president E.J. Numann as presiding justice and the justices A.M.J. van Buchem-Spapens, J.C. van Oven, C.A. Streefkerk and C.E. Drion, and pronounced in open session by justice J.C. van Oven on 22 June 2012.

David Pritzker

From: Elizabeth Neiman <eneiman@ansi.org>
Sent: Tuesday, September 18, 2012 5:17 PM
To: Emily Bremer; Michael Goldenberg; Rae McQuade; Clark Silcox; Peter L. Strauss; Dirk Breedveld; Esa L. Sferra-Bonistalli; Esa L. Sferra-Bonistalli; Thomas B. O'Brien, Jr.; Rachel Weintraub; Vanessa.Sutherland@dot.gov
Cc: Patricia Griffin; Scott Cooper; Fran Schrotter
Subject: ANSI Legal Issues Forum panelists - discussion questions
Attachments: LIF 2012 discussion questions 9-18-12.docx

To: Panelists, ANSI Legal Issues Forum

Dear all,

Thank you again for agreeing to participate as panelists at ANSI's upcoming Legal Issues Forum. I look forward to welcoming you to Washington, DC, on Wednesday, October 10. Please note that the event begins at 9 a.m. and ends with a networking luncheon from 1 to 2 p.m.

As promised in my earlier message to you, I am writing to share the discussion questions that will be posed to you by our moderator, Emily Bremer of ACUS. Please find them attached here for your advance preparation.

DISCUSSION FORMAT

We are looking to have as robust and interactive a dialogue as possible. As a result, we want to avoid prepared PowerPoint presentations and instead focus on the discussion.

Please be prepared to speak for no more than five minutes about your general position (or your organization's position, as appropriate) on incorporation by reference, reasonable availability, and copyright.

Once each of you has spoken briefly, our moderator, Emily Bremer of ACUS, will lead the group discussion using this series of focused questions.

Please note that we are also expecting a great deal of audience interaction, given the subject matter.

PREPARATORY TELECONFERENCE

You should have all received a calendar notice from me for a preparatory teleconference at 10 a.m. either on Thursday, September 27, or Monday, October 1. I look forward to speaking with you then.

BIO and SPECIAL NEEDS

As soon as possible, please send me your brief bio (250 words or less) for inclusion in our event program. Many of you have already done so - thank you! Please also indicate if you have any dietary restrictions or other special needs so that we may best accommodate you.

AGENDA

The latest version of the agenda will always be available at [this link](#) for your reference. You may also visit www.ansi.org/wsstream to view the full series of events.

Once again, many thanks for agreeing to participate in the forum. I look forward to a very exciting event and to seeing each of you in person.

Best regards,
Liz

Liz Neiman
Director of Communications and Public Relations
American National Standards Institute
25 West 43rd Street, Fourth Floor
New York, NY 10036

T 212.642.4911
F 212.398.0023
eneiman@ansi.org

ANSI Legal Issues Forum 2012

Moderated Discussion Questions

General Questions for All Panelists

- What kinds of things do SDOs already do to make their standards available? Is this enough?
- Why don't SDOs just change their business model? Companies are forced to do that all the time and they survive. Just look at the music industry.
- If standards and codes were given away for free, what would the impact really be on the U.S. standardization system? Wouldn't everyone just adapt?
- What if the U.S. government just develops its own standards? This doesn't seem to be an issue in other countries.
- What if the government pays SDOs for all standards that it incorporates by reference?
- Why is protecting intellectual property in standards so important? Is it just about the money?
- How does your organization define reasonable availability?
- How should agencies and regulated parties handle secondary and tertiary references to standards?
- Standards developed by international organizations like ISO and IEC have also been incorporated by reference. Is it reasonable to expect these organizations to make their standards available when they are not under the U.S. government's jurisdiction?

Targeted Questions

For Dirk Breedveld, NEN (on the phone)

- Earlier this year, the same issue came up in the Netherlands with respect to your Buildings Decree. I understand that your Supreme Court issued a decision in June on copyright of standards referenced in Dutch law. Can you please tell us a little more about what happened?
- Following the Supreme Court's decision, has there been any continued discussion of the matter? Does the issue receive any attention in your media, for example?

For Michael Goldenberg, FERC

- How many standards has FERC incorporated by reference into regulation?

- Has FERC considered developing its own standards instead of relying on the private sector? What was the result of that analysis?
- What would happen if FERC had to pay SDOs to develop standards so they could be made freely available?
- What can government agencies do to make sure that the most current versions of standards are incorporated by reference?

For Rae McQuade, NAESB

- Your organization's response to the Federal Register petition was very detailed in outlining exactly how NAESB makes its documents available for review. Could you please share that information with the audience?
- Is versioning an issue when NAESB standards are incorporated by reference? (For example, a 2003 version is referenced when a newer version exists.) How do you handle this?
- Does NAESB make incorporated standards available today, in some form (read-only, etc.)? If NAESB was required to make all of its incorporated standards available for free, what would happen?
- Do you often receive requests for information on incorporated standards? How do you handle these requests?

For Tom O'Brien, ASTM International

- ASTM International does a lot of work with small and medium-sized enterprises. Do you have any special programs in place for these groups to enhance their access?
- Is versioning an issue when ASTM's standards are incorporated by reference? (For example, a 2003 version is referenced when a newer version exists.) How do you handle this?
- Does ASTM International make incorporated standards available today, in some form (read-only, etc.)? If ASTM International was required to make all of its incorporated standards available for free, what would happen?
- Do you often receive requests for information on incorporated standards? How do you handle these requests?

For Esa Sferra-Bonistalli, USCG

- The Coast Guard has developed a well-regarded approach to the incorporation of standards. How many standards has the Coast Guard incorporated by reference into regulation?

- Has the Coast Guard considered developing its own standards instead of relying on the private sector? What was the result of that analysis?
- What would happen if the Coast Guard had to pay SDOs to make incorporated standards freely available?
- What can government agencies do to make sure that the most current versions of standards are incorporated by reference?

For Clark Silcox, NEMA

- When a NEMA standard is incorporated by reference, does the regulation typically make reference to the full standard or just a portion of it?
- Is versioning an issue when NEMA standards are incorporated? (For example, a 2003 version is referenced when a newer version exists.) How do you handle this?
- Does NEMA make incorporated standards available today in some form (read-only, etc.)? If NEMA was required to make all of its incorporated standards available for free, what would happen?
- Do you often receive requests for information on incorporated standards? How do you handle these requests?

For Peter Strauss, Columbia Law School

- You coordinated the Federal Register petition, which included some discussion about the criteria for reasonable availability. Can you please elaborate on your views?
- In its comments on the Federal Register petition, the American Bar Association's Section on Administrative Law and Regulatory Practice suggested that it would be sufficient for incorporated standards to be available in "read-only" format, and acknowledged that some SDOs already do this. I understand that you were involved in preparing these comments. Your petition to the Federal Register seems to take a similar position, urging that documents must be "electronically accessed for reading without cost." Others have taken a different approach, arguing that standards are the law and should be available for free without the limitations of a "read-only" format. Can you please explore this distinction?

For Vanessa Allen Sutherland, PHMSA, DOT

- In July, PHMSA hosted a workshop on incorporation by reference that focused on the implementation of section 24 of the Pipeline Safety Bill. In your view, what were some of the key takeaways from the discussion at the workshop?
- How many standards has PHMSA incorporated by reference into regulation?

- Has PHMSA or the Department of Transportation considered developing its own standards instead of relying on the private sector? What was the result of that analysis?
- What would happen if PHMSA had to pay SDOs to develop standards so they could be made freely available?
- What can government agencies do to make sure that the most current versions of standards are incorporated by reference?

For Rachel Weintraub, Consumer Federation of America

- In response to the Office of Management and Budget's request for information on Circular A-119, your organization stated that citizens should have "unfettered access" to standards that have been incorporated by reference into U.S. law. How do you define "unfettered?"
- Consumer groups contribute to standards development through involvement in individual standards creation efforts and through international efforts such as ISO's Committee on Consumer Policy. Given time and resource constraints, do you have any suggestions for how consumer groups and SDOs can most effectively work together in standards development activities?

David Pritzker

From: Scott Cooper <SCooper@ansi.org>
Sent: Monday, April 23, 2012 5:29 PM
To: Emily Bremer; Neil R. Eisner; Cheryl A. Falvey
Cc: Adam Schlosser; Reeve Bull
Subject: RE: May 1 IBR Panel--Call next week?

Excellent.

Thanks Emily for your persistence.

Looking forward.

Best
Scott

Scott Cooper

Vice President
Government Relations and Public Policy
American National Standards Institute
1899 L St, NW, 11th Floor
Washington, DC 20036
Office: 202-331-3610
Cell: 413-687-1788
scooper@ansi.org

From: Emily Bremer [<mailto:ebremer@acus.gov>]
Sent: Monday, April 23, 2012 5:26 PM
To: Neil R. Eisner; Cheryl A. Falvey; Scott Cooper
Cc: Adam Schlosser; Reeve Bull
Subject: RE: May 1 IBR Panel--Call next week?

All,

Thank you all for letting me know your availability. Miraculously, we've found a time that works for everyone: **4:30 pm tomorrow afternoon**. I've set up a conference bridge for us. At the appointed time, just call 202.480.2086 and enter conference code 49310.

The call shouldn't take long; we just want to get everyone on the same page for the upcoming panel discussion.

Best,
Emily

From: Emily Bremer
Sent: Thursday, April 19, 2012 4:19 PM
To: 'Neil.Eisner@dot.gov'; Cheryl A. Falvey; 'Scott Cooper'
Cc: 'Schlosser, Adam'; Reeve Bull
Subject: May 1 IBR Panel--Call next week?

Neil, Cheryl, and Scott,

Thank you all for agreeing to be on the IBR panel for our upcoming event at the Chamber of Commerce. We're looking forward to a great discussion! As you know, the event will start at 2:30 on Tuesday, May 1. The IBR panel will be up first. I'll be joining you as a panelist, while Reeve will moderate the discussion.

Are you available for a conference call next week to discuss the format and content of our respective presentations? If so, **please let me know your availability on the afternoons of next Monday, Tuesday, and Wednesday.** When I've heard from everyone, I'll set a time that everyone can do and will set up a conference bridge for us.

Thank you,

Emily Schleicher Bremer | Attorney Advisor



ADMINISTRATIVE CONFERENCE
OF THE UNITED STATES

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1120 20th St., NW Suite 706 South . Washington, DC 20036
(202) 480-2086 . ebremer@acus.gov . www.acus.gov

David Pritzker

From: Grove, Jeff <jgrove@astm.org>
Sent: Wednesday, September 07, 2011 3:56 PM
To: Emily Bremer
Subject: RE: ACUS Report on Standards Inc by Ref

Dear Emily;

Hope you had a pleasant August and were able to get away from the standards project for a little while. In that regard, is there an update on your report?

Thanks!
Jeff

From: Grove, Jeff
Sent: Wednesday, July 27, 2011 3:53 PM
To: 'Emily Bremer' <emily.bremer@astm.org>; 'Emily Bremer' <emily.bremer@astm.org>
Subject: ACUS Report on Standards Inc by Ref

(b)(6) Ex.

Dear Emily and Jim;

First, I would like to thank Emily for seeking ASTM's opinions as the Administrative Council of the US strives to make recommendations on standards incorporated by reference by Federal agencies. I enjoyed our conversation very much and was impressed with your knowledge and interest in subjects which are very near and dear to me.

To Jim, Emily Bremer is an attorney advisor at ACUS working on the following project:
<http://www.acus.gov/research/the-conference-current-projects/incorporation-by-reference/>

As I stated early today in our ASTM – ACUS meeting, I hope any review of standards policy includes Jim Turner.

Below, please find the respective contact information for Emily and Jim. And I have included a brief 2008 spotlight piece on Jim as background. Please do not hesitate to contact me if I can be of assistance in any way. Thanks, Jeff

Jim Turner, Senior Counsel and Director of Energy Programs
Association of Public and Land Grant Universities
1307 New York Avenue NW, 4th Floor
Washington, DC 20005

202-478-6049 APLU
202-684-5580 cell

(b)(6) Ex.

703-891-9432 efax

Emily Schleicher Bremer | Attorney Advisor

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September/October 2008

SpotLight



Celebrating an Ongoing Career in Standardization

James H. Turner Jr. to Be Honored on World Standards Day

By Richard Wilhelm

No two days are quite the same for James H. Turner Jr., chief counsel for the U.S. House of Representatives Committee on Science and Technology. In his position, Turner works every day with members of the U.S. Congress, their staffs and others from industry and the standards community on a wide variety of issues. Over the years, he has been a constant friend and adviser to the standards community, worked with the community on legislative solutions to its problems and served on a variety of standards boards and committees.

In recognition of this work, Turner will receive the Ronald H. Brown Standards Leadership Award, which will be given on World Standards Day, Oct. 23, in Washington, D.C. The award, named for the late U.S. Secretary of Commerce from 1993 to 1996, recognizes demonstrated leadership in promoting the role of standardization in eliminating global barriers to trade. ASTM International and ASME International nominated Turner for the Brown award.

Among Turner's most important work was his assistance in the enactment of the National Technology Transfer and Advancement Act, which was signed into law on March 7, 1996. The NTTAA directs the National Institute of Standards and Technology to coordinate with other federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on government-produced standards. Turner played a key role in developing a version of the NTTAA legislation that was acceptable to both the administration of President William J. Clinton and to Congress and the standardization community.

Turner feels that the NTTAA has been effective because it enabled Congress and the executive branch of the government to reach agreement on the role of voluntary consensus in federal procurement and regulation. He believes the NTTAA should be a catalyst for rethinking the way the federal government carries out its public

and safety responsibilities and to learn from the private sector's adoption of quality principles. "If these principles could be the standard way that the government as well as the private sector does business and the public and private sectors continually improved the way they worked together, huge amounts of waste could be eliminated as both sides achieved their goals better than ever before," says Turner.

At the heart of Turner's work is his conviction that standards play an important role in accomplishing many of the legislative objectives of the U.S. Congress. "As our world becomes more and more interrelated, we become more and more dependent on high quality standards to establish the framework in which to operate," says Turner. "I think many people on Capitol Hill grasp that standards are important and that the consistency that standards bring are essential to establishing uniform policies or programs across the country. This is why an increasing number of bills each Congress reference standards."

In 2000, Turner received the William T. Cavanaugh Memorial Award from ASTM. The Cavanaugh award is granted to a person or persons of widely recognized eminence in the voluntary standards system. In addition, Turner served on ASTM International's board of directors from 2005 to 2007.

Turner says that he is honored to be receiving the Ronald Brown award, particularly since he knew and worked with Brown after Brown's nomination to serve as secretary of commerce. "My job was easy because Ron Brown was so bright and had an uncanny ability to ask just the right question," says Turner. "I have been lucky over the years to be exposed to more than my share of our best and brightest, but Ron was as quick as anyone I have known in understanding what was ahead."

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Sent: Wednesday, July 27, 2011 3:53 PM
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more and more dependent on high quality standards to establish the framework in which to operate,” says Turner. “I think many people on Capitol Hill grasp that standards are important and that the consistency that standards bring are essential to establishing uniform policies or programs across the country. This is why an increasing number of bills each Congress reference standards.”

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David Pritzker

From: Emily Bremer
Sent: Tuesday, October 22, 2013 8:57 AM
To: Scott Cooper
Subject: RE: RegBlog Weekly Email: October 21, 2013
Attachments: Private Standards in Public Law (Bremer) [Sept. 2013].pdf

(Sent as separate PDF file.)

Ah, yes, I saw that. Did you see the other pieces? RegBlog did another three-part series, including a piece from their staff and one from Sean Croston, an attorney at FTC (and formerly at NRC). The series is here:
<https://www.law.upenn.edu/blogs/regblog/2013/10/continuing-debate-over-regulatory-incorporation.html>.

And I believe I promised I'd inflict my newest IBR article on you, but then neglected to do so. ☺ It's attached. I would appreciate it if you would not circulate it without my permission—I expect to make changes before submitting it to journals in the spring. If you have any suggestions in that regard, I'd be thrilled to hear them, although I understand that you may not have time.

The job search is going better this year—the hiring conference was last weekend, and I've already got callbacks at Notre Dame, Southern Illinois University, and the University of Alabama. Fingers crossed!

Cheers,
Emily

From: Scott Cooper [mailto:SCooper@ansi.org]
Sent: Tuesday, October 22, 2013 8:49 AM
To: Emily Bremer
Subject: RegBlog Weekly Email: October 21, 2013

A belated response from Prof Strauss on Portal and NARA petition.

<https://www.law.upenn.edu/blogs/regblog/2013/10/15-strauss-one-step-forward.html>

From: Peter Strauss !
Sent: Monday, October 21, 2013 10:06 PM
To: Scott Cooper
Subject: Fwd: RegBlog Weekly Email: October 21, 2013

(b)(6)

In case you did not see this ...

----- Forwarded message -----

From: **RegBlog** <regblog@law.upenn.edu>
Date: Mon, Oct 21, 2013 at 9:00 AM
Subject: RegBlog Weekly Email: October 21, 2013
To: Peter Strauss <strauss@law.columbia.edu>

Your source of regulatory news, analysis, and opinion in affiliation with the Penn Program on Regulation

Is this email not displaying correctly?
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Monday, October 21, 2013

THIS PAST WEEK IN REGBLOG

[Series: The Continuing Debate Over Regulatory Incorporation](#)

Our previous series, *Regulating by Reference*, chronicled the surprising reality that "some legally binding rules also originate within private organizations – not the government." This practice, known as "incorporation by reference," takes advantage of industry expertise, but also is perceived to come into tension with general principles of open government because the private standards an agency incorporates by reference are not always readily available to the public. In this week's series, *The Continuing Debate Over Regulatory Incorporation*, RegBlog is excited to publish new essays on the issue by [Professor Strauss](#) and attorney [Sean Croston](#). We begin, first, with a [news story](#) by RegBlog writer Jessica Bassett explaining the OFR's recent action....[More](#)

FEATURED ESSAYS

[Opinion: OFR's Refusal to Regulate References](#)

Sean Croston

In the opening days of his first term, President Obama proclaimed that his administration would be the most transparent in history, stating that: "Transparency promotes accountability and provides information for citizens about what their Government is doing. . . . My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public." In that spirit, debate continues over incorporation by reference (IBR), an obscure but important administrative law tool that allows federal agencies to build into their binding regulations various standards developed by outside entities....[More](#)

Opinion: One Step Forward, Two Steps Back

Peter L. Strauss

On October 2, the American National Standards Institute (ANSI) held an open forum in Washington, D.C. on "Government Reliance on Voluntary Consensus Standards and Conformance Programs." ANSI's President and CEO, Joe Bhatia, proudly announced that ANSI was creating an Incorporation by Reference Portal – already subscribed to by 14 standards development organizations (SDOs, including the International Standards Organization and other heavy hitters) – to provide free public access on a tightly controlled read-only basis to voluntary consensus standards converted into legal obligations through their incorporation by reference into agency regulations. James Shannon, President and CEO of the National Fire Protection Association, responsible among other things for the National Electrical Code many states have incorporated by reference into their laws, reminded the audience that NFPA had been providing such a facility for ten years, without appreciable damage to a financial base heavily dependent on sales of its standards....[More](#)

STORIES FROM THIS PAST WEEK

News: Federal Reserve Board Implements New Capital Plan Rules

Patricia Santiago

The Federal Reserve Board recently issued two interim final rules that bring the U.S. closer to satisfying internationally recommended capital safeguards for bank holding companies. In an earlier statement, Chairman Ben Bernanke emphasized the new capital requirements are "a key element of the Board's regulatory reform package to promote financial stability. "The interim final rules raise capital ratio requirements for banking institutions. The Federal Reserve uses capital ratios to measure

an institution's liquidity – its ability to satisfy liabilities....[More](#)

[News: OFR Responds to Petition on Incorporation by Reference](#)

Jessica Bassett

Most everyone is familiar with the legal principle that ignorance of the law excuses no one. But what if the public cannot access or consult a particular law? Public access to binding legal rules lies at the core of a recent announcement by the Office of the Federal Register (OFR) responding to a petition addressing a practice known as incorporation by reference. A government agency incorporates by reference when it “adopts” a standard developed by a *private* organization as part of a *government* regulation. In its recent announcement, OFR concluded that public access to the law does not require private standards that are incorporated to be accessible online—or even available to the public for free....[More](#)

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