

**From:** [Emily Bremer](#)  
**To:** [Scott Cooper](#)  
**Subject:** RE: Peter Strauss  
**Date:** Tuesday, October 28, 2014 3:40:00 PM  
**Attachments:** [Bremer Perspectives on Private Standards \[October 2014\].pdf](#)

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This is great, thanks for sharing! It's actually very timely, as I'm currently working on another paper (a personal project not for the Conference) that more directly compares and contrasts the US and EU standards systems and policies. The current draft is attached. I plan to make some fairly significant revisions before submitting it for publication in the spring. Any thoughts you have would be much appreciated! Please don't circulate, as it's still very much a draft, or share with Peter, to whom I'll send it directly in the coming weeks.

Lunch was great, as always. Thanks so much for putting me in touch with Peter Winn!

Hope all else is well.

Best,

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**From:** Scott Cooper [mailto:SCooper@ansi.org]  
**Sent:** Tuesday, October 28, 2014 3:30 PM  
**To:** Emily Bremer  
**Subject:** Peter Strauss

Emily,

It is so long since we had lunch (and exactly that long in being remiss for thanking you for joining us), that I can't remember why I was going to send you this email string from Peter Strauss). Regardless, here it is.... I will see him next week up in NY if you have any message you wish to convey...

Best  
Scott

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**From:** Peter Strauss [mailto:[strauss@law.columbia.edu](mailto:strauss@law.columbia.edu)]  
**Sent:** Monday, September 10, 2012 6:30 PM  
**To:** Scott Cooper  
**Subject:** Re: FW: Buthe and Mattli book

Thanks for this. Had a good conversation today with Paul Verkuil about the work you are doing together -- and the obstacles you may face.

Still curious how much time I should plan to spend in talking -- and hopeful that I'll find some acceptance in this discussion of my understanding that you do valuable work, and wish to find a way to

reward it without empowering (by a broad view of copyright) monopoly pricing for law. I don't think, as you have sometimes seemed to, that these are mutually exclusive positions.

Best, Peter

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▼ "Scott Cooper" ---09/10/2012 04:58:38 PM---Dear Peter,

From: "Scott Cooper" <[SCooper@ansi.org](mailto:SCooper@ansi.org)>  
To: "Peter Strauss" <[strauss@law.columbia.edu](mailto:strauss@law.columbia.edu)>,  
Date: 09/10/2012 04:58 PM  
Subject: FW: Buthe and Mattli book

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Dear Peter,

I appreciate this ongoing dialogue that we have been able to develop.

In regards to your request for further information on ANSI's BSR process, including "data (and examples) about returns and return rates," it is unfortunately not that easy for us to devote the resources needed to quickly and accurately respond. What I would like to suggest is that at the Legal Issues Forum, we get together with some of ANSI's experts in this field and have an open discussion on the issue and attempt to respond to all your questions.

For the purposes of this discussion, I would like to pick up on a previous thread, which is the book you recommended to me, *The New Global Rulers*, and respond with my thoughts.

I can't speak very knowledgably about the first section of the book on accounting standards, except to comment that the jury is still out as to how fast (and how far) the SEC is going to move in integrating (not wholly replacing GAAP), IFRS standards into the U.S. financial reporting system. An SEC "Final Staff Report" from 7/13 of this year pointedly did not contain a recommendation to the SEC on whether to incorporate IFRS into US reporting standards, and stated that in significant areas – rate-regulated industries, insurance, extractive industries – the IFRS standards are undeveloped and have not addressed these (and other issues) in a timely basis. The CFA Institute commented soon afterwards (8/11/12) in an analysis provocatively titled "Does the SEC have the will to find a way towards IFRS," concludes that, no, they don't, and that "more analysis and evaluation is required" (usually the kiss of death in this town...). So Mattli's and Buthe's conclusion that "SEC-regulated US corporations were to be **required** (my emphasis) to use IFRS, possibly as soon as 2014," is overstated, regardless of all the surveys and regression analysis they may have done to make their case.

The discussion of the international standards arena (mostly an ISO and IEC focus), is closer to home. The authors seem prone to sweeping but inaccurate statements that I think impeach the case they are trying to make.

"Private standard-setters generally have strong norms or formal rules that require technical, scientific reasoning from anyone who seeks to have a voice in the development of a standard.

There are two main reasons for this insistence on technical language. It reinforces the transitional standard-setting body's legitimacy, which is based on technical expertise. And in rendering other (political or economic) arguments impermissible and illegitimate, it safeguards the transitional body against overt political and specially government interference." (p. 45)

Standards are technical documents, which is one reason that Congress and USG agencies find them so useful to incorporate by reference in Public Law and rulemakings. Far from keeping government officials, small businesses, and others (consumer groups, academics, etc.) in a hands-off position in standards creation, standards developers encourage their participation. And in ANSI's recent response to the Department of Commerce's request for information on use of standards by USG agencies [attached] we stated that:

Greater Participation and Support by Government in Standards Process: The NTTAA is clear on the need for government agencies to rely on private-sector standards wherever possible. Agencies with an interest in standards – whether from a regulatory or procurement perspective – should actively participate in domestic and international standards development. More government agencies should be encouraged to join ANSI and its member organizations, participate in the ANSI Government Member Forum, and seek office on the Institute's Board of Directors. They should also give greater support to U.S.-domiciled SDOs and Technical Advisory Groups (TAGs) to the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) by encouraging qualified government technical personnel to participate in SDO and TAG work whenever possible as a matter of policy. By becoming more involved and doing so in a more coordinated fashion, the government can alert the impacted communities when a cross-sector, standards-based solution is needed, and SDOs in turn can alert the government when key standards are being developed or revised.

Roughly one third of ANSI's Board of Directors is made up of government officials, and there is also representation from consumer groups and academia. Private-sector standardization organizations would not succeed – nor would they have standing – if they were not transparent, inclusive, and consensus-driven.

The U.S. system is portrayed by the authors as fragmented and thus disorganized. The European system is portrayed as being well organized and coordinated, thus giving European countries an advantage in ISO and IEC. It is true that the U.S. system is a bottom-up, stakeholder-driven system that makes an organization chart look unwieldy, but the fact remains that our decentralized system has produced thousands upon thousands of quality standards that have been accepted internationally. The European org chart does look well organized, but the CEN and CENELEC system is populated by the same members as the ISO and IEC system, and to say that the Europeans vote the same way in an organized fashion at either the European or ISO-IEC level is not the case. Facts do not support the Europeans voting one way, and the U.S. another way, on ISO and IEC matters. There may be a few cases of divergence among thousands of votes, but that is hardly conclusive evidence of European solidarity. In most cases, the U.S. votes the same way as the European participating countries. About 10 years ago, ANSI tasked some interns to look over approximately 4,000 votes, and they found that U.S. and EU votes were strongly correlated.

The point is also made repeatedly in the book that regulation is being taken over by private sector member bodies such as ISO and IEC. To wit: "In sum, the nongovernmental status of nonmarket private sector standard-setters is not just coincidental, but consciously and sometimes adamantly maintained by organizations such as IASB, IEC and ISO" (p.44). About 75% of the ISO members are actually governmental bodies, for example from most of SE Asia, China, India, the Middle East countries, Japan, Mexico, and many more. And these government bodies decide who participates in ISO (and to a [slightly](#) lesser extent, the IEC).

A last point, as I may be wearing out my welcome. The authors conclude that:

"In sum, the European system of product standardization is characterized by a high degree of

coordination under an umbrella of a single domestic institution with a hierarchical structure, supplemented by European-wide private-sector organizations that reinforce these structures. By contrast, the US domestic institutions for product standardization are characterized by extreme fragmentation and competition among specialized standard-setters." (p.159)

I am not sure I know what "extreme...competition" is, or when that becomes a bad thing, but in a global marketplace – for products, or standards, or product standards – a "hierarchical structure" is unlikely to be able to respond effectively to change.

This is the problem that I find pervasive throughout the book: what I would call the 'Black Box' syndrome. If a process gets to the Black Box first (whether the SEC, or ISO or IEC), then that process is declared the winner by the authors. But the most widely used standard is not always the first through the gate. There are many international standards developed by consensus-based SDOs and by consortia that never pass through the gates of IEC or ISO; and yet are still the most widely used international standards in their particular field. In large part this is because they have been subject to competition and consensus-reaching by the stakeholders that are impacted by their subject matter . . . and that has made them more responsive to the real-world issues of the marketplace than a hierarchical structure will be able to replicate.

I realize I have called upon your patience with this long response to your e-mail. My apologies, but I do appreciate the opportunity to continue this dialogue that we have started. I hope you still feel the same. If so, I look forward to your next response.

Best  
Scott

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**From:** Peter Strauss [<mailto:strauss@law.columbia.edu>]  
**Sent:** Tuesday, June 19, 2012 11:41 AM  
**To:** Scott Cooper  
**Subject:** Buthe and Mattli book

Hi Scott --

Good to catch up with you again at ACUS.

I have now finished reading "The New Global Rulers" and am even more certain it should be at the top of your to-read pile. It makes devastatingly clear how ANSI's relatively weak position at the head of America's competing SDOs prejudices American firms that are not multi-nationals in the increasingly important international standard-setting process.(e.g., "the American system for product standardization is characterized by extreme pluralism and contestation," p. 150, which results in our being heard late and less persuasively) -- and also suggests that a wider range of voices are regularly heard, even subsidized, in unitary national systems than in ours, where even government agencies may be required to pay to play by at least some SDOs.

There is, then, a good deal of ammunition here that you might use in an effort to persuade your member SDOs to accept a more genuinely hierarchical arrangement; and indeed you might be able to enlist OMB's help in working to eliminate the unfortunate pay-to-play elements that just are not present abroad, and that weaken any claim that resulting standards reflect anything other than dominant industrial views.

Peter

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