

Submitted May 14, 2026
Responses to Questions for the Record from
Representative Darrell Issa (R-CA) to

Jim Pauley

President and Chief Executive Officer

National Fire Protection Association

before the

House Committee on Judiciary
Subcommittee on Courts, Intellectual Property, Artificial Intelligence,
and the Internet

Hearing on the
Protecting and Enhancing Public Access to Codes Act
(Pro Codes Act) H.R. 4072

April 21, 2026

- 1. State and local governments rely on the expertise of the National Fire Protection Association and regularly incorporate your standards by reference into state and local building codes. In recent years, you have faced an onslaught of entities posting your standards on the internet without your permission. Can you clarify, for the record, the extent to which organizations like Public.Resource.Org or UpCodes post material beyond just those portions of the standard that are incorporated by reference?**

When a state or local government incorporates a work by reference, it generally lists the title, edition, and publishing information of the copyrighted work in a statute, regulation, or ordinance. For example, an agency may include the following in their regulation: “This agency incorporates by reference NFPA 72, *National Fire Alarm and Signaling Code*, 2019 edition. Copies of standards are available through the National Fire Protection Association online at www.nfpa.org or at their offices, 1 Batterymarch Park, Quincy, MA 02169.” The jurisdiction’s incorporation by reference serves, among other purposes, to (1) enhance safety and standardization because the copies available from NFPA are authentic and current with any errata issued after publication; (2) increase efficiency and reduce costs for the agency, which can reference the standard instead of creating their own or negotiating with publishers; and (3) protect NFPA’s independent, self-funded model by directing users

to NFPA for copies. These purposes are consistent with the National Technology Transfer and Advancement Act of 1995 (NTTAA) and federal policy. See OMB Circular A-119, 63 Fed. Reg. 8546, 8555 (Feb. 19, 1998), renewed 81 Fed. Reg. 4673 (Jan. 27, 2016).

Over the past decade, NFPA has been forced to endure lengthy and costly litigation that distracts from its important public safety work to protect its copyrighted standards and defend the incorporation by reference system that has kept us all safe for decades. As NFPA demonstrated in those litigations, Public.Resource.Org and UpCodes posted the entirety of dozens of NFPA’s copyrighted works verbatim, including material far in excess of what reasonably could be deemed the legally binding portions of those standards. For example, Public.Resource.Org cited 38 C.F.R. § 39.63 as the basis for its posting of the entirety of NFPA 101, *Life Safety Code*, (2003) online. But the Department of Veteran Affairs’ regulation narrowly addresses architectural and structural requirements for cemeteries. NFPA 101 (2003) also includes chapters regarding day-care occupancies, educational occupancies, and 1- or 2-family dwellings, which are outside the scope of the regulation. In addition, as demonstrated through litigation, Public.Resource.Org and UpCodes posted significant material that was only explanatory and informative, such as informational notes that provide context, background, and other material but do not set forth requirements. NFPA includes non-mandatory material for the benefit of readers seeking to gain deeper insight and understanding of NFPA’s standards as they use them in their professional work. But that material—by its plain text—is not setting forth requirements. Despite all that, Public.Resource.Org and UpCodes posted the entire body of NFPA’s standards.

Further, both Public.Resource.Org and UpCodes posted copyrighted standards that are not incorporated by reference by any state or local government, but instead are only indirectly cited in other organizations’ privately authored works, which are themselves incorporated by reference. This “daisy chain” argument was at issue in the recent Third Circuit decision, *ASTM v. UpCodes*, No. 24-2965 (Apr. 7, 2026). UpCodes argued entitlement to post the entirety of a standard because it was referenced in yet another standard that was in turn referenced in a regulation. Because many standards cross-reference other standards, this approach vastly expanded the scope of material UpCodes claimed entitlement to post, and significantly expands the threat to NFPA’s and other SDOs’ important work.

2. Courts have focused heavily on the “non-profit” nature of the organizations posting standards online when determining whether “fair use” should protect them from liability for copyright infringement. Are the founders of some of these “non-profits” making a significant amount of money, to your knowledge?

Public.Resource.Org is a 501(c)(3) nonprofit that publishes incorporated standards online without authorization. In 2024, it received \$1.1 million in total contributions (up from \$821,285 in 2023). Its founder and president, Carl Malamud, is compensated at a level that is high by small-nonprofit standards: in 2024, the organization paid him \$321,647 in total compensation (\$320,135 in 2023). Including revenue from sources other than contributions,

Mr. Malamud's compensation represents approximately 28% to 35% of Public.Resource.Org's total annual revenue.

However, the nonprofit-versus-commercial distinction is not the relevant dividing line for purposes of the fair-use analysis. Unrestricted copying and online publication of full copies of standards by nonprofits is likely to have the same effect as comparable conduct by for-profit entities. In either case, wholesale, unauthorized dissemination supplants demand for the original works and displaces the licensing market on which standards development organizations depend. Over time, such dissemination will erode those organizations' revenue streams, threatening the viability of the voluntary-consensus standards system as it currently operates. That system depends on the organizations' ability to recoup the substantial costs of developing, maintaining, and updating technical standards.

What is notably absent from any of these actors, whether nonprofit or commercial, is a plan for sustaining the system they are undermining. Organizations like Public.Resource.Org post standards that took years and significant resources to develop, but they offer no mechanism for funding the continued creation and updating of those works. If the organizations that develop standards can no longer fund their work, there will be nothing left to post.

3. What might happen to many standards development organizations (SDOs) and how quickly if Congress does not take action?

Now is the time for Congress to act. NFPA can only speak for itself, but we strongly believe that SDOs face a critical and growing threat if Congress does not set the appropriate balance on this important policy question. Multiple lower-court decisions have created an inconsistent legal landscape regarding incorporation by reference and copyright that is increasingly threatening this important private-public partnership. That uncertainty, coupled with courts' inability to use their limited tools to set this important policy balance, is why congressional action is necessary.

Without legislation, the conflicting court decisions are eroding the necessary legal clarity regarding the proper balance between public access and protection for copyright. This legal uncertainty harms NFPA's ability to enforce its rights. For-profit actors are already invoking ambiguous decisions to justify mass copying and repackaging of standards for their own gain. In turn, this undermines NFPA's ability to license its standards to legitimate organizations, businesses, and professionals who fund standards development by purchasing the works. As a result, NFPA has less funds available to invest in its public safety mission. Those funds are further depleted by the necessity of spending resources to protect its copyrights. This all means less is available for our core work: developing standards that are critical to the nation's safety and security.

This process is already happening, and will only worsen if Congress does not take immediate action. Over the past few years, an increasing number of organizations and

individuals—emboldened by the lack of legal clarity—have engaged in mass distribution of privately developed standards, meaning there has been a drastic uptick in litigation in this area. Litigation expenses are growing and could, in the very near term, lead NFPA to cut back on its standards development work. NFPA just wants to get out of court and back to its nonprofit mission; Congress should act now to allow that to happen.

If Congress declines to act and the court decisions continue on this dangerous path, NFPA may need to take more drastic actions. We have already told the Occupational Safety and Health Administration (OSHA) in federal rulemaking proceedings for OSHA’s Emergency Response Standard *not* to incorporate by reference over 22 of NFPA’s emergency response and fire service related standards. NFPA has also made difficult decisions regarding combining standards or ceasing to publish standards that serve small, but important, safety needs, but cost more to develop than they are able to recoup. NFPA is committed to its nonprofit mission, but its ability to do that work is directly tied to its self-funded model.

Logic suggests that this risk extends beyond NFPA. Other SDOs may be forced to reconsider their support for incorporation by reference if they cannot effectively protect copyright. That would jeopardize a system Congress expressly endorsed because it delivers best-in-class standards at no cost to government or taxpayers, promotes efficiency, and keeps pace with technological change. There is no better system than the current one. The alternatives—either a taxpayer-funded bureaucratic process, or permitting industries to essentially set their own rules without any checks and balances—both bring serious risks. Standard setting needs to remain an independent, consensus-based process to achieve the best result for public safety.

4. Some have suggested SDOs, which do not advocate for their standards to be incorporated by reference, are positionally distinct from those that do. What do you make of this argument?

a. Follow on question: As a practical matter, do all SDOs not aim to have their codes widely adopted?

The suggestion of a distinction between SDOs that “do not advocate” for incorporation by reference from those that do appears to echo characterizations regarding “lobbying” made in some of the litigation. NFPA is happy to provide more clarity on this issue, but notes that it largely distracts from and does not meaningfully advance the discussion regarding incorporation by reference, copyright, and access.

NFPA develops standards to solve safety problems—that is our mission. When governments at any level are looking to address a safety challenge, they often turn to organizations like NFPA because they trust the independence and rigor of our consensus-based process. Federal policy in OMB Circular A-119 expressly encourages this kind of collaboration, recognizing that agencies and SDOs often work together to make standards reasonably available.

In litigation, NFPA has seen its opponents argue that SDOs “lobby governments to incorporate their standards by reference” as an effort to taint NFPA’s government outreach work as self-interested, in a negative way. That is not a fair characterization. NFPA does not “lobby” to have its standards incorporated by reference. What NFPA does do is engage with federal, state, and local governments to provide information and education regarding its standards, which includes how those jurisdictions can use its standards to enhance public safety and solve the sorts of problems that governments are hoping to solve. Even with these policy and engagement efforts, NFPA still frequently does not know when a jurisdiction is considering incorporating by reference one of its codes or standards.

NFPA wants its standards to be used widely. Through its independent, rigorous, and consensus-based process, NFPA develops standards that reflect the most up-to-date research, advancements in technology, and safety approaches. NFPA serves its public-interest mission when *everyone*—from private industry, to academia, to the public—uses those standards.

As a general matter, other SDOs also aim for broad use, which may include incorporation by reference, because that is how standards advance safety and facilitate uniform practices. Different SDOs may approach that goal through different means: some may directly advocate for jurisdictions to incorporate their standards; others may work with jurisdictions that reach out to the SDO for assistance; still others may simply publicly tout the rigor and excellence of their standards. Some SDOs have stated explicitly that they don’t aim to have their standards incorporated by reference, but do have policies to encourage incorporation by reference, if doing so can address a matter of safety addressed by their standards. The variation in approaches does not change the copyright analysis.

5. To your knowledge, are any States considering legislation, policies, or guidance to replicate what Congress did in the National Technology Transfer and Advancement Act and OMB Circular A-119 to govern use of private standards by federal agencies?

To NFPA’s knowledge, every state relies on incorporation by reference of privately authored codes and standards in some capacity, as do many local governments and agencies. We are not aware of any states considering legislation, policies, or guidance that would directly replicate the National Technology Transfer and Advancement Act and OMB Circular A-119. However, many states have adopted statutes and regulations that address the process agencies must follow when they incorporate codes and standards by reference. See, e.g., Ariz. Rev. Stat. § 41-1028; Cal. Code Regs. Tit. 1, § 20; Colo. Rev. Stat. § 24-4-103(12.5); Fla. Stat. § 120.54(1)(i); Idaho Code § 67-5229; N.C. Gen. Stat. § 150B-21.6; Wis. Stat. § 227.21.

To a degree, the state regulations are all similar to the federal policy because states generally respect SDOs’ copyrights in incorporating standards by reference, while simultaneously specifying how the standards can be accessed by the general public. See, e.g., Ariz. Stat. § 41-1028(C), (D); Cal. Code Regs. Tit. 1, § 20(c)(2); Colo. Rev. Stat. § 24-4-

103(a)(III), (IV); Fla. Stat. § 120.54(1)(i)(3), (4); Idaho Code § 67-5229(2)(b), (c); N.C. Gen. Stat. § 150B-21.6; Wis. Stat. § 227.21(b). Although the federal government and states are aligned in supporting and facilitating incorporation by reference of voluntary consensus standards, only Congress can legislate copyright. A nationally uniform approach will respect state policies while protecting copyright across federal jurisdictions.

6. If Congress fails to pass the Pro Codes Act, how would that impact the health and safety of Americans and first responders across the country?

I have no doubt the long-term impact of Congress failing to pass the Pro Codes Act, without some other meaningful change, would negatively impact the health and safety of Americans and first responders.

As I said during my testimony, NFPA has been doing this work for over 130 years. We have seen meaningful progress in that time. Fire incidents in this country have declined 54% since 1980. Home fire deaths have declined 44% over the same period. Every day, the pace of technological change—for example, our increased use of lithium-ion batteries and new electrical equipment—pose *new* challenges and risks that require *new* standards to ensure safety. The continued progress towards safer homes, businesses, cars, and public spaces depends on NFPA being able to tackle these new and evolving challenges.

Without congressional action, there is a substantial risk to the funding model that has sustained the standards development system in this country for over a century. Copyright is what makes that system work—what allows SDOs to be independent, to put safety first, and to develop and update standards that keep pace with new technologies and emerging risks. If Congress does not protect that system by protecting copyright, and funding declines as a result, NFPA will simply not be able to keep pace. The result will be fewer new standards and less frequent updates to existing ones. For NFPA, this would impact standards covering everything from fire stations, fire engines, and firefighter safety equipment; to storage safety for certain chemicals, gases, and combustible dust; to the safe home charging of e-scooter and e-bikes so the batteries do not start a fire. NFPA represents just a small piece of the much larger standards system that covers every aspect of modern life. In short, if Congress does not act, the country may see a degradation of the safety infrastructure Americans depend on every day.

7. If the U.S. system of voluntary consensus standards deteriorates due to the inability to recover development costs because of loss of copyright, what is the degree of risk that the United States will yield its leadership to the People's Republic of China?

Strength in the U.S. system of voluntary consensus standards development is important to our global leadership in technological advancement, market dominance, and national security.

The voluntary, private-sector-driven model has long enabled American innovation and economic growth across industries. This works because the U.S. system is merit-based and brings together technical experts and stakeholders to develop high-quality, consensus-based standards. In the United States, the standards development process is accredited by the American National Standards Institute (ANSI) (<https://ansi.org/>), which was founded in 1918 and has a rigorous accreditation process for voluntary consensus standards. That system has delivered substantial benefits to U.S.-based workers, businesses, and consumers. When American standards lead, they become global standards. That means international exports can comply with U.S. standards and be assured their products will meet the global standard; it also means that American consumers are assured that import products comply with U.S. safety standards.

However, U.S. leadership in standards development is under increasing pressure, driven in significant part by the People's Republic of China ("PRC"). Over the past several decades, the PRC has pursued a sustained, state-backed strategy to lead in critical and emerging technologies. The PRC recognizes that influence over standards-setting confers significant advantages, and it has accordingly expanded its participation and leadership within key international standards-development organizations, seeking not only to advance its domestic industries, but also to shape standards in ways that reflect its autocratic policy objectives.

The continued viability of the U.S. voluntary consensus standards system depends on SDOs' ability to recover the substantial costs of developing, maintaining, and updating standards. Copyright protection is critical for that cost recovery. If copyright protections are weakened or eliminated, particularly for standards that are incorporated by reference into law, SDOs are likely to face significant funding shortfalls. These funding constraints will erode the quality and global competitiveness of the U.S. standards system. In that environment, Chinese-led or -influenced standards bodies would be well positioned to fill the gap, diminishing U.S. leadership.

Put simply, absent copyright protection, standards-development organizations would face existential financial pressure, and their role would likely be supplanted by foreign counterparts. Erosion of the economic foundations of the U.S. voluntary consensus standards system therefore risks ceding U.S. leadership in international standards development to the PRC.

**Responses to Questions for the Record from
Representative Ben Cline (R-VA) to**

Jim Pauley

President and Chief Executive Officer

National Fire Protection Association

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- 8. My understanding is that, in order for a tradesperson or small business to access building codes that have been incorporated into law, they must first determine which version has been adopted in their jurisdiction, and then navigate to the relevant standards development organization’s website. In many cases, this may involve creating an account, agreeing to terms and conditions, and accessing the material through a read-only online viewer, with limitations on downloading, printing, or sharing content.**
- a. Is this an accurate description of how your organization provides public access to incorporated standards? If not, please describe the typical process and any variations.**
 - b. What, if any, limitations apply to activities such as searching across related standards, printing, downloading, or quoting incorporated provisions for compliance or business purposes?**

The question accurately describes one way in which codes and standards can be accessed for free by the general public. Specifically, NFPA offers a Free Access feature, which is designed to allow any member of the general public to access any portion of an NFPA code or standard, including portions that may have been incorporated by reference in

their jurisdiction, while simultaneously protecting NFPA's intellectual property. Free Access does not permit users to print NFPA codes and standards, download them, copy-paste them, or conduct text search across multiple standards. NFPA's Free Access tool was generally designed to allow anyone to read or review a particular standard or section of a standard, similar to what they would be able to do in a library.

These limitations within NFPA's Free Access feature exist to prevent bulk copying and piracy. Without them, standards could be downloaded and posted online, resold, or fed into large language models for AI training—all without authorization or compensation. Additionally, requiring some type of registration is standard practice for many organizations offering free online access, from the local public library requiring a library card to check out e-books to PACER requiring a login to provide access to public court records. Like these platforms, NFPA must balance public access with protection against piracy.

Most tradespeople and small businesses do not use Free Access, but choose to access NFPA codes and standards in any number (or multiple) of the other ways NFPA's standards are offered. Before the internet, tradespeople and businesses that regularly consult NFPA codes and standards in their work would purchase codes and standards in book form and maintain their own library. Many customers continue to purchase paper copies of NFPA codes and standards, which are typically available for about \$150-\$170. But in recent years, NFPA has developed and launched a cutting-edge digital platform, NFPA LiNK, which allows users to access every NFPA code and standard on any computer or mobile device. NFPA LiNK also includes advanced searching, productivity, and collaboration tools. NFPA LiNK is available through a subscription at a modest price of \$13.99 per month for an individual account, with discounts available for team subscriptions. In addition to NFPA's own digital platform, NFPA has worked with licensees who respect NFPA's intellectual property and wish to distribute or post NFPA codes and standards in other ways to an even wider audience.

NFPA believes its Free Access offering strikes the right balance. Anyone can access the limited Free Access service, while that service protects NFPA's works from piracy and protects NFPA's other sources of revenue. Most professionals and businesses who use and benefit from NFPA standards in their work are willing to pay the reasonable prices to access or license those standards, which in turn sustains NFPA's crucial standards development work.