

CASE LAW

There have been 5 circuit courts to rule on building codes incorporated by reference into law, which have said the following:

DC Circuit:

ASTM v Public.Resource.Org (PRO),

2018: "The plaintiffs here claim a copyright over binding legal texts, which would enable them to prevent anyone from gaining access to that law or copying it for the public... As a matter of common-sense, this cannot be right: access to the law cannot be conditioned on the consent of a private party." (ref)

2023: "We hold that the non-commercial dissemination of such standards, as incorporated by reference into law, constitutes fair use" (ref)

(went to Circuit twice)

1st Circuit:

BOCA* v Code Technology, 1980:

"The citizens are the authors of the law, and therefore its owners, regardless of who actually drafts the provisions, because the law derives its authority from the consent of the public, expressed through the democratic process." (ref)

3rd Circuit:

ASTM v UpCodes, 2026:

"Enhanced public access to the law is a clear and significant public benefit. ... once the Works were incorporated by reference into law — which occurred before UpCodes' copying — they moved even further to the periphery of copyright's core protection" (ref)

5th Circuit:

Veeck v SBCCI*, 2002:

"Our short answer is that as law, the model codes enter the public domain and are not subject to the copyright holder's exclusive prerogatives." (ref)

CSA v PS Knight, 2024:

"And all material that has been validly incorporated by reference carries the force of law and is treated as having been published in the Federal Register and Code of Federal Regulations" (ref)

11th Circuit:

Georgia v PRO, 2018:

"The resulting work is intrinsically public domain material, belonging to the People, and, as such, must be free for publication by all. As a result, no valid copyright can subsist in these works. ... the law falls plainly outside the realm of copyright protection" (ref)

Furthermore, the Supreme Court has ruled more than once on the copyrightability of the law:

Banks v Manchester, 1888:

"the law, which, binding every citizen, is free for publication to all" (ref)

Georgia v PRO, 2023:

Justice Roberts: "no one can own the law"

Justice Ginsburg: "Beyond doubt, state laws are not copyrightable"

Justice Thomas: "statutes and regulations cannot be copyrighted" (ref)

*Note: BOCA, SBCCI and ICBO merged to form ICC (one of 2 main proponents of the bill)