

# Frequently Asked Questions

## ***What have the courts ruled on the copyrightability of law?***

The courts have consistently ruled that no one can own the law. Many circuit courts and even the Supreme Court are all in agreement. The law publishers are lying about this to create confusion, but are unable to produce any case law showing you can copyright building codes. In none of ICC, NFPA and ASTM's many cases did they ever succeed in getting an injunction against the defendants, who were giving free access to the law. That's why they're now turning to Congress.

Here's excerpts from some cases:

*No one can own the law*

– Justice Roberts

*Beyond doubt, state laws are not copyrightable*

– Justice Ginsburg

*Statutes and regulations cannot be copyrighted*

– Justice Thomas

– **Georgia v Public.Resource.Org (2020), Supreme Court**

*The law, which, binding every citizen, is free for publication to all*

– **Banks v Manchester (1888), Supreme Court**

*As a matter of common-sense, this cannot be right: access to the law cannot be conditioned on the consent of a private party.*

– **ASTM v Public.Resource.Org (2023), DC Circuit**

*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.*

– **BOCA v. Code Technology (1980), 1st Circuit**

*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 ... Enhanced public access to the law is a clear and significant public benefit.*

– **ASTM v UpCodes (2026), 3rd Circuit**

*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.*

– **SBCCI v. Veeck (2002), 5th Circuit**

## ***Don't the publishers need to make money to keep making codes?***

The most successful lie they've pushed is that the publishers need to restrict access to the law to make money and survive. As noted by multiple courts, there's not any evidence of any publisher having financial difficulties.

*"It is difficult to imagine an area of creative endeavor in which the copyright incentive is needed less. Trade organizations have powerful reasons stemming from industry standardization, quality control, and self regulation to produce these model codes; it is unlikely that, without copyright, they will cease producing them."*

– **Veeck v. SBCCI (2002), 5th Circuit**

*“Public Resource has been posting incorporated standards for fifteen years. Yet the plaintiffs have been unable to produce any economic analysis showing that Public Resource's activity has harmed any relevant market for their standards. To the contrary, ASTM's sales have increased over that time.”*

– **ASTM v. Public.Resource.Org (2023), DC Circuit**

*“There is not yet any evidence of any effect on the potential market [for NFPA codes] beyond speculation”*

– **NFPA v. UpCodes (2021), District (CDCA)**

First, a large amount of the work is done by volunteers including thousands of government officials. Second, they already have many alternative ways to make money. According to the last International Code Council (ICC) Form 990, 88% of the International Code Council's revenue comes from program services, including consulting, certification, and training, which do not rely on profiting by limiting access to the law. And ICC is making more money than they ever have, making almost \$100M in annual revenue. These revenue streams are dependent on producing the model codes and having them adopted into law.

### ***Doesn't this bill improve access to the law?***

No. The public already has free, unfettered access to the law provided by organizations like UpCodes and Public.Resource.Org. The bill aims to end this truly free access.

The "free" access contemplated in the bill will be heavily restricted, and there will be no ability (without paying) to search, print, comment on, or quote excerpts from the law. For some publishers like NFPA, Americans would need to register with them, being forced to turn over a slew of private information and enter into a contract with them before getting access to the law.

Furthermore, there have been multiple cases of bad behavior by the publishers as to the “free” copies they would offer:

- in one case, the free access version by a law publisher requires the reader to physically click on it to turn from one page to the next with an old-school page-turning graphic (250 page flips to get to p. 250)
- in another case, a publisher made the viewer too narrow and you had to scroll back and forth to read a single line. The DC Circuit Court noted this behavior.

This is not free access. This is why public interest groups strongly oppose this bill, such as R Street Institute, the Association of Research Libraries, American Library Association, Wikimedia Foundation, and Electronic Frontier Foundation.

The Pro Codes Act aims to grant a monopoly over large swathes of the law, empowering them to be the sole gatekeeper for how these materials can be accessed, used, modified, and shared. And control any derivative works, like innovative tools that help automate compliance. Just try asking anyone in the construction industry what they think about the publishers and this bill.

## ***Is adopting code into law an unconstitutional “taking” of private property by the government?***

No. Courts that have ruled on this issue have consistently found that the government is not taking private property. This is because the model codes are specifically written with the intent that they will become law.

Furthermore, law publishers lobby state and local governments to adopt their codes into public law. In reality, almost all of the value in these model codes comes from the government enacting these model codes into laws. The publishers derive a variety of financial benefits from this, primarily through program services.

There's no takings concern there. Every court has ruled that way.

*This is not, however, a "takings" case, not least because SBCCI urged localities to adopt its model codes. The issue in the case is not the voluntariness of the appropriation but the legal consequences flowing from the permission that SBCCI gave.*

– **Veeck v SBCCI (2002), 5th Circuit**

*ICC undisputedly encourages the adoption of its model codes into law as a general matter, which counsels against according its Takings Clause concerns particularly great weight.*

– **ICC v UpCodes (2020), District (SDNY)**

## ***What is the status of the Pro Codes Act in the House and Senate?***

Last Congress, the Pro Codes Act was introduced in both chambers. The House bill (H.R. 1631) was brought to a vote on the House suspension calendar, but failed. This Congress, there is a House bill (H. R. 4072) and a Senate bill (S. 4145), both are in committee.

There has never been a hearing on this bill.