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Apr 20, 2026

The Honorable Darrell Issa
Chair
Subcommittee on Courts, Intellectual Property,
Property, Artificial Intelligence, and the Internet
Committee on Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Henry C. Johnson
Ranking Member
Subcommittee on Courts, Intellectual
Artificial Intelligence, and the Internet
Committee on Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Issa, Ranking Member Johnson and members of the Committee/Subcommittee:

Thank you for your decision to hold a hearing on April 10, 2026, titled "Protecting U.S. Leadership in Codes Development and Enhancing Public Access." The R Street Institute has been a strong advocate for public access to the law and has concerns that the Pro Codes Act may limit public access as well as innovations that ensure that the public can comply with laws in the most cost-effective manner. The R Street Institute would like to submit for the record a recent publication that examines our concerns with the Pro Codes Act.

Thank you in advance for your consideration.

Public Laws, Private Paywalls: The Case Against the Pro Codes Act

Wayne T. Brough

The old adage "ignorance of the law is no excuse" makes clear that no one avoids legal liability by claiming to be unaware of the law. Yet many important public laws remain locked behind paywalls erected by the private organizations that drafted them, including health and safety codes and technical standards that carry the force of law. Congress is currently working to ensure these paywalls remain. The Pro Codes Act[1] was recently filed in the Senate as the companion bill to the House version[2] to extend exclusivity and control over standards that become law. The legislation is a rebuke of court rulings[3], which have held that public access to the law is paramount. While

mandated standards may provide benefits, anyone affected by them should be able to freely access the laws from which they derive in a manner that minimizes compliance costs.

From Standards to Laws

Technical standards and codes are developed and maintained by Standards Development Organizations (SDOs) such as the American National Standards Institute (ANSI), the National Fire Protection Association (NFPA), ASTM International, and the International Code Council (ICC). There are hundreds of SDOs[4] in the United States that generate thousands of technical standards or codes. These organizations develop, approve, and disseminate standards and guidelines adopted by various industries. The SDOs also provide training, accreditation, and certification to demonstrate expertise with current codes. In addition, they produce and sell products to help practitioners ensure compliance.

Most standards generated by SDOs are voluntary and describe best practices for an industry. Because they are developed by SDOs, these organizations have an exclusive copyright over them. However, federal, state, or local governments often pass laws that incorporate a standard by reference[5], meaning it now has the force of law behind it and carries potential civil or criminal penalties for noncompliance. Yet SDOs claim they still retain copyright[6] over technical standards even when adopted into law. But this restricts the public's access to the laws that govern them and increases compliance costs. This tension between SDOs' copyright claims and the public's right to access the law has fueled a longstanding battle over the limits of copyright.

It is also important to note that SDOs are not just passive actors. In fact, SDOs often engage in lobbying[7] to ensure that their standards are incorporated into law, a practice that weighs heavily in favor of public access. This type of rent-seeking can impose new mandates on the public for the private gain of SDOs. In such cases, incorporation by law is not incidental to otherwise voluntary codes or standards; rather, the SDO's intention is to acquire the force of law to increase sales. Continuing to retain copyright not only increases costs for those who must comply with new standards incorporated into law, but also creates incentives to expand the regulatory burden.

Many SDOs claim that without copyright protection for standards incorporated by reference, they would be unable to fund the consensus-building process that generates standards. Yet it is not obvious that this claim is true. The SDOs have other streams of income—training and certification, for example, as well as licensing revenues from standards that remain in the private

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sector. They also continue to thrive in the wake of recent legal challenges to their control of public laws. As a court of appeals judge noted[8], "the plaintiffs have been unable to produce any economic analysis showing that [the defendant's] activity has harmed any relevant market for their standards."

In response to concerns about public access to the law, SDOs often offer limited availability via online portals, typically offering "read-only" access with restricted functionality. Basic tools such as print, copy-and-paste, and search are disabled, while full access remains paywalled, with strict licensing requirements that limit the code's accessibility and use. Additionally, these portals often require users to divulge personal data, raising important privacy concerns[9].

"No One Can Own the Law"

From a legal perspective, business models should not override constitutional due process and the right to access the law. While SDOs claim their limited-access reading rooms satisfy the public's need to access technical standards incorporated into law, the courts have been less sanguine. American jurisprudence has consistently maintained that access to the law must be unrestricted for those it governs. In the 19th century, this concept evolved into the government edicts doctrine[10], which holds that government documents belong in the public domain and cannot be copyrighted.

More recent litigation has expanded and clarified the reach of copyright with respect to public laws: private individuals or companies cannot maintain a copyright on rules that govern the general public. In the 2002 case *Veeck v. Southern Building Code Congress International*[11], Peter Veeck posted the municipal building code incorporated by reference in two Texas towns. This sparked a legal dispute between the SDO and Veeck, with courts initially ruling in favor of Southern Building Code. But this was overturned in an en banc decision by the Fifth Circuit, which ruled specifically that once a model code or standard is adopted by a government body, it becomes part of the public domain.

As Circuit Judge Edith Jones noted in her decision: "Our short answer[12] is that as *law*, the model codes enter the public domain and are not subject to the copyright holder's exclusive prerogatives." The court also relied on copyright law's merger doctrine[13]. That is, when fact and expression merge, copyright no longer applies, because the law protects only expression, not facts. When the building code became law, it became an uncopyrightable fact.

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Public access to the law is grounded just as firmly in due process and free speech as it is in copyright law. Citizens have a fundamental right to access and become informed about the laws by which they are governed, and this should not require paying a fee to a private entity or gatekeeper. Whether a criminal statute or the specific requirements for complying with a fire code, if it is enforced with legal penalties, it belongs in the public domain. The Supreme Court reaffirmed this logic in 2020 in *Georgia v. Public. Resource. Org., Inc.*[14], finding that for a law to be binding, it must be accessible to the public. As Chief Justice Roberts made clear in the majority opinion[15]: "The animating principle behind the government edicts doctrine is that no one can own the law."

The fair use doctrine[16] under copyright has also played an important role in limiting copyright with respect to public laws. In *American Society for Testing and Materials, et al. v. Public.Resource.Org, Inc.*[17], the nonprofit organization Public.Resource.Org (PRO) was sued by a number of SDOs for posting thousands of technical standards online that could be downloaded for free. The trial court initially ruled in favor of the SDOs, but on appeal, the Circuit Court reversed and remanded[18], finding that although the SDOs held a valid copyright, the website created by PRO to post standards incorporated into law was a fair use. On remand, the trial court agreed, relying on the fair use doctrine to find that PRO's postings of incorporated standards were not infringing.

This long legal battle between the SDOs and PRO concluded with a decision that non-commercial use of standards incorporated by reference qualifies as a fair use under copyright law. But what about commercial use? Here, too, the courts have limited SDOs' copyright claims. UpCodes[19] is a tech startup that created a platform to aggregate technical standards and codes across functions and regions, creating a database that can significantly reduce the time and cost of compliance. Not surprisingly, in a series of lawsuits, SDOs have challenged their publications of codes adopted into law as copyright infringement. Although the litigation is ongoing, in *ICC v. UpCodes*[20], the court relied on both fair use and the fact that laws belong in the public domain.

In another case, the Facility Guidelines Institute[21] sought a preliminary injunction against UpCodes for making its guidelines available online. The injunction was denied[22]: "the Court is persuaded that UpCodes' posting of the FGI Guidelines that have been adopted into law likely constitutes fair use." Similarly, when ASTM sued UpCodes for posting its codes adopted into law and sought a preliminary injunction, a federal judge denied[23] the motion, finding "ASTM is unlikely to succeed on the merits…."

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From Microfiche to SaaS

Paywalls erected by SDOs impede the development of innovative services that apply new technologies to old problems. Accessing the law as data can reduce regulatory compliance burdens, lowering costs for architects, builders, engineers, and, ultimately, consumers. One study[24] found that regulations account for 40 percent of the costs of a multifamily housing development, and complying with changes to building codes over the past 10 years is the biggest cost factor. Allowing public access to building codes adopted into law enables practitioners to choose the most cost-effective method of compliance and can contribute to efforts to mitigate these costs.

As in other sectors of the economy, artificial intelligence (AI) tools are emerging that can expedite compliance with the law while reducing costs. Companies like Symbium, BuildCheck, and UpCodes are developing new tools and databases that can significantly reduce costs. UpCodes' database, for example, unifies building codes that are typically siloed by function (electrical, fire, etc.) and jurisdiction. UpCodes uses natural language processing to enable users to query the database more intuitively, providing rapid solutions to questions about technical standards.

That these startups exist is evidence of market inefficiencies and the potential gains from innovation; entrepreneurs are creating new products and services to reduce transaction costs and alleviate burdensome bottlenecks. But this can only happen through public access to the laws that govern compliance. With building codes paywalled and fragmented, compliance becomes labor-intensive, often requiring manual cross-referencing of thousands of pages of complex codes, as well as any changes adopted by local governments. This time-consuming process can delay project completion times and increase costs.

While new technologies can reduce compliance costs, they are also disruptive and pose a significant threat to outdated business models. Incumbent firms seeking to preserve the status quo and their market power work to thwart the efforts of disruptive innovators[25] driving change. Rather than adapting to innovation, legacy firms remain entrenched in the past, wielding copyright law as a tool of protectionism and turning to new legislative and regulatory fixes to shield themselves in a changing market.

The Pro Codes Act: A Legislative End-Run

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Because the courts have continued to limit copyright's reach over public laws, SDOs have shifted their focus to Congress to enact legislation to protect their monopoly position. The Pro Codes Act would allow SDOs to retain copyright over technical standards incorporated into the law, specifically upending the legal framework established by the courts. Ironically, the lead cosponsor in the House, Darrell Issa (R-Calif.), submitted an amicus brief[26] along with Zoe Lofgren (D-Calif.) in the initial 2017 *ASTM* case, arguing just the opposite: "Allowing SDOs to control access to the law via copyright burdens the American people, complicates the process of legislation, and may violate the due process rights of those the law regulates."

In exchange for copyright protection, the Pro Codes Act only requires SDOs to provide public access, with the only requirement that they include a "searchable table of contents and index." [27] But the "read-only" portals used to satisfy such requirements are completely incompatible with machine-readable systems and other technologies that could reduce the costs of complying with the law. In fact, the DC Circuit Court[28] highlighted the limited value of such reading rooms: "Among other things, text is not searchable, cannot be printed or downloaded, and cannot be magnified without becoming blurry. Often, a reader can view only a portion of each page at a time and, upon zooming in, must scroll from right to left to read a single line of text." The Pro Codes Act would enshrine these very practices that the courts have found lacking.

This two-tiered structure does little to alleviate due process concerns for those compelled to follow the law. Because standards adopted by reference are binding, those affected by such mandates should have the right to determine the most appropriate method for accessing the law to minimize compliance costs.

Conclusion

The Pro Codes Act would overturn the long legal history protecting public access to the law, leaving codes and standards adopted by reference behind paywalls, fragmented by function, and restricted in form. By codifying restrictions that allow SDOs to determine how standards incorporated by reference are displayed and accessed while extending copyright exclusivity, the legislation looks backwards to enshrine costly legacy business practices that shield monopoly providers at the expense of consumers. Compliance with the law should not require a subscription. Paywalls and cumbersome online reading rooms limit efficient access to the law—akin to mandating microfiche when an AI-driven database is available.

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Innovation holds the promise of dynamic new information systems that streamline compliance and eliminate costly, time-consuming delays. Better access to building codes adopted into law facilitates better compliance and enables new services and products that can reduce overall costs, benefiting both industry and consumers. Minimizing those costs through modern technology should be considered an important first step for easing regulatory and compliance costs. By contrast, the Pro Codes Act is an attempt to protect the past by restricting access to the law and imposing new barriers to cost-saving technologies.

Chairman Issa, Ranking Member Johnson and members of the Committee/Subcommittee, thank you again for holding this important hearing and for your consideration of my views. Should you have any questions or wish to have further discussion, please do not hesitate to contact me.

Sincerely,

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Endnotes

1. https://www.congress.gov/119/bills/s4145/BILLS-119s4145is.pdf
2. https://www.congress.gov/bill/119th-congress/house-bill/4072/text
3.https://www.eff.org/deeplinks/2024/10/courts-agree-no-one-should-have-monopoly-over-law-congress-shouldnt-change
4. https://www.minnesotalawreview.org/wp-content/uploads/2019/07/Sweeney.pdf
5.https://www.everycrsreport.com/files/2025-08-08_R47656_9735a15220618bf114bfb56f44cd64ad98dcce8c.pdf
6.https://share.ansi.org/Shared%20Documents/News%20and%20Publications/Links%20Within%20Stories/SDO%20Action%20Brief_080624.pdf
7.https://truthonthemarket.com/2025/10/14/the-pro-codes-act-and-the-perils-of-surreptitious-compulsory-licensing/
8.https://cases.justia.com/federal/appellate-courts/cadc/22-7063/22-7063-2023-09-12.pdf?ts=1694529102
9.https://www.arl.org/wp-content/uploads/2024/03/The-Real-Truth-about-the-Pro-Codes-Act.pdf
10.https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=2284&context=jour_mlr
11. https://law.justia.com/cases/federal/appellate-courts/F3/293/791/521953/
12. https://law.justia.com/cases/federal/appellate-courts/F3/293/791/521953/
13. https://definitions.uslegal.com/m/merger-doctrine/
14. https://www.supremecourt.gov/opinions/19pdf/590us1r30_3f14.pdf
15. https://www.supremecourt.gov/opinions/19pdf/590us1r30_3f14.pdf
16. https://www.law.cornell.edu/uscode/text/17/107
17.https://ia601702.us.archive.org/24/items/gov.uscourts.dcd.161410/gov.uscourts.dcd.161410.175.0.pdf
18.https://cases.justia.com/federal/appellate-courts/cadc/22-7063/22-7063-2023-09-12.pdf?ts=1694529102
19. https://up.codes/
20.https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2017cv06261/479219/105/
21. https://dockets.justia.com/docket/missouri/moedce/4:2022cv01308/199673
22. https://business.cch.com/ipld/FacilityGuidelinesInstUpCodes20230615.pdf
23. https://business.cch.com/ipld/ASTMUpCodes20241002.pdf
24.https://www.nmhc.org/globalassets/research--insight/research-reports/cost-of-regulations/2022-nahb-nmhc-cost-of-regulations-report.pdf
25.https://www.hbs.edu/ris/Publication%20Files/McDonald_Rory_A04_What%20is%20Disruptive%20Innovation_182498a6-5391-4916-a38b-d14932db41a6.pdf
26. https://law.resource.org/pub/us/cfr/regulations.gov.astm.appeal/1694498.pdf

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27. https://www.congress.gov/119/bills/s4145/BILLS-119s4145is.pdf
28.https://cases.justia.com/federal/appellate-courts/cadc/22-7063/22-7063-2023-09-12.pdf?ts=1694529102