

**Responses of Jonathan Band to Questions for the Record from
Representative Darrell Issa (R-CA)**

**Protecting U.S. Leadership in Codes Development and Enhancing Public Access
Tuesday, April 21, 2026**

1. Mechanically, how would the solution of direct government compensation to SDO copyright owners work, especially since most of these instances take place at the state and local level?

The solution I proposed in my testimony centered on direct incorporation of standards into legal codes, rather than incorporation by reference. I believe that in the vast majority of cases, standards development organizations (SDOs) would willingly grant governments at all levels a royalty-free license to directly incorporate elements of their standards into legal codes.

If the federal government, by amending OMB Circular A-119 or 5 U.S.C. § 552(a)(1), were to adopt the approach of direct incorporation at the federal level, state and local governments would follow.

a. Follow on question: Given how thorny issues of government funding are, what is the likelihood that such a solution would be possible as both a pragmatic and political matter?

As noted above, in the vast majority of cases, SDOs would willingly grant governments at all levels royalty-free licenses to directly incorporate elements of their standards into legal codes. Often, a SDO's objective in creating the standard is for it to be adopted by an agency as a regulation. SDOs lobby governments to incorporate their standards into law, and work closely with government officials both in the crafting of the standard and integrating elements of the standard into the law. As explained in my written testimony, the voluntary consensus standards process is a critical element of what is in effect a system of self-regulation, which industry vastly prefers to regulation originating from government entities.

In the highly unlikely event that an SDO is unwilling to grant a government entity a royalty-free license, the entity could decide not to incorporate the standard or to incorporate it by reference without any payment. It is theoretically possible that the government would opt to pay a royalty for direct incorporation, or to infringe an SDO's copyright by directly incorporating it without a license, but either scenario isn't realistic. The industries represented by the SDOs desire incorporation of the standards more than the government does. Industry will always prefer self-regulation via government incorporation of the SDO-written standards to regulation by government-written standards.

b. Follow on question: Your written testimony mentioned 28 U.S.C. §1498, which provides a cause of action to copyright owners to sue for unauthorized uses "by or for the United States," as a potential option to compensate SDO copyright owners. How could this be a solution to state or local unauthorized uses?

State actors would have sovereign immunity against damages for copyright infringement actions under Title 17, but could still be subject to injunctive relief. However, as noted above, I do not believe that such a situation will arise; SDOs would readily grant royalty-free licenses for the direct incorporation of their standards.

Governments should replace the outdated twentieth century paradigm of incorporation by reference with the twenty-first century paradigm of direct incorporation of standards based on royalty-free licenses from the SDOs. Under the new paradigm, it would be clear what is the law that is free for anyone to access and copy; and what is explanatory third-party material that is not the law and thus is not in the public domain. This clarity and certainty would be beneficial to both the SDOs and the public.

May 15, 2026