

March 20, 2024

The Honorable Jim Jordan
Chairman
U.S. House Committee on the Judiciary
Washington, DC 20515

The Honorable Jerrold Nadler
Ranking Member
U.S. House Committee on the Judiciary
Washington, DC 20515

Dear Chairman Jordan and Ranking Member Nadler:

As non-profit organizations developing thousands of rigorous codes and standards and those who value their critical work, we appreciate the House Judiciary Committee's consideration of H.R. 1631, the Protecting and Enhancing Public Access to Codes Act (Pro Codes Act). We are also deeply grateful to Chairman Issa, Representative Ross, and the other sponsors of the bill for their bipartisan leadership on this important initiative.

For over 125 years, the United States has relied on standards development organizations (SDOs) to independently develop and maintain codes and standards that have saved countless lives, created economic growth, and saved billions of taxpayer dollars. The federal government has affirmed repeatedly the importance of the non-profit SDO system in promoting the welfare of the country.

The value of this public-private system is not in dispute. Nevertheless, it is directly undermined by deliberate attacks on the copyright protection long-afforded to codes and standards. SDOs undertake the costly process of developing and updating codes and standards at their own expense – and at no cost to taxpayers. SDOs then recoup their costs by publishing, selling, and licensing standards to people who use them in the course of their work, a common way copyright owners seek to fund new and updated editions. This revenue is how SDOs continue to operate independently, and it ensures they can put safety first.

Federal, state, and local policymakers routinely incorporate privately developed codes and standards by reference to keep the public safe. Some special interests wrongly argue that this action strips copyright protection for the entire standard. These interests have been emboldened by a handful of district court decisions that have weakened copyright protection in cases where unauthorized copies of SDO codes and standards have been appropriated to fuel a for-profit business.

The uncertainty created by such decisions, and by the emboldening of other similarly situated for-profit businesses to follow suit, is deeply detrimental to the work of SDOs. Courts considering these issues, including courts that have sanctioned unpermitted copying and distribution of SDO's' works, have uniformly recognized the standards development system's value. Nevertheless, the recent decisions and their fallout have raised a need for Congressional action. Extinguishing the copyright for a standard

adopted or incorporated by reference will make it impossible for SDOs to sell copies of their standards to the professionals who use them, effectively dismantling the private standards development system.

The Pro Codes Act strikes the right balance of both reaffirming the incentives for non-profits to create codes and standards that protect public health and safety, while also ensuring the public has free online access to standards governments incorporate by reference. Although the codes and standards are already readily accessible, especially to the individuals and businesses who use them in their work, the free viewing requirement is intended to ensure that the public has the ability to access codes when referenced in a statute or regulation. Importantly, they will be able to do so through an authorized source and in a manner that avoids causing unprecedented damage to our standards development system.

Some would have Congress believe that property rights should evaporate when lawmakers, recognizing the quality and effectiveness of the underlying standard, incorporate them by reference. Others argue that the copyright is inviolable and that Congress should weaken, or jettison the Pro Codes Act's mandate for free access to standards incorporated by reference into law. While we have always been open to addressing realistic concerns, we believe this bill avoids the pitfalls of being too extreme in either direction, striking a balanced solution. Ensuring public access to incorporated standards enables anyone to see what the standards say. On the other side of the balance, the Pro Codes Act makes it clear that incorporation does not undermine copyright, which is the lifeblood of the SDOs' work.

The Committee's leadership on the Pro Codes Act is critical because the stakes are high. Without the standards development system in place today, there would likely be a disjointed and expensive patchwork of standards in the United States, jeopardizing the safety and well-being of millions of citizens. Other approaches to developing standards would involve some combination of greater costs to taxpayers and more industry influence. Worse still, standards may be developed and updated less frequently or not at all. In any scenario, Americans would be less safe and building and manufacturing more expensive. To head off conflicting court decisions, the time has come for Congress to clarify the law.

Thank you again for your bipartisan leadership on the Pro Codes Act. We need Congress' support to ensure SDOs can continue developing codes and standards that save lives, make communities more resilient, and foster economic growth for generations to come.

Sincerely,

American Fire Sprinkler Association
American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)
Common Voices
Copyright Alliance

Green Building Initiative (GBI)
International Association of Fire Chiefs (IAFC)
International Association of Plumbing and Mechanical Officials (IAPMO)
International Code Council (ICC)
International Fire Service Training Association (IFSTA)
National Electrical Manufacturers Association (NEMA)
National Fire Protection Association (NFPA)
National Fire Sprinkler Association (NFSA)
National Institute of Building Sciences (NIBS)
National Sanitation Foundation (NSF)
Phoenix Society for Burn Survivors
Pool & Hot Tub Alliance (PHTA)