

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN SOCIETY FOR TESTING AND
MATERIALS d/b/a ASTM INTERNATIONAL;

NATIONAL FIRE PROTECTION
ASSOCIATION, INC.; and

AMERICAN SOCIETY OF HEATING,
REFRIGERATING, AND AIR CONDITIONING
ENGINEERS,

Plaintiffs-Counterdefendants,

v.

PUBLIC.RESOURCE.ORG, INC.,

Defendant-Counterclaimant.

Case No. 1:13-cv-01215-TSC-DAR

**INDEX OF CONSOLIDATED
EXHIBITS IN SUPPORT OF
DEFNDANT-COUNTERCLAIMANT
PUBLIC.RESOURCE.ORG, INC.'S
MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND
PERMANENT INJUNCTION**


Action Filed: August 6, 2013


PUBLIC VERSION

Defendant-Counterclaimant Public.Resource.Org respectfully submits this Index of Consolidated Exhibits in Support of its Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment and Permanent Injunction.

Exh. No.	Description
1	Public Resource's Articles of Incorporation, available at https://public.resource.org/public.resource.articles.html .
2	Public Resource's Table of Standards, available at https://law.resource.org/pub/us/cfr/manifest.us.html .
3	Public Resource Notice Displayed on ASTM F963 (2011) at Public Resource's website, available at https://law.resource.org/pub/us/cfr/ibr/003/astm.f963.2011.html .
4	Donald Bliss's deposition excerpts, as the corporate designee for NFPA, dated March 3, 2015.
5	Steven Comstock's deposition excerpts, as the corporate designee for ASHRAE, dated March 5, 2015.

Exh. No.	Description
6	Christian Dubay's deposition excerpts, as the corporate designee of NFPA, dated April 1, 2015.
7	James Fruchterman's deposition excerpts, Public Resource's designated expert witness, dated July 31, 2015.
8	Jeffrey Grove's deposition excerpts, as the corporate designee for ASTM, dated March 4, 2015.
9	John Jarosz's deposition excerpts, Plaintiffs' designated expert witness, dated August 27, 2015.
10	Rebecca Malamud's deposition excerpts, dated November 13, 2014.
11	Bruce Mullen's deposition excerpts, as the corporate designee of NFPA, dated March 31, 2015.
12	Stephanie Reiniche's deposition excerpts, as the corporate designee for ASHRAE, dated March 30, 2015.
13	Daniel Smith's deposition excerpts, as the corporate designee of ASTM, dated July 24, 2015.
14	ASTM's Copyright Registrations for the incorporated laws at issue, which were marked as Exhibit 1291 to the deposition of Daniel Smith and numbered ASTM000001-168.
15	NFPA's copyright registrations for the incorporated laws at issue, which were marked as NFPA-PR0020354-392 in NFPA's document production.
16	ASHRAE's copyright registrations for the incorporated laws at issue, which were marked as Exhibits 1175 and 1176 to the deposition of Stephanie Reiniche and numbered ASHRAE0001590-597.
17	Email from Carl Malamud to Deborah Hunt, dated June 30, 2009, which was marked as Exhibit 33 to the deposition of Carl Malamud.
18	"Public Safety Standards" (Exhibit 38 to the February 26, 2015 deposition of Carl Malamud).
19	Email to Carl Malamud, dated October 1, 2013 (Exhibit 57 to the February 27, 2015 deposition of Carl Malamud).
20	Email to Carl Malamud, dated October 25, 2013 (Exhibit 58 to the February 27, 2015 deposition of Carl Malamud).
21	[REDACTED]


Exh. No.	Description
22	
23	"ASTM Standards Regulations & Trade, Power Point," (Exhibit 1032 to the deposition of Jeffrey Grove).
24	Email from Sarah Petre to Jeff Grove, et. al., dated October 4, 2012 (Exhibit 1071 to the deposition of Jeffrey Grove).
25	"Form and Style for ASTM Standards," which was marked as Exhibit 1072 to the deposition of Jeffrey Grove.
26	"Incorporation by Reference Public Workshop," dated July 13, 2012 (Exhibit 1073 to the deposition of Jeffrey Grove).
27	"Form for Commenting on a Public Review Draft ASHRAE Standard, Guideline or Addendum" (Exhibit 1134 to the deposition of Stephanie Reiniche).
28	"CM Submittal Form" (Exhibit 1135 to the deposition of Stephanie Reiniche).
29	"Form for Commenting on a Public Review Draft ASHRAE Standard, Guideline or Addendum" (Exhibit 1136 to the deposition of Stephanie Reiniche).
30	"Form for Commenting on a Public Review Draft ASHRAE Standard, Guideline or Addendum" (Exhibit 1137 to the deposition of Stephanie Reiniche).
31	"Form for Submittal of Proposed Change to an ASHRAE Standard Under Continuous Maintenance" (Exhibit 1138 to the deposition of Stephanie Reiniche).
32	"Application for Project Committee Organizational Representative Membership" (Exhibit 1139 to the deposition of Stephanie Reiniche).
33	"ASHRAE Standard/Guideline Project Committee Application for Individual Membership" (Exhibit 1140 to the deposition of Stephanie Reiniche).
34	Redacted ASHRAE Form (Exhibit 1141 to the deposition of Stephanie Reiniche).
35	Redacted ASHRAE Form (Exhibit 1142 to the deposition of Stephanie Reiniche).
36	"CM Submittal Form" (Exhibit 1143 to the deposition of Stephanie Reiniche).
37	"Form for Commenting on a Public Review Draft ASHRAE Standard, Guideline or Addendum" (Exhibit 1144 to the deposition of Stephanie Reiniche).
38	"Form for Commenting on a Public Review Draft ASHRAE Standard, Guideline or Addendum" (Exhibit 1145 to the deposition of Stephanie Reiniche).
39	"Form for Submittal of Proposed Change to an ASHRAE Standard Under Continuous Maintenance" (Exhibit 1146 to the deposition of Stephanie Reiniche).




Exh. No.	Description
40	"CM Submittal Form" (Exhibit 1147 to the deposition of Stephanie Reiniche).
41	"Form for Commenting on a Public Review Draft ASHRAE Standard, Guideline or Addendum" (Exhibit 1148 to the deposition of Stephanie Reiniche).
42	"Form for Commenting on a Public Review Draft ASHRAE Standard, Guideline or Addendum" (Exhibit 1149 to the deposition of Stephanie Reiniche).
43	"Form for Submittal of Proposed Change to an ASHRAE Standard Under Continuous Maintenance" (Exhibit 1150 to the deposition of Stephanie Reiniche).
44	"Application for Project Committee Organizational Representative Membership" (Exhibit 1151 to the deposition of Stephanie Reiniche).
45	"ASHRAE Standard/Guideline Project Committee Application for Individual Membership" (Exhibit 1152 to the deposition of Stephanie Reiniche).
46	ASHRAE website electronic signature copyright release page (Exhibit 1153 to the deposition of Stephanie Reiniche).
47	ASHRAE website electronic signature copyright release page (Exhibit 1154 to the deposition of Stephanie Reiniche).
48	"Application for Membership on ASHRAE Standard or Guideline Project Committee" (Exhibit 1155 to the deposition of Stephanie Reiniche).
49	"Memorandum of Understanding Between The United States Department of Energy and The American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc." (Exhibit 1157 to the deposition of Stephanie Reiniche).
50	"Marketing Task Group," dated June 26, 2004 (Exhibit 1159 to the deposition of Stephanie Reiniche).
51	Email from Steve Ferguson to Doug Read, et. al., dated December 17, 2009 (Exhibit 1160 to the deposition of Stephanie Reiniche).
52	"ASHRAE Government Affairs: Technical Expertise to Policymakers" (Exhibit 1163 to the deposition of Stephanie Reiniche).
53	
54	"Proposal for 1999 National Electrical Code" (Exhibit 1233 to the deposition of Christian Dubay).
55	"1999 National Electrical Code Proposal" (Exhibit 1234 to the deposition of Christian Dubay).
56	"Proposal for the 1999 National Electrical Code" (Exhibit 1235 to the deposition of Christian Dubay).




Exh. No.	Description
57	"Form for Proposals for 1999 National Electrical Code" (Exhibit 1236 to the deposition of Christian Dubay).
58	"Form for Proposals on NFPA Technical Committee Documents" (Exhibit 1237 to the deposition of Christian Dubay).
59	"Form for Proposals for 1999 National Electrical Code" (Exhibit 1238 to the deposition of Christian Dubay).
60	"Form for Proposals for 1999 National Electrical" (Exhibit 1239 to the deposition of Christian Dubay).
61	"Form for Proposals for 1999 National Electrical Code" (Exhibit 1240 to the deposition of Christian Dubay).
62	"Form for Proposals for 1999 National Electrical Code" (Exhibit 1241 to the deposition of Christian Dubay).
63	"Form for Proposals on NFPA Technical Committee Documents" (Exhibit 1243 to the deposition of Christian Dubay).
64	"Form for Proposals on NFPA Technical Committee Documents" (Exhibit 1244 to the deposition of Christian Dubay).
65	"Form for Proposals on NFPA Technical Committee Documents" (Exhibit 1245 to the deposition of Christian Dubay).
66	"Form for Proposals on NFPA Technical Committee Documents" (Exhibit 1246 to the deposition of Christian Dubay).
67	"Form for Proposals on NFPA Technical Committee Documents" (Exhibit 1248 to the deposition of Christian Dubay).
68	"Form for Proposals for NFPA National Electrical Code" (Exhibit 1253 to the deposition of Christian Dubay).
69	"Form for Proposals for NFPA National Electrical Code" (Exhibit 1254 to the deposition of Christian Dubay).
70	"Form for Comments for NFPA National Electrical Code" (Exhibit 1255 to the deposition of Christian Dubay).
71	"Form for Comments for NFPA National Electrical Code" (Exhibit 1256 to the deposition of Christian Dubay).
72	"Form for Comments for NFPA Report on Proposals" (Exhibit 1257 to the deposition of Christian Dubay).
73	"Form for Comments for NFPA Report on Proposals" (Exhibit 1258 to the deposition of Christian Dubay).

Exh. No.	Description
74	[REDACTED]
75	[REDACTED]
76	[REDACTED]
77	Intellectual Property Policy of ASTM (ASTM103277–284) (Exhibit 1285 to the deposition of Daniel Smith).
78	Intellectual Property Policy of ASTM (ASTM003445–448 (Exhibit 1287 to the deposition of Daniel Smith).
79	Intellectual Property Policy of ASTM (ASTM003437–41) (Exhibit 1288 to the deposition of Daniel Smith).
80	[REDACTED]
81	ASTM “Organizational Membership Directory” (Exhibit 1294 to the deposition of Daniel Smith).
82	[REDACTED]
83	[REDACTED]
84	[REDACTED]
85	[REDACTED]
86	[REDACTED]
87	[REDACTED]
88	[REDACTED]
89	[REDACTED]

Exh. No.	Description
90	[REDACTED]
91	[REDACTED]
92	[REDACTED]
93	[REDACTED]
94	[REDACTED]
95	"How To, Standards Writing 101," which was marked as Exhibit 1320 to the deposition of Daniel Smith.
96	James Fruchterman and served by Public Resource on Plaintiffs as required by Federal Rule of Civil Procedure 26.
97	ASTM Standards That Have Been Superseded, Chart.
98	NFPA Standards That Have Been Superseded, Chart.
99	ASHRAE Standards That Have Been Superseded, Chart.
100	ASTM's Mission Statement.
101	NFPA's Mission Statement.
102	ASHRAE's Mission Statement.
103	"ASHRAE Guide to Writing Standards in Code Intended Language," which is available on ASHRAE's website.
104	Webpage entitled "Capitol Hill Event to Feature Policy and Business Leader Insights on Voluntary Standards and Conformance" appearing at http://www.ansi.org/news_publications/news_story.aspx?menuid=7&articleid=920dcf8b-8eda-45ab-9eae-ec0bec2edf27 .
105	Resolution submitted to the ABA House of Delegates on November 17, 2015 by the ABA Section of Administrative Law and Regulatory Practice.
106	ASTM Public Policy & Corporate Outreach, dated September 2015.

Exh. No.	Description
107	Email from Robert Morgan to Kathe Hooper re “New Standard” dated May 26, 2009 (ASTM095635–641).
108	Email from Ron Cote to Kathe Hooper re “ASTM E2238 courtesy copies?” dated Sep. 14, 2009 (ASTM095718–720).
109	Email from Kathe Hooper to Joseph Ritchey re “Review by FGDC for teleconference,” dated Sep. 16, 2009 (ASTM095747–748).
110	Email from Robert Morgan to Kathe Hooper re “FW: ASTM Review,” dated Oct. 11, 2011 (ASTM091055).
111	Email from Kathe Hooper to Steve Mawn re “RE: Standards to IAPMO for Their Review on CD,” dated Oct. 12, 2012 (ASTM096390).
112	Email from Steven Mawn to Kathe Hooper re “RE: E1300 Figures and Tables for Woodhead Publishing: Architectural glass to resist seismic and extreme climatic events (ed. Behr),” dated Feb. 2, 2009 (ASTM089102–104).
113	Email from Kathe Hooper to sales@ninjapaintball.com re “RE: ASTM Copyrights,” dated June 5, 2009 (ASTM095371–372).
114	
115	Email from Kathe Hooper to clk.wario@policja.gov.pl re “RE: polygraph examination,” July 29, 2009 (ASTM095396).
116	Email from Kathe Hooper to Patrick re “RE: Copyright & Permissions,” dated Mar. 18, 2011 (ASTM095437–438).
117	Email from Kathe Hooper to N. Leonard re “RE: Figure Permissions,” dated Nov. 2, 2012 (ASTM095485–486).
118	Email from Steve Mawn to Kathe Hooper re “RE: E1300 Figures and Tables for Woodhead Publishing: Architectural glass to resist seismic and extreme climatic events (ed. Behr),” dated Feb. 2, 2009 (ASTM089102–104).
119	Email from John Pace to Lesley West et al. re “RE: Use of Figures from G-1 Standards in MTI Book,” dated Jan. 4, 2012 (ASTM091243–245).
120	Email from John Pace to Kathe Hooper re “RE: Method info,” dated Sep. 5, 2008 (ASTM095342–343).
121	Brief for Amici Curiae American Medical Association et al., in <i>Veeck v. Southern Building Code Congress Int’l Inc.</i> , Case No. 99-40632 in the United States Court of Appeals for the Fifth Circuit, available at http://publicaa.ansi.org/sites/apdl/Documents/ANSI%20Position%20on%20Protection%20of%20Copyright%20for%20Standards%20Referenced%20into%20Public%20Law/Veeck_v_Souther_Code_Congress_intl_inc-Amicus_Curiae.pdf .

Exh. No.	Description
122	2011 National Electrical Code® Style Manual, available at http://www.nfpa.org/assets/files/aboutthecodes/70/nec_stylemanual_2011.pdf .
123	Errata to the 2011 National Electrical Code (1 of 2).
124	Errata to the 2011 National Electrical Code (2 of 2).
125	“An Introduction to the NFPA Standards Development Process”.
126	“Procedures for ASHRAE Standards Actions”.
127	“Form for Proposals For 2011 National Electrical Code” (NFPA-PR0017531).
128	“Form for Proposals For 2008 National Electrical Code” (NFPA-PR0016693).
129	
130	Email from John Pace to Kathe Hooper re “Fw: Question related to copyright,” dated Mar. 24, 2009 (ASTM095359–362).
131	Email from Kathe Hooper to V. Palacios re “RE: Request (nao),” dated July 9, 2009 (ASTM095373–376).
132	“ASTM Reading Library Registration” Screen, Page 1.
133	“ASTM Reading Library Registration” Screen, Page 2.
134	“ASTM – International Reading Room” disclaimer information.
135	“ASTM Reading Room Terms.”
136	“ASTM License Agreement”
137	“NFPA Free Access Terms.”
138	“National Fire Protection Association Sign In”.
139	ASHRAE Reading Room screen capture.
140	“2012 Accomplishments and 2013 Objectives” (Exhibit 1033 in the deposition of Jeffrey Grove).
141	
142	

Exh. No.	Description
143	"ASTM License Agreement (Reading Room)" (Exhibit 1060 in the deposition of Jeffrey Grove).
144	Email from Kathe Hooper to sales@ninjapaintball.com re "RE: ASTM Copyrights," dated June 5, 2009 (Exhibit 1068 in the deposition of Jeffrey Grove).
145	Email from Kathe Hooper to Joe Koury re "RE: Information usage on the internet," dated Jan. 11, 2013 (Exhibit 1069 in the deposition of Jeffrey Grove).
146	
147	Website for purchasing ASTM D396-98 Standard Specification for Fuel Oils.
148	"Memorandum in Support of Defendant's Motion for Summary Judgment," filed in <i>International Code Council, Inc., v. National Fire Protection Association, Inc.</i> , Case No. 02-5610, dated February 28, 2005.
149	"MyASTM Membership Renewal," produced by Plaintiffs as ASTM001792-800.
150	
151	"ASTM Designation: D 1217-93 (Reapproved 1998)," produced by Plaintiffs as PRO_00170513-517.
152	Website images from Internet Archive Wayback Machine for www.astm.org, captured on December 21, 2015.
153	
154	NFPA website images, produced at NFPA-PR0038497-507, (Exhibit 1230 to the deposition of Christian Dubay).
155	The "Incorporation by Reference" webpage of the Office of the Federal Register, available at http://www.archives.gov/federal-register/cfr/ibr-locations.html .
156	Superseding Indictment in the case of U.S. v. Donald L. Blankenship, No. 5:14-cr-00244 (S.D.W.Va.).
157	Order issued by U.S. District Judge Irene C. Berger on December 10, 2015 (ECF No. 553) in the case of U.S. v. Donald L. Blankenship, No. 5:14-cr-00244 (S.D.W.Va.).

Dated: December 21, 2015

Respectfully submitted,

/s/ Andrew P. Bridges

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