## **EXHIBIT 1**

1	UNITED STATES	DISTRICT COURT	
2	FOR THE DISTRI	CT OF COLUMBIA	
3			
	AMERICAN SOCIETY FOR	: NO.	
4	TESTING AND MATERIALS	: 1:13-cv-01215-TSC-	
5	d/b/a ASTM	: DAR	
6	INTERNATIONAL;	:	
7	NATIONAL FIRE	:	
	PROTECTION	:	
8	ASSOCIATION, INC.;	:	
9	and AMERICAN SOCIETY	:	
10	OF HEATING,	:	
11	REFRIGERATION, AND	:	
12	AIR CONDITIONING	:	
13	ENGINEERS,	:	
	Plaintiffs	:	
14	vs.	:	
	PUBLIC.RESOURCE.ORG,	:	
15	INC.,	:	
16	Defendant	:	
17			
	Videotaped depos	ition of JOHN C.	
18	JAROSZ taken at the law	offices of Veritext	
19	Legal Solutions, 1250 I	Street NW,	
20	Washington, DC, commend	ing at 10:09 a.m.	
21	THURSDAY, AUGUST 27, 20	15, before Debbie	
22	Leonard, Registered Dip	olomate Reporter,	
23	Certified Realtime Repo	orter.	
24			
25	PAGES 1 - 260		
			Page 1

1	it.	1	beyond the document production to verify that
2	Objection to form. You're	2	information.
3	asking him to recall, without having	3	Q. But you don't recall seeing any
4	all the materials in front of him?	4	defective materials yourself, correct?
5	MR. BRIDGES: Yeah.	5	A. That's correct. I do not.
6	MR. FEE: Okay.	6	Q. You just relied upon the word
7	THE WITNESS: It's all laid out	7	of others, correct?
8	in my report, and the sources are	8	MR. FEE: Objection. Vague.
9	provided in my report. I've not	9	Mischaracterizes his testimony.
10	memorized all those.	10	THE WITNESS: I relied upon
11	BY MR. BRIDGES:	11	written documents I saw and
12	Q. But I don't think your report	12	conversations that I had.
13	refers to upside-down materials, does it?	13	BY MR. BRIDGES:
14	A. I don't recall for sure, but I	14	Q. What written documents did you
15		15	see that discussed these issues?
	thought some of the documents that I cited	1	
16	make reference to those materials. I'm not	16	MR. FEE: Objection. Asked and
17	sure that I cited the, for instance,	17	answered.
18	upside-down materials, but I think I have	18	THE WITNESS: And I'm sorry. I
19	discussions about that phenomenon.	19	can't point you to the particular
20	Q. With whom?	20	ones. Perhaps, through the course of
21	A. In written materials that I've	21	the day, my memory will be refreshed
22	cited.	22	on that.
23	Q. Have you had oral discussions	23	BY MR. BRIDGES:
24	about what you have referred to as that	24	Q. If you relied upon those
25	phenomenon?	25	written documents, would you have cited to
	Page 22		Page 24
1	A. Yes.	1	those written documents in your report?
1 2	A. Yes. Q. With whom?	1 2	those written documents in your report?  A. Perhaps.
			A. Perhaps.
2 3	<ul><li>Q. With whom?</li><li>A. Counsel here.</li></ul>	2	<ul><li>A. Perhaps.</li><li>Q. Why do you say "perhaps"?</li></ul>
2 3 4	<ul><li>Q. With whom?</li><li>A. Counsel here.</li><li>Q. With anybody else?</li></ul>	2 3 4	<ul><li>A. Perhaps.</li><li>Q. Why do you say "perhaps"?</li><li>A. I can't say with absolute</li></ul>
2 3 4 5	<ul><li>Q. With whom?</li><li>A. Counsel here.</li><li>Q. With anybody else?</li><li>A. I don't think so. It's</li></ul>	2 3 4 5	<ul><li>A. Perhaps.</li><li>Q. Why do you say "perhaps"?</li><li>A. I can't say with absolute</li><li>certainty what I do. But often, if something</li></ul>
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1	consulting career.	1	standards development organization that
2	BY MR. BRIDGES:	2	you've worked on?
3	Q. In what context?	3	A. Again, I'd have to go back and
4	A. There have been several matters	4	look at my records. I can't right now recite
5	I've had, litigations, that have involved	5	any, but there very well could be one or
6	standard setting organizations and the	6	more.
7	outputs from those organizations.	7	Q. Did you review any of your work
8	Q. What organizations?	8	in from earlier copyright cases involving
9	A. Well, some that come to mind	9	standards development organizations in
10	are ETSI, IEEE, the Blu-ray Association,	10	connection with your work in this case?
11	MPEG, MPEG L.A., the Philips 6C and Philips	11	A. Not to the best of my memory,
12	3C organizations. Those are among the ones	12	no.
13	that come to mind.	13	Q. What background do you have in
14	Q. And what types of litigation	14	the creation of standards by standard
15	did your work relating to those standard	15	development organizations?
		16	
16	setting organizations involve?	l	MR. FEE: Objection to form. THE WITNESS: In the context of
17	MR. FEE: Objection to form.	17	
18	THE WITNESS: It was almost all	18	some of my consulting assignments, I
19	intellectual property litigation, with	19	have examined processes undertaken by
20	probably the bulk of the analyses	20	SDOs.
21	undertaken with regard to patent	21	BY MR. BRIDGES:
22	rights.	22	Q. Anything else?
23	BY MR. BRIDGES:	23	A. Nothing else comes to mind.
24	Q. Do you recall	24	I've certainly looked at the output
25	A. I guess I should there were	25	associated with those processes, but there's
	Page 26		Page 28
1	probably some breach of contract matters as	1	nothing else that comes to mind.
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	probably some breach of contract matters as well.	l	nothing else that comes to mind.  O. What processes undertaken by
2	well.	2	Q. What processes undertaken by
2 3	well.  Q. Did you work on any matters	2 3	Q. What processes undertaken by standards development organizations did you
2 3 4	well.  Q. Did you work on any matters involving copyright law where you became	2 3 4	Q. What processes undertaken by standards development organizations did you examine?
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1 A. It sounds like the same 1 manufacturers only. Others include a wider question to me. array of companies. 3 Specifically, what processes 3 In all instances, though, the Q. did you examine? 4 companies are trying to -- the standards 5 That still sounds like the same setting organizations are trying to develop at least some form of consensus -- sometimes question, but let me try to answer it by saying I've looked, for instance, at the it's very broad consensus; sometimes it's mechanisms that ETSI undertook in developing more narrow consensus -- about what would be standards. So I am familiar generally with good for that standards setting organization. 10 the processes that it follows. Similarly Sometimes the SSOs are with regard to other standard setting 11 interested in what's best for the 12 organizations. 12 manufacturers and the ability for them to 13 Q. What other standard setting supply in an interoperable environment. In 14 organizations? 14 some cases, the SSOs are very alert to the 15 Well, I think I identified 15 needs of consumers and users of products and A. 16 those a few moments ago. Do you want me to 16 services that comply with standards. 17 repeat those? 17 You've distinguished between 18 standards setting organizations and standard 18 Well, if -- are you saying 19 that, for all of those organizations, you development organizations. What is the 20 examined their processes? distinction that you -- that you identify In some dimension, probably for 21 between the two? 21 22 most of the organizations, I had at least 22 A. I think I said I didn't know if 23 some knowledge of the process. I can't say 23 there is for sure a distinction, but I think 24 that I investigated in depth all of the an SSO is perhaps a broader concept than an 25 processes for all of the organizations that 25 SDO, but I might be wrong on that. Page 30 Page 32 1 have been involved in my consulting 1 I know the companies -- I -assignments that are standards oriented. the plaintiffs here are SDOs. The 3 What do you recall about your associations are, among other things, in the investigation of the processes by which business of creating and developing standards development organizations create 5 standards. 5 their standards? 6 There could be other SSOs that 7 I should say I -- SDO is have different constituents that are of probably not the right term to use. I should interest to them. I don't know for sure that probably say standards setting organizations. an SSO is a broader concept than an SDO, but 10 There may be a distinction between an SSO and 10 it could be. 11 an SDO. 11 O. What do you understand to be 12 But, generally, each SSO has a 12 the constituents of the plaintiffs in this 13 process that's unique to its organization. case? 13 14 Some solicit input from a wide range of 14 MR. FEE: Objection to form. 15 constituents; some from a more narrow range. THE WITNESS: I laid that out 15 16 The ones that I have examined 16 in my report. In summary, I believe 17 have all been fairly careful in the work that 17 they try to include in the process 18 they've done, seeking input at many steps both those -- both supply-side 18 entities and demand-side entities. 19 along the way. 19 20 Some organizations, like SDOs 20 BY MR. BRIDGES: 21 at issue here, seek a broader array of inputs 21 Who else are plaintiffs' O. 22 than do others. 22 constituents? 23 Some organizations, standards 23 MR. FEE: Same objection. 24 setting organizations, include primarily or 24 THE WITNESS: I can't think of 25 only manufacturers and sometimes large 25 anything that doesn't fall within Page 31 Page 33

1	Q. So those would be harms caused	1	think basically what I'm saying is
2	by a court decision?	2	what would or addressing, is what
3	MR. FEE: Same objection.	3	would be the harm to the plaintiffs if
4	THE WITNESS: By continuing	4	there's no permanent injunction.
5	activities by the defendant that are	5	BY MR. BRIDGES:
6	not halted by the Court.	6	Q. Well, what did you mean by
7	BY MR. BRIDGES:	7	"losing copyright protection" in the
8	Q. Well, it comes across, frankly,	8	paragraph in the heading VI on page 48?
9	in your report as though you're identifying	9	A. In essence, you can think of it
10	harms that would flow from a court decision.	10	as what would happen if there's no permanent
11	MR. FEE: Objection.	11	injunction. In other words, what the
12	BY MR. BRIDGES:	12	defendant has done in the past and what it's
13	Q. Is that correct or not?	13	likely to do in the future is allowed to
14	A. No, I think you	14	continue.
15	MR. FEE: Mischaracterizes the	15	Q. And you immediately go into
16	report.	16	paragraph 112 talking about Emily Bremer,
17	THE WITNESS: you misread	17	correct?
18	it. I don't think I said that or	18	A. I don't know what you mean by
19	meant to say that.	19	"immediately." It's the first paragraph in
20	BY MR. BRIDGES:	20	Section VI.
21	Q. So what harms have occurred	21	Q. Right. Was Emily Bremer in the
22	from the from the defendant's conduct to	22	passage you referred to referring to the
23	date?	23	presence or absence of a permanent injunction
24	A. At the risk of repeating	24	in this case?
25	myself, some of that is summarized in	25	A. I don't think explicitly she
	Page 66		Page 68
1	paragraph 133, with regard to tangible	1	was addressing that issue, no.
1 2		1 2	was addressing that issue, no.  Q. Do you think implicitly she was
			-
2	evidence on harm. With regard to other	2	Q. Do you think implicitly she was
2 3	evidence on harm. With regard to other evidence, it's throughout the report.	2 3	Q. Do you think implicitly she was referring to this case?
2 3 4	evidence on harm. With regard to other evidence, it's throughout the report.  Q. So why would it make a	2 3 4	<ul><li>Q. Do you think implicitly she was referring to this case?</li><li>A. No. I thought you were asking</li></ul>
2 3 4 5	evidence on harm. With regard to other evidence, it's throughout the report.  Q. So why would it make a difference to what the defendant's harms	2 3 4 5	Q. Do you think implicitly she was referring to this case?  A. No. I thought you were asking about permanent injunction. I don't think
2 3 4 5 6	evidence on harm. With regard to other evidence, it's throughout the report.  Q. So why would it make a difference to what the defendant's harms are strike strike that.	2 3 4 5	Q. Do you think implicitly she was referring to this case?  A. No. I thought you were asking about permanent injunction. I don't think she was addressing the an injunction
2 3 4 5 6 7	evidence on harm. With regard to other evidence, it's throughout the report.  Q. So why would it make a difference to what the defendant's harms are strike strike that.  Why would it make a defendants	2 3 4 5 6 7	Q. Do you think implicitly she was referring to this case?  A. No. I thought you were asking about permanent injunction. I don't think she was addressing the an injunction issue. She was addressing the concept of
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2 3 4 5 6 7 8 9	evidence on harm. With regard to other evidence, it's throughout the report.  Q. So why would it make a difference to what the defendant's harms are strike strike that.  Why would it make a defendants [sic] to the plaintiffs' harms if the plaintiffs' harms were continue with	2 3 4 5 6 7 8 9	Q. Do you think implicitly she was referring to this case?  A. No. I thought you were asking about permanent injunction. I don't think she was addressing the an injunction issue. She was addressing the concept of copyright protection.  Q. And that's what you quoted her
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1	A. Generally. I think she's	1	Q. "Such products"
2	talking about standards development and	2	A. And in the next two sentences.
3	incorporation by reference. I don't remember	3	Q. And these are other products
4	if she said at the very beginning of the	4	that "could include more sophisticated
5	article that it was about copyright	5	Web-based availability, published
6	protection, but she certainly talks about	6	compilations of incorporated standards, and
7	copyright protection.	7	other ancillary products that incorporate the
8	Q. And you're quoting her about	8	standards"; isn't that correct?
9	losing copyright protection, and you're	9	A. You didn't read that right. It
10	placing it in the context of harms of the	10	starts "such products could include."
11	loss of copyright protection, correct?	11	Q. Okay. Otherwise, that reading
12	MR. FEE: Objection to form.	12	is correct?
13	THE WITNESS: This excerpt	13	A. I think so.
14	doesn't specifically talk about losing	14	Q. You consider that to be harm to
15	copyright protection, but it talks	15	the plaintiffs?
16	about the concept of it. If there was	16	MR. FEE: Objection. Vague.
17	no longer copyright protection granted	17	THE WITNESS: It could be, yes.
18	to the SDOs, what would be the	18	It's likely to be, if the copyright
19	repercussions.	19	infringement or the assumption of a
20	BY MR. BRIDGES:	20	copyright infringement continues. It
21	Q. And that's the context that you	21	could broaden.
22	identified in the first line of	22	BY MR. BRIDGES:
23	paragraph 112, correct?	23	Q. Right. But the fact that these
24	A. Yes.	24	other types of products would enter the
25	MR. FEE: Objection to form.	25	marketplace is part of the harm that you
	Page 70		Page 72
1	BY MR. BRIDGES:	1	envision from the defendant in this case?
2	Q. Let me direct your attention to	2	
		1 2	MR. FEE: Objection to form.
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1	Q. In other words, if the Court	1	standards.
2	makes a decision in a certain way, there will	2	Q. What further harm would
3	be harms from persons or entities other than	3	Public.Resource.Org cause to plaintiffs with
4	Public.Resource.Org to the plaintiffs? Is	4	respect to the standards at issue in this
5	that your testimony?	5	case if no if the Court does not
6	MR. FEE: Objection to form.	6	permanently enjoin Public.Resource.Org?
7	THE WITNESS: You used the	7	MR. FEE: Objection to form.
8	phrase "in a certain way." I don't	8	THE WITNESS: If there's no
9	know what you mean by that. I'm	9	permanent injunction, there will, in
10	addressing the issue of whether there	10	essence, be a message sent to the
11	should be a permanent injunction or	11	marketplace that the standards that
12	not.	12	have already been disseminated are out
13	BY MR. BRIDGES:	13	there and can be used by others.
14	Q. So your view is that, if the	14	So right now my expectation is
15	Court does not enter a permanent injunction,	15	that some number of consumers of the
16	the plaintiffs will suffer harms from parties	16	standards have been reluctant or
17	other than Public.Resource.Org. Is that your	17	unknowing as to the standards
18	testimony?	18	disseminated by Public Resource. Now
19	A. That potential exists. I don't	19	there will be more knowledge about
20	know for sure. That's, in part, why the harm	20	that and more approval of that
21	is irreparable or very difficult to quantify.	21	activity. That is if there's no
22	Q. The what harm?	22	permanent injunction.
23	A. Continuing activity of Public	23	BY MR. BRIDGES:
24	Resource and others. I don't know exactly	24	Q. What harms will plaintiffs
25	what will happen, but the potential is that	25	suffer if the Court rules that the plaintiffs
	Page 74		Page 76
1	there could be very broad dissemination of	1	do not own the copyrights in this case?
2	the standards, which would impact these SDOs	2	MR. FEE: Objection. Calls for
3	tremendously.	3	speculation.
4	Q. What harm would	4	THE WITNESS: In essence,
5	Public.Resource.Org cause to plaintiffs if	5	you're asking if there's no copyright
6	there is no permanent injunction?	6	infringement?
7	A. A permanent injunction would	7	BY MR. BRIDGES:
8	lack of a permanent injunction would harm the	8	Q. No. What harms have you
9	SDOs.	9	identified what harms the plaintiffs would
10	Q. That wasn't my question. My	10	suffer if the Court rules that the plaintiffs
11	question was, what harm would	11	do not own the copyrights at issue, that
12	Public.Resource.Org cause to plaintiffs if	12	there are no copyrights that the plaintiffs
13	there is no permanent injunction?	13	own
14	A. At the very least, it's	14	MR. FEE: Objection to form.
15	associated with its historical dissemination	15	BY MR. BRIDGES:
16	of these standards and there would be in	16	Q at issue in this case?
17	of these standards, and there would be, in	1	
10	essence, a carte blanche for other	17	A. I haven't addressed or thought
18	essence, a carte blanche for other organizations or individuals to access those.	18	about that issue. There are also, don't
19	essence, a carte blanche for other organizations or individuals to access those.  So my expectation is that the	18 19	about that issue. There are also, don't forget, trademark issues.
19 20	essence, a carte blanche for other organizations or individuals to access those.  So my expectation is that the dissemination of the materials that have	18 19 20	about that issue. There are also, don't forget, trademark issues.  Q. I'm asking about copyright, so
19 20 21	essence, a carte blanche for other organizations or individuals to access those.  So my expectation is that the dissemination of the materials that have already been disseminated will expand.	18 19 20 21	about that issue. There are also, don't forget, trademark issues.  Q. I'm asking about copyright, so I ask you to confine your answers to my
19 20 21 22	essence, a carte blanche for other organizations or individuals to access those.  So my expectation is that the dissemination of the materials that have already been disseminated will expand.  It could also be the case that	18 19 20 21 22	about that issue. There are also, don't forget, trademark issues.  Q. I'm asking about copyright, so I ask you to confine your answers to my questions.
19 20 21 22 23	essence, a carte blanche for other organizations or individuals to access those.  So my expectation is that the dissemination of the materials that have already been disseminated will expand.  It could also be the case that Public Resource will undertake further	18 19 20 21 22 23	about that issue. There are also, don't forget, trademark issues.  Q. I'm asking about copyright, so I ask you to confine your answers to my questions.  My question is, what you
19 20 21 22 23 24	essence, a carte blanche for other organizations or individuals to access those.  So my expectation is that the dissemination of the materials that have already been disseminated will expand.  It could also be the case that Public Resource will undertake further activities that would disseminate either	18 19 20 21 22 23 24	about that issue. There are also, don't forget, trademark issues.  Q. I'm asking about copyright, so I ask you to confine your answers to my questions.  My question is, what you assume for purposes of your analysis that
19 20 21 22 23	essence, a carte blanche for other organizations or individuals to access those.  So my expectation is that the dissemination of the materials that have already been disseminated will expand.  It could also be the case that Public Resource will undertake further	18 19 20 21 22 23	about that issue. There are also, don't forget, trademark issues.  Q. I'm asking about copyright, so I ask you to confine your answers to my questions.  My question is, what you

1	A. I assume that there's copyright	1	plaintiffs deserve copyright protection for
2	infringement. I don't know that I've made an	2	these standards?
3	explicit assumption with regard to ownership.	3	MR. FEE: Objection to form.
4	Q. And you assume infringement	4	THE WITNESS: I don't have an
5	without assuming ownership of the copyrights?	5	opinion on that one way or the other.
6	A. I haven't made any explicit	6	I have not thought about that topic.
7	assumption with regard to ownership. I know	7	BY MR. BRIDGES:
8	that's an issue in this case, but it's well	8	Q. Do you have any expertise in
9	beyond my expertise.	9	copyright law as a field of law?
10	Q. So if it turns out that do	10	MR. FEE: Objection. Vague.
11	you understand your testimony to have any	11	THE WITNESS: No, I don't have
12	bearing on whether plaintiffs' standards are	12	legal expertise. I have expertise in
13	copyrightable?	13	looking at harm associated with
14	MR. FEE: Objection. Calls for	14	copyright infringement.
15	speculation.	15	BY MR. BRIDGES:
16	I would instruct you to not	16	Q. Do you have any expertise with
17	disclose any communications you had	17	respect to harm caused by invalidation of
18	with counsel that weren't the basis	18	copyrights?
19	for any of your opinions in this case.	19	MR. FEE: Same objection.
20	You can otherwise answer.	20	THE WITNESS: I'm not quite
21	THE WITNESS: Could you read	21	sure I'm fully appreciating your
22	that back or ask it again, please?	22	question. Again, I'm an expert in the
23	BY MR. BRIDGES:	23	economics of IP protection. One of
24	Q. Do you understand your	24	the areas in which I do work is harm
25	testimony and opinions in this case to have	25	associated with copyright protection.
	Page 78		Page 80
1	any bearing on whether plaintiffs' standards	1	BY MR. BRIDGES:
1 2	any bearing on whether plaintiffs' standards are copyrightable?	1 2	BY MR. BRIDGES: Q. Have you done any work in this
1		_	
2	are copyrightable?	2	Q. Have you done any work in this case to quantify what harms plaintiffs would suffer if a court were to rule that they
2 3	are copyrightable?  MR. FEE: Same objection and	2 3	Q. Have you done any work in this case to quantify what harms plaintiffs would suffer if a court were to rule that they lacked copyright rights in the standards at
2 3 4	are copyrightable?  MR. FEE: Same objection and instruction. Plus objection, calls	2 3 4	Q. Have you done any work in this case to quantify what harms plaintiffs would suffer if a court were to rule that they
2 3 4 5 6 7	are copyrightable?  MR. FEE: Same objection and instruction. Plus objection, calls for a legal conclusion.	2 3 4 5	Q. Have you done any work in this case to quantify what harms plaintiffs would suffer if a court were to rule that they lacked copyright rights in the standards at
2 3 4 5 6	are copyrightable?  MR. FEE: Same objection and instruction. Plus objection, calls for a legal conclusion.  THE WITNESS: I don't know one	2 3 4 5 6	Q. Have you done any work in this case to quantify what harms plaintiffs would suffer if a court were to rule that they lacked copyright rights in the standards at issue in this case?
2 3 4 5 6 7	are copyrightable?  MR. FEE: Same objection and instruction. Plus objection, calls for a legal conclusion.  THE WITNESS: I don't know one way or the other. I've not taken on	2 3 4 5 6 7	Q. Have you done any work in this case to quantify what harms plaintiffs would suffer if a court were to rule that they lacked copyright rights in the standards at issue in this case?  MR. FEE: Objection to form.
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1	Q. Right. Or approximately	1	THE WITNESS: Again, I don't
2	\$3 million?	2	have an estimate.
3	A. Are you limiting it just to	3	BY MR. BRIDGES:
4	90.1 or all its standards?	4	Q. Do you know did ASHRAE pay
5	Q. Well, that's a good question.	5	for the time, the hotel bills, and the plane
6	What what's what did you intend the	6	fares of its volunteer members in updating
7	last sentence in paragraph 76 to refer to?	7	the ASHRAE 90.1 standard?
8	All of its standards or 90.1?	8	A. I would expect rarely. It's
9	A. I think it's all of its	9	possible that there are certain instances in
10	standards, but we could visit the screenshot	10	which there was some set of out-of-pocket
11	from the Web site to confirm that.	11	expenses covered, but I would imagine the
12	Q. Okay.	12	bulk of the time it's the volunteer's
13	A. I I could be wrong. I don't	13	employer.
14	think I am, but I could be.	14	MR. BRIDGES: Sorry. How long
15	Q. Okay. In the previous	15	have we been going? I didn't get when
16	sentence, you say, "ASHRAE and its volunteer	16	we went back on.
17	members devoted more than 86,400 man-hours,	17 18	MR. FEE: 34 minutes. BY MR. BRIDGES:
18	3,600 hotel nights, and 1,200 round-trip		
19 20	flights as part of the process."	19 20	Q. Did you speak with Emily Bremer at any point in this case?
21	And that "the process" appears to refer to updating the ASHRAE 90.1	21	A. No.
$\begin{vmatrix} 21\\22 \end{vmatrix}$	standard, correct?	$\begin{vmatrix} 21\\22\end{vmatrix}$	Q. How did you become acquainted
$\begin{vmatrix} 22 \\ 23 \end{vmatrix}$	A. Yes.	23	with her writings?
$\begin{vmatrix} 23 \\ 24 \end{vmatrix}$	Q. When you say "ASHRAE and its	24	A. I think Kevin Fee and/or
25	volunteer members," and then you give those	25	Jordana Rubel brought to my attention that
23	Page 90	23	Page 92
_			
1	- ( - ( ' - ( ' ( ' - ( ' ( ' - ( '	1	1. 1. 1. 1
1	statistics, those statistics refer primarily	1	she had written on this topic. I don't
2	to the man-hours, hotel nights, and	2	recall whether then we separately obtained
2 3	to the man-hours, hotel nights, and round-trip flights of the volunteer members?	2 3	recall whether then we separately obtained her two articles or Mr. Fee slash Ms. Rubel
2 3 4	to the man-hours, hotel nights, and round-trip flights of the volunteer members?  MR. FEE: Objection. Vague.	2 3 4	recall whether then we separately obtained her two articles or Mr. Fee slash Ms. Rubel provided those to us.
2 3 4 5	to the man-hours, hotel nights, and round-trip flights of the volunteer members?  MR. FEE: Objection. Vague.  THE WITNESS: Probably. As	2 3 4 5	recall whether then we separately obtained her two articles or Mr. Fee slash Ms. Rubel provided those to us.  Q. What independent work did you
2 3 4 5 6	to the man-hours, hotel nights, and round-trip flights of the volunteer members?  MR. FEE: Objection. Vague.  THE WITNESS: Probably. As opposed to ASHRAE-employed staff.	2 3 4 5 6	recall whether then we separately obtained her two articles or Mr. Fee slash Ms. Rubel provided those to us.  Q. What independent work did you do to research writings regarding the
2 3 4 5 6 7	to the man-hours, hotel nights, and round-trip flights of the volunteer members?  MR. FEE: Objection. Vague.  THE WITNESS: Probably. As opposed to ASHRAE-employed staff. BY MR. BRIDGES:	2 3 4 5 6 7	recall whether then we separately obtained her two articles or Mr. Fee slash Ms. Rubel provided those to us.  Q. What independent work did you do to research writings regarding the economics of standards development?
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1	THE WITNESS: Yes, with the	1	the various plaintiffs.
2	exception that, in the first instance,	2	Q. With whom?
3	lawyers at Morgan Lewis brought to our	3	A. They are all identified in
4	attention the Bremer the existence	4	paragraph 10 of my report.
5	of Bremer articles.	5	Q. Which of those did you
6	BY MR. BRIDGES:	6	personally have conversations with?
7	Q. Did you study any of the	7	A. All of them, as I recall. It's
8	materials that Bremer strike that.	8	possible there's someone I did not, but I'm
9	Bremer's articles are law	9	not remembering that being the case.
10	review articles, correct?	10	Q. Approximately how long did you
11	A. Yes.	11	spend with did you have conversations with
12	Q. Did any plaintiff did your	12	any of them together?
13	team's research identify any articles that	13	A. Yes, several of them were
14	you chose not to include in tab 2?	14	together.
15	A. I don't think so.	15	Q. Which ones?
16	Q. Did any plaintiff or its	16	A. I don't recall all
17	counsel furnish you with correspondence	17	combinations. I can say with some confidence
18	between the plaintiffs and Emily Bremer for	18	that there was never more than one plaintiff
19	review?	19	on a call. In other words, there were
20	A. No, not to my knowledge.	20	several people from a particular plaintiff on
21	Q. How many conversations with	21	a call, but not more than one plaintiff.
22	representatives of the plaintiffs did you	22	So I had various combinations
23	have?	23	
24	MR. FEE: Objection.	24	three occasions; with NFPA, one or two
25		25	
23	I would instruct you not to Page 94	23	occasions; and with ASHRAE, one or two
	Tuge / I		Tuge 70
1			
1	answer questions regarding	1	occasions.
1 2	answer questions regarding communications with counsel, unless	1 2	occasions.  Q. And approximately how long
		_	
2	communications with counsel, unless	2	Q. And approximately how long
2 3	communications with counsel, unless they formed the basis of your opinions, in which case you can answer questions with respect to those	2 3	Q. And approximately how long total did you spend in conversations with
2 3 4	communications with counsel, unless they formed the basis of your opinions, in which case you can answer	2 3 4	Q. And approximately how long total did you spend in conversations with representatives of each plaintiff?
2 3 4 5	communications with counsel, unless they formed the basis of your opinions, in which case you can answer questions with respect to those	2 3 4 5	Q. And approximately how long total did you spend in conversations with representatives of each plaintiff?  MR. FEE: Objection to form.
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1	record at 12:17. This is the end of	1	you interview?
2	media unit number 1.	2	A. I don't think I interviewed any
3	* * *	3	members of the public either.
4	(Recess from 12:17 p.m. to	4	Q. What steps did you do to
5	12:32 p.m.)	5	ascertain the views of the members of the
6	* * *	6	organizations, other than the employees?
7	THE VIDEOGRAPHER: On the	7	A. I read the materials that were
8	record at 12:32. This is the	8	produced here. I read the deposition
9	beginning of media unit 2 in the	9	testimony of the various individuals. I read
10	deposition of John Jarosz.	10	the articles published by Ms. Bremer. And I
11	BY MR. BRIDGES:	11	read the other academic literature and
12	Q. Mr. Jarosz, your report, as I	12	practical literature that I had.
13	referred to earlier, cites a number of	13	Q. Which of those sources stated
14	conversations with employees of the	14	the views of the non-employee members of the
15	plaintiffs. For what purpose did you have	15	various organizations?
16	conversations with the plaintiffs' employees?	16	A. I don't know that views of
17	A. To learn more about the	17	that their views were explicitly addressed in
18	organization and their view as to the impact	18	my report or represented. I understood what
19	of continued copyright protection	19	the impacts of the lack of honoring the
20	continued copyright infringement and	20	copyrights and trademarks would have, but I
21	trademark infringement.	21	don't know that I saw non-employee member
$\begin{vmatrix} 21\\22\end{vmatrix}$	Q. What view did you learn from	22	views explicitly summarized.
23	them?	23	Q. So what steps did you do to
24	MR. FEE: Objection to form.	24	ascertain the views of the members of the
25	•	l	
23	THE WITNESS: Well, I solicited Page 110	25	organizations Page 112
	1 age 110		1 age 112
1	and learned many facts about the	1	MR. FEE: Objection.
2	organizations. I also learned that	2	BY MR. BRIDGES:
	organizations. I also learned that each one of them viewed continued	2 3	BY MR. BRIDGES: Q other than their employees?
2	organizations. I also learned that each one of them viewed continued copyright infringement and trademark	2 3 4	BY MR. BRIDGES: Q other than their employees? MR. FEE: Asked and answered.
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2 3 4	organizations. I also learned that each one of them viewed continued copyright infringement and trademark	2 3 4	BY MR. BRIDGES: Q other than their employees? MR. FEE: Asked and answered.
2 3 4 5	organizations. I also learned that each one of them viewed continued copyright infringement and trademark infringement as quite detrimental to	2 3 4 5	BY MR. BRIDGES: Q other than their employees? MR. FEE: Asked and answered. THE WITNESS: Well, I talked to
2 3 4 5 6	organizations. I also learned that each one of them viewed continued copyright infringement and trademark infringement as quite detrimental to their organizations, detrimental to	2 3 4 5 6	BY MR. BRIDGES: Q other than their employees? MR. FEE: Asked and answered. THE WITNESS: Well, I talked to the employees, and they interact with
2 3 4 5 6 7	organizations. I also learned that each one of them viewed continued copyright infringement and trademark infringement as quite detrimental to their organizations, detrimental to the members, detrimental to the	2 3 4 5 6 7	BY MR. BRIDGES: Q other than their employees? MR. FEE: Asked and answered. THE WITNESS: Well, I talked to the employees, and they interact with the members on a very regular basis,
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	organizations. I also learned that each one of them viewed continued copyright infringement and trademark infringement as quite detrimental to their organizations, detrimental to the members, detrimental to the public.  They viewed continued IP infringement as potentially devastating to their organizations.  BY MR. BRIDGES: Q. These were their views? A. Yes. I'm just paraphrasing, of course. Q. What members did you interview? A. None, other than the employees. I don't know if you call those "members" or not. But the volunteer membership, I didn't go to.  THE VIDEOGRAPHER: Excuse me. Counsel, could you move your microphone to your lapel? Thank you. BY MR. BRIDGES:	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	BY MR. BRIDGES:  Q other than their employees?  MR. FEE: Asked and answered.  THE WITNESS: Well, I talked to the employees, and they interact with the members on a very regular basis, so they gave me some sense of what the views of the members were.  It also could be that some of the perspectives of the members are reflected in some of the documents I identified in tab 2.  BY MR. BRIDGES:  Q. Well, I'm just trying to find out where it sounds as though strike that.  It sounds as though a minute ago you said you couldn't recall anything specifically calling out views of non-employee members, correct?  A. Correct. I think that's right.  Q. What did you do to verify the statements that employees of the plaintiffs
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	organizations. I also learned that each one of them viewed continued copyright infringement and trademark infringement as quite detrimental to their organizations, detrimental to the members, detrimental to the public.  They viewed continued IP infringement as potentially devastating to their organizations.  BY MR. BRIDGES: Q. These were their views? A. Yes. I'm just paraphrasing, of course. Q. What members did you interview? A. None, other than the employees. I don't know if you call those "members" or not. But the volunteer membership, I didn't go to.  THE VIDEOGRAPHER: Excuse me. Counsel, could you move your microphone to your lapel? Thank you.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	BY MR. BRIDGES:  Q other than their employees?  MR. FEE: Asked and answered.  THE WITNESS: Well, I talked to the employees, and they interact with the members on a very regular basis, so they gave me some sense of what the views of the members were.  It also could be that some of the perspectives of the members are reflected in some of the documents I identified in tab 2.  BY MR. BRIDGES:  Q. Well, I'm just trying to find out where it sounds as though strike that.  It sounds as though a minute ago you said you couldn't recall anything specifically calling out views of non-employee members, correct?  A. Correct. I think that's right.  Q. What did you do to verify the

1 States other than law review articles by 2 A. I did what I normally do in an assignment like this and look at the produced 4 materials. 5 Q. And the produced materials did 6 not call out specifically any views of 7 non-employee members of the plaintiff 8 organizations, correct? 9 A. I don't recall any specific 10 views being summarized. My memory may not be 11 perfect on that, though. 12 Q. What research, if any, did you 13 do among members of the public about whether 14 lack of copyright protection for the 15 plaintiff's standards would be detrimental to 16 the to the public? 14 Lack of copyrigh protection for the 16 the to the public? 15 A. The information that I reviewed 18 is in tab 2. I didn't have material beyond 19 what is identified in tab 2. 20 Q. So what in tab 2 reflects your 21 steps to ascertain the views of members of 22 the public? 21 the public? 22 mR. FEE: Objection to form. 23 mR. FEE: Objection to form. 24 THE WITNESS: I think the 25 Bremer articles, in part, address 2 mpointed to the Administrative Conference of the United States - Strike that. 25 memer articles, in part, address 2 mpointed to the Administrative Conference of the United States - Strike that. 26 mpointed to the Administrative Conference of the United States - Strike that. 27 mpost liber 1 don't. Tecall that stitting here now. 28 my Mr. BRIDGES: 30 mr. FEE: Objection to form. 41 that. I think some of the federal 2 government's circulars that I dentify, in part, reflect the 1995 and OMB Circular A-119 I think the 1995 and OMB Circular A-119 personally? 41 that. I spart, reflect the 1995 and OMB Circular A-119 conference of the United States - Strike that. 42 poyou know whether states in her law review articles reflect a deliberations of the Administrative Conference of the United States - Strike that. 43 personally? 44 the United States - Strike that. 45 possible. 46 pour benefit of the federal 2 mpointed to the Administrative Conference of the United States - Strike that. 47 pour benefit of the Administrative Conferenc				
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pertaining to the discussions or  deliberations of the Administrative  Conference of the United States in connection with your research or analysis?  A. What particular materials or meetings are you referring to?  Q. Any.  BY MR. BRIDGES:  A. I don't recall, but it's possible.  Q. Does tab 2 refer you to any documents that would provide you information about the discussions or deliberations of the Administrative Conference of the United  13 that they officially reflect that. I believe she gathered information, and they may, in fact, represent the views of some or all members, but I don't think that's that either article is an official representation 19 BY MR. BRIDGES: Q. Are you 21 possible.  Q. Are you aware of the fact that 23 her articles her law review articles 24 specifically disclaim her articles as the 25 views of any government entity and indicate		· · · · · · · · · · · · · · · · · · ·		· ·
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15 Conference of the United States in connection 16 with your research or analysis? 17 A. What particular materials or 18 meetings are you referring to? 19 Q. Any. 19 BY MR. BRIDGES: 20 A. I don't recall, but it's 21 possible. 22 Q. Does tab 2 refer you to any 23 documents that would provide you information 24 about the discussions or deliberations of the 25 Administrative Conference of the United 26 they may, in fact, represent the views 17 think that's that either article is 28 an official representation 29 Q. Are you 20 Q. Are you 21 possible. 21 A of that body. 22 Q. Are you aware of the fact that 23 her articles her law review articles 24 specifically disclaim her articles as the 25 views of any government entity and indicate	13	pertaining to the discussions or	13	that they officially reflect that. I
with your research or analysis?  A. What particular materials or  meetings are you referring to?  Q. Any.  19 Q. Any.  19 BY MR. BRIDGES:  20 Q. Are you  21 possible.  20 Q. Are you  21 possible.  21 A of that body.  22 Q. Are you aware of the fact that  23 documents that would provide you information  24 about the discussions or deliberations of the  25 Administrative Conference of the United  16 of some or all members, but I don't  17 think that's that either article is  28 an official representation  19 BY MR. BRIDGES:  20 Q. Are you  21 A of that body.  22 Q. Are you aware of the fact that  23 her articles her law review articles  24 specifically disclaim her articles as the  25 views of any government entity and indicate	14	deliberations of the Administrative	14	
17 think that's that either article is 18 meetings are you referring to? 19 Q. Any. 19 BY MR. BRIDGES: 20 A. I don't recall, but it's 21 possible. 21 A of that body. 22 Q. Does tab 2 refer you to any 23 documents that would provide you information 24 about the discussions or deliberations of the 25 Administrative Conference of the United 26 United 27 think that's that either article is 28 an official representation 29 Q. Are you 20 Q. Are you 21 Possible. 21 A of that body. 22 Q. Are you aware of the fact that 23 her articles her law review articles 24 specifically disclaim her articles as the 25 views of any government entity and indicate	15	Conference of the United States in connection	15	they may, in fact, represent the views
18 meetings are you referring to? 19 Q. Any. 19 Any. 20 A. I don't recall, but it's 21 possible. 22 Q. Does tab 2 refer you to any 23 documents that would provide you information 24 about the discussions or deliberations of the 25 Administrative Conference of the United 26 Any. 18 an official representation 19 BY MR. BRIDGES: 20 Q. Are you 21 A of that body. 22 Q. Are you aware of the fact that 23 her articles her law review articles 24 specifically disclaim her articles as the 25 views of any government entity and indicate	16	with your research or analysis?	16	of some or all members, but I don't
19 Q. Any. 20 A. I don't recall, but it's 20 Q. Are you 21 possible. 21 A of that body. 22 Q. Does tab 2 refer you to any 23 documents that would provide you information 24 about the discussions or deliberations of the 25 Administrative Conference of the United 26 Page 19 BY MR. BRIDGES: 27 Q. Are you 28 Q. Are you aware of the fact that 29 Are articles her law review articles 20 Q. Are you aware of the fact that 21 Specifically disclaim her articles as the 22 Views of any government entity and indicate	17	A. What particular materials or	17	think that's that either article is
20 A. I don't recall, but it's 21 possible. 22 Q. Does tab 2 refer you to any 23 documents that would provide you information 24 about the discussions or deliberations of the 25 Administrative Conference of the United 20 Q. Are you 21 A of that body. 22 Q. Are you aware of the fact that 23 her articles her law review articles 24 specifically disclaim her articles as the 25 views of any government entity and indicate	18		18	an official representation
21 possible. 22 Q. Does tab 2 refer you to any 23 documents that would provide you information 24 about the discussions or deliberations of the 25 Administrative Conference of the United 26 A of that body. 27 Q. Are you aware of the fact that 28 her articles her law review articles 29 specifically disclaim her articles as the 29 views of any government entity and indicate		meetings are you referring to?		
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24 about the discussions or deliberations of the 25 Administrative Conference of the United 25 views of any government entity and indicate	19 20	<ul><li>Q. Any.</li><li>A. I don't recall, but it's</li></ul>	20	Q. Are you
24 about the discussions or deliberations of the 25 Administrative Conference of the United 25 views of any government entity and indicate	19 20 21	<ul><li>Q. Any.</li><li>A. I don't recall, but it's possible.</li><li>Q. Does tab 2 refer you to any</li></ul>	20 21	Q. Are you A of that body.
	19 20 21 22	<ul><li>Q. Any.</li><li>A. I don't recall, but it's possible.</li><li>Q. Does tab 2 refer you to any</li></ul>	20 21 22	<ul><li>Q. Are you</li><li>A of that body.</li><li>Q. Are you aware of the fact that</li></ul>
Page 115 Page 117	19 20 21 22 23	<ul> <li>Q. Any.</li> <li>A. I don't recall, but it's</li> <li>possible.</li> <li>Q. Does tab 2 refer you to any</li> <li>documents that would provide you information</li> </ul>	20 21 22 23	Q. Are you A of that body. Q. Are you aware of the fact that her articles her law review articles
	19 20 21 22 23 24	<ul> <li>Q. Any.</li> <li>A. I don't recall, but it's</li> <li>possible.</li> <li>Q. Does tab 2 refer you to any</li> <li>documents that would provide you information</li> <li>about the discussions or deliberations of the</li> <li>Administrative Conference of the United</li> </ul>	20 21 22 23 24	Q. Are you A of that body. Q. Are you aware of the fact that her articles her law review articles specifically disclaim her articles as the

1	that they are her personal views?	1	I believe counsel did not
2	A. I wouldn't be surprised and	2	provide the Web site screenshots, but I might
3	may I may have read that, but I would	3	be wrong on that.
4	expect that that would be in the first	4	Q. And did you do anything
5	footnote of one or both articles.	5	what, if anything, did you do to test the
6	Q. What did you do to examine the	6	validity of the factual assertions that the
7	alleged facts that the representatives of	7	plaintiffs made to you in your conversations
8	plaintiffs stated to you in their	8	with their employees?
9	conversations with you?	9	MR. FEE: Objection to form.
10	MR. FEE: Objection to form.	10	Asked and answered.
11	THE WITNESS: I looked at	11	THE WITNESS: Well, we looked
12	MR. FEE: Asked and answered.	12	at materials. If we found things that
13	THE WITNESS: I'm sorry. I	13	conflicted with what we learned, that
14	looked at the document production and	14	would prompt us to investigate
15	the other materials shown in tab 2.	15	further. But I don't recall seeing
16	BY MR. BRIDGES:	16	any documentary evidence that
17	Q. You looked at the document	17	conflicted with facts that were
18	production that the plaintiffs' counsel	18	provided by plaintiff personnel, but I
19	furnished you?	19	might be wrong.
20	A. In part. There were other	20	BY MR. BRIDGES:
21	things in tab 2 that were not provided to me	21	Q. Did you investigate
22	by plaintiffs' counsel.	22	independently whether documents existed that
23	Q. What other materials in	23	contradicted plaintiffs' statements of facts?
24	tab 2 strike that.	24	A. Not with that in mind. We
25	Please identify for me in tab 2 Page 118	25	looked at the documents and were mindful of Page 120
	1 uge 110		1 ugc 120
1	the materials that plaintiffs' counsel	1	whether there were conflicts within documents
2	furnished you.	2	or conflicts between documents and other
3	A. I don't know with absolute	3	information, but I don't recall that we saw
4	certainty, but let me give you my best guess.	4	anything that gave us substantial pause.
5	I believe all the depositions that are shown	5	There were probably some things
6	on page 1. I believe the Bates ranges at the	6	where there were some uncertainties whether
7	very top of the page were provided by	17	there was a conflict or not and some where
8	counsel.	8	there were insignificant conflicts, but I
9	The deposition transcripts and	9	think mostly the information we saw did not
10	exhibits were provided by counsel. I believe	10	conflict with the information we learned from
11	the financial statements and plans were	11	plaintiff personnel.
12	provided by counsel. I believe the legal	12	Q. Did you investigate
13	doduments more promised by councel I	13	independently whether other documents, apart
1.4	documents were provided by counsel. I	l	THOMAS THE GOODING ONTO MICENTATES TERMINACINES TOUR
14	believe the miscellaneous items were provided	14	from the documents plaintiffs furnished you,
15	believe the miscellaneous items were provided by counsel.	14 15	existed that contradicted plaintiffs'
15 16	believe the miscellaneous items were provided by counsel.  I don't know about the cases	14 15 16	existed that contradicted plaintiffs' statements of facts
15 16 17	believe the miscellaneous items were provided by counsel.  I don't know about the cases and laws. I just don't remember if we	14 15 16 17	existed that contradicted plaintiffs' statements of facts MR. FEE: Objection to form.
15 16 17 18	believe the miscellaneous items were provided by counsel.  I don't know about the cases and laws. I just don't remember if we separately gathered those or were provided	14 15 16 17 18	existed that contradicted plaintiffs' statements of facts MR. FEE: Objection to form. BY MR. BRIDGES:
15 16 17 18 19	believe the miscellaneous items were provided by counsel.  I don't know about the cases and laws. I just don't remember if we separately gathered those or were provided those.	14 15 16 17 18 19	existed that contradicted plaintiffs' statements of facts MR. FEE: Objection to form. BY MR. BRIDGES: Q in conversations with you?
15 16 17 18 19 20	believe the miscellaneous items were provided by counsel.  I don't know about the cases and laws. I just don't remember if we separately gathered those or were provided those.  The analyst reports, articles,	14 15 16 17 18 19 20	existed that contradicted plaintiffs' statements of facts MR. FEE: Objection to form. BY MR. BRIDGES: Q in conversations with you? A. Yes, in the sense that we
15 16 17 18 19 20 21	believe the miscellaneous items were provided by counsel.  I don't know about the cases and laws. I just don't remember if we separately gathered those or were provided those.  The analyst reports, articles, books, and presentations, I think we gathered	14 15 16 17 18 19 20 21	existed that contradicted plaintiffs' statements of facts MR. FEE: Objection to form. BY MR. BRIDGES: Q in conversations with you? A. Yes, in the sense that we gathered some information that we did not
15 16 17 18 19 20 21 22	believe the miscellaneous items were provided by counsel.  I don't know about the cases and laws. I just don't remember if we separately gathered those or were provided those.  The analyst reports, articles, books, and presentations, I think we gathered all of those, with the possible exception of	14 15 16 17 18 19 20 21 22	existed that contradicted plaintiffs' statements of facts MR. FEE: Objection to form. BY MR. BRIDGES: Q in conversations with you? A. Yes, in the sense that we gathered some information that we did not receive from plaintiffs' counsel, but all of
15 16 17 18 19 20 21 22 23	believe the miscellaneous items were provided by counsel.  I don't know about the cases and laws. I just don't remember if we separately gathered those or were provided those.  The analyst reports, articles, books, and presentations, I think we gathered all of those, with the possible exception of the two Bremer articles. I don't recall if	14 15 16 17 18 19 20 21 22 23	existed that contradicted plaintiffs' statements of facts MR. FEE: Objection to form. BY MR. BRIDGES: Q in conversations with you? A. Yes, in the sense that we gathered some information that we did not receive from plaintiffs' counsel, but all of that is identified in tab 2.
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15 16 17 18 19 20 21 22 23	believe the miscellaneous items were provided by counsel.  I don't know about the cases and laws. I just don't remember if we separately gathered those or were provided those.  The analyst reports, articles, books, and presentations, I think we gathered all of those, with the possible exception of the two Bremer articles. I don't recall if	14 15 16 17 18 19 20 21 22 23	existed that contradicted plaintiffs' statements of facts MR. FEE: Objection to form. BY MR. BRIDGES: Q in conversations with you? A. Yes, in the sense that we gathered some information that we did not receive from plaintiffs' counsel, but all of that is identified in tab 2.

1	Web sites we gathered ourselves, and I think	1	Q. What did you hear about
2	the reports and articles, with the exception	2	overseas litigation involving Public
3	of the Bremer articles, we gathered	3	Resource?
4	ourselves.	4	A. I think I heard that there was
5	Q. Do you know why you got no	5	a German or a suit in Germany, but I'm not
6	documents from NFPA, no Bates range documents	6	sure that I learned much more than that. I
7	from NFPA?	7	don't recall what status that suit what
8	MR. REHN: Object to form	8	the status of that suit is.
9	THE WITNESS: I don't know why	9	Q. Do you recall anyone disclosing
10	we did not receive Bates documents	10	to you litigation involving NFPA in the
11	THE REPORTER: Wait.	11	United States that pertained to standards and
12	MR. REHN: Sorry. Object to	12	copyright?
13	the form. Lacks foundation.	13	A. It's possible, but I don't
14	THE WITNESS: I don't know for	14	recall any, sitting here right now.
15	sure that we didn't receive	15	Q. Do you recall inquiring about
16	Bates-stamped documents, but I believe	16	public statements of fact that NFPA has made
17	some of the documents we received were	17	regarding copyright and standards in
18	NFPA documents.	18	litigation other than this litigation in the
19	BY MR. BRIDGES:	19	United States?
20	Q. Do you recall seeing any NFPA	20	MR. FEE: Objection to form.
21	documents that in which NFPA personnel	21	THE WITNESS: I do not.
22	stated that they could not show any harm from	22	BY MR. BRIDGES:
23	the defendant's activities?	23	Q. Are you familiar with a case
24	A. Received any documents that	24	called Veeck, V-E-E-C-K?
25	said that?	25	A. I'm familiar with an opinion in
	Page 122		Page 124
1	O. Uh-huh.	1	the Veeck case.
1 2	Q. Uh-huh. A. Perhaps you would have	$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	the Veeck case.  O. What do you know about that
2	A. Perhaps you would have	2	Q. What do you know about that
2 3	A. Perhaps you would have something that would refresh my memory. I	2 3	Q. What do you know about that opinion?
2 3 4	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but	2 3 4	Q. What do you know about that opinion?  MR. FEE: Objection.
2 3 4 5	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.	2 3 4 5	Q. What do you know about that opinion?  MR. FEE: Objection. I would instruct you not to
2 3 4 5 6	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.  Are you talking about	2 3 4 5 6	Q. What do you know about that opinion?  MR. FEE: Objection.  I would instruct you not to disclose anything you know about that
2 3 4 5 6 7	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.  Are you talking about historical historically no harm, or are	2 3 4 5 6 7	Q. What do you know about that opinion?  MR. FEE: Objection.  I would instruct you not to disclose anything you know about that opinion that was a result of
2 3 4 5 6 7 8	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.  Are you talking about historical historically no harm, or are you talking about prospectively?	2 3 4 5 6 7 8	Q. What do you know about that opinion?  MR. FEE: Objection.  I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that
2 3 4 5 6 7 8 9	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.  Are you talking about historical historically no harm, or are you talking about prospectively?  Q. Either one. Did you do you	2 3 4 5 6 7 8 9	Q. What do you know about that opinion?  MR. FEE: Objection.  I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that did not form the basis of any of the
2 3 4 5 6 7 8 9	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.  Are you talking about historical historically no harm, or are you talking about prospectively?  Q. Either one. Did you do you recall seeing any internal NFPA documents	2 3 4 5 6 7 8 9	Q. What do you know about that opinion?  MR. FEE: Objection.  I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that did not form the basis of any of the opinions in your report or any of the
2 3 4 5 6 7 8 9 10 11	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.  Are you talking about historical historically no harm, or are you talking about prospectively?  Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether	2 3 4 5 6 7 8 9 10	Q. What do you know about that opinion?  MR. FEE: Objection.  I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in
2 3 4 5 6 7 8 9 10 11 12	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.  Are you talking about historical historically no harm, or are you talking about prospectively?  Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the	2 3 4 5 6 7 8 9 10 11 12	Q. What do you know about that opinion?  MR. FEE: Objection.  I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.  Are you talking about historical historically no harm, or are you talking about prospectively?  Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities?  A. I don't recall documents on it. There may have been some deposition testimony	2 3 4 5 6 7 8 9 10 11 12 13 14 15	Q. What do you know about that opinion?  MR. FEE: Objection.  I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions.  THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.  Are you talking about historical historically no harm, or are you talking about prospectively?  Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities?  A. I don't recall documents on it.  There may have been some deposition testimony about past activities, but I don't know if it	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q. What do you know about that opinion?  MR. FEE: Objection.  I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions.  THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.  Are you talking about historical historically no harm, or are you talking about prospectively?  Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities?  A. I don't recall documents on it.  There may have been some deposition testimony about past activities, but I don't know if it was activities prior to Public Resource	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q. What do you know about that opinion?  MR. FEE: Objection.  I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions.  THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here.  BY MR. BRIDGES:
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.  Are you talking about historical historically no harm, or are you talking about prospectively?  Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities?  A. I don't recall documents on it. There may have been some deposition testimony about past activities, but I don't know if it was activities prior to Public Resource actions here or after.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. What do you know about that opinion?  MR. FEE: Objection.  I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions.  THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here.  BY MR. BRIDGES:  Q. Why did the Veeck case not form
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.  Are you talking about historical historically no harm, or are you talking about prospectively?  Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities?  A. I don't recall documents on it. There may have been some deposition testimony about past activities, but I don't know if it was activities prior to Public Resource actions here or after.  Q. Do you recall learning about	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q. What do you know about that opinion?  MR. FEE: Objection.  I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions.  THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here.  BY MR. BRIDGES:  Q. Why did the Veeck case not form any basis for any of your observations or
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1 answered. 2 THE WITNESS: Again, I read the case. I didn't do any analysis beyond 4 that of that particular case. 3 PYMR. BRIDGES: 6 Q. What steps did you take to ascertain what public harms flowed from the court's decision in the Veeck case? 9 A. Other than reading the case, 10 the opinion in the case, 1 didn't do anything 11 beyond that to understand the implications of 2 that holding. 13 Q. You didn't do any investigation 4 as to the economic consequences to any 5 entity, industry, or person as a consequence 16 of the decision in the Veeck case, correct? 17 MR. FEE: Objection to form. 18 THE WITNESS: I think that's 19 correct, ves. 19 correct, yes. 19 correct, yes. 19 cyroct, yes. 20 BY MR. BRIDGES: 21 Q. How has the process of 22 standards development changed in the last 100 23 years, to your knowledge? 24 A. I don't know that there is one standards Page 130 SSOs or SDOs. I'm sure that there have been 4 changes on the margin. There may have been 6 In the standards development process of ver time. 8 Q. What changes are you aware of 14 in the standards development process of the standards development				
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25 need? 25 copying and dissemination capabilities	23		23	years ago, but it might have been.
25 need? 25 copying and dissemination capabilities	24	Q. Do you know who identified the	24	I would expect some of the
Page 131 Page 133	25		25	
		Page 131		Page 133

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1	are much greater today than they were	1	the right to reproduce, copy, or
2	in 1915, but I don't know that the	2	disseminate those standards but can
3	general methods of I don't know how	3	look at them online.
4	the general methods of distribution	4	BY MR. BRIDGES:
5	have changed.	5	Q. Have you used the reading rooms
6	BY MR. BRIDGES:	6	of any of the plaintiffs?
7	Q. What changes are you aware of	7	A. No, I have not.
8	in sales trends over the past 20 years?	8	Q. Have you reviewed the interface
9	MR. FEE: Objection to form.	9	that the have you reviewed the interfaces
10	THE WITNESS: I don't have data	10	that the plaintiffs offer to persons wishing
11	going back as far as 20 years ago. I	11	to view materials for free online?
12	have some information on publication	12	A. No, I don't think so.
13	sales, for instance, in tabs 3, 4, and	13	Q. Do you know what effect, if
14	5. They only that information only	14	any, the presence of those free materials on
15	goes back a few years, however.	15	the plaintiffs' Web sites has had on the
16	BY MR. BRIDGES:	16	plaintiffs' revenues?
17	Q. Did you review any information	17	MR. FEE: Objection to form.
18	earlier than the dates shown in the documents	18	THE WITNESS: No, I don't.
19	at tabs 3, 4, and 5?	19	BY MR. BRIDGES:
20	MR. FEE: Objection. Vague.	20	Q. Have you have you
21	THE WITNESS: It's possible	21	investigated that?
22	that some of the source documents had	22	MR. FEE: Same objection.
23	earlier information, but I don't	23	THE WITNESS: I've been
24	recall that. I would need to look at	24	opening I've been open to learning
25	those source documents.	25	about that, but I haven't learned that
	Page 134		Page 136
1	BY MR. BRIDGES:	1	there's a direct or indirect effect.
1 2	BY MR. BRIDGES: Q. And those source documents	2	there's a direct or indirect effect. There might be, but I haven't seen
	Q. And those source documents would be within the Bates ranges identified		There might be, but I haven't seen evidence of that.
2 3 4	Q. And those source documents would be within the Bates ranges identified in tab 2 of your report?	2 3 4	There might be, but I haven't seen evidence of that. BY MR. BRIDGES:
2 3	Q. And those source documents would be within the Bates ranges identified in tab 2 of your report?  A. Within the Bates ranges or	2 3	There might be, but I haven't seen evidence of that. BY MR. BRIDGES: Q. My question was, have you
2 3 4	Q. And those source documents would be within the Bates ranges identified in tab 2 of your report?  A. Within the Bates ranges or identified elsewhere in tab 2. For instance,	2 3 4 5 6	There might be, but I haven't seen evidence of that. BY MR. BRIDGES:
2 3 4 5	Q. And those source documents would be within the Bates ranges identified in tab 2 of your report?  A. Within the Bates ranges or	2 3 4 5 6 7	There might be, but I haven't seen evidence of that. BY MR. BRIDGES: Q. My question was, have you investigated that? MR. FEE: Same objection.
2 3 4 5 6	Q. And those source documents would be within the Bates ranges identified in tab 2 of your report?  A. Within the Bates ranges or identified elsewhere in tab 2. For instance, the AS team ASTM audited audited consolidated financial statements, I think,	2 3 4 5 6 7 8	There might be, but I haven't seen evidence of that. BY MR. BRIDGES: Q. My question was, have you investigated that? MR. FEE: Same objection. THE WITNESS: Perhaps you could
2 3 4 5 6 7 8 9	Q. And those source documents would be within the Bates ranges identified in tab 2 of your report?  A. Within the Bates ranges or identified elsewhere in tab 2. For instance, the AS team ASTM audited audited consolidated financial statements, I think, may not all be Bates-stamped. I could be	2 3 4 5 6 7	There might be, but I haven't seen evidence of that.  BY MR. BRIDGES: Q. My question was, have you investigated that?  MR. FEE: Same objection.  THE WITNESS: Perhaps you could read back my answer.
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1	Q. Was something that was	1	SDOs, but the standard setting organizations
2	remained pending at the time you wrote this	2	that are the candidates are the ones that I
3	report as something that you expected to do	3	identified earlier today.
4	in the future?	4	Q. Which SDOs do you recall
5	A. No.	5	treating copyright protection of their
6	MR. FEE: Objection. Vague.	6	standards as very important?
7	THE WITNESS: I'm sorry.	7	A. I just don't recall right now.
8	No.	8	I I have some vague recollection that
9	BY MR. BRIDGES:	9	copyright considerations are addressed by
10	Q. Did you study the practices of	10	ETSI, but I could be wrong on that.
11	any standards development organizations,	11	Q. What do you know about policies
12	other than the plaintiffs, for purposes of	12	or practices of the Blu-ray organization with
13	your work in this case?	13	respect to copyright protection?
14	MR. FEE: Objection. Vague.	14	A. I assume you're talking about
15	THE WITNESS: Not that I	15	the Blu-ray Association? I may have known
16	recall. I saw reference to other SDOs	16	when I was involved in that matter. I do not
17	in the Bremer articles, for instance,	17	remember, sitting here now.
18	but I didn't undertake a separate	18	Q. Do you recall that your report
19	investigation of the practices of any	19	actually refers to the Blu-ray Association?
20	other SDOs for purposes of my	20	A. I think I refer to Blu-ray
21	assignment here.	21	standards. I don't recall if I refer to the
22	BY MR. BRIDGES:	22	Blu-ray Association, but perhaps you could
23	Q. Are you aware of practices or	23	refresh my memory.
24	policies of other SDOs with reference to	24	Q. I believe you point it out at
25	either copyright or free availability of	25	the bottom of page 62. "While certain SDOs
	Page 138		Page 140
1	their materials?	1	(e.g., the Blu-ray disc association) provide
		$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	(e.g., the Blu-ray disc association) provide unrestricted access to their standard
1 2 3	MR. FEE: Objection to form.		unrestricted access to their standard
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1	Q. Why did you not consider the	1	perspective.
2	economic effects of free distribution of	2	BY MR. BRIDGES:
3	standards with respect to other	3	Q. And what is the relevance of
4	organizations?	4	economic analysis to that question, as you
5	A. I didn't quite see the	5	understand it?
6	relevance to this matter.	6	MR. FEE: Objection to form.
7	Q. Why?	7	Vague. Might also be construed to
8	A. I don't know how to prove a	8	require a legal conclusion.
9	negative.	9	THE WITNESS: Economists have a
10	Q. What's the negative you were	10	view and perspective at looking at
11	thinking of that would need to be proved or	11	issues that some courts have found to
12	disproved?	12	be useful.
13	A. That something is not relevant.	13	BY MR. BRIDGES:
14	Q. You just didn't see the	14	Q. Well, I'm asking, with specific
15	relevance?	15	relevance to this case, what do you
16	A. I don't understand how that	16	understand the importance of economic
17	would be helpful in the assignment that I had	17	analysis to be in this case
18	here.	18	MR. FEE: Objection. Calls
19	Q. And what was the assignment you	19	BY MR. BRIDGES:
20	had here?	20	Q as you have purported to
21	A. Well, I've laid it out	21	practice it?
22	Q. I can read the report. I'm not	22	MR. FEE: Calls for a legal
23	asking you to read read the report. I'd	23	conclusion.
24	like your own words now, sitting here.	24	Also, to the extent that
25	MR. FEE: Objection.	25	responding to that would require you
	Page 142		Page 144
1	DILLER DRIP GEG		
1	BY MR. BRIDGES:	1	to disclose communications with
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	Q. How do you how do you	1 2	to disclose communications with counsel that did not form the basis
2	Q. How do you how do you	2	counsel that did not form the basis
2 3	Q. How do you how do you view	2 3	counsel that did not form the basis for any of your opinions or
2 3 4	Q. How do you how do you view A. I'd like to answer it by	2 3 4	counsel that did not form the basis for any of your opinions or conclusions and did not provide any
2 3 4 5	Q. How do you how do you view A. I'd like to answer it by looking at my report.	2 3 4 5	counsel that did not form the basis for any of your opinions or conclusions and did not provide any assumptions that were the basis for
2 3 4 5 6	Q. How do you how do you view A. I'd like to answer it by looking at my report. Q. No, I'd like for you to give me a straight answer, because if you're just going to refer to the report, the report will	2 3 4 5 6	counsel that did not form the basis for any of your opinions or conclusions and did not provide any assumptions that were the basis for your opinions or conclusions, you
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1	Q. Why did you not consider the	1	perspective.
2	economic effects of free distribution of	2	BY MR. BRIDGES:
3	standards with respect to other	3	Q. And what is the relevance of
4	organizations?	4	economic analysis to that question, as you
5	A. I didn't quite see the	5	understand it?
6	relevance to this matter.	6	MR. FEE: Objection to form.
7	Q. Why?	7	Vague. Might also be construed to
8	A. I don't know how to prove a	8	require a legal conclusion.
9	negative.	9	THE WITNESS: Economists have a
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1	myself the question of ownership or	1	under the assumption that the
2	impact of ownership. I asked myself	2	activities violate the law.
3	the question here of impact of	3	BY MR. BRIDGES:
4	infringement.	4	Q. If the activities do you
5	BY MR. BRIDGES:	5	believe do you understand that your
6	Q. If it turns out that the Court	6	analysis is relevant to a determination of
7	rules that the plaintiff sorry. Strike	7	whether the defendant has violated the law?
8	that.	8	MR. FEE: Objection. Calls for
9	If it turns out the Court rules	9	a legal conclusion.
10	here that the defendant has engaged in fair	10	To the extent that your
11	use, is it your understanding that none of	11	understanding is based upon
12	your harms analysis is relevant	12	communications with counsel, you
13	MR. FEE: Objection.	13	shouldn't disclose them, unless they
14	BY MR. BRIDGES:	14	•
		l	formed the basis for your opinions or
15	Q because of a finding of	15	conclusions or provided assumptions
16	non-infringement?	16	that you relied upon in reaching your
17	MR. FEE: Calls for a legal	17	conclusions.
18	conclusion.	18	THE WITNESS: I don't know.
19	To the extent answering that	19	BY MR. BRIDGES:
20	question would require you to disclose	20	Q. Do you have any view as to
21	communications you had with counsel	21	whether the defendant has violated copyright
22	that don't form the basis for any of	22	law?
23	your opinions or conclusions and don't	23	MR. FEE: Objection. Calls for
24	provide any assumptions that you	24	a legal conclusion.
25	relied upon, you shouldn't disclose	25	THE WITNESS: No, I've not
	Page 146		Page 148
1	those communications.	1	taken on that assignment.
2	THE WITNESS: You're asking for	2	BY MR. BRIDGES:
	<del>-</del>		
3	a legal conclusion. I'm not an expert	3	O. Do you have any view as to
3 4	a legal conclusion. I'm not an expert on that.		Q. Do you have any view as to whether the defendant's activities constitute
4	on that.	4	whether the defendant's activities constitute
5	on that. BY MR. BRIDGES:	4 5	whether the defendant's activities constitute fair use?
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1	If you could recast it, please.	1	that's fine.
2	Q. No. Then please answer my	2	A. I want to, but I cannot.
3	question.	3	Q. Well
4	MR. FEE: Objection.	4	A. I do not understand the
5	BY MR. BRIDGES:	5	question.
6	Q. I get to ask the questions.	6	Q. I'll say it again.
7	MR. FEE: He just said he	7	Would a decision by the Court
8	couldn't answer it.	8	that the defendant has not infringed upon the
9	THE WITNESS: I don't	9	plaintiffs' copyrights result in economic
10	understand the question.	10	harm to the plaintiffs?
11	BY MR. BRIDGES:	11	MR. FEE: Objection. Calls for
12	Q. What is it you don't	12	a legal conclusion. Asked and
13	understand?	13	answered.
14	A. I understand each word but not	14	THE WITNESS: I
15	how you put them together.	15	MR. FEE: Vague.
16	Q. If a court determines that the	16	THE WITNESS: I cannot answer
17	defendant has not infringed upon the	17	it any differently. I'm sorry.
18	plaintiffs' copyrights, do you believe that	18	Is this a good time for a
19	that decision would result in economic harm	19	break, or do you want to keep going?
20	to the plaintiffs?	20	MR. BRIDGES: Sure. We can
21	MR. FEE: Objection to the	21	take one if you want.
22	extent it calls for a legal	22	THE VIDEOGRAPHER: Off the
23	conclusion. Plus asked and answered.	23	record at 1:17.
24	THE WITNESS: It sounds like	24	* * *
25	exactly the same words, so I'm not	25	(Recess from 1:17 p.m. to
	Page 150		Page 152
1	sure how to answer that question.	1	2:12 p.m.)
2	BY MR. BRIDGES:	2	* * *
2 3	BY MR. BRIDGES: Q. Would a decision that the	2 3	* * * THE VIDEOGRAPHER: On the
2 3 4	BY MR. BRIDGES: Q. Would a decision that the defendant has not infringed upon plaintiffs'	2 3 4	* * * THE VIDEOGRAPHER: On the record at 2:12.
2 3 4 5	BY MR. BRIDGES:  Q. Would a decision that the defendant has not infringed upon plaintiffs' copyrights result in economic harm to the	2 3 4 5	* * * THE VIDEOGRAPHER: On the record at 2:12. BY MR. BRIDGES:
2 3 4 5 6	BY MR. BRIDGES: Q. Would a decision that the defendant has not infringed upon plaintiffs' copyrights result in economic harm to the plaintiffs?	2 3 4 5 6	* * * THE VIDEOGRAPHER: On the record at 2:12. BY MR. BRIDGES: Q. Good afternoon, Mr. Jarosz.
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1	If you could recast it, please.	1	that's fine.
2	Q. No. Then please answer my	2	A. I want to, but I cannot.
3	question.	3	Q. Well
4	MR. FEE: Objection.	4	A. I do not understand the
5	BY MR. BRIDGES:	5	question.
6	Q. I get to ask the questions.	6	Q. I'll say it again.
7	MR. FEE: He just said he	7	Would a decision by the Court
8	couldn't answer it.	8	that the defendant has not infringed upon the
9	THE WITNESS: I don't	9	plaintiffs' copyrights result in economic
10	understand the question.	10	harm to the plaintiffs?
11	BY MR. BRIDGES:	11	MR. FEE: Objection. Calls for
12	Q. What is it you don't	12	a legal conclusion. Asked and
13	understand?	13	answered.
14	A. I understand each word but not	14	THE WITNESS: I
15	how you put them together.	15	MR. FEE: Vague.
16	Q. If a court determines that the	16	THE WITNESS: I cannot answer
17	defendant has not infringed upon the	17	it any differently. I'm sorry.
18	plaintiffs' copyrights, do you believe that	18	Is this a good time for a
19	that decision would result in economic harm	19	break, or do you want to keep going?
20	to the plaintiffs?	20	MR. BRIDGES: Sure. We can
21	MR. FEE: Objection to the	21	take one if you want.
22	extent it calls for a legal	22	THE VIDEOGRAPHER: Off the
23	conclusion. Plus asked and answered.	23	record at 1:17.
24	THE WITNESS: It sounds like	24	* * *
25	exactly the same words, so I'm not	25	(Recess from 1:17 p.m. to
	Page 150		Page 152
1	sure how to answer that question.	1	2:12 p.m.)
2	BY MR. BRIDGES:	2	* * *
2 3	BY MR. BRIDGES: Q. Would a decision that the	2 3	* * * THE VIDEOGRAPHER: On the
2 3 4	BY MR. BRIDGES: Q. Would a decision that the defendant has not infringed upon plaintiffs'	2 3 4	* * * THE VIDEOGRAPHER: On the record at 2:12.
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		1	
1	counsel. And then we finalized the report,	1	Q. Have you analyzed any
2	submitting it to counsel on June 5th, 2015.	2	differences in sales trends between those of
3	Q. Do you know how many standards	3	plaintiffs' standards that have been
4	of each plaintiff are at issue in this case?	4	incorporated into law and those of
5	A. How many I'm sorry	5	plaintiffs' standards that have not been
6	standards are at issue?	6	incorporated into law?
7	Q. Yes.	7	A. I don't think so. I don't
8	A. I have that number written	8	think I have those data, and I'm not sure
9	down. It's in the hundreds, and I forget, as	9	that each plaintiff knows precisely how many
10	I sit here right now, precisely the number.	10	have been incorporated into law.
11	I will look it up. And I was giving you an	11	Q. Did you ask for any data
12	answer that was a cumulation across the three	12	regarding the distinction between standards
13	plaintiffs.	13	incorporated by reference and standards not
14	I am not seeing that number	14	incorporated by reference in the law?
15	right now. I'll keep looking.	15	A. I don't
16	Q. Do you know what	16	MR. FEE: Objection to form.
17	A. You may be able to point me	17	THE WITNESS: I'm sorry. I
18	quicker than I recall where it was.	18	don't recall.
19	Q. Do you do you know what	19	BY MR. BRIDGES:
20	proportion of plaintiffs of each	20	Q. You made observations about
21	plaintiffs' standards is at issue in this	21	sales trends earlier in your deposition. I
22	case?	22	think you said that there's been a reduction
23	A. Are you asking me the ratio of	23	in sales of certain of plaintiffs' standards;
24	the standards at issue versus the total	24	is that correct?
25	standards developed by the organizations?	25	A. I'm not quite sure what the
	Page 154		Page 156
		1	
1	O. Yes.	1	earlier testimony was, but I think I was
1 2	<ul><li>Q. Yes.</li><li>A. I think it's less than a</li></ul>	$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	earlier testimony was, but I think I was pointing you to paragraph 133 with regard to
	A. I think it's less than a		earlier testimony was, but I think I was pointing you to paragraph 133 with regard to downloads of and other measures of
2	A. I think it's less than a majority for each organization. I'm fairly	2	pointing you to paragraph 133 with regard to downloads of and other measures of
2 3	A. I think it's less than a	2 3	pointing you to paragraph 133 with regard to
2 3 4	A. I think it's less than a majority for each organization. I'm fairly certain of that with regard to ASTM. I think that's true with regard to NFPA. I think	2 3 4	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal.
2 3 4 5	A. I think it's less than a majority for each organization. I'm fairly certain of that with regard to ASTM. I think that's true with regard to NFPA. I think it's true with regard to ASHRAE.	2 3 4 5	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal.  Q. Well, I'm trying to find out what changes you have studied in plaintiffs'
2 3 4 5 6	A. I think it's less than a majority for each organization. I'm fairly certain of that with regard to ASTM. I think that's true with regard to NFPA. I think it's true with regard to ASHRAE.  Q. Do you have any better	2 3 4 5 6	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal.  Q. Well, I'm trying to find out
2 3 4 5 6 7	A. I think it's less than a majority for each organization. I'm fairly certain of that with regard to ASTM. I think that's true with regard to NFPA. I think it's true with regard to ASHRAE.	2 3 4 5 6 7	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal.  Q. Well, I'm trying to find out what changes you have studied in plaintiffs' economics that you attribute to defendant's
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. I think it's less than a majority for each organization. I'm fairly certain of that with regard to ASTM. I think that's true with regard to NFPA. I think it's true with regard to ASHRAE.  Q. Do you have any better information than less than a majority  A. Well, I Q for each of them?  A. The precise numbers are in the report. Let's see here. One can figure that out. You may remember where I summarized the number of standards. I just don't remember. It's easy to determine because the data are all here.  Q. Have you analyzed differences in sales trends between standards that are at issue in this case and plaintiffs' other standards?  A. No, I don't think I have those	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal.  Q. Well, I'm trying to find out what changes you have studied in plaintiffs' economics that you attribute to defendant's activities.  A. I'm not quite sure what your question is.  Q. Well, I'm trying to find out what information you have studied to determine what changes in the finances of each of the plaintiffs have occurred as a consequence of the defendant's activities.  MR. FEE: Objection to form.  THE WITNESS: I'm still not sure that I'm hearing a question. But to the extent that I had information on changes in activity level, I summarized that in paragraph 133.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. I think it's less than a majority for each organization. I'm fairly certain of that with regard to ASTM. I think that's true with regard to NFPA. I think it's true with regard to ASHRAE.  Q. Do you have any better information than less than a majority  A. Well, I Q for each of them?  A. The precise numbers are in the report. Let's see here. One can figure that out. You may remember where I summarized the number of standards. I just don't remember. It's easy to determine because the data are all here.  Q. Have you analyzed differences in sales trends between standards that are at issue in this case and plaintiffs' other standards?  A. No, I don't think I have those data at my disposal.  Q. Did you ever ask for those	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal.  Q. Well, I'm trying to find out what changes you have studied in plaintiffs' economics that you attribute to defendant's activities.  A. I'm not quite sure what your question is.  Q. Well, I'm trying to find out what information you have studied to determine what changes in the finances of each of the plaintiffs have occurred as a consequence of the defendant's activities.  MR. FEE: Objection to form.  THE WITNESS: I'm still not sure that I'm hearing a question. But to the extent that I had information on changes in activity level, I summarized that in paragraph 133.  BY MR. BRIDGES:
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1	plaintiffs?	1	of certain of the standards. I've
2	MR. FEE: Same objection.	2	presented that.
3	THE WITNESS: It's reflected in	3	I don't have direct evidence of
4	paragraph 133 and in the tabs,	4	the precise impact historically of
5	particularly 3, 4, and 5. But the	5	defendant's activities on plaintiffs'
6	tabs are not at the granular level	6	financials.
7	that I think are of interest to you.	7	BY MR. BRIDGES:
8	BY MR. BRIDGES:	8	Q. What evidence of any kind do
9	Q. What do you mean by the	9	you have of any kind of impact historically
10	"granular level" that would be of interest to	10	of the defendant's activities on plaintiffs'
11	me?	11	financials?
12	A. I don't think it breaks out	12	MR. FEE: Objection to form.
13	publications by standard, for instance.	13	THE WITNESS: That which is
14	Q. Does it break out publications	14	reported in paragraph 133, that of
15	by whether a standard has been incorporated	15	which is contained in deposition
16	by reference or not?	16	testimony, and that of which I
17	A. I don't think so.	17	summarized in other parts of the
18	Q. Does it break out by whether a	18	report.
19	standard has been publicly made available by	19	BY MR. BRIDGES:
20	defendant or not?	20	Q. So when you're referring to
21	A. I don't think so. Not in	21	deposition testimony, you're referring to the
22	tabs 3, 4, and 5.	22	citations to the footnotes in paragraph 133?
23	Q. How do you establish causation	23	A. No, I don't think it's just
24	between defendant's activities and any of the	24	limited to that. I think there's some other
25	data that you provide in section in	25	deposition transcripts that talk about the
	Page 158		Page 160
1	paragraph 133?	1	impact or potential impact of defendant's
2	MR. FEE: Objection. Calls for	2	activities on each one of the plaintiffs.
3	a legal conclusion. Form.	3	Q. Did you make any independent
4	THE WITNESS: One can and	4	assessment of causation of any financial
5	should look at all evidence available,	5	effects on plaintiffs by the defendant's
6	including circumstantial evidence. I	6	activities?
7	don't have direct information about	7	MR. FEE: Objection to form.
8	the precise impact of defendant's	8	Calls for a legal conclusion.
9	activities, but I have important	9	THE WITNESS: What do you mean
10	information that bears on that issue,	10	by the term of "independent assessment
11	including information that's in	11	of causation"?
12	deposition transcripts.	12	BY MR. BRIDGES:
13	BY MR. BRIDGES:	13	Q. You, as an expert, not relying
14	Q. So my question is, how do	14	just on what other people have said or
15	you do you strike that.	15	speculated or thought.
16	Are your conclusion are you	16	MR. FEE: Same objections.
17	making conclusions in paragraph 133 about the	17	•
18		18	Plus compound.  THE WITNESS: We experts rely
19	cause of changes in sales of the plaintiffs'	19	on other information to draw the
20	mp FFF: Objection to form	20	
	MR. FEE: Objection to form.	l	conclusions that we do, and then we
21	THE WITNESS: Not definitively.	21	bring our training to it. So our
22	I have observations about the	22	observations shouldn't be in a vacuum.
23	magnitude and trend of the downloads	23	BY MR. BRIDGES:
24	of through defendant's sites. I	24	Q. But they should be objective,
25	have some information on the downloads Page 159	25	correct?
	1 age 139	1	1 age 101

1	plaintiffs?	1	of certain of the standards. I've
2	MR. FEE: Same objection.	2	presented that.
3	THE WITNESS: It's reflected in	3	I don't have direct evidence of
4	paragraph 133 and in the tabs,	4	the precise impact historically of
5	particularly 3, 4, and 5. But the	5	defendant's activities on plaintiffs'
6	tabs are not at the granular level	6	financials.
7	that I think are of interest to you.	7	BY MR. BRIDGES:
8	BY MR. BRIDGES:	8	Q. What evidence of any kind do
9	Q. What do you mean by the	9	you have of any kind of impact historically
10	"granular level" that would be of interest to	10	of the defendant's activities on plaintiffs'
11	me?	11	financials?
12	A. I don't think it breaks out	12	MR. FEE: Objection to form.
13	publications by standard, for instance.	13	THE WITNESS: That which is
14	Q. Does it break out publications	14	reported in paragraph 133, that of
15	by whether a standard has been incorporated	15	which is contained in deposition
16	by reference or not?	16	testimony, and that of which I
17	A. I don't think so.	17	summarized in other parts of the
18	Q. Does it break out by whether a	18	report.
19	standard has been publicly made available by	19	BY MR. BRIDGES:
20	defendant or not?	20	Q. So when you're referring to
21	A. I don't think so. Not in	21	deposition testimony, you're referring to the
22	tabs 3, 4, and 5.	22	citations to the footnotes in paragraph 133?
23	Q. How do you establish causation	23	A. No, I don't think it's just
24	between defendant's activities and any of the	24	limited to that. I think there's some other
25	data that you provide in section in	25	deposition transcripts that talk about the
	Page 158		Page 160
1	paragraph 133?	1	impact or potential impact of defendant's
2	MR. FEE: Objection. Calls for	2	activities on each one of the plaintiffs.
3	a legal conclusion. Form.	3	Q. Did you make any independent
4	THE WITNESS: One can and	4	assessment of causation of any financial
5	should look at all evidence available,	5	effects on plaintiffs by the defendant's
6	including circumstantial evidence. I	6	activities?
7	don't have direct information about	7	MR. FEE: Objection to form.
8	the precise impact of defendant's	8	Calls for a legal conclusion.
9	activities, but I have important	9	THE WITNESS: What do you mean
10	information that bears on that issue,	10	by the term of "independent assessment
11	including information that's in	11	of causation"?
12	deposition transcripts.	12	BY MR. BRIDGES:
13	BY MR. BRIDGES:	13	Q. You, as an expert, not relying
14	Q. So my question is, how do	14	just on what other people have said or
15	you do you strike that.	15	speculated or thought.
16	Are your conclusion are you	16	MR. FEE: Same objections.
17	making conclusions in paragraph 133 about the	17	•
18		18	Plus compound.  THE WITNESS: We experts rely
19	cause of changes in sales of the plaintiffs'	19	on other information to draw the
20	mp FFF: Objection to form	20	
	MR. FEE: Objection to form.	l	conclusions that we do, and then we
21	THE WITNESS: Not definitively.	21	bring our training to it. So our
22	I have observations about the	22	observations shouldn't be in a vacuum.
23	magnitude and trend of the downloads	23	BY MR. BRIDGES:
24	of through defendant's sites. I	24	Q. But they should be objective,
25	have some information on the downloads Page 159	25	correct?
	rage 139	1	1 age 101

1 A. Yes. 2 Q. And that means perhaps not 3 relying upon the views of the parties to the 4 lawsuit alone, but doing independent analysis 5 and research, correct?  1 A. I took all the dat 2 MR. FEE: Object 3 Objection to form. 4 THE WITNESS: 5 data into account. The	
3 relying upon the views of the parties to the 4 lawsuit alone, but doing independent analysis 4 Objection to form.  THE WITNESS:	
4 lawsuit alone, but doing independent analysis 4 THE WITNESS:	tion. Form.
5 and research, correct? 5 data into account. The	
	at's why I
6 MR. FEE: Objection to form. 6 reported it here.	
7 THE WITNESS: I think one can 7 BY MR. BRIDGES:	
8 and should evaluate and consider the 8 Q. And the data tha	
9 views of the parties, but not limited 9 identified in the footnotes	
10 investigation to that. 10 paragraph 134 sorry 1	
11 BY MR. BRIDGES: 11 A. Yes, I considered	d that
12 Q. So what independent analysis 12 information.	
13 and research did you do other than reviewing   13 Q. Do you know in	·
14 the views and statements of the parties in 14 defendant posted the 2008	
15 this case? 15 National Electrical Code o	
MR. FEE: Objection. Vague. 16 A. I don't know with	
THE WITNESS: I reviewed and 17 certainty. I do know a nur	
summarized the data, as you see in 18 activities occurred in late 2	
19 133, that I had at my disposal. I 19 know if it's specific to that	code or not.
reviewed writings about the impacts. 20 Q. Does it matter to	your analysis
21 And I took important 21 exactly when the defendant	nt posted the 2008
information from the fact that the 22 National Electrical Code o	on its Web site or
plaintiffs have brought this lawsuit. 23 to Internet Archive?	
24 The plaintiffs don't want this 24 A. I would	
25 activity to continue. That is 25 MR. FEE: Object	tion to form.
Page 162	Page 164
1 revealed preference information that's 1 THE WITNESS:	I would consider
2 quite important. 2 that information if I had	ad it, but I
3 BY MR. BRIDGES: 3 don't have any reason	to think that it
4 Q. Tell me about what you mean by 4 would change any of t	the conclusions
5 repealed sorry. Strike that. 5 that I drew.	
6 Tell me what you mean by 6 BY MR. BRIDGES:	
7 "revealed preference." 7 Q. The timing of what is a second of the seco	hen the
8 A. What people do often provides 8 defendant posted certain m	natters wouldn't
9 information on what their preferences are. 9 change your conclusions?	
10 Q. And so the fact that plaintiffs 10 A. Not based on wh	nat I know right
11 brought this lawsuit has revealed to you that 11 now. My understanding is	
12 they prefer to bring the lawsuit, correct? 12 activity occurred in 2012,	
MR. FEE: Objection. Vague. 13 2012, and I still have the w	•
THE WITNESS: Given the cost, 14 evidence that I have considered the state of the cost, 14 evidence that I have considered the cost, 15 evidence that I have considered the cost, 15 evidence that I have considered the cost, 16 evidence that I have considered the cost, 16 evidence that I have considered the cost, 17 evidence that I have considered the cost, 17 evidence that I have considered the cost, 18 evidence the cost, 18 evi	
, , , , , , , , , , , , , , , , , , ,	would change, but
they prefer to bring the lawsuit 15 sure if the precise timing v	that.
, , , , , , , , , , , , , , , , , , ,	what year
15 they prefer to bring the lawsuit 16 rather than not bring it, yes. 17 BY MR. BRIDGES: 18 sure if the precise timing volume in the precise time in	
they prefer to bring the lawsuit rather than not bring it, yes.  15 sure if the precise timing volume is sure if the precise time is sure if the	ed the 2011 version
15 they prefer to bring the lawsuit 16 rather than not bring it, yes. 17 BY MR. BRIDGES: 18 sure if the precise timing volume in the precise time in	
15 they prefer to bring the lawsuit 16 rather than not bring it, yes. 17 BY MR. BRIDGES: 18 Q. What else strike that. 19 What are the data you're 20 referring to in page strike that. 11 sure if the precise timing volume in 16 I certainly would consider 17 Q. Do you know in 18 Public.Resource.Org poster 19 of the National Electrical Control of the National El	Code?
they prefer to bring the lawsuit rather than not bring it, yes.  BY MR. BRIDGES: Resource.Org poste What are the data you're They would consider Resource.Org poste Some answer to A. Same answer to They would consider Resource.Org poste Some answer to They would consider They would	Code? the question
15 they prefer to bring the lawsuit 16 rather than not bring it, yes. 17 BY MR. BRIDGES: 18 Q. What else strike that. 19 What are the data you're 20 referring to in page strike that. 11 sure if the precise timing volume in 16 I certainly would consider 17 Q. Do you know in 18 Public.Resource.Org poster 19 of the National Electrical Control of the National El	Code? the question the 2008 code.
they prefer to bring the lawsuit rather than not bring it, yes.  BY MR. BRIDGES: Resource.Org poste What are the data you're They would consider Resource.Org poste Some answer to A. Same answer to They would consider A public.Resource.Org poste Some answer to They would consider They w	Code? the question the 2008 code. the data in
they prefer to bring the lawsuit rather than not bring it, yes.  BY MR. BRIDGES: Q. What else strike that. What are the data you're referring to in page strike that. What are the data you're referring to in paragraph 133 that you took referring to in paragraph 133 that you took referring to in discussing or analyzing referring to defendant's activities on  The precise timing volution is used if the precise timing volution in the precise timing volution volution volution in the precise timing volution in the precise timing volution volut	Code? the question the 2008 code. the data in to your report
they prefer to bring the lawsuit rather than not bring it, yes.  BY MR. BRIDGES:  Q. What else strike that. What are the data you're referring to in page strike that. What are the data you're what are the data you're referring to in paragraph 133 that you took referring to in paragraph 133 that you took rather than not bring it, yes. If I certainly would consider Resource.Org poster referring to fin paragraph 130 that you took Resource org poster Resource	Code? the question the 2008 code. the data in to your report h your memory as

1	NEC NEC 2011?	1	appropriateness of a permanent
2	A. I can look, and I will.	2	injunction here.
3	No, it doesn't answer that	3	BY MR. BRIDGES:
4	question, I don't think.	4	Q. Is the appropriate of is the
5	Q. Can you make a prediction as to	5	appropriateness of a permanent injunction an
6	when the defendant posted NEC 2008 and	6	economic question?
7	NEC 2011, based on the data attached to your	7	A. I think, in part, economic
8	report in Exhibit 1?	8	considerations can be and often are taken
9	MR. FEE: Objection to form.	9	into account in answering that question.
10	THE WITNESS: No, I don't	10	Q. Is it an economic question?
11	think, based on just those data.	11	MR. FEE: Objection.
12	BY MR. BRIDGES:	12	BY MR. BRIDGES:
13	Q. Can you make give an	13	Q. That was my question.
14	estimate as to when the defendant posted	14	MR. FEE: Asked and answered.
15	NEC 2008 and NEC 2011, based on the data	15	THE WITNESS: Again, in part.
16	attached to your report as Exhibit 1?	16	BY MR. BRIDGES:
17	MR. FEE: Same objection.	17	Q. The propriety of
18	THE WITNESS: No, I don't	18	a preliminary of a strike that.
19	think, based on just that information.	19	It's your testimony that the
20	BY MR. BRIDGES:	20	propriety of a permanent injunction is, in
21	Q. Well, just looking at your	21	part, an economic question?
22	report, can you tell when defendant posted	22	MR. FEE: Objection. Asked and
23	NEC 2008 and NEC 2011?	23	answered. Form. Calls for a legal
24	A. My answer hasn't changed. I	24	conclusion.
25	still don't know precisely when those were Page 166	25	THE WITNESS: Yes. As I
	1 age 100		
1	posted.	1	understand it, one factor to consider
2	Q. But that doesn't make a	2	is the reparability or irreparability
3	difference to your economic analysis of the	3	of harm. I believe, at its core,
4	effects of defendant's activities on the	4	that's an economic question.
5	plaintiffs?	5	BY MR. BRIDGES:
6	A. Well, I would be curious	6	Q. And what economic theories did
7	MR. FEE: Objection to form.	7	you rely upon to conclude that, as an
0	THE WITNESS: curious about		economic matter, a preliminary strike
9	that information, but I don't have any		that.
10	reason to think it would change the	10	What economic theories did you
11	conclusions that I drew, and that is	11	rely upon to conclude that, as an economic
12 13	that a permanent injunction is	12	matter, a permanent injunction is appropriate in this case?
14	appropriate here. BY MR. BRIDGES:	14	
15	Q. Is it your job to determine	15	MR. FEE: Same objections. THE WITNESS: I don't know what
16	whether a permanent injunction is	16	candidates you have in mind for
17	appropriate? Is that what you were hired to	17	economic theories.
18	do?	18	BY MR. BRIDGES:
19	A. No.	19	Q. Whichever ones you relied upon.
20	MR. FEE: Objection. Calls for	20	A. I
21	a legal conclusion. Form. Compound.	$\begin{vmatrix} 20 \\ 21 \end{vmatrix}$	MR. FEE: Same objections.
22	THE WITNESS: I think it's	$\begin{vmatrix} 21\\22\end{vmatrix}$	THE WITNESS: used all of my
23	ultimately the Court's decision to	23	training and applied it to the facts
24	make, but I've been asked what my	24	of this case and drew the conclusions
25	economic view is as to the	25	that I did.
	Page 167		Page 169

1	BY MR. BRIDGES:	1	THE WITNESS: We learn about
2	Q. And are there any particular	2	price theory. We learn about consumer
3	aspects of training that you have beyond what	3	behavior. We talk we learn about
4	a first-year college student would have	4	manufacturer and supplier actions. We
5	gotten in a first-year economics course that	5	learn about game theory. We learn
6	you have brought to bear by applying	6	about econometrics. We learn more
7	particular economic theories to this case?	7	broadly about quantitative methods.
8	A. I think my training makes me	8	We learn about a variety of aspects of
9	who I am and has helped me in assignments	9	industrial organization. There are
10	like this. I have beyond a first-year-in-	10	many things that we learn beyond the
11	college understanding of basic economics, but	11	first year of economics training.
12	they're very important concepts that are	12	BY MR. BRIDGES:
13	taught and learned in first-year economics.	13	Q. No, I'm asking what you brought
14	Q. Well, I want to know if there	14	to bear in your analysis in this case.
15	are any economic concepts beyond first-year	15	A. All those.
16	economics that you have brought to bear in	16	Q. Okay. What aspect of price
17	rendering your conclusions in this case.	17	theory did you bring to bear in this case?
18	MR. FEE: Objection to form.	18	A. I don't know how to answer that
19	Asked and answered.	19	question besides I understand basic price
20	THE WITNESS: Generally, there	20	theory and have researched it much and
21	are, yes.	21	applied that to the facts here.
22	BY MR. BRIDGES:	22	Q. What was the specific
23	Q. What economic concepts have you	23	application of price theory that you brought
24	brought to bear in your report and analysis	24	to bear in this case?
25	in this case?	25	A. I can't be any more specific
	Page 170		Page 172
1			
1	A. I'm sorry, because I don't know	1	than that. I don't understand your question.
1 2	A. I'm sorry, because I don't know what you mean by "economic concepts." We get	$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	Q. What aspect of training about
_	what you mean by "economic concepts." We get trained in things like quantitative methods	2 3	Q. What aspect of training about consumer behavior did you bring to bear in
2	what you mean by "economic concepts." We get trained in things like quantitative methods and intermediate microeconomics, in price	2	Q. What aspect of training about
2 3	what you mean by "economic concepts." We get trained in things like quantitative methods and intermediate microeconomics, in price theory, in econometrics, in consumer	2 3 4 5	Q. What aspect of training about consumer behavior did you bring to bear in this case?  A. I can't be any more specific
2 3 4	what you mean by "economic concepts." We get trained in things like quantitative methods and intermediate microeconomics, in price theory, in econometrics, in consumer behavior. All those things are beyond the	2 3 4	Q. What aspect of training about consumer behavior did you bring to bear in this case?  A. I can't be any more specific than saying that.
2 3 4 5	what you mean by "economic concepts." We get trained in things like quantitative methods and intermediate microeconomics, in price theory, in econometrics, in consumer behavior. All those things are beyond the first year. I don't know if you're calling	2 3 4 5	Q. What aspect of training about consumer behavior did you bring to bear in this case?  A. I can't be any more specific than saying that.  Q. What aspects of your training
2 3 4 5 6	what you mean by "economic concepts." We get trained in things like quantitative methods and intermediate microeconomics, in price theory, in econometrics, in consumer behavior. All those things are beyond the	2 3 4 5 6	Q. What aspect of training about consumer behavior did you bring to bear in this case?  A. I can't be any more specific than saying that.  Q. What aspects of your training about game theory have you brought to bear in
2 3 4 5 6 7	what you mean by "economic concepts." We get trained in things like quantitative methods and intermediate microeconomics, in price theory, in econometrics, in consumer behavior. All those things are beyond the first year. I don't know if you're calling those economic theories. Your your questioning confuses me.	2 3 4 5 6 7 8 9	Q. What aspect of training about consumer behavior did you bring to bear in this case?  A. I can't be any more specific than saying that.  Q. What aspects of your training about game theory have you brought to bear in your work on this case?
2 3 4 5 6 7 8	what you mean by "economic concepts." We get trained in things like quantitative methods and intermediate microeconomics, in price theory, in econometrics, in consumer behavior. All those things are beyond the first year. I don't know if you're calling those economic theories. Your your questioning confuses me.  Q. Well, you referred to the	2 3 4 5 6 7 8	Q. What aspect of training about consumer behavior did you bring to bear in this case?  A. I can't be any more specific than saying that.  Q. What aspects of your training about game theory have you brought to bear in your work on this case?  A. I can't be any more specific
2 3 4 5 6 7 8 9	what you mean by "economic concepts." We get trained in things like quantitative methods and intermediate microeconomics, in price theory, in econometrics, in consumer behavior. All those things are beyond the first year. I don't know if you're calling those economic theories. Your your questioning confuses me.  Q. Well, you referred to the important concepts in response to my question	2 3 4 5 6 7 8 9 10 11	Q. What aspect of training about consumer behavior did you bring to bear in this case?  A. I can't be any more specific than saying that.  Q. What aspects of your training about game theory have you brought to bear in your work on this case?  A. I can't be any more specific than that.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	what you mean by "economic concepts." We get trained in things like quantitative methods and intermediate microeconomics, in price theory, in econometrics, in consumer behavior. All those things are beyond the first year. I don't know if you're calling those economic theories. Your your questioning confuses me.  Q. Well, you referred to the important concepts in response to my question to you about particular aspects of training that you have beyond what a first-year college student would have gotten in a first-year economics course that you brought to bear by applying economic theories to this case, and your answer refers to very important concepts that are taught and learned.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q. What aspect of training about consumer behavior did you bring to bear in this case?  A. I can't be any more specific than saying that.  Q. What aspects of your training about game theory have you brought to bear in your work on this case?  A. I can't be any more specific than that.  Q. What aspects of econometrics in your training have you brought to bear on this case?  A. I can't be any more specific than that.  Q. What inform what aspects of training in qualitative methods have you brought to bear on this case?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	what you mean by "economic concepts." We get trained in things like quantitative methods and intermediate microeconomics, in price theory, in econometrics, in consumer behavior. All those things are beyond the first year. I don't know if you're calling those economic theories. Your your questioning confuses me.  Q. Well, you referred to the important concepts in response to my question to you about particular aspects of training that you have beyond what a first-year college student would have gotten in a first-year economics course that you brought to bear by applying economic theories to this case, and your answer refers to very important concepts that are taught and learned.  And so I'm asking you, what	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. What aspect of training about consumer behavior did you bring to bear in this case?  A. I can't be any more specific than saying that.  Q. What aspects of your training about game theory have you brought to bear in your work on this case?  A. I can't be any more specific than that.  Q. What aspects of econometrics in your training have you brought to bear on this case?  A. I can't be any more specific than that.  Q. What inform what aspects of training in qualitative methods have you brought to bear on this case?  A. I didn't say "qualitative
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	what you mean by "economic concepts." We get trained in things like quantitative methods and intermediate microeconomics, in price theory, in econometrics, in consumer behavior. All those things are beyond the first year. I don't know if you're calling those economic theories. Your your questioning confuses me.  Q. Well, you referred to the important concepts in response to my question to you about particular aspects of training that you have beyond what a first-year college student would have gotten in a first-year economics course that you brought to bear by applying economic theories to this case, and your answer refers to very important concepts that are taught and learned.  And so I'm asking you, what very important economic concepts have you brought to bear in your analysis of this case?  MR. FEE: Objection to form.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q. What aspect of training about consumer behavior did you bring to bear in this case?  A. I can't be any more specific than saying that.  Q. What aspects of your training about game theory have you brought to bear in your work on this case?  A. I can't be any more specific than that.  Q. What aspects of econometrics in your training have you brought to bear on this case?  A. I can't be any more specific than that.  Q. What inform what aspects of training in qualitative methods have you brought to bear on this case?  A. I didn't say "qualitative methods," and so it may have been mis-keyed in. I said "quantitative methods."  Q. All right. What aspects of quantitative methods of your training did you
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	what you mean by "economic concepts." We get trained in things like quantitative methods and intermediate microeconomics, in price theory, in econometrics, in consumer behavior. All those things are beyond the first year. I don't know if you're calling those economic theories. Your your questioning confuses me.  Q. Well, you referred to the important concepts in response to my question to you about particular aspects of training that you have beyond what a first-year college student would have gotten in a first-year economics course that you brought to bear by applying economic theories to this case, and your answer refers to very important concepts that are taught and learned.  And so I'm asking you, what very important economic concepts have you brought to bear in your analysis of this case?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. What aspect of training about consumer behavior did you bring to bear in this case?  A. I can't be any more specific than saying that.  Q. What aspects of your training about game theory have you brought to bear in your work on this case?  A. I can't be any more specific than that.  Q. What aspects of econometrics in your training have you brought to bear on this case?  A. I can't be any more specific than that.  Q. What inform what aspects of training in qualitative methods have you brought to bear on this case?  A. I didn't say "qualitative methods," and so it may have been mis-keyed in. I said "quantitative methods."  Q. All right. What aspects of

1	A. I can't be any more specific	1	just on this information.
2	than that.	2	Q. What else would you need?
3	Q. What aspect of your training	3	A. I don't know, because I think
4	regarding aspects of industrial organization	4	it's probably a very easy factual question to
5	have you brought to bear on this case?	5	determine when the downloading first
6	A. I can't be any more specific	6	occurred, so I don't know why one would need
7	than that.	7	to back into it.
8	Q. But you did bring the theory of	8	Q. Well, when would one be able
9	reveal revealed preferences to bear on	9	to use sales trends as a way of identifying
10	this case, correct?	10	likely effects of a posting of each standard
11	A. Yes.	11	by the defendant?
12	Q. What other economic theories do	12	MR. FEE: Objection. Vague.
13	you recall bringing to bear on this case?	13	Compound.
14	MR. FEE: Objection. Asked and	14	THE WITNESS: Maybe; maybe not.
15	answered.	15	BY MR. BRIDGES:
16	THE WITNESS: Everything that	16	Q. Why do you say "maybe; maybe
17	I've	17	not"?
18		18	
19	MR. FEE: And vague.		3
	Go ahead.	19	that way, so I don't know what you exactly
20	THE WITNESS: I've learned	20	have in mind.
21	in my training, both educational	21	Q. Do you associate the posting of
22	training and career training.	22	standards by defendant with changes in sales
23	BY MR. BRIDGES:	23	volume of the standards that the defendant
24	Q. Can you be more specific than	24	has posted?
25	that?	25	MR. FEE: Objection to form.
	Page 174		Page 176
1	A. No.	1	THE WITNESS: I don't know what
1 2	A. No. * * *	1 2	THE WITNESS: I don't know what you mean by that question.
2	* * *	2	you mean by that question.
2 3	* * * (Jarosz Exhibit 4 marked for	2 3	you mean by that question. BY MR. BRIDGES:
2 3 4	* * * (Jarosz Exhibit 4 marked for identification.)	2 3 4	you mean by that question. BY MR. BRIDGES: Q. You don't understand the
2 3 4 5	* * *  (Jarosz Exhibit 4 marked for identification.)  * * *  BY MR. BRIDGES:	2 3 4 5	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not.
2 3 4 5 6	* * *  (Jarosz Exhibit 4 marked for identification.)  * * *  BY MR. BRIDGES:  Q. Mr. Jarosz, do you recognize	2 3 4 5 6	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting
2 3 4 5 6 7 8	* * *  (Jarosz Exhibit 4 marked for identification.)	2 3 4 5 6 7	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in
2 3 4 5 6 7 8 9	* * *  (Jarosz Exhibit 4 marked for identification.)  * * *  BY MR. BRIDGES:  Q. Mr. Jarosz, do you recognize Exhibit 4 as a document that you produced in response to a subpoena in this case?	2 3 4 5 6 7 8 9	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the
2 3 4 5 6 7 8 9	* * *  (Jarosz Exhibit 4 marked for identification.)  * * *  BY MR. BRIDGES:  Q. Mr. Jarosz, do you recognize  Exhibit 4 as a document that you produced in response to a subpoena in this case?  A. Yes.	2 3 4 5 6 7 8 9	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted?
2 3 4 5 6 7 8 9 10	* * * *  (Jarosz Exhibit 4 marked for identification.)	2 3 4 5 6 7 8 9 10	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form.
2 3 4 5 6 7 8 9 10 11 12	* * * *  (Jarosz Exhibit 4 marked for identification.)	2 3 4 5 6 7 8 9 10 11 12	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think
2 3 4 5 6 7 8 9 10 11 12 13	* * * *  (Jarosz Exhibit 4 marked for identification.)  * * *  BY MR. BRIDGES:  Q. Mr. Jarosz, do you recognize  Exhibit 4 as a document that you produced in response to a subpoena in this case?  A. Yes.  Q. What is this document?  A. It appears to be a summary over the years 2009 through 2013 of dollars and	2 3 4 5 6 7 8 9 10 11 12 13	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted?  MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the
2 3 4 5 6 7 8 9 10 11 12 13 14	* * * *  (Jarosz Exhibit 4 marked for identification.)	2 3 4 5 6 7 8 9 10 11 12 13 14	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted?  MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	* * * *  (Jarosz Exhibit 4 marked for identification.)	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here associated with postings. BY MR. BRIDGES:
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	* * * *  (Jarosz Exhibit 4 marked for identification.)	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here associated with postings. BY MR. BRIDGES: Q. I'm not asking for a specific
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	* * * *  (Jarosz Exhibit 4 marked for identification.)	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted?  MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here associated with postings. BY MR. BRIDGES: Q. I'm not asking for a specific correlation coefficient. I'm just asking,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	* * * *  (Jarosz Exhibit 4 marked for identification.)	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here associated with postings. BY MR. BRIDGES: Q. I'm not asking for a specific correlation coefficient. I'm just asking, generally, can you correlate the posting of
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	(Jarosz Exhibit 4 marked for identification.)  * * * *  BY MR. BRIDGES:  Q. Mr. Jarosz, do you recognize  Exhibit 4 as a document that you produced in response to a subpoena in this case?  A. Yes.  Q. What is this document?  A. It appears to be a summary over the years 2009 through 2013 of dollars and quantity of NFPA standards that were sold in the marketplace.  Q. Based upon the trends that you see in this exhibit, can you estimate when you believe it is most likely that the defendant first published strike that.  Based upon the trends that you	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here associated with postings. BY MR. BRIDGES: Q. I'm not asking for a specific correlation coefficient. I'm just asking, generally, can you correlate the posting of standards by defendant with any changes in
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	* * * *  (Jarosz Exhibit 4 marked for identification.)	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here associated with postings. BY MR. BRIDGES: Q. I'm not asking for a specific correlation coefficient. I'm just asking, generally, can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that defendants has that the defendant has
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1	THE WITNESS: I don't recall	1	Q. Have you determined in any way
2	attempting to do that. And I wouldn't	2	the dates at which defendant posted various
3	necessarily think that the historical	3	standards to its Web site or to the Internet
4	impact would is the end of the	4	Archive?
5	story as to the harm here.	5	A. I don't recall doing a separate
6	BY MR. BRIDGES:	6	analysis of that, no.
7	Q. Is historical impact part of	7	Q. How did you learn about the
8	the story as to the harm here?	8	dates at which defendant posted various
9	A. Yes.	9	standards to its Web site or to Internet
10	Q. What what can you say by	10	Archive?
11	looking at Exhibit 4 about the historical	11	A. I had conversations with
12	impact of the posting of the defendant of	12	counsel on that topic, and I may have seen
13	the plaintiffs' standards by the defendant?	13	that information contained in certain
14	A. I don't know that I can say	14	documents like the Complaint, but I don't
15	much, because I believe the postings largely	15	recall.
16	occurred in late 2012, and I only have one	16	Q. Did you rely upon information
17	period after that.	17	regarding those dates from conversations with
18	Q. If it turns out that	18	counsel?
19	defendant's postings were well before 2012,	19	MR. FEE: In arriving at his
20	would that affect your analysis of the trends	20	opinions, you're asking?
21	in sales data of the plaintiffs'	21	MR. BRIDGES: Arriving at his
22	publications?	22	understanding of the facts.
23	MR. FEE: Objection to form.	23	THE WITNESS: I don't know that
24	Compound. Vague.	24	I did, because I don't recall
25	THE WITNESS: Maybe. I would	25	reporting those specific dates
	Page 178		Page 180
1	consider that information in	1	anywhere in my report.
2	conjunction with these data if you	2	BY MR. BRIDGES:
3	wanted me to.	3	Q. Do you recall taking specific
4	BY MR. BRIDGES:	4	dates into account in analyzing the effect of
5	Q. How what what would	5	defendant's actions?
6	change?	6	MR. FEE: Objection to form.
7	A. I don't know. I haven't done	7	Vague.
8	that analysis.	8	THE WITNESS: I don't recall
9	Q. Have you verified the dates on	9	one way or the other.
10	which plaintiffs strike that.	10	BY MR. BRIDGES:
11	Have you verified the dates at	11	Q. Do you know how strike that.
12	which defendant posted the various standards	12	Do you know how much revenue
13	to its Web site or to Internet Archive?	13	each plaintiff derives from the standards at
		11/	issue in this case?
14	A. I don't	14	
14 15	MR. FEE: Objection. Vague.	15	A. I don't think I know that
14 15 16	MR. FEE: Objection. Vague. THE WITNESS: I don't recall	15 16	A. I don't think I know that precise number.
14 15 16 17	MR. FEE: Objection. Vague. THE WITNESS: I don't recall verifying it.	15 16 17	<ul><li>A. I don't think I know that precise number.</li><li>Q. Did you did you ever know</li></ul>
14 15 16 17 18	MR. FEE: Objection. Vague. THE WITNESS: I don't recall verifying it. And are you asking did I	15 16 17 18	A. I don't think I know that precise number. Q. Did you did you ever know that number?
14 15 16 17 18 19	MR. FEE: Objection. Vague. THE WITNESS: I don't recall verifying it. And are you asking did I separately go out and determine what	15 16 17 18 19	A. I don't think I know that precise number.  Q. Did you did you ever know that number?  A. I don't think so.
14 15 16 17 18 19 20	MR. FEE: Objection. Vague. THE WITNESS: I don't recall verifying it. And are you asking did I separately go out and determine what that date is and see if that was the	15 16 17 18 19 20	A. I don't think I know that precise number. Q. Did you did you ever know that number? A. I don't think so. Q. Did you ever know how much
14 15 16 17 18 19 20 21	MR. FEE: Objection. Vague. THE WITNESS: I don't recall verifying it. And are you asking did I separately go out and determine what that date is and see if that was the same as what was represented in the	15 16 17 18 19 20 21	A. I don't think I know that precise number. Q. Did you did you ever know that number? A. I don't think so. Q. Did you ever know how much revenue each plaintiff derives from standards
14 15 16 17 18 19 20 21 22	MR. FEE: Objection. Vague. THE WITNESS: I don't recall verifying it. And are you asking did I separately go out and determine what that date is and see if that was the same as what was represented in the Complaint, for instance?	15 16 17 18 19 20 21 22	A. I don't think I know that precise number.  Q. Did you did you ever know that number?  A. I don't think so.  Q. Did you ever know how much revenue each plaintiff derives from standards that have been incorporated into law?
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1	those standards that have been incorporated	1	something just north of 50 percent for
1	in the law. I'm asking if you know how much	2	ASHRAE.
3	revenue each plaintiffs derives each	3	BY MR. BRIDGES:
4	plaintiff derives from those standards.	4	Q. What do you mean by "if you add
5	A. I don't	5	in memberships"?
6	MR. FEE: Objection. Form.	6	A. I'm not I'm not quite sure
7	THE WITNESS: think I know	7	what you're asking me to define.
8	that number, and I'm not sure the	8	Q. I'm asking you to explain the
9	plaintiffs know that number.	9	phrase that you just used, "if you add in
10	BY MR. BRIDGES:	10	memberships." What did that mean?
11	Q. Do you know the percentage of	11	A. I talked about that in my
12	revenue that each plaintiff derives from	12	report. Membership fees are a fairly good
13	standards that have been incorporated into	13	recollect a fairly good reflection of
14	law?	14	amount that would have been paid for
15	MR. FEE: Objection to form.	15	publications. In other words, publication
16	THE WITNESS: I don't think I	16	fees it let me start this over again.
17	do, and I don't believe the plaintiffs	17	It makes about as much sense to
18	do.	18	become a member of ASHRAE as it is to buy
19	BY MR. BRIDGES:	19	some of the individual publications. As a
20	Q. Are you aware of any difference	20	result, many people choose to become members
21	in profitability to plaintiffs between those	21	rather than just buying the publication, as I
22	standards that have been incorporated into	22	understand it.
23	law and those standards that have not been	23	Q. How did you learn that?
24	incorporated into law?	24	A. Having knowledge of the of
25	MR. FEE: Objection to form.	25	the price difference and through discussions
	Page 182		Page 184
1	THE WITNESS: I don't believe	1	with people at ASHRAE.
2	so.	2	Q. How did you learn about the
2 3	so. BY MR. BRIDGES:	2 3	Q. How did you learn about the price difference?
2 3 4	so. BY MR. BRIDGES: Q. Do you know strike that.	2 3 4	Q. How did you learn about the price difference?  A. I don't recall how I learned
2 3 4 5	so. BY MR. BRIDGES: Q. Do you know strike that. Are you aware of any difference	2 3 4 5	Q. How did you learn about the price difference?  A. I don't recall how I learned it, but I report it in my report based on
2 3 4	so. BY MR. BRIDGES: Q. Do you know strike that. Are you aware of any difference in profitability to plaintiffs between those	2 3 4	Q. How did you learn about the price difference?  A. I don't recall how I learned it, but I report it in my report based on certain documents I've seen. Perhaps I
2 3 4 5	so. BY MR. BRIDGES: Q. Do you know strike that. Are you aware of any difference in profitability to plaintiffs between those standards that defendant has posted to the	2 3 4 5 6 7	Q. How did you learn about the price difference?  A. I don't recall how I learned it, but I report it in my report based on certain documents I've seen. Perhaps I learned it from their Web site.
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2 3 4 5 6 7 8 9	so. BY MR. BRIDGES: Q. Do you know strike that. Are you aware of any difference in profitability to plaintiffs between those standards that defendant has posted to the Internet and those standards that defendant has not posted to the Internet?	2 3 4 5 6 7	Q. How did you learn about the price difference?  A. I don't recall how I learned it, but I report it in my report based on certain documents I've seen. Perhaps I learned it from their Web site.  Q. Did you do any surveys of ASHRAE members to validate that assumption?
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1 Q. Did that understanding make a 1 are to copyrighted publications, correct? difference to your analysis? 2 With the exception of number 3, 3 It was a factual underpinning. 3 which refers to copyrighted publications and Α. 4 O. An underpinning, but not an memberships. 5 assumption? 5 Q. Okay. So my question wasn't about copyrighted publications. My question A. It was not an explicit 6 6 7 assumption. is, what percentage do you understand of 8 But it was an underpinning, not plaintiffs' revenues comes from the sale of Q. an assumption, is your testimony? standards at issue in this case? 9 MR. FEE: Objection. Asked and 10 10 A. Thank you for that reminder of 11 11 what the question is. 12 THE WITNESS: Yes. I don't 12 I don't think I know that 13 know what or why you're arguing with 13 precise percentage. 14 14 me on this. What percentage of plaintiffs' 15 BY MR. BRIDGES: revenues, to your knowledge, comes from the 16 Q. I'm not arguing. sale of standards incorporated into law? 17 I don't understand. 17 I don't know that number. A. A. 18 I'm just trying to understand 18 What percentage of plaintiffs' 19 your testimony. That's all. So I'm asking 19 revenues, to your understanding, comes from 20 some follow-up questions. 20 the sale of all standards? You stated earlier some 21 21 I'm sorry. I thought you asked 22 percentages of revenue from the sale of that question. I thought the immediate one 23 standards. Did you mean to be identifying 23 before that was standards. 24 what you thought were the percentages of 24 No. It was standards at issue O. 25 revenue from the sale of standards or from 25 in this case. Then --Page 186 Page 188 the sale of all publications? 1 A. The one before that. 2 A. Let me -- let me double-check 2 Q. -- standards incorporated into 3 that. 3 law. And now it's all standards. Right. Thank you. Well, in the case of ASTM, for 4 5 I don't know that number instance, I believe it's copyrighted publications. 6 either. 7 What page are you referring to 7 What percentage of O. plaintiffs' -- strike that. in your report? A. Right now I'm looking at What dollar value do you 10 page 36, but I think I talk about it at other 10 associate with the investments that each 11 areas. plaintiff has made in the development of the 12 So page 36, you're talking 12 standards at issue in this case? Q. 13 about which paragraph? 13 I don't think I attributed a Well, right now I was --14 A. 14 dollar amount to that precise activity, 15 Q. 83? 15 because I don't know that amount. 16 A. -- I was looking at 83, but I'm 16 What percentage of plaintiffs' 17 turning back to, for more reliable operating expenses do you associate with the 17 18 information, to paragraph 15, for instance, plaintiffs' development of the standards at issue in this case? 19 which says in 2014, 67.1 percent of the 19 20 20 revenue was generated by the sale of I don't think I know that A. 21 copyrighted publications. For NFPA, that 21 number. 22 information is shown in paragraph 18. And 22 What percentage of plaintiffs' 23 for ASHRAE, that information is shown in 23 operating expenses do you associate with the plaintiffs' development of standards 24 paragraph 22. incorporated into law? 25 Q. All three of those references Page 187 Page 189

1	A. I don't think I know that	1	Q. Have you ever had access to any
2	number.	2	information that I've asked in the last
3	Q. What percentage of plaintiffs'	3	several questions?
4	operating expenses do you associate with the	4	MR. FEE: Objection to form.
5	plaintiffs' development of standards	5	THE WITNESS: I don't believe
6	generally?	6	so.
7	A. I don't think I know that	7	BY MR. BRIDGES:
8	number.	8	Q. Do you know whether plaintiffs
9	Q. Do you have any estimates of	9	prepare standards through joint sponsorship
10	any of those numbers that you just said you	10	with any other organizations?
11	don't think you know?	11	MR. FEE: Objection. Vague.
12	MR. FEE: Objection to form.	12	THE WITNESS: I think I may
13	THE WITNESS: Not sitting here	13	have seen a reference to that. I
14	right now.	14	don't know the extent to which it
15	BY MR. BRIDGES:	15	occurs, but I wouldn't be surprised to
16	Q. Did you at one point ever	16	be reminded that it does occur.
17	determine those numbers?	17	BY MR. BRIDGES:
18	A. Not that I recall.	18	Q. Are you aware of any, as you
19	Q. Do you know what percentage of	19	sit here?
20	the staff or employees of each plaintiff has	20	A. Not as I sit here right now,
21	worked on the development of standards at	21	but I think I'm aware that it has occurred.
$\begin{vmatrix} 21\\22\end{vmatrix}$	issue in this case?	22	
23			Q. Do you know whether plaintiffs
1	MR. FEE: Objection to form.	23	receive grants, revenue, or stipends from
24	THE WITNESS: I don't think I	24	governments that use, reference, or adopt
25	know that number.	25	their standards?
	Page 190		Page 192
		1	
1	BY MR. BRIDGES:	1	MR. FEE: Objection to form.
2	Q. Do you know what percentage	2	THE WITNESS: There are grant
2 3	Q. Do you know what percentage do you have an estimate?	2 3	THE WITNESS: There are grant monies that go to NFPA. I don't know
2 3 4	Q. Do you know what percentage do you have an estimate? A. No.	2 3 4	THE WITNESS: There are grant monies that go to NFPA. I don't know the source of those grants. I don't
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documents, but they provided them as 1 I looked at some parts of it. 1 A. 2 part of the discovery process. 2 I don't recall that I looked at all aspects 3 3 BY MR. BRIDGES: of the database. 4 Did you ask them for any 4 Did you verify how many 5 documents that they had not provided? 5 standards were incorporated by reference I think we generally described according to that database? the kinds of information that we find useful 7 A. No, I did not. 8 8 or typically find useful in matters like What do you mean by, "This 9 database reports nearly 13,000 instances of this. incorporation by reference"? 10 After you received documents 10 11 from plaintiffs' counsel, did you ask them A. I don't know what you're asking 11 12 for any more? 12 me to define. 13 A. That -- that's possible. I 13 I'm not asking you to define 14 anything. I'm asking you to explain what you 14 don't recall that. 15 You don't recall. Did you -meant by that clause, "This database O. reports" --16 do you have any understanding as to the dollar value of staff time and expenses that 17 I'm sorry. I'm just -- I'm A. 18 the plaintiffs have incurred in promoting going to be just rearranging words a little 19 incorporation of their standards into law? bit. There were 13,000 times that there was MR. FEE: Objection to form. incorporation by reference of a standard. 20 21 21 Lack of foundation. I -- I don't -- I'm sorry. I 22 THE WITNESS: I don't think I 22 don't understand what your confusion is. 23 have that number, no. 23 Q. I'm not confused. I'm just asking you questions. Okay? So please don't 24 BY MR. BRIDGES: 25 understand -- please don't assume that I'm Do you have an estimate? Page 198 Page 200 1 MR. FEE: Same objections. confused. I'm trying to understand what you 2 THE WITNESS: Not as I sit here meant by that. 3 3 You mean separate instances? now, no. You mean separate laws? What do you mean? 4 BY MR. BRIDGES: 5 5 Did you discuss that issue with Yes. Separate instances slash A. anyone representing the plaintiffs? 6 separate laws. 7 MR. FEE: Same objections. 7 What did you count as an O. 8 THE WITNESS: It's possible, 8 instance? 9 but I don't recall having that A. Mention in a particular law of 10 10 a standard. discussion. 11 BY MR. BRIDGES: 11 O. Did you or anybody working with In paragraph 57 of your report, 12 you attempt to determine the number of 12 13 you refer to "thousands of private-sector 13 standards that those 13,000 instances of 14 standards." Was your sole support for the 14 incorporation by reference referred to? 15 statement in paragraph 57 the Bremer article Not entirely. But if you read 15 16 you cited in footnote 88? 16 on that -- in that same section, it talks 17 No. You see I discuss and about the number of ASTM standards, the Α. 18 provide support for that in subsequent 18 numbers of -- the number of NFPA standards, 19 paragraphs in that section. and the number of ASHRAE standards. 20 20 And that includes in Well, please tell me where it 21 paragraph 58? refers to the number of standards. 22 It says, "Including more than A. Yes. 22 23 And did you review the 23 2,400 instances involving ASTM standards." 24 Standards Incorporated by Reference Database So you're right. It doesn't 24 25 that you refer to in paragraph 58? 25 have the number of standards. It just has Page 199 Page 201

1	mentions of standard. You're absolutely	1	Q. What are the governmental
2	right.	2	functions with respect to driving that you
3	Q. And the same thing is true of	3	have in mind?
4	the NFPA standards and ASHRAE standards?	4	A. I don't have any particular
5	A. You're absolutely right, yes.	5	ones in mind.
6	Q. Do you know how many standards	6	Q. In paragraph 59, you say, "At
7	that database shows as having been	7	least 44 states and territories have adopted
8	incorporated by reference?	8	ASHRAE 90.1 as part of the commercial
9	A. Not sitting here right now.	9	building energy code."
10	One could perhaps look at what I cited to	10	Do you see that?
11	answer that question, but I don't know right	11	A. Yes, I do.
12	now.	12	Q. And that also has footnote 95
13	Q. Do you know whether anyone	13	associated with that as well, correct?
14	working for you ever did that work to make	14	A. Yes, that's correct.
15	that determination?	15	Q. How do you explain the fact
16	A. I don't recall that being done.	16	that that reference in footnote 95 shows that
17	Q. Paragraph 59, you say, "At the	17	those 44 states, in fact, adopted the
18	state level, privately-developed standards	18	International Energy Conservation Code that
19	are incorporated by reference as part of the	19	merely has a reference to an option to use
20	exercise of a range of governmental	20	ASHRAE 90.1?
21	functions."	21	MR. FEE: Objection. Lack of
22	Do you see that?	22	foundation.
23	A. Yes.	23	THE WITNESS: I don't have any
24	Q. What do you mean by	24	explanation for that.
25	"governmental functions" in that statement?	25	BY MR. BRIDGES:
	Page 202		Page 204
1	A Things that government agencies	1	O Did you verify that?
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	A. Things that government agencies do.	1 2	Q. Did you verify that? A. I did not, no.
2	do.	2	A. I did not, no.
	do.  Q. And you give a couple of	2 3	A. I did not, no. Q. Who did?
2 3 4	do.  Q. And you give a couple of examples, but speaking broadly, what are	2	<ul><li>A. I did not, no.</li><li>Q. Who did?</li><li>A. I'm sorry. Who verified what?</li></ul>
2 3 4 5	do.  Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve	2 3 4	A. I did not, no. Q. Who did?
2 3 4 5 6	do.  Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve incorporation by reference of privately	2 3 4 5	A. I did not, no. Q. Who did? A. I'm sorry. Who verified what? Q. On what on what did you rely to make that statement with that footnote?
2 3 4 5 6 7	do.  Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve incorporation by reference of privately developed standards at the state level?	2 3 4 5 6	A. I did not, no. Q. Who did? A. I'm sorry. Who verified what? Q. On what on what did you rely to make that statement with that footnote? A. I may not understand your
2 3 4 5 6	do.  Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve incorporation by reference of privately developed standards at the state level?  MR. FEE: Objection to form.	2 3 4 5 6 7 8	A. I did not, no. Q. Who did? A. I'm sorry. Who verified what? Q. On what on what did you rely to make that statement with that footnote?
2 3 4 5 6 7 8	do.  Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve incorporation by reference of privately developed standards at the state level?  MR. FEE: Objection to form.  THE WITNESS: I can only answer	2 3 4 5 6 7 8	A. I did not, no. Q. Who did? A. I'm sorry. Who verified what? Q. On what on what did you rely to make that statement with that footnote? A. I may not understand your question. I relied on what's identified in
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2 3 4 5 6 7 8 9 10 11	do.  Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve incorporation by reference of privately developed standards at the state level?  MR. FEE: Objection to form.  THE WITNESS: I can only answer generally. Health and human services, things that are related to that, safety, driving rules and regulation.	2 3 4 5 6 7 8 9 10 11	A. I did not, no. Q. Who did? A. I'm sorry. Who verified what? Q. On what on what did you rely to make that statement with that footnote? A. I may not understand your question. I relied on what's identified in footnote 95. Q. But you didn't review foot
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	do.  Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve incorporation by reference of privately developed standards at the state level?  MR. FEE: Objection to form.  THE WITNESS: I can only answer generally. Health and human services, things that are related to that, safety, driving rules and regulation.  Those are among the things that come to mind.  BY MR. BRIDGES:	2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. I did not, no. Q. Who did? A. I'm sorry. Who verified what? Q. On what on what did you rely to make that statement with that footnote? A. I may not understand your question. I relied on what's identified in footnote 95. Q. But you didn't review foot what's in footnote 95, right? MR. FEE: Objection. Lack of foundation. THE WITNESS: I did. BY MR. BRIDGES:
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	do.  Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve incorporation by reference of privately developed standards at the state level?  MR. FEE: Objection to form.  THE WITNESS: I can only answer generally. Health and human services, things that are related to that, safety, driving rules and regulation.  Those are among the things that come to mind.  BY MR. BRIDGES:  Q. What are the governmental functions related to health and human services that you have in mind?  A. I don't have any particular	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. I did not, no. Q. Who did? A. I'm sorry. Who verified what? Q. On what on what did you rely to make that statement with that footnote? A. I may not understand your question. I relied on what's identified in footnote 95. Q. But you didn't review foot what's in footnote 95, right? MR. FEE: Objection. Lack of foundation. THE WITNESS: I did. BY MR. BRIDGES: Q. You you reviewed that Web site? A. Yes. Q. Personally?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	do.  Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve incorporation by reference of privately developed standards at the state level?  MR. FEE: Objection to form.  THE WITNESS: I can only answer generally. Health and human services, things that are related to that, safety, driving rules and regulation.  Those are among the things that come to mind.  BY MR. BRIDGES:  Q. What are the governmental functions related to health and human services that you have in mind?  A. I don't have any particular ones in mind.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. I did not, no. Q. Who did? A. I'm sorry. Who verified what? Q. On what on what did you rely to make that statement with that footnote? A. I may not understand your question. I relied on what's identified in footnote 95. Q. But you didn't review foot what's in footnote 95, right? MR. FEE: Objection. Lack of foundation. THE WITNESS: I did. BY MR. BRIDGES: Q. You you reviewed that Web site? A. Yes. Q. Personally? A. Yes, I believe so.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	do.  Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve incorporation by reference of privately developed standards at the state level?  MR. FEE: Objection to form.  THE WITNESS: I can only answer generally. Health and human services, things that are related to that, safety, driving rules and regulation.  Those are among the things that come to mind.  BY MR. BRIDGES:  Q. What are the governmental functions related to health and human services that you have in mind?  A. I don't have any particular ones in mind.  Q. What are the governmental functions relating to safety that you have in	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. I did not, no. Q. Who did? A. I'm sorry. Who verified what? Q. On what on what did you rely to make that statement with that footnote? A. I may not understand your question. I relied on what's identified in footnote 95. Q. But you didn't review foot what's in footnote 95, right? MR. FEE: Objection. Lack of foundation. THE WITNESS: I did. BY MR. BRIDGES: Q. You you reviewed that Web site? A. Yes. Q. Personally? A. Yes, I believe so. Q. Do you have an explanation as to why the resource cited in footnote 95
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	do.  Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve incorporation by reference of privately developed standards at the state level?  MR. FEE: Objection to form.  THE WITNESS: I can only answer generally. Health and human services, things that are related to that, safety, driving rules and regulation.  Those are among the things that come to mind.  BY MR. BRIDGES:  Q. What are the governmental functions related to health and human services that you have in mind?  A. I don't have any particular ones in mind.  Q. What are the governmental functions relating to safety that you have in mind?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. I did not, no. Q. Who did? A. I'm sorry. Who verified what? Q. On what on what did you rely to make that statement with that footnote? A. I may not understand your question. I relied on what's identified in footnote 95. Q. But you didn't review foot what's in footnote 95, right? MR. FEE: Objection. Lack of foundation. THE WITNESS: I did. BY MR. BRIDGES: Q. You you reviewed that Web site? A. Yes. Q. Personally? A. Yes, I believe so. Q. Do you have an explanation as to why the resource cited in footnote 95 actually shows that the 44 states adopted the

1	Q. What other benefits do	1	a particular period.
2	plaintiffs gain from incorporation by	2	Q. And then you do the same for
3	reference of their standards?	3	NFPA documents, correct?
4	A. I think that generally covers	4	A. Yes.
5	it. I may be forgetting things that are laid	5	Q. What do you calculate as the
6	out in my report, but that's what covers it,	6	dollar value of harm to the to ASTM from
7	to the best of my memory right now.	7	the accesses and downloads that you refer to
8	Are we at a good point for a	8	in paragraph 133?
9	break?	9	A. I haven't calculated that harm.
10	Q. If you want. Sure.	10	Q. Why not?
11	A. Thanks.	11	A. I'm not sure if I can at this
12	THE VIDEOGRAPHER: Off the	12	stage. One estimate would be those number of
13	record at 3:12. This is the end of	13	downloads times the well, actually, no,
14	media unit number 2.	14	let me take that back. I just don't know how
15	* * *	15	to do it.
16	(Recess from 3:12 p.m. to	16	Q. Can you be certain that these
17	3:41 p.m.)	17	accesses or down and downloads referred to
18	* * *	18	in paragraph 133, in fact, resulted in
19	THE VIDEOGRAPHER: On the	19	economic loss to ASTM?
20	record at 3:41. This is the beginning	20	MR. FEE: Objection to form.
21	of media unit number 3 in the	21	THE WITNESS: Not with absolute
22	deposition of John Jarosz.	22	certainty, but with reasonable
23	* * *	23	certainty I can say some in some
24	(Jarosz Exhibit 5 marked for	24	number of these instances, it's likely
25	identification.)	25	the case that the that the
	Page 210		Page 212
1	* * *	1	information would have been obtained
1 2		l	information would have been obtained from ASHRAE in or ASTM, rather.
2	BY MR. BRIDGES:	1 2 3	from ASHRAE in or ASTM, rather,
2 3	BY MR. BRIDGES: Q. Mr. Jarosz, I've handed you	2	from ASHRAE in or ASTM, rather, in through legal means.
2 3 4	BY MR. BRIDGES: Q. Mr. Jarosz, I've handed you Exhibit 5. This is an article that you cited	2 3 4	from ASHRAE in or ASTM, rather, in through legal means. BY MR. BRIDGES:
2 3 4 5	BY MR. BRIDGES: Q. Mr. Jarosz, I've handed you Exhibit 5. This is an article that you cited in your report, correct?	2 3 4 5	from ASHRAE in or ASTM, rather, in through legal means.  BY MR. BRIDGES:  Q. Would that in those
2 3 4 5 6	BY MR. BRIDGES: Q. Mr. Jarosz, I've handed you Exhibit 5. This is an article that you cited in your report, correct? A. Yes, I believe so.	2 3 4 5 6	from ASHRAE in or ASTM, rather, in through legal means.  BY MR. BRIDGES: Q. Would that in those instances where you say that the information
2 3 4 5 6 7	BY MR. BRIDGES: Q. Mr. Jarosz, I've handed you Exhibit 5. This is an article that you cited in your report, correct? A. Yes, I believe so. Q. Do you recall how this article	2 3 4 5 6 7	from ASHRAE in or ASTM, rather, in through legal means.  BY MR. BRIDGES: Q. Would that in those instances where you say that the information would have been obtained from ASTM through
2 3 4 5 6 7 8	BY MR. BRIDGES: Q. Mr. Jarosz, I've handed you Exhibit 5. This is an article that you cited in your report, correct? A. Yes, I believe so. Q. Do you recall how this article came to your attention?	2 3 4 5 6	from ASHRAE in or ASTM, rather, in through legal means.  BY MR. BRIDGES:  Q. Would that in those instances where you say that the information would have been obtained from ASTM through legal means, can you put a dollar value on
2 3 4 5 6 7 8 9	BY MR. BRIDGES: Q. Mr. Jarosz, I've handed you Exhibit 5. This is an article that you cited in your report, correct? A. Yes, I believe so. Q. Do you recall how this article came to your attention? A. I do not.	2 3 4 5 6 7 8 9	from ASHRAE in or ASTM, rather, in through legal means.  BY MR. BRIDGES: Q. Would that in those instances where you say that the information would have been obtained from ASTM through legal means, can you put a dollar value on or even an estimate of the increased revenue
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1 information? 1 more extended use of that document. Do you have any evidence about 2 Not with certainty, because I 2 A. don't know who those persons were, but I 3 wide distribution of plaintiffs' standards as would expect one alternative would be to a consequence of defendant's actions? 5 obtain it properly, directly from ASTM. A. I do not. Would that have resulted in 6 Have you reviewed any studies 6 Q. 7 more revenue to ASTM? that would allow you to establish any 8 connection between the number of accesses or It may have. If they're materials that were taken improperly that downloads that Public Resource made possible would have been paid for, then that would 10 10 and any financial harms to the plaintiffs? 11 represent a loss of revenue to ASTM. MR. FEE: Objection to form. 11 12 Do you know whether any of the 12 THE WITNESS: I don't think 13 persons who obtained this information from 13 I've seen any study on that, no. 14 defendant would have paid for the information BY MR. BRIDGES: 14 15 from ASTM? 15 Have you conducted any studies 16 A. No, not with certainty, because 16 that would have allowed you to establish any 17 I don't know the identity of the downloaders connection between the number of accesses or 18 or the reasons for their downloading. downloads that Public Resource made possible 19 Moreover, those persons might 19 and any financial harms to the plaintiffs? 20 have accessed the standards from ASTM's 20 MR. FEE: Objection to form. 21 THE WITNESS: Not other than 21 reading room for free and with no revenue to 22 ASTM, correct? 22 what's contained in my report. 23 A. You mean in a but-for world? 23 BY MR. BRIDGES: 24 24 Had they not done what they actually did, Q. Please turn to page 45, 25 alternatively they could have gone to the 25 paragraph 107, which spills into page 108. Page 214 Page 216 free reading room? 1 MR. FEE: Page 108? 1 2 Q. Right. 2 THE WITNESS: I'm sorry. 3 A. That's a possibility, yes. 3 Page 108 or paragraph? Do you have an understanding as BY MR. BRIDGES: to why persons would want to download a file 5 I'm sorry. Paragraph -- strike of a standard instead of viewing it at one of 6 that. 7 the plaintiffs' reading rooms? 7 Let me ask you to turn 8 Not with absolute certainty, 8 paragraph 107 on pages 45 to 46. 9 but I would imagine downloading would allow 9 Okay. I'm there. A. 10 10 more flexibility in referring to the standard I just want to make sure I 11 and using it and sharing that information 11 understand your language correctly at the 12 with others, whereas reading it in -- through bottom of page 45 and the top of page 46. 12 13 an Internet site is somewhat less flexible. 13 Is it your opinion that the 14 provides less flexibility for the use of that copyright that the plaintiffs assert in their 14 standards drives sales of other publications 15 information. 16 O. What did -- what do you 16 other than the standards themselves? 17 understand to be the difference in 17 MR. FEE: Objection. Form. 18 flexibility between possession of a download 18 Vague. 19 and access to a standard through a reading 19 THE WITNESS: I think they're 20 room? 20 important for driving sales of 21 Well, I think that a download 21 publications that embody those 22 typically has a document that's in hard-copy 22 standards. I don't know that I've 23 form. Copies can made -- be made of that and 23 drawn a conclusion that it drives the 24 distributed. Reading things just online 24 sale of other products, but that makes 25 doesn't allow for the wide distribution and 25 some sense. Page 215 Page 217

1 By MR. BRIDGES:   2 Q. Well, doesn't that sentence at   3 the bottom of 45 and going on to 46 say that   4 copyright on plaintiffs' standards drive   5 sales of 'handbooks that provide commentary   6 on the standards by referring to them"?   7 A. You haven't read				
3 the bottom of 45 and going on to 46 say that 4 copyright on plaintiffs' standards drive sales of "handbooks that provide commentary 6 on the standards by referring to them"?	1	BY MR. BRIDGES:	1	whether plaintiffs have copyright in
4 copyright on plaintiffs' standards drive 5 sales of "handbooks that provide commentary 6 on the standards by referring to them"? 7 A. You haven't read 8 MR. FEE: Objection. 9 Mischaracterizes the document. 10 THE WITNESS: You haven't read 11 the whole sentence. I see that 12 sentence to which you refer. 13 BY MR. BRIDGES: 14 Q. Right. I know I haven't read 15 the whole sentence, but didn't I fairly 16 capture one part of it, which is the sales 17 of strike that that copyright on 18 plaintiffs' standards drives sales of, among 19 other things, "handbooks that provide 20 commentary on standards by referring to 21 them"? 22 MR. FEE: Same objection. 23 THE WITNESS: I think you have 24 generally paraphrased it accurately, 25 yes.  Page 218  1 BY MR. BRIDGES: 2 Q. And that plaintiffs' copyright 3 protection this is the top of strike 4 that. 5 And turning to the top of 5 page 46, plaintiffs' copyright protection on 7 their standards provides plaintiff with a 8 competitive advantage with respect to what 9 you call value-added publications, sorrest? 10 A. You've read part of a sentence, 11 but I do see that sentence, yes. 12 Q. And Tve fairly paraphrased it 13 correctly, correct? 14 MR. FEE: Objection to form. 15 THE WITNESS: I think, 16 generally, yes. 17 SPY MR. BRIDGES: 18 Q. Do plaintiffs', to your 19 understanding, have separate copyrights in 10 those value-added publications, such as 11 commentaries and handbooks? 12 Q. And or the fairly paraphrased it 13 correctly, correct? 14 MR. FEE: Objection to form. 15 THE WITNESS: I think, 16 generally, yes. 17 SPY MR. BRIDGES: 18 Q. Do plaintiffs, to your 19 understanding, have separate copyrights in 20 the standards drives sales of, among 21 commentaries and handbooks? 22 A. I don't know. 23 Q. You don't know. 24 A. Correct. I do not know. 25 Q. I li timportant to you to know 26 Up you ador that. 27 d. Do you know whether 28 trandards drives sales of plaintiffs' 29 D. Sambala decurious to know that, but outloake curious to know that, but outloake curious	2	Q. Well, doesn't that sentence at	2	rights in their value-added publications?
5 sales of "handbooks that provide commentary of on the standards by referring to them"?  7 A. You haven't read	3	the bottom of 45 and going on to 46 say that	3	MR. FEE: Objection. Vague.
6 on the standards by referring to them"? 7 A. You haven't read 8 MR. FEE: Objection. 9 Mischaracterizes the document. 10 THE WITNESS: You haven't read 11 the whole sentence. I see that 12 sentence to which you refer. 13 BY MR. BRIDGES: 14 Q. Right. I know I haven't read 15 the whole sentence, but didn't I fairly 16 capture one part of it, which is the sales 17 of strike that that copyright on 18 plaintiffs' standards drives sales of, among 19 other things, "handbooks that provide 20 commentary on standards by referring to 21 them"? 22 MR. FEE: Same objection. 23 THE WITNESS: I think you have 24 generally paraphrased it accurately, 25 yes.  Page 218  1 BY MR. BRIDGES: 2 Q. And that plaintiffs' copyright 3 protection this is the top of 6 page 46, plaintiffs' copyright roprection on 7 their standards provides plaintiff with a 8 competitive advantage with respect to what 9 you call value-added publications, correct? 10 A. You've read part of a sentence, 11 but I do see that sentence, yes. 12 Q. And I we fairly paraphrased it 2 correctly, correct? 14 MR. FEE: Objection to form. 15 THE WITNESS: I think, 16 generally, yes.  17 BY MR. BRIDGES: 18 Q. Do plaintiffs, to your 19 understanding, have separate copyrights in 20 those value-added publications, such as 21 commentaries and handbooks? 22 A. I don't know. 23 Q. You don't know. 24 A. Correct. I do not know. 25 Q. I Il restate it. 26 Or Handbooks? 27 De Reference, but didn't 1 fairly would be curious to know that. 29 WR. BRIDGES: 10 Do you know whether 11 incorporation into law drives strike that. 20 Do you know whether 21 incorporation into law drives strike that. 21 Do you know whether 22 MR. FEE: Objection to form. 23 THE WITNESS: I don't know with 24 absolute certainty, but it would make some sense to me. 25 BY MR. BRIDGES: 26 Q. And turning to the top of same to the sale of handbooks? 27 MR. FEE: Objection to form. 28 THE WITNESS: I don't know one way or the other. I don't have reason to dispute it, but there's not a particular instance that c	4	copyright on plaintiffs' standards drive	4	THE WITNESS: I would be
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THE WITNESS: You haven't read the whole sentence. I see that the whole sentence to which you refer.  It standards drives sales of plaintiffs' standards?  It standards.  It standards?  It standards?  It standards.  It standard	8	MR. FEE: Objection.	8	would be curious to know that.
the whole sentence. I see that sentence to which you refer.  By MR. BRIDGES:  When the whole sentence, but didn't I fairly capture one part of it, which is the sales of commentary on standards by referring to ther things, "handbooks that provide commentary on standards by referring to the minist," handbooks that provide commentary on standards by referring to them?'  By MR. FEE: Same objection.  THE WITNESS: I think you have generally paraphrased it accurately, yes.  By MR. BRIDGES:  Competitive advantage with respect to what you call value-added publications, correct?  A. You've read part of a sentence, yes.  When the whole sentence, but didn't I fairly understanding, have separate copyrights in those value-added publications, such as commentaries and handbooks?  A. I don't know.  By MR. BRIDGES:  By MR. BRIDG	9	Mischaracterizes the document.	9	BY MR. BRIDGES:
12	10	THE WITNESS: You haven't read	10	Q. Do you know whether
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1	Can you provide a can you	1	Q. What else?
2	put a dollar value, even an estimate, on the	2	A. That's what comes to mind.
3	economic benefit that plaintiffs receive from	3	Q. Anything else?
4	incorporation of their standards into law?	4	A. Not this moment, no. I guess,
5	MR. FEE: Objection to form.	5	potentially, when I think some more about it,
6	THE WITNESS: I have not. And	6	training and seminars, for instance.
7	I'm not sure how one would do that,	7	Q. Providers of training and
8	subject to thinking more about it.	8	seminars?
9	BY MR. BRIDGES:	9	A. Yes. So that's broader than
10	Q. At the top of page 46, you say,	10	value-added publications, but there are
11	"The Plaintiffs' copyright protection on	11	potentially alternative providers of training
12	their privately-developed standards provides	12	and seminars.
13	a competitive advantage with regard to the	13	Q. In paragraph 109, you say, "In
14	sale of these value-added publications as the	14	addition to direct sales of copyrighted
15	copyright protection limits the ability of	15	materials, the Plaintiffs' materials
16	others to sell those publications unless they	16	associated with their privately-developed
17	are unwilling [sic] to compensate the	17	standards provide a competitive advantage
18	Plaintiffs for such use."	18	with regard to the sale of downstream
19	MR. FEE: Objection.	19	ancillary/complementary services and
20	Mischaracterizes the statement.	20	products."
21	BY MR. BRIDGES:	21	Do you see that?
22	Q. Is there something unfair about	22	A. Yes. That's what I had in
23	my characterization of that statement?	23	mind.
24	A. I think you read it wrong. You	24	Q. And who are the competitors you
25	read "willing" to read "unwilling" for some	25	have in mind in paragraph 109?
	Page 222		Page 224
1	reason.	1	A. I don't know particular names,
2	Q. Oh, I'm sorry. Thank you.	1 2	but at least I don't recall any sitting
2 3	Q. Oh, I'm sorry. Thank you. I'll restate the sentence.	2 3	but at least I don't recall any sitting right now sitting here right now, but I
2 3 4	Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs'	2 3 4	but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these
2 3 4 5	Q. Oh, I'm sorry. Thank you.  I'll restate the sentence.  "In particular, the Plaintiffs' copyright protection on their	2 3	but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products.
2 3 4 5 6	Q. Oh, I'm sorry. Thank you.  I'll restate the sentence.  "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a	2 3 4	but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products.  Q. And please give me examples of
2 3 4 5 6 7	Q. Oh, I'm sorry. Thank you.  I'll restate the sentence.  "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale	2 3 4 5 6 7	but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and
2 3 4 5 6 7 8	Q. Oh, I'm sorry. Thank you.  I'll restate the sentence.  "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the	2 3 4 5 6 7 8	but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products.  Q. And please give me examples of what you're calling "downstream services and products."
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. Oh, I'm sorry. Thank you.  I'll restate the sentence.  "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for such use."  Do you see that statement?  A. I do, yes. Q. And the competitive advantage you've identified there, whom do you understand to be the competition?  A. Other potential providers of these so-called value-added publications. Q. And what when you say "value-added publications," please give me more examples of what types of things fall into that category, as you use the term.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products.  Q. And please give me examples of what you're calling "downstream services and products."  A. Again, seminars and training, for instance.  Q. Anything else?  A. That's what comes to mind right now.  Q. Turning to paragraph 110, you state, "I understand that the ability to control these downstream products and services is particularly important to the Plaintiffs here because the barriers to entry in the marketplace for downstream products, such as training and user manuals, are relatively low. For example, according to Mr. Comstock of ASHRAE, it is relatively easy for unauthorized instructors to read a

1	guidance on that standard."	1	Q. You're just parroting what
2	Do you see that?	2	Mr. Comstock said, or did you have an
3	A. I do, yes.	3	independent view?
4	Q. What do you understand what	4	A. No, I heard what he said, and
5	did you mean by "unauthorized instructors"?	5	it made sense to me.
6	A. People that have provided or	6	Q. So you put it in your report?
7	trying to provide services to the marketplace	7	A. Yes.
8	that have not been explicitly approved by,	8	Q. What independent thought or
9	for instance, ASHRAE.	9	investigation did you do before you put that
10	Q. What do you understand the	10	in your report?
11	the nature of strike that.	11	MR. FEE: Objection. Vague.
12	You called them "instructors,"	12	Compound.
13	correct?	13	THE WITNESS: I can't point to
14	A. Yes.	14	_
			anything in particular. BY MR. BRIDGES:
15	Q. Does that mean that you	15	
16	envision that these persons are providing	16	Q. Would a law-school course on
17	some kind of instruction?	17	the law and regulation of building
18	A. Yes.	18	construction provide instruction to law
19	Q. What instruction do you	19	students?
20	understand what instruction did you have	20	MR. FEE: Objection. Vague.
21	in mind when you referred to "unauthorized	21	Calls for speculation.
22	instructors"?	22	THE WITNESS: I guess it could.
23	A. Generally, how best to	23	I have a hard time imagining there
24	implement standards or provisions of certain	24	would be much demand for such a
25	standards.	25	course, but I'm in general agreement
	Page 226		Page 228
1	Q. What else?	1	that that, in concept, could occur.
1 2		1 2	that that, in concept, could occur. BY MR. BRIDGES:
	A. Nothing else comes to mind		BY MR. BRIDGES:
2	A. Nothing else comes to mind right now.	2	BY MR. BRIDGES: Q. Would it be possible to
2 3	<ul><li>A. Nothing else comes to mind right now.</li><li>Q. Would your understanding of</li></ul>	2 3	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such
2 3 4	A. Nothing else comes to mind right now. Q. Would your understanding of "unauthorized instructors" include persons	2 3 4	BY MR. BRIDGES:  Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some
2 3 4 5 6	A. Nothing else comes to mind right now. Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what	2 3 4 5	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been
2 3 4 5 6 7	A. Nothing else comes to mind right now.  Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what the standards require?	2 3 4 5 6 7	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been incorporated into law as law and as
2 3 4 5 6 7 8	A. Nothing else comes to mind right now. Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what the standards require? MR. FEE: Objection to form.	2 3 4 5 6 7 8	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been incorporated into law as law and as regulation?
2 3 4 5 6 7 8 9	A. Nothing else comes to mind right now.  Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what the standards require?  MR. FEE: Objection to form.  Vague.	2 3 4 5 6 7 8 9	BY MR. BRIDGES:  Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been incorporated into law as law and as regulation?  MR. FEE: Objection. Calls for
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Nothing else comes to mind right now.  Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what the standards require?  MR. FEE: Objection to form.  Vague.  THE WITNESS: I didn't have that in mind. I guess that's a possibility.  BY MR. BRIDGES:  Q. And would it be relatively easy for unauthorized persons like that to read a standard and think that they have become qualified to provide training or guidance on that standard?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	BY MR. BRIDGES:  Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been incorporated into law as law and as regulation?  MR. FEE: Objection. Calls for speculation. Vague. Form.  THE WITNESS: I guess that's possible, but I would expect a law professor would be talking about legal implications, not the technical aspects of a standard. I think they might talk about the implication in a business that's different from a vendor business.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Nothing else comes to mind right now.  Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what the standards require?  MR. FEE: Objection to form.  Vague.  THE WITNESS: I didn't have that in mind. I guess that's a possibility.  BY MR. BRIDGES:  Q. And would it be relatively easy for unauthorized persons like that to read a standard and think that they have become qualified to provide training or guidance on that standard?  MR. FEE: Objection. Vague.  BY MR. BRIDGES:  Q. Is that your understanding?  A. According to Mr. Comstock, I believe that's correct.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	BY MR. BRIDGES:  Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been incorporated into law as law and as regulation?  MR. FEE: Objection. Calls for speculation. Vague. Form.  THE WITNESS: I guess that's possible, but I would expect a law professor would be talking about legal implications, not the technical aspects of a standard. I think they might talk about the implication in a business that's different from a vendor business.  BY MR. BRIDGES:  Q. Well, what about the legal implications of a code for contractors?  MR. FEE: Objection.  BY MR. BRIDGES:

1	Q. You can't point to any	1	Q. What probability do you assign
2	particular investigation or fact that you're	2	to the likelihood that you refer to in the
3	relying on in paragraphs 117 to 119?	3	first sentence of paragraph 121?
4	MR. FEE: Objection to form.	4	MR. FEE: Objection to form.
5	Asked and answered.	5	Lack of foundation.
6	THE WITNESS: Everything that's	6	THE WITNESS: I don't have a
7	embedded in Exhibit 1 is, in part, a	7	particular quantitative likelihood
8	basis for the observations that I draw	8	measure.
9	in those paragraphs.	9	BY MR. BRIDGES:
10	BY MR. BRIDGES:	10	Q. Can you give an estimate?
11	Q. What probability do you assign	11	MR. FEE: Same objection.
12	to your prediction in the first sentence of	12	THE WITNESS: No.
13	paragraph 119?	13	BY MR. BRIDGES:
14	MR. FEE: Objection. Form.	14	Q. Turning to paragraph 126, you
15	Lack of foundation.	15	refer to an "option available to Plaintiffs
16	THE WITNESS: I'm not sure that	16	to respond to the loss of protection for
17	I've used the term "prediction," but I	17	incorporated standards."
18	wouldn't assign a particular	18	Is it your belief that, if the
19	quantitative probability.	19	plaintiffs lose this case, they will shut
20	BY MR. BRIDGES:	20	down their creation of new standards?
21	Q. Can you give an estimate?	21	A. I think that's a possibility.
22	A. No.	22	Q. What probability do you assign
23	Q. Why not?	23	to that?
24	A. I don't have a basis for that	24	MR. FEE: Objection to form.
25	estimate. I have reasoning underlying it, Page 234	25	Lack of foundation.  Page 236
1	but I don't have a basis to provide a	1	THE WITNESS: I don't have a
2	quantitative estimate of my level of	2	particular quantitative measure of
3	confidence.	3	probability for that.
4	Q. You refer to "uncertainties" in	4	BY MR. BRIDGES:
5	the second sentence of paragraph 119,	5	Q. What's your best estimate?
6	correct?	6	MR. FEE: Same objection.
7	A. I do, yes.	7	THE WITNESS: I don't have a
8	Q. What probability do you assign	8	quantitative best estimate.
	to the likelihood that you refer to with the	9	BY MR. BRIDGES:
10	word "likely" in the first sentence of	10	Q. Is it more or less than
11 12	paragraph 120?	11 12	50 percent?
13	MR. FEE: Objection. Form.  Lack of foundation.	13	MR. FEE: Same objections. THE WITNESS: I still don't
14	THE WITNESS: I don't have a	14	have a quantitative estimate.
15	particular quantitative measure of	15	BY MR. BRIDGES:
16	that. And are you referring to my use	16	Q. Is it more or less than
17	of the term "likely"?	17	80 percent?
18	BY MR. BRIDGES:	18	MR. FEE: Same objections.
19	Q. Yes.	19	THE WITNESS: Still don't have
20	A. Yes, I don't have a particular	20	a quantitative estimate.
21	quantification of that.	21	BY MR. BRIDGES:
$\begin{vmatrix} 21\\22\end{vmatrix}$	Q. What particular facts are you	22	Q. Is it more or less than
23	relying on for that paragraph?	23	5 percent?
24	A. Everything that you see	24	MR. FEE: Same objections.
25	reported in Exhibit 1.	25	THE WITNESS: Still don't have
	Page 235		Page 237

		_	
1	a quantitative estimate. I think that	1	to see what alternatives there are among
2	there with reasonable probability I	2	standards development organizations currently
3	can draw this conclusion, but I can't	3	in existence to carry forward the work of
4	be any more precise than that.	4	plaintiffs if plaintiffs chose to stop
5	BY MR. BRIDGES:	5	standards development as a result of the loss
6	Q. What do you mean, "with	6	of this case?
7	reasonable probability"?	7	MR. FEE: Same objection.
8	A. Based on the information that I	8	THE WITNESS: Not that I
9	have and the training and logic I bring to	9	recall, but I am of the understanding
10	it, I think there is a I say with some	10	that each SDO has a different charter,
11	confidence what I have said here.	11	so I don't know that any SDO has an
12	Q. And when you say "likely," do	12	identical charter to that of any of
13	you mean more than 50 percent likely?	13	the three plaintiffs.
14	A. Not necessarily, no.	14	BY MR. BRIDGES:
15	Q. Are you aware of other	15	Q. Are you aware that these
16	standards development organizations active in	16	plaintiffs compete with other SDOs in the
17	the same field as the plaintiffs?	17	creation of standards in particular fields?
18	MR. FEE: Objection. Vague.	18	MR. FEE: Objection to form.
19	Form.	19	Vague.
20	THE WITNESS: Perhaps you could	20	THE WITNESS: What do you mean
21	tell me what you have in mind with	21	by the term "compete with" in this
22	your use of the term "fields."	22	context?
23	BY MR. BRIDGES:	23	BY MR. BRIDGES:
24	Q. Well, are you familiar with	24	Q. That they consider others
25	AHRI?	25	rivals for the same market, in part.
	Page 238		Page 240
		1	
1	A. I have perhaps seen reference	1	MR. FEE: Objection to form.
1 2	A. I have perhaps seen reference to that.	1 2	MR. FEE: Objection to form. Vague.
		1	•
2	to that.	2	Vague.
2 3	to that.  Q. Do you know with which of these	2 3	Vague. THE WITNESS: I don't recall
2 3 4	to that.  Q. Do you know with which of these plaintiffs it do you do you know what	2 3 4	Vague. THE WITNESS: I don't recall seeing reference to that, but my memory is not perfect. BY MR. BRIDGES:
2 3 4 5 6 7	to that.  Q. Do you know with which of these plaintiffs it do you do you know what field it's in?  A. I don't recall, sitting here right now, no.	2 3 4 5	Vague. THE WITNESS: I don't recall seeing reference to that, but my memory is not perfect. BY MR. BRIDGES: Q. The in paragraph 131, you
2 3 4 5 6	to that.  Q. Do you know with which of these plaintiffs it do you do you know what field it's in?  A. I don't recall, sitting here	2 3 4 5 6	Vague. THE WITNESS: I don't recall seeing reference to that, but my memory is not perfect. BY MR. BRIDGES:
2 3 4 5 6 7 8 9	to that.  Q. Do you know with which of these plaintiffs it do you do you know what field it's in?  A. I don't recall, sitting here right now, no.	2 3 4 5 6 7	Vague. THE WITNESS: I don't recall seeing reference to that, but my memory is not perfect. BY MR. BRIDGES: Q. The in paragraph 131, you say, "Simply put, freely-distributed, unrestricted versions of Plaintiffs'
2 3 4 5 6 7 8	to that.  Q. Do you know with which of these plaintiffs it do you do you know what field it's in?  A. I don't recall, sitting here right now, no.  Q. Are you familiar with NFRC?	2 3 4 5 6 7 8	Vague. THE WITNESS: I don't recall seeing reference to that, but my memory is not perfect. BY MR. BRIDGES: Q. The in paragraph 131, you say, "Simply put, freely-distributed,
2 3 4 5 6 7 8 9 10	to that.  Q. Do you know with which of these plaintiffs it do you do you know what field it's in?  A. I don't recall, sitting here right now, no.  Q. Are you familiar with NFRC?  A. I may have seen reference to that acronym.  Q. Do you know what field it's in?	2 3 4 5 6 7 8 9	Vague. THE WITNESS: I don't recall seeing reference to that, but my memory is not perfect. BY MR. BRIDGES: Q. The in paragraph 131, you say, "Simply put, freely-distributed, unrestricted versions of Plaintiffs' standards that are or could be incorporated by reference can be expected to adversely
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1	new in terms of a theory.	1	rest of that paragraph?
2	Q. Do you have the same answer	2	MR. FEE: Objection. Vague.
3	with respect to strike that.	3	THE WITNESS: I looked at the
4	What facts do you have	4	financial information, and I talked to
5	strike that.	5	people at the various plaintiffs.
6	What facts are you aware of to	6	BY MR. BRIDGES:
7	disprove to disprove Mr. Malamud's theory	7	Q. You talked to people at the
8	that you refer to in paragraph 144?	8	various plaintiffs?
9	A. Again, it's the same theory	9	A. Yes.
10	that's being referenced, but there's	10	Q. What did you do to verify the
11	additional facts; and that is, the downstream	11	truth and accuracy of the things that various
12	products and services aren't particularly	12	plaintiffs said to you in their
13	substantial to these plaintiffs and don't	13	conversations?
14	appear to be enhanced by a lack of copyright	14	MR. FEE: Objection to form.
15	protection; that is, the plaintiffs have had	15	THE WITNESS: I looked at the
16	copyright protection and have said had	16	financial information, and I kept my
17	some downstream products and services. It's	17	eyes and mind open to the information
18	hard to imagine that elimination of that	18	in the rest of the record to determine
19	copyright protection will enhance that	19	if it conflicted with what I learned
20	business.	20	from the company personnel.
21	Q. It's hard to imagine, but are	21	BY MR. BRIDGES:
22	you aware of any studies to disprove	22	Q. Whose financial information did
23	Mr. Malamud's theory?	23	you look at?
24	A. No.	24	A. All three of the plaintiffs.
25	MR. FEE: Objection. Vague.	25	It's summarized in tabs 3, 4, and 5.
	Page 246		Page 248
1	THE WITNESS: I'm sorry.	1	Q. Did you look at the financial
1 2	THE WITNESS: I'm sorry. BY MR. BRIDGES:	1 2	Q. Did you look at the financial information of any entities other than the
			· · · · · · · · · · · · · · · · · · ·
2 3 4	BY MR. BRIDGES: Q. Have you conducted any studies to disprove Mr. Malamud's theory?	2	information of any entities other than the plaintiffs?  A. I looked at Public Resource
2 3	BY MR. BRIDGES: Q. Have you conducted any studies to disprove Mr. Malamud's theory? MR. FEE: Same objection.	2 3	information of any entities other than the plaintiffs?  A. I looked at Public Resource financial information.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	BY MR. BRIDGES: Q. Have you conducted any studies to disprove Mr. Malamud's theory? MR. FEE: Same objection. THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have you relied upon to criticize Mr. Malamud's theory in paragraph 144? A. Nothing specific comes to mind. Q. In paragraph 145, you state that, "Mr. Malamud's suggestion that the sale of downstream products and services represents an untapped and undeveloped opportunity for the Plaintiffs is incorrect." Do you see that? A. Yes, I do. Q. And then you go on and make some statements for the rest of the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	information of any entities other than the plaintiffs?  A. I looked at Public Resource financial information.  Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in paragraph 145?  A. Not in undertaking my assignment here.  Q. Did you consider the business models of any entities other than the plaintiffs and the defendant in making the statements criticizing Mr. Malamud's theory in paragraph 145?  A. Nothing in particular comes to mind. I understand that there are front-loaded business models, but at DIN, for instance, but I don't recall undertaking
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1	other US-based standards development	1	unable to quantify that with great
2	organizations that make their standards	2	accuracy.
3	freely available to the public?	3	BY MR. BRIDGES:
4	A. Not that I recall.	4	Q. Have you considered any
5	Q. Would that have been relevant	5	comparable circumstances apart from this case
6	to your analysis?	6	that would provide guidance for your
7	A. It wasn't necessary to do my	7	prediction in the last sentence of
8	analysis, but I would be curious if I had	8	paragraph 146?
9	that information. If I if I had the	9	MR. FEE: Objection to form.
10	ability to examine that information, I would	10	Vague.
11	be curious as to what that shows.	11	THE WITNESS: I kept my mind
12	Q. In paragraph 146, you state,	12	and eyes open to that, but I didn't
13	"The loss of publications here will likely	13	see information of a good comparator.
14	reduce the Plaintiffs' sales of those	14	BY MR. BRIDGES:
15	downstream products and services."	15	Q. Did you research whether there
16	Do you see that?	16	might be good comparators?
17	MR. FEE: That's in 146?	17	A. I
18	THE WITNESS: Is that the last	18	MR. FEE: Same objection.
19	sentence you were reading from?	19	THE WITNESS: I did in the
20	BY MR. BRIDGES:	20	sense of reading through the
21	Q. Yes.	21	literature and information to see if I
22	A. Yeah.	22	could learn of something that would be
23	Q. Paragraph 146.	23	a good comparator, but I didn't learn
24	A. Yes, I do see that.	24	of such comparator.
25	Q. Did you mean the loss of	25	BY MR. BRIDGES:
	Page 250		Page 252
		l .	
1	copyright in the publications here?	1	Q. You looked only at the
1 2	copyright in the publications here?  A. Certainly the loss of	$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	Q. You looked only at the information shown in tab 2 to Exhibit 1?
	A. Certainly the loss of	1	information shown in tab 2 to Exhibit 1?
2	A. Certainly the loss of publications, but I believe it would probably	2	information shown in tab 2 to Exhibit 1? A. Yes, I think that's right.
2 3	A. Certainly the loss of	2 3	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right.  Q. What economic effect are you
2 3 4	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the	2 3 4	information shown in tab 2 to Exhibit 1? A. Yes, I think that's right.
2 3 4 5	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the	2 3 4 5	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right.  Q. What economic effect are you aware of to the Blu-ray Disc Association from
2 3 4 5 6	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.	2 3 4 5 6	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right.  Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its
2 3 4 5 6 7	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.  Q. What probability do you assign	2 3 4 5 6 7 8	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right.  Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?
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1	A. Yes. It's a different entity	1	MR. FEE: Objection. Lack of
2	than the SDOs here; but for its purposes, it	2	foundation. Vague.
3	would appear that it's of the belief that	3	THE WITNESS: I'm not I'm
4	that's the optimal path to follow.	4	not sure that I understand the concept
5	MR. BRIDGES: I think I	5	of a standard being out of print, so
6	think we may pause things now and	6	maybe you could help me with that.
7	reserve the remainder of our time.	7	BY MR. BRIDGES:
8	Just a second. Oh, yes.	8	Q. Do you know the term "out of
9	BY MR. BRIDGES:	9	print"?
10	Q. Do you believe that the	10	A. Generally, I do, yes.
11	plaintiffs are harmed when the defendant	11	Q. What do you understand it to
12	posts a standard that has been incorporated	12	mean?
13	by reference let me strike that.	13	A. That it's no longer provided in
14	Do you believe that plaintiffs	14	print form.
15	suffer harm from defendant posting a standard	15	Q. All right. So what harm do you
16	that is not the latest version of the	16	understand plaintiffs would suffer if
17	standard?	17	-
18		18	defendants posted a standard that is out of
	MR. FEE: Objection. Form.		print?
19	Compound.	19	MR. FEE: Objection to form.
20	THE WITNESS: Potentially, it	20	THE WITNESS: Potentially, it
21	could cause confusion in the	21	could be the harm similar to outdated
22	marketplace as to what's the latest	22	standards.
23	standard, and there may be some	23	BY MR. BRIDGES:
24	entities out there that are interested	24	Q. In other words, confusion in
25	in obtaining an earlier standard that	25	the marketplace?
	Page 254		Page 256
1	would be obtaining it free rather than	1	A. Potential confusion in the
2	through the legal routes established	1 2	marketplace and potentially providing yes,
	through the legal routes established by the plaintiffs.		marketplace and potentially providing yes, that that would be one form of it.
2	through the legal routes established	2	marketplace and potentially providing yes,
2 3	through the legal routes established by the plaintiffs.	2 3	marketplace and potentially providing yes, that that would be one form of it.
2 3 4	through the legal routes established by the plaintiffs. BY MR. BRIDGES:	2 3 4	marketplace and potentially providing yes, that that would be one form of it. Q. What other harms do would
2 3 4 5	through the legal routes established by the plaintiffs. BY MR. BRIDGES: Q. Have you done any studies to	2 3 4 5	marketplace and potentially providing yes, that that would be one form of it.  Q. What other harms do would you identify from the defendants posting a
2 3 4 5 6	through the legal routes established by the plaintiffs. BY MR. BRIDGES: Q. Have you done any studies to determine what confusion may be likely in the	2 3 4 5 6	marketplace and potentially providing yes, that that would be one form of it.  Q. What other harms do would you identify from the defendants posting a standard that is out of print?
2 3 4 5 6 7	through the legal routes established by the plaintiffs. BY MR. BRIDGES: Q. Have you done any studies to determine what confusion may be likely in the marketplace in that regard?	2 3 4 5 6 7	marketplace and potentially providing yes, that that would be one form of it.  Q. What other harms do would you identify from the defendants posting a standard that is out of print?  A. Nothing else comes to mind this
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1	not thought about that particular	1 CERTIFICATE
2	topic.	2 I do hereby certify that I am a Notary
3	MR. BRIDGES: Okay. I think	3 Public in good standing, that the aforesaid
4	we'll pause here and reserve the rest	testimony was taken before me, pursuant to 4 notice, at the time and place indicated; that
5	of the time for a later visit with	said deponent was by me duly sworn to tell
6	you, Mr. Jarosz.	5 the truth, the whole truth, and nothing but
7	Kevin, this is in reliance on	the truth; that the testimony of said 6 deponent was correctly recorded in machine
8	an exchange of correspondence between	shorthand by me and thereafter transcribed
9	Matt and you, I believe. If, for some	7 under my supervision with computer-aided transcription; that the deposition is a true
10	reason well, no. I think that's	8 and correct record of the testimony given by
11	all.	the witness; and that I am neither of counsel
12	Anything else?	9 nor kin to any party in said action, nor interested in the outcome thereof.
13	MR. FEE: Well, I don't have	10
14	any questions.	WITNESS my hand and official seal this 11 11th day of September, 2015.
	• •	11 11th day of September, 2015.
15 16	Do you guys have any questions? MR. REHN: Not at this time.	13
1		14 <% signature%>
17	MR. CUNNINGHAM: No.	15 Devoir Leonary, KDR, CRR
18	MR. BRIDGES: Great. Thank	Notary Public
19	you.	16 17
20	THE WITNESS: Thank you.	18
21	THE VIDEOGRAPHER: All right.	19 20
22	Off the record at 4:31. This ends	21
23	media unit number 3 and ends testimony	22
24	for August 27th, 2015.	23 24
25	* * *	25
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1	(Witness excused.)	
2	* * *	
3	(Off the record at 4:31 p.m.)	
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