

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

NATIONAL FIRE PROTECTION
ASSOCIATION, INC.; and

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

Plaintiffs/
Counter-Defendants,

v.

PUBLIC.RESOURCE.ORG, INC.,

Defendant/
Counter-Plaintiff.

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

SUPPLEMENTAL DECLARATION OF STEPHANIE REINICHE

I, Stephanie Reiniche, declare as follows:

1. I am currently employed by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (“ASHRAE”) as its Director of Technology. I have been employed by ASHRAE since 2003. Based on the information known to me as a result of the duties and responsibilities of my position, as well as information I have gathered from relevant ASHRAE personnel and staff, I have personal knowledge of the facts set forth herein and could and would testify competently thereto if called as a witness.

2. The specific ASHRAE standard that I understand to be at issue here, Standard 90.1, pertains to energy efficiency in commercial and high-rise residential buildings. Standard 90.1 is under “continuous maintenance” by ASHRAE, which means that a new version of the standard is released every three years. I understand that in this litigation, three versions of Standard 90.1 are at issue: the 2004, 2007, and 2010 versions. Attached to this declaration are a true and correct copy of Standard 90.1-2007 (attached as **Exhibit 1**) and Standard 90.1-2010 (attached as **Exhibit 2**).

3. To further ensure public access, ASHRAE offers online read-only access to many of its standards—particularly those standards that have been incorporated into codes—on the ASHRAE website, available at <https://www.ashrae.org/technical-resources/standards-and-guidelines/read-only-versions-of-ashrae-standards>. This portion of the ASHRAE website allows viewers to read ASHRAE standards, including the 2004, 2007, and 2010 versions of Standard 90.1. ASHRAE feels it is important to provide this public service so that the public can have access to authentic versions of our standards in a format that allows readers to educate themselves on the standards but that does not harm ASHRAE’s business.



4. Each time new versions of ASHRAE standards are developed, ASHRAE offers those standards for sale. Sales of the standards are an important piece of ASHRAE's yearly revenues. ASHRAE also relies on membership fees as a significant source of its revenues, and a primary driver of memberships is that members gain access to ASHRAE standards at a discount. These sources of revenue permit ASHRAE to keep operating and developing new standards. As stated above, ASHRAE also makes new versions of many of its standards available for read-only access on its website. ASHRAE does not believe it is harmed by operating the reading room or that the reading room significantly compromises ASHRAE's ability to generate revenue. Instead, the reading room allows for ASHRAE to maintain control over its standards and insure use in ways that benefit ASHRAE. For instance, a user that samples the standard on the ASHRAE site may decide they prefer a mobile version of the standard to take to a construction job site; since the free version is read-only, that user would then buy a copy of the standard. For users that are content viewing the standard on the website, it still provides ASHRAE an opportunity to expose that individual to other products offered by ASHRAE, including by promoting trainings, conferences, and certifications offered on the ASHRAE website.

5. Unlike ASHRAE's read-only versions of the standards, ASHRAE believes that versions provided for free (in a downloadable or printable format) by others are harmful to ASHRAE's business. When a third-party, like Public.Resource.Org, purports to offer the exact same standard for free online, ASHRAE believes that provides ASHRAE's target market, which includes builders, contractors, and architects, with free access to products they would otherwise purchase from ASHRAE. These potential customers can now use printed versions of the ASHRAE standards without paying ASHRAE and without interacting with the ASHRAE website.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.



Executed this 4th day of October 2019 at 12:35 pm.

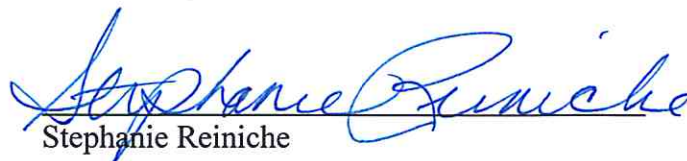

Stephanie Reiniche

EXHIBIT 1

[Filed Under Seal]

EXHIBIT 2

[Filed Under Seal]