

EXHIBIT 44

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR TESTING
AND MATERIALS d/b/a ASTM
INTERNATIONAL; NATIONAL FIRE
PROTECTION ASSOCIATION, INC., ;
and AMERICAN SOCIETY OF HEATING,
REFRIGERATING, AND AIR-CONDITIONING
ENGINEERS, INC.

Plaintiffs, CIVIL ACTION FILE

vs. NO. 1:13-CV-01215-EGS

PUBLIC.RESOURCE.ORG, INC.,
Defendant.

30(b)(6) VIDEOTAPED DEPOSITION OF

STEVEN COMSTOCK

March 5, 2015

10:20 a.m.

1075 Peachtree Street

Suite 3625

Atlanta, Georgia 30309

Lee Ann Barnes, CCR-1852, RPR, CRR

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<p>1 APPEARANCES OF COUNSEL (Continued) 2 3 On behalf of the Defendant Public.Resource.Org: 4 FENWICK & WEST LLP 5 ANDREW P. BRIDGES, ESQ. 6 MATTHEW B. BECKER, ESQ. 7 555 California Street 8 San Francisco, CA 94104 9 415.875.2300 10 415.281.1350 (facsimile) 11 abridges@fenwick.com 12 mbecker@fenwick.com 13 14 15 16 17 18 19 20 Also Present: 21 Carl Malamud (via telephone) 22 Spencer Bush, Videographer 23 24 25</p> <p style="text-align: right;">Page 3</p>	<p>1 INDEX TO EXHIBITS 2 Defendant's 3 Exhibit Description Page 4 Exhibit 1076 Defendant's Amended Notice of 30(b)(6) Deposition of ASHRAE 9 5 6 Exhibit 1077 Technical Proposal 52 7 8 Exhibit 1078 E-mail Chain 67 9 10 Exhibit 1079 Terms of Use for ASHRAE org Website 101 11 Exhibit 1080 E-mail Chain 111 12 Exhibit 1081 Multiple User License 112 13 Exhibit 1082 Copyright License and Distribution Agreement 118 14 15 Exhibit 1083 E-mail Chain 122 16 17 Exhibit 1084 E-mail Chain 123 18 19 Exhibit 1085 E-mail Chain 124 20 21 Exhibit 1086 E-mail Chain 125 22 23 Exhibit 1087 E-mail Chain 127 24 25 Exhibit 1088 Multiple User License 129 Exhibit 1089 E-mail Chain 131 Exhibit 1090 License and Distribution Agreement 132 Exhibit 1091 E-mail Chain 132 Exhibit 1092 E-mail Chain 133 Exhibit 1093 E-mail Chain 136 Exhibit 1094 E-mail Chain 145 Exhibit 1095 E-mail Chain 149</p> <p style="text-align: right;">Page 5</p>

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1 Deposition of STEVEN COMSTOCK
March 5, 2015

2

3 (Reporter disclosure made pursuant to
4 Article 8.B of the Rules and Regulations of the
5 Board of Court Reporting of the Judicial Council
6 of Georgia.)

7

8 VIDEOGRAPHER: This is the beginning of the
9 videotaped -- the 30(b)(6) videotaped deposition
10 of Steven Comstock. Today's date is March 5,
11 2015, and the time on the video record is
12 10:20 a m.

13 Would counsel please introduce themselves
14 for the record.

15 MR. BRIDGES: This is Andrew Bridges and
16 with me is Matthew Becker of Fenwick & West of
17 San Francisco, representing the defendant
18 Public.Resource.Org. And also participating or
19 listening in by telephone is Carl Malamud.

20 MR. LEWIS: Antonio Lewis, King & Spalding,
21 on behalf of plaintiff American Soci- -- Society
22 of Heating, Refrigerating -- Refrigeration, and
23 Air-Conditioning Engineers, Incorporated.

24 VIDEOGRAPHER: And counsel on the phone?
25 MS. RUBEL: Jordana Rubel, Morgan -- from

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1 Morgan, Lewis & Bockius, here representing
2 American Society for Testing and Materials.

3 MR. REHN: And Thane Rehn from the Munger
4 Tolles & Olson law firm, representing the
5 National Fire Protection Association.

6 MR. BRIDGES: I think that's everybody.

7 VIDEOGRAPHER: Will the court reporter
8 please swear in the witness.

9 STEVEN COMSTOCK, having been first duly sworn,
10 was examined and testified as follows:

11 EXAMINATION

12 BY-MR. BRIDGES:

13 Q. Good morning, Mr. Comstock.

14 A. Good morning.

15 Q. How long have you worked for ASHRAE?

16 A. A little bit over 40 years.

17 Q. What's your current title?

18 A. Director of publications and education.

19 Q. How long have you had that title?

20 A. The -- I was director of publications and
21 communications in 1985, and then the education
22 component was added -- I'm going to guess now -- that
23 was probably about 2000.

24 Q. Have you ever had your deposition taken
25 before?

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<p>1 A. Yeah, about 12 years ago I had one taken. 2 Q. Is that the only deposition? 3 A. That's the only one. 4 Q. What kind of case did that involve? 5 A. That was a personnel matter for our 6 organization. 7 Q. Did you testify at trial? 8 A. No, I did not. 9 Q. Did you have a chance to meet with 10 Mr. Lewis or other counsel before this deposition to 11 prepare for the deposition? 12 A. Yes, I did. 13 Q. I'll ask you to look at Exhibit 1076 -- 14 (Defendant's Exhibit 1076 was marked for 15 identification.) 16 Q. (By Mr. Bridges) -- which is Defendant's 17 Notice of 30(b)(6) deposition of ASHRAE. Please take 18 a look at it, Mr. Comstock. 19 Do you understand that you are here today 20 testifying as a representative of ASHRAE on Topics 4, 21 5, 7, 8, 9, 10, 12, 13, 14, 18, 23, 24, 30, and 31? 22 A. Yes, that's my understanding. 23 Q. When did ASHRAE start providing a reading 24 room for public access to ASHRAE's standards? 25 A. We made selected standards available for</p> <p style="text-align: right;">Page 10</p>	<p>1 public access to some of its standards? 2 A. We were actually hoping to increase our 3 sales of those standards. It would be to the -- to 4 allow somebody to view those standards, but not be 5 able to download those standards or print those 6 standards. So that would drive demand for those -- 7 for those standards. 8 Q. What was ASHRAE's experience in that 9 regard? 10 A. It was -- our experience was that it was 11 relatively flat. It didn't have -- seem to have much 12 of a positive impact, nor in -- in that case did it 13 seem to have a negative impact. 14 Q. Does ASHRAE have information about how many 15 persons have accessed the standards in its reading 16 room? 17 A. We did. We changed the -- the -- the 18 software platform from which they were made available 19 for viewing. We originally used -- we originally 20 used a RealRead vendor-supplied system and then we 21 went -- they went out of business, I believe, and 22 then we switched to iWrapper. 23 But I -- I know for certain when we were 24 with RealRead, we would track the views. There was 25 no registration so we wouldn't know who those people</p> <p style="text-align: right;">Page 12</p>
<p>1 read-only access, and I believe that was about 15 2 years ago. I don't have the exact date. It was in 3 that -- that range of time. 4 Q. How did ASHRAE select what standards to 5 make available? 6 A. These are our -- our most popular 7 standards, the ones for which there was the greatest 8 demand. 9 Q. How many standards -- strike that. 10 How many current standards does ASHRAE 11 publish? 12 A. I don't have the exact number. My 13 recollection would be in the neighborhood of -- of 14 75. 15 Q. How many of those standards are on ASHRAE's 16 reading room available to the public now? 17 A. At the current time, I believe there are 10 18 of those standards available. 19 Q. Does ASHRAE also make available through its 20 reading room earlier versions of those 10 standards? 21 A. We provide -- we provide the current 22 versions of those standards. 23 Q. But not the earlier versions? 24 A. I believe that's the case. 25 Q. Do you know why ASHRAE began providing</p> <p style="text-align: right;">Page 11</p>	<p>1 were, but we did track views. 2 I think we do so with iWrapper, as well, 3 now, but I know for certain it was done with 4 RealRead. 5 Q. Do you recall any statistics regarding the 6 number of accesses of various standards? 7 A. I -- the -- the -- the most prominent of 8 those standards was 90.1, and I think if my 9 recollection is correct, I believe maybe 40-, 45,000 10 views of the 2010 version of that -- that -- that 11 standard over the course of the time it was made 12 available. 13 Q. And was it ASHRAE's experience that the 14 effect of the public access to the 90.1 standard was 15 somewhere between nothing and minimal? 16 A. That's -- 17 MR. LEWIS: Object to the form. 18 Q. (By Mr. Bridges) You can answer. 19 A. I didn't see much of an impact one way or 20 the other. 21 Q. Does ASHRAE still sell earlier versions of 22 its current standards? 23 A. Yes. 24 Q. How much -- strike that. 25 Roughly how much revenue per year does</p> <p style="text-align: right;">Page 13</p>

1 ASHRAE gain from either sale or licensing of its
 2 standards for persons to either own or have access
 3 to?
 4 A. It will vary a little depending upon where
 5 documents are in -- in their various revision cycles.
 6 Looking at a little more granular --
 7 granular level to build that, it would be 300- to
 8 \$500,000 in print sales, another 300- to 400,000 in
 9 PDF sales, and then it -- it may be as much as --
 10 from standards component, maybe \$800,000 in -- in --
 11 in -- in royalties network-type sales and another
 12 20,000 in CD sales.
 13 So if you add those up, that would be about
 14 the -- the total, with some variation depending upon
 15 the -- the year -- where we are in the revision
 16 cycle.
 17 Q. That sounds to me like somewhere between
 18 1.5 and \$1.7 million in your total?
 19 A. That sounds -- that sounds accurate.
 20 Q. You said it depends on where ASHRAE is in
 21 the revision cycle.
 22 By that, you're referring to the fact that
 23 ASHRAE, like other standards development
 24 organizations, updates standards every few years; is
 25 that correct?

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1 A. That's correct.
 2 Q. How does the revision cycle affect ASHRAE's
 3 sales?
 4 A. There is an increase within the -- the
 5 first year of a revision cycle and then there'll be
 6 a -- a -- a -- a dropoff. However, there still
 7 continues to be demand for the -- for the -- the --
 8 the previous editions, which is why we sell them.
 9 So I don't know the exact nature of that,
 10 but there does -- there is a -- a jump that we would
 11 see in -- in those revision cycles after a new
 12 standard is released.
 13 Q. Do you have an estimate as to what
 14 percentage of ASHRAE's revenues from publications
 15 relates to older versions of current standards?
 16 A. I really do not know. I know they're a
 17 component of that. Breaking that -- the older
 18 versions down, I'm not -- I'm not sure what that --
 19 that percentage would be.
 20 Q. If you had to make an estimate, what would
 21 your estimate be?
 22 A. Older versions -- and this is -- could --
 23 could you repeat -- in terms of the total sales of
 24 standards?
 25 Q. Right. The total sales of standards, let's

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1 say, are in the 1.5 to \$1.7 million range.
 2 What amount of that or what percentage of
 3 that would be older versions?
 4 MR. LEWIS: You have to let him finish the
 5 question. Object to form.
 6 THE WITNESS: Then -- then that would be --
 7 if I had to make a guess, it would be somewhere
 8 between 5, 8 percent.
 9 Q. (By Mr. Bridges) And what do you base that
 10 estimate on?
 11 A. I would base that on my having to make a --
 12 approve print runs. Typically, what happens is when
 13 we run out of inventory and we have to replace,
 14 replenish our inventory, those requests go through my
 15 office. So that's -- that's something I would
 16 routinely see.
 17 Q. How does ASHRAE decide -- strike that.
 18 Are you familiar with the concept of either
 19 adoption or incorporation of standards into law or
 20 regulation?
 21 A. I'm not -- I'm not extremely knowledgeable
 22 about that. I have a passing understanding of that
 23 that I would have in my role as the publications
 24 director, but that is a process I don't personally
 25 engage in for ASHRAE.

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1 Q. But you understand that some standards of
 2 standards development organizations get adopted or
 3 incorporated into law and others do not get adopted
 4 or incorporated --
 5 A. I do.
 6 Q. -- into law; right?
 7 Are you familiar with which ASHRAE
 8 standards are incorporated into law?
 9 A. I am not. I know some are.
 10 Q. Do you know roughly what percentage of
 11 ASHRAE's standards are incorporated or adopted into
 12 law or regulation?
 13 MR. LEWIS: Objection.
 14 THE WITNESS: That's -- that -- I do not,
 15 and that's an area that's outside of -- of what
 16 I do.
 17 I look at the -- the demand for the -- for
 18 the standards and the -- the inventory and the
 19 print runs and make sure that we have adequate
 20 inventory to deliver our demand, but I do not
 21 track what states or how many states or
 22 municipalities may -- may -- may adopt or
 23 include the standard.
 24 Q. (By Mr. Bridges) Are you aware of any
 25 facts that would allow you to determine whether

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<p>1 there's a relationship between sales or licenses of a 2 standard and incorporation of that standard into 3 law -- 4 MR. LEWIS: Objection. 5 Q. (By Mr. Bridges) -- or regulation? 6 A. No. We don't -- that's -- that's not a 7 metric that we use at all. I mean, I imagine, you 8 know, perhaps you -- you look at where sales are 9 from, but we don't do that. That's not part of our 10 business. 11 And I would think that the -- there's 12 people who do work in our industry do work across 13 states, across municipalities, but that's not a 14 metric that we -- we keep as part of our business 15 operation. 16 Q. Apart from keeping a metric, do you have 17 any, let's say, anecdotal experience observing that 18 incorporation of a particular ASHRAE standard leads 19 to a jump in sales of that standard? 20 MR. LEWIS: Objection. 21 THE WITNESS: Really, no. I have -- I 22 mean, there'll be times when somebody will say 23 to me, "Steve, how do I find an older version of 24 a standard in our bookstore," because we're -- 25 we -- we have to put on education, training</p> <p style="text-align: right;">Page 18</p>	<p>1 standard before the revision has been on the reading 2 room -- strike that. 3 Is "reading room" a term that you use at 4 ASHRAE? 5 A. We do not. 6 Q. What do you use -- what term do you use for 7 the facility by which the public can view ASHRAE 8 standards for free? 9 A. I believe we call it free viewing. 10 Q. Free viewing? 11 A. Free viewing. 12 Q. When ASHRAE revises a standard and the 13 standard before that revision has been available for 14 free viewing, does ASHRAE replace the older version 15 of the standard with the newer version of the 16 standard for free viewing as soon as ASHRAE issues 17 the standard? 18 A. Yes, we do. 19 Q. And does ASHRAE then take the older version 20 of the standard out of the free viewing facility when 21 that happens? 22 A. Yes, we do. 23 Q. Is there a reason why ASHRAE removes the 24 older standard from the free viewing? 25 A. That's been our process going back to when</p> <p style="text-align: right;">Page 20</p>
<p>1 related to that standard. 2 So I have anecdotal questions that are 3 asked or comments that are made to me along 4 those lines, but nothing that's -- that -- that 5 would, you know, trigger that back to specific 6 sales totals. 7 Q. (By Mr. Bridges) Is there anything that 8 can tie it to a general trend of sales, in your view? 9 MR. LEWIS: Objection. 10 THE WITNESS: I don't believe so. I mean, 11 I -- we sell -- when a new standard -- a -- a 12 new version of a standard is -- is published, 13 there's interest in the market to buy that 14 standard, and if stan- -- if older versions of 15 standards are still relevant, we sell those 16 standards and continue to sell those. 17 Q. (By Mr. Bridges) In what circumstances 18 would an older version of an ASHRAE standard be 19 relevant in the marketplace? 20 A. I assume that would be because it's -- it's 21 referenced in -- in legislation or regulation or -- 22 or codes. I think it would probably depend upon what 23 the owners of the -- the -- the -- the owner of a 24 building may have in their specifications. 25 Q. When ASHRAE revises a standard and the</p> <p style="text-align: right;">Page 19</p>	<p>1 we first started the free viewing, which is the -- 15 2 years ago or so. 3 And the -- the -- the reason for that is -- 4 is we always wish to have the most current 5 application of the technology used. So the -- the -- 6 the notion is that as a standard is revised, it's 7 a -- it's a better application of the technology 8 that's current at the time. 9 So we -- it -- it -- it's always been 10 our -- our preference to -- to have -- to -- to move 11 the market towards the more current version of the 12 standard because of the application of technology. 13 Q. Now, I think you mentioned a few minutes 14 ago -- and please correct me if I'm wrong because I 15 don't want to misquote you -- that there are some 16 times when people want older standards but they 17 aren't in stock and so there has to be a new print 18 order for those; is that correct? 19 MR. LEWIS: Objection. 20 THE WITNESS: Actually, our objective is to 21 never have them out of -- out of stock. It's -- 22 usually, I will be asked a question, "Steve, do 23 we have these in stock," and I will say, "Yes." 24 And we go through a process where we have 25 a -- a trigger -- this is what we do for all of</p> <p style="text-align: right;">Page 21</p>

1 our publications. There's a trigger point when
2 you get to a certain level of inventory, that's
3 when somebody in my group will say, "We're
4 running low. Do we wish to reprint this item?"
5 And then they usually will recommend a print run
6 and I approve that or -- or modify that.
7 Q. (By Mr. Bridges) Do you print the previous
8 versions of standards in smaller print runs than the
9 current versions of standards?
10 A. Most likely.
11 Q. How many do you generally print in a print
12 run, let's say, for a seven-year-old standard?
13 A. Well, it -- that would be somewhat
14 dependent upon the standard. If it's -- if it's
15 90.1, for example, we do anywhere from maybe 500 to
16 750 copies.
17 But -- and -- and part of the -- the
18 printing technology has changed where print --
19 smaller print runs are now more feasible with newer
20 publishing technology.
21 Plus when items are ordered for print from
22 our on-line bookstore, in fact, right now it's print
23 on demand. So in that case, there's always print
24 copies available because of the technology we employ.
25 This is more for inventory that we have for

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1 off-line orders, orders that come in outside of the
2 bookstore.
3 Q. You referred just now to print on demand.
4 What does that mean in this context?
5 A. It -- it means when an order comes in
6 through our on-line bookstore, that order then is
7 transmitted to a -- to a copier and that document is
8 reproduced on demand as that order comes in,
9 packaged, and put in the mail, entered into the mail
10 stream for delivery.
11 Q. Does ASHRAE do that printing?
12 A. No. We use a -- we use a vendor, a
13 supplier, for that.
14 Q. Does ASHRAE provide a different type of
15 print on demand option where the customer would be
16 able to print it himself or herself on his or her own
17 equipment on demand?
18 A. When a customer purchases a PDF copy from
19 us, the customer has the -- has the ability and
20 the -- the license to make -- to make a copy for
21 themselves.
22 Q. I believe you mentioned that there's no
23 registration requirement for the free viewing;
24 correct?
25 MR. LEWIS: Objection.

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1 THE WITNESS: That's -- to my
2 understanding, that's correct.
3 Q. (By Mr. Bridges) Are you familiar with the
4 analogous free viewing facilities of ASTM and NFPA?
5 A. I have never gone to their sites to
6 experience those, but I was aware they do offer free
7 viewing.
8 (Thereupon, there was an interruption in
9 the proceedings.)
10 Q. (By Mr. Bridges) Whom do you consider your
11 counterparts to be at ASTM and NFPA?
12 A. At -- at ASTM, I would consider my
13 counterpart John -- John Pace.
14 At NFPA, I am not sure who my counterpart
15 is.
16 Q. Are there persons at NFPA with whom you
17 discuss publication issues from time to time?
18 MR. LEWIS: Objection.
19 THE WITNESS: With -- with -- with NFP- --
20 yes, I -- I have discussed publication issues
21 with NFPA, I think most recently three, four
22 years ago.
23 Q. (By Mr. Bridges) Do you recall whom you
24 had those discussions with?
25 A. Well, there were two people. One I had a

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1 telephone conversation with and the other was a
2 e-mail exchange, one a lady. I think Michael was
3 maybe the fellow. I -- I don't recall. The woman
4 was maybe Julie. I'm stretching now, but...
5 Q. Do you recall ever learning that ASTM and
6 NFPA have registration requirements for their free
7 viewing facilities?
8 A. No, I think I have heard that over the --
9 over the years of my knowledge of what they've done.
10 I wouldn't -- and I'm -- I wouldn't swear to the fact
11 that they've -- that they would have those processes,
12 but I -- I think that John Pace had mentioned to me
13 once they do that.
14 Q. Have you ever discussed with them the
15 relative -- strike that.
16 Did you ever discuss with them any
17 considerations as to why an organization would or
18 would not impose a registration requirement?
19 A. No, I never have.
20 Q. Coming back to 90.1, is that the most
21 popular standard that ASHRAE provides?
22 A. Uh-huh (affirmative). It is.
23 Q. How would you briefly describe the scope
24 and purpose of 90.1?
25 A. 90.1 provides guidance for the design and

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1 operation of buildings that are energy efficient.
 2 Q. Is it true that some people credit 90.1
 3 with significant energy savings at the national level
 4 because of its implementation in building design and
 5 operation?
 6 MR. LEWIS: Objection.
 7 THE WITNESS: What I hear mostly is -- what
 8 I hear is it's -- there's a -- there's savings
 9 that can be achieved over the previous editions
 10 of the standard.
 11 So when a new edition of that standard
 12 comes out, it would be -- I -- I hear that it
 13 will be a 15 percent energy savings over a
 14 building constructed from the previous version
 15 or 30 percent savings.
 16 Q. (By Mr. Bridges) Do you know how many
 17 copies of 90.1 ASHRAE has sold or distributed or
 18 provided access to? And my question is specific to
 19 the 2010 edition.
 20 A. For ASHRAE providing access -- and this
 21 would be, say -- you said 90.1 2010; is that right?
 22 Q. Right. And actually, by this I don't mean
 23 through the free facility, I mean --
 24 A. So --
 25 Q. -- on a paid or --

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1 A. Yeah.
 2 Q. -- or --
 3 A. Yeah.
 4 Q. -- on a pay basis.
 5 A. Yeah. 90- -- my recollection is 90.1 2010
 6 would be in the neighborhood of 7,000 to 9,000 copies
 7 that -- that we would have provided access to. There
 8 may be a few more -- a few other more outlying copies
 9 that would be part of a CD collection that would
 10 include -- that would have included 90.1, so maybe
 11 that's another 500 or so.
 12 Q. And did these numbers include numbers of
 13 copies of 90.1 that distributors may have sold?
 14 A. It -- it -- it would not include the --
 15 what we call the value-added distributors, the --
 16 which is -- reaches a big percentage of the market
 17 for us.
 18 Those would be the groups that would take
 19 our standards and make them available to customers
 20 along with the standards of other organizations, or
 21 they could also sell -- just resell our standards.
 22 And typically, those would be large percentage of
 23 network licenses and so on.
 24 So it does not -- to answer your question,
 25 that number would not include sales from -- from

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1 those sources.
 2 Q. Do you have an estimate of something
 3 analogous to a circulation figure for an -- sorry,
 4 for ASHRAE 90.1?
 5 MR. LEWIS: Object to form.
 6 Q. (By Mr. Bridges) You understand what I
 7 mean by "circulation figure" in this context?
 8 A. I'll -- well, I'll answer by saying I'm
 9 also the publisher of our magazines --
 10 Q. Right.
 11 A. -- so each of our magazines has a
 12 circulation statement, which -- which verifies how
 13 many copies of the magazine are put into the mail --
 14 Q. Right.
 15 A. -- and made available --
 16 Q. Right.
 17 A. -- or accessed online.
 18 There is nothing analogous to that sort of
 19 statement for our public -- for our standards
 20 actively.
 21 Q. And I understand that there's -- there's
 22 not an industry standard circulation number as there
 23 is for magazines when we're talking about books, but
 24 just trying to get a sense of the -- the number of
 25 persons that ASHRAE believes have interacted with

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1 90.1 in the 2010 edition, whether that is by physical
 2 copy sale, whether it's by bundled or value-added
 3 sale, whether it's by license, whether it's by some
 4 subscription or network license, but I'm omitting
 5 from this question the free reading facility.
 6 MR. LEWIS: Object to form.
 7 THE WITNESS: That would be pure conje- --
 8 I -- I do not know.
 9 Q. (By Mr. Bridges) What -- is there a
 10 standard retail price for the current version of
 11 ASHRAE 90.1?
 12 A. Yes, there is.
 13 Q. How much is that?
 14 A. That's what I'm -- I believe the ASHRAE
 15 member price for the current edition of standard 90.1
 16 is \$99. I believe the list price is \$120.
 17 Typically, our member discount is 15 percent.
 18 Q. Does ASHRAE have a figure of -- strike
 19 that.
 20 Does ASHRAE have an understanding of the
 21 approximate revenue that it has gained from the sale
 22 or licensing, direct or indirect, of the ASHRAE 90.1
 23 standard?
 24 A. We would have the information that would
 25 represent the revenue from the copies that we sell.

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1 When it comes to the revenue that is
2 derived from the -- these value-added resellers, we
3 wouldn't -- we do not have a specific breakdown of
4 what component of that total rev- -- revenue is
5 attributable to 90.1.
6 Q. And I understand there may be no specific
7 breakdown because when somebody's selling a
8 compendium they don't charge on every piece of it,
9 but do you have an estimate, based on the relative
10 importance of 90.1 in those compendia, of what the
11 revenue stream is to ASHRAE that the ASHRAE 90.1 2010
12 standard provides?
13 MR. LEWIS: Objection. Asked and answered.
14 THE WITNESS: It -- just -- just when --
15 when -- when you mention the indirect, would
16 that also include educational courses and other
17 activities that are based on the standard, as
18 well?
19 Q. (By Mr. Bridges) Good -- good question.
20 No.
21 A. Okay.
22 Q. What I meant by "indirect" here is that
23 either ASHRAE sells to a ultimate purchaser or it
24 sells to a book dealer or a bookstore or it sells to
25 ANSI and ANSI sells it where the ultimate purchaser

1 is not interacting directly with ASHRAE. That's what
2 I mean.
3 A. So now that I have achieved that
4 clarification, could you repeat your original
5 question, please?
6 Q. Certainly, certainly.
7 Do you have an estimate of what the total
8 revenue stream is to ASHRAE that the ASHRAE 90.1 2010
9 standard provides, taking into account all of the
10 channels of distribution and licensing?
11 MR. LEWIS: Objection.
12 THE WITNESS: Yeah, I -- I really do not.
13 I mean, I -- I just know -- I -- I know the --
14 or could derive the -- the amount of income from
15 the sales that we are responsible for, where we
16 make the sale, and it's a substantial, you know,
17 proportion. It's our largest revenue generator
18 in -- in standards.
19 I would intuitively think that -- that it
20 would also be a substantial re- -- portion of
21 the revenue that comes from the resellers, but
22 we just do not receive the information in
23 that -- that manner.
24 We receive our royalty, a royalty check,
25 and there is -- we do not receive a breakdown

1 of -- of -- of the components, especially from
2 the big resellers that we have. If it's a
3 reseller that just resells specific documents
4 then we may see that, but that's a very small
5 percentage of the whole.
6 Q. (By Mr. Bridges) Who are ASHRAE's big
7 resellers?
8 A. The -- the largest one would be Information
9 Handling Services. Second largest one would be
10 Techstreet. Third would most likely be ANSI.
11 Fourth, MADCAD. Those would be the top four.
12 Q. And if you had to estimate what proportion
13 of your reseller revenue comes from those four, what
14 would that estimate be?
15 A. From those four? Oh, gosh, that would be
16 85, 90 percent.
17 Q. What is ANSI's [sic] yearly
18 publication-based revenue from resellers?
19 MR. LEWIS: Objection.
20 THE WITNESS: I have no idea.
21 Q. (By Mr. Bridges) What royalties does ANSI
22 [sic] collect with respect to its standards?
23 MR. LEWIS: Objection.
24 Q. (By Mr. Bridges) Let me -- I'll clarify
25 the question.

1 What types of royalties and for what types
2 of transactions does ASHRAE collect
3 publication-related royalties?
4 A. This is with -- just generally? Is that --
5 Q. Yes.
6 A. Yeah. For the most part, my understanding
7 is that the -- the resellers are selling network
8 licenses and broad-based access to our standards
9 within companies. They -- typically, they would
10 reach a little different market than we would,
11 whereas, you know, they're for the most part, my
12 understanding would be, reaching larger corporate
13 entities, institutional entities, whereas our
14 membership is -- is more -- it's an in- -- ASHRAE is
15 an individual member-based organization. So our
16 market is typically those individuals.
17 Q. Do you know roughly how much revenue ASHRAE
18 receives in royalties from network licenses?
19 A. I -- I know the amount of -- I can estimate
20 the -- the amount of revenue that we receive from our
21 value-added resellers. I'm -- again, I -- I know
22 that they also will sell one-off copies from their --
23 from -- that's one of their sales channels. However,
24 I do not believe that's a major component of their
25 sales.

1 So I -- I would -- I would assume that
 2 the -- the largest -- the most substantial revenue
 3 stream that they provide to us in royalty comes from
 4 network licenses.
 5 Q. And how much would you estimate that to be
 6 on an annual basis?
 7 A. Do you mean the -- the -- the total revenue
 8 or the part from -- or the part from network
 9 licenses?
 10 Q. Let's say the total revenue from
 11 value-added resellers to begin with and then
 12 understanding whether you can break out network --
 13 A. Yeah.
 14 Q. -- licenses.
 15 A. Our -- our total royalty revenue would be
 16 roughly 1.2 million to 1.4 million.
 17 Q. And when you identify your total royalty
 18 revenue, that revenue number is separate from the
 19 revenue number you gave me earlier about publications
 20 revenue; is that correct?
 21 A. Yes, that's correct.
 22 Q. So to understand the total -- I hate to use
 23 the word, but monetization value of publications, one
 24 would have to add in the publications revenue and the
 25 royalty revenue; correct?

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1 A. That is correct.
 2 Q. What other components would be missing if I
 3 had just the publication revenue and the royalty
 4 revenue?
 5 A. Now, we are speaking just -- of just
 6 publications?
 7 Q. Right, and really specifically standards.
 8 A. Standards. Just running through our
 9 financial statements in my mind. That -- that's it.
 10 Again, there's educational components that
 11 we may use standards in which -- but there's no --
 12 but sometimes like we include a standard in a
 13 registration fee for a conference, so there's no
 14 direct revenue from that standard.
 15 But if you added together the royalty sales
 16 and you added together our direct sales of
 17 publications, that would represent our -- our total
 18 publication revenue.
 19 Q. Do you have an estimate as to what
 20 percentage of that total revenue is attributable, in
 21 your mind -- or in ASHRAE's mind, to all versions of
 22 90.1?
 23 MR. LEWIS: Objection.
 24 THE WITNESS: So what percentage of our
 25 total publications revenue, if that total

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1 revenue is both what we sell and the royalties,
 2 what's the component of that that is
 3 attributable to --
 4 Q. (By Mr. Bridges) 90.1 --
 5 A. -- 90.1?
 6 Q. -- all versions.
 7 A. Yeah. And let me just go through some math
 8 as I'm -- as I'm speaking.
 9 And this would not be any of the kind of
 10 indirect educational or, you know, credibility and
 11 other -- other ways that that may impact us.
 12 Q. Right.
 13 A. Yes, just give me -- okay. Now let me just
 14 run through those numbers now.
 15 Well, when it gets to the royal- -- the
 16 problem is for the royalty part I'm really making
 17 guesses, because it's -- because I don't have -- you
 18 know, it -- it -- I -- I don't have those numbers,
 19 you know, broken down as such.
 20 Q. I'll just ask you for your best estimate.
 21 A. Best estimate.
 22 MR. LEWIS: Objection.
 23 THE WITNESS: So the best estimate, if the
 24 total was \$450,000 --
 25 Q. (By Mr. Bridges) Out of the total.

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1 A. Out of the total as an estimate, just
 2 conjecturing.
 3 Q. Is -- excuse me, I may have -- I don't
 4 think I asked the exact same question. I may have
 5 asked a similar question earlier. Forgive me if I
 6 repeat myself because I'm working on one hour of
 7 sleep.
 8 Is 90.1 ASHRAE's -- I think -- strike that.
 9 I think you said it was ASHRAE's most
 10 popular standard; is that correct?
 11 A. (Witness nodded head affirmatively.)
 12 MR. LEWIS: Objection.
 13 Q. (By Mr. Bridges) What would you consider
 14 the second most popular standard to be?
 15 A. Second I would consider Standard 62.1,
 16 which is ventilation requirements for buildings.
 17 Q. What would round out the rest of the top
 18 five, in your view?
 19 A. Top five. Standard 55, which is a thermal
 20 comfort standard; Standards 15 and 34, which relate
 21 to refrigerant use and -- in air-conditioning and
 22 refrigeration systems.
 23 Q. I think, based on the number of years
 24 you've been at ASHRAE, is it correct that you started
 25 at ASHRAE before ASHRAE first published 90.1?

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1 A. My first job at ASHRAE was to edit the
2 proposed version of Standard 90.
3 Q. Of 90?
4 A. It was originally called Standard 90 when
5 it was first released in 1975. The .1 was added as a
6 variation at a later time.
7 Q. Did -- did ASHRAE take that work over from
8 some different predecessor?
9 MR. LEWIS: Objection. Vague.
10 THE WITNESS: To my knowledge, there was a
11 National Bureau of Standards. I've heard that
12 was -- that was -- that was underway.
13 Q. (By Mr. Bridges) And so had it published
14 an earlier standard that ASHRAE then updated and made
15 ASHRAE's own standard?
16 MR. LEWIS: Objection.
17 THE WITNESS: I don't believe so. I
18 don't -- I don't believe there was a previous
19 document in existence.
20 Q. (By Mr. Bridges) Is it your understanding
21 that there was a previous process in existence and
22 ASHRAE took that over?
23 MR. LEWIS: Objection.
24 Q. (By Mr. Bridges) I thought I read
25 someplace that -- that -- that ASHRAE developed it as

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1 some follow-on to something else, and I'm trying to
2 figure out what that is.
3 A. I think there was --
4 MR. LEWIS: Objection.
5 THE WITNESS: I think there was a desire.
6 There was a need that was voiced that ASHRAE
7 then fulfilled that need by developing
8 Standard 90.
9 Q. (By Mr. Bridges) Do you know who it was
10 who articulated that need?
11 A. With -- within ASH- -- within ASHRAE now?
12 Q. No, no, whoever it was that initiated the
13 statement saying there's a need for something like
14 this --
15 MR. LEWIS: Objection.
16 Q. (By Mr. Bridges) -- and then ASHRAE
17 fulfilled it.
18 A. I -- I -- I do not. I'm working from my
19 memory of presidential speeches of that -- of that
20 year, "presidential" meaning ASHRAE presidential --
21 Q. ASHRAE --
22 A. -- not President Nixon --
23 Q. Right.
24 A. -- whoever was in office at the time.
25 Q. Right.

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1 I want to come back to the reading room for
2 a second -- I'm sorry, the free reading facility. I
3 should use your terminology.
4 What functions can a viewer carry out at
5 the free reading facility?
6 A. When we used the RealRead platform, I know
7 it was -- it was just to view. So it was purely to
8 view, you did not download. And there was a -- at
9 some point in time, we added a "Buy Now" button, so
10 we put a "Buy Now" button there.
11 When we switched to iWrapper, my -- my
12 recollection is that that is pure viewing only and I
13 do not know if we've got a "Buy Now" button on --
14 with the iWrapper platform, but I'm quite sure we do.
15 I can't imagine why we wouldn't. That was -- we
16 switched platforms -- I think that was two years ago.
17 Q. How do you spell "iWrapper"? Is it capital
18 I-W-r-a-p-p-e-r?
19 A. I think it's small i, capital
20 W-R-A-P-P-E-R.
21 Q. Oh, okay.
22 A. And I think --
23 Q. Do you recall whether there's a text search
24 function that when somebody goes to the --
25 A. I do not recall.

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1 Q. Do you recall whether there's a possibility
2 of selecting text for pasting?
3 A. I do not -- I do not believe there is. I
4 believe it's -- it's viewing, but I -- I'm not sure.
5 Q. Who is in charge of the technical aspects
6 of the iWrapper implementation?
7 A. I approve it. We -- when RealRead -- when
8 I received the notice from RealRead going out of
9 business, I was responsible for shifting us over to
10 another platform.
11 And so we -- I talked -- we use various
12 suppliers and vendors, and so one vendor who we use
13 extensively for publications work, we asked him what
14 his solution would be and -- and he recommended
15 iWrapper, which is a commercially-available -- I'm
16 not sure if that's Adobe or that's -- I think it's
17 probably Adobe, but -- but that's commer- -- so he
18 recommended using that commercially-available
19 platform.
20 And -- and my intent would have been to
21 replicate what we had with the RealRead
22 functionality.
23 Q. Who's the vendor that ASHRAE uses?
24 A. For -- for -- for this project, we used --
25 used a firm iENGINEERING, which is outside of

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1 Washington.
 2 Q. Who is ASHRAE's principal contact there?
 3 A. Riaz Ahmed.
 4 Q. R-I-A-Z A-H-M-E-D?
 5 A. Yes. That's the first name and last name.
 6 Q. Who at ASHRAE supervises the relationship
 7 with iENGINEERING?
 8 A. Well, at the -- approving the payment of
 9 invoices and approving the initiation of work, it is
 10 me, and -- and then there's a -- a gentleman in my
 11 group who actually then works on a day-to-day basis
 12 with vendor relationships. David Soltis is his name.
 13 Q. How do you spell Soltis?
 14 A. S-O-L-T-I-S.
 15 Q. If a member of the public wanted to write
 16 an article about the evolution of the 90.1 standard
 17 over the last 20 years by showing a comparison
 18 through, let's say, a redline, an electronic
 19 comparison -- let me back up.
 20 Do you understand what a redline is?
 21 A. I do.
 22 Q. If a member of the public wanted to write
 23 an article about the evolution of the 90.1 standard
 24 over the last 20 years by providing a redline of the
 25 various changes from version to version, is there

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1 a -- what would the -- I'm going to start the
 2 question again. Let me strike that.
 3 If a member of the public wanted to write
 4 an article about the evolution of the 90.1 standard
 5 over the last 20 years by providing a redline of
 6 various changes from version to version, what steps
 7 would that person need to go through in order to
 8 generate a comparison document?
 9 MR. LEWIS: Objection.
 10 THE WITNESS: We currently offer for the
 11 current version of Standard 90.1 -- .1 a redline
 12 version that's available for sale. That's
 13 something we only initiated a year ago, year and
 14 a half. So we would not be able to provide that
 15 document, if that's a -- if that's -- if that's
 16 the question.
 17 If they wish to reuse our content, then we
 18 have a process that we follow for reprint
 19 permission or request for -- for -- for use.
 20 Q. (By Mr. Bridges) Leaving aside the
 21 permissions process, how, from a technical
 22 standpoint, would one be able to generate that
 23 redline? Would one have access to earlier versions
 24 in an electronic format that would be suitable for
 25 applying a comparison tool to?

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1 MR. LEWIS: Objection.
 2 THE WITNESS: Yes.
 3 Q. (By Mr. Bridges) And what would the
 4 earlier versions be?
 5 A. PDFs.
 6 MR. LEWIS: Objection.
 7 Q. (By Mr. Bridges) PDF.
 8 And if one wanted to trace the evolution
 9 across four versions to produce one document with
 10 annotations showing, for example, when each provision
 11 entered into the standard and when various provisions
 12 disappeared from the standard, would the person need
 13 to get permissions to reuse each of the four
 14 versions, according to ASHRAE's practices?
 15 A. If they were doing this for their personal
 16 use, then no, because that would be allowed for in
 17 their purchase of the standards.
 18 The permission would require -- would be
 19 required for the extent to which that person would
 20 want to make information available more widely other
 21 than for personal use, and then there would be
 22 considerations that would be given for amount of
 23 content, so on.
 24 Q. Well, what -- what if somebody wanted to
 25 write an article criticizing the evolution and saying

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1 that it had gotten off track and wanting to
 2 illustrate the arguments by quoting substantial bits,
 3 let's say two pages at a time for five different
 4 instances.
 5 According to ASHRAE's practices, what would
 6 be required for the person -- for that person to be
 7 able to do this?
 8 MR. LEWIS: Objection.
 9 THE WITNESS: Whether the article is
 10 critical or not isn't part of our process of
 11 granting permission for use of content.
 12 Q. (By Mr. Bridges) Leaving that part aside,
 13 then, what would the person need to do, according to
 14 ASHRAE's practices, to get permission to provide,
 15 let's say, four two-page excerpts showing the
 16 changes?
 17 MR. LEWIS: Objection.
 18 THE WITNESS: They would need to specify
 19 what content from the standard they wished to
 20 use, what -- how much content, what type of
 21 content, and what the use would be, say an
 22 article.
 23 We do not ask what that article is going to
 24 say, nor do we review that article before it is
 25 used. That's not part of our process.

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1 So they would have to specify the amount of
2 content that they wish to use, what content, and
3 how and what that use would be.
4 Q. (By Mr. Bridges) Would ASHRAE give that
5 permission without charge?
6 A. We always use a balance in -- in -- in how
7 we approach reprint requests.
8 If I do not feel there's going to be a
9 negative impact on the sales of -- of a standard,
10 typically I will grant reprint permission use,
11 because I think it also promotes awareness of a
12 standard.
13 I should say that we also have an on-line
14 system that we use, as well, RightsLink. You can go
15 to our website and you can see that. But that hasn't
16 worked very well. That was my attempt at trying to
17 remove a little bit of the care and hand- -- well,
18 the time that has to go in with processing requests.
19 In -- in that system, it was a cookie
20 cutter, a certain amount of money for a certain --
21 for a certain number of figures and so on. But
22 that's really not a very practical system and it's
23 just about -- we -- I think we still have the link
24 there, but it's really -- doesn't have very good
25 functionality.

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1 Q. And it sounds to me as though the reason
2 for that is that it wasn't flexible enough to
3 accommodate different use cases?
4 A. That -- that's correct. And -- and it's
5 hard to keep it up to date. We publish many
6 articles, we publish many standards, and so to try to
7 keep that database of permission -- so when somebody
8 goes in and they identify the -- the source of the
9 content, it was as much work for us to keep the
10 database up to date as it was to handle the
11 permissions personally.
12 Q. Do you have a dedicated permission staff?
13 A. My administrative assistant is the focal
14 point for permissions.
15 Q. What is your assistant's name?
16 A. Julie Harr, H-A-R-R.
17 MR. BRIDGES: If it's all right with you, I
18 ask that we take a break. We've gone just a
19 little bit over an hour. Normally I'd like to
20 go longer, but I'm working on sleep deprivation.
21 I'll try and keep the breaks short, but I may
22 need them every hour.
23 VIDEOGRAPHER: This is the end of Video 1.
24 We're going off the record at 11:26 a m.
25 (Thereupon, there was an interruption in

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1 the proceedings.)
2 VIDEOGRAPHER: This is the beginning of
3 Video 2. We are going on the record at
4 11:46 a m.
5 Q. (By Mr. Bridges) Do you know roughly what
6 percentage of publications income comes from
7 government sources for ASHRAE?
8 A. I do not.
9 Q. Do you know what government support ASHRAE
10 gets in the development or revision of standard --
11 standards?
12 A. I am not aware of any funding received by
13 ASHRAE for development or the revision of -- of
14 standards.
15 Q. You're aware that government employees
16 participate in the standard development process?
17 A. I do. And -- well, I -- what I am aware of
18 is that there -- there may be individuals with the
19 government who purchase copies of -- of standards.
20 I'm not exactly sure of their role on project
21 committees, but -- but they are -- would be included
22 in the -- the customer base for standards.
23 Q. And you're aware that -- does the U.S.
24 government enter into any contracts with ASHRAE for
25 the sale or availability of standards?

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1 A. We have had -- in -- in recent -- this is
2 in recent years, we've had three contracts I've been
3 engaged with related to the distribution of
4 standards, specifically 90.1.
5 Q. What were the contracts for?
6 A. Three -- first contract was for making
7 90.1 -- and I believe that was the 2010 version of
8 the standard -- available to ASHRAE members for --
9 well, I -- available from the ASHRAE website for free
10 download.
11 And then there were two subsequent
12 contracts that were done in conjunction with the
13 International Code Council where actually they did
14 the -- the distribution, but inclu- -- which -- which
15 the distribution included one of their documents,
16 the -- what is called the IECC, International Energy
17 Conservation Code.
18 So -- so that -- that document was
19 provided -- distributed by ICC and included in that
20 package ASHRAE Standard 90.1 2010.
21 And then the third contract added 90.1 2007
22 distribution, and that was to a distribution list
23 provided to ICC from, in this case, Pacific Northwest
24 Laboratories, which was a -- a laboratory under
25 contract at the Department of Energy.

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1 Q. I'd like to go back to the beginning of
2 your answer, because I -- I didn't quite understand
3 it.
4 The first contract was for making the 2010
5 version of the standard available in some fashion and
6 I think first you said available to ASHRAE members
7 and then I think you said available from the ASHRAE
8 website for free download.
9 Is -- did you mean available not
10 specifically to ASHRAE members, but available from
11 the ASHRAE website for download?
12 MR. LEWIS: Objection.
13 THE WITNESS: I meant to say was available
14 for free download from the ASHRAE website.
15 Q. (By Mr. Bridges) Who -- and under that
16 contract, who had access to the free downloads?
17 A. Anyone who logged into our website and
18 clicked on the option to complete that download.
19 Q. Oh, any person --
20 A. Anybody could --
21 Q. -- any person, country?
22 A. That's correct. Actually, in the world.
23 Q. In the world.
24 A. That's my -- as I say that, that's my
25 recollection, is it was not rest- -- I know it was

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1 not restricted to members -- I misspoke at first --
2 and I think it was open to -- to anyone.
3 Q. And that's what I was trying to figure out.
4 A. Yeah.
5 Q. Okay. So the first contract -- just to
6 summarize again, the first contract was for ASHRAE to
7 make 90.1 available for free to the public by
8 download; correct?
9 A. That is correct.
10 Q. Was that contract for a limited period of
11 time or was it for -- what were the terms of that
12 contract?
13 A. There was a contract that had a -- a dollar
14 amount associated with it, and so there was a fee
15 that every -- every time a download was made, a fee
16 for that unit was charged. So once that total
17 contract amount was met, then the downloads stopped.
18 Q. Do you recall what the per-download fee
19 was?
20 A. I believe it was \$15 a -- a document.
21 Q. Do you know how ASHRAE knew when a download
22 occurred?
23 A. Yes, because we had a -- a system that
24 would click -- keep track of the downloads.
25 Q. How --

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1 A. So that was how we did the -- knew when it
2 ended.
3 Q. How could you distinguish, let's say,
4 between a download and a simple view of the document
5 from ASHRAE's website?
6 A. There was no viewing associated with this
7 particular functionality. You just clicked on a box
8 that said "Download."
9 Q. Got it.
10 With what government agency was the
11 contract?
12 A. Our contract was with PNL, Pacific
13 Northwest Laboratory, which is a laboratory of the
14 U.S. Department of Energy.
15 Q. Did ASHRAE ever come to have an
16 understanding as to why Pacific Northwest Laboratory
17 wished to have that facility available?
18 A. This was part of the -- the time frame is
19 2011, and I believe this was part of the -- the
20 Recovery Acts, the National Recovery Acts that were
21 in place at that time.
22 And I was approached by somebody from PNL
23 as a -- to do that. I do not know what their --
24 their motivations were except to make the standard
25 available.

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1 Q. Do you know how many downloads occurred
2 under that contract?
3 A. I do not, but if -- if it was the 15 per
4 download and the contract was \$322,000, it would be
5 that division.
6 (Defendant's Exhibit 1077 was marked for
7 identification.)
8 Q. (By Mr. Bridges) My brain is sitting next
9 to me and my brain hands me important things from
10 time to time.
11 Mr. Comstock, I ask you to look at
12 Exhibit 1077.
13 Could you identify it, please?
14 A. This appears to be the -- the proposal that
15 I just -- I just spoke of. I think I did say 2010.
16 This document says 2000 -- 2007 version of that --
17 oh, no, I'm sorry. Yeah, it says --
18 MR. LEWIS: I'll just note for the record
19 that the document is two sided.
20 Q. (By Mr. Bridges) Yes, always. I think all
21 of our documents will be.
22 A. So it's the 2007 version, yes.
23 Q. Okay. Was this free download facility
24 something that ASHRAE proposed?
25 A. No. The -- we -- we were approached by

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1 PNL, to my -- to my knowledge.
 2 Q. The -- just the format, it's in response to
 3 an RFP or request for proposals.
 4 Do you know what the RFP No. 140008
 5 specified?
 6 A. I -- I do not.
 7 Q. The proposal envisioned that ASHRAE would
 8 promote the free download program through targeted
 9 e-mails to members of ASHRAE; correct? I'm looking
 10 rough- -- just above the midpoint in that exhibit.
 11 A. Correct.
 12 Q. Do you know to what extent ASHRAE promoted
 13 the free download program to the broader public,
 14 apart from members of ASHRAE?
 15 A. I -- we put notices on our website to -- is
 16 my recollection. I believe we did news releases, but
 17 I am -- that's an assumption on my part.
 18 Q. And then you said there were two other
 19 contracts; is that correct?
 20 A. That's correct. Both of those also
 21 involved versions of Standard 90.1 and then also
 22 included a document, the -- the IECC that I
 23 referenced.
 24 Q. Were they on roughly the same terms as the
 25 terms in Exhibit 1077?

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1 A. No. That -- that was a -- a different
 2 arrangement. For that process, the documents were
 3 sent in hard copy form to recipients who were
 4 provided to us from the -- from PNL. And the
 5 distribution was made by ICC, which is the publisher
 6 of the IECC. ICC is International Code Council.
 7 Q. Were the second and third contracts
 8 contracts between PNL and ICC?
 9 A. No. I believe they were contracts between
 10 PNL and ASHRAE and then ICC was engaged to fulfill
 11 the agreement.
 12 Q. Do you recall the expected audience,
 13 recipients, of the hard-copy publications in the
 14 second and third contracts?
 15 A. I believe the targeted audience for that
 16 was code officials at state and municipalities.
 17 Q. Do you recall quantities and financial
 18 terms for the second and third contracts?
 19 A. The -- the -- the -- the purchase price for
 20 the 90.1 inclusion was the same as this, \$15, if I
 21 recall, and then there was a -- I believe ICC charge
 22 for distribution of the IECC was also \$15 and then
 23 there was a \$15 charge by ICC for printing, mailing,
 24 inventory, distribution. So that was a total per
 25 unit, that I recall, of \$45.

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1 Now, the first agreement I believe was
 2 \$188,000, in that neighborhood. The second agreement
 3 was \$230,000. The -- the -- but the second
 4 agreement, I think -- so the first one, it would be
 5 dividing the 45,000 into that -- \$45 into that total
 6 amount. The second agreement actually included two
 7 versions of 90.1, if I recall, and two different
 8 versions of the IECC, so it could have been that cost
 9 was \$90 total in- -- \$90 per unit into that \$230,000
 10 number.
 11 Q. And just to clarify one thing.
 12 In the last couple of answers, you referred
 13 to the first contract and the second contract. If we
 14 put them in the context of the other contract, that
 15 would make these the second and third contracts?
 16 A. That's correct.
 17 Q. Okay. In your answer just now, when you
 18 were saying first and second, in the broader scope,
 19 you were referring to the second and third contracts;
 20 is that correct?
 21 A. That is correct.
 22 Q. As a result of these contracts, did ASHRAE
 23 observe any effect on its other sales or licenses of
 24 the 90.1 standard?
 25 A. These -- these three contracts all involve

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1 distribution of not the current version of the ASHRAE
 2 standard, but the previous version.
 3 Did we see any noticeable change in the
 4 distribution or the sales of the -- the current
 5 version? Nothing seemed to jump out.
 6 Q. Did ASHRAE observe any noticeable effect on
 7 the distribution, even of the earlier versions, apart
 8 from -- from these contracts?
 9 A. Intuitively, I would think there would have
 10 been some impact, but I can't say -- we didn't
 11 monitor that, so I have no evidence one way or the
 12 other.
 13 Q. So you don't know one way or the other
 14 whether these contracts cannibalized other types of
 15 sales of the same versions?
 16 A. Yeah, I have no -- no evidence one way or
 17 the other.
 18 Q. Has ASHRAE entered into any other
 19 agreements for public access or distribu- -- public
 20 access to or distribution of its -- strike that.
 21 Has ASHRAE en- -- entered into any other
 22 agreements for broad public access to or distribution
 23 of its standards, either for free or for reduced
 24 price?
 25 MR. LEWIS: Objection.

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1 THE WITNESS: Was your question by --
2 repeat the question, please?
3 Q. (By Mr. Bridges) Sure.
4 Has ASHRAE entered into any other
5 agreements to provide broad public access to or
6 distribution of its standards either for free or for
7 a reduced price?
8 A. At -- at times over the past -- not for
9 90.1, but for some other standards, a company may pay
10 a license fee to make a standard available if it
11 relates specifically to their products. That would
12 be a license agreement.
13 And that's very rare. I mean, it's --
14 it's -- perhaps one standard every three to five
15 years would -- would be the case. But nothing with
16 government like was done here.
17 Q. Okay. What proportion of ASHRAE's yearly
18 revenues comes from the monetization of its
19 publications? Do you understand that term?
20 A. When you say "publications," do you include
21 periodicals?
22 Q. Good point, so I'm going to withdraw my
23 question.
24 But I just want to make sure -- I think you
25 understand my -- my word "monetization" in this

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1 context. You nodded, but the court reporter can't
2 take nods down.
3 Do you understand, broadly speaking,
4 monetization of publications through revenue sources
5 like purchasing and licensing and the like?
6 A. Yes.
7 Q. And royalties?
8 A. Yes.
9 Q. What proportion of ASHRAE's yearly revenues
10 comes from the monetization of its standards as
11 publications?
12 A. I'm making sure I'm doing the math right.
13 Q. That's fair. That's fair.
14 A. Let's see. It would be -- directly
15 attributable to standards would be approximately
16 10 percent.
17 Q. How else does ASHRAE earn revenue, other
18 than through the monetization of its standards?
19 A. Membership dues, conference registrations,
20 advertising, subscription sales, educational course
21 registrations, certification, exposition income.
22 And when you said "publications," if -- so
23 in addition to publications, we have books. So
24 books, if -- if -- if -- if that's -- if you
25 distinguish between standards in your questions, then

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1 there would be books. And I believe that -- that --
2 that covers it.
3 Q. Roughly what percentage of ASHRAE's
4 expenses pertain to the organization and supervision
5 of the standards development process and the costs of
6 publication and the costs of administering the
7 permissions and distributions and the like?
8 MR. LEWIS: Objection.
9 THE WITNESS: I can speak to the side of
10 that process that deals with the -- the -- the
11 publications part. I do not know what the --
12 the costs would be to support the development of
13 the product. My role begins when we push that
14 standard out to the -- to -- to the marketplace.
15 What would be -- I -- I'd probably say
16 there are staff salaries that would be
17 attributable to standards activities from the
18 publication side of things, production, so on.
19 If you add portions of people's time together,
20 we're probably speaking of four people from the
21 publications side.
22 And then the -- the cost of the
23 infrastructure for the book- -- for the
24 bookstore, the on-line process, and warehousing,
25 and finally the -- the -- the work that may be

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1 involved in -- in -- in managing that on-line
2 bookstore.
3 Q. (By Mr. Bridges) Are you able to estimate
4 a percentage of ASHRAE's expenses involved in what
5 you've just described?
6 A. Boy, and I -- and I -- I left -- the
7 easiest numbers, the printing costs, I just left out.
8 Q. Right.
9 A. The cost to print --
10 Q. Right.
11 A. -- a unit would be included.
12 You know, if -- if we have a hundred -- I'm
13 just guessing now. If you have a -- I said those --
14 those individuals, you know, we have a hundred
15 employees, so -- with various activities.
16 So I'd say 5 percent of labor and then you
17 figure the -- the cost of that infrastructure,
18 standards amounts to a large portion of it. And
19 permissions, a lot of that is attributed to
20 standards. That's maybe -- that part, \$200,000.
21 Q. 200,000 to the --
22 A. For the -- just the expenses of doing those
23 things. The bookstore, I mean, you know, processing
24 orders, apart from the -- the -- the labor.
25 Q. So you're saying 5 -- 5 percent of the

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1 staff count plus about 200,000 in expenses?
 2 A. That's correct, for the portion of the
 3 standards work that is involved in what we do, which
 4 is the distribution of those to the -- to the
 5 marketplace.
 6 I -- probably in terms of context, our
 7 bookstore is actually -- we do that in partnership
 8 with an outside group, so that is a -- we pay fees
 9 associated with -- any time orders are taken through
 10 our bookstore. So there are -- are costs that we
 11 have through the -- through the vendor for operation
 12 of our bookstore.
 13 Q. And just to be clear, I think you either
 14 said this or started to say it. I think I didn't
 15 hear it completely.
 16 The expenses you just described were from
 17 that point in the process where your part of the
 18 organization takes over and pushes the standards out
 19 to the public. These numbers did not include the
 20 costs and expenses and staffing that ASHRAE invests
 21 in the creation and revision of the standards
 22 themselves; correct?
 23 MR. LEWIS: Objection.
 24 THE WITNESS: That is correct.
 25 Q. (By Mr. Bridges) Has -- do you understand

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1 what a subvention is of a publication?
 2 A. I do not.
 3 Q. Has ASHRAE ever received any grants to
 4 support the publication of any particular standards?
 5 A. I have no knowledge of ASHRAE receiving
 6 funds for that.
 7 Q. Is ASHRAE aware of any monetary losses that
 8 it has suffered as a consequence of the defendant's
 9 conduct in this case?
 10 A. I can't speak to any -- any tracking of --
 11 of losses. And anecdotally, people say if -- they've
 12 asked me if a standard is available on the Internet,
 13 is that -- is that allowed, is that permissible, so
 14 we -- in those cases, we will seek to remove them.
 15 But we don't -- we -- I don't have any
 16 record of tracking such loss of -- of revenue.
 17 Q. Apart from tracking it, does ASHRAE have
 18 any information regarding monetary losses it has
 19 suffered as a consequence of defendant's conduct?
 20 A. I -- I do recall there was one message we
 21 got from somebody who refer- -- I think it was
 22 somebody with Carrier Corporation, if I recall, who
 23 referred to -- who referred to that. I don't know if
 24 they had intended to purchase or not, but that was
 25 one specific case I do recall.

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1 Q. Is that David Hollman?
 2 A. It was somebody with Carrier, Carrier
 3 Corporation.
 4 Q. Carrier UTC?
 5 A. Yes. Yeah, yeah.
 6 Q. Does the name David Hollman ring a bell to
 7 you?
 8 A. I -- I think so.
 9 Q. Do you know whether he's an ASHRAE member?
 10 A. I do not know. Carrier's -- there are many
 11 employees with -- with -- from -- of Carrier who are
 12 members of ASHRAE.
 13 Q. Do you recall any other information ASHRAE
 14 has regarding any potential monetary loss as a
 15 consequence of defendant's conduct?
 16 A. I have no firsthand knowledge of -- of
 17 that.
 18 Q. Do you have any other information that you
 19 might have acquired secondhand?
 20 A. With regard to --
 21 Q. Monetary losses.
 22 A. -- this -- this -- in this case?
 23 Q. Caused by defendants, yes.
 24 A. No, I do not have any -- any other
 25 knowledge of that.

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1 Q. Are you aware of any persons being misled
 2 as to a relationship between the defendants and
 3 ASHRAE?
 4 A. I'm not aware of that.
 5 Q. Are you aware of anybody being confused in
 6 any way as a consequence -- strike that.
 7 Are you aware of anyone being deceived in
 8 any way by defendant?
 9 A. I am not aware --
 10 MR. LEWIS: Objection.
 11 THE WITNESS: -- of that.
 12 Q. (By Mr. Bridges) Are you aware of anyone
 13 being confused in any way by any conduct of the
 14 defendant?
 15 MR. LEWIS: Objection.
 16 THE WITNESS: If I recall, I think that
 17 was -- the fellow from Carrier was asking me a
 18 question of whether that was an authorized use,
 19 perhaps. I can't remember the exact wording,
 20 but there was a -- a question that I was asked
 21 of that -- of that person.
 22 Q. (By Mr. Bridges) Are you aware of any
 23 other instances of anyone being confused in any way
 24 by any conduct of the defendant?
 25 MR. LEWIS: Objection.

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1 THE WITNESS: Not -- not specifically.
2 Q. (By Mr. Bridges) Do you know whether
3 ASHRAE is aware of anyone being confused in any way
4 by any conduct of the defendant?
5 MR. LEWIS: Objection.
6 THE WITNESS: I am -- that's -- if so,
7 that's not been passed on to me. I -- I'm not
8 aware of that.
9 Q. (By Mr. Bridges) Apart from Mr. Hollman
10 and the other -- strike that.
11 Apart from Mr. Hollman and other standards
12 development organizations, has anyone complained to
13 ASHRAE about the conduct of the defendant in this
14 case?
15 MR. LEWIS: Objection.
16 THE WITNESS: I do not know if anyone's
17 complained to ASHRAE. The only instance I'm
18 familiar is -- familiar with is that one.
19 Q. (By Mr. Bridges) Whom I think is
20 Mr. Hollman.
21 A. Mr. -- the fellow from Carrier.
22 Q. Right.
23 And just so you know, we're going to dig up
24 what we think is the relevant document. We just
25 don't have it. We'll probably have to print it out,

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1 but I'll ask you to look at it. I'm not holding that
2 back for some reason.
3 Is ASHRAE aware of any harms that it has
4 suffered in any way from the conduct of the defendant
5 in this case?
6 A. We always try to protect our copyright.
7 Whether I'm aware of any specific instances that have
8 been brought to my attention about the -- the conduct
9 in this case, I can't say I'm aware of that, but we
10 do have a process we follow where we protect our
11 copyright, which we do consistently.
12 Q. I understand that.
13 Has ASHRAE suffered any harm to its
14 reputation as a consequence of the defendant's
15 conduct in this case?
16 A. I can't say at this point that ASHRAE has.
17 Q. Has ASHRAE encountered any communication in
18 which a person informed or suggested to ASHRAE that
19 ASHRAE would lose a sale of a standard because of the
20 defendant's conduct in this action?
21 MR. LEWIS: Objection.
22 THE WITNESS: I can't recall receiving any
23 such messages or being engaged in such
24 conversations. It's intuitive that if our
25 documents are available, that there would be

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1 some ramification for us, but I can't point to a
2 specific claim that was made.
3 MR. BRIDGES: I think we've gone about an
4 hour. Why don't we take a lunch break now.
5 I'll just tell you that I don't anticipate using
6 the full seven hours in case you're worried
7 about timing.
8 MR. LEWIS: Okay.
9 VIDEOGRAPHER: We're going off the record
10 at 12:24 p m.
11 (Thereupon, there was an interruption in
12 the proceedings.)
13 VIDEOGRAPHER: We are back on the video
14 record at 1:43 p m.
15 Q. (By Mr. Bridges) Good afternoon.
16 A. Good afternoon.
17 (Defendant's Exhibit 1078 was marked for
18 identification.)
19 Q. (By Mr. Bridges) Mr. Comstock, during the
20 morning session, you had mentioned communication from
21 someone connected with Carrier; correct?
22 A. Correct.
23 Q. Please look at Exhibit 1078 and tell me
24 what that exhibit is.
25 A. This is an inquiry that we received from a

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1 person with a Carrier UTC e-mail address noting that
2 he found an ASHRAE document published at Resource.org
3 website.
4 Q. Was that the instance you were referring to
5 in your testimony this morning?
6 A. Yes, it was.
7 Q. Do you recall whether there was any other
8 communication with Mr. Hollman about this topic?
9 A. I do not recall any further exchange except
10 what's represented here.
11 Q. What is Carrier?
12 A. Carrier's probably -- well, one of the
13 largest air-conditioning equipment suppliers in the
14 world with a global -- global outreach, founded by
15 Willis Carrier, the so-called father of
16 air-conditioning, if you would.
17 Q. That actually reminds me of -- the
18 perspective you gave on that question reminds me,
19 what was your background before joining ASHRAE?
20 A. I worked for a newspaper after graduating
21 from -- from college. Graduated from a -- from a
22 school that had a very strong engineering program. I
23 chose not to go into engineering, went into -- worked
24 for a newspaper and then did that for a short amount
25 of time and then took an editorial position with

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1 ASHRAE.
2 Q. What newspaper were you working for?
3 A. Bergen News.
4 Q. Bergen County, New Jersey?
5 A. Bergen County, New Jersey, yes.
6 Q. And you mentioned you graduated from a
7 school that had a very strong engineering program.
8 Which one was that?
9 A. Lehigh University in Bethlehem,
10 Pennsylvania.
11 Q. So you had come to -- you came to ASHRAE
12 from a publishing and -- from a publishing background
13 with a technology slant in the publishing?
14 A. With a familiarity, to some degree, of
15 engineering, but it was mainly with an editorial
16 background.
17 Q. To what extent -- strike that.
18 Earlier today when we were talking about
19 revenues, I think you were distinguishing between
20 revenues that ASHRAE receives directly from the sale
21 or licensing of publications and other revenues that
22 may in some way involve the publications, such as
23 training programs where a copy of a standard would be
24 furnished.
25 Do you recall that?

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1 MR. LEWIS: Objection.
2 THE WITNESS: Yes, I do.
3 Q. (By Mr. Bridges) I'd like to explore for a
4 little bit what activities ASHRAE engages in that may
5 touch upon standards, apart from the sale or
6 licensing of standards.
7 So education is one; right?
8 A. Correct.
9 Q. What types of education offerings does
10 ASHRAE provide?
11 A. We -- we offer a -- a varied program. We
12 really take seriously trying to help with the
13 application of the standard, ensure the standards are
14 applied properly.
15 And so that consists of instructor-led
16 training that we will provide, either -- typically,
17 three-hour or six-hour courses for which there are
18 registration fees, and we also will have web-based
19 learning programs that are available, which would be
20 e-learning experiences that are available on demand.
21 And many of those courses deal with
22 applications of -- of standards, and specifically
23 there's -- there's quite a few courses that would
24 deal with topics related to 90.1.
25 And -- and we also offer a -- a -- a

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1 five -- a total of five days of training, which is
2 a -- an intensive HVAC design training program, and
3 much of that content deals with Standard 90.1
4 content, Standard 62.1 content.
5 Q. What other revenue-generating activities
6 does ASHRAE engage in, apart from the publication
7 sales and licensing and the education offerings you
8 just mentioned?
9 A. Do you mean with a direct or indirect tie
10 to standards, for example?
11 Q. Yes.
12 A. The -- the magazine will -- our -- our
13 principal magazine, which is a -- a trade
14 publication, B-to-B publication, ASHRAE journal
15 will -- will have -- will be quite often articles
16 about ASHRAE standards there.
17 So that -- that is always -- when we have
18 topics related to standards, those are often articles
19 that we will promote to our -- to our advertising
20 base.
21 Q. What other activities does -- strike that.
22 What other revenue-generating activities
23 does ASHRAE engage in relating to --
24 A. We have --
25 Q. -- standards?

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1 A. We have some electronic products, for
2 example, that are based on ASHRAE standards that --
3 that -- apps that are based on content and ASHRAE
4 standards specifically. So we offer those types of
5 products for sale.
6 Q. What are some of the apps?
7 A. For -- related to 62.1, there would be a --
8 a ventilation rate effectiveness app that we have
9 available, a duct-fitting app and a duct-fitting
10 database. However, that probably relates more to our
11 hand- -- that relates more to our handbook than to
12 standards.
13 Right now, we're developing an app for 90.1
14 compliance.
15 Q. Anything else in terms of standards
16 relating to revenue-generating activities?
17 A. Users manuals.
18 Q. How are they organized? In other words, is
19 there a user's manual for each standard?
20 A. Not for all the standards, but the more
21 popular standards, the more complex standards, we
22 have users manuals to assist with their appropriate
23 and proper application.
24 Q. I assume there's a user's manual for 90.1?
25 A. There is.

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<p>1 Q. What other rev- -- revenue-generating 2 activities does ASHRAE engage in pertaining to 3 standards? 4 A. We've covered royalties. We've covered the 5 sales of the documents. We've covered the articles 6 that would impact the advertising, the courses, the 7 ancillary support documents. 8 I could imagine at one -- at -- some 9 extension of that could be either sessions that are 10 presented at our conferences that would deal with 11 90.1, for which -- for which there would be 12 attendance interests that would be generated for 13 that. 14 I believe that -- I believe that would 15 cover the -- the -- the potential for -- for revenue. 16 Q. Does the sale of -- strike that. 17 Does the sale and licensing of standards 18 subsidize other ASHRAE activities apart from 19 standards development -- 20 MR. LEWIS: Objection. 21 Q. (By Mr. Bridges) -- and publication? 22 A. All of the revenue flows into a single -- 23 single source. There's some standards that are -- 24 are very low-selling standards, so there are -- so it 25 would be fair to say that some -- if a standard</p> <p style="text-align: right;">Page 74</p>	<p>1 that are -- are -- are deemed by peers to have been 2 successful. They're developed by people who are 3 recognized by their peer -- peers as being 4 knowledgeable in their respective fields. 5 So it provides standards. And especially 6 the -- the ASHRAE handbook really provide -- they 7 provide solutions. They -- they -- they incorporate 8 new technology that's available in products and 9 equipment and assist designers as to what new design 10 options may be available because of new products in 11 the marketplace. 12 Q. You use terminology that I hear frequently. 13 I often push back at it a little bit wherever I hear 14 it, so don't take this personally. 15 But I've never quite understood what 16 "solutions" means, because it's often a very vague 17 term. Sometimes it's a liquid in a bottle; okay? 18 That's not what you meant here. 19 How else would you describe what you're 20 referring to as solutions here? 21 MR. LEWIS: Objection. 22 THE WITNESS: One of the things that I've 23 noticed in the industry as an editorial person 24 is that there's so many different technologies 25 that can be provided that are available to</p> <p style="text-align: right;">Page 76</p>
<p>1 generates more revenue, that helps support those 2 activities that don't have revenue streams that would 3 cover them. 4 Q. There's no requirement that each activity 5 fully self-support itself? 6 MR. LEWIS: Objection. 7 THE WITNESS: Our -- our obligation's to 8 advance the technology. We -- we -- there are 9 some items that are needed, but they have a 10 difficult time finding the financial support to 11 carry them forward. 12 Q. (By Mr. Bridges) And in your last 13 statement, you said, "Our obligation is to advance 14 the technology." 15 Is that a summary or a reference to 16 ASHRAE's mission? 17 A. In our bylaws, ASHRAE's organized to 18 advance the arts and sciences of heating, 19 refrigeration, air-conditioning, ventilation, and 20 their allied arts and sciences. 21 Q. How does ASHRAE's development and 22 publication of its standards advance the technology? 23 A. Because it sets a -- a standard for 24 practice. It incorporates through user experiences 25 those solutions to technical applications that are --</p> <p style="text-align: right;">Page 75</p>	<p>1 maintain air in a building, whether it be 2 conditioned air at a particular temperature or 3 air that's free of contaminants. There's many, 4 many different methods of applying technology, 5 different types of technology, to provide a -- 6 an air-conditioning -- HVAC system in a building 7 or a refrigeration system. 8 And so designers have more choices 9 available to them than ever before, so part of 10 the role that ASHRAE provides in offering 11 solutions is to help guide those engineers to -- 12 to provide the appropriate -- the -- the 13 appropriate application of technology which best 14 solves the design problem that they face. 15 Q. (By Mr. Bridges) Thank you for that 16 explanation. 17 I spoke with ASHRAE counsel during a break 18 about your testimony earlier today about the reading 19 room. 20 Did you have any clarifications that you 21 wanted to make about the functionality of the reading 22 room? I'm sorry, about the functionality of the free 23 viewing facility. 24 A. Yes. I -- in -- in -- in checking that 25 point, I understand now that there's search</p> <p style="text-align: right;">Page 77</p>

1 capability that you can apply in our free viewing
2 capability documents.
3 It's still my understanding that you cannot
4 cut and paste from those documents, but you are able
5 to search and view.
6 Q. Thank you.
7 For the free viewing facility, you
8 mentioned that one does not have to register; is that
9 correct?
10 A. That is my understanding.
11 Q. Does someone have to agree to terms of
12 service in order to engage in the free viewing?
13 A. I do not believe so.
14 Q. Moving away from free viewing now to sales
15 of physical documents, does ASHRAE impose any
16 obligations on the purchaser of standards in physical
17 form as a condition of that transaction?
18 A. If in paper form --
19 Q. Right.
20 A. -- no.
21 Q. What about the sale of electronic access to
22 standards? Does ASHRAE impose any obligations on the
23 purchaser of standards in that fashion as a condition
24 of that transaction?
25 A. In -- in a legal sense, "obligations" means

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1 that -- restrictions?
2 Q. Well, that's a good question. I'll get
3 there, because that's not exactly what I had in mind.
4 Does somebody have to promise to do
5 something or promise not to do something in order to
6 purchase electronic access to standards that ASHRAE
7 has published?
8 A. My recollection is that they would agree to
9 certain terms and conditions when making a purchase
10 of an electronic document.
11 Q. Do you recall what some of those terms and
12 conditions are?
13 A. I believe those terms and conditions would
14 be that the document is for personal use only, may
15 not be copied nor distributed to another party.
16 Q. Anything else?
17 A. Perhaps there is store -- you're not able
18 to store unless it's for your personal use. I can't
19 recall that exact wording, but the notion would be
20 that you're not able to put it into a cloud from
21 which other -- or a company network from which other
22 people would be able to gain access.
23 And I should say we're -- I'm not speaking
24 of network licenses now, I'm speaking of an
25 individual purchaser of a PDF document.

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1 Q. Thank you for clarifying that.
2 Again, regarding individual purchases of
3 PDFs, can you think of any other terms and conditions
4 for that type of sale?
5 A. I cannot.
6 Q. So we've just talked about terms and
7 conditions for personal access to electronic
8 documents.
9 What other types of transactions does
10 ASHRAE engage in with respect to electronic access to
11 AS- -- ASHRAE's standards?
12 MR. LEWIS: Objection.
13 THE WITNESS: We have CD products that
14 would include standards. There would be a
15 message that has an agreement that you would
16 have in accessing that CD, which would be
17 similar in -- in wording, that this is for
18 personal use only.
19 And then network licenses, although we do
20 not direct- -- we do not directly sell network
21 licenses ourselves, those are done by
22 third-party -- those value-added resellers that
23 I referenced before.
24 Q. (By Mr. Bridges) Apart from the ones you
25 just discussed, what other types of transactions does

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1 ASHRAE engage in with respect to electronic access to
2 ASHRAE's standards?
3 A. CDs, PDFs, network through our resellers.
4 I believe that's it, those -- those three areas.
5 Q. What -- strike that.
6 Do the terms and conditions associated with
7 the sale of CDs match i- -- identically the terms and
8 conditions associated with the sale of physical
9 documents?
10 MR. LEWIS: Objection.
11 THE WITNESS: The wording would not be
12 identical. The intent of what is conveying
13 the -- the notion and concept this is for
14 individual use would be consistent among the
15 terms and conditions.
16 Q. (By Mr. Bridges) Actually, I think I
17 misspoke. I may have given you a misleading
18 question, so your counsel was wise to object.
19 Because I think you said that there were no
20 terms and conditions associated with the sale of
21 physical documents; right? I think I should have
22 meant PDFs, so let me start all over again.
23 Am I correct --
24 A. Yeah, I think I -- I believe I said -- I
25 believe I said paper.

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1 Q. Oh, paper, but -- but did you mean PDF?
2 This is confusing enough. I'm just going
3 to --
4 MR. LEWIS: I'm just going to throw an
5 objection in there.
6 MR. BRIDGES: Yeah, put an objection in
7 there.
8 Q. (By Mr. Bridges) I'll -- I'll move on and
9 give you a better question.
10 A. Okay.
11 Q. I think you said there were no obligations,
12 terms and conditions, on the sale of paper documents.
13 A. I believe that's what I said and I believe
14 that was the case.
15 Q. So let me rephrase this question.
16 There are terms and conditions associated
17 with sales of electronic access to PDFs that users
18 can download; correct?
19 A. That is correct.
20 Q. There are terms and conditions associated
21 with the sale of standards in an electronic media,
22 such as CDs, where the media are physically delivered
23 to the customers; correct?
24 A. That is correct.
25 Q. How do the terms and conditions with

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1 respect to those two categories differ from each
2 other?
3 A. The intent is -- would be similar, in that
4 it's -- they are both meant for personal use.
5 There may be some nuances of the platform
6 that are involved with that delivery that may require
7 some differences in the specific wording.
8 Q. Then take me a step further.
9 How do the terms and conditions with
10 respect to network licenses differ from the terms and
11 conditions that apply to either PDF delivery or CD
12 delivery?
13 A. For network delivery, probably -- first of
14 all, ASHRAE doesn't deliver those products to -- for
15 network uses. Those are done through third parties,
16 and I am -- I'm sure there are variations among those
17 third-party resellers about those terms.
18 They may relate to the type of network
19 license that's purchased, for example, is it
20 simultaneous -- is the license based on simultaneous
21 users? Is the license based on sites? There could
22 be a wide spectrum of what the use is.
23 The intent of all those licenses, however,
24 is to restrict the access to the people -- number of
25 persons, number of stations, for which the -- the

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1 license has been purchased.
2 Q. When a third-party reseller delivers ASHRAE
3 products to customers for network uses, does a
4 reseller impose terms and conditions on the
5 purchasers?
6 A. Yes. Yes.
7 Q. And to the extent the reseller is reselling
8 matters that pertain to ASHRAE's standards, does
9 ASHRAE dictate the terms and conditions of the
10 customer's use of ASHRAE's standards?
11 A. Typically, we do not go into great detail
12 about the terms and conditions statement.
13 Often -- and we have maybe 10 such
14 agree- -- maybe five such agreements -- the -- the
15 language may actually be part of the agreement, part
16 of the contract with the reseller.
17 In other cases, it may be something
18 generic, such as the -- the reseller will provide
19 digital rights management, controls over the
20 distribution.
21 But I would dare say for all the
22 agreements, there's a -- there's some language that
23 says the -- the -- the -- the reseller is going to
24 apply prudent and appropriate levels to ensure
25 protection of the documents.

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1 Q. Does ASHRAE approve or review terms and
2 conditions that the reseller imposes on its customer
3 when its customer purchases electronic access to an
4 ASHRAE standard?
5 MR. LEWIS: Objection.
6 THE WITNESS: Typically, we do not.
7 However, sometimes those terms are in the -- are
8 in the agreement that we have with a reseller.
9 In terms of -- of our bookstore, which
10 is -- which is -- is managed by a third party,
11 which is Techstreet, for that bookstore, we
12 would review what those terms and conditions
13 are, since that bookstore is on our site.
14 Q. (By Mr. Bridges) When ASHRAE sells CDs of
15 its standards, does that sale come with a license to
16 the purchaser?
17 A. It has an agr- -- a user agreement. I
18 guess that would be called a license.
19 Q. Does ASHRAE sell CDs for multiple user use?
20 A. At the current time, I do not believe
21 our -- we have one CD and I do not believe that one
22 CD is a network option. It is meant for personal
23 use.
24 Q. I know I touched on this earlier, but I
25 want to come back and ask the question in a way that

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1 ties very closely to the notice of deposition.
 2 Is ASHRAE aware of any consumer confusion,
 3 mistake, or deception caused by Public Resources'
 4 posting of ASHRAE's standards, apart from whatever
 5 you discussed this morning?
 6 A. I have no knowledge other than what I
 7 discussed this morning.
 8 Q. A similar question, but phrased slightly
 9 differently.
 10 Does ASHRAE have any awareness of any
 11 consumer confusion, mistake, or deception caused by
 12 the appearance of ASHRAE's standards that Public
 13 Resource has posted?
 14 A. Except for what I stated this morning, I'm
 15 not aware of any other.
 16 Q. Does ASHRAE have any special licensing
 17 terms with respect to its standards for particular
 18 types of users?
 19 MR. LEWIS: Objection.
 20 Q. (By Mr. Bridges) By -- for example, does
 21 it give different terms for the sale or license of
 22 its standards to public libraries or to universities
 23 or to professors?
 24 A. Our licenses would be -- our licenses would
 25 be handled by the resellers.

1 When it comes to professors, there might be
 2 some cases where we would allow some content to be
 3 used in course packs, for example. I'm not sure if
 4 that borders as much on reprint permission as it does
 5 a -- as a network license, but certainly I do receive
 6 requests from instructors to use content in their
 7 classes.
 8 If -- sometimes if it's explained to me
 9 that the professor would put it on some sort of
 10 internal network restricted solely to students who
 11 are registered for that class -- and, typically,
 12 these would be professors who are members of ASHRAE
 13 and have -- I've interacted with over -- over the
 14 years -- I would typically grant that. There may be
 15 a fee that we would charge. Again, it would depend
 16 upon was it an entire standard they were going to
 17 use.
 18 So I -- I think there's -- until you said
 19 "professors," I think there are cases where we would
 20 have some different terms for professors. But if a
 21 university buys a product for a -- for a university
 22 network, that would go through one of the resellers.
 23 Q. Does ASHRAE have different terms and
 24 conditions for licenses according to whether --
 25 strike that.

1 Does ASHRAE have different terms and
 2 conditions for licenses of standards according to
 3 whether the standards are incorporated into law or
 4 regulation or not?
 5 A. No, I cannot think of any -- any difference
 6 for that.
 7 I -- I did think of one other thing I
 8 should say.
 9 Q. Go ahead.
 10 A. I -- for example, I can -- back to a case
 11 like professors, which you mentioned, there may be a
 12 case where some group is writing another standard and
 13 that standards writing group will ask can they make a
 14 standard of ours available for reference on that
 15 association's website restricted to members of that
 16 committee. There's cases where I would probably
 17 grant that, as well.
 18 Q. That would be something as to which you
 19 would apply your discretion and custom tailor
 20 something, rather than having a -- a set alternative
 21 for that type of content?
 22 A. Yes. Usually, that -- that would come in
 23 through the channel of a reprint permission, may we
 24 reprint that standard. And as corollary to that,
 25 they say, "Well, instead of sending us paper copies,

1 can we put it on a -- a restricted intranet available
 2 only to the members of the committee writing the
 3 standard so they have reference?"
 4 So there are instances where we've -- we've
 5 done that sort of activity, which I apply my judg- --
 6 judgment for in granting.
 7 Q. Does ASHRAE have different terms and
 8 conditions for governmental agencies with respect to
 9 the licensing of ASHRAE standards?
 10 A. No. Again, that would be handled through
 11 our -- through our resellers and they would apply
 12 whatever their -- their sales principles are.
 13 Q. Would that be true -- strike that.
 14 But the resellers resell only networked
 15 standards, right, network access licenses?
 16 MR. LEWIS: Objection.
 17 THE WITNESS: For the most -- they also
 18 will -- will sell single copies of documents if
 19 they have retail stores, if you would.
 20 Q. (By Mr. Bridges) Okay. The resellers
 21 don't sell CDs; correct?
 22 A. That is correct.
 23 Q. I guess my question -- I'll ask it another
 24 way just to make sure I'm getting the point out.
 25 Do governments get any different terms of

<p>1 access to ASHRAE's standards from the terms available 2 to the general public?</p> <p>3 A. No. However, we do have a -- a price -- if 4 somebody is a code official and writes to us making a 5 request for purchase as a code official on their 6 letterhead, there is a -- a discount category that's 7 available to them as a code -- as an individual code 8 official.</p> <p>9 Q. What do you mean by a code official?</p> <p>10 A. I've never explored it all that -- that 11 detail.</p> <p>12 The -- it would be somebody who works for a 13 code enforcement body that would be part of a 14 governmental entity, most likely at a municipal, 15 perhaps state, level.</p> <p>16 Q. When ASHRAE licenses its standards that are 17 on a CD to an individual for personal use, does that 18 license include the ability of the individual to make 19 and preserve altered versions of the standards; for 20 example, extracts for reference or terms juxtaposed 21 in a different way?</p> <p>22 A. To the best of my knowledge, with our 23 current CD product, those standards are each 24 available on the CD.</p> <p>25 And I should clarify. This -- we have one</p> <p style="text-align: right;">Page 90</p>	<p>1 standards is in PDF form. So whatever the 2 functionality associated with a PDF is, that is what 3 you would find on the CD.</p> <p>4 That sounded to me like a technological 5 restriction embedded in the CD, on what people could 6 do with the CD; is that correct?</p> <p>7 MR. LEWIS: Objection.</p> <p>8 THE WITNESS: What I meant to say was that 9 we don't alter the PDF functionality; we just 10 take the PDF that we finish our editorial 11 process with, create a PDF, and that file gets 12 moved over and manufactured as part of the CD.</p> <p>13 So we just use that -- that file format as 14 being an easily transportable file that the user 15 can -- can use the way you normally would a PDF.</p> <p>16 Q. (By Mr. Bridges) So my question following 17 up on that is this: Is there anything in the license 18 grant that accompanies the CD when ASHRAE sells or 19 delivers the CD to a user that regulates the 20 different types of things that the user can do with 21 the CD with the -- with the documents on the CD?</p> <p>22 For example, does, to ASHRAE's 23 understanding, the license prohibit a user from 24 making edits to the standard for one's own reference 25 and, therefore, changing the standard?</p> <p style="text-align: right;">Page 92</p>
<p>1 CD that has our complete set of standards --</p> <p>2 Q. Okay.</p> <p>3 A. -- and on that one CD, each one of those 4 individual C- -- standards is in PDF form.</p> <p>5 So whatever the functionality associated 6 with PDF is, that is what you would find on the CD.</p> <p>7 Q. Does that mean that ASHRAE uses limitations 8 on the functionality of the CD as a way of limiting 9 the license that is available for use of the CD?</p> <p>10 MR. BRIDGES: Objection.</p> <p>11 THE WITNESS: We want the CD and its 12 content to be usable for the purchaser. We want 13 to make it a product that meets the users' 14 demand.</p> <p>15 The restrictions that are there are meant 16 to convey that this is for that user.</p> <p>17 Q. (By Mr. Bridges) Oh, you're not talking 18 about technical restrictions, then; you're talking 19 about license restrictions?</p> <p>20 A. Well, I don't understand.</p> <p>21 Q. I may have misunderstood your earlier 22 question.</p> <p>23 You said that on the one CD that has a 24 complete set of standards, each one of those 25 standards is -- each one of those individual</p> <p style="text-align: right;">Page 91</p>	<p>1 MR. LEWIS: Objection.</p> <p>2 THE WITNESS: There is nothing in the 3 license agreement that I can recall that would 4 prevent a user from doing that.</p> <p>5 Q. (By Mr. Bridges) Is there anything in the 6 license agreement that authorizes a user to do that?</p> <p>7 A. To the best of my recollection, the license 8 agreement would be silent on that issue.</p> <p>9 Q. Is it ASHRAE's understanding that the scope 10 of permissions granted to the user in the license has 11 the same contours as the technological capability of 12 the PDF files in the CD --</p> <p>13 MR. LEWIS: Objection.</p> <p>14 Q. (By Mr. Bridges) -- themselves?</p> <p>15 MR. LEWIS: Objection.</p> <p>16 THE WITNESS: That would be my 17 understanding, the contours between the content 18 on the CD and PDF technology would be the same.</p> <p>19 Q. (By Mr. Bridges) This is another one of 20 these questions where I'm going back and tying it 21 more precisely to the list in the notice.</p> <p>22 Has ASHRAE identified, apart from what 23 you've mentioned today, any harms, financially or 24 otherwise, to ASHRAE arising from any acts, 25 omissions, or operations of Public Resource?</p> <p style="text-align: right;">Page 93</p>

1 A. The -- the -- the concerns that -- that --
2 that ASHRAE has is to be able to maintain control
3 over its -- its document for how it's -- it's used
4 and distributed in the market in accordance with
5 its -- with its terms.
6 Whether there's a specific harm that's been
7 seen from PR -- from the case at hand, I can't speak
8 to that. But in -- in principle, the -- the
9 organization sees harm if -- if it -- if -- if its
10 documents are not able to be maintained.
11 Q. And apart from that, has ASHRAE detected
12 any harms, financially or otherwise, to itself
13 arising from any acts, omissions, or operations of
14 Public Resource?
15 A. I -- I've got no evidence. I have not seen
16 cases of that.
17 Q. Again, this overlaps a little bit with some
18 earlier questions.
19 What -- what are all the factors that you
20 understand ASHRAE considered in deciding to provide
21 free viewing to ASHRAE's standards?
22 A. I was the one who actually launched that
23 effort, and it was -- so much of what we do is a
24 balance between trying to assist our members, trying
25 to help provide a better explanation of the

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1 technology, and allowing our -- our business model
2 to -- to -- to be supported. So it was a combination
3 of those things.
4 Number one was to -- in -- in theory, when
5 we first decided to move in that direction, it was so
6 that our members could see a document and be able to
7 determine if they wished to buy it or not. So they
8 had some familiarity that, yes, this is a document
9 that would be worthwhile for us to have, and then --
10 then to be able to build into that that notion that
11 then it's going to lead to a sale.
12 And then there are -- our mission statement
13 means that we are to advance technology, so then the
14 third element would be to make it available to other
15 people who would have an interest in -- in looking at
16 the standard, but -- but would not be an engineer or
17 part of the engineering community, so wouldn't need
18 the technical depth of the -- the document as a
19 working tool.
20 So it's those three factors that went into
21 our decision to create the -- the free viewing,
22 which, again, I'm -- I can't recall the exact year,
23 but it's -- it's 15 years ago, maybe even a little
24 bit longer than that.
25 Q. How do the standards func- -- strike that.

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1 How do ASHRAE's standards function as
2 working tools for persons who are part of the
3 engineering community?
4 A. ASHRAE's stan- -- they -- they provide a --
5 well, many of the standards are method of test, so
6 they provide methods of testing equipment so that
7 equipment can be measured -- can be compared with
8 similar levels of performance.
9 Our -- some of the standards set
10 definitions of refrigerants and classify those
11 refrigerants in terms of their flammability, in terms
12 of their toxicity, different characteristics.
13 And then you have a third type of standard,
14 which is a design standard, which actually provides
15 guidance that says, "You shall have a -- your design
16 shall do this in these circumstances."
17 Q. And as you just mentioned, does that
18 guidance take the form of specific requirements that
19 are specified in the standard?
20 A. It says "shall."
21 Q. So that answer's yes?
22 A. Yes.
23 Q. Were there any other factors involved in
24 the decision to provide free viewing of ASHRAE's
25 standards?

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1 A. No. Those three factors were the -- that
2 was the -- the -- the thrust of our initiative.
3 Q. Are there any protocols or procedures at
4 ASHRAE governing the granting of licenses or
5 permission requests to anyone outside the
6 organization? And you can limit your answer to
7 standards.
8 A. Typically, the factors that would be
9 considered would be amount of content that's to be
10 used. Typically, we would want it to be less than
11 33 percent of a standard. That's not a hard and fast
12 rule, but that's a general guideline that my
13 assistant has.
14 We would look at what the use is. If it's
15 a classroom use, that's one thing; if it's posting it
16 on the Internet, that's another thing; if it's a
17 company brochure, that's another thing. So it's --
18 it's -- it's how the distribution will be done and --
19 and who is doing it, for example, a company, as
20 opposed to an educator.
21 Then there would also be the -- you know,
22 our expectation that the -- the -- the -- that there
23 be a citation so that the doc- -- the document is
24 sourced. And in that particular case, it would be
25 reprinted as it is unless it's specified that it

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1 is -- that there's commentary about it -- it -- it
 2 being modified in some way.
 3 Q. Do you know whether some jurisdictions
 4 incorporate ASHRAE standards into their laws or
 5 regulations by quoting the standards, literally, in
 6 the laws and regulations?
 7 MR. LEWIS: Objection.
 8 THE WITNESS: I think there must be some
 9 cases like that. Offhand, I can't recall any
 10 specific instances. It seems logical that there
 11 would be such a reference.
 12 I'm not -- I don't get involved
 13 specifically with code adoption. The request to
 14 use our content would come to me; I just look at
 15 it in terms of a -- a reprint request. It seems
 16 that -- logical there would have been some cases
 17 to that nature. I don't think it's an abundance
 18 of such cases.
 19 Q. (By Mr. Bridges) And then another way in
 20 which standards get incorporated or adopted into law
 21 or regulation is by reference; correct?
 22 MR. LEWIS: Let me just stop for just a
 23 second and point out that this witness is not
 24 addressing incorporation or adoption.
 25 MR. BRIDGES: I understand. This is

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1 foundational to get to --
 2 MR. LEWIS: Sure, sure. I just wanted to
 3 make sure you were aware of that.
 4 Q. (By Mr. Bridges) So I'll repeat my last
 5 question.
 6 Another way in which standards get
 7 incorporated or adopted into law or regulation is by
 8 reference; correct?
 9 A. My understanding is that happens.
 10 Q. Do you know whether some jurisdictions,
 11 when they adopt an ASHRAE standard into law or
 12 regulation, adopt the standard with some
 13 modifications that that jurisdiction itself wanted?
 14 MR. LEWIS: Objection.
 15 THE WITNESS: I do not know. I would -- I
 16 receive reprint requests. If they modify a
 17 standard, that probably would not -- that
 18 process would not come to -- to my attention.
 19 Q. Whose attention would that come to?
 20 A. My guess is that's to our standards staff.
 21 Q. And the reason I'm asking you these
 22 questions is: Are you aware of any publications by
 23 anyone other than ASHRAE of modified versions of
 24 ASHRAE's standards? If, for example, a state adopts
 25 your standards, but with changes, perhaps the state

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1 publishes the altered version that suits it.
 2 Are you aware of that type of scenario?
 3 A. I am not. I'm not saying it may not
 4 happen, but there's no -- I have no -- no knowledge
 5 of that passing through -- through my office -- or I
 6 have no knowledge of it happening at all.
 7 Q. Does ASHRAE require any royalties from any
 8 jurisdictions that adopt or incorporate ASHRAE's
 9 standards into law or regulation?
 10 A. By ref- -- by reference?
 11 Q. Whether it's incorporation or adoption,
 12 either explicitly or by reference.
 13 A. From -- from my perspective, I would look
 14 at reprint permission. I'm not aware of any
 15 reprinting of our standards with modifications by
 16 government officials, so there would be -- I'm not
 17 aware of any royalties from that.
 18 If a standard was adopted exactly as we
 19 have published it and is distributed by that
 20 governmental entity, that would be a reprint
 21 permission and we would charge a royalty fee that
 22 would be associated with that, because that would be
 23 a distribution of our standard.
 24 Q. So ASHRAE would charge the jurisdiction
 25 that reprint fee?

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1 A. That -- that is correct.
 2 Q. If a state adopted an ASHRAE standard
 3 exactly into its law and then wished to make that
 4 standard, now law, available for free and
 5 unrestricted public access on the Web, would ASHRAE
 6 charge that state a fee for posting the standard on
 7 the Web?
 8 MR. LEWIS: Objection.
 9 THE WITNESS: If that happened, that would
 10 seem to fit our business model that we would --
 11 there would be a fee involved because our --
 12 because of our standard being copyrighted.
 13 Q. (By Mr. Bridges) Are there -- strike that.
 14 How would ASHRAE determine the appropriate
 15 price for such an action by the state?
 16 MR. LEWIS: Objection.
 17 THE WITNESS: When I charge royalty fees or
 18 set royalty fees, I start with the price of the
 19 standard.
 20 I then take into account the distribution,
 21 the number of copies that are expected to be
 22 distributed, and I would take into account how
 23 that might impact our sales.
 24 Principally, though, I would look at the
 25 number of copies distributed and the price.

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1 MR. BRIDGES: By the way, it's a little
2 unfair. I'm drinking coffee after coffee. If
3 you need a coffee or you need a break or if you
4 do, we can -- we can take breaks.
5 MR. LEWIS: How long have we been back on
6 the record?
7 VIDEOGRAPHER: An hour and three minutes.
8 MR. BRIDGES: Oh, maybe we should just take
9 a break then.
10 THE WITNESS: Sure.
11 VIDEOGRAPHER: This is the end of Video 2.
12 We're going off the record at 2:46 p.m.
13 (Thereupon, there was an interruption in
14 the proceedings.)
15 VIDEOGRAPHER: This is the beginning of
16 Video 3. We are on the record at 3:07 p.m.
17 Q. (By Mr. Bridges) Mr. Comstock, I'm handing
18 you Exhibit 1079.
19 (Defendant's Exhibit 1079 was marked for
20 identification.)
21 Q. (By Mr. Bridges) Can you please tell me
22 what it is?
23 A. This appears to be the terms of use for the
24 ASHRAE.org website.
25 Q. How did these terms of use differ, to your

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1 knowledge, from the terms of use that apply, for
2 example, to CD products that ASHRAE delivers?
3 A. The intent of this was for access to the
4 website, so it was developed specifically for the
5 website, the other -- the terms of use for the CD for
6 that product.
7 Q. Is it your understanding that Exhibit 1079
8 applies to persons who use the free viewing facility
9 of the ASHRAE website?
10 A. I'm not sure of that. This appears to deal
11 with the website and its content, so if the free
12 viewing is part of that, then my assumption is that
13 would apply.
14 Q. Do these terms in Exhibit 1079 apply
15 equally to ASHRAE members and to non-members?
16 A. I'm not aware of any separate agreement
17 for -- for members.
18 Q. So to the best of your information, it
19 would apply to both members and non-members?
20 A. I would think that's correct.
21 Q. You've touched on this a little bit, but
22 what are the different ways persons can approach
23 ASHRAE in order to gain permission to use information
24 from an ASHRAE standard?
25 A. One, it is from a permissions link on the

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1 ASHRAE home page.
2 Secondly would be if they con- -- if they
3 just contact ASHRAE in -- in general.
4 Q. And if -- are there any other ways that
5 you're aware of?
6 A. No, just those two.
7 Q. If someone contacts ASHRAE in general, is
8 it my understanding, based on your testimony earlier,
9 that the person contacting ASHRAE is likely to be
10 directed to your assistant?
11 A. That is correct.
12 Q. And your assistant would typically act as
13 some kind of interface between ASHRAE and whoever's
14 seeking the permission?
15 A. That is correct.
16 Q. Who besides yourself would direct your
17 assistant in connection with the assistant's handling
18 the requests for permission?
19 A. I would be the only person who would be
20 giving her that direction.
21 Q. I also want to review systematically some
22 of the information that I've heard today about
23 sources other than ASHRAE for ASHRAE standards.
24 So to begin with, ASHRAE makes its
25 standards available through the Web to persons who

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1 want to view or acquire the standards through the Web
2 interface, whether by using the free viewing facility
3 or by ordering a PDF or ordering a CD; is that
4 correct?
5 A. That is correct, or a book.
6 Q. If somebody wants networked access to
7 ASHRAE's standards, that person normally goes through
8 a reseller; is that correct?
9 A. That is correct.
10 Q. And you identified several resellers
11 earlier today; correct?
12 A. That is correct.
13 Q. Are there any other significant resellers
14 apart from the four you mentioned who resell ASHRAE's
15 standards?
16 A. I don't -- significant sellers, the only
17 other ones that come to mind, SAI Global -- I don't
18 believe I referenced them, and Barber Index would
19 be -- would be -- I think that may be six then.
20 Those are the principal resellers.
21 Q. And then apart from them, there may be book
22 retailers?
23 A. (Witness nodded head affirmatively.)
24 MR. LEWIS: You have to --
25 THE WITNESS: Yes.

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<p>1 Q. (By Mr. Bridges) What other major sources 2 of AST- -- sorry, of ASHRAE standards other than 3 ASHRAE have I missed? 4 A. When you say "sources," sources that make 5 our documents available in the marketplace? 6 Q. Right, right. What I would consider to be 7 a source to which a member of the public would go in 8 order to obtain ASHRAE standards. 9 A. I know we have publications in Amazon, for 10 example. I don't know if -- offhand, I can't recall 11 if among the titles they offer are standards, but I 12 would think it's likely that they would be. 13 Q. Any others that we haven't reviewed? 14 A. There's an assortment of small book 15 redistributors, Engineer's Bookstore over at Georgia 16 Tech, for example, Barnes & Noble, which does college 17 bookstores. They may maintain inventory of ASHRAE 18 standards for resale. 19 Q. Do college students get a discount on the 20 price of AS- -- of ASHRAE standards? 21 A. We have a student member price that is 22 available to student members of ASHRAE. 23 Q. And do members have to purchase standards 24 through ASHRAE's website in order to take advantage 25 of member discount?</p> <p style="text-align: right;">Page 106</p>	<p>1 include in the package that's purchased documents 2 from ASHRAE, as well as other organizations. 3 Q. Okay. So that might be a -- would that be 4 for on-line access? 5 A. My understanding is that, yes, that would 6 be for on-line access. 7 Q. So that would be a form of multi-title 8 on-line access where the different titles might come 9 from different organizations? 10 A. That is correct. 11 Q. Does ASHRAE authorize anyone to disseminate 12 to the public any ASHRAE standards together with 13 someone else's annotations or commentary? 14 MR. LEWIS: Objection. 15 THE WITNESS: I do not recall any such 16 license. 17 Q. (By Mr. Bridges) If someone wishes to 18 publish a book advising the public how to make the 19 most effective use of ASHRAE standards, does ASHRAE 20 take the position that the author or publisher of 21 such a book would need a grant of permission or a 22 license from ASHRAE? 23 A. ASHRAE's position would be if there's 24 content from the standard that is used as it's 25 expressed in the ASHRAE standard, then permission</p> <p style="text-align: right;">Page 108</p>
<p>1 A. Yes, yes, through the website or by calling 2 our customer service department. 3 Q. And did you say earlier that ASHRAE 4 authorizes some entities to include ASHRAE standards 5 in some other publications that include a broad 6 collection of standards? 7 MR. LEWIS: Objection. 8 Q. (By Mr. Bridges) I may have misheard you 9 or misunderstood. I thought I heard something to 10 that effect. 11 A. I don't believe I said that. 12 Q. So if -- if -- so any authorized 13 distribution of ASHRAE standards would be only 14 individually or grouped with other ASHRAE standards 15 or other ASHRAE publications; correct? 16 MR. LEWIS: Objection. 17 THE WITNESS: We have resellers who will 18 sell ASHRAE standards with other collections. 19 Q. (By Mr. Bridges) Would that be bundling 20 separate products together the way Amazon might 21 suggest, that if you like book A you might want book 22 B and it tries to sell you both? 23 A. I am not sure how they may package 24 standards. I was referring to electronic access that 25 would be available from resellers where they would</p> <p style="text-align: right;">Page 107</p>	<p>1 would be required. 2 Q. Does ASHRAE know whether, apart from the 3 defendant in this -- this case, there is any other 4 source apart from ASHRAE's website for free viewing 5 of ASHRAE's standards? 6 A. There have been occasions where posting of 7 ASHRAE standards have been brought to our attention. 8 Q. Were these postings without ASHRAE -- 9 without ASHRAE's permission? 10 A. That's the first thing we do, is check and 11 see if there is an authorization that's been granted. 12 And as part of that process, then we would ask if the 13 person posting has authorization. 14 Q. Does ASHRAE regularly demand that persons 15 making those postings stop the postings? 16 A. Yes, that is a process that we follow. 17 Typically, what we see most often are file-sharing 18 sites. 19 Q. Does ASHRAE have any information suggesting 20 that the presence of its standards on file-sharing 21 sites has caused it to lose money? 22 A. All we have are complaints from somebody 23 who perhaps has bought a standard and says, "Now I 24 see this is available here, what gives." 25 Q. Has ASHRAE succeeded in eliminating the</p> <p style="text-align: right;">Page 109</p>

1 unauthorized postings of its standards apart from the
 2 posting by defendant in this case?
 3 A. We typically have success removing postings
 4 as they come up, but it's a continuing problem.
 5 Q. Does ASHRAE have any information suggesting
 6 that Public Resource has posted ASHRAE standards or
 7 any standards to the Internet for purposes other than
 8 a public benefit?
 9 MR. LEWIS: Objection.
 10 THE WITNESS: I have no knowledge of the
 11 motivations.
 12 Q. (By Mr. Bridges) Apart from the formal
 13 committee process leading to standards development,
 14 are you aware of any of the plaintiffs providing a
 15 public facility for the posting of discussions or
 16 comments by the public about the standards of the
 17 plaintiffs?
 18 MR. LEWIS: Objection.
 19 THE WITNESS: I have no knowledge of any
 20 other organizations --
 21 Q. (By Mr. Bridges) What about --
 22 A. -- what they do.
 23 Q. -- ASHRAE? How does that apply to ASHRAE?
 24 A. Could you ask the ques- -- question again,
 25 please?

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1 Q. Sure.
 2 Apart from the formal committee process
 3 that's part of standards development, are you aware
 4 of ASHRAE's providing a public facility for the
 5 posting of discussions or comments about ASHRAE's
 6 standards?
 7 MR. LEWIS: I'll just insert an objection
 8 here that this is outside the scope of the
 9 topics for this witness.
 10 MR. BRIDGES: We can debate it, but you're
 11 not instructing him anyway, so...
 12 THE WITNESS: There's interpretations of
 13 standards that are -- that are -- that are made.
 14 I'm not aware of a place on our website where we
 15 allow posting of comments about any of -- about
 16 our standards or other publications.
 17 Q. (By Mr. Bridges) Does ASHRAE maintain any
 18 public forum where the interested public can make
 19 comments and where commenters can, for example,
 20 respond to each other?
 21 MR. LEWIS: Same objection.
 22 THE WITNESS: The -- ASHRAE offers a
 23 platform called ASHRAExCHANGE at which if you
 24 register, you may post comments.
 25 Q. (By Mr. Bridges) What must one do to

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1 qualify to register to make comments on that
 2 ExCHANGE?
 3 A. My --
 4 MR. LEWIS: Same objection.
 5 THE WITNESS: My recollection is that you
 6 provide your name, e-mail address, and verify
 7 you're over a certain age to allow you to post.
 8 Q. (By Mr. Bridges) And does one have to
 9 agree to terms of service?
 10 A. I imagine there -- there is a -- yes, there
 11 is a terms of service that you would agree to.
 12 Q. Does ASHRAE make public its standards for
 13 free viewing through a facility other than the free
 14 viewing facility we've discussed when standards are
 15 under consideration for incorporation by a
 16 government?
 17 A. I am not aware of that.
 18 (Plaintiffs' Exhibit 1080 was marked for
 19 identification.)
 20 Q. (By Mr. Bridges) Mr. Comstock, I hand you
 21 Exhibit 1080. This is an exchange of e-mails between
 22 you and someone who's contacted ASHRAE regarding
 23 extracting some information for another code and
 24 guideline; is that correct?
 25 A. This appears to be a request for use of

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1 content for 90.1.
 2 Q. And I'm not trying to force you into a --
 3 any unfair characteriz- -- characterization, so feel
 4 free to push back.
 5 Is this within a typical range of the types
 6 of communications that ASHRAE receives for
 7 permissions?
 8 A. It's not unique. I'm not sure it could be
 9 characterized as being typical, but it's certainly a
 10 type of request that we receive.
 11 (Plaintiffs' Exhibit 1081 was marked for
 12 identification.)
 13 Q. (By Mr. Bridges) Can you please identify
 14 Exhibit 1081?
 15 A. Okay. This is a multiuser license for use
 16 of 90.1, 2007.
 17 Q. Help me understand one thing.
 18 This is a license for use of a PDF file by
 19 multiple persons; is that correct?
 20 A. I believe that's correct.
 21 Q. What I don't understand is it says the
 22 purchase of the PDF file is not included in the
 23 license fee.
 24 Do you see that in the first full paragraph
 25 in the body of it?

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1 A. (Witness nodded head affirmatively.)
 2 Q. So this means that -- is this correct that
 3 this means that somebody has to pay this license fee
 4 and then separately has to purchase a PDF file?
 5 A. That is correct.
 6 Q. This license fee, this agreement, cost
 7 \$1,000; correct?
 8 A. As I -- as I see stated here, yes.
 9 Q. How much more does somebody have to pay to
 10 purchase the PDF file?
 11 A. This would have been a -- somewhere
 12 between -- well, what's the date of this? 2009.
 13 My assumption is that there's previous
 14 reference to these being ASHRAE members, so most
 15 likely they paid a fee of something about \$99, which
 16 would have been the member price.
 17 Q. And it goes on to say, "Networking of
 18 updated standards would require a new licensing
 19 agreement. This standard is on continuous
 20 maintenance."
 21 What does that last sentence mean?
 22 A. Continuous maintenance is the process that
 23 ASHRAE followed so that every three years there's a
 24 revision of that standard released.
 25 Q. Now, in the sentence before that, I think

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1 which I also earlier read, it said, "Networking of
 2 updated standards would require a new licensing
 3 agreement."
 4 Then it goes on to say, "This standard is
 5 on 'continuous maintenance'" and then it says, "Any
 6 approved addenda posted on the ASHRAE website may
 7 also be included with the document on the network at
 8 no additional fee."
 9 So there's a license to a standard, but it
 10 doesn't cover updated standards; correct?
 11 A. It does not include revisions -- different
 12 versions of that standard. This license is for 90.1
 13 2007.
 14 Q. But it looks to me as though it does --
 15 that the license does extend to any approved addenda
 16 posted on the ASHRAE website.
 17 A. That is correct, because those addenda are
 18 freely available as individual units.
 19 Q. Okay. So there's a -- there's a standard
 20 and then the standard may have some addenda over
 21 time; is that correct?
 22 A. That is correct.
 23 Q. But then after a certain point in time, the
 24 standard is updated and that becomes a new version of
 25 the standard, typically given a new date?

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1 A. Year designation.
 2 Q. Year designation.
 3 And that would -- a new year designation
 4 means that, within the meaning of this document, it's
 5 an updated standard?
 6 A. That is correct.
 7 Q. Okay. What do the addenda typically
 8 include?
 9 A. Typically, an addenda -- or I guess I
 10 should -- a singular addendum would be a section of
 11 the standard that has been revised, so the committee
 12 has agreed to revise this section of the standard.
 13 That then becomes an addendum.
 14 Q. Do the addenda contain corrections to
 15 errors that may have appeared in a published version
 16 of a standard in the nature of an errata?
 17 MR. LEWIS: Objection.
 18 THE WITNESS: I -- I believe the errata is
 19 a sep- -- that's a separate issue. The addenda
 20 would be a change to the standard.
 21 Q. (By Mr. Bridges) Okay. Thank you.
 22 Would the errata be furnished -- would the
 23 errata to a particular version be included within the
 24 license for that version?
 25 A. Yes, and that was our attempt to say that,

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1 "Here is you -- you have access -- just as anyone has
 2 access to the addenda, you do, as well."
 3 Q. So this says that the license does not
 4 expire, correct, in the second sentence of the first
 5 full paragraph?
 6 A. Second sentence. I see the sen- -- that's
 7 correct, it does say that.
 8 Q. So help me understand this.
 9 This is ASHRAE Standard 90.1 2007?
 10 A. Yes.
 11 Q. So this means that the holder of this
 12 license can have multiple -- it can have multiple
 13 user access to 90.1 2007, to the addenda to 90.1
 14 2007, not explicitly, but presumably also to any
 15 errata that pertain to 90.1 2007; correct?
 16 A. That is correct.
 17 Q. And that this license would enable somebody
 18 to have access to that version of that standard
 19 indefinitely?
 20 A. That is correct.
 21 Q. Even after a new revision has come out?
 22 A. That is correct.
 23 Q. How many addenda does ASHRAE typically
 24 publish for any standard during a -- one revision
 25 cycle?

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1 A. I do not know and -- and I think it would
2 vary quite a bit, depending upon the standard.
3 Q. How many errata does ASHRAE publish for any
4 standard during one revision cycle?
5 A. I do not know.
6 Q. Do you know the range?
7 A. I do not.
8 Q. Do you know the type of errors that are
9 included among the errata?
10 MR. LEWIS: I'm going to insert my
11 objection again about being outside the scope
12 and topics, but...
13 MR. BRIDGES: It's generally within -- I
14 mean, he's basically in charge of publication.
15 The errata is part of the publication process.
16 That's why I'm asking him. I'm not asking you
17 to agree with me; I'm just trying to explain.
18 MR. LEWIS: I understand.
19 THE WITNESS: The -- the errata are posted
20 on the ASHRAE website in the standards section
21 of the website, which is different from -- from
22 the section of the website where we sell the
23 standard.
24 So they're published in that -- they're
25 posted on the website and I'm not engaged in

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1 that process.
2 Q. (By Mr. Bridges) Who -- who is engaged in
3 that process?
4 A. That's our standards staff that does that.
5 Q. Do you -- do you know -- sorry.
6 Do you have any knowledge of the types of
7 corrections that the errata include?
8 A. I -- I really do not. I've -- I've not
9 looked at them.
10 (Plaintiffs' Exhibit 1082 was marked for
11 identification.)
12 Q. (By Mr. Bridges) I think I gave you two
13 copies.
14 A. I have two, yes.
15 Q. Please give one to your counsel.
16 MR. LEWIS: Thank you.
17 Q. (By Mr. Bridges) Actually, I'm going to
18 start doing that on a regular basis --
19 A. Okay. I'll be prepared.
20 Q. -- since you're closer to him. So it
21 wasn't my mistake after all, it was just a brilliant
22 plan.
23 Do you recognize Exhibit 1082?
24 A. I do.
25 Q. What is it?

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1 A. This is for packaging 90.1 with the IECC,
2 which is published by the International Code Council.
3 Q. And this is an agreement between ASHRAE and
4 the International Code Council; is that correct?
5 A. That is correct.
6 Q. Do you know by what method ICC reproduced
7 ASHRAE's Standard 90.1 2007 in its publication?
8 A. I know they did a book.
9 Q. Do you know how the book was typeset, for
10 example?
11 A. I -- what we did was provide them with a
12 PDF from which they -- they manufactured the book.
13 Q. Do you know whether they simply reproduced
14 the PDF?
15 A. My assumption is they -- they -- my
16 understanding and assumption is that they reproduced
17 the PDF as we provided it to them, and I think it may
18 even say in here that they're required to do so.
19 Q. I didn't see that. What I saw was
20 paragraphs 4 and 5.
21 A. It's certainly my understanding that the
22 document was reprinted as ASHRAE distributes it.
23 I -- which, I believe, is covered in Section 4.
24 Q. I guess in Section 4(a), I -- I'm not sure
25 what I -- what the phrase "in other formats" means.

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1 A. I'm not sure exactly what that means
2 either.
3 Q. In paragraph -- or in Section 5, paragraph
4 (b), what did ASHRAE mean by "stringent quality
5 control procedures"?
6 MR. LEWIS: Objection.
7 THE WITNESS: I'm sorry. That was in
8 Section 5(b)?
9 Q. (By Mr. Bridges) 5(b), I'm sorry, on
10 page 3 of 6.
11 A. My reading this agreement would mean that
12 it was -- that the document was up to -- is
13 comparable to the standards by which our products are
14 distributed to the public, made available for sale.
15 Q. Are you familiar with the term "double
16 keying"?
17 A. Yes.
18 Q. To what does that term apply?
19 A. I -- my understanding of double keying
20 would mean there would be a document that would be
21 keyboarded twice to ensure accuracy to the
22 document -- of what's been typed in.
23 Q. Do you have a view as to whether that is a
24 standard for entry of text into a -- into a
25 publication in the publishing industry?

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1 MR. LEWIS: Objection.
2 THE WITNESS: I've not come across that
3 being done for many, many years, because now so
4 much of the reproduction is PDF.
5 Q. (By Mr. Bridges) What about fresh entry of
6 text? Are you familiar with double keying as a
7 standard in the industry for fresh entry of text?
8 MR. LEWIS: Objection.
9 THE WITNESS: I'm not aware of that now as
10 a standard.
11 Q. (By Mr. Bridges) Were you aware of it as a
12 standard at any time in the past?
13 MR. LEWIS: Same objection.
14 THE WITNESS: I'm aware of it being done.
15 I'm not aware that it was a standard.
16 Q. (By Mr. Bridges) Whom were you aware of
17 doing it?
18 A. In the mid-1970s, we did a directory and
19 there was a firm that we used in Pennsylvania for
20 this directory. So it was very straightforward
21 keying, and they employed double -- double keying.
22 Q. Do you recall ever asking a vendor to
23 provide triple keying of fresh text entry?
24 MR. LEWIS: Objection.
25 THE WITNESS: I am not.

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1 (Plaintiffs' Exhibit 1083 was marked for
2 identification.)
3 Q. (By Mr. Bridges) Mr. Comstock, I've handed
4 you Exhibit 1083. Could you please identify it?
5 A. This is an e-mail exchange between myself
6 and Jeff Littleton.
7 Q. Who is Mr. Littleton?
8 A. He is our executive vice president and
9 person to whom I report.
10 Q. Does this e-mail exchange pertain to the
11 agreement we've just discussed as Exhibit 1082?
12 A. Yes, it does.
13 Q. By the way, have you -- strike that.
14 Has ASHRAE studied the reproductions of
15 ASHRAE's standards on the defendant's website?
16 A. I have not.
17 Q. Do you know whether anyone at ASHRAE has?
18 A. I am unaware.
19 Q. Do you know whether ASHRAE is aware of any
20 errors in the standards -- in the ASHRAE standards
21 posted by defendant?
22 A. I am not aware of any errors.
23 MR. BRIDGES: I would just like to say
24 for -- for the record, regardless of what
25 positions the parties take as they combat this

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1 case, if ASHRAE is ever aware of any error in
2 the defendant's posting, please do let us know
3 immediately.
4 You can reserve whatever rights you want to
5 it, but we think it would be better for us to
6 know sooner, rather than later, not as a matter
7 of discovery, but as a matter of public
8 interest.
9 I raise that because this has come up in a
10 different context with others where it appears
11 that they are collecting instances of errors,
12 but not telling Public Resource.
13 MR. FEE: I'd like to note for the record
14 that we object to that and move to strike it.
15 This is Kevin Fee on behalf of ASTM.
16 MR. REHN: NFPA will join that.
17 MR. BRIDGES: Well, for the record, I made
18 the same offer to both -- and request to both
19 NFPA and ASTM.
20 (Defendant's Exhibit 1084 was marked for
21 identification.)
22 Q. (By Mr. Bridges) Mr. Comstock, I don't
23 believe I see -- you are copied on this document.
24 Do you recognize this document?
25 A. I don't recall it, but I see that I'm --

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1 I'm copied on this exchange and was involved in it.
2 Q. And this is an exchange of e-mails in part
3 to you, but between someone named Mike Moore at
4 Newport Ventures, Inc. and ASHRAE regarding a request
5 for permission to reprint ASHRAE 90.1; is that
6 correct?
7 A. That is correct.
8 Q. Who is Julie Harr?
9 A. Julie Harr is my assistant.
10 Q. And she's the one we discussed earlier as
11 having responsibility for acting as a point person or
12 interface with ASHRAE with respect to requests for
13 permission; is that correct?
14 A. That is correct.
15 (Defendant's Exhibit 1085 was marked for
16 identification.)
17 MR. LEWIS: Thank you, sir.
18 Q. (By Mr. Bridges) Mr. Comstock, this is
19 a -- at the top, an e-mail from Steve Ferguson to you
20 regarding a request to reprint tables from ASHRAE
21 90.1 2010 and one or more codes in Minnesota; is that
22 correct?
23 A. That's what this pertains to, yes.
24 Q. Do you recall the outcome of this request?
25 A. I do not recall.

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1 Q. Based on the information in this e-mail,
2 would you have an expectation as to what the likely
3 outcome of this request was?
4 MR. LEWIS: Objection.
5 THE WITNESS: We try to work with -- this
6 is from the Minnesota -- State of Minnesota
7 Energy Mechanical Codes. We like to cooperate
8 with them.
9 It looks like there's a couple of tables.
10 My guess is we would probably grant that
11 permission.
12 (Defendant's Exhibit 1086 was marked for
13 identification.)
14 Q. (By Mr. Bridges) Mr. Comstock, I've handed
15 you Exhibit 1086.
16 Is this an e-mail from you, with other
17 e-mails earlier in the thread, to your assistant
18 regarding permission ASHRAE granted in response to a
19 request from Minnesota?
20 A. I'm sorry. What's --
21 Q. I'm sorry. Is this an e-mail from you --
22 A. Oh.
23 Q. -- with other e-mails earlier in the thread
24 to your assistant regarding permission ASHRAE granted
25 in response to a request from Minnesota?

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1 A. Yes, this appears to be the same thread.
2 Q. The beginning of the thread on the second
3 page of the exhibit says, "The State of Minnesota
4 intends to adopt the 2012 International Mechanical
5 Code and the 2012 International Energy Conservation
6 Code by reference with amendments."
7 You see that?
8 A. Was that the previous document?
9 Q. No. That's on page 2 of -- of
10 Exhibit 1086.
11 A. Page 2. Yes, I see that.
12 Q. Are the International Mechanical Code and
13 International Energy Conservation Code both ASHRAE
14 codes?
15 A. No, they are not.
16 Q. Is either of them?
17 A. No, neither of them is an ASHRAE document.
18 Q. So he was just giving that to you by --
19 for -- for informational purposes or what? Do you --
20 did you have an understanding as to what the
21 relevance of that was?
22 MR. LEWIS: Objection.
23 THE WITNESS: I'm -- I -- I think he's -- I
24 think it's just providing additional
25 information.

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1 Q. (By Mr. Bridges) Was the import of this
2 that Minnesota was adopting these two other codes and
3 not ASHRAE codes, but wanted certain sections from an
4 ASHRAE code to graft into those Minnesota codes?
5 MR. LEWIS: Objection.
6 THE WITNESS: My concern here was the use
7 of -- the request to use content from Standard
8 90.1. So I focused my attention on -- on that
9 use.
10 Q. (By Mr. Bridges) But the permission you
11 granted was to use material from 90.1 in a state code
12 that was incorporating provisions from other codes
13 through other sources; correct?
14 A. I think our intent was to allow reprinting
15 of the sections that were specified in the message.
16 Q. Well, the context was that that reprinting
17 would be in a state code that also incorporated
18 material from two other codes from another source;
19 correct?
20 A. That's -- that -- as I read it here, that's
21 what that seems to say.
22 (Defendant's Exhibit 1087 was marked for
23 identification.)
24 Q. (By Mr. Bridges) Mr. Comstock, this is an
25 e-mail that you received from your colleague,

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1 Michshell Phillips, regarding a request for a copy of
2 a standard --
3 A. Yes.
4 Q. -- from -- and -- sorry, it's from someone
5 in Israel; is that right?
6 A. Israeli standards organization, I believe.
7 Q. Who is Michshell Phillips?
8 A. She is an editorial coordinator in our --
9 in our special publications group.
10 Q. It appears that -- in this e-mail that
11 ASHRAE generated an invoice for one-time license fees
12 for the use of ASHRAE Standard 62.1 and Standard 90.1
13 to be included in Israeli standards; correct?
14 A. That is what this indicates, yes.
15 Q. How much would -- would -- strike that.
16 Would ASHRAE consider that revenue to be
17 royalty revenue or sale of publication revenue or
18 something else?
19 A. We would account for that as a royalty.
20 Q. Do you know how much ASHRAE earns in
21 royalties in a particular year paid to it by other
22 entities that are responsible for developing
23 standards or codes?
24 A. So the question is to restrict it to
25 entities that are going to use content from us in a

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<p>1 code --</p> <p>2 Q. Right --</p> <p>3 A. -- not just --</p> <p>4 Q. -- but in a code, I -- I mean in a -- not</p> <p>5 in a legal code, but in a -- in some other standard</p> <p>6 or code produced by some other standards organization</p> <p>7 or standards authority.</p> <p>8 MR. LEWIS: Objection.</p> <p>9 THE WITNESS: On an average basis, my guess</p> <p>10 would be \$10,000.</p> <p>11 Q. (By Mr. Bridges) Per year?</p> <p>12 A. Per year, yeah.</p> <p>13 Q. Does ASHRAE pay other standards</p> <p>14 organizations for the privilege of using material</p> <p>15 from their codes or standards in ASHRAE's codes or</p> <p>16 standards?</p> <p>17 A. To my knowledge, we do not.</p> <p>18 (Defendant's Exhibit 1088 was marked for</p> <p>19 identification.)</p> <p>20 Q. (By Mr. Bridges) Mr. Comstock, what is</p> <p>21 Exhibit 1088?</p> <p>22 A. A multiuser license for 90.1 2010 and 189.1</p> <p>23 2009.</p> <p>24 Q. So this is a -- sort of a bundled license</p> <p>25 for two different standards?</p> <p style="text-align: right;">Page 130</p>	<p>1 Doesn't a license give rights to use the</p> <p>2 content?</p> <p>3 A. It -- it may be a bad choice of words in</p> <p>4 this case.</p> <p>5 Q. Okay. What -- what do you think this</p> <p>6 means?</p> <p>7 A. That ASHRAE retains ownership over the</p> <p>8 content. That's how I would read that.</p> <p>9 Q. By the way, I see references to IP and SI</p> <p>10 versions from time to time.</p> <p>11 Does "IP" stand for inches and pounds and</p> <p>12 "SI" for system international?</p> <p>13 A. Correct.</p> <p>14 Q. And a more ordinary word for "SI" would be</p> <p>15 metric?</p> <p>16 A. A more ordinary word, but perhaps not as</p> <p>17 precise.</p> <p>18 Q. Thank you.</p> <p>19 (Defendant's Exhibit 1089 was marked for</p> <p>20 identification.)</p> <p>21 Q. (By Mr. Bridges) Mr. Comstock, I've handed</p> <p>22 you Exhibit 1089. It is an exchange of</p> <p>23 correspondence between ASHRAE and someone in Slovenia</p> <p>24 regarding Standard 90.1 2013; is that correct?</p> <p>25 A. That is correct.</p> <p style="text-align: right;">Page 132</p>
<p>1 A. It looks -- it appears to be that way, yep.</p> <p>2 Q. In the first sentence in the main part of</p> <p>3 the text, in the smaller print, it says, "In</p> <p>4 purchasing a Multiple User License from ASHRAE for a</p> <p>5 Standard, the purchaser recognizes that the title,</p> <p>6 ownership rights and intellectual property rights in</p> <p>7 the data shall remain in ASHRAE and/or its supplier."</p> <p>8 Do you see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. For what ASHRAE standards do title</p> <p>11 ownership rights and intellectual property rights in</p> <p>12 the data remain with a supplier of ASHRAE, as opposed</p> <p>13 to ASHRAE itself?</p> <p>14 A. I can't answer that -- answer that.</p> <p>15 That -- that may be referring to a distribution</p> <p>16 process that's applied.</p> <p>17 Q. Well, then that would normally be ASHRAE</p> <p>18 and/or its distributor, I would assume.</p> <p>19 A. I -- I would think so. Offhand, I can't --</p> <p>20 I -- I -- I'm not aware of -- of content being</p> <p>21 provided by a supplier, if the content's an ASHRAE</p> <p>22 standard.</p> <p>23 Q. Farther along in the second line, after</p> <p>24 "and/or its supplier," it says "This license gives no</p> <p>25 rights to content."</p> <p style="text-align: right;">Page 131</p>	<p>1 Q. Do you understand that this refers to a</p> <p>2 Slovenian translation?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Did you have an understanding as to who was</p> <p>5 going to conduct the translation or prepare the</p> <p>6 translation?</p> <p>7 A. My understanding was that it would be</p> <p>8 prepared by the Slovenian Society of Mechanical</p> <p>9 Engineers, was their name.</p> <p>10 (Defendant's Exhibit 1090 was marked for</p> <p>11 identification.)</p> <p>12 Q. (By Mr. Bridges) Mr. Comstock, I've handed</p> <p>13 you Exhibit 1090.</p> <p>14 Could you identify it, please?</p> <p>15 A. This is a license and distribution</p> <p>16 agreement with -- between ASHRAE and ICC.</p> <p>17 Q. Is this for a -- is this an update of a</p> <p>18 previous agreement?</p> <p>19 A. It -- it -- it is. This is the replacement</p> <p>20 for an earlier agreement we had for an earlier</p> <p>21 version of -- of our standard and their code.</p> <p>22 (Defendant's Exhibit 1091 was marked for</p> <p>23 identification.)</p> <p>24 Q. (By Mr. Bridges) Is Exhibit 1091 e-mail</p> <p>25 correspondence between yourself and Mark Johnson of</p> <p style="text-align: right;">Page 133</p>

<p>1 the International Code Council regarding the document 2 you just identified as Exhibit 1090? 3 A. Yes. 4 Q. And a draft of 1090 is an attachment to 5 this e-mail in 1091; correct? 6 A. Correct. 7 MR. LEWIS: Objection. 8 (Defendant's Exhibit 1092 was marked for 9 identification.) 10 Q. (By Mr. Bridges) Please identify 11 Exhibit 1092. 12 A. This is an e-mail exchange between myself 13 and Jodi Scott in our office. 14 Q. The e-mail identifies Jodi Scott as 15 communications manager; is that correct? 16 A. That's correct. 17 Q. What does that role entail? 18 A. She was the -- our public relations and she 19 would monitor Internet postings related to ASHRAE. 20 Q. You said to her -- strike that. 21 The underlying e-mail is from you to your 22 assistant, Julie Harr; correct? 23 A. That's correct. 24 Q. And that e-mail says, "If you ever receive 25 a copyright infringement notice/message involving</p> <p style="text-align: right;">Page 134</p>	<p>1 various trade publications. 2 Q. Did you become aware of it from other 3 persons in the industry through conversations or 4 e-mail messages? 5 A. Not from -- from e-mail messages, I don't 6 believe. There were discussions that -- that I heard 7 about free access to documents on the Internet. 8 Q. What -- what discussions do you recall? 9 A. If I would go to conferences at which 10 publishing matters were discussed, whether it be 11 academic journals, books, standards. 12 Q. Who -- who would speak at those conferences 13 about these issues? 14 A. There would be -- typically, they would be 15 peer-to-peer groups that would -- so people in my 16 roles who would -- who would discuss perhaps people 17 from commercial publishers. 18 Q. To your knowledge, did ASHRAE ever 19 communicate to Mr. Malamud before this lawsuit that 20 it wanted Mr. Malamud to remove ASHRAE standards from 21 his website? 22 A. I have no knowledge of that. 23 Q. Do you know who would? 24 A. I -- I don't know. 25 Q. Did you ever become aware of Underwriters</p> <p style="text-align: right;">Page 136</p>
<p>1 Karl Malamud (sp?) bring to my attention." 2 What type of copyright infringement notice 3 or message were you anticipating in that statement? 4 A. That someone would bring to our attention 5 that there was a -- a violation of our copyright. 6 Q. Would that be something along the lines of 7 the communication from Dave Hollman of Carrier that 8 we reviewed earlier today? 9 A. Something along those lines, that's 10 correct. 11 Q. Do you recall receiving any other written 12 communications or notices of a similar sort that fall 13 within the description of what you are looking out 14 for in Exhibit 1092? 15 A. Yeah, I do not recall that. 16 Q. Did you read the article that Jodi Scott 17 brought to your attention? 18 A. I -- I believe I did. 19 Q. Did you have a -- an impression about 20 Mr. Malamud before you ran that article? 21 A. I was aware that -- that he held a position 22 where copyrighted documents could be -- be made 23 available on the Internet. 24 Q. How did you become aware of that? 25 A. I think from articles such as this one from</p> <p style="text-align: right;">Page 135</p>	<p>1 Laboratories having discussions with anyone at ASHRAE 2 about Mr. Malamud? 3 A. No. 4 Q. Did you ever become aware of anyone at ASME 5 having discussions with anyone at ASHRAE regarding 6 Mr. Malamud? 7 A. No, I have no knowledge of such 8 discussions. 9 Q. Were you -- sorry. 10 Was ASHRAE aware of a lawsuit that Public 11 Resource brought against SMACNA, or the Sheet Metal 12 and Air Conditioning Contractors' National 13 Association? 14 A. Yes, I was aware of that. 15 (Defendant's Exhibit 1093 was marked for 16 identification.) 17 Q. (By Mr. Bridges) Can you please identify 18 Exhibit 1093? 19 A. This is an e-mail exchange that involves 20 Claire Ramspeck and me. 21 Q. Claire Ramspeck is director of technology 22 at ASHRAE, or at least was at the time of this 23 e-mail; correct? 24 A. That is correct. 25 Q. What were her functions as director of</p> <p style="text-align: right;">Page 137</p>

1 technology?
2 A. She's administrator of our standards
3 activity, or they fall within her area.
4 Q. Please turn to the earliest e-mail in the
5 thread on the reverse side of the page.
6 Are you familiar with something called the
7 IPRPC?
8 A. I am not.
9 Q. At the bottom of the front page of
10 Exhibit 1093, Ms. Ramspeck -- that's a -- that's an
11 e-mail from Ms. Ramspeck to you; correct?
12 A. That's correct.
13 Q. And she said, "I thought you'd want to know
14 about the latest development in the Carl
15 Malamud/Incorporation by Reference issue."
16 Do you see that?
17 A. Yes, I do.
18 Q. What earlier developments was ASHRAE aware
19 of with respect to the Carl Malamud incorporation by
20 reference issue?
21 MR. LEWIS: Objection.
22 THE WITNESS: What I'm aware of is the --
23 is the position of Mr. Malamud that -- that
24 documents -- that copyrighted documents could be
25 made freely available, from articles such as had

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1 been sent to me from -- from Jodi. So I was
2 aware of this being an issue.
3 Q. (By Mr. Bridges) I'm trying to focus on
4 her choice of the words "the latest development," and
5 I was wondering what earlier developments either you
6 or ASHRAE was aware of that made this the latest
7 development.
8 A. I'm not aware of earlier developments
9 except that the -- the position of -- about posting
10 copyrighted documents is one that all publishers
11 follow -- were following that issue.
12 Q. Following Ms. Ramspeck's e-mail to you, you
13 sent an e-mail back to her on February 26, 2013;
14 correct?
15 A. That's correct.
16 Q. You're referring in that e-mail to the IHS
17 meeting.
18 What was that?
19 A. I was at a conference of Information
20 Handling Services.
21 Q. Information Handling?
22 A. Yes, uh-huh (affirmative).
23 Q. What does Information Handling Services
24 mean?
25 A. They're -- they're a distributor of -- of

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1 standards and other information.
2 Q. That's a business name?
3 A. That's correct.
4 Q. That's not an industry category?
5 A. No. That's a company name.
6 Q. When you said "he," referring to Tom
7 Soles -- strike that.
8 In the second sentence of that paragraph,
9 the "he" at the beginning of the sentence refers to
10 Tom Soles of SMACNA; correct?
11 MR. LEWIS: Objection.
12 THE WITNESS: Uh-huh (affirmative).
13 Q. (By Mr. Bridges) You said, "He had his
14 hand slapped by Tom Pace (ASTM), ANSI and had a call
15 from NFPA when I was actually with him."
16 Do you see that?
17 A. Yes, I do.
18 Q. What did you mean by the phrase, "He had
19 his hand slapped by Tom Pace (ASTM)..."?
20 A. That's what Tom Soles told me.
21 Q. What -- what details did he furnish to you?
22 A. Just that there was a lot of concern
23 from -- among the -- the -- the standards developers
24 about the -- the violation of the copyright postings
25 on the Internet.

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1 Q. Does that explain why Mr. Soles would say
2 he had his hand slapped by Tom Pace, ASTM, and ANSI?
3 A. I wasn't involved in -- in their
4 discussions. That's just what Tom -- what Tom Soles
5 relayed to me.
6 Q. So I'm trying to understand the context of
7 his explaining that.
8 It -- it suggests that he was reprimanded
9 by ASTM and ANSI.
10 MR. LEWIS: Objection.
11 Q. (By Mr. Bridges) Was that your
12 understanding of it?
13 MR. LEWIS: Objection.
14 THE WITNESS: Those were the words he used
15 with me.
16 Q. (By Mr. Bridges) Was it your understanding
17 when he used those words that it was some kind of a
18 reprimand that he was referring to?
19 MR. LEWIS: Objection.
20 THE WITNESS: I can't say. That was --
21 that -- those were the words he -- he relayed to
22 me.
23 Q. (By Mr. Bridges) And then you relayed to
24 Ms. Ramspeck that Mr. Soles had a call from NFPA when
25 you were with him; correct?

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1 A. That's correct.
2 Q. What did you observe with respect to him
3 during that call that came in from NFPA?
4 MR. LEWIS: Objection.
5 THE WITNESS: I'm -- that's what Tom Soles
6 told me, that he had a phone call.
7 Q. (By Mr. Bridges) Well, I thought you were
8 telling Ms. Ramspeck that Tom Soles had a phone call
9 from NFPA when you were with Tom Soles.
10 A. Well, I -- I wasn't part of that
11 conversation.
12 Q. But were you --
13 A. I --
14 Q. Were you with him as he engaged in that
15 conversation on the telephone?
16 A. Not -- not that I recall.
17 Q. By the way, the reference to Tom Pace,
18 could that have been John Pace, the director of
19 publications at ASTM?
20 A. Yeah, that's John Pace.
21 MR. FEE: Objection. Calls for
22 speculation.
23 COURT REPORTER: Who was that, please?
24 MR. FEE: That was Kevin Fee from ASTM.
25 COURT REPORTER: Thank you.

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1 Q. (By Mr. Bridges) As you sit here, you say
2 you -- you now know that that was John Pace?
3 A. My recollection.
4 MR. FEE: Same objection.
5 Q. (By Mr. Bridges) Then you said to
6 Ms. Ramspeck, "Not a good excuse but he had no idea
7 of what he was getting into."
8 Could you please explain the -- your
9 statement that he had no idea of what he was getting
10 into?
11 A. That was from articles such as the -- the
12 previous one, where we saw where this -- where there
13 was a lot of concern about the high-profile nature
14 of -- of the -- of the postings.
15 Q. What was it that he was getting into?
16 A. A case of high visibility.
17 Q. Anything else?
18 A. No, not that I'm aware of.
19 Q. And Ms. Ramspeck responded to you by
20 saying, "It is unfortunate."
21 What did you understand from that to have
22 been unfortunate?
23 A. That there would be a lot of -- a lot of --
24 be a high-profile case, high-profile awareness.
25 Q. And what -- what makes that unfortunate?

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1 A. Well, that he'd be at the center of that.
2 Q. Why would it be unfortunate that he would
3 be at the center of that?
4 A. Because it would be a -- it would be a -- a
5 significant effort to try to resolve the copyright
6 issue.
7 Q. Was there -- was there concern that it was
8 unfortunate because he was the -- was not -- or
9 because SMACNA was not the most strategically
10 advantageous party to litigate the issue?
11 MR. LEWIS: Objection.
12 MR. FEE: Objection. Calls for
13 speculation. Vague. Calls for legal
14 conclusion. Kevin Fee again.
15 THE WITNESS: I -- I can't speak to what --
16 what the motivations were.
17 Q. (By Mr. Bridges) I'm not asking for
18 speculation about motivations; I'm trying to explore
19 why the fact that SMACNA would have a high-profile
20 case as to which there would be a great deal of
21 awareness would be unfortunate.
22 MR. FEE: Same objection.
23 THE WITNESS: I just think anyone who was
24 gonna be involved in this would really need to
25 be aware of what all the issues were.

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1 Q. (By Mr. Bridges) What are all the issues
2 that one needs to be aware of?
3 A. I would say that would --
4 MR. FEE: Same objections.
5 THE WITNESS: The -- the high-profile
6 nature of the -- of -- of the case.
7 Q. (By Mr. Bridges) What else?
8 A. I'm not aware of any- -- anything else.
9 Q. Ms. Ramspeck went on to say, "SMACNA should
10 have been more plugged in on this issue...."
11 What did you understand that to mean?
12 A. From the high-profile nature of the --
13 of -- of -- of the -- the -- the postings, that this
14 was meant to be a real test case of copyright on the
15 Internet.
16 Q. But what did "more plugged in" mean? Did
17 that mean in greater conversation with others?
18 A. I can't speak --
19 MR. FEE: Objection to form.
20 THE WITNESS: I -- I don't know which --
21 I -- I would interpret that as being awareness,
22 but I can't speak to anything more than that.
23 Q. (By Mr. Bridges) Why is it unfortunate for
24 SMACNA to have had litigation with Public Resource,
25 as opposed to ASHRAE, ASTM, and NFPA to be in

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1 litigation with Public Resource?
2 MR. FEE: Objection to form.
3 MR. LEWIS: Objection.
4 MR. FEE: Lack of foundation.
5 THE WITNESS: I'm not aware of what those
6 issues might be.
7 (Defendant's Exhibit 1094 was marked for
8 identification.)
9 Q. (By Mr. Bridges) Mr. Comstock,
10 Exhibit 1094 is an e-mail from you to your assistant,
11 Julie Harr; correct?
12 A. That's correct.
13 Q. Do you understand -- strike that.
14 What did you mean when you wrote to Julie
15 Harr, "Be glad not me and you"?
16 A. I believe this would be a high-profile case
17 that would take a considerable amount of time to
18 resolve.
19 Q. But ASH- -- ASHRAE brought a lawsuit
20 against Public Resource; correct?
21 A. That -- I'm not sure when that -- when that
22 action initiated, but that was not something I was --
23 that I was involved in.
24 Q. Bringing the lawsuit was not something you
25 were involved in?

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1 A. That's correct.
2 Q. Were you aware of ASHRAE's plans to file
3 this lawsuit before ASHRAE filed it?
4 MR. LEWIS: I'll insert my objection that
5 this is outside the scope of this witness'
6 topics.
7 Q. (By Mr. Bridges) You may answer.
8 A. I -- I remember -- there were discussions
9 that were -- that were held that I was aware of, but
10 I was not privy to those.
11 Q. Did you offer any opinion internally at
12 ASHRAE about the wisdom or propriety of ASHRAE
13 bringing a lawsuit against Public Resource?
14 MR. LEWIS: Objection.
15 THE WITNESS: I did think it was important
16 for ASHRAE to protect its copyright.
17 Q. (By Mr. Bridges) Did you offer an opinion
18 internally at ASHRAE about the wisdom or propriety --
19 MR. LEWIS: Objection.
20 Q. (By Mr. Bridges) -- of -- of ASHRAE
21 bringing a lawsuit against Public Resource?
22 MR. LEWIS: Objection.
23 THE WITNESS: I thought it was prudent for
24 ASHRAE to -- to protect its copyright, and if
25 that meant engaging in a lawsuit, then I would

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1 support that.
2 Q. (By Mr. Bridges) Do you know who at ASHRAE
3 decided that ASHRAE would be one of the plaintiffs in
4 this lawsuit?
5 MR. LEWIS: Same objection.
6 THE WITNESS: I do not know.
7 Q. (By Mr. Bridges) In your response to
8 Ms. Harr at the top of the page on Exhibit 1094, you
9 mentioned you "...played golf with the SMACNA guy who
10 did this back in February when he told me I said
11 watch out."
12 So -- so what was the name of the SMACNA
13 guy you were referring to there?
14 A. Tom Soles.
15 Q. Tom Soles.
16 The same one you saw at the ISH meeting?
17 A. That's correct.
18 Q. What caused you to tell him, "Watch out"?
19 A. Because from all I had read in the trade
20 press and so on, it was going to be a high-profile
21 case.
22 Q. Did you tell him to watch out because it
23 would be a risky case to SMACNA?
24 MR. LEWIS: Objection.
25 THE WITNESS: I told him it was going to --

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1 it -- my intention was that it was going to be a
2 high-profile case, it was going to require much,
3 much detail and attention.
4 Q. (By Mr. Bridges) Did you tell him that the
5 case might have bad consequences for the standards
6 development industry?
7 A. I did not.
8 Q. Did you have any other explanation to him
9 of why he should watch out?
10 A. No.
11 Q. Did Jeff Littleton decide to bring the case
12 on behalf of ASHRAE?
13 MR. LEWIS: Objection.
14 THE WITNESS: I do not know if -- I do not
15 know if it was Jeff. Such decision -- decisions
16 are usually made by our executive committee.
17 Q. (By Mr. Bridges) Who chairs the executive
18 committee?
19 A. The president of the association.
20 Q. The president of the executive -- sorry.
21 The president of the association is a
22 volunteer; is that correct?
23 A. That is correct.
24 Q. Who's the senior-most employee of the
25 association?

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1 A. Jeff Littleton.
 2 MR. LEWIS: We've been going for about an
 3 hour and a half now, but I didn't want to stop
 4 you if you guys were getting close to --
 5 MR. BRIDGES: Let me just do one or two
 6 more. It's not some great crescendo or
 7 anything. I'm just -- let me get through one or
 8 two.
 9 I'll stop in an instant if you need to stop
 10 right now.
 11 THE WITNESS: I'm okay.
 12 MR. BRIDGES: We'll go a couple of minutes.
 13 All that coffee's finally having its effect on
 14 me.
 15 (Defendant's Exhibit 1095 was marked for
 16 identification.)
 17 Q. (By Mr. Bridges) Mr. Comstock, do you
 18 recognize Exhibit 1095 as an ASHMAE -- as an e-mail
 19 that you received from Jodi Scott, ASHRAE's
 20 communications manager?
 21 A. Yes, I do.
 22 Q. This appears to forward a Google News Alert
 23 on Carl Malamud.
 24 Do you see that down below?
 25 A. Yes, I do.

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1 Q. Were you aware of ASHRAE having a Google
 2 News Alert subscription for -- for references to Carl
 3 Malamud?
 4 A. I would get items from Jodi Scott from
 5 Google Alerts.
 6 Q. Do you know how many Google Alerts
 7 regarding Carl Malamud you saw?
 8 A. I do not recall. I don't -- just a couple,
 9 I think, but I'm not aware of anything more.
 10 Q. Do you know when ASHRAE first started a
 11 Google News Alert on Carl Malamud?
 12 A. I do not know.
 13 MR. BRIDGES: This is a good time to break.
 14 VIDEOGRAPHER: This is the end of Video 3
 15 We're going off the record at 4:45 p m.
 16 (Thereupon, there was an interruption in
 17 the proceedings.)
 18 VIDEOGRAPHER: This is the beginning of
 19 Video 4. We're on the record at 4:58 p.m.
 20 (Defendant's Exhibit 1096 was marked for
 21 identification.)
 22 Q. (By Mr. Bridges) Mr. Comstock, I've just
 23 handed you Exhibit 1096.
 24 Can you confirm for me, please, that this
 25 is an e-mail from your assistant, Julie Harr --

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1 A. Yes, it is.
 2 Q. -- and it's in response to a request from
 3 someone in Vermont for use of material from an ASHRAE
 4 standard; is that right?
 5 A. Yes, that is correct.
 6 (Defendant's Exhibit 1097 was marked for
 7 identification.)
 8 Q. (By Mr. Bridges) Please identify
 9 Exhibit 1097.
 10 A. This is a copyright permission request.
 11 This looks like a -- a blank form, a model.
 12 Q. Is this a model that ASHRAE furnished to
 13 persons seeking permission to reprint material from
 14 ASHRAE standards?
 15 A. This was not specific to standards; this
 16 would have been used for general publications
 17 content.
 18 Q. That would include standards, as well?
 19 A. That's -- that is correct.
 20 (Defendant's Exhibit 1098 was marked for
 21 identification.)
 22 Q. (By Mr. Bridges) Mr. Comstock,
 23 Exhibit 1098 is an e-mail exchange between you and an
 24 employee of the City of Houston regarding Houston's
 25 adoption of an ASHRAE standard, at least portions of

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1 an ASHRAE standard; is that correct?
 2 A. That is correct.
 3 (Defendant's Exhibit 1099 was marked for
 4 identification.)
 5 Q. (By Mr. Bridges) Mr. Comstock, can you
 6 please identify Exhibit 1099?
 7 A. This pertains to an article that was -- was
 8 published with ASHRAE -- I assume with ASHRAE content
 9 from 90.1.
 10 MR. BRIDGES: With counsel's permission, I
 11 would like to add the following as a second part
 12 to this exhibit. They're sequential Bates
 13 numbers and I believe that this is probably
 14 identified as an attachment in the e-mail cover
 15 page of 1099.
 16 MR. LEWIS: I'm happy for you to ask the
 17 witness if that's his recollection.
 18 MR. BRIDGES: Sure. Just for the
 19 formality, I'd like to go ahead and say that the
 20 exhibit now constitutes Bates Nos. ASHRAE0027658
 21 through -665.
 22 MR. LEWIS: That's fine. I do want the
 23 record to reflect that --
 24 MR. BRIDGES: I'll ask him.
 25 Q. (By Mr. Bridges) Mr. Comstock, do you

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1 recognize the second portion of Exhibit 1099 as the
2 article to which the e-mail refers as the first part
3 of Exhibit 1099?
4 And I draw your attention, as well, not
5 only to the Bates numbers as given them by ASHRAE in
6 producing documents, but also to the attachment file
7 name as shown on the front page of the exhibit.
8 A. So this article is what is referred to in
9 the e-mail.
10 Q. And the article being the second part of
11 Exhibit 1099?
12 A. That's correct.
13 Q. Exhibit 1099 is an e-mail ostensibly from
14 Julie Harr to herself several times.
15 Do you know if you received a copy of this
16 as a bcc recipient?
17 A. I don't recall that I -- I don't recall
18 receiving copies as bcc.
19 Q. Do you understand what the reference is at
20 the top of Exhibit 1099, "Call Julie at NIA..."?
21 A. I do not.
22 Q. Is "NIA" an acronym you're familiar with,
23 referring to the National Insulation Association?
24 MR. LEWIS: Objection.
25 THE WITNESS: I'm -- I'm not aware of a --

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1 of that -- I'm not aware. Don't know.
2 Q. (By Mr. Bridges) Do you know whether the
3 National Insulation Association is responsible for
4 the publication of Insulation Outlook and
5 InsulationOutlook.com, which is the subject of this
6 message?
7 A. That seems logical. Offhand, I don't --
8 I -- I don't know if there is a National Insulation
9 Association.
10 Q. Well, for the record, I looked up the phone
11 number and that's what came back.
12 A. It is? Then --
13 MR. LEWIS: Objection.
14 Q. (By Mr. Bridges) Is it ASHRAE's position
15 that the references to Standard 90.1 in this article
16 are illegal?
17 MR. LEWIS: Objection.
18 THE WITNESS: I think the concern was
19 whether or not there was use of the cop- -- of
20 copyrighted content.
21 Q. (By Mr. Bridges) So my question is: Is it
22 ASHRAE's position that the use of ASHRAE's
23 copyrighted content in this article was illegal?
24 MR. LEWIS: Objection.
25 THE WITNESS: It appears from this exchange

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1 there was concern that content was used without
2 permission.
3 Q. (By Mr. Bridges) Is it ASHRAE's belief
4 that for that reason, the use of the content was
5 illegal?
6 MR. LEWIS: Objection.
7 THE WITNESS: My understanding of a
8 copyright violation is that would be unlawful.
9 Q. (By Mr. Bridges) Is it ASHRAE's view that
10 this article violated ASHRAE's copyright?
11 MR. LEWIS: Objection. Asked and answered.
12 THE WITNESS: I need to look at the
13 standard to confirm that.
14 Q. (By Mr. Bridges) Without -- this is a
15 standard that you have been in charge of publishing
16 for at least 20 years; correct?
17 A. That's correct.
18 Q. And how many pages is the standard, in its
19 standard typesetting as a PDF?
20 A. Off the top of my head, 140 pages.
21 Q. How long is this article?
22 A. Four pages.
23 Q. How much of this article -- strike that.
24 What do you think the highest possible
25 percentage is the material in this article

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1 constituted in ASHRAE's Standard 90.1?
2 MR. LEWIS: Objection. Vague.
3 THE WITNESS: A very small amount of
4 content.
5 Q. (By Mr. Bridges) Can you assign a
6 percentage to that, please?
7 MR. LEWIS: Objection.
8 THE WITNESS: I'd just be guessing for a
9 percentage. It's not much.
10 Q. (By Mr. Bridges) Under 5 percent?
11 MR. LEWIS: Objection.
12 THE WITNESS: I think that's an accurate
13 estimate.
14 Q. (By Mr. Bridges) Turning to the tables and
15 footnotes at the top of the second and third pages of
16 Exhibit -- sorry, of the article, Bates Nos. -027663
17 and -027664, it appears that those tables were taken
18 directly from ASHRAE's Standard 90.1, given the
19 references at the top of the pages; is that correct?
20 MR. LEWIS: Objection.
21 THE WITNESS: I'd -- I'd have to look at
22 the standard to tell if they were taken directly
23 or not.
24 Q. (By Mr. Bridges) Could you suggest other
25 ways by which a writer could express the ideas

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1 contained in those two tables at the top of pages
2 -027663 and -027664?
3 MR. LEWIS: Objection.
4 THE WITNESS: They could likely reformat
5 tables.
6 Q. (By Mr. Bridges) What else?
7 MR. LEWIS: Objection.
8 THE WITNESS: I'm not sure.
9 (Defendant's Exhibit 1100 was marked for
10 identification.)
11 Q. (By Mr. Bridges) I'm showing you
12 Exhibit 1100.
13 Who is Doug Reed?
14 A. He was our director of government affairs
15 in Washington.
16 Q. During what period of time did he hold that
17 post?
18 A. I can tell you more accurately when he
19 ended, which was approximately -- he retired six
20 months or so ago. He was employed by ASHRAE for
21 probably five to seven years before that.
22 Q. Has someone succeeded him in that role?
23 A. Nobody.
24 Q. Has someone else taken over his job
25 functions?

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1 A. We have several other people in our
2 Washington office and -- and among those people
3 there, they are conducting the affairs of our
4 Washington office.
5 Q. Who are those persons?
6 A. Jim Scarborough and Mark Ames.
7 Q. Are you familiar with this e-mail exchange
8 or with its topics?
9 A. I -- I do recall this now.
10 Q. Do you recall interest of the United States
11 State Department in extracting an appendix of
12 ASHRAE's 90.1 standard?
13 A. Only from -- from -- from what's in the
14 exchange, where I guess they asked to use Appendix B,
15 for which I provided that to them.
16 Q. And does this exhibit refresh your
17 recollection about that?
18 A. Yes --
19 MR. LEWIS: Objection.
20 THE WITNESS: -- I think I did and required
21 it be -- be referenced from the standard.
22 Q. (By Mr. Bridges) What is Appendix B to
23 Standard 90.1?
24 A. I do not know.
25 (Defendant's Exhibit 1101 was marked for

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1 identification.)
2 MR. LEWIS: Thank you.
3 Q. (By Mr. Bridges) I've handed you
4 Exhibit 1101.
5 Can you identify this, please?
6 A. Yes. This is an exchange between me and
7 someone from Vancouver -- City of Vancouver.
8 Q. That's Vancouver, Canada; correct?
9 A. That's correct.
10 Q. What are the ASHRAE 90.1 2007 compliance
11 PDFs?
12 A. Those were or are forms that are -- are
13 used where you would enter data to -- to achieve
14 compliance with the -- the standard.
15 Q. What creative expression is in those forms,
16 to the best of your knowledge?
17 MR. LEWIS: Objection.
18 THE WITNESS: Could you ask the question
19 again? I'm sorry.
20 Q. (By Mr. Bridges) What creative expression
21 is in those forms, to the best of your knowledge?
22 MR. LEWIS: Objection.
23 THE WITNESS: Yeah, I -- I do not know
24 the -- the technical application.
25 Q. (By Mr. Bridges) Please look at the page

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1 stamped with the number at the bottom -0027650.
2 What was the rationale for the conditions
3 that ASHRAE imposed upon the City of Vancouver?
4 A. The -- the rationale would be that -- that
5 the -- this -- this standard was still required to
6 use the forms and that there would be recognition of
7 the ASHRAE ownership and its copyright for the forms.
8 Q. Does ASHRAE sell those forms?
9 A. They are part of the standard.
10 Q. Does it sell the forms independently of the
11 standard?
12 A. No, I don't believe we do.
13 Q. What harm would come to ASHRAE from the
14 unbridled distribution of those forms?
15 MR. LEWIS: Objection.
16 THE WITNESS: Our -- our procedures and
17 policy are to maintain the copyright and to
18 ensure that the -- or try our best to ensure
19 that the forms are -- are properly used and
20 associated with the Society and the standard in
21 the correct manner.
22 Q. (By Mr. Bridges) I -- I hear that as a
23 concern. I -- I guess I'm not sure I heard what
24 harms would flow to ASHRAE from the unbridled
25 distribution of those forms.

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1 MR. LEWIS: Objection.
2 THE WITNESS: Our -- our process is to try
3 to protect our copyright whenever -- whenever we
4 can.
5 Q. (By Mr. Bridges) And the harm came --
6 would come -- would be in what nature?
7 A. Harm would be if -- if -- if our -- if the
8 information was -- was made in a way that didn't
9 provide a -- a connection to ASHRAE as being a source
10 for additional information, explanation, further
11 background.
12 Q. Would it -- would ASHRAE suffer greater or
13 less harm if the forms were used without any
14 reference to ASHRAE whatsoever?
15 MR. LEWIS: Objection.
16 THE WITNESS: I'm not sure I can -- I -- I
17 can answer that.
18 Again, our process is to protect our -- our
19 copyright. I'm not in the position of -- of --
20 of knowing what could be the consequences of not
21 using the forms properly or without reference to
22 ASHRAE.
23 (Defendant's Exhibit 1102 was marked for
24 identification.)
25 Q. (By Mr. Bridges) Exhibit 1102 consists of

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1 other correspondence between you and Mr. McCall of
2 the City of Vancouver, Canada; is that correct?
3 A. That is correct.
4 Q. You mention that the files -- strike that.
5 You mention files on the front page of
6 Exhibit -- Exhibit 1102; is that correct?
7 A. That's correct.
8 Q. What files were you referring to?
9 A. These would be the files of the -- of -- of
10 the forms.
11 Q. PDF files of -- of the forms?
12 A. We may have converted them to Word.
13 Q. So whatever format they were, these were
14 electronic files containing files in a particular
15 format; is that correct?
16 A. Yeah, they were --
17 MR. LEWIS: Objection.
18 THE WITNESS: -- they were files of --
19 of -- of -- that were formatting files.
20 Q. (By Mr. Bridges) Was there rationale as to
21 why ASHRAE wanted to use tamperproof formatting or
22 tamperproof files for these forms?
23 MR. LEWIS: Objection.
24 THE WITNESS: Looking back on this, that
25 would be so that the -- the -- the nature and

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1 intent of the files were kept intact. They --
2 they couldn't be modified to the extent that
3 they were asking for information that weren't
4 part of the original files.
5 Q. (By Mr. Bridges) Is there a reason ASHRAE
6 had to prevent people from adapting the files to
7 their own particular specifications or desires?
8 A. I believe in this case, it was to
9 demonstrate compliance with the standard.
10 Q. Is there only one way to demonstrate
11 compliance with the standard?
12 A. I'm -- I am not aware of -- I -- I don't
13 have the knowledge of the technical application.
14 Q. Was the form necessary and -- was the form
15 uniquely necessary to demonstrate compliance?
16 MR. LEWIS: Objection.
17 THE WITNESS: I don't believe so. I think
18 it was a -- it was a -- a tool to assist, an
19 aid.
20 (Defendant's Exhibit 1103 was marked for
21 identification.)
22 Q. (By Mr. Bridges) Mr. Comstock, I've handed
23 you Exhibit 1103. I think we've seen another
24 exhibit -- and I'm sorry I don't have the number
25 right at hand -- with some of this e-mail thread in

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1 it, but this is correspondence on which you were
2 copied between your assistant, Ms. Harr, and an
3 employee of the City of Minneapolis, I believe; is
4 that correct?
5 A. That's -- I believe that's correct.
6 Q. And this involves permission without a
7 royalty fee for use of one section and three tables
8 of an ASHRAE standard; correct?
9 A. That is correct.
10 Q. And looking at the context and the
11 discussions earlier, this is -- they grant under
12 conditions of a request to use these in one or two
13 Minnesota codes, namely the Minnesota Mechanical Code
14 and the Minnesota Commercial Energy Code; correct?
15 A. That is correct.
16 Q. At the end of Ms. Harr's e-mail to
17 Mr. Manz, M-A-N-Z, in this exhibit, she refers to a
18 required copyright notice -- to a copyright notice
19 that ASHRAE was going to require of the City of
20 Minneapolis; is that correct?
21 A. That is correct.
22 Q. And that notice would be required where
23 more than one element or more than a 50-word excerpt
24 from those portions of ASHRAE 90.1 2010 were going to
25 be used by the State of Minnesota; is that correct?

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1 A. That is correct.
2 Q. Did ASHRAE understand the final sentence of
3 that copyright notice to be a legal requirement? And
4 I quote, "This material may not be copied nor
5 distributed in either paper or digital form without
6 ASHRAE's permission?"
7 A. Yeah, I think that's just an expression of
8 our -- our wishing to maintain copyright.
9 Q. It's not, in your view, a statement of a
10 legal restriction?
11 MR. LEWIS: Objection.
12 THE WITNESS: I -- I can't speak to the --
13 to the legality of this. I -- this is our
14 standard statement we use that we wish to have
15 our copyright respected.
16 Q. (By Mr. Bridges) Where did ASHRAE expect
17 that copyright notice to appear in either of the
18 Minnesota codes that were the subject of this
19 correspondence?
20 A. That would be with the applicable sections
21 or tables, I imagine.
22 Q. Was it ASHRAE's view that the Minnesota
23 Mechanical Code and the Minnesota Commercial Energy
24 Code, to the extent they included more than one
25 element mentioned in this e-mail or more than a

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1 50-word excerpt, could not be copied or distributed
2 in either paper or digital form without ASHRAE's
3 permission?
4 MR. LEWIS: Objection.
5 THE WITNESS: The intent here would be to
6 restrict this to the use of the ASHRAE content
7 that's -- that's reprinted.
8 Q. (By Mr. Bridges) Where would that be
9 reprinted?
10 A. With -- with those pertinent sections.
11 Q. Right.
12 Was it ASHRAE's expectation that to --
13 let's assume that the section and all three tables
14 from ASHRAE's Standard 90.1 2010 appeared in the
15 Minnesota Mechanical Code. Let's assume one full
16 section, 6.4.4, and the three tables referred to all
17 appeared in the Minnesota Mechanical Code.
18 Was it ASHRAE's expectation that as a
19 consequence, the Minnesota Mechanical Code could not
20 be copied or distributed in either paper or digital
21 form without ASHRAE's permission?
22 A. That would not be my expectation. Those
23 elements separate from the -- those two codes is what
24 my expectation would be.
25 Q. Does anything in this correspondence,

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1 namely Exhibit 1103, indicate such a limitation or
2 narrowness of ASHRAE's expectation?
3 MR. LEWIS: Objection.
4 THE WITNESS: Not that I read here.
5 (Defendant's Exhibit 1104 was marked for
6 identification.)
7 Q. (By Mr. Bridges) Please identify
8 Exhibit 1104.
9 A. E-mail exchange between myself and David
10 Branson.
11 Q. Who is Mr. Branson?
12 A. He's a member of ASHRAE. He's active on
13 our committees.
14 Q. What was the subject of this
15 correspondence?
16 A. It looks like he wants to develop a
17 software product.
18 Q. Do you know whether he ended up developing
19 that software product?
20 A. I have -- I have no recollection of
21 anything further from -- from this message.
22 Q. Was it your expectation, in connection with
23 this correspondence, that ASHRAE would have to pay
24 Mr. Branson or any of his students for their efforts
25 on that software product?

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1 A. Could you repeat that, please?
2 Q. Sure.
3 Was it your expectation or ASHRAE's
4 expectation in connection with this correspondence in
5 Exhibit 1104 that ASHRAE would have to pay
6 Mr. Branson or any of his students for their efforts
7 on the software product?
8 A. If we developed a software product with
9 Mr. Branson, we'd have an agreement to do that and
10 the agreement would spell out those terms and perhaps
11 a distribu -- perhaps a distribution agreement.
12 Q. Does anything in this exchange of
13 correspondence in 1104 indicate an expectation of
14 payment on Mr. Branson's part or on his students'
15 part?
16 A. Payment from ASHRAE to Mr. Branson?
17 Q. Or his students, correct.
18 A. I don't think so. I don't recall anything.
19 Q. ASHRAE, in fact, had an expectation that it
20 could use the apps that Mr. Branson and his students
21 developed in order to gain revenue for ASHRAE,
22 correct --
23 MR. LEWIS: Objection.
24 Q. (By Mr. Bridges) -- if you look at the
25 bottom of page 2 and the top of page 3 of the

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1 correspondence?
 2 MR. LEWIS: Objection.
 3 THE WITNESS: So what I was suggesting here
 4 was, yes, the possibility that he would develop
 5 an app for ASHRAE.
 6 Q. (By Mr. Bridges) And there's also a
 7 suggestion of the possibility that the app that he
 8 would develop for ASHRAE would provide a modest
 9 revenue stream, looking at the top of page 3 of the
 10 exhibit; correct?
 11 A. That is correct.
 12 Q. And you see that Mr. Branson had -- strike
 13 that.
 14 Do you see that Mr. Branson expressed a
 15 possible motivation for developing the app? At the
 16 bottom of page 3, he said, "I was looking for
 17 something to use in a coding exercise, and noted that
 18 90.1 could possibly be a fit. I also determined that
 19 this could be an easy way to get the Standard into
 20 the hands of a huge number of Authorities Having
 21 Jurisdiction (building inspectors, fire marshals,
 22 etc.), engineers, and contractors."
 23 Do you see that?
 24 A. I -- I -- I see where he wrote that, yes.
 25 Q. To this date, has ASHRAE developed an app

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1 of the sort Mr. Branson was suggesting?
 2 A. We are develop- -- we're -- we're just
 3 beginning development now of an app that would be
 4 tied in with compliance for the standard. Let's see
 5 what was he suggesting.
 6 90.1 checklist. It -- it -- what we're
 7 developing may be very similar to what he was
 8 thinking of doing, as well. There's much interest
 9 in -- in -- in publishing about making -- having
 10 electronic tools that help make books and documents
 11 easier to use in different formats.
 12 Q. Of course, at the bottom of page 3, he
 13 wasn't suggesting making the documents easy to use.
 14 He said, "I also determined that this could be an
 15 easy way to get the Standard into the hands of a huge
 16 number of Authorities Having Jurisdiction (building
 17 inspectors, fire marshals, etc.), engineers, and
 18 contractors."
 19 Do you see that?
 20 MR. LEWIS: Objection.
 21 THE WITNESS: Yes, I do.
 22 Q. (By Mr. Bridges) Has ASHRAE on its own
 23 taken any steps since this exchange of correspondence
 24 in 2010 to get the standard into the hands of a huge
 25 number of authorities having jurisdiction, such as

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1 building inspectors and fire marshals, as well as
 2 engineers and contractors?
 3 A. Nothing specific I'm aware of other than
 4 the -- the agreements we had with ICC for
 5 distribution of 90.1.
 6 (Defendant's Exhibit 1105 was marked for
 7 identification.)
 8 Q. (By Mr. Bridges) Mr. Comstock, I'm going
 9 to be handing you a series of documents in the nature
 10 of financial discovery that we received from ASHRAE,
 11 and I just want to get you to identify or
 12 authenticate them, if you can. So there won't be a
 13 lot of questions on these.
 14 Do you understand this printout, which we
 15 received from ASHRAE, to represent accurately the
 16 dues -- membership dues revenues that ASHRAE has
 17 received each year from 2002-3 to 2013-14?
 18 A. Yes. And the question was?
 19 Q. Do you understand this printout to
 20 represent accurately the membership dues revenues for
 21 each of the corresponding years?
 22 A. They appear to be. I don't know the exact
 23 numbers, but they appear to be relatively accurate.
 24 (Defendant's Exhibit 1106 was marked for
 25 identification.)

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1 Q. (By Mr. Bridges) I ask you to look at
 2 Exhibit 1106, which again I'll represent to you is a
 3 document that we received in discovery from ASHRAE.
 4 Does this appear to you to be an acc- --
 5 accurate representation of the sales of the ASHRAE
 6 90.1 standards for three different versions of the IP
 7 version, the inches pounds version?
 8 A. Yes, it does.
 9 Q. Did the member price and retail price of
 10 those standards change over those three versions?
 11 A. I do not believe so. I don't think between
 12 2010 and '07. I can't recall if '04 had a different
 13 price.
 14 Q. Do you know -- I'm not sure that we have --
 15 or maybe I don't have handy -- the corresponding
 16 figures for the SA version.
 17 There was an SA version at one point?
 18 A. SI.
 19 Q. SI?
 20 A. Yeah.
 21 Q. I'm sorry.
 22 Do you recall roughly how they compared to
 23 these numbers?
 24 A. They'd be much smaller.
 25 Q. Much smaller?

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1 A. Yeah.
2 Q. Would the -- would the pattern of growth
3 and diminishment be equivalent, in your view?
4 MR. LEWIS: Objection.
5 Q. (By Mr. Bridges) Let me say this: Would
6 the trends be equivalent to the trends evident in
7 Exhibit 1106, in your view?
8 A. I don't think you'd have as many sales of
9 older versions.
10 Q. Otherwise, would the trends be roughly
11 equivalent?
12 A. The market for the SI version is overseas,
13 so much smaller numbers.
14 And -- what do you mean by -- by -- what --
15 by trends? What do you mean?
16 Q. Well, for example, if you look in the
17 middle, the 2007, the numbers grew substantially as a
18 percentage of the previous year until they peaked,
19 and then they went down a bit and then fell very
20 substantially.
21 A. When the standard is -- is newly released,
22 the sales are higher.
23 Q. Right.
24 And my question just has to do with the --
25 whether the graph that might describe the SI sales

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1 would be roughly analogous to the graph describing
2 the IP sales in terms of the slope and peak and the
3 like.
4 MR. LEWIS: Objection.
5 THE WITNESS: I don't think you'd have as
6 many years. The -- the sales would be focused
7 on those years when the SI version was current.
8 Q. (By Mr. Bridges) And when you say the SI
9 sales are much smaller, what's your best estimate as
10 a percentage of the IP sales?
11 A. Let me look at -- for 2013, for example, if
12 you ask me what the SI version of the 2010 would be,
13 a hundred.
14 Q. A hundred quantity?
15 A. A hundred quantity, yeah. That may even be
16 a little on the high side. That's -- I'm guessing at
17 that now, but...
18 Q. But that's an estimate?
19 A. That's correct.
20 (Defendant's Exhibit 1107 was marked for
21 identification.)
22 Q. (By Mr. Bridges) Exhibit 1107 is a
23 document that ASHRAE produced to us in discovery.
24 Can you identify it, please?
25 A. These are sales of -- of -- of standards in

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1 various formats or from various channels, I guess is
2 a better description.
3 Q. Did you prepare this chart?
4 A. Someone in my group did.
5 Q. Is it -- is this -- does this reflect
6 current projections?
7 A. That's correct.
8 Q. And does this show all of the methods and
9 channels of monetization of the standards themselves,
10 as opposed to other activities that may involve the
11 standards?
12 A. Those that are directly related to the
13 standards, yes.
14 Q. Okay. Is there a reason why ASHRAE
15 projects lower -- a lower -- or a declining trend in
16 projected revenue of PDF sales?
17 A. That would be tied to the cycle of the
18 standard.
19 Q. Would that imply, then, that over these
20 three years, the standards would be approaching end
21 of their current life as a new version of the
22 standard being prepared?
23 A. That's right, that would -- yes, that's
24 correct. That would occur in some place around
25 '16 -- 2016-2017, which is probably why it goes back

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1 up a little bit.
2 Q. All right. I'm sorry. I misread it.
3 You're -- you're correct. So my description of the
4 trend was inaccurate.
5 Looking at the 2014-2015 projected revenue,
6 how did those numbers compare with the projected
7 revenue for 20- -- or, I'm sorry. Strike that.
8 How did those numbers compare with the
9 actual revenue for 2013 to 2014?
10 A. My guess is this number's a little bit
11 higher.
12 Q. The number in the projections?
13 A. That's -- the '14-'15 year is probably
14 projected slightly higher than '13-'14.
15 Q. Thank you.
16 Please look back at Exhibit 1106. What's
17 interesting to me is that the peak revenue for the
18 different standards doesn't appear to be in the year
19 of introduction of a new standard. So that's just a
20 statement, but let me then ask you a question.
21 If we look at the numbers for 90.1 2004,
22 that standard was introduced in 2004; correct?
23 A. That is correct.
24 Q. Its peak sales were in 2007; correct?
25 A. Correct.

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1 Q. And if we look at the 2007 version -- it
2 was introduced in 2007 -- its peak sales were in
3 2009; correct?
4 A. Correct.
5 Q. What, in your view, causes peak sales to
6 lag maybe two years or so, maybe two or three years,
7 behind the introduction of a new version?
8 A. Typically, our standards will come out late
9 in the year, so I'm assuming this is a calendar year,
10 how this was done. Yeah, I'm quite sure a calendar
11 year.
12 So it wouldn't come out early in that year,
13 it would come out somewhere around the midpoint of
14 the year, sometime later than June 1. So that would
15 certainly explain why you would have -- see the --
16 the sales then the next year.
17 Now, why it may lag two years behind, that
18 could be cases where there's more awareness of the
19 standard, there's more knowledge that there's a newer
20 version available and it may catch up in that manner.
21 But it doesn't surprise me it's one year
22 behind. Two years, it -- it may be that that -- that
23 that -- the big boost of sales is early in that --
24 that second year out and then it starts dipping down
25 again towards the latter half of the year.

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1 Q. But if we look at the peak year for 2004,
2 that came in 2007 after two full years.
3 A. Yeah, I --
4 Q. Could it have to do with that -- the fact
5 that awareness of these codes flowed in part from
6 their incorporation by governments into laws and
7 regulations requiring --
8 MR. LEWIS: Object.
9 Q. (By Mr. Bridges) -- more persons to
10 consult and apply the standards?
11 MR. LEWIS: Objection. Calls for
12 speculation.
13 THE WITNESS: I'm -- I'm not sure.
14 Q. (By Mr. Bridges) Is that an ex- -- a
15 possible explanation for it?
16 MR. LEWIS: Objection.
17 THE WITNESS: I would think that's a
18 possible explanation.
19 (Defendant's Exhibit 1108 was marked for
20 identification.)
21 MR. LEWIS: Thank you.
22 Q. (By Mr. Bridges) Mr. -- I'm sorry, I'm now
23 spacing. I've forgotten your name.
24 MR. BECKER: Comstock.
25 MR. BRIDGES: Comstock. I'm so sorry. I'm

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1 about to forget my own name.
2 THE WITNESS: I wasn't going to help.
3 Q. (By Mr. Bridges) Mr. Comstock, what is
4 Exhibit 1108?
5 A. This is a sales by customer type report.
6 Q. Could you please go through the various
7 columns and indicate what those headings mean?
8 A. Sure. So "Product Code" is the code for a
9 particular item, book, document that we sell.
10 "Non-Member" would be sales to someone
11 who's not a member of ASHRAE, both quantity and
12 dollars.
13 Sales to members at -- at member prices,
14 quantity and amount.
15 Book dealers would be those organizations
16 that buy products in bulk and resell.
17 Then same pattern for school libraries,
18 public libraries, subscription agencies, and
19 bookstores.
20 Q. Does this page refer to any sales of
21 standards?
22 A. This page does not.
23 (Defendant's Exhibit 1109 was marked for
24 identification.)
25 Q. (By Mr. Bridges) Same questions with

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1 respect to Exhibit 1109. I don't think we need to
2 repeat the columns, but the question is: Does this
3 exhibit reflect any sales of standards?
4 A. This page does not reflect sale of
5 standards.
6 Q. Is there a reference to "Out of Print"?
7 A. I see "Not Available."
8 Q. If we look about two-thirds of the way --
9 or I guess 60 percent of the way down --
10 A. "Out of Print," yes, I see that.
11 Q. It's "01" -- sorry, "081900 Out of Print.
12 Use 01940."
13 That's just referring to a work farther
14 down in the -- in the list there; correct?
15 A. I see the "Doubt of" -- the "Out of Print"
16 references now.
17 Q. Down below there are items that say "Not
18 available thru ASHRAE."
19 Do you know what that is?
20 A. I -- I do not know.
21 (Defendant's Exhibit 1110 was marked for
22 identification.)
23 Q. (By Mr. Bridges) Could you please identify
24 Exhibit 1110?
25 A. This is an e-mail exchange started by Jodi

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1 Scott.
2 Q. Are you familiar with the discussions that
3 are contained within this e-mail?
4 A. This -- only what I read here.
5 Q. At the end of Mr. Ames' e-mail at the top,
6 he said, "Standards community lobbyists are keeping a
7 close watch on this...."
8 Do you have any idea who the lobbyists for
9 ASHRAE are and have been?
10 MR. LEWIS: Objection.
11 THE WITNESS: I'm not -- I don't know what
12 he's referring to here.
13 Q. (By Mr. Bridges) Who is Michael Burgess,
14 do you know?
15 A. Is he on this?
16 Q. He's on a different --
17 A. Different.
18 There was a -- a member on our board,
19 Michael Burgess, from California. I'm not sure if
20 that's who's being referred to.
21 Q. Xpera Group?
22 MR. LEWIS: Objection. Vague.
23 Q. (By Mr. Bridges) That's I think --
24 MR. BRIDGES: You're right. It is vague.
25 Q. (By Mr. Bridges) Does that name ring a

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1 bell with you as being associated with Mr. Burgess?
2 A. Could you repeat the name of that?
3 Q. Xpera Group.
4 A. No, it does not.
5 Q. Do you receive copies of e-mails on a
6 distribution list from the ASHRAE board of directors?
7 A. Typically not.
8 Q. You're not part of ASHRAE-BOD?
9 A. I am not.
10 Q. Has ASHRAE published any information to its
11 members about this lawsuit?
12 A. I do not believe we have.
13 Q. When did -- strike that.
14 Has ASHRAE given per- -- permission to ANSI
15 to make ASHRAE standards available for free on-line?
16 A. I believe they have a reading room at which
17 we allowed for free viewing some years ago, I
18 believe.
19 Q. Do you know why ASHRAE makes its
20 standards -- strike that.
21 Do you know why ASHRAE allows ANSI to make
22 ASHRAE's standards available for free viewing?
23 A. My assumption would be that they would only
24 be the -- the ANSI-approved standards. So they're
25 ANSI -- ANSI standards, as well as ASHRAE standards

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1 that would -- that would be applicable.
2 Q. But do you know why ASHRAE allows ANSI to
3 make its standards available for free viewing?
4 A. I would say only because they're also ANSI
5 standards.
6 Q. Are all ASHRAE standards ANSI standards?
7 A. No. There are some that are not.
8 Q. Do you know whether ANSI makes available
9 for public viewing all of ASHRAE's ANSI standards?
10 A. I do not know.
11 (Defendant's Exhibit 1111 was marked for
12 identification.)
13 Q. (By Mr. Bridges) I've handed you
14 Exhibit 1111.
15 This is an exchange of e-mails among ANSI
16 employees and also ASHRAE employees; correct?
17 A. I'm not -- I do not know who all those
18 people are.
19 Q. Who is Cindy Simmons?
20 A. Cindy Simmons is our controller. I -- I do
21 recognize the names on the top message.
22 Q. Mr. Littleton is the executive director of
23 ASHRAE; correct?
24 A. That is correct.
25 Q. And he says to the others, "You will want

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1 to read the testimony referenced below. No e-mails,
2 please"; correct?
3 A. That's correct.
4 Q. What conversations occurred regarding the
5 testimony that this e-mail thread refers to?
6 A. Personally, I don't recall any
7 conversations about the -- about the -- the -- the
8 thread or the items in the thread.
9 Q. Do you recall any other non-written
10 communications?
11 A. No, no.
12 (Defendant's Exhibit 1112 was marked for
13 identification.)
14 Q. (By Mr. Bridges) Mr. Comstock,
15 Exhibit 1112 is a document that ASHRAE's furnished to
16 us in discovery.
17 Are you familiar with the -- with this
18 e-mail?
19 A. I -- yeah, I have a recollection of it now
20 that I see it.
21 Q. So it appears to be an exchange between
22 Kimberly Gates of ASHRAE and Thomas Long, a member of
23 ASHRAE and chair of the Chapter Education Committee;
24 is that --
25 A. That's correct, yes.

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1 Q. Is that what this e-mail correspondence is
2 about?

3 A. That is correct.

4 Q. Who is Kimberly Gates?

5 A. She manages our inventory. She works in my
6 group.

7 Q. Do you know anything about Thomas Long
8 beyond what's indicated in this e-mail?

9 A. No, I don't.

10 Q. Do you know anything about Larry Spiel- --
11 Spielvogel?

12 A. He's been a member of ASHRAE for the whole
13 time I've been an employee.

14 Q. Has he had any leadership roles?

15 A. He was on our board of directors at some
16 point. He -- he's been a -- certainly on many
17 committees.

18 Q. Who is Kristina Rayford?

19 A. She was an employee who reported to
20 Kimberly Gates.

21 Q. What did you understand about Mr. Long's
22 needs for print copies of the standard?

23 A. It appears as if he was organizing a
24 chapter seminar at which he wished to have copies of
25 the standard for the seminar.

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1 Q. And it appears that chapter -- chapters
2 wanting to use ASHRAE standards have to buy those
3 standards from the organization; is that correct?

4 A. Well, from a source. I mean, we --
5 certainly from us, but there's others, as well.

6 Q. But -- but a chapter doesn't get a special
7 dispensation to get free copies of standards for
8 chapter education?

9 A. No, that's correct.
(Defendant's Exhibit 1113 was marked for
11 identification.)

12 Q. (By Mr. Bridges) Exhibit 1113 is something
13 that ASHRAE produced to us in deposition -- sorry, in
14 discovery. That was correcting it. The record
15 should reflect that.

16 Do you recall this document?

17 A. Vaguely.

18 Q. Is this a request from a New York State
19 agency?

20 A. That is correct.

21 Q. What do you recall about the context of
22 this?

23 A. I believe it was to maintain copies in
24 libraries in New York State so they could be
25 referenced.

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1 Q. And is it ASHRAE's understanding that it
2 needed to give permission to New York State in order
3 for New York State to incorporate the materials by
4 reference?

5 A. I can't speak to that. My involvement was
6 their contacting us to ask if they could make copies
7 for their libraries, which I granted.

8 Q. Are ASHRAE's standards available in most
9 public libraries, to your knowledge?

10 A. I -- I do not know.

11 Q. If -- if someone living in New York City
12 and interested in some of the legal requirements that
13 pertains to ASHRAE standards wanted to review what
14 those legal requirements were, what would that
15 person's practical options be for reviewing the
16 standards?

17 MR. LEWIS: Objection.

18 THE WITNESS: I think in New York State,
19 they would go to one of those libraries.

20 Q. (By Mr. Bridges) What about someone in
21 Brunswick, Georgia?

22 MR. LEWIS: Objection.

23 THE WITNESS: I'm not aware what library
24 facilities may have our standards.

25 Q. (By Mr. Bridges) Do you know what

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1 libraries in Georgia have ASHRAE's standards, the
2 ones that have been incorporated --

3 A. I do not.

4 Q. -- into law?

5 A. I would just process requests like this.
(Defendant's Exhibit 1114 was marked for
7 identification.)

8 Q. (By Mr. Bridges) Mr. Comstock,
9 Exhibit 1114 is an exchange of correspondence between
10 you and a gentleman in Canada regarding creation of a
11 code and guideline; is that correct?

12 A. That appears to be the case.

13 Q. And in it you quoted a price of \$10 per
14 table with a minimum fee of \$25 for your
15 correspondent to extract tables or figures from the
16 standard; is that correct?

17 A. That's correct.

18 Q. All right. And, in fact, the person wanted
19 to take information from the tables and figures, as
20 opposed to the formatted tables and figures
21 themselves; is that correct?

22 MR. LEWIS: Objection.

23 Q. (By Mr. Bridges) At least that's evident
24 in his statement in the e-mail; correct?

25 MR. LEWIS: Objection. Vague.

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1 THE WITNESS: I -- I think that was a
2 question I had, whether or not they would be
3 lifted exactly as they were.
4 Q. (By Mr. Bridges) I mean, I think he
5 answered no to that; correct?
6 MR. LEWIS: Objection.
7 THE WITNESS: I don't see my reply to that.
8 Q. (By Mr. Bridges) Yeah, I don't see your
9 reply, but this seems to be his reply to you.
10 "If you lifted tables or figures exactly as
11 they were," and you go on to say more, and he
12 responds by saying, "We will not be using tables and
13 figures exactly as they are in the standard; they
14 will instead be applied to the needs of this proj- --
15 this project. Also, we will be using some text as it
16 appears in the standard but not taking exact pages of
17 text from it."
18 Does that suggest to you that he was
19 looking for the formatting and expression of the
20 standard or the information in the standard?
21 A. That would suggest to me it's the
22 information and I would not charge a fee.
23 (Defendant's Exhibit 1115 was marked for
24 identification.)
25 Q. (By Mr. Bridges) I'm handing you a -- an
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1 Exhibit 1115. This is as we received, a group of
2 documents, it appears to us, from ASHRAE in
3 discovery.
4 And I was wondering if you had an
5 understanding as to what this group of documents is.
6 MR. LEWIS: There's quite a bit there, so
7 take your time.
8 THE WITNESS: These appear to be various
9 reprint requests that Julie Harr had processed
10 or involved with.
11 Q. (By Mr. Bridges) Is it your understanding
12 that she compiled and gathered these various
13 requests?
14 A. Yes, that's what I believe has happened.
15 Q. Did she compile it for purposes of
16 discovery in the case?
17 A. I -- I believe that's the case. I believe
18 she was asked for samples.
19 Q. So these are samples from the -- from
20 ASHRAE's records?
21 A. That's -- that's my understanding.
22 Q. Thank you.
23 (Defendant's Exhibit 1116 was marked for
24 identification.)
25 Q. (By Mr. Bridges) I hand you Exhibit 1116,
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1 which consists of an e-mail followed by several
2 pages. This is the way they were produced to us. I
3 think the several pages after the first two were in a
4 separate file associated with the e-mail on top, so I
5 suspect that after the second page of the exhibit,
6 we're looking at the attachment, "How to Use
7 RightsLink.doc."
8 Is that your understanding looking at the
9 document, as well?
10 A. Yes.
11 Q. And, again, this is an e-mail by your
12 assistant, Julie Harr, to someone outside of ASHRAE
13 apparently named Sam Hurt, who describes himself on
14 page 2; is that right?
15 A. Yes, that's correct.
16 Q. Do the pages in the apparent attachment
17 starting on the third page of the exhibit depict the
18 RightsLink process?
19 A. Yes, it does.
20 Q. And it depicts the RightsLink process as
21 ASHRAE offered it to persons wishing to seek
22 permission to use ASHRAE material; is that correct?
23 A. Yes, that's correct.
24 (Defendant's Exhibit 1117 was marked for
25 identification.)
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1 Q. (By Mr. Bridges) Mr. Comstock,
2 Exhibit 1117 is an exchange -- strike that.
3 Exhibit 1117 is a series of e-mails, one to
4 you from someone named Mike Moore and then another
5 from you forwarding it to your assistant; is that
6 correct?
7 A. That is correct.
8 Q. And in the top e-mail, this is your
9 communication to your assistant on how to respond to
10 the request in Mr. Moore's e-mail; is that correct?
11 A. That is correct.
12 (Defendant's Exhibit 1118 was marked for
13 identification.)
14 Q. (By Mr. Bridges) I hand you Exhibit 1118.
15 This is a series of e-mails between you and Mike
16 Moore, who we referred to in a previous exhibit,
17 followed by a response to you from Steve Comstock,
18 who you had copied on one of your e-mails to
19 Mr. Moore; is that correct?
20 MR. LEWIS: Objection.
21 THE WITNESS: Steve Ferguson.
22 Q. (By Mr. Bridges) Yes, I apologize. Let me
23 restate that.
24 This is a series of e-mails between you and
25 Mike Moore, whom we referred to in a previous
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1 exhibit, followed by a response to you from Steve
 2 Ferguson, whom you had copied on one of your e-mails
 3 to Mr. Moore; is that correct?
 4 A. That is correct.
 5 Q. What is Steve Ferguson's role?
 6 A. He's -- he's in our standards group and he
 7 works with code bodies.
 8 Q. And what do you mean by "code bodies"?
 9 A. Oh, I guess code-writing groups like -- so
 10 he would go to code hearings, for example, for codes
 11 that are considered for adoption.
 12 Q. Is that codes within ASHRAE or outside
 13 ASHRAE or both?
 14 A. External to ASHRAE.
 15 Q. External.
 16 When you say "codes being considered for
 17 adoption," do you mean codes being considered for
 18 adoption into law or regulation?
 19 A. I think it's building codes. Steve, he's
 20 outside of my group so I'm not sure exact- -- exactly
 21 what his responsibilities are, but they are in the
 22 codes arena within our standards area.
 23 Q. Can you explain the context of the e-mails
 24 in Exhibit 1118, please?
 25 A. So it looks like this fellow, Mike Moore,

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1 wanted to get permission from ASHRAE for use of
 2 content.
 3 And besides what I -- I really can't recall
 4 any of the background for this besides what I can
 5 read here.
 6 Q. You refer to ICC policies as having been
 7 made clear to us.
 8 Do you recall what that means?
 9 A. Yeah. Back in this era -- this is quite
 10 some -- it was quite a few years ago -- when ASHRAE
 11 content was submitted to the ICC at the time, ASHRAE
 12 lost the copyright of the con- -- ownership of the
 13 content.
 14 Q. Do you know what specific documents you're
 15 referring to?
 16 A. I real- -- I think this was back --
 17 probably IECC, the International Energy Conservation
 18 Code, is probably the document that this was to be
 19 include- -- yes, IECC.
 20 Q. And does this reference mean that somehow
 21 ASHRAE lost the copyright because of an ICC policy?
 22 A. That's -- that was my understanding at the
 23 time, that if -- if our content was submitted by
 24 somebody to ICC, then we would lose the ownership of
 25 that.

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1 If ASHRAE did it, then that was the -- the
 2 standards people involved thought that was a -- that
 3 it was a -- a good technical solution to submit our
 4 content.
 5 So -- but at that time, there was concerns
 6 about whether somebody else -- somebody else using
 7 our content and submitted it.
 8 Q. Does ASHRAE 90.1 include any content from
 9 other standards organizations?
 10 A. I don't believe so.
 11 MR. BRIDGES: Why don't we take a short
 12 break and then I think I may have a few wrap-up
 13 questions, but I think I'm through with the
 14 documents. Oh, sorry, I may have one more.
 15 Oh, yes, let me just do this. No.
 16 So let's take a break, we'll do a short
 17 regroup, and then we'll have just a final set of
 18 questions.
 19 MR. LEWIS: Okay.
 20 VIDEOGRAPHER: This is the end of Video 4
 21 We're off the record at 6:38 p m.
 22 (Thereupon, there was an interruption in
 23 the proceedings.)
 24 VIDEOGRAPHER: This is the beginning of
 25 Video 5. We're on the record at 6:45 p.m.

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1 MR. BRIDGES: Mr. Comstock, I have no
 2 further questions. Thank you very much.
 3 VIDEOGRAPHER: This concludes the
 4 deposition. We're going off the record at
 5 6:46 p.m.
 6 (Whereupon, the deposition was concluded at
 7 6:46 p.m.)
 8 (Pursuant to Rule 30(e) of the Federal
 9 Rules of Civil Procedure and/or O.C.G.A.
 10 9-11-30(e), signature of the witness has been
 11 reserved.)
 12
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1 CERTIFICATE
2
3
4 STATE OF GEORGIA:
5
6 COUNTY OF FULTON:
7
8 I hereby certify that the foregoing transcript was
9 taken down, as stated in the caption, and the
10 questions and answers thereto were reduced to
11 typewriting under my direction; that the foregoing
12 pages represent a true, complete, and correct
13 transcript of the evidence given upon said hearing,
14 and I further certify that I am not of kin or counsel
15 to the parties in the case; am not in the regular
16 employ of counsel for any of said parties; nor am I
17 in anywise interested in the result of said case.
18
19
20
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22
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24
25

Lee Ann Barnes
LEE ANN BARNES, CCR B-1852, RPR, CRR

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1 DEPOSITION ERRATA SHEET
2
3 Our Assignment No. 2023730
4 Case Caption: AMERICAN SOCIETY FOR TESTING
5 AND MATERIALS d/b/a ASTM INTERNATIONAL, et al. vs.
6 PUBLIC.RESOURCE.ORG, INC.
7
8 DECLARATION UNDER PENALTY OF PERJURY
9 I declare under penalty of perjury
10 that I have read the entire transcript of
11 my Deposition taken in the captioned matter
12 or the same has been read to me, and
13 the same is true and accurate, save and
14 except for changes and/or corrections, if
15 any, as indicated by me on the DEPOSITION
16 ERRATA SHEET hereof, with the understanding
17 that I offer these changes as if still under
18 oath.
19 Signed on the _____ day of
20 _____, 20____.
21
22 _____
23 STEVEN COMSTOCK
24
25

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2014. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.