## **EXHIBIT 38**

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1
               UNITED STATES DISTRICT COURT
 2
               FOR THE DISTRICT OF COLUMBIA
 3
       AMERICAN SOCIETY FOR : NO.
       TESTING AND MATERIALS : 1:13-cv-01215-TSC-
 4
                         : DAR
 5
       d/b/a ASTM
 6
       INTERNATIONAL;:
       NATIONAL FIRE
       PROTECTION
       ASSOCIATION, INC.; :
8
9
       and AMERICAN SOCIETY :
       OF HEATING,
10
       REFRIGERATION, AND
11
       AIR CONDITIONING
12
13
       ENGINEERS,
       Plaintiffs
14
             VS.
       PUBLIC.RESOURCE.ORG, :
15
       INC.,
       Defendant
16
17
             Videotaped deposition of JOHN C.
      JAROSZ taken at the law offices of Veritext
18
      Legal Solutions, 1250 I Street NW,
19
20
      Washington, DC, commencing at 10:09 a.m.
21
      THURSDAY, AUGUST 27, 2015, before Debbie
      Leonard, Registered Diplomate Reporter,
22
2.3
      Certified Realtime Reporter.
24
      PAGES 1 - 260
25
                                                    Page 1
```

## Case 1:13-cv-01215-TSC Document 204-44 Filed 11/13/19 Page 3 of 102

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1 APPEARANCES:
                                                                              INDEX TO WITNESSES
                                                                   1
                                                                   2
     KING & SPALDING
                                                                   3
                                                                       WITNESS: JOHN C. JAROSZ
                                                                                                            PAGE
     By: J BLAKE CUNNINGHAM, ESQ
 3
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     101 Second Street
     Suite 2300
                                                                          BY MR. BRIDGES
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     San Francisco, California 94105
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     bcunningham@kslaw com
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     Representing the Plaintiff American
     Society For Testing and Materials d/b/a
                                                                   8
     ASTM International
                                                                   9
                                                                              INDEX TO EXHIBITS
                                                                  10
                                                                                            PAGE
     MUNGER, TOLLES & OLSON LLP
 9
     By: THANE REHN, ESQ
                                                                      EXHIBIT
                                                                                 DESCRIPTION
                                                                                                         MARKED
     560 Mission Street
                                                                  11
10
     27th Floor
                                                                  12 Exhibit 1 Expert Report of John C. 6
     San Francisco, California 94105
                                                                           Jarosz
11
     (415) 512-4000
                                                                  13
                                                                           June 5, 2015
     thane rehn@mto com
     Representing the Plaintiff National Fire
12
                                                                  14 Exhibit 2 Handwritten notes
                                                                                                     97
     Protection Association, Inc
                                                                                                     97
                                                                   15 Exhibit 3 Handwritten notes
13
                                                                  16 Exhibit 4 Spreadsheet
                                                                                                  175
     MORGAN LEWIS & BOCKIUS LLP
14
     By: J KEVIN FEE, ESQ
                                                                           "NFPA Publication Sales
     1111 Pennsylvania Avenue NW
15
                                                                  17
                                                                           2009 to 2013"
     Washington, DC 20004
(202) 739-3000
                                                                           JAROSZ02443
16
                                                                  18
     jkfee@morganlewis com
                                                                      Exhibit 5 Article
                                                                                                210
17
     Representing the Plaintiff American
     Society of Heating, Refrigeration, and Air
                                                                  19
                                                                           "ASHRAE Takes on Energy
18
     Conditioning Engineers
                                                                           Standard"
19
                                                                  20
20
                                                                  21
21
                                                                  22
22
23
24
                                                                  23
                                                                  24
25
                                                                  25
                                                          Page 2
                                                                                                                            Page 4
    APPEARANCES (continued):
                                                                             DEPOSITION SUPPORT INDEX
 2
                                                                   2
      FENWICK & WEST LLP
                                                                      INSTRUCTION NOT TO ANSWER:
 3
      By: ANDREW P. BRIDGES, ESQ.
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      San Francisco, California 94104
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 5
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      abridges@fenwick.com
                                                                   6
 6
      Representing the Defendant
                                                                      REOUEST FOR PRODUCTION OF DOCUMENTS:
 7
                                                                   7
      FENWICK & WEST LLP
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 8
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      (650) 988-8500
10
      mbecker@fenwick.com
      Representing the Defendant
                                                                     STIPULATIONS:
11
                                                                  12 Page
                                                                            Line
12
    ALSO PRESENT:
                                                                  13
13
                                                                            16
      Carl Malamud, Public Resource
                                                                   14
14
                                                                   15
                                                                      QUESTIONS MARKED:
15
      Jonathan Perry, Videographer
                                                                  16
                                                                      Page Line
16
                                                                  17
                                                                      NONE
17
                                                                  18
18
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19
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22
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23
                                                                  24
24
25
                                                                  25
                                                          Page 3
                                                                                                                            Page 5
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1	* * *	1	Air-Conditioning Engineers.
2	(Jarosz Exhibit 1 marked for	2	THE VIDEOGRAPHER: Today our
3	identification.)	3	court reporter is Debbie Leonard with
4	* * *	4	Veritext. Would you please swear in
5	THE VIDEOGRAPHER: We are now	5	the witness.
6	on the record.	6	* * *
7	Please note that the	7	JOHN C. JAROSZ,
8	microphones are sensitive and may pick	8	having been first duly sworn, testified as
9	up whispering and private	9	follows:
10	conversations.	10	* * *
11	Please turn off all cell phones	11	EXAMINATION
12	or place them away from the	12	* * *
13	microphones, as they can interfere	13	BY MR. BRIDGES:
14	with the deposition audio.	14	Q. Good morning, Mr. Jarosz.
15	Recording will continue until	15	A. Good morning, Mr. Bridges.
16	all parties agree to go off the	16	Q. What do you do for a living?
17	record.	17	A. I'm an economist.
18	My name is Jonathan Perry. I'm	18	Q. What types of work do you do as
19	The state of the s		
20	here representing Veritext. Today's date is August 27th, 2015. The time	19 20	an economist?  A. I'm not exactly sure what
21	e e	21	•
22	is approximately 10:09 a.m.  We are at the offices of		you're asking. I am employed at an economic
1		22	consulting firm, and I am involved in applied
23	Veritext, located at 1250 I Street	23	microeconomics and industrial organization,
24	Northwest in Washington, D.C.	24	among other things.
25	The caption on the case is the	25	I apply much of my expertise to Page 8
	1 age 0		1 age o
1	American Society for Testing and	1	the valuation and evaluation of intellectual
2	Materials, et al., versus	2	property rights. Some of that work is in the
3	Public.Resource.Org, Incorporated,	3	context of damages assessments. Some of it
4	case filed in the US District Court	4	outside such contexts. Some of my work is in
5	for the District of Columbia, Case	5	litigation, and some of my work is not.
6	Number 1:13-cv-0215 [sic] TSC-DAR.	6	Q. Have you valued any of the
7	The name of the witness is	7	intellectual property at issue in this case?
8	John C. Jarosz.	8	MR. FEE: Objection. Form.
9	Would counsel present please	9	MR. REHN: And
10	introduce themselves and state whom	10	MR. FEE: Wait. Before we go
11	they represent.	11	any further, should do you want to
12	MR. BRIDGES: This is Andrew	12	get into a stipulation that they don't
13	Bridges of Fenwick & West for the	13	have to join every objection that one
14	defendant, and with me is Matthew	14	or the other plaintiffs makes, or do
15	Becker.	15	you want us to make them all seriatim?
16	MR. FEE: Kevin Fee from Morgan	16	MR. BRIDGES: I'll stipulate to
17	Lewis on behalf of ASTM.	17	that.
18	MR. REHN: Thane Rehn from	18	MR. FEE: Okay.
19	Munger, Tolles & Olson on behalf of	19	THE WITNESS: I'm not exactly
20	the National Fire Protection	20	sure what you mean by "value," but I
21	Association.	21	haven't done a formal valuation of any
22	MR. CUNNINGHAM: Blake	22	of the IP. I have evaluated the
23	Cunningham of King & Spalding on	23	intellectual property rights, and I
24	behalf of the American Society for	24	have done the assessment that you see
25	Heating, Refrigerating, and	25	in my expert report.
23	Page 7	23	Page 9
	1 450 /		

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1 BY MR. BRIDGES:
                                                     1
                                                                  I don't know that there -- I --
 2
        Q. Have you made any attempt to
                                                        let me start this over again.
    put a value on any of the intellectual
                                                     3
                                                                 I believe there are fights
   property rights claimed by the plaintiffs in
                                                     4 about whether the plaintiffs are entitled to
                                                       these copyrights. I don't know that there's
   this case?
                                                     6 been a conclusion by this Court that they are
            MR. FEE: Objection to form.
 6
            THE WITNESS: What do you mean
                                                     7 valid rights. I'm working under the
 7
 8
        by "value"?
                                                        assumption that they are, but I believe the
                                                        defendant is disputing those rights.
 9
    BY MR. BRIDGES:
                                                     9
        Q. I mean by "value" what you
                                                    10
                                                                 What did you do to evaluate
10
                                                        trademark rights in this case?
11 referred to earlier when you stated that
                                                    11
   among your activities is the valuation of
                                                    12
                                                                  What I've done is summarized in
    intellectual property rights.
                                                        my report. I have an understanding that
13
14
        A. I have not done a formal
                                                        there are marks and logos at issue that are
15 valuation, and I have not assigned a dollar
                                                        important to the plaintiffs and that Public
16 amount to any of the intellectual property
                                                    16 Resource activities impair the rights of the
17
   rights at issue here.
                                                    17
                                                        plaintiffs in those trademarks and may
18
            I have evaluated the rights and
                                                        possibly cause confusion in the marketplace.
19 determined issues associated with harm and
                                                    19
                                                             Q. What work did you do to
    irreparable harm. You see my results
                                                        determine whether any activities of the
    contained in my report.
                                                        defendant does or may cause confusion in the
21
                                                    21
              What do you mean by "evaluating
22
                                                    22 marketplace?
23 the intellectual property rights"?
                                                    23
                                                             A.
                                                                  The work that you see is
24
        A. I have looked at, from an
                                                    24
                                                        summarized in my report. I haven't done
25 economist's perspective, the rights and the
                                                        anything beyond that which is summarized
                                                                                                 Page 12
    impact of having IP protection or not having
                                                     1 here.
 2
   IP protection for the subject matter at
                                                     2
                                                                  And by the "report," you're
 3
    issue.
                                                     3 referring to Exhibit 1 that I've marked and
                                                        placed before you?
 4
             Have you done anything else to
    evaluate the intellectual property rights of
                                                     5
                                                             A.
                                                                  Yes.
 5
    the plaintiffs?
                                                     6
                                                                  Where did you state your
                                                             Q.
            MR. FEE: Objection to form.
 7
                                                        conclusions in your report regarding
            THE WITNESS: I've done the
                                                        trademark rights of the plaintiff -- of the
 8
        analyses underlying my report, but the
                                                     9
                                                        plaintiffs?
 9
        summary of the work that I've done and
10
                                                    10
                                                                  In part, I think it's covered
        the conclusions that I've drawn are
                                                        in paragraphs 150 and 151. It may be covered
11
                                                    11
        contained in my report. I don't have
                                                        in other sections.
12
                                                    12
13
        other conclusions that are not
                                                    13
                                                                  Take the time and let me know
        contained in those -- in that report.
                                                        what other sections trademark rights are
14
                                                    14
15
   BY MR. BRIDGES:
                                                    15
                                                        covered in.
16
        Q. What intellectual property
                                                    16
                                                                 MR. FEE: Objection. Are you
   rights of plaintiffs have you evaluated?
                                                             asking him to read the whole report
17
                                                    17
             The copyrights at issue here.
18
                                                             and answer that now?
                                                    18
19
            I'm sorry. Let me be -- let me
                                                                 MR. BRIDGES: No. Presumably
                                                    19
20 alter that by saying I have evaluated the
                                                             he's relatively familiar with it, so
                                                    20
21
   alleged copyrights at issue here, and I have
                                                    21
                                                             it wouldn't require him to read it and
   evaluated the trademark rights at issue here.
                                                             spend a great deal of time. I
22
                                                    22
                                                             don't -- he's referred to his report
23
             Why did you change your
                                                    23
24 testimony to refer to "alleged copyrights"
                                                    24
                                                             in his answer, so I just want to make
25 instead of "copyrights"?
                                                             sure that I have a complete
                                                    25
                                             Page 11
                                                                                                 Page 13
```

1	understanding.	1	from the facts.
2	MR. FEE: All right. Well,	2	BY MR. BRIDGES:
3	take as long as you need to answer	3	Q. All right. I would like to
4	that, then.	4	know where in the report your report reveals
5	THE WITNESS: In part, you see	5	any observations or conclusions by you about
6	it addressed in paragraph 30.	6	the evaluation of the trademark rights.
7	Right now, those are the	7	MR. FEE: Just so the record is
8	sections that I see that touch on that	8	clear, you're withdrawing the previous
9	topic. There may be others that I'm	9	question now?
10	overlooking right now.	10	MR. BRIDGES: No. It's a new
11	BY MR. BRIDGES:	11	question.
12	Q. And do you need more time?	12	MR. FEE: Okay. Well, he
13	MR. FEE: Objection. Asked and	13	didn't
14	answered.	14	Are you finished going through
15	THE WITNESS: I don't think so.	15	the entire report and identifying
16	I've looked through at a fairly	16	everywhere where you've evaluated the
17	cursory level. If you want me to read	17	trademarks?
18	the whole report to make absolutely	18	Or do you not want him to keep
19	sure, I will, but I'm not sure if	19	doing that?
20	you're asking me to do that, but	20	MR. BRIDGES: I just I just
21	BY MR. BRIDGES:	21	asked him a question. I'd like an
22	Q. No, I wouldn't want to take the	22	answer to the question.
23	time, unless counsel is willing to give me	23	MR. FEE: Okay.
24	lots of extra time or if you want to do it	24	BY MR. BRIDGES:
25	during a break. But if you're confident that	25	Q. I'd like to know where in
	Page 14		Page 16
1	those are the paragraphs that cover the	1	the in the report your report reveals any
2	evaluation of trademark rights, then we can	2	observations or conclusions by you about your
3	proceed.	3	evaluation of the trademark rights of the
4	A. I'm not sure if there's a	4	plaintiffs.
5	pending question, but I didn't say I was	5	MR. FEE: Objection. And I
6	confident that those are the only places.	6	think it would be misleading if it's
7	Q. Oh, then take more time,	7	not stated for the record that he has
8	please.	8	not gotten past paragraph 2 in
9	A. I think	9	responding to the prior question, and
10	Q. Then please	10	you've instructed him not to further
11	A that those are the three	11	proceed with respect to that question.
12	that address it.	12	You can go ahead and answer the
13	Q. Well, what else reflects your	13	current question.
14	evaluation of trademark rights in this case?	14	THE WITNESS: So right now, I'm
15		15	-
	<i>y</i>	16	working under the assumption that
16	a little bit more time locking at the veget	10	there's only one pending question, and
16	a little bit more time looking at the report.	17	that is your most recent assertion
17	I think in paragraph 2, I	17	that is your most recent question.
17 18	I think in paragraph 2, I believe part of the copying is the marks	18	BY MR. BRIDGES:
17 18 19	I think in paragraph 2, I believe part of the copying is the marks and/or logos.	18 19	BY MR. BRIDGES: Q. Yes.
17 18 19 20	I think in paragraph 2, I believe part of the copying is the marks and/or logos.  Q. And that paragraph 2 reflects	18 19 20	BY MR. BRIDGES: Q. Yes. A. Part of the implications of
17 18 19 20 21	I think in paragraph 2, I believe part of the copying is the marks and/or logos.  Q. And that paragraph 2 reflects your evaluation?	18 19 20 21	BY MR. BRIDGES: Q. Yes. A. Part of the implications of loss I'm sorry.
17 18 19 20 21 22	I think in paragraph 2, I believe part of the copying is the marks and/or logos.  Q. And that paragraph 2 reflects your evaluation?  MR. FEE: Objection to form.	18 19 20 21 22	BY MR. BRIDGES: Q. Yes. A. Part of the implications of loss I'm sorry. Part of the implications of
17 18 19 20 21 22 23	I think in paragraph 2, I believe part of the copying is the marks and/or logos.  Q. And that paragraph 2 reflects your evaluation?  MR. FEE: Objection to form. THE WITNESS: Yes. My	18 19 20 21 22 23	BY MR. BRIDGES: Q. Yes. A. Part of the implications of loss I'm sorry. Part of the implications of trademark infringement are reflected in
17 18 19 20 21 22 23 24	I think in paragraph 2, I believe part of the copying is the marks and/or logos. Q. And that paragraph 2 reflects your evaluation? MR. FEE: Objection to form. THE WITNESS: Yes. My evaluation includes understanding the	18 19 20 21 22 23 24	BY MR. BRIDGES: Q. Yes. A. Part of the implications of loss I'm sorry. Part of the implications of trademark infringement are reflected in paragraph 6, though they're not stated there.
17 18 19 20 21 22 23	I think in paragraph 2, I believe part of the copying is the marks and/or logos. Q. And that paragraph 2 reflects your evaluation? MR. FEE: Objection to form. THE WITNESS: Yes. My evaluation includes understanding the issues and then drawing conclusions	18 19 20 21 22 23	BY MR. BRIDGES: Q. Yes. A. Part of the implications of loss I'm sorry. Part of the implications of trademark infringement are reflected in paragraph 6, though they're not stated there. That is when I address harm. That
17 18 19 20 21 22 23 24	I think in paragraph 2, I believe part of the copying is the marks and/or logos. Q. And that paragraph 2 reflects your evaluation? MR. FEE: Objection to form. THE WITNESS: Yes. My evaluation includes understanding the	18 19 20 21 22 23 24	BY MR. BRIDGES: Q. Yes. A. Part of the implications of loss I'm sorry. Part of the implications of trademark infringement are reflected in paragraph 6, though they're not stated there.

```
1 encompasses both the harm of loss of
                                                     1
                                                            report.
   copyright protection and the repercussions of
                                                        BY MR. BRIDGES:
 3
    trademark infringement.
                                                     3
                                                            Q. What facts did you rely upon
            Same answer with regard to
 4
                                                     4
                                                       for that conclusion?
                                                     5
 5
    paragraph 7.
                                                                  Well, I understand that there
            There are also counterpart
                                                     6 has been some inaccurate copying and
 6
    paragraphs at the end of the report that I
                                                        dissemination of plaintiff materials. I
    think are identical to 6 and 7, so I won't
                                                        don't recall exactly where I got that
                                                        information from, but I believe that there's
    identify those numbers.
            Though I didn't say it in a
                                                        some materials, for instance, that have been
10
   number of paragraphs, I make reference to
                                                        copied and disseminated that are upside-down.
11
    conclusions with regard to the copyright
                                                    12
                                                        There are other materials that are difficult
12
                                                        to read. There may be materials that are
13
    infringement.
                                                    14 disseminated with the thought that those are
14
            I understand that the copyright
15 infringement is associated with certain
                                                    15 the most recent standards when, in fact, they
                                                        may not be.
16 actions that, in part, encompass trademark
                                                    16
17
    infringement, though I don't think I
                                                    17
                                                            O.
                                                                  You have no idea how you
18 explicitly said that in every section in
                                                        learned that information?
                                                    18
19 which I discover -- in which I discussed the
                                                    19
                                                            A. I don't recall --
20 copyright protection and the conclusions
                                                    20
                                                                 MR. FEE: Objection. Vague.
21 flowing from that.
                                                    21
                                                            And form.
            I don't think I have anything
22
                                                    22
                                                                 THE WITNESS: I don't recall,
23 else to add besides what I have discussed
                                                    23
                                                            sitting here right now. I may have
24
                                                    24
                                                            seen representations in some of the
    already.
25
        Q.
              What conclusions do you see
                                                    25
                                                            written materials, but I don't recall
                                            Page 18
                                                                                                 Page 20
    about a likelihood of confusion in the
                                                     1
                                                            what those written materials are.
                                                        BY MR. BRIDGES:
   marketplace arising from the defendant's use
 3
    of the marks?
                                                     3
                                                            Q. Have you seen any upside-down
                                                        pages in any of the defendant's materials?
            I haven't drawn any conclusions
 4
    with regard to that topic.
                                                     5
                                                            A. I don't recall seeing that
 5
             And what conclusions have you
                                                        personally, no.
                                                     6
    drawn about the economic value or dollar
                                                     7
                                                            O. Have you seen any
    value of the plaintiffs' trademarks?
                                                        difficult-to-read materials produced by the
                                                     8
 9
        A. I have not assigned a dollar
                                                     9
                                                        defendant?
10 value to the plaintiffs' trademarks.
                                                    10
                                                            A.
                                                                  I don't recall that right now.
             What conclusions have you drawn
                                                                  Do you know what rationale the
11
                                                    11
12 about any harm to the plaintiffs arising from
                                                        defendant has for disseminating materials
13 the defendant's alleged use of the
                                                        that are not the most recent standards?
                                                    13
14 plaintiffs' marks?
                                                    14
                                                                 MR. FEE: Objection. Form.
15
        A.
             I've drawn the conclusion that
                                                    15
                                                                 THE WITNESS: I'm not sure that
16 there could be harm if the materials, in
                                                    16
                                                            I know, no.
    fact, are inaccurate use -- inaccurate
                                                        BY MR. BRIDGES:
                                                    17
18 copies, therefore impacting the reputation of
                                                            Q. On what information -- I'd like
                                                    18
   either the materials or the organizations in
                                                        for you to recall all the information on
                                                    19
                                                        which you relied for the determination that
20 the marketplace.
21
        O.
             What studies did you rely upon
                                                        the defendant may have engaged in activities
                                                        that may have caused any harms to the
22 for that conclusion?
                                                        plaintiffs' reputation.
23
            MR. FEE: Objection. Vague.
                                                    23
24
            THE WITNESS: Nothing other
                                                    24
                                                                 MR. FEE: Could you read that
        than what you see reflected in my
                                                    25
                                                            back -- oh, I have it here. Forget
25
                                            Page 19
                                                                                                 Page 21
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1	it.	1	beyond the document production to verify that
2	Objection to form. You're	2	information.
3	asking him to recall, without having	3	Q. But you don't recall seeing any
4	all the materials in front of him?	4	defective materials yourself, correct?
5	MR. BRIDGES: Yeah.	5	A. That's correct. I do not.
6	MR. FEE: Okay.	6	Q. You just relied upon the word
7	THE WITNESS: It's all laid out	7	of others, correct?
8	in my report, and the sources are	8	MR. FEE: Objection. Vague.
9	provided in my report. I've not	9	Mischaracterizes his testimony.
10	memorized all those.	10	•
			THE WITNESS: I relied upon
11	BY MR. BRIDGES:	11	written documents I saw and
12	Q. But I don't think your report	12	conversations that I had.
13	refers to upside-down materials, does it?	13	BY MR. BRIDGES:
14	A. I don't recall for sure, but I	14	Q. What written documents did you
15	thought some of the documents that I cited	15	see that discussed these issues?
16	make reference to those materials. I'm not	16	MR. FEE: Objection. Asked and
17	sure that I cited the, for instance,	17	answered.
18	upside-down materials, but I think I have	18	THE WITNESS: And I'm sorry. I
19	discussions about that phenomenon.	19	can't point you to the particular
20	Q. With whom?	20	ones. Perhaps, through the course of
21	A. In written materials that I've	21	the day, my memory will be refreshed
22	cited.	22	on that.
23	Q. Have you had oral discussions	23	BY MR. BRIDGES:
24	about what you have referred to as that	24	Q. If you relied upon those
25	phenomenon?	25	written documents, would you have cited to
	Page 22		Page 24
1	A 37	1	.1 ' 1
1	A. Yes.	1 2	those written documents in your report?
2	Q. With whom?	2	A. Perhaps.
2 3	<ul><li>Q. With whom?</li><li>A. Counsel here.</li></ul>	2 3	<ul><li>A. Perhaps.</li><li>Q. Why do you say "perhaps"?</li></ul>
2 3 4	<ul><li>Q. With whom?</li><li>A. Counsel here.</li><li>Q. With anybody else?</li></ul>	2 3 4	<ul><li>A. Perhaps.</li><li>Q. Why do you say "perhaps"?</li><li>A. I can't say with absolute</li></ul>
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1	consulting career.	1	standards development organization that
2	BY MR. BRIDGES:	2	you've worked on?
3	Q. In what context?	3	A. Again, I'd have to go back and
4	A. There have been several matters	4	look at my records. I can't right now recite
5	I've had, litigations, that have involved	5	any, but there very well could be one or
6	standard setting organizations and the	6	more.
7	outputs from those organizations.	7	Q. Did you review any of your work
8	Q. What organizations?	8	in from earlier copyright cases involving
9	A. Well, some that come to mind	9	standards development organizations in
10	are ETSI, IEEE, the Blu-ray Association,	10	connection with your work in this case?
11	MPEG, MPEG L.A., the Philips 6C and Philips	11	A. Not to the best of my memory,
12	3C organizations. Those are among the ones	12	no.
13	that come to mind.	13	Q. What background do you have in
14	Q. And what types of litigation	14	the creation of standards by standard
15	did your work relating to those standard	15	development organizations?
16	setting organizations involve?	16	MR. FEE: Objection to form.
17	MR. FEE: Objection to form.	17	THE WITNESS: In the context of
18	THE WITNESS: It was almost all	18	some of my consulting assignments, I
		19	
19	intellectual property litigation, with		have examined processes undertaken by SDOs.
20	probably the bulk of the analyses	20	
21	undertaken with regard to patent	21	BY MR. BRIDGES:
22	rights.	22	Q. Anything else?
23	BY MR. BRIDGES:	23	A. Nothing else comes to mind.
24	Q. Do you recall	24	I've certainly looked at the output
25	A. I guess I should there were	25	associated with those processes, but there's
	Page 26		Page 28
1	probably some breach of contract matters as	1	nothing else that comes to mind.
1 2	probably some breach of contract matters as well.	1 2	nothing else that comes to mind.  Q. What processes undertaken by
		l	_
2	well.	2	Q. What processes undertaken by
2 3	well.  Q. Did you work on any matters	2 3	Q. What processes undertaken by standards development organizations did you
2 3 4	well.  Q. Did you work on any matters involving copyright law where you became familiar with the work and outputs of	2 3 4	Q. What processes undertaken by standards development organizations did you examine?  MR. FEE: Objection. Are you
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2 3 4 5 6	well.  Q. Did you work on any matters involving copyright law where you became familiar with the work and outputs of standards setting organizations before this case?	2 3 4 5 6	Q. What processes undertaken by standards development organizations did you examine?  MR. FEE: Objection. Are you asking prior to the report still?  MR. BRIDGES: Yes.
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1	A. It sounds like the same	1	manufacturers only. Others include a wider
2	question to me.	2	array of companies.
3	Q. Specifically, what processes	3	In all instances, though, the
4	did you examine?	4	companies are trying to the standards
5	A. That still sounds like the same	5	setting organizations are trying to develop
6	question, but let me try to answer it by	6	at least some form of consensus sometimes
7	saying I've looked, for instance, at the	7	it's very broad consensus; sometimes it's
8	mechanisms that ETSI undertook in developing	8	more narrow consensus about what would be
9	standards. So I am familiar generally with	9	good for that standards setting organization.
10	the processes that it follows. Similarly	10	Sometimes the SSOs are
11	with regard to other standard setting	11	interested in what's best for the
12	organizations.	12	manufacturers and the ability for them to
13	Q. What other standard setting	13	supply in an interoperable environment. In
14	organizations?	14	some cases, the SSOs are very alert to the
15	A. Well, I think I identified	15	needs of consumers and users of products and
16	those a few moments ago. Do you want me to	16	services that comply with standards.
17	repeat those?	17	Q. You've distinguished between
18	1	18	
	Q. Well, if are you saying	l	standards setting organizations and standard
19	that, for all of those organizations, you	19	development organizations. What is the
20	examined their processes?	20	distinction that you that you identify
21	A. In some dimension, probably for	21	between the two?
22	most of the organizations, I had at least	22	A. I think I said I didn't know if
23	some knowledge of the process. I can't say	23	there is for sure a distinction, but I think
24	that I investigated in depth all of the	24	an SSO is perhaps a broader concept than an
25	processes for all of the organizations that	25	SDO, but I might be wrong on that.
	Page 30		Page 32
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2	assignments that are standards oriented.	1 2	the plaintiffs here are SDOs. The
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1	they have both supply-side and	1	The Web sites and information
2	demand-side interests that they	2	that I looked at for each of the
3	consider.	3	plaintiffs certainly give more detail.
4	BY MR. BRIDGES:	4	But, in essence, a need for a
5	Q. Don't they also have regulatory	5	standard is brought to the attention
6	interests aside from being supply side or	6	of the group. That need can be
7	demand side?	7	identified from any number of places.
8	MR. FEE: Objection to form.	8	And then a group is chartered
9	THE WITNESS: What do you mean	9	with assessing what that need is and
10	by "regulatory interests"?	10	how best to respond to that need.
11	BY MR. BRIDGES:	11	That group often comes up with
12	Q. You don't understand the term?	12	proposals to respond to the issue and
13	A. No, I don't know what you mean	13	adjusts that proposal as it gets more
14	by that term.	14	input and gives more thought.
15	Q. Do they have public interests	15	Ultimately consensus is arrived
16	other than supply or demand side interests?	16	at for each of the organizations, and
17	MR. FEE: Objection to form.	17	a standard is developed and published.
18	THE WITNESS: I don't know that	18	The processes are slightly
19	it would be "other than," because I	19	different for each of the
20	think of the public interest as being	20	organizations but generally follow
21	either demand or supply side. I don't	21	that route.
22	know what might not be included.	22	BY MR. BRIDGES:
23	BY MR. BRIDGES:	23	Q. How do the processes differ
24	Q. What about somebody that has a	24	among the three plaintiff organizations?
25	safety interest? How do you classify them as	25	MR. FEE: Objection to form.
	Page 38		Page 40
1	a constituent of the plaintiffs?	1	THE WITNESS: I don't know all
1	a constituent of the plaintiffs?	1	THE WITNESS: I don't know all
2	MR. FEE: Objection to form.	2	of the differences. They may have, in
2 3	MR. FEE: Objection to form. THE WITNESS: It depends on who	2 3	of the differences. They may have, in part, been summarized in my report. I
2 3 4	MR. FEE: Objection to form. THE WITNESS: It depends on who that is. I have an interest in my	2 3 4	of the differences. They may have, in part, been summarized in my report. I see, for instance, on page 29,
2 3 4 5	MR. FEE: Objection to form. THE WITNESS: It depends on who that is. I have an interest in my house being safe, for instance, and I	2 3 4 5	of the differences. They may have, in part, been summarized in my report. I see, for instance, on page 29, paragraph 70, I have identified the
2 3 4 5 6	MR. FEE: Objection to form. THE WITNESS: It depends on who that is. I have an interest in my house being safe, for instance, and I consider myself as part of the	2 3 4 5 6	of the differences. They may have, in part, been summarized in my report. I see, for instance, on page 29, paragraph 70, I have identified the four steps that I saw that NFPA
2 3 4 5 6 7	MR. FEE: Objection to form. THE WITNESS: It depends on who that is. I have an interest in my house being safe, for instance, and I consider myself as part of the demand-side constituency.	2 3 4 5 6 7	of the differences. They may have, in part, been summarized in my report. I see, for instance, on page 29, paragraph 70, I have identified the four steps that I saw that NFPA follows in developing standards.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MR. FEE: Objection to form.  THE WITNESS: It depends on who that is. I have an interest in my house being safe, for instance, and I consider myself as part of the demand-side constituency.  I think that there could be companies that are in the business of manufacturing smoke detectors, for instance. I would think of them primarily as being on the supply side, although they're certainly alert to the demand-side considerations.  BY MR. BRIDGES:  Q. How do you understand the plaintiffs here strike that.  What do you understand to be the process by which the plaintiffs develop standards?  MR. FEE: Objection to form.  THE WITNESS: I don't know all the steps. I've summarized some of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	of the differences. They may have, in part, been summarized in my report. I see, for instance, on page 29, paragraph 70, I have identified the four steps that I saw that NFPA follows in developing standards.  BY MR. BRIDGES:  Q. I'm just asking you you don't need to spend time going through the report. I just want to know, sitting here today, how you understand the processes differ.  MR. FEE: Object to form, to the extent you are asking him not to look at his report. I think he should be permitted to do that.  THE WITNESS: Just by just going by memory, I don't recall substantial differences in the processes. I understand each one to follow the general scheme that I identified a few moments ago. I'm

```
1
        that scheme.
                                                     1
                                                            particular, but the -- the options are
                                                     2
   BY MR. BRIDGES:
                                                            federal, state, and local.
3
        Q. You used the word "group"
                                                     3
                                                       BY MR. BRIDGES:
   several times in discussing the process by
                                                            Q. Have you --
                                                     4
   which the standards -- the plaintiffs develop
                                                     5
                                                                 But I don't know that each
   standards. What did you mean by "group"?
                                                       group assessing the need for a standard
        A. I don't recall exactly what
7
                                                       always has representations at each level of
8 context I used it in, but I think of a set of
                                                       government.
   individuals representing either themselves or
                                                     9
                                                                 What do you know about
10 companies that have interest in the topic and
                                                       participation by employees of standards
                                                    10
11 might have some thoughts as to how best to
                                                       development organizations in what you call
12 address that topic and develop a standard.
                                                   12
                                                       the "groups"?
            The groups can be wide
13
                                                   13
                                                                MR. FEE: Objection to form.
14 assortments. Sometimes they're individual
                                                   14
                                                                THE WITNESS: My memory is that
15 users. Sometimes they're large company
                                                            each one of the standard development
                                                   15
16 representatives. Sometimes they're small
                                                   16
                                                            organizations that are at issue here
17
   company representatives. Sometimes there
                                                   17
                                                            have at least one employee that's --
18 are -- they are employees of the SDO.
                                                            that's involved in the process.
                                                   18
            But each one of the SDOs tends
19
                                                   19
                                                                Sometimes those employees are
20 to have a fairly wide and diverse set of
                                                            facilitators. Often that's the case.
                                                   20
   groups that addresses these topics.
                                                   21
21
                                                            Sometimes they have substantive input.
        Q. You say some members of the
22
                                                   22
                                                            But they often help the process along.
23 groups may be individuals, correct, and their
                                                   23
                                                       BY MR. BRIDGES:
   own -- acting on their own interest; is that
                                                   24
                                                                And what do you mean by
                                                            O.
25 correct?
                                                       "substantive input"?
                                            Page 42
                                                                                                Page 44
1
        A.
             That's my understanding, yes.
                                                     1
                                                                 Some people may have particular
2
        O.
             Why is that your understanding?
                                                        knowledge about a particular industry or
   How -- what -- what's the basis of your
                                                       topic. They all have some knowledge about
                                                       the standards development process.
   understanding?
        A. I think I've probably seen that
                                                     5
                                                            Q. Do you have any understanding
5
   in some of the written materials, but I can't
                                                       as to why the various individuals in the
    point you to particular materials that --
                                                       groups participate in the standards
   that I relied on for that.
                                                     8
                                                       development process?
        Q. And you said that some
                                                     9
                                                                MR. FEE: Objection to form.
                                                    10
10 individuals may participate in groups as
                                                                THE WITNESS: Generally,
11 representatives of large companies; is that
                                                            they're interested in addressing a
                                                   11
12 correct?
                                                            topic of some concern and coming to a
                                                    12
13
                                                            resolution, one that's acceptable to,
        A.
             Yes.
                                                   13
14
             Some individuals may
                                                   14
                                                            at the very least, the party that
        O.
   participate as -- participate as
                                                   15
                                                            they're representing and one that
16 representatives of small companies, correct?
                                                            is of -- has sufficient consensus
                                                   16
17
                                                            support to be a practical and
        A.
             Yes.
                                                    17
                                                            acceptable solution to a pending
18
             And I don't think you mentioned
                                                   18
    that any individuals participate as
                                                            problem.
19
                                                   19
    representatives of government?
                                                   20 BY MR. BRIDGES:
21
             That's probably also the case.
                                                   21
                                                            O.
                                                                What do you mean by "a pending
        A.
             What types of governments?
22
                                                   22
                                                       problem"?
            MR. FEE: Objection. Vague.
23
                                                   23
                                                                 Typically, there's a need
24
                                                       identified, and the SDO has decided a
        Form.
                                                       standard may help address that need. For
25
            THE WITNESS: I don't know in
                                            Page 43
                                                                                                Page 45
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1 instance, the fire at the shirt factory in
                                                        do have a JD.
 2 New York a hundred years ago, it was
                                                     2
                                                                  You don't have a Ph.D. in
                                                             O.
 3 identified that we didn't want those
                                                     3
                                                        economics, correct?
 4 disasters to occur in the future and that we
                                                             A. Correct. I was in the Ph.D.
 5 would like to investigate avenues to minimize
                                                        program and have completed most of the
                                                        requirements for my Ph.D. but not all.
 6 such risks.
                                                             Q. What interests do you
 7
        Q.
              What do you mean by "avenues to
                                                     7
 8 minimize such risks"?
                                                        understand the plaintiffs to have -- strike
                                                     8
             Well, consideration is given to
                                                     9
10 determining whether there should be quality
                                                    10
                                                                 What interests do you
11 standards that manufacturers should comply
                                                        understand the plaintiffs to have in having
                                                    11
                                                        standards incorporated into law?
12 with in order to reduce the disastrous
                                                    12
                                                                 MR. FEE: Objection to form.
13 outcomes that occur because of fires, for
                                                    13
                                                                 THE WITNESS: I think that's
                                                    14
14 instance.
             And what do you mean by
                                                             laid out in my report in a variety of
15
        O.
                                                    15
16 "quality standards"?
                                                    16
                                                             ways; but generally, the plaintiffs
                                                             are interested in effectuating their
17
             Just by way of example, to have
                                                    17
18 more ingress and egress available to
                                                             charters, and that is they want to
                                                    18
19 employees and to have that as a requirement
                                                    19
                                                             address certain problems in an
20 or have a standard that may eventually be
                                                             effective way. And if those solutions
                                                    20
21 incorporated into law so that buildings are
                                                    21
                                                             get incorporated into standards and
22 erected in such a way to allow employees to
                                                             those standards get incorporated by
                                                    22
23 leave the building rather than be engulfed in
                                                    23
                                                             reference into law, that can be an
24 flames.
                                                    24
                                                             effective way for dissemination of a
25
        Q.
              And what do you mean by
                                                    25
                                                             solution.
                                             Page 46
                                                                                                  Page 48
    "incorporated into law"?
                                                     1 BY MR. BRIDGES:
 2
             MR. FEE: Objection. Calls for
                                                     2
                                                             Q. What do you mean by
                                                        "effectuating" the plaintiffs' charters?
 3
        a legal conclusion. Form.
                                                     3
                                                             A. Well, each plaintiff has a goal
             THE WITNESS: As an economist,
 4
 5
        I generally understand it to be that
                                                        or set of goals it would like to achieve,
 6
        there's some federal, state, and local
                                                        whether that's safety or interoperability.
                                                     7 But generally, they want to achieve a
 7
        laws that make reference to certain
                                                        socially good purpose and one that is good
 8
        standards and have that reference as
 9
                                                        for members of the industry.
        part of the law.
                                                             Q. In your answer, you're
10
            The legal implications I am
                                                    10
                                                    11 referring specifically to these plaintiffs?
        certainly not an expert in, and I
11
12
        hesitate to characterize any more than
                                                    12
                                                             A.
                                                                  Yes.
13
                                                                  Do these plaintiffs have an
        I have.
                                                    13
14 BY MR. BRIDGES:
                                                        interoperability goal?
                                                    14
15
                                                             A. I don't think explicitly, but I
              Well, you, in fact, have a law
                                                    15
                                                    16 think -- I don't think as part of the charter
16 degree, correct?
17
            I have a law degree. I am not
                                                        for the plaintiff, but I think with regard to
18 now, nor have I ever been a practicing
                                                        certain topics that they address
                                                        interoperability helps achieve some of those
19
    attornev.
              Okay. But you have a juris
                                                        goals of the individual topics that help
20
        Q.
21
   doctor degree, correct?
                                                    21
                                                        achieve the overall goals of the
             Is that different from a law
                                                        organization.
22
                                                    22
        A.
23
   degree?
                                                    23
                                                                  What are some of the goals of
                                                    24 interoperability that you've identified for
24
             It's a type of law degree.
        Q.
             I -- I didn't know that, but I
                                                    25 plaintiffs?
25
        A.
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Page 47

1	A. That I've identified in my	1	the problems that they are trying to address?
2	report?	2	MR. FEE: Same objection.
3	Q. In your work on in your work	3	THE WITNESS: Generally, ASTM
4	on this matter for the plaintiffs.	4	is addressing problems associated with
5	A. I'm not exactly sure what	5	public health and safety; support
6	you're asking, but I talked about the merits	6	protection and sustainability of the
7	of interoperability and why these	7	environment; overall quality of life;
8	organizations why certain standards are	8	the reliability of materials, product
9	oriented toward interoperability.	9	systems, and services; and
10	I think one of the specific	10	facilitating international, regional,
11	illustrations is of the need for and the	11	and national commerce.
12	achieving of interoperability goals is the	12	BY MR. BRIDGES:
13	NEC. That allows one to safely and	13	Q. Now, those are problems?
14	effectively receive power across the world.	14	A. They are trying to achieve
15	That's good for manufacturers, and it's good	15	their mission by addressing problems that may
16	for consumers.	16	stand in the way of achieving those missions.
17	Q. You said that plaintiffs are	17	Q. So please give me an example of
18	interested, I believe, in addressing certain	18	some problems that the plaintiffs are trying
19	problems in an effective way. Do you recall	19	to address. My questioning has been focused
20	that?	20	on problems. You've been responding about
21	A. Generally I recall that, yes.	21	mission, but I I'd like for you to
22	Q. And, generally speaking,	22	identify some of the problems, generally
23	referring to these plaintiffs, what are the	23	speaking, that you understand the plaintiffs
24	problems you understand them to be trying to	24	are trying to address.
25	address?	25	MR. FEE: Objection to form.
	Page 50		Page 52
1	MR FFF: Objection to form	1	Compound
1 2	MR. FEE: Objection to form. THE WITNESS: I've laid that	1 2	Compound. THE WITNESS: I thought I did
2	THE WITNESS: I've laid that	2	THE WITNESS: I thought I did,
2 3	THE WITNESS: I've laid that out in my report. In page 64 I've	2 3	THE WITNESS: I thought I did, so I'll try with some different words.
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1	Q. You may after I get your answer	1	Q. You said standards "provide
2	first.	2	definition around what is a best practice, an
3	A. Okay.	3	advisable practice, and that practice is
4	MR. FEE: Objection to making	4	intended to address existing and potential
5	this a memory test and not allowing	5	problems."
6	him to review materials he's indicated	6	What did you mean by "practice"
7	he needs to review to fully and	7	in that answer?
8	accurately respond to the question.	8	A. It was an example of what
9	If you can answer without	9	somebody should do.
10	looking at your report, go ahead.	10	Q. And what do you mean by "what
11	THE WITNESS: By way of	11	somebody should do"?
12	example, ASTM has addressed problems	12	MR. FEE: Objection. Vague.
13	associated with the safety of	13	THE WITNESS: I don't know how
14	amusement rides.	14	to define it any more than that. I'm
15	By way of example, NFP [sic]	15	•
16		16	sorry. BY MR. BRIDGES:
	has addressed problems associated with	1	
17	electrical fires in buildings.	17	Q. Is it a course of action that
18	By way of example, ASHRAE is	18	somebody should take?
19	addressing but I'm not thinking of	19	A. That would be another way to
20	a good example for ASHRAE right now.	20	say it. I don't think that's a definition.
21	I apologize. I'd have to look at my	21	It's it's another presentation of what I
22	report.	22	said.
23	BY MR. BRIDGES:	23	Q. Is a suitable method for
24	Q. Okay. And I believe that you	24	accomplishing a goal?
25	testified bear with me just a second. Let	25	MR. FEE: Objection to form.
	Page 54		Page 56
1	me get the exact testimony.	1	THE WITNESS: That that
1 2	me get the exact testimony.  You said earlier that the	1 2	THE WITNESS: That that could be an example, yes.
		1	
2	You said earlier that the	2	could be an example, yes.
2 3	You said earlier that the plaintiffs are interested in effectuating	2 3	could be an example, yes. BY MR. BRIDGES:
2 3 4	You said earlier that the plaintiffs are interested in effectuating their charters, and that is they want to	2 3 4	could be an example, yes. BY MR. BRIDGES: Q. And would it be in terms of
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2	I've seen that. I think that they are	2	effective way for dissemination of a
3	consensus based, and what one party	3	solution.
4	may define as optimum may be different	4	What makes incorporation into
5	from what another party defines as	5	law an effective way for dissemination of a
6	optimal.	6	solution with respect to the plaintiffs'
7	But I think they're the result	7	activities?
8	of a variety of parties coming	8	MR. FEE: Objection to form.
9	together and sometimes balancing	9	THE WITNESS: I I'm
10	interests and opinions.	10	certainly not
11	BY MR. BRIDGES:	11	MR. FEE: It mischaracterizes
12	Q. And recommending certain	12	his prior testimony.
13	procedures for accomplishing certain	13	THE WITNESS: I I'm not a
14	outcomes?	14	legal expert, and I'm not an expert of
15	A. By way	15	an on the topic of incorporation by
16	MR. FEE: Objection to form.	16	reference into law.
17	THE WITNESS: By way of	17	But if a particular statute
18	example, yes.	18	lays out that legally someone must
19	Are we at a point for a break?	19	follow what's laid out in certain
20	We've been going a little over an	20	standards, I would expect that,
21	hour.	21	because most people are interested in
$\begin{vmatrix} 21\\22\end{vmatrix}$	BY MR. BRIDGES:	22	lawful rather than unlawful activity,
23		23	
24	· · · · · · · · · · · · · · · · · · ·	24	that people would follow that dictate. BY MR. BRIDGES:
25	further to conclude a line of questioning.  It will be about ten more minutes.	25	
23	Page 58	23	Q. And that incorporation into law Page 60
1	MR. FEE: Are you okay with	1	would be effective for dissemination of a
2			4 1 10
	that?	2	standard?
3	THE WITNESS: I'm okay with	3	MR. FEE: Same objections.
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1 any harms that the plaintiffs have actually
                                                     1 you just said, quote, "I am not sure that the
   suffered to date as a consequence of the
                                                       impact from the past would be close to the
 3
    defendant's activities?
                                                     3 impact that will occur in the future if the
            MR. FEE: Objection to form.
                                                     4 Court finds that there has been no copyright
 4
 5
                                                     5 or trademark infringement."
            THE WITNESS: To the extent I
        have, it's embodied in my report.
                                                            A. It's everything laid out in my
 6
                                                     6
                                                     7 report. I -- it's really the -- at the heart
 7
        You'll see there's a little bit of
 8
        evidence of actual tangible harm to
                                                     8
                                                       of what I did.
        date, and there's certainly more
 9
                                                     9
                                                                 And please summarize for me
                                                            O.
        discussion of harm. The tangible
                                                       what data you base that statement on.
10
                                                    10
                                                                  That's identified in my report.
        evidence I have is reflected in my
11
                                                    11
12
        report.
                                                    12
                                                                  Okay. Show me, please, in the
                                                            Q.
13 BY MR. BRIDGES:
                                                    13 report.
        Q. And what do you understand that
                                                    14
                                                                  It's all of what's in
14
                                                            A.
15 evidence to be?
                                                    15 Exhibit 1.
16
        A. I believe the number of
                                                    16
                                                            O. No, I want -- I want the basis
17 downloads from the Public Resource
                                                    17 for your statement that the impact from
                                                    18 conduct to date -- strike that -- that you're
18 dissemination have been fairly substantial.
19 I believe that the purchase of publications
                                                    19 not sure that the impact from the conduct to
20 has declined some at the plaintiffs -- at the
                                                    20 date would be close to the impact that will
21 various plaintiffs. It certainly has not
                                                   21 occur in the future if the Court find --
22 risen. Those are among the things that come
                                                   22 makes a certain finding, right?
                                                   23
23 to mind.
                                                            A.
                                                                 Correct.
24
            I think I discuss the topic in
                                                   24
                                                                  So please identify for me
                                                            O.
25 more depth in paragraph, among other thing --
                                                    25 something specific that forms the basis of
                                            Page 62
                                                                                                Page 64
   among other places, in paragraph 133 of my
                                                     1
 1
                                                       that statement.
 2
   report.
                                                     2
                                                                MR. FEE: Objection. Asked and
                                                     3
 3
             Have you been able to quantify
                                                            answered.
    any financial losses to plaintiffs as a
                                                     4
                                                                THE WITNESS: Among other
    consequence of defendant's activities?
                                                     5
                                                            things, paragraphs 112 through 155.
 5
        A.
             No.
                                                     6
                                                       BY MR. BRIDGES:
                                                                  So these are the "Costs of
 7
        O.
             Why not?
                                                     7
 8
             Not with any great certainty.
                                                       Losing Copyright Protection"; is that
        A.
                                                     8
 9
             Why not?
                                                        correct?
        O.
10
             Well, I don't have the records
                                                    10
                                                                  That's the title of this
        A.
11 that would allow me to do that. Moreover, I
                                                    11 section, and then there's some discussion of
12 am not sure that the impact from the past
                                                       trademark protection as well.
13 will be close to the impact that will occur
                                                                 And those would be the harms
                                                    13
14 in the future if the Court finds that there
                                                       that you identify that would flow from a
                                                    14
15 has been no copyright or trademark
                                                        decision by the Court that the plaintiffs
                                                       cannot enforce their copyrights against the
16 infringement.
17
             Why do you make the statement
                                                        defendant, correct?
        O.
                                                    17
   you just did? What's your basis for it?
18
                                                                MR. FEE: Objection to form.
                                                    18
19
            MR. FEE: Objection to form.
                                                                THE WITNESS: What I can say --
                                                    19
            THE WITNESS: I think there
20
                                                    20
                                                            I'm sorry.
21
        were a few things in my statement.
                                                    21
                                                                MR. FEE: I just objected to
        Which would you like me to expound on?
22
                                                   22
23 BY MR. BRIDGES:
                                                   23
                                                                THE WITNESS: What I can say
                                                    24
                                                            with a reasonable degree of certainty.
24
        O. Just that sentence. I'd like
25 to know what the basis is for the sentence
                                                   25 BY MR. BRIDGES:
                                                                                                Page 65
                                            Page 63
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1 D. So those would be harms caused 2 by a court decision? 3 MR. FEE: Same objection. 4 THE WITNESS: By continuing 5 activities by the defendant that are 6 not halted by the Court. 7 BY MR. BRIDGES: 8 Q. Well, it comes across, frankly, 9 in your report as though you're identifying 10 harms that would flow from a court decision. 11 MR. FEE: Objection. 12 BY MR. BRIDGES: 13 Q. Is that correct or not? 14 A. No, I think you- 15 MR. FEE: Mischaracterizes the 16 report. 17 THE WITNESS: -you misread 18 it. I don't think I said that or 19 meant to say that. 20 BY MR. BRIDGES: 21 Q. So what harms have occurred 22 from the -r from the defendant's conduct to 23 date? 24 A. A At the risk of repeating 25 myself, some of that is summarized in 27 widence, it's throughout the report. 4 Q. So why would it make a 28 difference to what the defendant's harms 29 to plaintiff's harms were continue with - 10 strike that. 20 So why would it make a 21 plaintiff's harms were continue with - 22 strike that. 23 difference to what the defendant's harms 24 to plaintiff's harms were continue with - 25 trike that. 26 to plaintiff's toolse copyright 27 mR. BRIDGES: 28 THE WITNESS: I - I don't understand your question. 29 MR. FEE: Objection. Vague. 20 It looks as though you're 21 stating what that are would be defendant that are though and the plaintiff's toolse copyright 29 The WITNESS: I - I don't understand your question. 3 difference to what the defendant's larms 4 Q. So why would it make a 5 difference to what the defendant's harms 16 to plaintiff's tool other 17 BY MR. BRIDGES: 18 Q. It looks as though you're 19 stating what the harms would be if the Court 20 found that incorporation by reference would 21 cause the plaintiff's to lose copyright 22 protection; is that correct? 23 A. I don't - 24 MR. FEE: Objection. Vague. 25 THE WITNESS:think so. I  26 presence or absence of a permanent injunction in this case? 27 Do you think implicitly she was referring to this case? 28 Q. Tool you doted her form, injunction in the paragraph 112? 29 T				
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1	A. Generally. I think she's	1	Q. "Such products"
2	talking about standards development and	2	A. And in the next two sentences.
3	incorporation by reference. I don't remember	3	Q. And these are other products
4	if she said at the very beginning of the	4	that "could include more sophisticated
5	article that it was about copyright	5	Web-based availability, published
6	protection, but she certainly talks about	6	compilations of incorporated standards, and
7	copyright protection.	7	other ancillary products that incorporate the
8	Q. And you're quoting her about	8	standards"; isn't that correct?
9	losing copyright protection, and you're	9	A. You didn't read that right. It
10	placing it in the context of harms of the	10	starts "such products could include."
11	loss of copyright protection, correct?	11	Q. Okay. Otherwise, that reading
12	MR. FEE: Objection to form.	12	is correct?
13	THE WITNESS: This excerpt	13	A. I think so.
14	doesn't specifically talk about losing	14	Q. You consider that to be harm to
15	copyright protection, but it talks	15	the plaintiffs?
16	about the concept of it. If there was	16	MR. FEE: Objection. Vague.
17	no longer copyright protection granted	17	THE WITNESS: It could be, yes.
18	to the SDOs, what would be the	18	It's likely to be, if the copyright
19	repercussions.	19	infringement or the assumption of a
20	BY MR. BRIDGES:	20	copyright infringement continues. It
21	Q. And that's the context that you	21	could broaden.
22	identified in the first line of	22	BY MR. BRIDGES:
23		23	
24	paragraph 112, correct? A. Yes.	24	Q. Right. But the fact that these other types of products would enter the
25	MR. FEE: Objection to form.	25	marketplace is part of the harm that you
23	Page 70	23	Page 72
	Tuge /v		1 450 72
1			
1	BY MR. BRIDGES:	1	envision from the defendant in this case?
2	Q. Let me direct your attention to	2	MR. FEE: Objection to form.
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1	Q. In other words, if the Court	1	standards.
2	makes a decision in a certain way, there will	2	Q. What further harm would
3	be harms from persons or entities other than	3	Public.Resource.Org cause to plaintiffs with
4	Public.Resource.Org to the plaintiffs? Is	4	respect to the standards at issue in this
5	that your testimony?	5	case if no if the Court does not
6	MR. FEE: Objection to form.	6	permanently enjoin Public.Resource.Org?
7	THE WITNESS: You used the	7	MR. FEE: Objection to form.
8	phrase "in a certain way." I don't	8	THE WITNESS: If there's no
9	know what you mean by that. I'm	9	permanent injunction, there will, in
10	addressing the issue of whether there	10	essence, be a message sent to the
11	should be a permanent injunction or	11	marketplace that the standards that
12	not.	12	have already been disseminated are out
13	BY MR. BRIDGES:	13	there and can be used by others.
14	Q. So your view is that, if the	14	So right now my expectation is
15	Court does not enter a permanent injunction,	15	that some number of consumers of the
		16	standards have been reluctant or
16	the plaintiffs will suffer harms from parties		
17	other than Public.Resource.Org. Is that your	17	unknowing as to the standards
18	testimony?	18	disseminated by Public Resource. Now
19	A. That potential exists. I don't	19	there will be more knowledge about
20	know for sure. That's, in part, why the harm	20	that and more approval of that
21	is irreparable or very difficult to quantify.	21	activity. That is if there's no
22	Q. The what harm?	22	permanent injunction.
23	A. Continuing activity of Public	23	BY MR. BRIDGES:
24	Resource and others. I don't know exactly	24	Q. What harms will plaintiffs
25	what will happen, but the potential is that	25	suffer if the Court rules that the plaintiffs
	Page 74		Page 76
1	there could be very broad dissemination of	1	do not own the copyrights in this case?
1 2	there could be very broad dissemination of the standards, which would impact these SDOs	1 2	do not own the copyrights in this case?  MR. FEE: Objection. Calls for
2	the standards, which would impact these SDOs	2	MR. FEE: Objection. Calls for
3	the standards, which would impact these SDOs tremendously.	2 3	MR. FEE: Objection. Calls for speculation.
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```
1
            I assume that there's copyright
                                                      plaintiffs deserve copyright protection for
        A.
   infringement. I don't know that I've made an
                                                       these standards?
 3
    explicit assumption with regard to ownership.
                                                    3
                                                               MR. FEE: Objection to form.
                                                               THE WITNESS: I don't have an
             And you assume infringement
                                                    4
4
                                                    5
                                                           opinion on that one way or the other.
5
    without assuming ownership of the copyrights?
            I haven't made any explicit
                                                           I have not thought about that topic.
                                                    6
   assumption with regard to ownership. I know
                                                    7
                                                      BY MR. BRIDGES:
    that's an issue in this case, but it's well
                                                    8
                                                           Q. Do you have any expertise in
8
                                                       copyright law as a field of law?
   beyond my expertise.
                                                    9
             So if it turns out that -- do
                                                               MR. FEE: Objection. Vague.
10
        O.
                                                   10
11 you understand your testimony to have any
                                                               THE WITNESS: No, I don't have
                                                   11
   bearing on whether plaintiffs' standards are
                                                   12
                                                           legal expertise. I have expertise in
                                                           looking at harm associated with
13
    copyrightable?
                                                   13
14
            MR. FEE: Objection. Calls for
                                                   14
                                                           copyright infringement.
                                                   15 BY MR. BRIDGES:
15
        speculation.
16
            I would instruct you to not
                                                   16
                                                           Q. Do you have any expertise with
17
        disclose any communications you had
                                                       respect to harm caused by invalidation of
                                                   17
        with counsel that weren't the basis
18
                                                   18
                                                       copyrights?
19
        for any of your opinions in this case.
                                                   19
                                                               MR. FEE: Same objection.
                                                               THE WITNESS: I'm not quite
20
        You can otherwise answer.
                                                  20
21
            THE WITNESS: Could you read
                                                  21
                                                           sure I'm fully appreciating your
                                                           question. Again, I'm an expert in the
22
        that back or ask it again, please?
                                                  22
                                                           economics of IP protection. One of
23
   BY MR. BRIDGES:
                                                  23
24
        Q. Do you understand your
                                                   24
                                                           the areas in which I do work is harm
   testimony and opinions in this case to have
                                                  25
                                                           associated with copyright protection.
                                           Page 78
                                                                                               Page 80
    any bearing on whether plaintiffs' standards
                                                    1 BY MR. BRIDGES:
1
    are copyrightable?
                                                    2
                                                           Q. Have you done any work in this
            MR. FEE: Same objection and
3
                                                    3 case to quantify what harms plaintiffs would
                                                       suffer if a court were to rule that they
        instruction. Plus objection, calls
4
        for a legal conclusion.
                                                       lacked copyright rights in the standards at
5
            THE WITNESS: I don't know one
                                                       issue in this case?
 6
7
        way or the other. I've not taken on
                                                    7
                                                               MR. FEE: Objection to form.
 8
        that assignment.
                                                    8
                                                               Go ahead.
                                                    9
                                                               THE WITNESS: Not explicitly,
9
   BY MR. BRIDGES:
10
             Do you understand whether your
                                                   10
                                                           to my knowledge.
   testimony and opinions in this case are
11
                                                   11
                                                      BY MR. BRIDGES:
    relevant to whether plaintiffs deserve
                                                               Have you done anything
                                                   12
                                                           Q.
    copyright protection in this case?
                                                      implicitly?
13
                                                   13
14
            MR. FEE: Objection. Calls for
                                                   14
                                                               MR. FEE: Same objection.
15
        a legal conclusion.
                                                               THE WITNESS: Not to my
                                                   15
16
            And same objection with respect
                                                   16
                                                           knowledge.
17
        to communications between you and
                                                      BY MR. BRIDGES:
                                                   17
18
        counsel that were not the bases for
                                                           Q. Have you done any work in this
                                                   18
        your opinions or your report.
                                                       case to analyze the incentives that
19
                                                   19
                                                       participants have in the standards
            THE WITNESS: I don't know one
20
21
        way or the other. I did not take on
                                                  21
                                                       development process?
        that assignment.
                                                  22
                                                               MR. FEE: Objection to form.
22
23
   BY MR. BRIDGES:
                                                  23
                                                           Vague.
                                                  24
24
        Q. Do you mean by your analysis
                                                               THE WITNESS: I have in the
25 and opinions to suggest in any way that
                                                           sense that I've examined the materials
                                                  25
                                           Page 79
                                                                                               Page 81
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1	that I've cited, and some of those	1	THE WITNESS: point to
2	talk about the standard development	2	MR. FEE: form.
3	process and why participants are	3	THE WITNESS: any particular
4	active in the process. So in that	4	instances as I sit here now.
5	regard, I've considered incentives.	5	BY MR. BRIDGES:
6	BY MR. BRIDGES:	6	Q. Can you think of any other
7	Q. What do you understand the	7	motivations that the participants in the
8	incentives to be?	8	standards writing process have?
9	A. Well, for the supply side	9	A. I'm sorry. Other than what?
10	constituents, they're interested in effective	10	Q. Other than the incentives you
11	manufacturing and selling of products that	11	referred to earlier of the supply-side
12	will and services that will be well	12	constituents and the demand-side
13	received in the marketplace; and on the	13	constituents.
14	demand side, the constituents are interested	14	A. Nothing else comes to mind,
15	in products and services that address certain	15	although I'm certainly open to the fact that
16	quality and compatibility issues or problems	16	I haven't thought of or expressed all the
17	and help resolve those.	17	incentives.
18	Q. Do you know who actually	18	Q. Well, what other incentives can
19	creates the text of the standards?	19	you think of as you sit here?
20	MR. FEE: Objection to form.	20	A. As I just said, nothing else
21	THE WITNESS: Are you talking	21	comes to mind.
22	about who actually types in the words?	22	Q. What incentives do you
23	BY MR. BRIDGES:	23	understand the plaintiffs to have in
24	Q. No.	24	developing standards?
25	A. Because I don't know what you	25	MR. FEE: Objection to form.
	Page 82		Page 84
-			
1	mean by "creates the text."	1	THE WITNESS: I think,
1 2	mean by "creates the text." Q. Who actually suggests the	1 2	THE WITNESS: I think, generally, they want consensus among
	·		· · · · · · · · · · · · · · · · · · ·
2	Q. Who actually suggests the	2	generally, they want consensus among
2 3	Q. Who actually suggests the words?	2 3	generally, they want consensus among interested parties in how to address a
2 3 4	Q. Who actually suggests the words? A. I think a number of	2 3 4	generally, they want consensus among interested parties in how to address a particular issue or problem that those
2 3 4 5	Q. Who actually suggests the words?  A. I think a number of constituents do, typically.	2 3 4 5	generally, they want consensus among interested parties in how to address a particular issue or problem that those constituents face.
2 3 4 5 6 7 8	Q. Who actually suggests the words?  A. I think a number of constituents do, typically.  Q. What types of constituents suggest the words of the standards?  MR. FEE: Objection to form.	2 3 4 5 6 7 8	generally, they want consensus among interested parties in how to address a particular issue or problem that those constituents face.  They are each non-profit
2 3 4 5 6 7 8 9	Q. Who actually suggests the words?  A. I think a number of constituents do, typically. Q. What types of constituents suggest the words of the standards?  MR. FEE: Objection to form.  THE WITNESS: I think it's	2 3 4 5 6 7	generally, they want consensus among interested parties in how to address a particular issue or problem that those constituents face.  They are each non-profit organizations, so they're not intending to profit off their activities, but they're certainly
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1	clearinghouse for resources.	1	standards, print copies of standards,
2	BY MR. BRIDGES:	2	and disseminate copies of standards.
3	Q. When you say they "create	3	They are involved in teaching
4	versions of the proposed standards," it's, in	4	and training sometimes associated with
5	fact, the various groups, as you call them,	5	standards.
6	that create versions, perhaps with a staff	6	They participate in advertising
7	member from the organizations themselves,	7	campaigns about the output of the SDO.
8	correct?	8	Those are among the things that
9	MR. FEE: Objection to form.	9	they contribute.
10	Vague.	10	BY MR. BRIDGES:
11	THE WITNESS: I think that's	11	Q. And when you say "providing
12	sometimes correct.	12	people to be involved and pay salaries,"
13	BY MR. BRIDGES:	13	you're talking about the generally
14	Q. Do you know that	14	speaking, the staff members who may functions
15	A. Perhaps often.	15	as liaisons to various committees and groups
16	Q. Or perhaps always?	16	that draft the standards?
17	A. Perhaps always.	17	MR. FEE: Objection to form.
18	MR. FEE: Objection.	18	Lack of foundation.
19	BY MR. BRIDGES:	19	BY MR. BRIDGES:
20	Q. How do the plaintiffs serve as	20	Q. Is that what you understand?
21	clearinghouses for resources?	21	A. Staff people that help
22	A. They allow a forum for the	22	facilitate. Some are purely helping in a
23	various constituents to identify and address	23	logistics front. Others are helping on a
24	issues that those constituents face in a	24	more substantive front. They pay their
25	particular subject area.	25	salaries. They pay taxes, provide benefits.
	Page 86		Page 88
1	O What investments do you	1	They provide travel expenses Those are some
1 2	Q. What investments do you understand the plaintiffs to make in the	1 2	They provide travel expenses. Those are some of the things that are done
2	understand the plaintiffs to make in the	2	of the things that are done.
2 3	understand the plaintiffs to make in the standards development process?	2 3	of the things that are done. Q. On page 76 sorry page 33.
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Right. Or approximately
                                                   1
                                                               THE WITNESS: Again, I don't
 1
        Q.
                                                   2
 2
   $3 million?
                                                           have an estimate.
        A. Are you limiting it just to
                                                   3
                                                      BY MR. BRIDGES:
3
   90.1 or all its standards?
                                                           Q. Do you know -- did ASHRAE pay
                                                   4
                                                      for the time, the hotel bills, and the plane
5
        Q. Well, that's a good question.
                                                   5
   What -- what's -- what did you intend the
                                                      fares of its volunteer members in updating
   last sentence in paragraph 76 to refer to?
                                                      the ASHRAE 90.1 standard?
                                                   7
   All of its standards or 90.1?
                                                   8
                                                           A. I would expect rarely. It's
                                                      possible that there are certain instances in
9
        A. I think it's all of its
10 standards, but we could visit the screenshot
                                                      which there was some set of out-of-pocket
                                                  10
                                                      expenses covered, but I would imagine the
   from the Web site to confirm that.
12
        O. Okav.
                                                  12
                                                      bulk of the time it's the volunteer's
        A. I -- I could be wrong. I don't
13
                                                  13
                                                      employer.
14 think I am, but I could be.
                                                  14
                                                               MR. BRIDGES: Sorry. How long
             Okay. In the previous
                                                           have we been going? I didn't get when
15
                                                  15
16 sentence, you say, "ASHRAE and its volunteer
                                                  16
                                                           we went back on.
   members devoted more than 86,400 man-hours, 17
                                                               MR. FEE: 34 minutes.
18 3,600 hotel nights, and 1,200 round-trip
                                                  18
                                                      BY MR. BRIDGES:
19 flights as part of the process."
                                                  19
                                                           Q. Did you speak with Emily Bremer
            And that -- "the process"
                                                  20 at any point in this case?
20
21 appears to refer to updating the ASHRAE 90.1
                                                  21
                                                           A.
                                                                No.
   standard, correct?
22
                                                  22
                                                           Q.
                                                                How did you become acquainted
                                                  23 with her writings?
23
        A.
             Yes.
24
             When you say "ASHRAE and its
                                                  24
                                                           A. I think Kevin Fee and/or
        O.
25 volunteer members," and then you give those
                                                  25 Jordana Rubel brought to my attention that
                                           Page 90
                                                                                              Page 92
   statistics, those statistics refer primarily
                                                   1 she had written on this topic. I don't
   to the man-hours, hotel nights, and
                                                      recall whether then we separately obtained
                                                   3 her two articles or Mr. Fee slash Ms. Rubel
 3
   round-trip flights of the volunteer members?
            MR. FEE: Objection. Vague.
                                                      provided those to us.
4
            THE WITNESS: Probably. As
5
                                                   5
                                                           Q. What independent work did you
        opposed to ASHRAE-employed staff.
                                                      do to research writings regarding the
6
   BY MR. BRIDGES:
                                                      economics of standards development?
                                                               MR. FEE: Objection to form.
8
        Q. Do you know how much ASHRAE's
                                                   8
   volunteer members and their employers --
                                                   9
                                                               THE WITNESS: We did
9
                                                  10
                                                           independent research in the sense that
10
   strike that.
                                                           people that work with me did a
11
            Do you know how much ASHRAE's
                                                  11
12 volunteer members and their employers spent
                                                           literature search to determine what
                                                  12
                                                           writings had been done in the area.
13 in salaries and disbursements for the
                                                  13
14 man-hours, hotel nights, and round-trip
                                                  14
                                                               I was previously aware of some
15 flights that were part of the process of
                                                  15
                                                           amount of the scholarship to begin
16 updating the ASHRAE 90.1 standard?
                                                  16
                                                           with.
17
        A. I don't know, but it -- I would
                                                      BY MR. BRIDGES:
                                                  17
18 imagine it's a noticeable amount, but I don't
                                                           Q. How is that literature search
                                                  18
19 know the amount.
                                                      reflected in any documents?
                                                  19
                                                               The results are shown in my
20
             What would be your best
                                                  20
        Q.
21 estimate?
                                                      tab 2, and in particular it is page 2 of my
                                                      tab 2, at the bottom.
22
        A. I don't have a best estimate.
23
        Q. Would it be probably over
                                                  23
                                                           Q.
                                                               And were these items found by
24 $10 million?
                                                  24
                                                      you or your team?
            MR. FEE: Objection to form.
                                                               MR. FEE: Objection to form.
25
                                                  25
                                           Page 91
                                                                                              Page 93
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1 THE WITNESS: Yes, with the 2 exception that, in the first instance, 3 lawyers at Morgan Lewis brought to our 4 attention the Bremer the existence 5 of Bremer articles: 6 BY MR. BRIDGES: 7 Q. Did you study any of the 8 materials that Bremer strike that. 9 Bremer's articles are law 10 review articles, cornect? 11 A. Yes. 12 Q. Did any plaintiff did your 13 team's research identify any articles that 14 you chose not to include in tab 2? 15 A. I don't thinks oo. 16 Q. Did any plaintiff or its 17 counsel furnish you with correspondence 18 between the plaintiffs and Emily Bremer for 18 review? 19 A. No, not to my knowledge. 20 A. No, not to my knowledge. 21 Q. How many conversations with 22 paintiffs and Emily Bremer for 23 review? 24 A. No, not to my knowledge. 25 I would instruct you not to 26 Page 94  1 answer questions regarding 2 communications with counsel, unless 3 they formed the basis of your 4 opminons, in which ease you can answer 5 questions with respect to those 6 conversations. 7 BY MR. BRIDGES: 8 Q. So II'll change my question 9 slightly. 1 answer questions regarding 1 conversations did you have with non-lawyer 2 conversations of the answer. 3 the scope of the answer. 4 A. I had somewhere between four 5 A. I don't thinks oo. 5 Q. When you say cumulative 6 THE WITHEM. 5 Q. Which of those did you 6 personally have conversations with 7 ont remembering that being the case. 9 Q. An tereall. It's 8 possible there's someone I did not, but I'm 9 not remembering that being the case. 9 Q. Which ones? 14 A. I d				
al lawyers at Morgan Lewis brought to our attention the Bremer - stree existence of Bremer articles.  of Bremer articles.  of Bremer articles.  of Bremer's articles are law  or review articles, correct?  10 Q. Did any plaintiff did your  11 A. Yes.  12 Q. Did any plaintiff did your  13 team's research identify any articles that  14 you chose not to include in tab 2?  15 A. I don't think so.  16 Q. Did any plaintiff or its  17 counsel furnish you with correspondence  18 between the plaintiffs and Emily Bremer for  19 review?  20 A. No, not to my knowledge.  21 Q. How many conversations with  22 representatives of the plaintiffs did you  33 have?  24 MR. FEE: Objection.  25 I would instruct you not to  Page 94  1 answer questions regarding  2 communications with counsel, unless  3 they formed the basis of your  4 opinions, in which case you can answer  5 questions with respect to those  5 conversations  6 D. J. How many - how many  1 conversations did you have with non-lawyer  1 employees or former employees of the laintiff, I'd like to  13 plaintiffs?  14 A. None that the that did not include the lawyers.  OR Right. I'm so I'm asking  you to tell me what they were. If the  18 presence of lawyer if you had a conversations with respect to whose oconversations with respect to woldn't excuse if from  23 the scope of the answer.  A. I had somewhere between four  24 A. None that the that did not include the lawyers.  OR Right. I'm so I'm asking  you to tell me what they were. If the  18 presence of lawyer if you had a conversation with a with an employee or former employee of the plaintiff, I'd like to  18 know what that was. So the fact that lawyers  29 may have conversations with people who were at a streat. It's paragraph 10 of my report.  5 Q. Which oness?  A. I don't think as I recall. It's possible there's someone I did not, but I'm not remembering that being the case.  15 Q. Which ones?  A. I don't them teyer have feet rever as never more than one plaintiff or a call, but not more tha	1	THE WITNESS: Yes, with the	1	the various plaintiffs.
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21 know what that was. So the fact that lawyers 22 may have been present wouldn't excuse it from 23 the scope of the answer. 24 A. I had somewhere between four 25 and six conversations with people who were at 26 guess right now. 27	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	communications with counsel, unless they formed the basis of your opinions, in which case you can answer questions with respect to those conversations.  BY MR. BRIDGES: Q. So I I'll change my question slightly.  How many how many conversations did you have with non-lawyer employees or former employees of the plaintiffs?  A. None that the that did not include the lawyers. Q. Right. I'm so I'm asking you to tell me what they were. If the presence of lawyer if you had a	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. And approximately how long total did you spend in conversations with representatives of each plaintiff?  MR. FEE: Objection to form.  THE WITNESS: Cumulatively, somewhere between three and five hours is my best guess right now.  BY MR. BRIDGES:  Q. When you say cumulative "cumulatively," you mean for all plaintiffs?  A. Yes. Meaning I'm I've added up the conversations I had across all three plaintiffs.  Q. Right. What's your best estimate as to the period of time you spent with each plaintiff?  A. With ASTM, it may have been two
22 may have been present wouldn't excuse it from 22	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	communications with counsel, unless they formed the basis of your opinions, in which case you can answer questions with respect to those conversations.  BY MR. BRIDGES: Q. So I I'll change my question slightly.  How many how many conversations did you have with non-lawyer employees or former employees of the plaintiffs?  A. None that the that did not include the lawyers. Q. Right. I'm so I'm asking you to tell me what they were. If the presence of lawyer if you had a conversation with a with an employee or	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q. And approximately how long total did you spend in conversations with representatives of each plaintiff?  MR. FEE: Objection to form.  THE WITNESS: Cumulatively, somewhere between three and five hours is my best guess right now.  BY MR. BRIDGES:  Q. When you say cumulative "cumulatively," you mean for all plaintiffs?  A. Yes. Meaning I'm I've added up the conversations I had across all three plaintiffs.  Q. Right. What's your best estimate as to the period of time you spent with each plaintiff?  A. With ASTM, it may have been two to three hours. For NFPA, one to two hours.
23 the scope of the answer. 24 A. I had somewhere between four 25 and six conversations with people who were at 26 (Jarosz Exhibit 2 and Jarosz-3 marked for identification.) 27 marked for identification.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	communications with counsel, unless they formed the basis of your opinions, in which case you can answer questions with respect to those conversations.  BY MR. BRIDGES: Q. So I I'll change my question slightly.  How many how many conversations did you have with non-lawyer employees or former employees of the plaintiffs?  A. None that the that did not include the lawyers. Q. Right. I'm so I'm asking you to tell me what they were. If the presence of lawyer if you had a conversation with a with an employee or former employee of the plaintiff, I'd like to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. And approximately how long total did you spend in conversations with representatives of each plaintiff?  MR. FEE: Objection to form.  THE WITNESS: Cumulatively, somewhere between three and five hours is my best guess right now.  BY MR. BRIDGES:  Q. When you say cumulative  "cumulatively," you mean for all plaintiffs?  A. Yes. Meaning I'm I've added up the conversations I had across all three plaintiffs.  Q. Right. What's your best estimate as to the period of time you spent with each plaintiff?  A. With ASTM, it may have been two to three hours. For NFPA, one to two hours.  For ASHRAE, one to two hours. That's my best
24 A. I had somewhere between four 24 marked for identification.) 25 and six conversations with people who were at 25 ***	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	communications with counsel, unless they formed the basis of your opinions, in which case you can answer questions with respect to those conversations.  BY MR. BRIDGES: Q. So I I'll change my question slightly.  How many how many conversations did you have with non-lawyer employees or former employees of the plaintiffs?  A. None that the that did not include the lawyers. Q. Right. I'm so I'm asking you to tell me what they were. If the presence of lawyer if you had a conversation with a with an employee or former employee of the plaintiff, I'd like to know what that was. So the fact that lawyers	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. And approximately how long total did you spend in conversations with representatives of each plaintiff?  MR. FEE: Objection to form.  THE WITNESS: Cumulatively, somewhere between three and five hours is my best guess right now.  BY MR. BRIDGES:  Q. When you say cumulative  "cumulatively," you mean for all plaintiffs?  A. Yes. Meaning I'm I've added up the conversations I had across all three plaintiffs.  Q. Right. What's your best estimate as to the period of time you spent with each plaintiff?  A. With ASTM, it may have been two to three hours. For NFPA, one to two hours. For ASHRAE, one to two hours. That's my best guess right now.
25 and six conversations with people who were at 25 ***	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	communications with counsel, unless they formed the basis of your opinions, in which case you can answer questions with respect to those conversations.  BY MR. BRIDGES: Q. So I I'll change my question slightly.  How many how many conversations did you have with non-lawyer employees or former employees of the plaintiffs?  A. None that the that did not include the lawyers. Q. Right. I'm so I'm asking you to tell me what they were. If the presence of lawyer if you had a conversation with a with an employee or former employee of the plaintiff, I'd like to know what that was. So the fact that lawyers may have been present wouldn't excuse it from	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. And approximately how long total did you spend in conversations with representatives of each plaintiff?  MR. FEE: Objection to form.  THE WITNESS: Cumulatively, somewhere between three and five hours is my best guess right now.  BY MR. BRIDGES:  Q. When you say cumulative  "cumulatively," you mean for all plaintiffs?  A. Yes. Meaning I'm I've added up the conversations I had across all three plaintiffs.  Q. Right. What's your best estimate as to the period of time you spent with each plaintiff?  A. With ASTM, it may have been two to three hours. For NFPA, one to two hours. For ASHRAE, one to two hours. That's my best guess right now.  * * *
25 and six conversations with people who were at 25	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	communications with counsel, unless they formed the basis of your opinions, in which case you can answer questions with respect to those conversations.  BY MR. BRIDGES: Q. So I I'll change my question slightly.  How many how many conversations did you have with non-lawyer employees or former employees of the plaintiffs?  A. None that the that did not include the lawyers. Q. Right. I'm so I'm asking you to tell me what they were. If the presence of lawyer if you had a conversation with a with an employee or former employee of the plaintiff, I'd like to know what that was. So the fact that lawyers may have been present wouldn't excuse it from the scope of the answer.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. And approximately how long total did you spend in conversations with representatives of each plaintiff?  MR. FEE: Objection to form.  THE WITNESS: Cumulatively, somewhere between three and five hours is my best guess right now.  BY MR. BRIDGES:  Q. When you say cumulative  "cumulatively," you mean for all plaintiffs?  A. Yes. Meaning I'm I've added up the conversations I had across all three plaintiffs.  Q. Right. What's your best estimate as to the period of time you spent with each plaintiff?  A. With ASTM, it may have been two to three hours. For NFPA, one to two hours. For ASHRAE, one to two hours. That's my best guess right now.  * * *  (Jarosz Exhibit 2 and Jarosz-3
Page 95 Page 97	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	communications with counsel, unless they formed the basis of your opinions, in which case you can answer questions with respect to those conversations.  BY MR. BRIDGES: Q. So I I'll change my question slightly.  How many how many conversations did you have with non-lawyer employees or former employees of the plaintiffs?  A. None that the that did not include the lawyers. Q. Right. I'm so I'm asking you to tell me what they were. If the presence of lawyer if you had a conversation with a with an employee or former employee of the plaintiff, I'd like to know what that was. So the fact that lawyers may have been present wouldn't excuse it from the scope of the answer.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. And approximately how long total did you spend in conversations with representatives of each plaintiff?  MR. FEE: Objection to form.  THE WITNESS: Cumulatively, somewhere between three and five hours is my best guess right now.  BY MR. BRIDGES:  Q. When you say cumulative  "cumulatively," you mean for all plaintiffs?  A. Yes. Meaning I'm I've added up the conversations I had across all three plaintiffs.  Q. Right. What's your best estimate as to the period of time you spent with each plaintiff?  A. With ASTM, it may have been two to three hours. For NFPA, one to two hours. For ASHRAE, one to two hours. That's my best guess right now.  * * *  (Jarosz Exhibit 2 and Jarosz-3
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	communications with counsel, unless they formed the basis of your opinions, in which case you can answer questions with respect to those conversations.  BY MR. BRIDGES: Q. So I I'll change my question slightly. How many how many conversations did you have with non-lawyer employees or former employees of the plaintiffs? A. None that the that did not include the lawyers. Q. Right. I'm so I'm asking you to tell me what they were. If the presence of lawyer if you had a conversation with a with an employee or former employee of the plaintiff, I'd like to know what that was. So the fact that lawyers may have been present wouldn't excuse it from the scope of the answer. A. I had somewhere between four and six conversations with people who were at	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q. And approximately how long total did you spend in conversations with representatives of each plaintiff?  MR. FEE: Objection to form.  THE WITNESS: Cumulatively, somewhere between three and five hours is my best guess right now.  BY MR. BRIDGES:  Q. When you say cumulative  "cumulatively," you mean for all plaintiffs?  A. Yes. Meaning I'm I've added up the conversations I had across all three plaintiffs.  Q. Right. What's your best estimate as to the period of time you spent with each plaintiff?  A. With ASTM, it may have been two to three hours. For NFPA, one to two hours. For ASHRAE, one to two hours. That's my best guess right now.  * * *  (Jarosz Exhibit 2 and Jarosz-3 marked for identification.)  * * *

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1 BY MR. BRIDGES:
                                                     1 Hamasaki?
2
        Q. Mr. Jarosz, I'm handing you
                                                    2
                                                                MR. FEE: Objection. Vague.
3
   Exhibits 2 and 3. I'll represent that these
                                                    3
                                                                THE WITNESS: Yes, in part.
    were furnished to us by e-mail last night, I
                                                       BY MR. BRIDGES:
    think around 6 p.m. Eastern or thereabouts.
                                                    5
                                                            Q. What else, other than relying
            Can you please identify
                                                       upon conversations with them?
                                                    6
                                                                 And the memory that I had of
   Exhibits 2 and 3?
                                                    7
            MR. FEE: Objection to form.
                                                       the conversations with the individuals.
8
                                                    8
9
            THE WITNESS: To the best of my
                                                    9
                                                                 And you -- but you didn't rely
        knowledge, Exhibit 2 is notes that
                                                       upon your own notes?
10
                                                   10
        Mr. Chapman took in conversations that
                                                                 Not at the point that I was
11
                                                   11
12
        we had with various people, and
                                                       drafting up footnotes, no.
                                                   12
        Exhibit 3 is notes that Mr. Hamasaki
                                                                 Why would you take notes and
13
                                                   13
14
        took in conversations with plaintiff
                                                   14 then dispose of them before you wrote your
15
        personnel.
                                                   15 report?
16 BY MR. BRIDGES:
                                                   16
                                                                 Well, I find it -- I find it
17
        Q. Did you take any notes of
                                                   17 useful to follow along in a conversation by
   conversations with plaintiffs' personnel?
                                                   18 taking notes so that I can follow up with
18
        A. I believe I did, but I did not
19
                                                       certain points. I find it useful to write
20 keep those notes. Those were -- I followed
                                                   20 things down. It helps in the memory process.
21 my normal procedure. And by the time we got
                                                       But I did not keep those notes in the final
                                                   21
   to the report, I had not kept those notes.
22
                                                   22 drafting of the report.
             Did you have those -- did you
                                                   23
                                                                 Why would you -- when you had
23
24 refer to those notes in drafting your report?
                                                   24 those conversations, did you anticipate that
25
            MR. FEE: Objection. Vague.
                                                   25 you were going to prepare a report?
                                            Page 98
                                                                                               Page 100
1
            THE WITNESS: Not that I
                                                    1
                                                                 I thought that there was a very
2
        recall.
                                                       good possibility, yes.
 3
   BY MR. BRIDGES:
                                                    3
                                                            O.
                                                                 Why did you not retain notes of
                                                       conversations to have on hand for the
        Q. In your report --
4
             Well, I guess I should say, I
                                                       preparation of your report?
5
                                                    5
   looked back at the notes at some time, and
                                                            A. I followed my normal procedure.
                                                    6
    the report was done over a period of time.
                                                       I don't typically take notes. I'm not a
                                                       great note-taker, and my handwriting leaves
    So I guess in some dimension I did, but as it
   came toward the final stages, I did not.
                                                       much to be desired. So I tend to find my
10
             Well, I'm just curious, because
                                                   10 notes themselves to be of limited assistance.
11 your report indicates, among a number of the
                                                   11
                                                            Q. And that's your normal
12 footnotes, there's citations to conversations
                                                   12 procedure, is to throw away notes that
13 with various persons. And I'm trying to
                                                   13 reflect conversations that you rely on?
14 figure out how -- on what you drew to cite
                                                   14
                                                                 No. My normal procedure is to
15 specifically to various conversations in your
                                                       keep materials that I do rely upon and not
16 report. And I'll give you examples.
                                                       keep materials that I don't need to rely
                                                   16
   Footnotes 193, 194, and 196 through 200.
                                                       upon.
17
                                                   17
18
            On what were you relying in
                                                   18
                                                                 And you didn't need to rely
   referring to those conversations?
                                                       upon any of your notes to recall your
19
                                                   19
                                                       conversations, so you went and discussed the
20
            MR. FEE: Objection to form.
21
            THE WITNESS: Conversations
                                                   21
                                                       conversations with two other persons?
22
        with Mr. Chapman and/or Mr. Hamasaki.
                                                   22
                                                            A.
23
   BY MR. BRIDGES:
                                                   23
                                                                 Did -- I see -- it's my
                                                   24 understanding that your report sites
24
             So you were relying on
25 conversations with Messrs. Chapman and
                                                       conversations with Stephen Comstock 17 times,
                                            Page 99
                                                                                               Page 101
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1	conversations with Jim Thomas 11 times,	1	Q. Did you rely upon the writing
2	conversations with Jim Pauley seven times,	2	of the language by other people in deciding
3	conversations with John Pace four times,	3	to include language regarding information
4	conversations with Stephanie Reiniche four	4	learned from conversations in your report?
5	times, and conversations with Mark Owen three	5	MR. FEE: Objection. Vague.
6	times.	6	THE WITNESS: I can answer that
7	Did you make the citations to	7	by saying Mr. Hamasaki, Mr. Chapman,
8	those conversations in the report based on	8	and I were all involved in this
9	your memory?	9	project and the report. It was the
10	MR. FEE: Objection. Lack of	10	case that we all had some input in the
11	foundation.	11	writing of the words, though I was
12	THE WITNESS: In part, and I	12	responsible for and directly
13	think in part the citations were put	13	supervised all of it.
14	there based on the memory and	14	BY MR. BRIDGES:
15	knowledge of Mr. Chapman and	15	Q. And did you rely upon input
16	Mr. Hamasaki.	16	from Mr. Hamasaki and Mr. Chapman in the form
17	BY MR. BRIDGES:	17	-
18			of written input, such as drafts?
1	Q. Did you get any materials from	18	MR. FEE: Objection.
19	Mr. Chapman and Mr. Hamasaki other than	19	THE WITNESS: As I
20	Exhibits 2 and 3 on which you relied in	20	MR. FEE: Hold on a second.
21	preparing this report?	21	I don't believe that you're
22	MR. FEE: Objection. Lack of	22	entitled to discovery regarding his
23	foundation. Mischaracterizes his	23	drafts, and I'll instruct him not to
24	testimony.	24	answer that
25	THE WITNESS: Actually, as a	25	MR. BRIDGES: I
	Page 102		Page 104
_			
1	factual matter, this is the very first	1	MR. FEE: unless you have
1 2	factual matter, this is the very first time I've seen these notes. I've	1 2	MR. FEE: unless you have unless there's something in there that
2	time I've seen these notes. I've	2	unless there's something in there that
2 3	time I've seen these notes. I've never seen these before.	2 3	unless there's something in there that makes this subject to an exception of
2 3 4	time I've seen these notes. I've never seen these before. BY MR. BRIDGES:	2 3 4	unless there's something in there that makes this subject to an exception of Rule 26, as limitation on discovery
2 3 4 5	time I've seen these notes. I've never seen these before.  BY MR. BRIDGES: Q. What did you rely upon in	2 3 4 5	unless there's something in there that makes this subject to an exception of Rule 26, as limitation on discovery from experts, which I'm not aware of.
2 3 4 5 6	time I've seen these notes. I've never seen these before.  BY MR. BRIDGES:  Q. What did you rely upon in making all of the detailed references to conversations in the report?	2 3 4 5 6	unless there's something in there that makes this subject to an exception of Rule 26, as limitation on discovery from experts, which I'm not aware of.  MR. BRIDGES: I am entitled to discovery about materials he relied
2 3 4 5 6 7	time I've seen these notes. I've never seen these before.  BY MR. BRIDGES: Q. What did you rely upon in making all of the detailed references to conversations in the report? A. My	2 3 4 5 6 7	unless there's something in there that makes this subject to an exception of Rule 26, as limitation on discovery from experts, which I'm not aware of.  MR. BRIDGES: I am entitled to discovery about materials he relied upon
2 3 4 5 6 7 8	time I've seen these notes. I've never seen these before.  BY MR. BRIDGES:  Q. What did you rely upon in making all of the detailed references to conversations in the report?	2 3 4 5 6 7 8	unless there's something in there that makes this subject to an exception of Rule 26, as limitation on discovery from experts, which I'm not aware of.  MR. BRIDGES: I am entitled to discovery about materials he relied upon  MR. FEE: Okay. That's fair.
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1	and in this report. We were all	1	go behind him or vice versa.
2	involved in writing and rewriting and	2	So I don't know if that answers
3	talking and questioning one another.	3	your question, but that's the process
4	BY MR. BRIDGES:	4	that we followed.
5	Q. And were you relying, in part,	5	BY MR. BRIDGES:
6	upon the memories or recorded memories of	6	Q. And did the process include
7	Mr. Hamasaki and Mr. Chapman?	7	their writing the facts that corresponded to
8	MR. FEE: Objection. Vague as	8	the conversations with plaintiffs' employees
9	to "relying."	9	and your reviewing and revising what they had
10	And if you're asking him if	10	written?
11	he's relied upon those conversations	11	MR. FEE: Objection.
12	as the basis for facts or assumptions,	12	To the extent that question
13	you can answer it. If you mean relied	13	calls for responsive information that
14	in any other context, you shouldn't	14	is unrelated to bases that form your
15	answer it.	15	opinions or conclusions or assumptions
16	THE WITNESS: I certainly	16	that you made, I would instruct you
17	didn't rely on any recordings of	17	not to answer that portion of the
18	conversations. I had not seen any	18	question. You can otherwise respond.
19	notes. This is the first I've seen	19	THE WITNESS: We all reviewed
20	notes from Mr. Chapman and	20	and revised the document. I don't
21	Mr. Hamasaki.	21	think that there were any facts that
22	We talked about virtually all	22	came only from one of them that I
23	of these topics. I don't know if you	23	wasn't aware of.
24	would call that "relying" or not. But	24	BY MR. BRIDGES:
25	we worked together on this project.	25	Q. Were there recollections that
	Page 106		Page 108
1	BY MR. BRIDGES:	1	came from them that you relied upon in
2	Q. Did they prepare draft language	2	creating your report?
3	referring to information from those	3	MR. FEE: Same objection and
4	conversations with citations to those	4	same instruction.
5	conversations that you relied upon in	5	THE WITNESS: There may have
6	completing the report?	6	been confirmations of things that I
7	MR. FEE: Objection. Vague as	7	recalled or knew, but I don't think
8	to "relied."	8	that they brought to my attention
9	To the extent that should be	9	things that I didn't previously know.
10	interpreted as meaning relied upon for	10	BY MR. BRIDGES:
11	reaching any conclusions in your	11	Q. And what types of confirmations
12	report or relied upon for assumptions,	12	were there things that you relied upon in
13	you can answer it. You shouldn't	13	approving this report?
14	answer it otherwise.	14	MR. FEE: Same objection and
15	THE WITNESS: I just don't know	15	instruction.
16	how to answer that question besides	16	THE WITNESS: Virtually
17	saying, at various points in time, one	17	everything you see in the report, all
18	or the other others of us were	18	three of us were involved in it, and
	involved in the Word document that we	19	all three of us were confirming and
19			
20	created. So it was almost never the	20	denying things or evaluating things
20 21	created. So it was almost never the case that the three of us were in the	21	along the way.
20 21 22	created. So it was almost never the case that the three of us were in the Word document at the same time.	21 22	along the way.  MR. BRIDGES: I think we have
20 21 22 23	created. So it was almost never the case that the three of us were in the Word document at the same time.  So there were times that, for	21 22 23	along the way.  MR. BRIDGES: I think we have to pause for a change of media, so why
20 21 22 23 24	created. So it was almost never the case that the three of us were in the Word document at the same time.  So there were times that, for instance, Mr. Hamasaki was doing some	21 22 23 24	along the way.  MR. BRIDGES: I think we have to pause for a change of media, so why don't we take a break.
20 21 22 23	created. So it was almost never the case that the three of us were in the Word document at the same time.  So there were times that, for	21 22 23	along the way.  MR. BRIDGES: I think we have to pause for a change of media, so why

```
1
        record at 12:17. This is the end of
                                                       you interview?
2
                                                    2
                                                            A. I don't think I interviewed any
        media unit number 1.
 3
                                                    3
                                                       members of the public either.
                                                                What steps did you do to
                                                    4
 4
            (Recess from 12:17 p.m. to
 5
                                                       ascertain the views of the members of the
                                                    5
        12:32 p.m.)
                                                       organizations, other than the employees?
 6
                                                            A. I read the materials that were
 7
            THE VIDEOGRAPHER: On the
                                                    7
8
        record at 12:32. This is the
                                                       produced here. I read the deposition
                                                       testimony of the various individuals. I read
9
        beginning of media unit 2 in the
10
        deposition of John Jarosz.
                                                       the articles published by Ms. Bremer. And I
   BY MR. BRIDGES:
                                                       read the other academic literature and
11
12
             Mr. Jarosz, your report, as I
                                                   12
                                                       practical literature that I had.
13 referred to earlier, cites a number of
                                                   13
                                                               Which of those sources stated
14 conversations with employees of the
                                                   14 the views of the non-employee members of the
   plaintiffs. For what purpose did you have
                                                       various organizations?
15
                                                   15
16 conversations with the plaintiffs' employees?
                                                   16
                                                            A. I don't know that views of --
17
             To learn more about the
                                                   17
                                                       that their views were explicitly addressed in
                                                       my report or represented. I understood what
18 organization and their view as to the impact
   of continued copyright protection --
                                                       the impacts of the lack of honoring the
   continued copyright infringement and
                                                       copyrights and trademarks would have, but I
20
21 trademark infringement.
                                                   21
                                                       don't know that I saw non-employee member
             What view did you learn from
                                                      views explicitly summarized.
22
        Q.
                                                   22
23
                                                                So what steps did you do to
   them?
                                                   23
24
            MR. FEE: Objection to form.
                                                   24 ascertain the views of the members of the
25
            THE WITNESS: Well, I solicited
                                                       organizations --
                                           Page 110
                                                                                               Page 112
                                                               MR. FEE: Objection.
1
        and learned many facts about the
                                                    1
2
        organizations. I also learned that
                                                    2
                                                       BY MR. BRIDGES:
 3
        each one of them viewed continued
                                                    3
                                                            Q. -- other than their employees?
        copyright infringement and trademark
                                                    4
                                                                MR. FEE: Asked and answered.
 4
 5
        infringement as quite detrimental to
                                                    5
                                                                THE WITNESS: Well, I talked to
 6
        their organizations, detrimental to
                                                    6
                                                            the employees, and they interact with
7
        the members, detrimental to the
                                                    7
                                                            the members on a very regular basis,
                                                            so they gave me some sense of what the
 8
        public.
                                                    8
9
            They viewed continued IP
                                                    9
                                                            views of the members were.
        infringement as potentially
10
                                                   10
                                                                It also could be that some of
        devastating to their organizations.
11
                                                   11
                                                            the perspectives of the members are
12
   BY MR. BRIDGES:
                                                            reflected in some of the documents I
                                                   12
13
             These were their views?
                                                   13
                                                            identified in tab 2.
14
             Yes. I'm just paraphrasing, of
                                                       BY MR. BRIDGES:
        A.
                                                   14
15
                                                                 Well, I'm just trying to find
                                                   15
   course.
                                                       out where -- it sounds as though -- strike
16
        O.
             What members did you interview?
                                                   16
             None, other than the employees.
17
                                                   17
                                                       that.
18 I don't know if you call those "members" or
                                                   18
                                                                It sounds as though a minute
   not. But the volunteer membership, I didn't
                                                       ago you said you couldn't recall anything
                                                   19
                                                       specifically calling out views of
20 go to.
21
            THE VIDEOGRAPHER: Excuse me.
                                                   21
                                                       non-employee members, correct?
        Counsel, could you move your
                                                   22
                                                                 Correct. I think that's right.
22
        microphone to your lapel? Thank you.
                                                                 What did you do to verify the
23
                                                   23
24 BY MR. BRIDGES:
                                                   24 statements that employees of the plaintiffs
             What members of the public did
                                                   25 made about the views of the non-employee
25
        Q.
                                           Page 111
                                                                                               Page 113
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	members of their organizations?	1	States other than law review articles by
2	A. I did what I normally do in an	2	Emily Bremer?
3	assignment like this and look at the produced	3	A. As I sit here right now, I'm
4	materials.	4	not aware of any documents that discuss the
5	Q. And the produced materials did	5	deliberations, but my memory is not perfect.
6	not call out specifically any views of	6	Q. Do you know if there was a
7	non-employee members of the plaintiff	7	consensus in any relevant committee of the
8	organizations, correct?	8	Administrative Conference of the United
9	A. I don't recall any specific	9	States regarding the conclusions that
10	views being summarized. My memory may not be	10	Ms. Bremer states in her law review articles?
11	perfect on that, though.	11	A. I don't.
12	Q. What research, if any, did you	12	MR. FEE: Objection. Vague.
13	do among members of the public about whether	13	BY MR. BRIDGES:
14	lack of copyright protection for the	14	Q. Do you know whether there was
15	plaintiffs' standards would be detrimental to	15	any dissent in any relevant committee of the
16	the to the public?	16	Administrative Conference of the United
17	A. The information that I reviewed	17	States regarding the conclusions that
18	is in tab 2. I didn't have material beyond	18	Ms. Bremer states in her law review articles?
19	what is identified in tab 2.	19	MR. FEE: Objection to form.
20	Q. So what in tab 2 reflects your	20	THE WITNESS: I don't.
21	steps to ascertain the views of members of	21	BY MR. BRIDGES:
22	the public?	22	Q. Do you know why persons get
23	MR. FEE: Objection to form.	23	appointed to the Administrative Conference of
24	THE WITNESS: I think the	24	the United States?
25	Bremer articles, in part, address	25	A. I may have known that, but I
	Page 114		Page 116
1	that. I think some of the federal	1	don't recall that sitting here now.
1 2	that. I think some of the federal government's circulars that I	1 2	Q. Do you know whether
2	government's circulars that I	2	Q. Do you know whether
2 3	government's circulars that I identify, in part, reflect the	2 3	Q. Do you know whether Ms. Bremer's articles strike that.
2 3 4	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of	2 3 4	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether
2 3 4 5	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views.	2 3 4 5	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a
2 3 4 5 6	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think	2 3 4 5	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the
2 3 4 5 6 7	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things.	2 3 4 5 6 7	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States
2 3 4 5 6 7 8	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things.  BY MR. BRIDGES:	2 3 4 5 6 7 8	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form.
2 3 4 5 6 7 8 9	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things.  BY MR. BRIDGES:  Q. Did you review OMB Circular	2 3 4 5 6 7 8 9	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES:
2 3 4 5 6 7 8 9 10	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things.  BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally?	2 3 4 5 6 7 8 9 10	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees?
2 3 4 5 6 7 8 9 10 11	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things.  BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials	2 3 4 5 6 7 8 9 10	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees? MR. FEE: Objection to form. THE WITNESS: I'm not aware
2 3 4 5 6 7 8 9 10 11 12	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things.  BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did.	2 3 4 5 6 7 8 9 10 11 12	Q. Do you know whether  Ms. Bremer's articles strike that.  Do you know whether  Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States  MR. FEE: Objection to form.  BY MR. BRIDGES:  Q or of any of its committees?  MR. FEE: Objection to form.  THE WITNESS: I'm not aware that they officially reflect that. I
2 3 4 5 6 7 8 9 10 11 12 13	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things.  BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or	2 3 4 5 6 7 8 9 10 11 12 13	Q. Do you know whether  Ms. Bremer's articles strike that.  Do you know whether  Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States  MR. FEE: Objection to form.  BY MR. BRIDGES:  Q or of any of its committees?  MR. FEE: Objection to form.  THE WITNESS: I'm not aware that they officially reflect that. I believe she gathered information, and
2 3 4 5 6 7 8 9 10 11 12 13 14 15	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things.  BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or deliberations of the Administrative Conference of the United States in connection	2 3 4 5 6 7 8 9 10 11 12 13 14	Q. Do you know whether  Ms. Bremer's articles strike that.  Do you know whether  Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States  MR. FEE: Objection to form.  BY MR. BRIDGES:  Q or of any of its committees?  MR. FEE: Objection to form.  THE WITNESS: I'm not aware that they officially reflect that. I believe she gathered information, and they may, in fact, represent the views
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1	Web sites we gathered ourselves, and I think	1	Q. What did you hear about
2	the reports and articles, with the exception	2	overseas litigation involving Public
3	of the Bremer articles, we gathered	3	Resource?
4	ourselves.	4	A. I think I heard that there was
5	Q. Do you know why you got no	5	a German or a suit in Germany, but I'm not
6	documents from NFPA, no Bates range documents	6	sure that I learned much more than that. I
7	from NFPA?	7	don't recall what status that suit what
8	MR. REHN: Object to form	8	the status of that suit is.
9	THE WITNESS: I don't know why	9	Q. Do you recall anyone disclosing
10	we did not receive Bates documents	10	to you litigation involving NFPA in the
11	THE REPORTER: Wait.	11	United States that pertained to standards and
12	MR. REHN: Sorry. Object to	12	copyright?
13	the form. Lacks foundation.	13	A. It's possible, but I don't
14	THE WITNESS: I don't know for	14	recall any, sitting here right now.
15	sure that we didn't receive	15	Q. Do you recall inquiring about
16	Bates-stamped documents, but I believe	16	public statements of fact that NFPA has made
17	some of the documents we received were	17	regarding copyright and standards in
18	NFPA documents.	18	litigation other than this litigation in the
19	BY MR. BRIDGES:	19	United States?
20	Q. Do you recall seeing any NFPA	20	MR. FEE: Objection to form.
21	documents that in which NFPA personnel	21	THE WITNESS: I do not.
22	stated that they could not show any harm from	22	BY MR. BRIDGES:
23	the defendant's activities?	23	Q. Are you familiar with a case
24	A. Received any documents that	24	called Veeck, V-E-E-C-K?
25	said that?	25	A. I'm familiar with an opinion in
	Page 122		Page 124
1	Q. Uh-huh.	1	the Veeck case.
1 2	<ul><li>Q. Uh-huh.</li><li>A. Perhaps you would have</li></ul>	1 2	the Veeck case. Q. What do you know about that
		_	
2	A. Perhaps you would have	2	Q. What do you know about that
2 3	A. Perhaps you would have something that would refresh my memory. I	2 3	Q. What do you know about that opinion?
2 3 4	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but	2 3 4	Q. What do you know about that opinion?  MR. FEE: Objection.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.  Are you talking about historical historically no harm, or are you talking about prospectively?  Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities?  A. I don't recall documents on it. There may have been some deposition testimony about past activities, but I don't know if it was activities prior to Public Resource actions here or after.  Q. Do you recall learning about any litigation that NFPA had engaged in pertaining to standards and copyright?  A. I think I heard that there's some overseas litigation involving Public Resource. Whether that involves NFPA, I	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q. What do you know about that opinion?  MR. FEE: Objection.  I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions.  THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here.  BY MR. BRIDGES:  Q. Why did the Veeck case not form any basis for any of your observations or conclusions here?  A. I don't know how to answer that question. I it didn't present any facts that were specific to this case, as far as I recall.
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1 of that case? 2 A. I recall generally it had to do 3 with activities of certain municipalities 4 using what was copyrighted or what was 5 claimed to be copyrighted material by a group 6 that developed materials explicitly to be put 7 into the law. 8 Q. Do you recall what the decision 9 was in the opinion you seem to be familiar 10 with? 11 MR. FEE: Objection to form. 12 THE WITNESS: 1 think, 13 generally, that copyright protection 14 was not available. I'm sure there was 15 more to it, but that's my general 16 opinion, my general memory. 17 BYMR. BRIDGES: 18 Q. And copyright protection was 19 not available for what? 20 A. Well, the asserted copyrights 21 in that matter. 22 Q. And do you recall what the 23 matter was that was at issue in Vecek? 24 A. Well, as I said, I think it was 25 certain municipalities were using certain 2 certain standards and perhaps disseminating 2 certain standards and perhaps disseminating 3 int. I – I forget the facts. 4 Q. Do you recall what think it was 2 generally have had to deal with 9 building codes, but I could be wrong 10 on that. 11 BY MR. BRIDGES: 12 Q. What analysis did you do of 13 harms suffered by the code developers of 14 those building codes as a consequence of the 15 Vecek decision? 16 A. I didn't do any analysis 17 associated with the facts fer, including what 18 Q. Are the facts — what — what 29 cases suddes? Are you talking about 20 something akin to a business school 21 ease studdes? Are you talking about 21 don't know what you 22 mean by that term. 24 doyou — have you identified for finding to doyou – have you identified for finding to doy				
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1	answered.	1	A. Not sitting here right now, I
2	THE WITNESS: Again, I read the	2	don't.
3	case. I didn't do any analysis beyond	3	Q. Do you know whether ASHRAE took
4	that of that particular case.	4	over development of what became standard 90.1
5	BY MR. BRIDGES:	5	from any other group or entity?
6	Q. What steps did you take to	6	A. No, I do not.
7	ascertain what public harms flowed from the	7	Q. Have you ever quantified the
8	Court's decision in the Veeck case?	8	value of the contributions made by the
9	A. Other than reading the case,	9	volunteers of the various organizations to
10	the opinion in the case, I didn't do anything	10	the standards at issue in this case?
11	beyond that to understand the implications of	11	MR. FEE: Objection to form.
12	that holding.	12	THE WITNESS: Not other than
13	Q. You didn't do any investigation	13	having some sense of hours or a
14	as to the economic consequences to any	14	limited sense of dollars, but not
15	entity, industry, or person as a consequence	15	beyond that, no.
16	of the decision in the Veeck case, correct?	16	BY MR. BRIDGES:
17	MR. FEE: Objection to form.	17	Q. Can you put a rough dollar
18	THE WITNESS: I think that's	18	value on the time and expenses of the
19	correct, yes.	19	volunteers with respect to any of the
20 21	BY MR. BRIDGES:	20	standards in this case?
22	Q. How has the process of	21	MR. FEE: Objection to form.
1	standards development changed in the last 100	22 23	THE WITNESS: Not sitting here
23 24	years, to your knowledge?  A. I don't know the specifics, and	23	right now. That would entail a little
25	A. I don't know the specifics, and I don't know that there is one standards	25	bit of a study. I have not done that. BY MR. BRIDGES:
23	Page 130	23	Page 132
1	development process. I think there are a	1	Q. What what would be required?
2	variety of processes pursued by a number of	2	A. To understand basically the
3	SSOs or SDOs. I'm sure that there have been	3	out-of-pocket expenses incurred and the
4	changes on the margin. There may have been	4	opportunity costs incurred. So among other
5	larger changes. I just don't know. I have	5	things, one would want to look at time
6	not studied the trend in the standard	6	records, have an understanding of
7	development process over time.	7	compensation, have an understanding of the
8	Q. What changes are you aware of	8	activities of those individuals. Those
_	in the standards development process of NFPA	9	are would be among the inputs.
	over the past 100 years?	10	Q. What changes are you aware of
11	A. I don't know. I've not studied	11	in the distribution of standards in the past
12	that topic.	12	100 years by the plaintiffs?
13	Q. What changes are you aware of	13	MR. FEE: Objection to form.
14	in the standards development process of the	14	THE WITNESS: I haven't
15	ASHRAE 90.1 standard?	15	investigated that particular issue,
16	A. I don't know. I've not studied	16	but I understand that some of the
17	that.	17	standards today are distributed
18	Q. How did ASHRAE come to develop	18	through the Internet that certainly
19	the 90.1 standard?	19	didn't exist 100 years ago.
20	A. I think, generally, a need was	20	Some of the standards are
21	identified and a group of constituents	21	distributed for free with limitations.
22	convened to derive a standard, but I don't	22	I don't know if that was true 100
23	know the specifics beyond that.	23	years ago, but it might have been.
24	Q. Do you know who identified the	24	I would expect some of the
1 .	· · · · · · · · · · · · · · · · · · ·		_
25	need?	25	copying and dissemination capabilities
25	need?	25	copying and dissemination capabilities Page 133

1	are much greater today than they were	1	the right to reproduce, copy, or
2	in 1915, but I don't know that the	2	disseminate those standards but can
3	general methods of I don't know how	3	look at them online.
4	the general methods of distribution	4	BY MR. BRIDGES:
5	have changed.	5	Q. Have you used the reading rooms
6	BY MR. BRIDGES:	6	of any of the plaintiffs?
7	Q. What changes are you aware of	7	A. No, I have not.
8	in sales trends over the past 20 years?	8	Q. Have you reviewed the interface
9	MR. FEE: Objection to form.	9	that the have you reviewed the interfaces
10	THE WITNESS: I don't have data	10	that the plaintiffs offer to persons wishing
11	going back as far as 20 years ago. I	11	to view materials for free online?
12	have some information on publication	12	A. No, I don't think so.
13	sales, for instance, in tabs 3, 4, and	13	Q. Do you know what effect, if
14	5. They only that information only	14	any, the presence of those free materials on
15	goes back a few years, however.	15	the plaintiffs' Web sites has had on the
16	BY MR. BRIDGES:	16	plaintiffs' revenues?
17	Q. Did you review any information	17	MR. FEE: Objection to form.
18	earlier than the dates shown in the documents	18	THE WITNESS: No, I don't.
19	at tabs 3, 4, and 5?	19	BY MR. BRIDGES:
20		20	
	MR. FEE: Objection. Vague.		Q. Have you have you
21	THE WITNESS: It's possible	21	investigated that?
22	that some of the source documents had	22	MR. FEE: Same objection.
23	earlier information, but I don't	23	THE WITNESS: I've been
24	recall that. I would need to look at	24	opening I've been open to learning
25	those source documents.	25	about that, but I haven't learned that
	Page 134		Page 136
1	BY MR. BRIDGES:	1	there's a direct or indirect effect.
1 2	BY MR. BRIDGES: Q. And those source documents	1 2	there's a direct or indirect effect. There might be, but I haven't seen
2	Q. And those source documents	2	There might be, but I haven't seen
2 3	Q. And those source documents would be within the Bates ranges identified	2 3	There might be, but I haven't seen evidence of that.
2 3 4	Q. And those source documents would be within the Bates ranges identified in tab 2 of your report?	2 3 4	There might be, but I haven't seen evidence of that. BY MR. BRIDGES:
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1
             Was something that was --
                                                     1 SDOs, but the standard setting organizations
        Q.
 2 remained pending at the time you wrote this
                                                        that are the candidates are the ones that I
    report as something that you expected to do
                                                     3
                                                        identified earlier today.
    in the future?
                                                     4
                                                                  Which SDOs do you recall
                                                       treating copyright protection of their
 5
        A. No.
                                                     5
                                                       standards as very important?
            MR. FEE: Objection. Vague.
 6
                                                                  I just don't recall right now.
 7
            THE WITNESS: I'm sorry.
                                                     7
 8
                                                     8 I -- I have some vague recollection that
            No.
                                                        copyright considerations are addressed by
 9
    BY MR. BRIDGES:
                                                       ETSI, but I could be wrong on that.
10
             Did you study the practices of
                                                    10
11 any standards development organizations,
                                                            Q. What do you know about policies
                                                    11
12 other than the plaintiffs, for purposes of
                                                        or practices of the Blu-ray organization with
    your work in this case?
                                                        respect to copyright protection?
13
                                                    13
14
            MR. FEE: Objection. Vague.
                                                    14
                                                            A. I assume you're talking about
15
            THE WITNESS: Not that I
                                                    15 the Blu-ray Association? I may have known
16
        recall. I saw reference to other SDOs
                                                        when I was involved in that matter. I do not
17
        in the Bremer articles, for instance,
                                                        remember, sitting here now.
                                                    17
        but I didn't undertake a separate
                                                            Q. Do you recall that your report
18
                                                    18
19
        investigation of the practices of any
                                                    19
                                                        actually refers to the Blu-ray Association?
        other SDOs for purposes of my
                                                            A. I think I refer to Blu-ray
20
                                                    20
        assignment here.
                                                        standards. I don't recall if I refer to the
21
                                                    22 Blu-ray Association, but perhaps you could
22 BY MR. BRIDGES:
        Q. Are you aware of practices or
                                                        refresh my memory.
23
                                                    23
24
   policies of other SDOs with reference to
                                                    24
                                                            Q. I believe you point it out at
   either copyright or free availability of
                                                    25 the bottom of page 62. "While certain SDOs
                                                                                                Page 140
                                           Page 138
    their materials?
                                                     1 (e.g., the Blu-ray disc association) provide
 1
 2
            MR. FEE: Objection to form.
                                                       unrestricted access to their standard
 3
            THE WITNESS: I may have been
                                                       publications for free, the Plaintiffs here do
        aware through other assignments I've
                                                     4 not."
 4
        undertaken in the past, but I didn't
                                                     5
 5
                                                                 Do you recall that?
        undertake any separate investigation
                                                     6
                                                            A. Now I do. Thank you for
 6
        for purposes of this matter.
 7
                                                        refreshing my memory.
                                                                  What economic effects are you
 8
    BY MR. BRIDGES:
                                                     8
             What awareness do you have of
                                                        aware of the fact that the Blu-ray Disc
 9
                                                     9
                                                        Association provides unrestricted access to
    the practices or policies of other SDOs
10
                                                    10
    through other assignments you've undertaken
                                                        its standard publications for free?
11
                                                    11
    in the past?
                                                    12
                                                            A. I have not investigated that
12
                                                       issue, so I don't know.
13
            MR. FEE: Objection to form.
                                                    13
            THE WITNESS: I can only recall
                                                                 What other SDOs have you
14
                                                    14
                                                            O.
15
        most generally that they view
                                                        identified that provide unrestricted access
        intellectual property protection as
                                                        to their standards for free?
16
                                                    16
17
        being very important, but I can't be
                                                                  I don't think I've identified
                                                    17
        any more specific than that.
                                                        any others in my report.
18
                                                    18
    BY MR. BRIDGES:
                                                                  Did you look for any others?
19
                                                    19
                                                            O.
                                                                  Not that I recall.
20
             Which SDOs you -- do you recall
                                                    20
                                                            A.
21
    treating intellectual property protection as
                                                    21
                                                                  Why not?
                                                            O.
    very important?
22
                                                    22
                                                                  I don't know how to answer
23
             Well, again, I've -- I've dealt
                                                        that. I was aware of the Blu-ray Disc
24 with standards setting organizations. I
                                                        Association's policy in this regard, so I
25 don't know if any of those are technically
                                                    25 wrote about it here.
                                           Page 139
                                                                                                Page 141
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1	Q. Why did you not consider the	1	perspective.
2	economic effects of free distribution of	2	BY MR. BRIDGES:
3	standards with respect to other	3	Q. And what is the relevance of
4	organizations?	4	economic analysis to that question, as you
5	A. I didn't quite see the	5	understand it?
6	relevance to this matter.	6	MR. FEE: Objection to form.
7	Q. Why?	7	Vague. Might also be construed to
8	A. I don't know how to prove a	8	require a legal conclusion.
9	negative.	9	THE WITNESS: Economists have a
10	Q. What's the negative you were	10	view and perspective at looking at
11	thinking of that would need to be proved or	11	issues that some courts have found to
12	disproved?	12	be useful.
13	A. That something is not relevant.	13	BY MR. BRIDGES:
14	Q. You just didn't see the	14	Q. Well, I'm asking, with specific
15	relevance?	15	relevance to this case, what do you
16	A. I don't understand how that	16	understand the importance of economic
17	would be helpful in the assignment that I had	17	analysis to be in this case
18	here.	18	MR. FEE: Objection. Calls
19	Q. And what was the assignment you	19	BY MR. BRIDGES:
20	had here?	20	Q as you have purported to
21	A. Well, I've laid it out	21	practice it?
22	Q. I can read the report. I'm not	22	MR. FEE: Calls for a legal
23	asking you to read read the report. I'd	23	conclusion.
24	like your own words now, sitting here.	24	Also, to the extent that
25	MR. FEE: Objection. Page 142	25	responding to that would require you Page 144
	1 agc 142		1 agc 144
1	BY MR. BRIDGES:	1	to disclose communications with
2	BY MR. BRIDGES: Q. How do you how do you	2	counsel that did not form the basis
	Q. How do you how do you view	2 3	counsel that did not form the basis for any of your opinions or
2	Q. How do you how do you view A. I'd like to answer it by	2 3 4	counsel that did not form the basis for any of your opinions or conclusions and did not provide any
2 3 4 5	Q. How do you how do you view A. I'd like to answer it by looking at my report.	2 3 4 5	counsel that did not form the basis for any of your opinions or conclusions and did not provide any assumptions that were the basis for
2 3 4	Q. How do you how do you view A. I'd like to answer it by looking at my report. Q. No, I'd like for you to give me	2 3 4 5 6	counsel that did not form the basis for any of your opinions or conclusions and did not provide any assumptions that were the basis for your opinions or conclusions, you
2 3 4 5 6 7	Q. How do you how do you view A. I'd like to answer it by looking at my report. Q. No, I'd like for you to give me a straight answer, because if you're just	2 3 4 5 6 7	counsel that did not form the basis for any of your opinions or conclusions and did not provide any assumptions that were the basis for your opinions or conclusions, you should not answer that portion of the
2 3 4 5 6 7 8	Q. How do you how do you view A. I'd like to answer it by looking at my report. Q. No, I'd like for you to give me a straight answer, because if you're just going to refer to the report, the report will	2 3 4 5 6 7 8	counsel that did not form the basis for any of your opinions or conclusions and did not provide any assumptions that were the basis for your opinions or conclusions, you should not answer that portion of the question.
2 3 4 5 6 7 8 9	Q. How do you how do you view A. I'd like to answer it by looking at my report. Q. No, I'd like for you to give me a straight answer, because if you're just going to refer to the report, the report will speak for itself, and I don't need you to	2 3 4 5 6 7 8 9	counsel that did not form the basis for any of your opinions or conclusions and did not provide any assumptions that were the basis for your opinions or conclusions, you should not answer that portion of the question.  THE WITNESS: I understand
2 3 4 5 6 7 8 9 10	Q. How do you how do you view A. I'd like to answer it by looking at my report. Q. No, I'd like for you to give me a straight answer, because if you're just going to refer to the report, the report will speak for itself, and I don't need you to read it to me.	2 3 4 5 6 7 8 9 10	counsel that did not form the basis for any of your opinions or conclusions and did not provide any assumptions that were the basis for your opinions or conclusions, you should not answer that portion of the question.  THE WITNESS: I understand that, generally, economists like me
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1	myself the question of ownership or	1	under the assumption that the
2	impact of ownership. I asked myself	2	activities violate the law.
3	the question here of impact of	3	BY MR. BRIDGES:
4	infringement.	4	Q. If the activities do you
5	BY MR. BRIDGES:	5	believe do you understand that your
6	Q. If it turns out that the Court	6	analysis is relevant to a determination of
7	rules that the plaintiff sorry. Strike	7	whether the defendant has violated the law?
8	that.	8	MR. FEE: Objection. Calls for
9	If it turns out the Court rules	9	a legal conclusion.
10	here that the defendant has engaged in fair	10	To the extent that your
11	use, is it your understanding that none of	11	understanding is based upon
12	your harms analysis is relevant	12	communications with counsel, you
13	MR. FEE: Objection.	13	shouldn't disclose them, unless they
14	BY MR. BRIDGES:	14	formed the basis for your opinions or
15	Q because of a finding of	15	conclusions or provided assumptions
	· · · · · · · · · · · · · · · · · · ·	l	
16	non-infringement?	16	that you relied upon in reaching your
17	MR. FEE: Calls for a legal	17	conclusions.
18	conclusion.	18	THE WITNESS: I don't know.
19	To the extent answering that	19	BY MR. BRIDGES:
20	question would require you to disclose	20	Q. Do you have any view as to
21	communications you had with counsel	21	whether the defendant has violated copyright
22	that don't form the basis for any of	22	law?
23	your opinions or conclusions and don't	23	MR. FEE: Objection. Calls for
24	provide any assumptions that you	24	a legal conclusion.
25	relied upon, you shouldn't disclose	25	THE WITNESS: No, I've not
	Page 146		Page 148
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2	THE WITNESS: You're asking for	2	BY MR. BRIDGES:
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1	If you could recast it, please.	1	that's fine.
2	Q. No. Then please answer my	2	A. I want to, but I cannot.
3	question.	3	Q. Well
4	MR. FEE: Objection.	4	A. I do not understand the
5	BY MR. BRIDGES:	5	question.
6	Q. I get to ask the questions.	6	Q. I'll say it again.
7	MR. FEE: He just said he	7	Would a decision by the Court
8	couldn't answer it.	8	that the defendant has not infringed upon the
9	THE WITNESS: I don't	9	plaintiffs' copyrights result in economic
10	understand the question.	10	harm to the plaintiffs?
11	BY MR. BRIDGES:	11	MR. FEE: Objection. Calls for
12	Q. What is it you don't	12	a legal conclusion. Asked and
13	understand?	13	answered.
14	A. I understand each word but not	14	THE WITNESS: I
15	how you put them together.	15	MR. FEE: Vague.
16	Q. If a court determines that the	16	THE WITNESS: I cannot answer
17	defendant has not infringed upon the	17	it any differently. I'm sorry.
18	plaintiffs' copyrights, do you believe that	18	Is this a good time for a
19	that decision would result in economic harm	19	break, or do you want to keep going?
20	to the plaintiffs?	20	MR. BRIDGES: Sure. We can
21	MR. FEE: Objection to the	21	take one if you want.
22	extent it calls for a legal	22	THE VIDEOGRAPHER: Off the
23	conclusion. Plus asked and answered.	23	record at 1:17.
24	THE WITNESS: It sounds like	24	* * *
25	exactly the same words, so I'm not	25	(Recess from 1:17 p.m. to
	Page 150		Page 152
1	sure how to answer that question.	1	2:12 p.m.)
		1	2.12 p.111.)
2	BY MR. BRIDGES:	2	* * *
	_		- 1
2	BY MR. BRIDGES:	2	* * *
2 3	BY MR. BRIDGES: Q. Would a decision that the	2 3	* * * THE VIDEOGRAPHER: On the
2 3 4	BY MR. BRIDGES: Q. Would a decision that the defendant has not infringed upon plaintiffs'	2 3 4	* * * * THE VIDEOGRAPHER: On the record at 2:12.
2 3 4 5	BY MR. BRIDGES:  Q. Would a decision that the defendant has not infringed upon plaintiffs' copyrights result in economic harm to the	2 3 4 5	* * * THE VIDEOGRAPHER: On the record at 2:12. BY MR. BRIDGES:
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1 counsel. And then we finalized the report,
                                                       1
                                                                    Have you analyzed any
    submitting it to counsel on June 5th, 2015.
                                                         differences in sales trends between those of
 3
        Q. Do you know how many standards
                                                         plaintiffs' standards that have been
    of each plaintiff are at issue in this case?
                                                       4 incorporated into law and those of
             How many -- I'm sorry --
 5
        A.
                                                         plaintiffs' standards that have not been
    standards are at issue?
                                                         incorporated into law?
 6
 7
        Q.
              Yes.
                                                       7
                                                              A. I don't think so. I don't
 8
        A. I have that number written
                                                         think I have those data, and I'm not sure
   down. It's in the hundreds, and I forget, as
                                                          that each plaintiff knows precisely how many
10 I sit here right now, precisely the number.
                                                         have been incorporated into law.
                                                     10
                                                              Q. Did you ask for any data
11 I will look it up. And I was giving you an
                                                     11
12 answer that was a cumulation across the three
                                                         regarding the distinction between standards
                                                     12
                                                         incorporated by reference and standards not
13 plaintiffs.
14
                                                         incorporated by reference in the law?
             I am not seeing that number
                                                     14
15 right now. I'll keep looking.
                                                     15
                                                              A. I don't --
16
        O.
              Do you know what --
                                                     16
                                                                  MR. FEE: Objection to form.
              You may be able to point me
17
                                                     17
                                                                  THE WITNESS: I'm sorry. I
        A.
   quicker than I recall where it was.
18
                                                     18
                                                              don't recall.
19
              Do you -- do you know what
                                                     19
                                                         BY MR. BRIDGES:
20 proportion of plaintiffs -- of each
                                                     20
                                                                   You made observations about
21 plaintiffs' standards is at issue in this
                                                         sales trends earlier in your deposition. I
22 case?
                                                         think you said that there's been a reduction
                                                         in sales of certain of plaintiffs' standards;
23
              Are you asking me the ratio of
24 the standards at issue versus the total
                                                     24
                                                         is that correct?
    standards developed by the organizations?
                                                     25
                                                                   I'm not quite sure what the
                                             Page 154
                                                                                                   Page 156
             Yes.
                                                         earlier testimony was, but I think I was
 1
        O.
 2
             I think it's less than a
                                                         pointing you to paragraph 133 with regard to
        A.
 3 majority for each organization. I'm fairly
                                                       3
                                                         downloads of -- and other measures of
                                                         activity, as I had at my disposal.
   certain of that with regard to ASTM. I think
                                                              Q. Well, I'm trying to find out
   that's true with regard to NFPA. I think
                                                       5
 5
   it's true with regard to ASHRAE.
                                                         what changes you have studied in plaintiffs'
                                                       6
 7
             Do you have any better
                                                          economics that you attribute to defendant's
   information than less than a majority --
                                                       8
                                                         activities.
                                                       9
 9
        A.
            Well, I --
                                                              A.
                                                                   I'm not quite sure what your
10
            -- for each of them?
                                                     10
                                                         question is.
        O.
11
            The precise numbers are in the
                                                     11
                                                                    Well, I'm trying to find out
12 report. Let's see here. One can figure that
                                                         what information you have studied to
                                                         determine what changes in the finances of
13 out. You may remember where I summarized the
14 number of standards. I just don't remember.
                                                         each of the plaintiffs have occurred as a
15 It's easy to determine because the data are
                                                         consequence of the defendant's activities.
                                                     15
                                                                  MR. FEE: Objection to form.
16 all here.
                                                     16
                                                     17
                                                                  THE WITNESS: I'm still not
17
        Q. Have you analyzed differences
18 in sales trends between standards that are at
                                                              sure that I'm hearing a question. But
                                                     18
                                                              to the extent that I had information
19 issue in this case and plaintiffs' other
                                                     19
                                                              on changes in activity level, I
                                                     20
20 standards?
                                                     21
                                                              summarized that in paragraph 133.
21
            No, I don't think I have those
                                                     22 BY MR. BRIDGES:
22 data at my disposal.
23
        Q.
             Did you ever ask for those
                                                     23
                                                                    My question is, what
                                                         information did you study to determine any
24 data?
                                                         changes in finances of each of the
2.5
            I don't recall.
        A.
                                             Page 155
                                                                                                   Page 157
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1	plaintiffs?	1	of certain of the standards. I've
2	MR. FEE: Same objection.	2	presented that.
3	THE WITNESS: It's reflected in	3	I don't have direct evidence of
4	paragraph 133 and in the tabs,	4	the precise impact historically of
5	particularly 3, 4, and 5. But the	5	defendant's activities on plaintiffs'
6	tabs are not at the granular level	6	financials.
7	that I think are of interest to you.	7	BY MR. BRIDGES:
8	BY MR. BRIDGES:	8	Q. What evidence of any kind do
9	Q. What do you mean by the	9	you have of any kind of impact historically
10	"granular level" that would be of interest to	10	of the defendant's activities on plaintiffs'
11	me?	11	financials?
12	A. I don't think it breaks out	12	MR. FEE: Objection to form.
13	publications by standard, for instance.	13	THE WITNESS: That which is
14	Q. Does it break out publications	14	reported in paragraph 133, that of
15	by whether a standard has been incorporated	15	which is contained in deposition
16	by reference or not?	16	testimony, and that of which I
17	A. I don't think so.	17	summarized in other parts of the
18	Q. Does it break out by whether a	18	report.
19	standard has been publicly made available by	19	BY MR. BRIDGES:
20	defendant or not?	20	Q. So when you're referring to
21	A. I don't think so. Not in	21	deposition testimony, you're referring to the
22	tabs 3, 4, and 5.	22	citations to the footnotes in paragraph 133?
23	Q. How do you establish causation	23	A. No, I don't think it's just
24	between defendant's activities and any of the	24	limited to that. I think there's some other
25	data that you provide in section in	25	deposition transcripts that talk about the
	Page 158		Page 160
1	paragraph 133?	1	impact or potential impact of defendant's
2	MR. FEE: Objection. Calls for	2	activities on each one of the plaintiffs.
3	a legal conclusion. Form.	3	Q. Did you make any independent
	THE WITNESS: One can and	4	assessment of causation of any financial
1 4			
5			•
5	should look at all evidence available,	5	effects on plaintiffs by the defendant's
5 6	should look at all evidence available, including circumstantial evidence. I	5 6	effects on plaintiffs by the defendant's activities?
5 6 7	should look at all evidence available, including circumstantial evidence. I don't have direct information about	5 6 7	effects on plaintiffs by the defendant's activities?  MR. FEE: Objection to form.
5 6 7 8	should look at all evidence available, including circumstantial evidence. I don't have direct information about the precise impact of defendant's	5 6 7 8	effects on plaintiffs by the defendant's activities?  MR. FEE: Objection to form. Calls for a legal conclusion.
5 6 7 8 9	should look at all evidence available, including circumstantial evidence. I don't have direct information about the precise impact of defendant's activities, but I have important	5 6 7 8 9	effects on plaintiffs by the defendant's activities?  MR. FEE: Objection to form.  Calls for a legal conclusion.  THE WITNESS: What do you mean
5 6 7 8 9 10	should look at all evidence available, including circumstantial evidence. I don't have direct information about the precise impact of defendant's activities, but I have important information that bears on that issue,	5 6 7 8 9 10	effects on plaintiffs by the defendant's activities?  MR. FEE: Objection to form.  Calls for a legal conclusion.  THE WITNESS: What do you mean by the term of "independent assessment
5 6 7 8 9 10 11	should look at all evidence available, including circumstantial evidence. I don't have direct information about the precise impact of defendant's activities, but I have important information that bears on that issue, including information that's in	5 6 7 8 9 10 11	effects on plaintiffs by the defendant's activities?  MR. FEE: Objection to form.  Calls for a legal conclusion.  THE WITNESS: What do you mean by the term of "independent assessment of causation"?
5 6 7 8 9 10 11 12	should look at all evidence available, including circumstantial evidence. I don't have direct information about the precise impact of defendant's activities, but I have important information that bears on that issue, including information that's in deposition transcripts.	5 6 7 8 9 10 11 12	effects on plaintiffs by the defendant's activities?  MR. FEE: Objection to form.  Calls for a legal conclusion.  THE WITNESS: What do you mean by the term of "independent assessment of causation"?  BY MR. BRIDGES:
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5 6 7 8 9 10 11 12 13 14	should look at all evidence available, including circumstantial evidence. I don't have direct information about the precise impact of defendant's activities, but I have important information that bears on that issue, including information that's in deposition transcripts.  BY MR. BRIDGES:  Q. So my question is, how do	5 6 7 8 9 10 11 12 13 14	effects on plaintiffs by the defendant's activities?  MR. FEE: Objection to form. Calls for a legal conclusion.  THE WITNESS: What do you mean by the term of "independent assessment of causation"?  BY MR. BRIDGES: Q. You, as an expert, not relying just on what other people have said or
5 6 7 8 9 10 11 12 13 14 15	should look at all evidence available, including circumstantial evidence. I don't have direct information about the precise impact of defendant's activities, but I have important information that bears on that issue, including information that's in deposition transcripts.  BY MR. BRIDGES:  Q. So my question is, how do you do you strike that.	5 6 7 8 9 10 11 12 13 14 15	effects on plaintiffs by the defendant's activities?  MR. FEE: Objection to form.  Calls for a legal conclusion.  THE WITNESS: What do you mean by the term of "independent assessment of causation"?  BY MR. BRIDGES:  Q. You, as an expert, not relying just on what other people have said or speculated or thought.
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5 6 7 8 9 10 11 12 13 14 15 16 17 18	should look at all evidence available, including circumstantial evidence. I don't have direct information about the precise impact of defendant's activities, but I have important information that bears on that issue, including information that's in deposition transcripts.  BY MR. BRIDGES:  Q. So my question is, how do you do you strike that.  Are your conclusion are you making conclusions in paragraph 133 about the cause of changes in sales of the plaintiffs'	5 6 7 8 9 10 11 12 13 14 15 16 17 18	effects on plaintiffs by the defendant's activities?  MR. FEE: Objection to form.  Calls for a legal conclusion.  THE WITNESS: What do you mean by the term of "independent assessment of causation"?  BY MR. BRIDGES:  Q. You, as an expert, not relying just on what other people have said or speculated or thought.  MR. FEE: Same objections.  Plus compound.  THE WITNESS: We experts rely
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5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	should look at all evidence available, including circumstantial evidence. I don't have direct information about the precise impact of defendant's activities, but I have important information that bears on that issue, including information that's in deposition transcripts.  BY MR. BRIDGES: Q. So my question is, how do you do you strike that. Are your conclusion are you making conclusions in paragraph 133 about the cause of changes in sales of the plaintiffs' products?  MR. FEE: Objection to form. THE WITNESS: Not definitively. I have observations about the magnitude and trend of the downloads	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	effects on plaintiffs by the defendant's activities?  MR. FEE: Objection to form. Calls for a legal conclusion. THE WITNESS: What do you mean by the term of "independent assessment of causation"? BY MR. BRIDGES: Q. You, as an expert, not relying just on what other people have said or speculated or thought.  MR. FEE: Same objections. Plus compound. THE WITNESS: We experts rely on other information to draw the conclusions that we do, and then we bring our training to it. So our observations shouldn't be in a vacuum. BY MR. BRIDGES:

1	A. Yes.	1	A. I took all the data
2	Q. And that means perhaps not	2	MR. FEE: Objection. Form.
3	relying upon the views of the parties to the	3	Objection to form.
4	lawsuit alone, but doing independent analysis	4	THE WITNESS: I took all this
5	and research, correct?	5	data into account. That's why I
6	MR. FEE: Objection to form.	6	reported it here.
7	THE WITNESS: I think one can	7	BY MR. BRIDGES:
8	and should evaluate and consider the	8	Q. And the data that you
9	views of the parties, but not limited	9	identified in the footnotes in
10	investigation to that.	10	paragraph 134 sorry 133?
11	BY MR. BRIDGES:	11	A. Yes, I considered that
12	Q. So what independent analysis	12	information.
13	and research did you do other than reviewing	13	Q. Do you know in what year the
14	the views and statements of the parties in	14	defendant posted the 2008 version of the
15	this case?	15	National Electrical Code on its Web site?
16	MR. FEE: Objection. Vague.	16	A. I don't know with absolute
17	THE WITNESS: I reviewed and	17	certainty. I do know a number of the alleged
18	summarized the data, as you see in	18	activities occurred in late 2012. I don't
19	133, that I had at my disposal. I	19	know if it's specific to that code or not.
20	reviewed writings about the impacts.	20	Q. Does it matter to your analysis
21	And I took important	21	exactly when the defendant posted the 2008
22	information from the fact that the	22	National Electrical Code on its Web site or
23	plaintiffs have brought this lawsuit.	23	to Internet Archive?
24	The plaintiffs don't want this	24	A. I would
25	activity to continue. That is	25	MR. FEE: Objection to form.
23	Page 162	23	Page 164
			<u> </u>
1	revealed preference information that's	1	THE WITNESS: I would consider
2	quite important.	2	that information if I had it, but I
3	BY MR. BRIDGES:	3	don't have any reason to think that it
4	Q. Tell me about what you mean by	4	would change any of the conclusions
5	repealed sorry. Strike that.	5	that I drew.
6	Tell me what you mean by	6	BY MR. BRIDGES:
7	"revealed preference."	7	
8			Q. The timing of when the
	A. What people do often provides	8	defendant posted certain matters wouldn't
9	information on what their preferences are.	8 9	defendant posted certain matters wouldn't change your conclusions?
10	information on what their preferences are.  Q. And so the fact that plaintiffs	8 9 10	defendant posted certain matters wouldn't change your conclusions?  A. Not based on what I know right
10 11	information on what their preferences are.  Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that	8 9 10 11	defendant posted certain matters wouldn't change your conclusions?  A. Not based on what I know right now. My understanding is that much of the
10 11 12	information on what their preferences are.  Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct?	8 9 10 11 12	defendant posted certain matters wouldn't change your conclusions?  A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of
10 11 12 13	information on what their preferences are.  Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct?  MR. FEE: Objection. Vague.	8 9 10 11 12 13	defendant posted certain matters wouldn't change your conclusions?  A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of
10 11 12 13 14	information on what their preferences are.  Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct?  MR. FEE: Objection. Vague. THE WITNESS: Given the cost,	8 9 10 11 12 13 14	defendant posted certain matters wouldn't change your conclusions?  A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not
10 11 12 13 14 15	information on what their preferences are.  Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct?  MR. FEE: Objection. Vague.  THE WITNESS: Given the cost, they prefer to bring the lawsuit	8 9 10 11 12 13 14 15	defendant posted certain matters wouldn't change your conclusions?  A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but
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10 11 12 13 14 15 16 17 18	information on what their preferences are.  Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct?  MR. FEE: Objection. Vague.  THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes.  BY MR. BRIDGES:  Q. What else strike that.	8 9 10 11 12 13 14 15 16 17 18	defendant posted certain matters wouldn't change your conclusions?  A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that.  Q. Do you know in what year Public.Resource.Org posted the 2011 version
10 11 12 13 14 15 16 17 18	information on what their preferences are.  Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct?  MR. FEE: Objection. Vague.  THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes.  BY MR. BRIDGES:  Q. What else strike that. What are the data you're	8 9 10 11 12 13 14 15 16 17 18 19	defendant posted certain matters wouldn't change your conclusions?  A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that.  Q. Do you know in what year Public.Resource.Org posted the 2011 version of the National Electrical Code?
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10 11 12 13 14 15 16 17 18 19 20 21	information on what their preferences are.  Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct?  MR. FEE: Objection. Vague.  THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes.  BY MR. BRIDGES:  Q. What else strike that. What are the data you're referring to in page strike that. What are the data you're	8 9 10 11 12 13 14 15 16 17 18 19 20 21	defendant posted certain matters wouldn't change your conclusions?  A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that.  Q. Do you know in what year Public.Resource.Org posted the 2011 version of the National Electrical Code?  A. Same answer to the question that you had with regard to the 2008 code.
10 11 12 13 14 15 16 17 18 19 20 21 22	information on what their preferences are.  Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct?  MR. FEE: Objection. Vague.  THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes.  BY MR. BRIDGES:  Q. What else strike that. What are the data you're referring to in page strike that.  What are the data you're referring to in paragraph 133 that you took	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	defendant posted certain matters wouldn't change your conclusions?  A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that.  Q. Do you know in what year Public.Resource.Org posted the 2011 version of the National Electrical Code?  A. Same answer to the question that you had with regard to the 2008 code.  Q. Can you look at the data in
10 11 12 13 14 15 16 17 18 19 20 21	information on what their preferences are.  Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct?  MR. FEE: Objection. Vague.  THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes.  BY MR. BRIDGES:  Q. What else strike that. What are the data you're referring to in page strike that. What are the data you're referring to in paragraph 133 that you took into account in discussing or analyzing	8 9 10 11 12 13 14 15 16 17 18 19 20 21	defendant posted certain matters wouldn't change your conclusions?  A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that.  Q. Do you know in what year Public.Resource.Org posted the 2011 version of the National Electrical Code?  A. Same answer to the question that you had with regard to the 2008 code.  Q. Can you look at the data in your the tables attached to your report
10 11 12 13 14 15 16 17 18 19 20 21 22	information on what their preferences are.  Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct?  MR. FEE: Objection. Vague.  THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes.  BY MR. BRIDGES: Q. What else strike that. What are the data you're referring to in page strike that.  What are the data you're referring to in paragraph 133 that you took into account in discussing or analyzing effects of defendant's activities on	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	defendant posted certain matters wouldn't change your conclusions?  A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that.  Q. Do you know in what year Public.Resource.Org posted the 2011 version of the National Electrical Code?  A. Same answer to the question that you had with regard to the 2008 code.  Q. Can you look at the data in your the tables attached to your report and see if that helps refresh your memory as
10 11 12 13 14 15 16 17 18 19 20 21 22 23	information on what their preferences are.  Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct?  MR. FEE: Objection. Vague.  THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes.  BY MR. BRIDGES:  Q. What else strike that. What are the data you're referring to in page strike that. What are the data you're referring to in paragraph 133 that you took into account in discussing or analyzing	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	defendant posted certain matters wouldn't change your conclusions?  A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that.  Q. Do you know in what year Public.Resource.Org posted the 2011 version of the National Electrical Code?  A. Same answer to the question that you had with regard to the 2008 code.  Q. Can you look at the data in your the tables attached to your report

1	NEC NEC 2011?	1	appropriateness of a permanent
2	A. I can look, and I will.	2	injunction here.
3	No, it doesn't answer that	3	BY MR. BRIDGES:
4	question, I don't think.	4	Q. Is the appropriate of is the
5	Q. Can you make a prediction as to	5	appropriateness of a permanent injunction an
6	when the defendant posted NEC 2008 and	6	economic question?
7	NEC 2011, based on the data attached to your	7	A. I think, in part, economic
8	report in Exhibit 1?	8	considerations can be and often are taken
9	MR. FEE: Objection to form.	9	into account in answering that question.
10	THE WITNESS: No, I don't	10	Q. Is it an economic question?
11	think, based on just those data.	11	MR. FEE: Objection.
12	BY MR. BRIDGES:		BY MR. BRIDGES:
13	Q. Can you make give an	13	Q. That was my question.
14	estimate as to when the defendant posted	14	MR. FEE: Asked and answered.
15	NEC 2008 and NEC 2011, based on the data	15	THE WITNESS: Again, in part.
16	attached to your report as Exhibit 1?	16	BY MR. BRIDGES:
17	MR. FEE: Same objection.	17	Q. The propriety of
18	THE WITNESS: No, I don't	18	a preliminary of a strike that.
19	think, based on just that information.	19	It's your testimony that the
20	BY MR. BRIDGES:	20	propriety of a permanent injunction is, in
21	Q. Well, just looking at your	21	part, an economic question?
22	report, can you tell when defendant posted	22	MR. FEE: Objection. Asked and
23	NEC 2008 and NEC 2011?	23	answered. Form. Calls for a legal
24	A. My answer hasn't changed. I	24	conclusion.
25	still don't know precisely when those were	25	THE WITNESS: Yes. As I
	Page 166		Page 168
1	posted.	1	understand it, one factor to consider
2	Q. But that doesn't make a	2	is the reparability or irreparability
3	difference to your economic analysis of the	3	of harm. I believe, at its core,
4	effects of defendant's activities on the	4	that's an economic question.
5	plaintiffs?	5	BY MR. BRIDGES:
6	A. Well, I would be curious	6	Q. And what economic theories did
7	MR. FEE: Objection to form.	7	you rely upon to conclude that, as an
8	THE WITNESS: curious about	8	economic matter, a preliminary strike
9	that information, but I don't have any		that.
10	reason to think it would change the	10	What economic theories did you
11	conclusions that I drew, and that is	11	rely upon to conclude that, as an economic
12	that a permanent injunction is	12	matter, a permanent injunction is appropriate
13	appropriate here.	13	in this case?
14	BY MR. BRIDGES:	14	MR. FEE: Same objections.
15	Q. Is it your job to determine	15	THE WITNESS: I don't know what
16	whether a permanent injunction is	16	candidates you have in mind for
17	appropriate? Is that what you were hired to	17	economic theories.
18	do?	18	BY MR. BRIDGES:
19	A. No.	19	Q. Whichever ones you relied upon.
20	MR. FEE: Objection. Calls for	20	A. I
21	a legal conclusion. Form. Compound.	21	MR. FEE: Same objections.
22	THE WITNESS: I think it's	22	THE WITNESS: used all of my
	relition at alive the County design to	23	training and applied it to the facts
23	ultimately the Court's decision to		
24	make, but I've been asked what my	24	of this case and drew the conclusions

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

1			
	A. I can't be any more specific	1	just on this information.
2	than that.	2	Q. What else would you need?
3	Q. What aspect of your training	3	A. I don't know, because I think
4	regarding aspects of industrial organization	4	it's probably a very easy factual question to
5	have you brought to bear on this case?	5	determine when the downloading first
6	A. I can't be any more specific	6	occurred, so I don't know why one would need
7	than that.	7	to back into it.
8	Q. But you did bring the theory of	8	Q. Well, when would one be able
9	reveal revealed preferences to bear on	9	to use sales trends as a way of identifying
10	this case, correct?	10	likely effects of a posting of each standard
11	A. Yes.	11	by the defendant?
12	Q. What other economic theories do	12	MR. FEE: Objection. Vague.
13	you recall bringing to bear on this case?	13	Compound.
14	MR. FEE: Objection. Asked and	14	THE WITNESS: Maybe; maybe not.
15	answered.	15	BY MR. BRIDGES:
16	THE WITNESS: Everything that	16	Q. Why do you say "maybe; maybe
17	I've	17	not"?
18	MR. FEE: And vague.	18	A. I just wouldn't think to do it
19	Go ahead.	19	that way, so I don't know what you exactly
20	THE WITNESS: I've learned	20	have in mind.
21	in my training, both educational	21	Q. Do you associate the posting of
22	training and career training.	22	standards by defendant with changes in sales
23	BY MR. BRIDGES:	23	volume of the standards that the defendant
24	Q. Can you be more specific than	24	has posted?
25	that?	25	MR. FEE: Objection to form.
	Page 174		Page 176
1	A. No.	1	THE WITNESS: I don't know what
2	* * *	2	you mean by that question.
3	(Jarosz Exhibit 4 marked for	3	BY MR. BRIDGES:
4	identification.)		
	identification.)	4	Q. You don't understand the
5	* * *	5	Q. You don't understand the question?
5 6			
I .	* * *	5	question?
6	* * * * BY MR. BRIDGES:	5 6 7	question? A. I do not.
6	* * *  BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize	5 6 7	question? A. I do not. Q. Can you correlate the posting
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1	THE WITNESS: I don't recall	1	Q. Have you determined in any way
2	attempting to do that. And I wouldn't	2	the dates at which defendant posted various
3	necessarily think that the historical	3	standards to its Web site or to the Internet
4	impact would is the end of the	4	Archive?
5	story as to the harm here.	5	A. I don't recall doing a separate
6	BY MR. BRIDGES:	6	analysis of that, no.
7	Q. Is historical impact part of	7	Q. How did you learn about the
8	the story as to the harm here?	8	dates at which defendant posted various
9	A. Yes.	9	standards to its Web site or to Internet
10	Q. What what can you say by	10	Archive?
11	looking at Exhibit 4 about the historical	11	A. I had conversations with
12	impact of the posting of the defendant of	12	counsel on that topic, and I may have seen
13	the plaintiffs' standards by the defendant?	13	that information contained in certain
14	A. I don't know that I can say	14	documents like the Complaint, but I don't
15	much, because I believe the postings largely	15	recall.
16	occurred in late 2012, and I only have one	16	Q. Did you rely upon information
17	period after that.	17	regarding those dates from conversations with
18	Q. If it turns out that	18	counsel?
l		19	
19	defendant's postings were well before 2012,		MR. FEE: In arriving at his
20	would that affect your analysis of the trends	20	opinions, you're asking?
21	in sales data of the plaintiffs'	21	MR. BRIDGES: Arriving at his
22	publications?	22	understanding of the facts.
23	MR. FEE: Objection to form.	23	THE WITNESS: I don't know that
24	Compound. Vague.	24	I did, because I don't recall
25	THE WITNESS: Maybe. I would	25	reporting those specific dates
	Page 178		Page 180
1	consider that information in	1	anywhere in my report.
1 2		1 2	anywhere in my report. BY MR. BRIDGES:
	consider that information in conjunction with these data if you wanted me to.		BY MR. BRIDGES:
2	conjunction with these data if you wanted me to.	2	BY MR. BRIDGES:  Q. Do you recall taking specific
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	conjunction with these data if you wanted me to.  BY MR. BRIDGES: Q. How what what would change? A. I don't know. I haven't done that analysis. Q. Have you verified the dates on which plaintiffs strike that. Have you verified the dates at which defendant posted the various standards to its Web site or to Internet Archive? A. I don't MR. FEE: Objection. Vague. THE WITNESS: I don't recall verifying it. And are you asking did I separately go out and determine what that date is and see if that was the same as what was represented in the Complaint, for instance?  BY MR. BRIDGES: Q. Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	BY MR. BRIDGES:  Q. Do you recall taking specific dates into account in analyzing the effect of defendant's actions?  MR. FEE: Objection to form.  Vague.  THE WITNESS: I don't recall one way or the other.  BY MR. BRIDGES:  Q. Do you know how strike that.  Do you know how much revenue each plaintiff derives from the standards at issue in this case?  A. I don't think I know that precise number.  Q. Did you did you ever know that number?  A. I don't think so.  Q. Did you ever know how much revenue each plaintiff derives from standards that have been incorporated into law?  A. As opposed to those that have not been incorporated? Is that

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1 those standards that have been incorporated
                                                           something just north of 50 percent for
                                                    1
                                                    2
2 in the law. I'm asking if you know how much
                                                           ASHRAE.
   revenue each plaintiffs derives -- each
                                                    3
                                                       BY MR. BRIDGES:
    plaintiff derives from those standards.
                                                    4
                                                                 What do you mean by "if you add
 5
        A. I don't --
                                                    5
                                                       in memberships"?
                                                                I'm not -- I'm not quite sure
6
            MR. FEE: Objection. Form.
                                                    6
                                                           A.
            THE WITNESS: -- think I know
                                                       what you're asking me to define.
7
8
        that number, and I'm not sure the
                                                           Q. I'm asking you to explain the
                                                    8
                                                       phrase that you just used, "if you add in
9
        plaintiffs know that number.
                                                   10 memberships." What did that mean?
10 BY MR. BRIDGES:
                                                           A. I talked about that in my
        Q. Do you know the percentage of
                                                   11
11
                                                   12 report. Membership fees are a fairly good
12 revenue that each plaintiff derives from
   standards that have been incorporated into
                                                       recollect -- a fairly good reflection of
13
                                                   14 amount that would have been paid for
14
   law?
15
                                                       publications. In other words, publication
            MR. FEE: Objection to form.
16
            THE WITNESS: I don't think I
                                                   16 fees -- it -- let me start this over again.
17
        do, and I don't believe the plaintiffs
                                                   17
                                                                It makes about as much sense to
                                                   18 become a member of ASHRAE as it is to buy
18
19
    BY MR. BRIDGES:
                                                       some of the individual publications. As a
20
             Are you aware of any difference
                                                   20 result, many people choose to become members
21 in profitability to plaintiffs between those
                                                   21 rather than just buying the publication, as I
   standards that have been incorporated into
                                                   22 understand it.
    law and those standards that have not been
                                                   23
23
                                                                 How did you learn that?
24
    incorporated into law?
                                                   24
                                                                 Having knowledge of the -- of
25
            MR. FEE: Objection to form.
                                                   25 the price difference and through discussions
                                                                                              Page 184
                                           Page 182
1
            THE WITNESS: I don't believe
                                                       with people at ASHRAE.
2
                                                    2
                                                           Q. How did you learn about the
        so.
 3
    BY MR. BRIDGES:
                                                    3
                                                       price difference?
        Q. Do you know -- strike that.
                                                           A. I don't recall how I learned
4
            Are you aware of any difference
                                                       it, but I report it in my report based on
5
   in profitability to plaintiffs between those
                                                       certain documents I've seen. Perhaps I
    standards that defendant has posted to the
                                                       learned it from their Web site.
    Internet and those standards that defendant
                                                    8
                                                           Q. Did you do any surveys of
    has not posted to the Internet?
                                                       ASHRAE members to validate that assumption?
                                                    9
                                                           A. I'm sorry. Validate what
10
            MR. FEE: Objection to form.
                                                   10
            THE WITNESS: I don't believe
11
                                                   11
                                                       assumption?
        so. And as with the previous
                                                                 About purchase of a membership
12
                                                   12
                                                       instead of buying the publication.
        question, I don't think the plaintiffs
13
                                                   13
14
        have that information at their
                                                                I'm not sure that there's an
                                                   14
15
        disposal.
                                                       assumption in there. My understanding is
                                                       that ASHRAE people are of the belief that
16 BY MR. BRIDGES:
             For each plaintiff, what do you
                                                       many people buy membership rather than
17
   understand to be the percentage of gross
                                                       individual publications.
                                                   18
    revenue from the sale of standards?
                                                                 And in your work, did you
19
                                                   19
                                                           O.
20
            MR. FEE: Objection to form.
                                                   20
                                                       assume that?
21
            THE WITNESS: I -- I've
                                                   21
                                                                 I didn't assume that. I worked
        reported that in my report. My memory
                                                       on that -- under that understanding.
22
                                                   22
        is that it's something on the order of
23
                                                   23
                                                                Oh, it's an understanding, but
24
        66 percent for ASTM and for NFPA. And
                                                   24 not an assumption?
        if you add in memberships, it's
                                                                 Yes.
25
                                                   25
                                                           Α.
                                           Page 183
                                                                                              Page 185
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1 are to copyrighted publications, correct? 1 Q. Did that understanding make a difference to your analysis? With the exception of number 3, 2 3 3 It was a factual underpinning. which refers to copyrighted publications and Α. An underpinning, but not an memberships. 4 O. 5 Q. Okay. So my question wasn't 5 assumption? about copyrighted publications. My question A. It was not an explicit 6 6 is, what percentage do you understand of 7 assumption. But it was an underpinning, not plaintiffs' revenues comes from the sale of 8 Q. an assumption, is your testimony? standards at issue in this case? 9 MR. FEE: Objection. Asked and 10 Thank you for that reminder of 10 A. what the question is. 11 11 12 THE WITNESS: Yes. I don't 12 I don't think I know that 13 know what or why you're arguing with 13 precise percentage. 14 me on this. 14 Q. What percentage of plaintiffs' 15 revenues, to your knowledge, comes from the 15 BY MR. BRIDGES: sale of standards incorporated into law? 16 Q. I'm not arguing. 17 I don't understand. 17 A. I don't know that number. A. 18 Q. I'm just trying to understand What percentage of plaintiffs' 18 19 your testimony. That's all. So I'm asking revenues, to your understanding, comes from 20 some follow-up questions. 20 the sale of all standards? You stated earlier some 21 21 A. I'm sorry. I thought you asked 22 percentages of revenue from the sale of 22 that question. I thought the immediate one 23 standards. Did you mean to be identifying before that was standards. 23 24 what you thought were the percentages of 24 O. No. It was standards at issue 25 revenue from the sale of standards or from 25 in this case. Then --Page 186 Page 188 the sale of all publications? 1 A. The one before that. 2 Let me -- let me double-check 2 Q. -- standards incorporated into law. And now it's all standards. 3 that. 3 Right. Thank you. 4 Well, in the case of ASTM, for 4 instance, I believe it's copyrighted 5 I don't know that number publications. either. 6 7 What page are you referring to 7 What percentage of O. plaintiffs' -- strike that. in your report? Right now I'm looking at What dollar value do you A. 10 page 36, but I think I talk about it at other 10 associate with the investments that each plaintiff has made in the development of the 11 areas. 12 So page 36, you're talking 12 standards at issue in this case? Q. 13 about which paragraph? 13 A. I don't think I attributed a Well, right now I was --14 dollar amount to that precise activity, 14 A. 15 because I don't know that amount. Q. 83? 15 16 -- I was looking at 83, but I'm Q. What percentage of plaintiffs' A. 16 17 turning back to, for more reliable operating expenses do you associate with the 17 18 information, to paragraph 15, for instance, plaintiffs' development of the standards at 19 which says in 2014, 67.1 percent of the issue in this case? 19 20 revenue was generated by the sale of 20 I don't think I know that Α. 21 copyrighted publications. For NFPA, that 21 number. 22 information is shown in paragraph 18. And 22 What percentage of plaintiffs' 23 for ASHRAE, that information is shown in operating expenses do you associate with the plaintiffs' development of standards 24 paragraph 22. Q. All three of those references 25 incorporated into law? 25 Page 187 Page 189

1	A. I don't think I know that	1	Q. Have you ever had access to any
2	number.	2	information that I've asked in the last
3	Q. What percentage of plaintiffs'	3	several questions?
4	operating expenses do you associate with the	4	MR. FEE: Objection to form.
5	plaintiffs' development of standards	5	THE WITNESS: I don't believe
6	generally?	6	so.
7	A. I don't think I know that	7	BY MR. BRIDGES:
8	number.	8	Q. Do you know whether plaintiffs
9	Q. Do you have any estimates of	9	prepare standards through joint sponsorship
10	any of those numbers that you just said you	10	with any other organizations?
11	don't think you know?	11	MR. FEE: Objection. Vague.
12	MR. FEE: Objection to form.	12	THE WITNESS: I think I may
13	THE WITNESS: Not sitting here	13	have seen a reference to that. I
14	right now.	14	don't know the extent to which it
15	BY MR. BRIDGES:	15	occurs, but I wouldn't be surprised to
16	Q. Did you at one point ever	16	be reminded that it does occur.
17	determine those numbers?	17	BY MR. BRIDGES:
18	A. Not that I recall.	18	Q. Are you aware of any, as you
19	Q. Do you know what percentage of	19	sit here?
20	the staff or employees of each plaintiff has	20	A. Not as I sit here right now,
21	worked on the development of standards at	21	but I think I'm aware that it has occurred.
22	issue in this case?	22	Q. Do you know whether plaintiffs
23	MR. FEE: Objection to form.	23	receive grants, revenue, or stipends from
24	THE WITNESS: I don't think I	24	governments that use, reference, or adopt
25	know that number.	25	their standards?
	Page 190		Page 192
1	BV MR BRIDGES:	1	MR FFF: Objection to form
1 2	BY MR. BRIDGES:	1	MR. FEE: Objection to form.
2	Q. Do you know what percentage	2	THE WITNESS: There are grant
2 3	Q. Do you know what percentage do you have an estimate?	2 3	THE WITNESS: There are grant monies that go to NFPA. I don't know
2 3 4	Q. Do you know what percentage do you have an estimate? A. No.	2 3 4	THE WITNESS: There are grant monies that go to NFPA. I don't know the source of those grants. I don't
2 3 4 5	Q. Do you know what percentage do you have an estimate? A. No. MR. FEE: Objection to form.	2 3 4 5	THE WITNESS: There are grant monies that go to NFPA. I don't know the source of those grants. I don't see a line for grant revenues for the
2 3 4 5 6	Q. Do you know what percentage do you have an estimate? A. No. MR. FEE: Objection to form. THE WITNESS: Not as I sit	2 3 4	THE WITNESS: There are grant monies that go to NFPA. I don't know the source of those grants. I don't see a line for grant revenues for the other two organizations.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	Q. Do you know what percentage do you have an estimate?  A. No.  MR. FEE: Objection to form.  THE WITNESS: Not as I sit here, no.  BY MR. BRIDGES:  Q. Do you know what percentage of the staff or employees of each plaintiff has worked on the development of standards incorporated into law?  MR. FEE: Objection to form.  THE WITNESS: Not as I sit here right now.	2 3 4 5 6 7 8 9 10 11 12 13 14 15	THE WITNESS: There are grant monies that go to NFPA. I don't know the source of those grants. I don't see a line for grant revenues for the other two organizations.  BY MR. BRIDGES: Q. Did you ask any of the plaintiffs about the revenues or expenses they have specifically attributable to the standards that defendant has posted to the Internet?  MR. FEE: Objection to form. THE WITNESS: We generally talked about that topic with each
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1	Q. I guess my question didn't have	1	the plaintiffs told you in this case?
2	anything to do with incorporated by	2	MR. FEE: Objection to form.
3	reference. My question is, did you ask any	3	THE WITNESS: Well, I kept an
4	of the plaintiffs about the revenues or	4	open mind to the facts that I was
5	expenses that they have had that are	5	given over the phone and sought to
6	specifically attributable to the standards	6	determine if I learned things that
7	that the defendant has posted to the	7	conflicted or not with that
8	Internet?	8	information.
9	MR. FEE: Objection to form.	9	BY MR. BRIDGES:
10	THE WITNESS: I think we	10	Q. Where did you
11	generally talked about that topic, and	11	A. But
12	I don't believe they have information	12	Q. I'm sorry. I didn't realize
13	at that level.	13	you were still
14	BY MR. BRIDGES:	14	A. But I didn't separately go out
15	Q. Did you ask the plaintiffs to	15	and write down the facts and attempt to get
16	estimate revenues or expenses specifically	16	separate verification of each fact.
17	attributable to the standards at issue in	17	Q. So you were looking for
18	this case?	18	internal inconsistencies in the
19	MR. FEE: Objection to form.	19	communications that plaintiffs had with you
20	THE WITNESS: Not that I	20	in order to determine whether to question any
21	recall. We may have asked whether	21	of the facts that the plaintiffs' employees
22	they are collected, but we didn't ask		related to you?
23	· ·	23	*
24	for the plaintiffs to separately		MR. FEE: Objection to form. BY MR. BRIDGES:
25	estimate those numbers, as I recall. BY MR. BRIDGES:	24 25	
23	Page 194	23	Q. Is that your testimony?  Page 196
	1 agc 174		1 agc 170
1	Q. In paragraph 49, you state that	1	MR. FEE: Mischaracterizes the
2	ASHRAE standard 90.1 was first published in	2	testimony.
3	ASHRAE standard 90.1 was first published in 1974. What's your basis for that statement?	2 3	testimony.  THE WITNESS: I'm not sure if
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ASHRAE standard 90.1 was first published in 1974. What's your basis for that statement?  A. I don't recall. It may have been in a produced document. It may have been in conversations. I just don't recall.  Q. Did you attempt to verify that information independently?  A. Not that I recall.  Q. Do you know if ASHRAE standard 90-75 was first published in 1975?  A. I don't happen to know, sitting here now.  Q. You cite to an article in footnotes 73, 74 of your report. Did you review that article?  A. Yes.  Q. Did you independently verify the information in it?  A. Not that I recall.  Q. You just took it at face value?  A. I think so. I didn't have	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	testimony.  THE WITNESS: I'm not sure if it is. Let me try and answer and see if that's responsive.  I was aware of the information we received over the telephone, and in the process of looking through the documents that we had, I kept an open eye toward learning things that conflicted with those oral conversations.  BY MR. BRIDGES:  Q. And the documents what are what were the documents that you're saying you had?  A. Everything that's in tab 2.  Q. Most of which, apart from the Web-based resources and the articles other than Ms. Bremer's law review articles, the plaintiffs' counsel furnished to you, correct?
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documents, but they provided them as
                                                                 I looked at some parts of it.
 1
                                                    1
2
        part of the discovery process.
                                                       I don't recall that I looked at all aspects
 3
   BY MR. BRIDGES:
                                                    3
                                                       of the database.
        Q. Did you ask them for any
4
                                                    4
                                                                Did you verify how many
                                                       standards were incorporated by reference
5
   documents that they had not provided?
                                                    5
                                                       according to that database?
        A. I think we generally described
   the kinds of information that we find useful
                                                    7
                                                           A.
                                                                No, I did not.
    or typically find useful in matters like
                                                    8
                                                                 What do you mean by, "This
8
                                                       database reports nearly 13,000 instances of
9
   this.
                                                       incorporation by reference"?
10
             After you received documents
                                                   10
11 from plaintiffs' counsel, did you ask them
                                                           A. I don't know what you're asking
                                                   11
12 for any more?
                                                       me to define.
                                                   12
13
        A.
             That -- that's possible. I
                                                   13
                                                           Q. I'm not asking you to define
14 don't recall that.
                                                   14 anything. I'm asking you to explain what you
             You don't recall. Did you --
                                                       meant by that clause, "This database
15
16 do you have any understanding as to the
                                                   16 reports" ---
    dollar value of staff time and expenses that
                                                   17
                                                                I'm sorry. I'm just -- I'm
17
                                                           A.
   the plaintiffs have incurred in promoting
                                                       going to be just rearranging words a little
                                                       bit. There were 13,000 times that there was
19
    incorporation of their standards into law?
            MR. FEE: Objection to form.
                                                       incorporation by reference of a standard.
20
21
                                                   21
                                                                I -- I don't -- I'm sorry. I
        Lack of foundation.
                                                      don't understand what your confusion is.
22
            THE WITNESS: I don't think I
                                                   22
                                                           Q. I'm not confused. I'm just
23
        have that number, no.
                                                   23
   BY MR. BRIDGES:
                                                       asking you questions. Okay? So please don't
24
25
        Q. Do you have an estimate?
                                                       understand -- please don't assume that I'm
                                           Page 198
                                                                                              Page 200
            MR. FEE: Same objections.
                                                       confused. I'm trying to understand what you
1
2
            THE WITNESS: Not as I sit here
                                                       meant by that.
 3
                                                    3
                                                                You mean separate instances?
        now, no.
                                                       You mean separate laws? What do you mean?
4
   BY MR. BRIDGES:
                                                           A. Yes. Separate instances slash
5
        Q. Did you discuss that issue with
                                                    5
    anyone representing the plaintiffs?
                                                    6
                                                       separate laws.
7
            MR. FEE: Same objections.
                                                    7
                                                                 What did you count as an
                                                           O.
                                                       instance?
 8
            THE WITNESS: It's possible,
                                                    8
9
        but I don't recall having that
                                                    9
                                                           A. Mention in a particular law of
10
                                                   10 a standard.
        discussion.
11 BY MR. BRIDGES:
                                                   11
                                                           O.
                                                                Did you or anybody working with
             In paragraph 57 of your report,
                                                   12 you attempt to determine the number of
12
13 you refer to "thousands of private-sector
                                                   13 standards that those 13,000 instances of
14 standards." Was your sole support for the
                                                   14 incorporation by reference referred to?
15 statement in paragraph 57 the Bremer article
                                                                 Not entirely. But if you read
                                                   15
                                                           A.
16 you cited in footnote 88?
                                                   16 on that -- in that same section, it talks
17
             No. You see I discuss and
                                                       about the number of ASTM standards, the
18 provide support for that in subsequent
                                                   18 numbers of -- the number of NFPA standards,
   paragraphs in that section.
                                                       and the number of ASHRAE standards.
19
                                                           Q. Well, please tell me where it
20
             And that includes in
                                                   20
21
   paragraph 58?
                                                       refers to the number of standards.
                                                           A. It says, "Including more than
22
        A. Yes.
                                                   22
                                                       2,400 instances involving ASTM standards."
23
             And did you review the
                                                   23
24 Standards Incorporated by Reference Database
                                                                So you're right. It doesn't
                                                   24
25 that you refer to in paragraph 58?
                                                   25 have the number of standards. It just has
                                           Page 199
                                                                                              Page 201
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What are the governmental
 1 mentions of standard. You're absolutely
                                                    1
2 right.
                                                       functions with respect to driving that you
3
        Q. And the same thing is true of
                                                    3
                                                       have in mind?
   the NFPA standards and ASHRAE standards?
                                                    4
                                                                 I don't have any particular
5
        A. You're absolutely right, yes.
                                                    5
                                                       ones in mind.
             Do you know how many standards
                                                                 In paragraph 59, you say, "At
6
        Q.
                                                    6
                                                           Q.
                                                       least 44 states and territories have adopted
   that database shows as having been
    incorporated by reference?
                                                       ASHRAE 90.1 as part of the commercial
 8
                                                    8
9
             Not sitting here right now.
                                                       building energy code."
10 One could perhaps look at what I cited to
                                                                Do you see that?
                                                   10
11 answer that question, but I don't know right
                                                                 Yes, I do.
                                                   11
12 now.
                                                   12
                                                                 And that also has footnote 95
13
             Do you know whether anyone
                                                   13
                                                       associated with that as well, correct?
14 working for you ever did that work to make
                                                   14
                                                                 Yes, that's correct.
                                                           A.
15 that determination?
                                                   15
                                                                 How do you explain the fact
16
        A.
             I don't recall that being done.
                                                   16 that that reference in footnote 95 shows that
17
             Paragraph 59, you say, "At the
                                                       those 44 states, in fact, adopted the
        Q.
18 state level, privately-developed standards
                                                      International Energy Conservation Code that
    are incorporated by reference as part of the
                                                       merely has a reference to an option to use
   exercise of a range of governmental
                                                   20 ASHRAE 90.1?
21 functions."
                                                   21
                                                                MR. FEE: Objection. Lack of
22
            Do you see that?
                                                   22
                                                           foundation.
23
             Yes.
                                                   23
                                                                THE WITNESS: I don't have any
        A.
24
             What do you mean by
                                                   24
                                                           explanation for that.
        O.
    "governmental functions" in that statement?
                                                   25 BY MR. BRIDGES:
                                                                                               Page 204
             Things that government agencies
                                                    1
                                                                 Did you verify that?
1
        A.
                                                           O.
 2
   do.
                                                    2
                                                           A.
                                                                 I did not, no.
3
             And you give a couple of
                                                    3
                                                                 Who did?
        Q.
                                                           Q.
   examples, but speaking broadly, what are
                                                                I'm sorry. Who verified what?
                                                    4
                                                           A.
    governmental functions that involve
                                                                 On what -- on what did you rely
                                                    5
 5
    incorporation by reference of privately
                                                       to make that statement with that footnote?
                                                    6
    developed standards at the state level?
                                                    7
                                                                 I may not understand your
            MR. FEE: Objection to form.
8
                                                       question. I relied on what's identified in
                                                    8
9
            THE WITNESS: I can only answer
                                                       footnote 95.
                                                    9
        generally. Health and human services,
10
                                                   10
                                                           Q. But you didn't review foot --
        things that are related to that,
11
                                                   11
                                                       what's in footnote 95, right?
        safety, driving rules and regulation.
                                                                MR. FEE: Objection. Lack of
12
                                                   12
        Those are among the things that come
13
                                                   13
                                                           foundation.
                                                                THE WITNESS: I did.
14
        to mind.
                                                   14
15
   BY MR. BRIDGES:
                                                   15
                                                       BY MR. BRIDGES:
16
        Q. What are the governmental
                                                   16
                                                                 You -- you reviewed that Web
                                                           O.
17 functions related to health and human
                                                   17
                                                       site?
   services that you have in mind?
18
                                                   18
                                                           A.
                                                                 Yes.
        A. I don't have any particular
                                                                 Personally?
19
                                                   19
                                                           Q.
                                                                 Yes, I believe so.
20 ones in mind.
                                                   20
                                                           A.
21
             What are the governmental
                                                   21
                                                                 Do you have an explanation as
                                                   22 to why the resource cited in footnote 95
22 functions relating to safety that you have in
                                                       actually shows that the 44 states adopted the
23
   mind?
                                                       International Energy Conservation Code?
24
        A.
             I don't have any particular
                                                   24
                                                                MR. FEE: Objection. Lack of
25 ones in mind.
                                                   25
                                                                                               Page 205
                                           Page 203
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1	foundation.	1	change in membership sales by ASHRAE over the
2	THE WITNESS: I would like to	2	past ten years?
3	understand the facts that you're	3	A. I don't think I have data that
4	positing right now.	4	goes as far as ten years ago. I do have
5	BY MR. BRIDGES:	5	information on ASHRAE membership revenue back
6	Q. Well, we're not going to take	6	to 2012. That's summarized in tab 5.
7	time to go look at a Web site right now, so	7	Q. And that membership figure has
8	I'm asking you based on what you know.	8	risen each year since 2012, correct?
9	Do you have an explanation as	9	A. Yes. Slightly each year, it
10	to why the resource cited in footnote 95	10	has risen.
11	actually shows that 44 state the 44 states	11	Q. Do you draw any conclusions
12	adopted the International Energy Conservation	12	with respect to this case from that trend?
13	Code?	13	A. I don't think so.
14	MR. FEE: Objection. Lack of	14	Q. Have you calculated the
15	foundation.	15	effects the financial effect on the
16	THE WITNESS: I don't know if	16	plaintiffs of the incorporation into law of
17	your factual representation is	17	their standards?
18	accurate or not, and I don't recall	18	MR. FEE: Objection to form.
19	investigating that particular issue.	19	THE WITNESS: No, I don't think
20	BY MR. BRIDGES:	20	I've independently I don't think
21	Q. Have you made any effort to	21	I've separately done that.
22	determine what resources were expended,	22	BY MR. BRIDGES:
23	incurred, or contributed by parties other	23	Q. Are you aware of any data
24	than ASHRAE in the development of standard		regarding the financial effect on the
25	90.1? Page 206	25	plaintiffs of the incorporation into law of Page 208
	1 agc 200		1 agc 208
1	MR. FEE: Objection to form.	1	their standards?
2	THE WITNESS: I generally	2	MR. FEE: Same objection.
2 3	THE WITNESS: I generally understand that there were many	2 3	MR. FEE: Same objection. THE WITNESS: I'm aware that
2 3 4	THE WITNESS: I generally understand that there were many members who participated in that. I	2 3 4	MR. FEE: Same objection. THE WITNESS: I'm aware that the plaintiffs benefit greatly by
2 3 4 5	THE WITNESS: I generally understand that there were many members who participated in that. I think I reported earlier in the report	2 3 4 5	MR. FEE: Same objection. THE WITNESS: I'm aware that the plaintiffs benefit greatly by incorporation by reference, but I
2 3 4 5 6	THE WITNESS: I generally understand that there were many members who participated in that. I think I reported earlier in the report the number of hours and other	2 3 4 5 6	MR. FEE: Same objection. THE WITNESS: I'm aware that the plaintiffs benefit greatly by incorporation by reference, but I don't know that I've seen a
2 3 4 5 6 7	THE WITNESS: I generally understand that there were many members who participated in that. I think I reported earlier in the report the number of hours and other indications of activity undertaken by	2 3 4 5 6 7	MR. FEE: Same objection. THE WITNESS: I'm aware that the plaintiffs benefit greatly by incorporation by reference, but I don't know that I've seen a quantitative study of that topic.
2 3 4 5 6 7 8	THE WITNESS: I generally understand that there were many members who participated in that. I think I reported earlier in the report the number of hours and other indications of activity undertaken by members.	2 3 4 5 6 7 8	MR. FEE: Same objection. THE WITNESS: I'm aware that the plaintiffs benefit greatly by incorporation by reference, but I don't know that I've seen a quantitative study of that topic. BY MR. BRIDGES:
2 3 4 5 6 7 8 9	THE WITNESS: I generally understand that there were many members who participated in that. I think I reported earlier in the report the number of hours and other indications of activity undertaken by members.  BY MR. BRIDGES:	2 3 4 5 6 7 8 9	MR. FEE: Same objection. THE WITNESS: I'm aware that the plaintiffs benefit greatly by incorporation by reference, but I don't know that I've seen a quantitative study of that topic. BY MR. BRIDGES: Q. What do you understand about
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	THE WITNESS: I generally understand that there were many members who participated in that. I think I reported earlier in the report the number of hours and other indications of activity undertaken by members.  BY MR. BRIDGES: Q. My question is, have you made any effort to determine what resources were expended, incurred, or contributed by parties other than ASHRAE and ASHRAE members in the development of standard 90.1?  MR. FEE: Same objection. THE WITNESS: I didn't realize that you had in your original question "and other than ASHRAE members."  BY MR. BRIDGES: Q. I didn't. Now I now my question does. A. Beyond that, I don't recall undertaking that investigation, meaning	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MR. FEE: Same objection.  THE WITNESS: I'm aware that the plaintiffs benefit greatly by incorporation by reference, but I don't know that I've seen a quantitative study of that topic.  BY MR. BRIDGES:  Q. What do you understand about the benefits that accrue to plaintiffs by incorporation by reference?  A. Some of those are laid out in my report on pages 19 through 26. I have a particular section called "Benefits of Incorporation" that starts at page 20.  Q. Well, I'm asking you, what benefits accrue to the plaintiffs from incorporation by reference?  A. Generally, it allows each one to satisfy its mandate of providing services to the entirety of the industry that it focuses its attention on. And so it allows for the collection and then dissemination of

1	Q. What other benefits do	1	a particular period.
2	plaintiffs gain from incorporation by	2	Q. And then you do the same for
3	reference of their standards?	3	NFPA documents, correct?
4	A. I think that generally covers	4	A. Yes.
5	it. I may be forgetting things that are laid	5	Q. What do you calculate as the
6	out in my report, but that's what covers it,	6	dollar value of harm to the to ASTM from
7	to the best of my memory right now.	7	the accesses and downloads that you refer to
8	Are we at a good point for a	8	in paragraph 133?
9	break?	9	A. I haven't calculated that harm.
10	Q. If you want. Sure.	10	Q. Why not?
11	A. Thanks.	11	A. I'm not sure if I can at this
12	THE VIDEOGRAPHER: Off the	12	stage. One estimate would be those number of
13	record at 3:12. This is the end of	13	downloads times the well, actually, no,
14	media unit number 2.	14	let me take that back. I just don't know how
15	* * *	15	to do it.
16	(Recess from 3:12 p.m. to	16	Q. Can you be certain that these
17	3:41 p.m.)	17	accesses or down and downloads referred to
18	* * *	18	in paragraph 133, in fact, resulted in
19	THE VIDEOGRAPHER: On the	19	economic loss to ASTM?
20	record at 3:41. This is the beginning	20	MR. FEE: Objection to form.
21	of media unit number 3 in the	21	THE WITNESS: Not with absolute
22	deposition of John Jarosz.	22	certainty, but with reasonable
23	* * *	23	certainty I can say some in some
24	(Jarosz Exhibit 5 marked for	24	number of these instances, it's likely
25	identification.)	25	the case that the that the
	Page 210		Page 212
1	* * *	1	information would have been obtained
2	BY MR. BRIDGES:	2	from ASHRAE in or ASTM, rather,
3	Q. Mr. Jarosz, I've handed you	3	in through legal means.
4	Exhibit 5. This is an article that you cited	4	BY MR. BRIDGES:
5	in your report, correct?	5	Q. Would that in those
6	A. Yes, I believe so.	6	instances where you say that the information
7	Q. Do you recall how this article	7	would have been obtained from ASTM through
8	came to your attention?	8	legal means, can you put a dollar value on
9	A. I do not.		or even an estimate of the increased revenue
10	O Is this an artial that you	10	
1 1	Q. Is this an article that you	10	that ASTM would have gotten from those
11	understand to have been published by		that ASTM would have gotten from those instances where people obtained the
11 12		11	-
	understand to have been published by	11	instances where people obtained the
12	understand to have been published by plaintiff ASHRAE in its journal?	11 12	instances where people obtained the information from ASHRAE sorry from
12 13	understand to have been published by plaintiff ASHRAE in its journal?  A. Yes, that's my understanding. Q. And this is an article you relied upon with respect to the development	11 12 13 14 15	instances where people obtained the information from ASHRAE sorry from AST MR. FEE: Object BY MR. BRIDGES:
12 13 14	understand to have been published by plaintiff ASHRAE in its journal?  A. Yes, that's my understanding. Q. And this is an article you	11 12 13 14 15 16	instances where people obtained the information from ASHRAE sorry from AST  MR. FEE: Object  BY MR. BRIDGES: Q from ASTM?
12 13 14 15 16 17	understand to have been published by plaintiff ASHRAE in its journal?  A. Yes, that's my understanding.  Q. And this is an article you relied upon with respect to the development of standard 90, which became standard 90.1, correct?	11 12 13 14 15 16 17	instances where people obtained the information from ASHRAE sorry from AST  MR. FEE: Object BY MR. BRIDGES: Q from ASTM? MR. FEE: Objection to form.
12 13 14 15 16	understand to have been published by plaintiff ASHRAE in its journal?  A. Yes, that's my understanding.  Q. And this is an article you relied upon with respect to the development of standard 90, which became standard 90.1,	11 12 13 14 15 16	instances where people obtained the information from ASHRAE sorry from AST  MR. FEE: Object BY MR. BRIDGES: Q from ASTM? MR. FEE: Objection to form. THE WITNESS: No, not based on
12 13 14 15 16 17	understand to have been published by plaintiff ASHRAE in its journal?  A. Yes, that's my understanding. Q. And this is an article you relied upon with respect to the development of standard 90, which became standard 90.1, correct?  A. Yes. Q. In paragraph 133 of your	11 12 13 14 15 16 17 18 19	instances where people obtained the information from ASHRAE sorry from AST  MR. FEE: Object  BY MR. BRIDGES: Q from ASTM?  MR. FEE: Objection to form.  THE WITNESS: No, not based on the information I have. I don't think
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12 13 14 15 16 17 18 19 20	understand to have been published by plaintiff ASHRAE in its journal?  A. Yes, that's my understanding. Q. And this is an article you relied upon with respect to the development of standard 90, which became standard 90.1, correct?  A. Yes. Q. In paragraph 133 of your report, you talk about a number of downloads strike that you talk about a number of documents accessed through Public	11 12 13 14 15 16 17 18 19 20 21 22	instances where people obtained the information from ASHRAE sorry from AST  MR. FEE: Object  BY MR. BRIDGES: Q from ASTM?  MR. FEE: Objection to form.  THE WITNESS: No, not based on the information I have. I don't think I have any indication of who was doing
12 13 14 15 16 17 18 19 20 21 22 23	understand to have been published by plaintiff ASHRAE in its journal?  A. Yes, that's my understanding. Q. And this is an article you relied upon with respect to the development of standard 90, which became standard 90.1, correct?  A. Yes. Q. In paragraph 133 of your report, you talk about a number of downloads strike that you talk about a number of documents accessed through Public Resource's Web site. Do you see that?	11 12 13 14 15 16 17 18 19 20 21	instances where people obtained the information from ASHRAE sorry from AST  MR. FEE: Object  BY MR. BRIDGES: Q from ASTM?  MR. FEE: Objection to form.  THE WITNESS: No, not based on the information I have. I don't think I have any indication of who was doing the downloading and why.  BY MR. BRIDGES: Q. And do you know what
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1	information?	1	more extended use of that document.
2	A. Not with certainty, because I	2	Q. Do you have any evidence about
3	don't know who those persons were, but I	3	wide distribution of plaintiffs' standards as
4	would expect one alternative would be to	4	a consequence of defendant's actions?
5	obtain it properly, directly from ASTM.	5	A. I do not.
6	Q. Would that have resulted in	6	Q. Have you reviewed any studies
7	more revenue to ASTM?	7	that would allow you to establish any
8	A. It may have. If they're	8	connection between the number of accesses or
9	materials that were taken improperly that	9	downloads that Public Resource made possible
10	would have been paid for, then that would	10	and any financial harms to the plaintiffs?
11	represent a loss of revenue to ASTM.	11	MR. FEE: Objection to form.
12	Q. Do you know whether any of the	12	THE WITNESS: I don't think
13	persons who obtained this information from	13	I've seen any study on that, no.
14	defendant would have paid for the information	14	BY MR. BRIDGES:
15	from ASTM?	15	Q. Have you conducted any studies
16	A. No, not with certainty, because	16	that would have allowed you to establish any
17	I don't know the identity of the downloaders	17	connection between the number of accesses or
18	or the reasons for their downloading.	18	downloads that Public Resource made possible
19	Q. Moreover, those persons might	19	and any financial harms to the plaintiffs?
20	have accessed the standards from ASTM's	20	MR. FEE: Objection to form.
21	reading room for free and with no revenue to	21	THE WITNESS: Not other than
22	ASTM, correct?	22	what's contained in my report.
23	A. You mean in a but-for world?	23	BY MR. BRIDGES:
24	Had they not done what they actually did,	24	Q. Please turn to page 45,
25	alternatively they could have gone to the	25	paragraph 107, which spills into page 108.
	Page 214		Page 216
1	free reading room?	1	MR. FEE: Page 108?
1 2	free reading room? Q. Right.	1 2	MR. FEE: Page 108? THE WITNESS: I'm sorry.
2 3	<ul><li>Q. Right.</li><li>A. That's a possibility, yes.</li></ul>		THE WITNESS: I'm sorry. Page 108 or paragraph?
2	<ul><li>Q. Right.</li><li>A. That's a possibility, yes.</li><li>Q. Do you have an understanding as</li></ul>	2	THE WITNESS: I'm sorry. Page 108 or paragraph? BY MR. BRIDGES:
2 3	<ul><li>Q. Right.</li><li>A. That's a possibility, yes.</li><li>Q. Do you have an understanding as to why persons would want to download a file</li></ul>	2 3 4 5	THE WITNESS: I'm sorry. Page 108 or paragraph? BY MR. BRIDGES: Q. I'm sorry. Paragraph strike
2 3 4	Q. Right. A. That's a possibility, yes. Q. Do you have an understanding as to why persons would want to download a file of a standard instead of viewing it at one of	2 3 4	THE WITNESS: I'm sorry. Page 108 or paragraph? BY MR. BRIDGES: Q. I'm sorry. Paragraph strike that.
2 3 4 5 6 7	Q. Right. A. That's a possibility, yes. Q. Do you have an understanding as to why persons would want to download a file of a standard instead of viewing it at one of the plaintiffs' reading rooms?	2 3 4 5 6 7	THE WITNESS: I'm sorry. Page 108 or paragraph? BY MR. BRIDGES: Q. I'm sorry. Paragraph strike that. Let me ask you to turn
2 3 4 5 6	Q. Right. A. That's a possibility, yes. Q. Do you have an understanding as to why persons would want to download a file of a standard instead of viewing it at one of the plaintiffs' reading rooms? A. Not with absolute certainty,	2 3 4 5 6 7	THE WITNESS: I'm sorry. Page 108 or paragraph? BY MR. BRIDGES: Q. I'm sorry. Paragraph strike that. Let me ask you to turn paragraph 107 on pages 45 to 46.
2 3 4 5 6 7 8 9	Q. Right. A. That's a possibility, yes. Q. Do you have an understanding as to why persons would want to download a file of a standard instead of viewing it at one of the plaintiffs' reading rooms? A. Not with absolute certainty, but I would imagine downloading would allow	2 3 4 5 6 7 8 9	THE WITNESS: I'm sorry. Page 108 or paragraph? BY MR. BRIDGES: Q. I'm sorry. Paragraph strike that. Let me ask you to turn paragraph 107 on pages 45 to 46. A. Okay. I'm there.
2 3 4 5 6 7 8 9	Q. Right. A. That's a possibility, yes. Q. Do you have an understanding as to why persons would want to download a file of a standard instead of viewing it at one of the plaintiffs' reading rooms? A. Not with absolute certainty, but I would imagine downloading would allow more flexibility in referring to the standard	2 3 4 5 6 7 8	THE WITNESS: I'm sorry. Page 108 or paragraph? BY MR. BRIDGES: Q. I'm sorry. Paragraph strike that.  Let me ask you to turn paragraph 107 on pages 45 to 46. A. Okay. I'm there. Q. I just want to make sure I
2 3 4 5 6 7 8 9 10 11	Q. Right. A. That's a possibility, yes. Q. Do you have an understanding as to why persons would want to download a file of a standard instead of viewing it at one of the plaintiffs' reading rooms? A. Not with absolute certainty, but I would imagine downloading would allow more flexibility in referring to the standard and using it and sharing that information	2 3 4 5 6 7 8 9 10 11	THE WITNESS: I'm sorry. Page 108 or paragraph? BY MR. BRIDGES: Q. I'm sorry. Paragraph strike that. Let me ask you to turn paragraph 107 on pages 45 to 46. A. Okay. I'm there. Q. I just want to make sure I understand your language correctly at the
2 3 4 5 6 7 8 9 10 11 12	Q. Right. A. That's a possibility, yes. Q. Do you have an understanding as to why persons would want to download a file of a standard instead of viewing it at one of the plaintiffs' reading rooms? A. Not with absolute certainty, but I would imagine downloading would allow more flexibility in referring to the standard and using it and sharing that information with others, whereas reading it in through	2 3 4 5 6 7 8 9 10 11 12	THE WITNESS: I'm sorry. Page 108 or paragraph? BY MR. BRIDGES: Q. I'm sorry. Paragraph strike that.  Let me ask you to turn paragraph 107 on pages 45 to 46. A. Okay. I'm there. Q. I just want to make sure I understand your language correctly at the bottom of page 45 and the top of page 46.
2 3 4 5 6 7 8 9 10 11 12 13	Q. Right. A. That's a possibility, yes. Q. Do you have an understanding as to why persons would want to download a file of a standard instead of viewing it at one of the plaintiffs' reading rooms? A. Not with absolute certainty, but I would imagine downloading would allow more flexibility in referring to the standard and using it and sharing that information with others, whereas reading it in through an Internet site is somewhat less flexible,	2 3 4 5 6 7 8 9 10 11 12 13	THE WITNESS: I'm sorry. Page 108 or paragraph? BY MR. BRIDGES: Q. I'm sorry. Paragraph strike that.  Let me ask you to turn paragraph 107 on pages 45 to 46. A. Okay. I'm there. Q. I just want to make sure I understand your language correctly at the bottom of page 45 and the top of page 46.  Is it your opinion that the
2 3 4 5 6 7 8 9 10 11 12 13 14	Q. Right. A. That's a possibility, yes. Q. Do you have an understanding as to why persons would want to download a file of a standard instead of viewing it at one of the plaintiffs' reading rooms? A. Not with absolute certainty, but I would imagine downloading would allow more flexibility in referring to the standard and using it and sharing that information with others, whereas reading it in through an Internet site is somewhat less flexible, provides less flexibility for the use of that	2 3 4 5 6 7 8 9 10 11 12 13	THE WITNESS: I'm sorry. Page 108 or paragraph?  BY MR. BRIDGES: Q. I'm sorry. Paragraph strike that.  Let me ask you to turn paragraph 107 on pages 45 to 46. A. Okay. I'm there. Q. I just want to make sure I understand your language correctly at the bottom of page 45 and the top of page 46.  Is it your opinion that the copyright that the plaintiffs assert in their
2 3 4 5 6 7 8 9 10 11 12 13 14 15	Q. Right. A. That's a possibility, yes. Q. Do you have an understanding as to why persons would want to download a file of a standard instead of viewing it at one of the plaintiffs' reading rooms? A. Not with absolute certainty, but I would imagine downloading would allow more flexibility in referring to the standard and using it and sharing that information with others, whereas reading it in through an Internet site is somewhat less flexible, provides less flexibility for the use of that information.	2 3 4 5 6 7 8 9 10 11 12 13 14 15	THE WITNESS: I'm sorry. Page 108 or paragraph?  BY MR. BRIDGES: Q. I'm sorry. Paragraph strike that.  Let me ask you to turn paragraph 107 on pages 45 to 46. A. Okay. I'm there. Q. I just want to make sure I understand your language correctly at the bottom of page 45 and the top of page 46.  Is it your opinion that the copyright that the plaintiffs assert in their standards drives sales of other publications
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2	Q. Well, doesn't that sentence at	2	rights in their value-added publications?
3	the bottom of 45 and going on to 46 say that	3	MR. FEE: Objection. Vague.
4	copyright on plaintiffs' standards drive	4	THE WITNESS: I would be
5	sales of "handbooks that provide commentary	5	curious to know that, but I'm not sure
6	on the standards by referring to them"?	6	of the significance. I don't think it
7	A. You haven't read	7	would change my conclusions, but I
8	MR. FEE: Objection.	8	would be curious to know that.
9	Mischaracterizes the document.	9	BY MR. BRIDGES:
10	THE WITNESS: You haven't read	10	Q. Do you know whether
11	the whole sentence. I see that	11	incorporation into law drives strike that.
12	sentence to which you refer.	12	Do you know whether
13	BY MR. BRIDGES:	13	incorporation into law of plaintiffs'
14	Q. Right. I know I haven't read	14	standards drives sales of plaintiffs'
15	the whole sentence, but didn't I fairly	15	standards?
16	capture one part of it, which is the sales	16	MR. FEE: Objection to form.
17	of strike that that copyright on	17	Vague.
18	plaintiffs' standards drives sales of, among	18	THE WITNESS: I don't know with
19	other things, "handbooks that provide	19	absolute certainty, but it would make
20	commentary on standards by referring to	20	some sense to me.
21	them"?	21	BY MR. BRIDGES:
22	MR. FEE: Same objection.	22	Q. Is it your understanding that
23	THE WITNESS: I think you have	23	it does?
24	generally paraphrased it accurately,	24	MR. FEE: Same objection.
25		25	THE WITNESS: It would make
23	yes. Page 218	23	Page 220
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1	DILLID DDIDGEG	1	
1	BY MR. BRIDGES:	1	some sense to me, yes.
2	Q. And that plaintiffs' copyright	2	BY MR. BRIDGES:
2 3	Q. And that plaintiffs' copyright protection this is the top of strike	2 3	BY MR. BRIDGES: Q. Are you aware that, in some
2 3 4	Q. And that plaintiffs' copyright protection this is the top of strike that.	2 3 4	BY MR. BRIDGES: Q. Are you aware that, in some instances, at least one plaintiff uses the
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2 3 4 5 6	Q. And that plaintiffs' copyright protection this is the top of strike that.  And turning to the top of page 46, plaintiffs' copyright protection on	2 3 4 5 6	BY MR. BRIDGES: Q. Are you aware that, in some instances, at least one plaintiff uses the legal status of its code to promote the sale of handbooks?
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1	Can you provide a can you	1	Q. What else?
2	put a dollar value, even an estimate, on the	2	A. That's what comes to mind.
3	economic benefit that plaintiffs receive from	3	Q. Anything else?
4	incorporation of their standards into law?	4	A. Not this moment, no. I guess,
5	MR. FEE: Objection to form.	5	potentially, when I think some more about it,
6	THE WITNESS: I have not. And	6	training and seminars, for instance.
7	I'm not sure how one would do that,	7	Q. Providers of training and
8	subject to thinking more about it.	8	seminars?
9	BY MR. BRIDGES:	9	A. Yes. So that's broader than
10	Q. At the top of page 46, you say,	10	value-added publications, but there are
11	"The Plaintiffs' copyright protection on	11	potentially alternative providers of training
12	their privately-developed standards provides	12	and seminars.
13	a competitive advantage with regard to the	13	Q. In paragraph 109, you say, "In
14	sale of these value-added publications as the	14	addition to direct sales of copyrighted
15	copyright protection limits the ability of	15	materials, the Plaintiffs' materials
16	others to sell those publications unless they	16	associated with their privately-developed
17	are unwilling [sic] to compensate the	17	standards provide a competitive advantage
18	Plaintiffs for such use."	18	with regard to the sale of downstream
19	MR. FEE: Objection.	19	ancillary/complementary services and
20	Mischaracterizes the statement.	20	products."
21	BY MR. BRIDGES:	21	Do you see that?
22	Q. Is there something unfair about	22	A. Yes. That's what I had in
23	my characterization of that statement?	23	mind.
24	A. I think you read it wrong. You	24	Q. And who are the competitors you
25	read "willing" to read "unwilling" for some	25	have in mind in paragraph 109?
	Page 222		Page 224
1	reason.	1	A. I don't know particular names,
2	Q. Oh, I'm sorry. Thank you.	2	but at least I don't recall any sitting
3	I'll restate the sentence.	3	right now sitting here right now, but I
			right now sitting here right now, but I
4	"In particular, the Plaintiffs'	4	think there are other providers of these
5	"In particular, the Plaintiffs' copyright protection on their		
l _		4	think there are other providers of these
5 6 7	copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale	4 5 6 7	think there are other providers of these downstream services and products.  Q. And please give me examples of what you're calling "downstream services and
5 6 7	copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the	4 5 6 7 8	think there are other providers of these downstream services and products.  Q. And please give me examples of what you're calling "downstream services and products."
5 6 7 8 9	copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of	4 5 6 7 8 9	think there are other providers of these downstream services and products.  Q. And please give me examples of what you're calling "downstream services and products."  A. Again, seminars and training,
5 6 7 8 9 10	copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they	4 5 6 7 8 9 10	think there are other providers of these downstream services and products.  Q. And please give me examples of what you're calling "downstream services and products."  A. Again, seminars and training, for instance.
5 6 7 8 9 10 11	copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for	4 5 6 7 8 9 10 11	think there are other providers of these downstream services and products.  Q. And please give me examples of what you're calling "downstream services and products."  A. Again, seminars and training, for instance.  Q. Anything else?
5 6 7 8 9 10 11 12	copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for such use."	4 5 6 7 8 9 10 11 12	think there are other providers of these downstream services and products.  Q. And please give me examples of what you're calling "downstream services and products."  A. Again, seminars and training, for instance.  Q. Anything else?  A. That's what comes to mind right
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5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for such use."  Do you see that statement?  A. I do, yes. Q. And the competitive advantage you've identified there, whom do you understand to be the competition?  A. Other potential providers of these so-called value-added publications. Q. And what when you say "value-added publications," please give me more examples of what types of things fall	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	think there are other providers of these downstream services and products.  Q. And please give me examples of what you're calling "downstream services and products."  A. Again, seminars and training, for instance.  Q. Anything else?  A. That's what comes to mind right now.  Q. Turning to paragraph 110, you state, "I understand that the ability to control these downstream products and services is particularly important to the Plaintiffs here because the barriers to entry in the marketplace for downstream products, such as training and user manuals, are relatively low. For example, according to Mr. Comstock of ASHRAE, it is relatively easy
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5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for such use."  Do you see that statement?  A. I do, yes. Q. And the competitive advantage you've identified there, whom do you understand to be the competition?  A. Other potential providers of these so-called value-added publications. Q. And what when you say "value-added publications," please give me more examples of what types of things fall into that category, as you use the term.	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	think there are other providers of these downstream services and products.  Q. And please give me examples of what you're calling "downstream services and products."  A. Again, seminars and training, for instance.  Q. Anything else?  A. That's what comes to mind right now.  Q. Turning to paragraph 110, you state, "I understand that the ability to control these downstream products and services is particularly important to the Plaintiffs here because the barriers to entry in the marketplace for downstream products, such as training and user manuals, are relatively low. For example, according to Mr. Comstock of ASHRAE, it is relatively easy for unauthorized instructors to read a

1	guidance on that standard."	1	Q. You're just parroting what
2	Do you see that?	2	Mr. Comstock said, or did you have an
3	A. I do, yes.	3	independent view?
4	Q. What do you understand what	4	A. No, I heard what he said, and
5	did you mean by "unauthorized instructors"?	5	it made sense to me.
6	A. People that have provided or	6	Q. So you put it in your report?
7	trying to provide services to the marketplace	7	A. Yes.
8	that have not been explicitly approved by,	8	Q. What independent thought or
9	for instance, ASHRAE.	9	investigation did you do before you put that
10	Q. What do you understand the	10	in your report?
11	the nature of strike that.	11	MR. FEE: Objection. Vague.
12	You called them "instructors,"	12	Compound.
13	correct?	13	THE WITNESS: I can't point to
14	A. Yes.	14	anything in particular.
15	Q. Does that mean that you	15	BY MR. BRIDGES:
16	envision that these persons are providing	16	Q. Would a law-school course on
17	some kind of instruction?	17	the law and regulation of building
18	A. Yes.	18	construction provide instruction to law
19	Q. What instruction do you	19	students?
20	understand what instruction did you have	20	MR. FEE: Objection. Vague.
21	in mind when you referred to "unauthorized	21	Calls for speculation.
22	instructors"?	22	THE WITNESS: I guess it could.
23	A. Generally, how best to	23	I have a hard time imagining there
24	implement standards or provisions of certain	24	would be much demand for such a
25	standards.	25	course, but I'm in general agreement
	Page 226		Page 228
1	O. What else?	1	that that, in concept, could occur.
1 2	<ul><li>Q. What else?</li><li>A. Nothing else comes to mind</li></ul>	1 2	that that, in concept, could occur. BY MR. BRIDGES:
2	A. Nothing else comes to mind	2	BY MR. BRIDGES:
1	A. Nothing else comes to mind right now.		BY MR. BRIDGES: Q. Would it be possible to
2 3 4	A. Nothing else comes to mind right now.  Q. Would your understanding of	2 3	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such
2 3 4 5	A. Nothing else comes to mind right now.  Q. Would your understanding of "unauthorized instructors" include persons	2 3 4	BY MR. BRIDGES:  Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some
2 3 4 5 6	A. Nothing else comes to mind right now.  Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what	2 3 4 5	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been
2 3 4 5 6 7	A. Nothing else comes to mind right now.  Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what the standards require?	2 3 4 5 6 7	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been incorporated into law as law and as
2 3 4 5 6 7 8	A. Nothing else comes to mind right now.  Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what the standards require?  MR. FEE: Objection to form.	2 3 4 5 6 7 8	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been incorporated into law as law and as regulation?
2 3 4 5 6 7	A. Nothing else comes to mind right now.  Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what the standards require?	2 3 4 5 6 7	BY MR. BRIDGES:  Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been incorporated into law as law and as regulation?  MR. FEE: Objection. Calls for
2 3 4 5 6 7 8 9 10	A. Nothing else comes to mind right now.  Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what the standards require?  MR. FEE: Objection to form.  Vague.  THE WITNESS: I didn't have	2 3 4 5 6 7 8 9 10	BY MR. BRIDGES:  Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been incorporated into law as law and as regulation?  MR. FEE: Objection. Calls for speculation. Vague. Form.
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2	MR. FEE: Objection. Compound.	2	MR. FEE: Objection. Form.
3	Form. Vague.	3	Compound. Calls for a legal
4	THE WITNESS: I guess, in in	4	conclusion. Vague.
5	concept. I'm having a hard time	5	THE WITNESS: That seems to be
6	imagining that that would, in fact,	6	a legal question. Just as an economic
7	occur at any law school, but it might.	7	proposition or just as a matter of the
8	I somehow doubt that the law professor	8	English language, I would think that
9	would be talking about the substance	9	they might be an unauthorized user but
10	of the standard as opposed to the	10	not an improper user.
11	process or implications of a standard.	11	I don't think they've gotten
12	BY MR. BRIDGES:	12	explicit authorization; therefore,
13	Q. You're not familiar with	13	they're unauthorized. But I'm not
14	courses in construction law?	14	sure if it's illegal for them to refer
15	A. I'm generally aware that there	15	to a standard.
16	are courses in construction law.	16	BY MR. BRIDGES:
17	Q. Is it your view that, for a law	17	Q. What about making copies of the
18	professor to provide a copy of, let's say,	18	standard and furnishing it to students?
19	the National Electrical Code to students for	19	MR. FEE: Same objections.
20	their study would require permission of the	20	THE WITNESS: Same answer.
21	National Fire Protection Association?	21	BY MR. BRIDGES:
22	MR. FEE: Objection. Calls for	22	Q. Do you have any opinion about
23	a legal conclusion.	23	the economic harms that plaintiffs would
24	THE WITNESS: I don't know.	24	suffer if a law professor were to provide
25	That seems to be a legal question. I	25	an a copy of the National Electrical Code
	Page 230		Page 232
1	do not Irnovy	1	to each student in a construction large class
1	do not know.	1	to each student in a construction law class
2	BY MR. BRIDGES:	2	without having purchased those copies?
2 3	BY MR. BRIDGES: Q. Is it your view that a law	2 3	without having purchased those copies?  MR. FEE: Objection.
2 3 4	BY MR. BRIDGES: Q. Is it your view that a law professor who does not get any permission	2 3 4	without having purchased those copies?  MR. FEE: Objection.  Incomplete hypothetical. Form.
2 3 4 5	BY MR. BRIDGES: Q. Is it your view that a law professor who does not get any permission from NFPA or who does not purchase a copy of	2 3 4 5	without having purchased those copies?  MR. FEE: Objection.  Incomplete hypothetical. Form.  You can answer, if you know.
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1	Q. You can't point to any	1	Q. What probability do you assign
2	particular investigation or fact that you're	2	to the likelihood that you refer to in the
3	relying on in paragraphs 117 to 119?	3	first sentence of paragraph 121?
4	MR. FEE: Objection to form.	4	MR. FEE: Objection to form.
5	Asked and answered.	5	Lack of foundation.
6	THE WITNESS: Everything that's	6	THE WITNESS: I don't have a
7	embedded in Exhibit 1 is, in part, a	7	particular quantitative likelihood
8	basis for the observations that I draw	8	measure.
9	in those paragraphs.	9	BY MR. BRIDGES:
10	BY MR. BRIDGES:	10	Q. Can you give an estimate?
11	Q. What probability do you assign	11	MR. FEE: Same objection.
12	to your prediction in the first sentence of	12	THE WITNESS: No.
13	paragraph 119?	13	BY MR. BRIDGES:
14	MR. FEE: Objection. Form.	14	Q. Turning to paragraph 126, you
15	Lack of foundation.	15	refer to an "option available to Plaintiffs
16	THE WITNESS: I'm not sure that	16	to respond to the loss of protection for
17	I've used the term "prediction," but I	17	incorporated standards."
18	wouldn't assign a particular	18	Is it your belief that, if the
19	quantitative probability.	19	plaintiffs lose this case, they will shut
20	BY MR. BRIDGES:	20	down their creation of new standards?
21	Q. Can you give an estimate?	21	A. I think that's a possibility.
22	A. No.	22	Q. What probability do you assign
23	Q. Why not?	23	to that?
24	A. I don't have a basis for that	24	MR. FEE: Objection to form.
25	estimate. I have reasoning underlying it,	25	Lack of foundation.
	Page 234		Page 236
1	but I don't have a basis to provide a	1	THE WITNESS: I don't have a
2	quantitative estimate of my level of	2	particular quantitative measure of
3	confidence.	3	probability for that.
4	Q. You refer to "uncertainties" in	4	BY MR. BRIDGES:
5	the second sentence of paragraph 119,	5	Q. What's your best estimate?
6	correct?	6	MR. FEE: Same objection.
7	A. I do, yes.	7	THE WITNESS: I don't have a
8	Q. What probability do you assign	8	quantitative best estimate.
9	to the likelihood that you refer to with the		BY MR. BRIDGES:
10	word "likely" in the first sentence of	10	Q. Is it more or less than
11	paragraph 120?	11	50 percent?
12	MR. FEE: Objection. Form.	12	MR. FEE: Same objections.
13	Lack of foundation.	13	THE WITNESS: I still don't
14	THE WITNESS: I don't have a	14	have a quantitative estimate.
15	particular quantitative measure of	15	BY MR. BRIDGES:
16	that. And are you referring to my use	16	Q. Is it more or less than
17	of the term "likely"?	17	80 percent?
18	BY MR. BRIDGES:	18	MR. FEE: Same objections.
19	Q. Yes.	19	THE WITNESS: Still don't have
20	A. Yes, I don't have a particular	20	a quantitative estimate.
21	quantification of that.	21	BY MR. BRIDGES:
22	Q. What particular facts are you	22	Q. Is it more or less than
23	relying on for that paragraph?	23	5 percent?
24	A. Everything that you see	24	MR. FEE: Same objections.
	reported in Exhibit 1.	25	THE WITNESS: Still don't have
	Page 235		Page 237

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a quantitative estimate. I think that
                                                     1 to see what alternatives there are among
 1
2
        there -- with reasonable probability I
                                                       standards development organizations currently
 3
        can draw this conclusion, but I can't
                                                     3 in existence to carry forward the work of
                                                       plaintiffs if plaintiffs chose to stop
        be any more precise than that.
 4
                                                       standards development as a result of the loss
 5
   BY MR. BRIDGES:
                                                       of this case?
             What do you mean, "with
6
                                                     6
 7
   reasonable probability"?
                                                     7
                                                                MR. FEE: Same objection.
             Based on the information that I
                                                     8
                                                                THE WITNESS: Not that I
8
   have and the training and logic I bring to
                                                     9
                                                            recall, but I am of the understanding
   it, I think there is a -- I say with some
                                                            that each SDO has a different charter,
10
                                                    10
   confidence what I have said here.
                                                            so I don't know that any SDO has an
11
                                                    11
12
             And when you say "likely," do
                                                    12
                                                            identical charter to that of any of
13 you mean more than 50 percent likely?
                                                    13
                                                            the three plaintiffs.
14
        A. Not necessarily, no.
                                                   14 BY MR. BRIDGES:
             Are you aware of other
15
        Q.
                                                   15
                                                                 Are you aware that these
16 standards development organizations active in
                                                   16
                                                       plaintiffs compete with other SDOs in the
    the same field as the plaintiffs?
                                                       creation of standards in particular fields?
17
                                                    17
            MR. FEE: Objection. Vague.
                                                                MR. FEE: Objection to form.
18
                                                   18
19
                                                   19
                                                            Vague.
20
            THE WITNESS: Perhaps you could
                                                   20
                                                                THE WITNESS: What do you mean
        tell me what you have in mind with
                                                   21
                                                            by the term "compete with" in this
21
        your use of the term "fields."
22
                                                   22
                                                            context?
23 BY MR. BRIDGES:
                                                   23
                                                       BY MR. BRIDGES:
24
             Well, are you familiar with
                                                   24
                                                            Q. That they consider others
        O.
25 AHRI?
                                                   25 rivals for the same market, in part.
                                           Page 238
                                                                                               Page 240
        A.
             I have perhaps seen reference
                                                     1
                                                                MR. FEE: Objection to form.
1
 2
   to that.
                                                     2
                                                            Vague.
 3
             Do you know with which of these
                                                     3
                                                                THE WITNESS: I don't recall
        O.
   plaintiffs it -- do you -- do you know what
                                                            seeing reference to that, but my
                                                     4
                                                     5
                                                            memory is not perfect.
 5
   field it's in?
        A. I don't recall, sitting here
                                                       BY MR. BRIDGES:
                                                     6
   right now, no.
                                                     7
                                                                 The -- in paragraph 131, you
                                                       say, "Simply put, freely-distributed,
 8
             Are you familiar with NFRC?
        Q.
             I may have seen reference to
                                                       unrestricted versions of Plaintiffs'
9
        A.
                                                    10 standards that are or could be incorporated
10
   that acronym.
11
        Q.
             Do you know what field it's in?
                                                   11 by reference can be expected to adversely
             Not sitting here right now.
                                                    12 impact the market for Plaintiffs' standards
12
        A.
        Q. Are you familiar with ICC?
                                                    13 that are incorporated by reference and to
13
             I have seen reference to that.
                                                   14 displace sales of these standards by the
14
        A.
15 I don't recall what it is, sitting here now.
                                                      Plaintiffs - which can be expected to have a
             Do you know whether other
16
                                                       material adverse effect on Plaintiffs'
17 standards developments organizations would be 17
                                                       revenues."
18 in a position to step forward and to continue
                                                   18
                                                                Do you see that?
    the maintenance and preservation and further
                                                   19
                                                                Yes.
                                                            A.
   development of the standards of plaintiffs
                                                                 By "expected," do you mean more
                                                   20
21
   here if plaintiffs lose this case?
                                                   21
                                                       than 50 percent likely?
            MR. FEE: Objection to form.
                                                                 Not necessarily. I don't have
22
                                                   22
23
            THE WITNESS: I don't know.
                                                   23
                                                       a quantitative assessment of what I mean by
24 BY MR. BRIDGES:
                                                   24
                                                        "expected."
25
        Q. Have you done any investigation
                                                   25
                                                            Q. Do you mean more than 5 percent
                                           Page 239
                                                                                               Page 241
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1	likely?	1	Q. Do you consider \$100,000 to be
2	A. I haven't quantified that, but	2	material as an adverse effect on plaintiffs'
3	I would expect that it's more than	3	revenues?
4	5 percent would be a reasonable definition of	4	MR. FEE: Objection to form.
5	"expected."	5	Compound.
6	Q. More than 10 percent?	6	THE WITNESS: I haven't
7	A. I don't know. I've not	7	considered that question. I don't
8	quantified that number.	8	know the answer to it.
9	Q. And what amount of an effect on	9	BY MR. BRIDGES:
10	plaintiffs' revenues have you identified as	10	Q. Have you considered whether
11	"material"?	11	50,000 is a material amount as an adverse
12	A. I haven't	12	effect on plaintiffs' revenues?
13	MR. FEE: Objection to form.	13	MR. FEE: Same objections.
14	THE WITNESS: been able to	14	THE WITNESS: Same answer.
15	quantify the specific effects, so I	15	BY MR. BRIDGES:
16	don't know the amount.	16	
	BY MR. BRIDGES:		Q. Starting at page sorry. Strike that.
17		17	
18	Q. Well, what I'm not asking	18	Starting at paragraph 139, you
19	for your quantification of a specific effect,	19	make several references to Mr. Malamud's
20	but how large would an effect have to be for	20	theory.
21	to you consider it "a material adverse effect	21	A. I'm sorry. To I missed a
22	on Plaintiffs' remedies"?	22	word that you said. References to his what?
23	MR. FEE: Objection to form.	23	Q. To Mr. Malamud's theory
24	THE WITNESS: I don't know that	24	A. Okay.
25	I have a particular quantitative	25	Q T-H-E-O-R-Y. You refer to
	Page 242		Page 244
1	guideline in mind.	1	it in paragraph 139; 140; 144, with the word
2	BY MR. BRIDGES:	2	"theorized"; 145, "theory"; 146, "theory."
3	Q. Have you ever are you	3	What facts do you have that
4	familiar with audit inquiry letters regarding	4	have disproved the theory in paragraph 139?
5	litigation?	5	A. Perhaps most important is the
6	A. Generally, yes.	6	revealed preference information. If the
7	Q. And you're familiar with the	7	plaintiffs believed they were better off by
8	fact that auditors will often specify to	8	lack of copyright protection, they would have
9	those they send the letters to what amounts		pursued such a model.
10	would be material for purposes of the audit	10	They don't believe they're
11	response?	11	better off. Moreover, they're expending
12	response.		
	$\Lambda$ Ves	12	tremendous resources in bringing and nursuing
	A. Yes.	12	tremendous resources in bringing and pursuing
13	Q. So you understand the concept	13	this litigation to halt the activity at
13 14	Q. So you understand the concept of certain amounts being material to certain	13 14	this litigation to halt the activity at issue.
13 14 15	Q. So you understand the concept of certain amounts being material to certain companies or entities?	13 14 15	this litigation to halt the activity at issue.  Q. What other facts, if any, do
13 14 15 16	Q. So you understand the concept of certain amounts being material to certain companies or entities?  A. Yes, for certain purposes.	13 14 15 16	this litigation to halt the activity at issue.  Q. What other facts, if any, do you have that have disproved Mr. Malamud's
13 14 15 16 17	<ul> <li>Q. So you understand the concept</li> <li>of certain amounts being material to certain</li> <li>companies or entities?</li> <li>A. Yes, for certain purposes.</li> <li>Q. So I'd like to know what amount</li> </ul>	13 14 15 16 17	this litigation to halt the activity at issue.  Q. What other facts, if any, do you have that have disproved Mr. Malamud's theory in paragraph 139?
13 14 15 16 17 18	Q. So you understand the concept of certain amounts being material to certain companies or entities?  A. Yes, for certain purposes.  Q. So I'd like to know what amount you have identified as being material as an	13 14 15 16 17 18	this litigation to halt the activity at issue.  Q. What other facts, if any, do you have that have disproved Mr. Malamud's theory in paragraph 139?  A. That's what comes to mind right
13 14 15 16 17 18 19	Q. So you understand the concept of certain amounts being material to certain companies or entities?  A. Yes, for certain purposes.  Q. So I'd like to know what amount you have identified as being material as an adverse effect on plaintiffs' revenues for	13 14 15 16 17 18 19	this litigation to halt the activity at issue.  Q. What other facts, if any, do you have that have disproved Mr. Malamud's theory in paragraph 139?  A. That's what comes to mind right now.
13 14 15 16 17 18 19 20	Q. So you understand the concept of certain amounts being material to certain companies or entities?  A. Yes, for certain purposes. Q. So I'd like to know what amount you have identified as being material as an adverse effect on plaintiffs' revenues for each of the three plaintiffs, please.	13 14 15 16 17 18 19 20	this litigation to halt the activity at issue.  Q. What other facts, if any, do you have that have disproved Mr. Malamud's theory in paragraph 139?  A. That's what comes to mind right now.  Q. What facts do you have or are
13 14 15 16 17 18 19 20 21	Q. So you understand the concept of certain amounts being material to certain companies or entities?  A. Yes, for certain purposes.  Q. So I'd like to know what amount you have identified as being material as an adverse effect on plaintiffs' revenues for each of the three plaintiffs, please.  MR. FEE: Objection. Compound.	13 14 15 16 17 18 19 20 21	this litigation to halt the activity at issue.  Q. What other facts, if any, do you have that have disproved Mr. Malamud's theory in paragraph 139?  A. That's what comes to mind right now.  Q. What facts do you have or are you aware of that have disproved
13 14 15 16 17 18 19 20 21 22	Q. So you understand the concept of certain amounts being material to certain companies or entities?  A. Yes, for certain purposes.  Q. So I'd like to know what amount you have identified as being material as an adverse effect on plaintiffs' revenues for each of the three plaintiffs, please.  MR. FEE: Objection. Compound. Asked and answered.	13 14 15 16 17 18 19 20 21 22	this litigation to halt the activity at issue.  Q. What other facts, if any, do you have that have disproved Mr. Malamud's theory in paragraph 139?  A. That's what comes to mind right now.  Q. What facts do you have or are you aware of that have disproved Mr. Malamud's theory as you refer to it in
13 14 15 16 17 18 19 20 21 22 23	Q. So you understand the concept of certain amounts being material to certain companies or entities?  A. Yes, for certain purposes. Q. So I'd like to know what amount you have identified as being material as an adverse effect on plaintiffs' revenues for each of the three plaintiffs, please.  MR. FEE: Objection. Compound.  Asked and answered.  THE WITNESS: I have not	13 14 15 16 17 18 19 20 21 22 23	this litigation to halt the activity at issue.  Q. What other facts, if any, do you have that have disproved Mr. Malamud's theory in paragraph 139?  A. That's what comes to mind right now.  Q. What facts do you have or are you aware of that have disproved Mr. Malamud's theory as you refer to it in paragraph 140?
13 14 15 16 17 18 19 20 21 22 23 24	Q. So you understand the concept of certain amounts being material to certain companies or entities?  A. Yes, for certain purposes. Q. So I'd like to know what amount you have identified as being material as an adverse effect on plaintiffs' revenues for each of the three plaintiffs, please.  MR. FEE: Objection. Compound.  Asked and answered.  THE WITNESS: I have not considered a particular amount.	13 14 15 16 17 18 19 20 21 22 23 24	this litigation to halt the activity at issue.  Q. What other facts, if any, do you have that have disproved Mr. Malamud's theory in paragraph 139?  A. That's what comes to mind right now.  Q. What facts do you have or are you aware of that have disproved Mr. Malamud's theory as you refer to it in paragraph 140?  A. That's the same theory that's
13 14 15 16 17 18 19 20 21 22 23	Q. So you understand the concept of certain amounts being material to certain companies or entities?  A. Yes, for certain purposes. Q. So I'd like to know what amount you have identified as being material as an adverse effect on plaintiffs' revenues for each of the three plaintiffs, please.  MR. FEE: Objection. Compound.  Asked and answered.  THE WITNESS: I have not	13 14 15 16 17 18 19 20 21 22 23	this litigation to halt the activity at issue.  Q. What other facts, if any, do you have that have disproved Mr. Malamud's theory in paragraph 139?  A. That's what comes to mind right now.  Q. What facts do you have or are you aware of that have disproved Mr. Malamud's theory as you refer to it in paragraph 140?

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1 new in terms of a theory.
                                                       rest of that paragraph?
        Q. Do you have the same answer
                                                                MR. FEE: Objection. Vague.
 2
                                                     2
                                                     3
                                                                THE WITNESS: I looked at the
 3
    with respect to -- strike that.
            What facts do you have --
                                                     4
 4
                                                            financial information, and I talked to
                                                     5
 5
                                                            people at the various plaintiffs.
   strike that.
                                                       BY MR. BRIDGES:
            What facts are you aware of to
                                                     6
 6
   disprove -- to disprove Mr. Malamud's theory
                                                     7
                                                            Q. You talked to people at the
    that you refer to in paragraph 144?
                                                       various plaintiffs?
                                                     8
        A. Again, it's the same theory
 9
                                                     9
                                                            A.
                                                                 Yes.
10 that's being referenced, but there's
                                                    10
                                                                 What did you do to verify the
                                                            Q.
   additional facts; and that is, the downstream
                                                        truth and accuracy of the things that various
12 products and services aren't particularly
                                                        plaintiffs said to you in their
13 substantial to these plaintiffs and don't
                                                        conversations?
                                                    13
14 appear to be enhanced by a lack of copyright
                                                    14
                                                                MR. FEE: Objection to form.
15 protection; that is, the plaintiffs have had
                                                                THE WITNESS: I looked at the
                                                    15
16 copyright protection and have said -- had
                                                    16
                                                            financial information, and I kept my
17 some downstream products and services. It's
                                                    17
                                                            eyes and mind open to the information
18 hard to imagine that elimination of that
                                                            in the rest of the record to determine
                                                    18
19 copyright protection will enhance that
                                                    19
                                                            if it conflicted with what I learned
20 business.
                                                            from the company personnel.
                                                   20
21
                                                        BY MR. BRIDGES:
        Q. It's hard to imagine, but are
                                                   21
22 you aware of any studies to disprove
                                                   22
                                                                 Whose financial information did
23 Mr. Malamud's theory?
                                                   23
                                                        you look at?
24
                                                    24
                                                                 All three of the plaintiffs.
        A.
             No.
                                                            A.
25
            MR. FEE: Objection. Vague.
                                                    25 It's summarized in tabs 3, 4, and 5.
                                           Page 246
                                                                                                Page 248
            THE WITNESS: I'm sorry.
                                                     1
                                                                 Did you look at the financial
 1
                                                            O.
    BY MR. BRIDGES:
                                                        information of any entities other than the
 3
        Q. Have you conducted any studies
                                                     3
                                                        plaintiffs?
    to disprove Mr. Malamud's theory?
                                                     4
 4
                                                            A.
                                                                 I looked at Public Resource
            MR. FEE: Same objection.
                                                     5
 5
                                                       financial information.
            THE WITNESS: Not other than
                                                                 Apart from Public Resource and
 6
                                                     6
 7
        what's reflected here in Exhibit 1.
                                                       the plaintiffs, did you look at the financial
                                                       information of any other entities in making
    BY MR. BRIDGES:
 8
             What academic literature have
                                                        the assertions that you made in
10 you relied upon to criticize Mr. Malamud's
                                                    10
                                                        paragraph 145?
                                                            A. Not in undertaking my
11 theory in paragraph 144?
                                                    11
12
             Nothing specific comes to mind.
                                                       assignment here.
                                                    12
             In paragraph 145, you state
                                                                Did you consider the business
13
                                                    13
                                                       models of any entities other than the
14 that, "Mr. Malamud's suggestion that the sale
                                                    14
15 of downstream products and services
                                                        plaintiffs and the defendant in making the
16 represents an untapped and undeveloped
                                                       statements criticizing Mr. Malamud's theory
    opportunity for the Plaintiffs is incorrect."
                                                       in paragraph 145?
17
                                                    17
18
            Do you see that?
                                                    18
                                                            A. Nothing in particular comes to
             Yes, I do.
                                                        mind. I understand that there are
19
                                                    19
        A.
20
             And then you go on and make
                                                        front-loaded business models, but -- at DIN,
    some statements for the rest of the
                                                        for instance, but I don't recall undertaking
    paragraph, correct?
22
                                                        an investigation of the downstream activities
23
        A.
             Yes.
                                                   23
                                                       that they have.
                                                    24
24
             What studies did you engage in
                                                            Q. Did you undertake any
        Q.
25 to determine the facts that you stated in the
                                                    25 investigation of downstream activities of
                                           Page 247
                                                                                               Page 249
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1	other US-based standards development	1	unable to quantify that with great
2	organizations that make their standards	2	accuracy.
3	freely available to the public?	3	BY MR. BRIDGES:
4	A. Not that I recall.	4	Q. Have you considered any
5	Q. Would that have been relevant	5	comparable circumstances apart from this case
6	to your analysis?	6	that would provide guidance for your
7	A. It wasn't necessary to do my	7	prediction in the last sentence of
8	analysis, but I would be curious if I had that information. If I if I had the	8	paragraph 146?
9		9	MR. FEE: Objection to form.
10	ability to examine that information, I would be curious as to what that shows.	10 11	Vague.
11 12		12	THE WITNESS: I kept my mind
13	Q. In paragraph 146, you state, "The loss of publications here will likely	13	and eyes open to that, but I didn't see information of a good comparator.
14	reduce the Plaintiffs' sales of those	14	BY MR. BRIDGES:
15	downstream products and services."	15	Q. Did you research whether there
16	Do you see that?	16	might be good comparators?
17	MR. FEE: That's in 146?	17	A. I
18	THE WITNESS: Is that the last	18	MR. FEE: Same objection.
19	sentence you were reading from?	19	THE WITNESS: I did in the
20	BY MR. BRIDGES:	20	sense of reading through the
21	Q. Yes.	21	literature and information to see if I
22	A. Yeah.	22	could learn of something that would be
23	Q. Paragraph 146.	23	a good comparator, but I didn't learn
24	A. Yes, I do see that.	24	of such comparator.
25	Q. Did you mean the loss of	25	BY MR. BRIDGES:
	Page 250		Page 252
1	copyright in the publications here?	1	O. You looked only at the
1 2	copyright in the publications here?  A. Certainly the loss of	1 2	Q. You looked only at the information shown in tab 2 to Exhibit 1?
2	A. Certainly the loss of		information shown in tab 2 to Exhibit 1?
	A. Certainly the loss of publications, but I believe it would probably	2	information shown in tab 2 to Exhibit 1?
2 3	A. Certainly the loss of	2 3	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right.
2 3 4	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the	2 3 4	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right.  Q. What economic effect are you
2 3 4 5	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the	2 3 4 5	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right.  Q. What economic effect are you aware of to the Blu-ray Disc Association from
2 3 4 5 6	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.	2 3 4 5	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right.  Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its
2 3 4 5 6 7 8 9	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.  Q. What probability do you assign	2 3 4 5 6 7	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.
2 3 4 5 6 7 8 9	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.  Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form.	2 3 4 5 6 7 8	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the
2 3 4 5 6 7 8 9 10 11	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.  Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form.  Lack of foundation.	2 3 4 5 6 7 8 9 10 11	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right.  Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the answer to that question or undertaking that
2 3 4 5 6 7 8 9 10 11 12	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.  Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form.  Lack of foundation.  THE WITNESS: I haven't	2 3 4 5 6 7 8 9 10 11 12	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the answer to that question or undertaking that evaluation.
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2 3 4 5 6 7 8 9 10 11 12 13 14	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.  Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form.  Lack of foundation.  THE WITNESS: I haven't assigned a quantitative probability to that.	2 3 4 5 6 7 8 9 10 11 12 13 14	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right.  Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize. Nonetheless, I don't recall knowing the answer to that question or undertaking that evaluation.  Q. Did Blu-ray Disc Association go out of business?
2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.  Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form.  Lack of foundation.  THE WITNESS: I haven't assigned a quantitative probability to that.  BY MR. BRIDGES:	2 3 4 5 6 7 8 9 10 11 12 13 14 15	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right.  Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the answer to that question or undertaking that evaluation.  Q. Did Blu-ray Disc Association go out of business?  A. I don't think it's out of
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.  Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form.  Lack of foundation.  THE WITNESS: I haven't assigned a quantitative probability to that.  BY MR. BRIDGES: Q. Have you any estimate?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the answer to that question or undertaking that evaluation.  Q. Did Blu-ray Disc Association go out of business?  A. I don't think it's out of business, no.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here. Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form. Lack of foundation.  THE WITNESS: I haven't assigned a quantitative probability to that.  BY MR. BRIDGES: Q. Have you any estimate? MR. FEE: Same objections.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the answer to that question or undertaking that evaluation.  Q. Did Blu-ray Disc Association go out of business?  A. I don't think it's out of business, no. Q. Has it suffered material harm,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here. Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form. Lack of foundation.  THE WITNESS: I haven't assigned a quantitative probability to that.  BY MR. BRIDGES: Q. Have you any estimate? MR. FEE: Same objections. THE WITNESS: I do not.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right.  Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the answer to that question or undertaking that evaluation.  Q. Did Blu-ray Disc Association go out of business?  A. I don't think it's out of business, no.  Q. Has it suffered material harm, to your knowledge, because of unrestricted
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.  Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form. Lack of foundation.  THE WITNESS: I haven't assigned a quantitative probability to that.  BY MR. BRIDGES: Q. Have you any estimate? MR. FEE: Same objections. THE WITNESS: I do not.  BY MR. BRIDGES:	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right.  Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the answer to that question or undertaking that evaluation.  Q. Did Blu-ray Disc Association go out of business?  A. I don't think it's out of business, no.  Q. Has it suffered material harm, to your knowledge, because of unrestricted access to its standard publications for free?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.  Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form.  Lack of foundation.  THE WITNESS: I haven't assigned a quantitative probability to that.  BY MR. BRIDGES:  Q. Have you any estimate?  MR. FEE: Same objections.  THE WITNESS: I do not.  BY MR. BRIDGES: Q. Have you any estimate as to the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the answer to that question or undertaking that evaluation.  Q. Did Blu-ray Disc Association go out of business?  A. I don't think it's out of business, no.  Q. Has it suffered material harm, to your knowledge, because of unrestricted access to its standard publications for free?  A. I don't know.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here. Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form. Lack of foundation.  THE WITNESS: I haven't assigned a quantitative probability to that.  BY MR. BRIDGES: Q. Have you any estimate?  MR. FEE: Same objections.  THE WITNESS: I do not.  BY MR. BRIDGES: Q. Have you any estimate as to the magnitude of the likely reduction of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the answer to that question or undertaking that evaluation.  Q. Did Blu-ray Disc Association go out of business?  A. I don't think it's out of business, no. Q. Has it suffered material harm, to your knowledge, because of unrestricted access to its standard publications for free?  A. I don't know. Q. Do you believe that, on the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here. Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form. Lack of foundation.  THE WITNESS: I haven't assigned a quantitative probability to that.  BY MR. BRIDGES: Q. Have you any estimate? MR. FEE: Same objections. THE WITNESS: I do not.  BY MR. BRIDGES: Q. Have you any estimate as to the magnitude of the likely reduction of plaintiffs' sales of downstream products and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the answer to that question or undertaking that evaluation.  Q. Did Blu-ray Disc Association go out of business?  A. I don't think it's out of business, no. Q. Has it suffered material harm, to your knowledge, because of unrestricted access to its standard publications for free?  A. I don't know. Q. Do you believe that, on the theory of revealed preference, Blu-ray Disc
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.  Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form.  Lack of foundation.  THE WITNESS: I haven't assigned a quantitative probability to that.  BY MR. BRIDGES:  Q. Have you any estimate?  MR. FEE: Same objections.  THE WITNESS: I do not.  BY MR. BRIDGES:  Q. Have you any estimate as to the magnitude of the likely reduction of plaintiffs' sales of downstream products and services?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the answer to that question or undertaking that evaluation.  Q. Did Blu-ray Disc Association go out of business?  A. I don't think it's out of business, no.  Q. Has it suffered material harm, to your knowledge, because of unrestricted access to its standard publications for free?  A. I don't know. Q. Do you believe that, on the theory of revealed preference, Blu-ray Disc Association has determined that unrestricted
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.  Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form.  Lack of foundation.  THE WITNESS: I haven't assigned a quantitative probability to that.  BY MR. BRIDGES:  Q. Have you any estimate?  MR. FEE: Same objections.  THE WITNESS: I do not.  BY MR. BRIDGES:  Q. Have you any estimate as to the magnitude of the likely reduction of plaintiffs' sales of downstream products and services?  MR. FEE: Same objections.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the answer to that question or undertaking that evaluation.  Q. Did Blu-ray Disc Association go out of business?  A. I don't think it's out of business, no. Q. Has it suffered material harm, to your knowledge, because of unrestricted access to its standard publications for free?  A. I don't know. Q. Do you believe that, on the theory of revealed preference, Blu-ray Disc Association has determined that unrestricted access to its standard publications for free
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.  Q. What probability do you assign to the likelihood that you refer to in that sentence?  MR. FEE: Objection to form.  Lack of foundation.  THE WITNESS: I haven't assigned a quantitative probability to that.  BY MR. BRIDGES:  Q. Have you any estimate?  MR. FEE: Same objections.  THE WITNESS: I do not.  BY MR. BRIDGES:  Q. Have you any estimate as to the magnitude of the likely reduction of plaintiffs' sales of downstream products and services?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	information shown in tab 2 to Exhibit 1?  A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free?  A. I don't know. I thought you had asked that earlier. If not, I apologize.  Nonetheless, I don't recall knowing the answer to that question or undertaking that evaluation.  Q. Did Blu-ray Disc Association go out of business?  A. I don't think it's out of business, no.  Q. Has it suffered material harm, to your knowledge, because of unrestricted access to its standard publications for free?  A. I don't know. Q. Do you believe that, on the theory of revealed preference, Blu-ray Disc Association has determined that unrestricted

1	A. Yes. It's a different entity	1	MR. FEE: Objection. Lack of
2	than the SDOs here; but for its purposes, it	2	foundation. Vague.
3	would appear that it's of the belief that	3	THE WITNESS: I'm not I'm
4	that's the optimal path to follow.	4	not sure that I understand the concept
5	MR. BRIDGES: I think I	5	of a standard being out of print, so
6	think we may pause things now and	6	maybe you could help me with that.
7	reserve the remainder of our time.	7	BY MR. BRIDGES:
8	Just a second. Oh, yes.	8	Q. Do you know the term "out of
9	BY MR. BRIDGES:	9	print"?
10	Q. Do you believe that the	10	A. Generally, I do, yes.
11	plaintiffs are harmed when the defendant	11	Q. What do you understand it to
12	posts a standard that has been incorporated	12	mean?
13	by reference let me strike that.	13	
14	· ·		<b>U</b> 1
	Do you believe that plaintiffs	14	print form.
15	suffer harm from defendant posting a standard	15	Q. All right. So what harm do you
16	that is not the latest version of the	16	understand plaintiffs would suffer if
17	standard?	17	defendants posted a standard that is out of
18	MR. FEE: Objection. Form.	18	print?
19	Compound.	19	MR. FEE: Objection to form.
20	THE WITNESS: Potentially, it	20	THE WITNESS: Potentially, it
21	could cause confusion in the	21	could be the harm similar to outdated
22	marketplace as to what's the latest	22	standards.
23	standard, and there may be some	23	BY MR. BRIDGES:
24	entities out there that are interested	24	Q. In other words, confusion in
25	in obtaining an earlier standard that	25	the marketplace?
	Page 254		Page 256
	1 450 20 1		
1	would be obtaining it free rather than	1	A. Potential confusion in the
1 2	<del>-</del>	1 2	
	would be obtaining it free rather than	_	A. Potential confusion in the
2	would be obtaining it free rather than through the legal routes established	2	A. Potential confusion in the marketplace and potentially providing yes,
2 3	would be obtaining it free rather than through the legal routes established by the plaintiffs. BY MR. BRIDGES:	2 3	A. Potential confusion in the marketplace and potentially providing yes, that that would be one form of it.  Q. What other harms do would
2 3 4	would be obtaining it free rather than through the legal routes established by the plaintiffs.  BY MR. BRIDGES: Q. Have you done any studies to	2 3 4	A. Potential confusion in the marketplace and potentially providing yes, that that would be one form of it.  Q. What other harms do would you identify from the defendants posting a
2 3 4 5	would be obtaining it free rather than through the legal routes established by the plaintiffs.  BY MR. BRIDGES: Q. Have you done any studies to determine what confusion may be likely in the	2 3 4 5	A. Potential confusion in the marketplace and potentially providing yes, that that would be one form of it.  Q. What other harms do would you identify from the defendants posting a standard that is out of print?
2 3 4 5 6 7	would be obtaining it free rather than through the legal routes established by the plaintiffs.  BY MR. BRIDGES:  Q. Have you done any studies to determine what confusion may be likely in the marketplace in that regard?	2 3 4 5 6 7	A. Potential confusion in the marketplace and potentially providing yes, that that would be one form of it.  Q. What other harms do would you identify from the defendants posting a standard that is out of print?  A. Nothing else comes to mind this
2 3 4 5 6 7 8	would be obtaining it free rather than through the legal routes established by the plaintiffs.  BY MR. BRIDGES:  Q. Have you done any studies to determine what confusion may be likely in the marketplace in that regard?  MR. FEE: Objection to form.	2 3 4 5 6 7 8	A. Potential confusion in the marketplace and potentially providing yes, that that would be one form of it.  Q. What other harms do would you identify from the defendants posting a standard that is out of print?  A. Nothing else comes to mind this moment, but there could be other things
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1	not thought about that particular	1 CERTIFICATE
2	topic.	I do hereby certify that I am a Notary
3	MR. BRIDGES: Okay. I think	Public in good standing, that the aforesaid testimony was taken before me, pursuant to
4	we'll pause here and reserve the rest	4 notice, at the time and place indicated; that
5	of the time for a later visit with	said deponent was by me duly sworn to tell
6	you, Mr. Jarosz.	5 the truth, the whole truth, and nothing but the truth; that the testimony of said
7	Kevin, this is in reliance on	6 deponent was correctly recorded in machine
8	an exchange of correspondence between	shorthand by me and thereafter transcribed
9	Matt and you, I believe. If, for some	7 under my supervision with computer-aided transcription; that the deposition is a true
10	reason well, no. I think that's	8 and correct record of the testimony given by
11	all.	the witness; and that I am neither of counsel  nor kin to any party in said action, nor
12	Anything else?	interested in the outcome thereof
13	MR. FEE: Well, I don't have	10 WITNESS my hand and official seal this
14	any questions.	WITNESS my hand and official seal this 11 11th day of September, 2015
15	Do you guys have any questions?	12
16	MR. REHN: Not at this time.	13 14
17	MR. CUNNINGHAM: No.	<%signature%>
18	MR. BRIDGES: Great. Thank	15 Leouis Leouau, ADR, CRR Notary Public
19	you.	16
20	THE WITNESS: Thank you.	17
21	THE VIDEOGRAPHER: All right.	18 19
22	Off the record at 4:31. This ends	20
23	media unit number 3 and ends testimony	21 22
24	for August 27th, 2015.	23
25	* * *	24 25
23	Page 258	Page 260
1	(Witness excused.)	
2	* * *	
3	(Off the record at 4:31 p.m.)	
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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.