

EXHIBIT 3

Malamud, Carl (Confidential) 02-27-2015

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR TESTING AND
MATERIALS D/B/A ASTM INTERNATIONAL;
NATIONAL FIRE PROTECTION, INC.;
AND AMERICAN SOCIETY OF HEATING,
REFRIGERATING, AND AIR-CONDITIONING
ENGINEERS, INC.

Plaintiffs, /
Counter-Defendants, Case No.:

vs. 1:13-cv-01215-EGS

PUBLIC.RESOURCE.ORG, INC.

Defendant/
Counter-Plaintiff

----- /
-HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY-
VIDEOTAPED DEPOSITION OF CARL MALAMUD

DATE: Thursday, February 27, 2015

TIME: 9:11 a.m.

LOCATION: 1 Market Street, Spear Tower, Suite
2000, San Francisco, California

Reported by: Ashley Soevyn
Certified Shorthand Reporter
License Number 12019

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1 Q Okay. When -- do you recall the first 9:16:05AM
2 time you saw an ASTM logo? 9:16:07AM

3 A No. 9:16:10AM

4 Q Do you acknowledge that the ASTM logo has 9:16:12AM
5 been used in connection with standards for at least 9:16:15AM
6 a decade? 9:16:19AM

7 MR. BRIDGES: Objection, calls for a
8 conclusion, lacks foundation, assumes facts not in 9:16:21AM
9 evidence, vague and ambiguous. 9:16:24AM

10 THE WITNESS: I don't know. 9:16:27AM

11 BY MR. FEE: 9:16:27AM

12 Q Do you acknowledge that the ASTM name is
13 well-known name? 9:16:30AM

14 MR. BRIDGES: All the same objections and 9:16:31AM
15 argumentative. 9:16:34AM

16 THE WITNESS: American Society of Testing 9:16:36AM
17 and Materials is certainly well-known to me. 9:16:37AM

18 BY MR. FEE: 9:16:40AM

19 Q Is the ASTM abbreviation also well-known 9:16:41AM
20 to you? 9:16:45AM

21 MR. BRIDGES: Objection, all the same 9:16:46AM
22 objections. 9:16:47AM

23 THE WITNESS: It's known to me yes. 9:16:48AM

24 BY MR. FEE: 9:16:51AM

25 Q Do you recall when you first encountered 9:16:53AM

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1 any NFPA trademark? 9:16:54AM
2 MR. BRIDGES: All the same objections. 9:16:57AM
3 THE WITNESS: No, I don't. 9:16:58AM
4 BY MR. FEE: 9:16:59AM
5 Q Is the NFPA name well-known to you? 9:17:00AM
6 MR. BRIDGES: All the same objections. 9:17:05AM
7 THE WITNESS: Yes. 9:17:07AM
8 BY MR. FEE: 9:17:07AM
9 Q Is the NFPA logo well-known to you? 9:17:07AM
10 MR. BRIDGES: All the same objections. 9:17:10AM
11 THE WITNESS: Yeah, I -- yes. 9:17:14AM
12 BY MR. FEE: 9:17:15AM
13 Q Do you recall when you first encountered 9:17:17AM
14 any ASHRAE trademark? 9:17:18AM
15 MR. BRIDGES: All the same objections. 9:17:20AM
16 THE WITNESS: No. 9:17:22AM
17 BY MR. FEE: 9:17:22AM
18 Q Is the ASHRAE name known -- well-known to 9:17:23AM
19 you? 9:17:26AM
20 MR. BRIDGES: All the same objections. 9:17:27AM
21 THE WITNESS: Yes. 9:17:28AM
22 BY MR. FEE: 9:17:28AM
23 Q Is the ASHRAE logo well-known to you? 9:17:29AM
24 MR. BRIDGES: All the same objections. 9:17:32AM
25 THE WITNESS: No. 9:17:33AM

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1 make -- to make copies that are similar to the 9:33:23AM
2 standards actually sold by ASTM available on its 9:33:33AM
3 website? 9:33:36AM

4 MR. BRIDGES: Okay. Objection, calls for 9:33:40AM
5 a legal conclusion, argumentative, lacks 9:33:41AM
6 foundation, vague and ambiguous. 9:33:46AM

7 THE WITNESS: Could you repeat the 9:33:49AM
8 question, please? 9:33:50AM

9 BY MR. FEE: 9:33:51AM

10 Q Sure. Is it Public Resource's intention 9:33:51AM
11 to make copies that are similar to the standards 9:33:53AM
12 actually sold by ASTM available on its website? 9:33:56AM

13 MR. BRIDGES: Objection, assumes facts
14 in evidence, lacks foundation, argumentative 9:34:01AM
15 vague and ambiguous. 9:34:03AM

16 THE WITNESS: No. 9:34:05AM

17 BY MR. FEE: 9:34:05AM

18 Q Why is that not the intention? 9:34:07AM

19 MR. BRIDGES: All the same objections. 9:34:09AM

20 THE WITNESS: We post standards that have 9:34:13AM
21 been explicitly and specifically incorporated 9:34:15AM
22 by reference into federal or state law. 9:34:18AM

23

24 BY MR. FEE: 9:34:21AM

25 Q And when those standards are posted by 9:34:22AM

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1 you, it's your intention to make them as close as 9:34:24AM
2 possible to the actual standard published by the 9:34:29AM
3 author of that standard, correct? 9:34:35AM

4 MR. BRIDGES: Objection, argumentative, 9:34:38AM
5 lacks foundation, vague and ambiguous. 9:34:38AM

6 THE WITNESS: Our goal is replication and 9:34:41AM
7 transformation of that standard to make it 9:34:45AM
8 accessible. 9:34:48AM

9 BY MR. FEE: 9:34:51AM

10 Q Do you intend the text to be identical to 9:34:51AM
11 the text that was in the originally published 9:34:53AM
12 standard? 9:34:56AM

13 MR. BRIDGES: Objection, assumes facts
14 in evidence, lacks foundation, vague and 9:35:00AM
15 ambiguous. 9:35:01AM

16 THE WITNESS: Text is identical. 9:35:07AM

17 BY MR. FEE: 9:35:09AM

18 Q At least that's the intention at the time 9:35:11AM
19 you post those standards on the website, right? 9:35:13AM

20 MR. BRIDGES: All the same objections. 9:35:16AM

21 THE WITNESS: Yes. 9:35:17AM

22 BY MR. FEE: 9:35:18AM

23 Q Now, at the time that you were posting
24 plaintiffs' standards on Public Resource's website, 9:35:25AM
25 you understood that the plaintiffs owned trademarks 9:35:28AM

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1 THE WITNESS: It sounds like you're
2 me about legal advice. 9:37:09AM

3 BY MR. FEE: 9:37:09AM

4 Q You're wrong. I'm asking if you had a 9:37:09AM
5 thought. At the time that you were posting 9:37:12AM
6 something on the website, did you think I'm about
7 post a standard that features somebody else's 9:37:17AM
8 trademark on my website at the time that you posted 9:37:20AM
9 it on the website? 9:37:22AM

10 MR. BRIDGES: All the same objections and 9:37:25AM
11 lacks foundation. 9:37:26AM

12 THE WITNESS: I was aware that the ASTM 9:37:28AM
13 logo was included in the standards at issue, 9:37:30AM
14 which we scanned and posted on our website. 9:37:33AM

15 BY MR. FEE: 9:37:37AM

16 Q And you thought it was okay for you to 9:37:37AM
17 post an ASTM standard with an ASTM trademark on
18 website, correct? 9:37:44AM

19 MR. BRIDGES: Objection, argumentative, 9:37:45AM
20 lacks foundation, assumes facts not in 9:37:46AM
21 evidence, vague and ambiguous and calls for a 9:37:53AM
22 legal conclusion. 9:37:57AM

23 THE WITNESS: Incorporation by reference 9:37:58AM
24 of a standard into the Code of Federal 9:38:00AM
25 Regulation is the incorporation of the entire 9:38:01AM

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1 document, and I'm not in a position to decide 9:38:06AM
2 which portions of that document are or not the 9:38:08AM
3 law. They -- the entire document is 9:38:11AM
4 incorporated by reference into law. 9:38:13AM

5 BY MR. FEE: 9:38:18AM

6 Q At the time that you were posting the 9:38:18AM
7 other plaintiffs' standards on your website, you 9:38:19AM
8 also were aware of the fact that they had an 9:38:22AM
9 ownership interest in their logos, weren't you? 9:38:25AM

10 MR. BRIDGES: All the same objections. 9:38:28AM

11 THE WITNESS: That's the same question
12 just asked me about ASTM. I'm not qualified 9:38:31AM
13 to -- to comment on that. 9:38:34AM

14 BY MR. FEE: 9:38:35AM

15 Q But you are aware that you were posting 9:38:37AM
16 trademarks owned by another person on your website 9:38:40AM
17 at the time, aren't you? 9:38:43AM

18 MR. BRIDGES: All the same objections and 9:38:44AM
19 asked and answered. 9:38:46AM

20 THE WITNESS: The same answer I just gave 9:38:47AM
21 you; I'm not qualified to discuss that. 9:38:49AM

22 BY MR. FEE: 9:38:51AM

23 Q So it never occurred to you that the
24 on NFPA's or ASHRAE's standards may be trademarks 9:38:55AM
25 owned by them at the time that you were posting

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1 lacks foundation, vague and ambiguous. 9:52:12AM

2 THE WITNESS: There is one specific 9:52:18AM

3 version of A106 on our website. 9:52:19AM

4 BY MR. FEE: 9:52:22AM

5 Q Okay. What version is that? 9:52:22AM

6 MR. BRIDGES: Same objections. 9:52:24AM

7 THE WITNESS: I'd have to look it up. 9:52:25AM

8 BY MR. FEE: 9:52:26AM

9 Q Well, you know there's at least one 9:52:27AM

10 version of A106 on your website, correct? 9:52:28AM

11 MR. BRIDGES: All the same objections. 9:52:32AM

12 THE WITNESS: Correct. 9:52:33AM

13 BY MR. FEE: 9:52:34AM

14 Q And you expect visitors to your website

15 understand that the copy of A106 that you have on 9:52:38AM

16 your website is or at least contains all the same 9:52:42AM

17 text that appears in the original ASTM Standard

18 of the year that you purport it to be? 9:52:55AM

19 MR. BRIDGES: Objection, assumes facts

20 in evidence, lacks foundation, argumentative, 9:53:01AM

21 vague and ambiguous. 9:53:02AM

22 THE WITNESS: It's a scan of the exact 9:53:03AM

23 standard, yes. 9:53:05AM

24 BY MR. FEE: 9:53:06AM

25 Q And when you post HTML versions of ASTM

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1 other plaintiffs' standards, you expect the viewers
2 of those standards at your website to understand
3 that the language or text that you're posting as
4 standard is, in fact, the standard that you purport
5 it to be?

6 MR. BRIDGES: Objection, lacks
7 argumentative, may be hypothetical, vague and
8 ambiguous.

9 THE WITNESS: Yes.

10 BY MR. FEE:

11 Q And that's the whole point of your
12 website, right, is to provide access to the
13 standards?

14 MR. BRIDGES: Objection, argumentative,
15 misstates testimony, lacks foundation, vague
16 and ambiguous.

17 THE WITNESS: The purpose of our service
18 is to make the law available to citizens.

19 BY MR. FEE:

20 Q Including standards incorporated by
21 reference, correct?

22 A Yes.

23 Q Now, Public Resource solicits donations
24 its website, doesn't it?

25 A We have -- yes.

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1 THE WITNESS: I do not recall the 10:02:00AM
2 specifics of every proposal that's there, and 10:02:01AM
3 so I cannot answer that question for you. 10:02:03AM
4 BY MR. FEE: 10:02:06AM
5 Q What is Kickstarter? 10:02:13AM
6 MR. BRIDGES: Objection, vague and 10:02:16AM
7 ambiguous. 10:02:16AM
8 THE WITNESS: It's an Internet service
9 crowd funding projects. 10:02:21AM
10 BY MR. FEE: 10:02:22AM
11 Q Have you ever used Kickstarter before? 10:02:23AM
12 A Yes. 10:02:26AM
13 Q Have you ever used Kickstarter on behalf 10:02:31AM
14 of Public Resource before? 10:02:33AM
15 A Yes. 10:02:34AM
16 Q Can you describe the circumstances under 10:02:36AM
17 which that occurred? 10:02:38AM
18 A We did an unsuccessful campaign for 10:02:41AM
19 something called Codes of the World. 10:02:45AM
20 Q What was Codes of the World? 10:02:48AM
21 A It was an attempt to fund a double-
22 of standards. 10:02:53AM
23 Q Would that include double-keying of 10:02:56AM
24 plaintiffs' standards? 10:02:58AM
25 A The focus was international. 10:03:01AM

1 Q So would that include the standards of
2 plaintiffs or not? 10:03:08AM

3 A It did not preclude that. 10:03:09AM

4 Q In connection with your Kickstarter 10:03:12AM
5 campaign, did you ever reference any of the 10:03:14AM
6 plaintiffs' standards? 10:03:16AM

7 MR. BRIDGES: Objection, vague and 10:03:18AM
8 ambiguous. 10:03:20AM

9 THE WITNESS: Yes, I did. 10:03:20AM

10 BY MR. FEE: 10:03:21AM

11 Q Under what circumstances did you do that?

12 A I had a photograph of a stack of old
13 standards that was included as a graphic 10:03:28AM
14 illustration. 10:03:32AM

15 Q Did you include any other references to 10:03:34AM
16 ASTM in your Kickstarter campaign? 10:03:37AM

17 MR. BRIDGES: Objection, vague and 10:03:39AM
18 ambiguous. 10:03:40AM

19 THE WITNESS: Yes. 10:03:41AM

20 BY MR. FEE: 10:03:41AM

21 Q Please describe those for me. 10:03:42AM

22 A I would want to review the text of the 10:03:49AM
23 Kickstarter to describe the specific

24 Q You don't recall anything about the 10:03:56AM
25 circumstances under which you were referencing

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1 standards in your Kickstarter campaign other than 10:04:01AM

2 the fact that you had a photograph of some of

3 standards? 10:04:06AM

4 MR. BRIDGES: Objection, vague and 10:04:07AM

5 ambiguous. 10:04:08AM

6 THE WITNESS: I don't recall where in

7 Kickstarter campaign it was, and that's why I 10:04:09AM

8 would want to review the text. 10:04:12AM

9 BY MR. FEE: 10:04:14AM

10 Q Do you recall referring to any other 10:04:14AM

11 plaintiffs' standards in connection with your 10:04:16AM

12 Kickstarter campaign? 10:04:18AM

13 MR. BRIDGES: Objection, vague and 10:04:20AM

14 ambiguous. 10:04:21AM

15 THE WITNESS: Again, I would want to 10:04:21AM

16 review the text. 10:04:23AM

17 BY MR. FEE: 10:04:24AM

18 Q Sitting here right now, you don't recall?

19 MR. BRIDGES: Same objections. 10:04:27AM

20 THE WITNESS: I -- I -- I do not recall 10:04:28AM

21 specifically, no. 10:04:30AM

22 MS. RUBEL: Ashley, what exhibit number 10:05:17AM

23 are we up to? 10:05:18AM

24 THE REPORTER: 57. 10:05:21AM

25 (Exhibit 57 marked for identification.) 11:31:27AM

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1 BY MR. FEE: 10:05:21AM

2 Q Mr. Malamud, I'm going to hand you

3 57. It's an e-mail from Kickstarter to you, Bates 10:05:23AM

4 label PRO_167895 through -896. 10:05:25AM

5 Can you identify Exhibit 57 as an e-mail 10:05:59AM

6 from Kickstarter to you? 10:06:03AM

7 A This is an e-mail from me to the 10:06:06AM

8 subscribers to the Kickstarter campaign. 10:06:09AM

9 Q And the title of this says, "Project 10:06:16AM

10 Update No. 1, 106 new ASTM standards converted."

11 you see that? 10:06:23AM

12 A I do. 10:06:24AM

13 Q Why were you reporting to the people 10:06:24AM

14 involved in your Kickstarter campaign that you had 10:06:27AM

15 converted 106 ASTM standards? 10:06:30AM

16 A Because we had. It was an update on --

17 what we were doing. 10:06:39AM

18 Q Look at the second paragraph of this 10:06:50AM

19 document. You see it says, you can really see the 10:06:52AM

20 difference between the original HTML and the

21 HTML." 10:07:00AM

22 Do you see that? 10:07:00AM

23 A I do. 10:07:01AM

24 Q What does that mean? 10:07:02AM

25 A It's actually a typo. It's -- you can 10:07:09AM

1 expected people to be able to see other than the 10:08:29AM
2 ones you just referenced? 10:08:31AM
3 MR. BRIDGES: Objection, vague and 10:08:35AM
4 ambiguous. 10:08:35AM
5 THE WITNESS: No, I think that was it. 10:08:41AM
6 BY MR. FEE: 10:08:42AM
7 Q And you thought that the original scan 10:08:43AM
8 looked different than the HTML version of this
9 Standard A47? 10:08:49AM
10 MR. BRIDGES: Objection, misstates 10:08:52AM
11 testimony, lacks foundation, vague and 10:08:53AM
12 ambiguous. 10:08:55AM
13 THE WITNESS: You can see the difference 10:08:56AM
14 in the sense of readability. It wasn't a 10:08:58AM
15 different standard, though. 10:09:02AM
16 BY MR. FEE: 10:09:04AM
17 Q Understood. After those two bullet 10:09:04AM
18 points, you say one of the hopes as we move beyond 10:09:08AM
19 the rekey stage is that we can do more than simply 10:09:12AM
20 recover text, but start adding true value. 10:09:15AM
21 Do you see that? 10:09:18AM
22 A I do. 10:09:19AM
23 Q What did you mean when you said that? 10:09:21AM
24 A As that paragraph says, for example, 10:09:24AM
25 rekeying the mathematical formulas into MathML, 10:09:26AM

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1 adding section ID headers so you could permanently10:09:29AM
2 not only to the full standard, but to a specific 10:09:34AM
3 section of the standard and converting graphics to10:09:39AM
4 the vector format, which is SVG program that we 10:09:41AM
5 previously described to you. 10:09:47AM

6 THE REPORTER: Which is what, SVG? 10:09:48AM

7 THE WITNESS: SVG program. 10:09:48AM

8 BY MR. FEE: 10:09:48AM

9 Q So you didn't consider the conversion of10:09:49AM
10 the scanned PDF to rekeyed HTML to be adding true 10:09:54AM
11 value? 10:10:00AM

12 MR. BRIDGES: Objection, argumentative, 10:10:04AM
13 vague and ambiguous. 10:10:04AM

14 THE WITNESS: No, that would not be 10:10:09AM
15 correct. We did add true value by -- by 10:10:10AM
16 putting the -- the double-keyed HTML up. 10:10:13AM

17 BY MR. FEE: 10:10:17AM

18 Q Why did you then say that you were going10:10:17AM
19 to start adding true value after you got the 10:10:19AM
20 rekeying done? 10:10:22AM

21 MR. BRIDGES: Objection, argumentative. 10:10:23AM

22 THE WITNESS: Probably for the same
23 I made a typo originally when I said original10:10:27AM
24 HTML instead of original PDF. Continue
25 true value would be a -- a better 10:10:34AM

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1 characterization of that process. 10:10:36AM

2 BY MR. FEE: 10:10:37AM

3 Q The next paragraph you say, "we'll have 10:10:39AM

4 another 100 or so ASTM standards done in a couple 10:10:42AM

5 weeks." 10:10:46AM

6 Do you see that? 10:10:47AM

7 A I do. 10:10:48AM

8 Q Why are you telling people that you're 10:10:48AM

9 asking for money that you're about to post 100 or

10 additional ASTM standards to your website? 10:10:54AM

11 A Because in this update I was discussing 10:10:57AM

12 what we were doing with ASTM standards. 10:11:00AM

13 Q Did you expect that potential donors

14 be interested to know that you were about to post 10:11:04AM

15 the 100 ASTM standards on your website for free? 10:11:07AM

16 MR. BRIDGES: Objection, argumentative, 10:11:11AM

17 lacks foundation. 10:11:11AM

18 THE WITNESS: I don't know. I thought

19 was an interesting update. 10:11:13AM

20 BY MR. FEE: 10:11:15AM

21 Q And you believed that that update would

22 interesting to potential donors as well, right? 10:11:19AM

23 A I believe it was an interesting 10:11:27AM

24 description of the technical work that we were 10:11:29AM

25 doing. 10:11:34AM

1 Q I'm going to hand you Exhibit 58, which
2 another e-mail that says it's from Kickstarter to 10:12:15AM
3 you, Bates-labeled PRO_168379 through -81. 10:12:20AM
4 (Exhibit 58 marked for identification.) 10:12:53AM
5 BY MR. FEE: 10:12:53AM
6 Q Can you identify Exhibit 58 as another 10:12:54AM
7 update you made to your Kickstarter campaign? 10:12:56AM
8 MR. BRIDGES: Objection, vague and 10:12:59AM
9 ambiguous. 10:13:00AM
10 BY MR. FEE: 10:13:01AM
11 Q Okay. What's Exhibit 58? 10:13:01AM
12 A It looks like part of an update that I
13 sent for the Kickstarter campaign. It looks like 10:13:12AM
14 some of it was cut off, however. 10:13:15AM
15 Q What portion do you believe to be cut off?
16 A On Page 2, Bates number 168380, at the 10:13:21AM
17 bottom it says, "when I started to publish federal 10:13:27AM
18 law, I sent the ASTM and nine other." And then 10:13:31AM
19 after that it says -- I continue publishing the
20 of our land on the next page. It sure looks like 10:13:38AM
21 something is missing in the middle there. 10:13:41AM
22 Q Do you know why that text is missing
23 the document production that your company made? 10:13:48AM
24 A I have no idea. 10:13:52AM
25 Q Do you have any reason to doubt the 10:13:53AM

1 authenticity of the text that is on the first page10:13:55AM

2 of this document and whether or not you wrote it? 10:13:59AM

3 A I wrote this. 10:14:02AM

4 Q Why did you make this Project Update No.10:14:08AM

5 8? 10:14:10AM

6 A For the same reason I did Update No. 1,
7 let people know the technical work that we were 10:14:17AM

8 doing. 10:14:20AM

9 Q Did you expect that providing updates to10:14:20AM
10 the Kickstarter community would help you raise 10:14:22AM

11 additional funds? 10:14:25AM

12 A Yes. 10:14:35AM

13 Q I want to draw your attention to the 10:14:38AM
14 second paragraph of the update. Do you see you

15 "Today I published 130 more ASTM standards that
16 been rekeyed into HTML?" Do you see that? 10:14:49AM

17 A Yes, I do. 10:14:51AM

18 Q All right. Why were you telling the 10:14:52AM
19 Kickstarter community about your additional

20 of ASTM standards? 10:15:00AM

21 A Because I think they would be interested10:15:04AM
22 in the high quality of the technical work. 10:15:06AM

23 Q Were you hopeful that advising them of
24 high quality copies of the ASTM standards that 10:15:20AM

25 you're making available would lead to additional 10:15:23AM

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1 donations from the campaign? 10:15:26AM

2 MR. BRIDGES: Objection, argumentative, 10:15:27AM

3 assumes facts not in evidence, incorporates a 10:15:28AM

4 legal term that may call for a legal 10:15:36AM

5 conclusion, argumentative, vague and

6 THE WITNESS: You're going to have to 10:15:43AM

7 repeat the question. I'm sorry. 10:15:43AM

8 MR. FEE: Could you read it back, please?

9 THE REPORTER: Sure. 10:15:45AM

10 (The reporter read the record 10:15:45AM

11 as requested.) 9:21:05AM

12 MR. BRIDGES: All the same objections. 10:15:59AM

13 THE WITNESS: I think all the updates

14 an attempt to show people the high quality of 10:16:04AM

15 the work we were doing and to, therefore,

16 the campaign successful. 10:16:09AM

17 BY MR. FEE: 10:16:10AM

18 Q And the definition of a successful 10:16:11AM

19 campaign was if you could raise \$100,000; is that 10:16:13AM

20 right? 10:16:16AM

21 MR. BRIDGES: Objection, argumentative, 10:16:18AM

22 vague and ambiguous. 10:16:19AM

23 THE WITNESS: Yes. 10:16:22AM

24 MR. FEE: Why don't we take a quick

25 THE REPORTER: Let's do that. 10:16:28AM

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1 MR. FEE: We can go off the record for a10:16:29AM
2 little bit and try to fix these things. 10:16:31AM
3 MR. BRIDGES: Okay. 10:16:36AM
4 MR. FEE: We're going to go off the 10:16:36AM
5 record. 10:16:38AM
6 THE VIDEOGRAPHER: They are going to 10:16:41AM
7 check. We're going off the record. The time10:16:42AM
8 is 10:16 a.m. 10:16:45AM
9 (Recess taken.) 10:27:41AM
10 THE VIDEOGRAPHER: Back on the record. 10:31:01AM
11 The time is 10:30 a.m. 10:31:03AM
12 BY MR. FEE: 10:31:05AM
13 Q Mr. Malamud, I have one or two more 10:31:05AM
14 questions on Exhibit 58, so you might want to grab10:31:08AM
15 that again. 10:31:11AM
16 On the first page after you talk about 10:31:13AM
17 publishing 130 more ASTM standards, you say they 10:31:17AM
18 are -- and then underlined -- available for open 10:31:20AM
19 access without restriction from our servers. 10:31:22AM
20 Do you see that? 10:31:27AM
21 MR. BRIDGES: Objection, misstates the 10:31:27AM
22 document, I think. 10:31:28AM
23 Go ahead. 10:31:33AM
24 Lacks foundation, vague and ambiguous. 10:31:35AM
25 THE WITNESS: That is the third sentence10:31:38AM

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1 of that paragraph. 10:31:39AM

2 BY MR. FEE: 10:31:40AM

3 Q And when you refer to "they" in that 10:31:41AM

4 sentence, you're referring to the 130 more ASTM 10:31:44AM

5 standards, aren't you? 10:31:47AM

6 A Actually, I'm referring to the 328 ASTM 10:31:51AM

7 files as scans from PDF and 256 as open HTML. 10:31:54AM

8 Q Why did you underline "available for
9 access without restriction"? 10:32:02AM

10 A That's one that's a hyperlink. When you 10:32:03AM

11 click on it, you go to another web page. 10:32:05AM

12 Q So that's a link to the list of the ASTM 10:32:08AM

13 standards that are available for free? 10:32:12AM

14 MR. BRIDGES: Objection, lacks
15 argumentative, vague and ambiguous. 10:32:15AM

16 THE WITNESS: I'd have to check what
17 specifically linked to. It's someplace on

18 web server. 10:32:27AM

19 BY MR. FEE: 10:32:28AM

20 Q When you refer to "open access without 10:32:46AM

21 restriction," what does that mean? 10:32:49AM

22 A It means that I impose no restrictions
23 use. 10:32:59AM

24 Q Does "open access" also means that it's 10:32:59AM

25 available for free? 10:33:01AM

1 MR. BRIDGES: Objection, lacks
2 argumentative, vague and ambiguous. 10:33:03AM

3 THE WITNESS: We have never charged for 10:33:06AM
4 access to any information on our website. 10:33:08AM

5 BY MR. FEE: 10:33:13AM

6 Q What did you expect persons to do with
7 328 ASTM files that were available for open access 10:33:17AM
8 without restriction? 10:33:21AM

9 MR. BRIDGES: Objection. Same

10 THE WITNESS: To inform themselves as 10:33:26AM
11 citizens of the laws. 10:33:28AM

12 BY MR. FEE: 10:33:30AM

13 Q Anything else? 10:33:30AM

14 MR. BRIDGES: Same objections. 10:33:36AM

15 THE WITNESS: People do many things with 10:33:38AM
16 the law. 10:33:39AM

17 BY MR. FEE: 10:33:39AM

18 Q Is there anything else that you 10:33:40AM
19 anticipated users of the Public Resource website
20 do with the 328 ASTM files that were made available?

21 MR. BRIDGES: Same objections. 10:33:50AM

22 THE WITNESS: We make the law available 10:33:53AM
23 for people to use as they see fit. 10:33:55AM

24 BY MR. FEE: 10:34:00AM

25 Q Did you anticipate users of the Public 10:34:01AM

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1 Resource website to make copies of plaintiffs' 10:34:03AM
2 standards that were made available on Public 10:34:06AM
3 Resource's website? 10:34:09AM
4 MR. BRIDGES: Objection, vague and 10:34:11AM
5 ambiguous, calls for a legal conclusion, 10:34:12AM
6 possibly because of the terminology, lacks 10:34:14AM
7 foundation, vague and ambiguous. 10:34:18AM
8 THE WITNESS: We expected people to
9 these standards and to use them as they see
10 because they're the law. 10:34:28AM
11 BY MR. FEE: 10:34:29AM
12 Q Would that include the users making -- 10:34:29AM
13 making additional print versions based upon the 10:34:32AM
14 standards that they downloaded from your website? 10:34:35AM
15 MR. BRIDGES: Objection, lacks
16 vague and ambiguous. 10:34:38AM
17 THE WITNESS: Again, we impose no 10:34:43AM
18 restrictions on use. They can do whatever
19 want. 10:34:47AM
20 BY MR. FEE: 10:34:47AM
21 Q I'm asking now what you expect users of 10:34:47AM
22 your website to do. Do you expect them to ever 10:34:49AM
23 print one of plaintiffs' standards from your 10:34:52AM
24 website? 10:34:56AM
25 MR. BRIDGES: Objection, vague and 10:34:57AM

1 themselves of the laws and to use that law to 10:36:29AM
2 inform themselves of their rights and 10:36:31AM
3 obligations. 10:36:33AM
4 BY MR. FEE: 10:36:33AM
5 Q Do you have any idea what people do with 10:36:34AM
6 the standards that they access from your website? 10:36:35AM
7 MR. BRIDGES: Objection, lacks
8 assumes facts not in evidence, vague and 10:36:40AM
9 ambiguous, argumentative. 10:36:42AM
10 THE WITNESS: I know people read them. 10:36:44AM
11 BY MR. FEE: 10:36:45AM
12 Q Do you have -- beyond reading them, do
13 have any idea what people do with the standards
14 you make available on your website? 10:36:51AM
15 MR. BRIDGES: All the same objections. 10:36:53AM
16 THE WITNESS: Not particularly, no. 10:36:55AM
17 BY MR. FEE: 10:36:57AM
18 Q How do you even know people read them? 10:36:59AM
19 MR. BRIDGES: Lacks foundation, vague
20 ambiguous. 10:37:05AM
21 THE WITNESS: Because I've received 10:37:07AM
22 electronic mail on occasion from people
23 that they've read the standards. 10:37:11AM
24 BY MR. FEE: 10:37:12AM
25 Q Is that the only way? 10:37:13AM

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1 MR. BRIDGES: Same objections. 10:37:15AM

2 THE WITNESS: Because I've given
3 and people have come up to me and say that
4 have read the standards. 10:37:21AM

5 BY MR. FEE: 10:37:22AM

6 Q Any other way? 10:37:22AM

7 MR. BRIDGES: Same objections. 10:37:23AM

8 THE WITNESS: Because we made a video
9 on that video people like Mr. Peterson, who
10 discussed previously, said that -- that he
11 read the standards on our website. 10:37:34AM

12 BY MR. FEE: 10:37:37AM

13 Q Any other way? 10:37:38AM

14 MR. BRIDGES: Same objections. 10:37:39AM

15 THE WITNESS: There have been numerous 10:37:42AM
16 news media reports about me on our site in 10:37:44AM
17 which people have -- or at least I believe
18 that they read them. 10:37:51AM

19 BY MR. FEE: 10:37:53AM

20 Q Anything else? 10:37:54AM

21 MR. BRIDGES: Same objections. 10:37:56AM

22 THE WITNESS: I -- I -- no. 10:38:03AM

23

24 BY MR. FEE: 10:38:03AM

25 Q Do you have any way of identifying any 10:38:10AM

1 persons who had printed copies of any of the 10:38:13AM

2 standards you made available on your website? 10:38:17AM

3 MR. BRIDGES: Objection, lacks
4 vague and ambiguous. 10:38:21AM

5 THE WITNESS: No, I do not. 10:38:22AM

6 BY MR. FEE: 10:38:23AM

7 Q Do you have any way of identifying
8 who had saved local versions of any of the
9 that were accessed on your website? 10:38:28AM

10 MR. BRIDGES: Objection, vague and 10:38:31AM
11 ambiguous, lacks foundation. 10:38:31AM

12 THE WITNESS: What do you mean by "saved"?

13 BY MR. FEE: 10:38:35AM

14 Q Saved to their hard drive, let's say. 10:38:36AM

15 MR. BRIDGES: Same objections. 10:38:40AM

16 THE WITNESS: I'm sorry. Repeat that 10:38:55AM
17 question. 10:38:56AM

18 BY MR. FEE: 10:38:57AM

19 Q Do you have any way of identifying
20 who had saved to their hard drive or to a server
21 copy of a standard from your website? 10:39:04AM

22 MR. BRIDGES: Objection, compound, vague 10:39:07AM
23 and ambiguous, may call for legal
24 lacks foundation. 10:39:15AM

25 THE WITNESS: No, I don't know if they 10:39:17AM

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1 saved it. 10:39:19AM
2 BY MR. FEE: 10:39:20AM
3 Q Do you have any way of identifying
4 persons had transferred any standards that were 10:39:33AM
5 available from your website to another computer or 10:39:41AM
6 person? 10:39:48AM
7 MR. BRIDGES: Same objections. 10:39:49AM
8 THE WITNESS: I do know from our web 10:39:50AM
9 server if a GET request resulted in a status 10:39:52AM
10 code 200 or 206, that the file in question
11 transferred to another computer on the 10:40:00AM
12 Internet. 10:40:02AM
13 BY MR. FEE: 10:40:03AM
14 Q That means that a file was transferred 10:40:05AM
15 from Public Resource's server to a user's server
16 computer, correct? 10:40:12AM
17 MR. BRIDGES: Objection, argumentative, 10:40:13AM
18 lacks foundation, vague and ambiguous. 10:40:14AM
19 THE WITNESS: Don't know if it's a user. 10:40:17AM
20 We know it's another computer. 10:40:17AM
21 BY MR. FEE: 10:40:20AM
22 Q Beyond that, does Public Resource have
23 available data regarding what was done with any 10:40:25AM
24 standard that was downloaded from its website? 10:40:29AM
25 MR. BRIDGES: Objection, vague and 10:40:34AM

1 ambiguous, lacks foundation. 10:40:35AM

2 THE WITNESS: As I said, received 10:40:46AM

3 occasional electronic mail from people saying10:40:47AM

4 that they have used our site and -- and read 10:40:49AM

5 standards. 10:40:52AM

6 BY MR. FEE: 10:40:53AM

7 Q That's it? 10:40:53AM

8 MR. BRIDGES: Same objections. 10:40:56AM

9 THE WITNESS: I believe that's it. 10:40:57AM

10 MS. RUBEL: We're up to 59? 10:41:23AM

11 THE REPORTER: Yes. 10:41:25AM

12 (Exhibit 59 marked for identification.) 10:41:26AM

13 BY MR. FEE: 10:41:27AM

14 Q Mr. Malamud, I'm going to hand you

15 59. It's another e-mail that's from Kickstarter

16 you, Bates-labeled PRO_168360 through -66. 10:41:34AM

17 If you've had a chance to look at it, 10:41:51AM

18 would you please identify what Exhibit 59 is? 10:41:52AM

19 A This is Update No. 6 from me as part of 10:42:18AM

20 the Kickstarter campaign. 10:42:21AM

21 Q So you wrote Exhibit 59, correct? 10:42:23AM

22 A I did. 10:42:27AM

23 Q I want to draw your attention to the

24 paragraph of Exhibit 59. You say I post legally 10:42:31AM

25 mandated public safety codes like the National 10:42:37AM

1 Electrical Code on our website for anybody to
2 Do you see that? 10:42:44AM
3 A I do. 10:42:44AM
4 Q Why were you telling the Kickstarter 10:42:45AM
5 community that you were posting legally mandated 10:42:48AM
6 public safety codes like the National Electric
7 on your website for everybody to read? 10:42:54AM
8 A Because we did. 10:42:59AM
9 Q Did you think that information would be 10:43:01AM
10 helpful in generating enough interest in your 10:43:02AM
11 Kickstarter campaign for it to be successful? 10:43:09AM
12 MR. BRIDGES: Objection, vague and 10:43:13AM
13 ambiguous. 10:43:14AM
14 THE WITNESS: As with the other project 10:43:15AM
15 updates, an overview of our activities is a 10:43:17AM
16 useful component of a Kickstarter campaign. 10:43:21AM
17 BY MR. FEE: 10:43:24AM
18 Q In the second paragraph you say the
19 of the National Electric Code is a wonderful 10:43:34AM
20 organization called the National Fire Protection 10:43:37AM
21 Association. 10:43:39AM
22 Do you see that? 10:43:40AM
23 A I do. 10:43:41AM
24 Q And you believed that to be true at the 10:43:43AM
25 time? 10:43:44AM

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1 THE WITNESS: I don't want to discuss
2 donors who are not publicly disclosed on our 10:46:01AM
3 website. 10:46:05AM

4 BY MR. FEE: 10:46:05AM

5 Q I'm not asking for any names. I'm just 10:46:05AM
6 asking you if you're aware of any persons who made
7 pledge in connection with your Kickstarter
8 that later, because the Kickstarter campaign was 10:46:12AM
9 unsuccessful, made a donation through some other 10:46:14AM
10 means to Public Resource. 10:46:19AM

11 MR. BRIDGES: Objection, lacks
12 vague and ambiguous. 10:46:21AM

13 THE WITNESS: Yes. 10:46:22AM

14 BY MR. FEE: 10:46:25AM

15 Q How many? 10:46:25AM

16 A I don't know. 10:46:29AM

17 Q Mr. Malamud, would you turn back to 10:47:08AM
18 Exhibit 59? Do you have that in front of you? 10:47:10AM

19 A I do. 10:47:12AM

20 Q Turn to -- I think it's the fifth page
21 the document. At the top it says, "Point 4, is 10:47:14AM
22 read-only good enough." 10:47:16AM

23 Do you see that? 10:47:19AM

24 A I do. 10:47:20AM

25 Q At the bottom of this page you say in

1 last paragraph, "there's nothing wrong with ANSI
2 that's A-N-S-I -- or ASTM or NFPA putting together
3 website. That's great. They should be applauded.10:47:39AM
4 But just imagine if another law-making agency such10:47:42AM
5 as OSHA were to put a law on their website and say10:47:46AM
6 nobody can make a copy of it without prior 10:47:51AM
7 permission and you can't print the law without 10:47:54AM
8 paying more money. Wouldn't you be totally 10:47:57AM
9 outraged?" 10:47:59AM

10 Do you see that? 10:48:00AM

11 A I do. 10:48:00AM

12 Q Why did you say that in your Kickstarter10:48:01AM
13 campaign? 10:48:04AM

14 A Because I think people putting 10:48:05AM
15 restrictions on access to the law in the United 10:48:06AM
16 States is -- is wrong. 10:48:09AM

17 Q Is it important to be able to print the 10:48:11AM
18 standards that are incorporated by reference in
19 mind? 10:48:17AM

20 MR. BRIDGES: Objection, vague and 10:48:19AM
21 ambiguous. 10:48:19AM

22 THE WITNESS: It is important for people10:48:19AM
23 to be able to use the law of the United
24 as they see fit in order to inform themselves10:48:23AM
25 and others about their rights and

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1 BY MR. FEE: 10:48:29AM

2 Q Including printing? 10:48:30AM

3 A As they see fit. 10:48:32AM

4 Q Including printing or not? 10:48:33AM

5 A It's as they see fit. 10:48:35AM

6 Q You can't answer that question? 10:48:37AM

7 MR. BRIDGES: He's answered it, Counsel. 10:48:39AM

8 THE WITNESS: I did. 10:48:41AM

9 BY MR. FEE: 10:48:41AM

10 Q Is it important for people to be able to 10:48:42AM

11 print standards incorporated by reference? 10:48:44AM

12 MR. BRIDGES: Asked and answered. 10:48:50AM

13 THE WITNESS: People should be able to

14 the law as they see fit. If they see fit to 10:48:51AM

15 print, then they -- they should print. 10:48:53AM

16 BY MR. FEE: 10:48:55AM

17 Q And you complain about the fact that 10:48:57AM

18 plaintiffs don't allow printing of electronic

19 of their standards -- 10:49:02AM

20 MR. BRIDGES: Objection. 10:49:05AM

21 BY MR. FEE: 10:49:06AM

22 Q -- right? 10:49:06AM

23 MR. BRIDGES: Objection, misstates the 10:49:07AM

24 document, misstates testimony, lacks 10:49:08AM

25 foundation, vague and ambiguous. 10:49:10AM

1 THE WITNESS: I don't discuss printing
2 this document. 10:49:16AM

3 BY MR. FEE: 10:49:17AM

4 Q I didn't even reference that document in
5 my question. 10:49:17AM 10:49:19AM

6 A Okay. Well, then, please repeat the
7 question. 10:49:19AM 10:49:19AM

8 Q I said you complain about the fact that
9 plaintiffs don't allow printing of electronic
10 of their standards -- 10:49:22AM 10:49:27AM

11 MR. BRIDGES: Objection. 10:49:28AM

12 BY MR. FEE: 10:49:28AM

13 Q -- don't you? 10:49:28AM

14 MR. BRIDGES: Objection, lacks
15 vague and ambiguous, argumentative. 10:49:30AM

16 THE WITNESS: Yeah, "complain" is a
17 word, but I certainly pointed out that --
18 that inability to print is one of the
19 of -- of some of the places where the -- the
20 standards at issue are made available. 10:49:44AM 10:49:46AM

21 BY MR. FEE: 10:49:49AM

22 Q And you seek to address that concern by
23 making standards available on your website that
24 could be printed without restriction; isn't that
25 true? 10:49:50AM 10:49:54AM 10:49:57AM 10:50:02AM

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1 MR. BRIDGES: I'm sorry. Can you read 10:50:04AM
2 that question back? 10:50:04AM
3 (The reporter read the record 10:50:12AM
4 as requested.) 9:21:05AM
5 MR. BRIDGES: I object to the extent 10:50:16AM
6 there's a loaded legal term in there that
7 for a legal conclusion, argumentative, vague 10:50:21AM
8 and ambiguous. 10:50:24AM
9 THE WITNESS: I intend to make the law 10:50:27AM
10 available for use without restriction, and
11 means that the users should be able to use
12 law as they see fit. 10:50:35AM
13 BY MR. FEE: 10:50:37AM
14 Q Turn to the next page of Exhibit 59, 10:50:38AM
15 please. The Bates label ends in 365. 10:50:39AM
16 A Yes. 10:50:50AM
17 Q Second paragraph, second sentence on
18 page says, "if the code people get their way and 10:50:55AM
19 they're the only ones able to post the law on
20 read-only, no print, no save, no copy websites, 10:51:02AM
21 we've made a mockery of constitutional principles
22 due process, equal protection and the freedom of 10:51:09AM
23 speech." 10:51:12AM
24 Do you see that? 10:51:13AM
25 A I do see that. 10:51:14AM

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1 Q Do you think it's important for the 10:51:18AM
2 citizens to be able to print their own copies of 10:51:19AM
3 standards incorporated by reference? 10:51:23AM

4 A I think it's -- it's important for 10:51:27AM
5 citizens to be able to use the law without 10:51:29AM
6 restriction as they see fit. 10:51:31AM

7 Q Do you think it's important for them to
8 able to print the standards incorporated by 10:51:35AM
9 reference? 10:51:38AM

10 MR. BRIDGES: Objection, asked and 10:51:39AM
11 answered. 10:51:40AM

12 THE WITNESS: I think when it, says no 10:51:41AM
13 print, no save, those are restrictions on

14 BY MR. FEE: 10:51:45AM

15 Q And your goal is to circumvent those 10:51:45AM
16 restrictions on use? 10:51:54AM

17 MR. BRIDGES: Objection, calls for a
18 conclusion, argumentative, assumes facts not
19 evidence, vague and ambiguous. 10:51:55AM

20 THE WITNESS: I'm not circumventing 10:51:57AM
21 anything. I'm making the law available. 10:52:00AM

22 BY MR. FEE: 10:52:02AM

23 Q Well, you understand that at least some
24 the code people, as you describe them here, make 10:52:05AM
25 standards available read-only, no print and no

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1 right? 10:52:11AM

2 MR. BRIDGES: Objection, lacks

3 vague and ambiguous. 10:52:14AM

4 THE WITNESS: Yes. 10:52:16AM

5 BY MR. FEE: 10:52:16AM

6 Q And Public Resource takes those same 10:52:18AM

7 standards and makes them available so that they

8 be printed without restriction and saved without 10:52:25AM

9 restriction, correct? 10:52:29AM

10 MR. BRIDGES: Objection, argumentative, 10:52:32AM

11 calls -- argumentative, lacks foundation, 10:52:32AM

12 assumes facts not in evidence, vague and 10:52:33AM

13 ambiguous. 10:52:35AM

14 THE WITNESS: Again, so that they can

15 them as they see fit. 10:52:38AM

16 BY MR. FEE: 10:52:39AM

17 Q And they can print them as they see fit, 10:52:40AM

18 correct? 10:52:42AM

19 MR. BRIDGES: Object. All the same 10:52:42AM

20 objections going back to the earlier ones. 10:52:44AM

21 It's a misleading question, argumentative. 10:52:46AM

22 THE WITNESS: It is my belief that there 10:52:50AM

23 should be no restrictions on the use of the

24 in the United States because in the United 10:52:54AM

25 States the law has no copyright. 10:52:55AM

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1 BY MR. FEE: 10:52:57AM

2 Q Isn't it true that visitors to your 10:52:58AM

3 website can print as many copies of a standard as 10:52:59AM

4 they like? 10:53:03AM

5 MR. BRIDGES: Objection, calls for 10:53:04AM

6 hypothetical, vague and ambiguous, 10:53:04AM

7 argumentative. 10:53:05AM

8 THE WITNESS: All I know is that users 10:53:08AM

9 access data using the HTTP and FTP protocols 10:53:10AM

10 and we transfer that information to their 10:53:19AM

11 sites. What they do with it, we don't know. 10:53:21AM

12 BY MR. FEE: 10:53:23AM

13 Q You put no limitations on the ability to 10:53:23AM

14 print any of plaintiffs' standards, correct? 10:53:26AM

15 MR. BRIDGES: Objection, argumentative, 10:53:29AM

16 lacks foundation, vague and ambiguous. 10:53:30AM

17 THE WITNESS: That is correct. 10:53:30AM

18 BY MR. FEE: 10:53:30AM

19 Q And you put no limitations on visitors 10:53:33AM

20 your websites' ability to save versions of the 10:53:33AM

21 standards that are owned by the plaintiffs? 10:53:36AM

22 MR. BRIDGES: Objection, argumentative, 10:53:41AM

23 lacks foundation, assumes facts not in 10:53:42AM

24 evidence, compound in its own way, vague and 10:53:44AM

25 ambiguous. 10:53:47AM

1 THE WITNESS: We impose no restrictions

2 use. 10:53:50AM

3 BY MR. FEE: 10:53:50AM

4 Q And you impose no restrictions on saving 10:53:50AM

5 plaintiffs' standards in this case? 10:53:53AM

6 MR. BRIDGES: Same objections. 10:53:55AM

7 THE WITNESS: We impose no restrictions

8 use and we don't qualify that term. 10:53:58AM

9 BY MR. FEE: 10:54:00AM

10 Q And use would encompass printing and 10:54:00AM

11 saving; isn't that true? 10:54:03AM

12 MR. BRIDGES: Objection, argumentative, 10:54:06AM

13 vague and ambiguous. 10:54:06AM

14 THE WITNESS: If that's what the user 10:54:08AM

15 decides they -- they want to do with the law. 10:54:10AM

16 BY MR. FEE: 10:54:12AM

17 Q And, in fact, there's nothing that you

18 to prevent other parties from accessing standards

19 your website and then posting them on another 10:54:19AM

20 website, is there? 10:54:21AM

21 MR. BRIDGES: All the same objections. 10:54:24AM

22 THE WITNESS: We impose no restrictions

23 use. 10:54:27AM

24 BY MR. FEE: 10:54:28AM

25 Q So a visitor to your website could post

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1 standard that they had received from your website

2 a different website, true? 10:54:33AM

3 MR. BRIDGES: Objection, hypothetical, 10:54:35AM

4 argumentative, lacks foundation, vague and 10:54:35AM

5 ambiguous. 10:54:37AM

6 THE WITNESS: That's a hypothetical. We 10:54:38AM

7 impose no restrictions on use. 10:54:40AM

8 BY MR. FEE: 10:54:41AM

9 Q You can't answer that question? 10:54:41AM

10 A They can do whatever they want. 10:54:43AM

11 MR. BRIDGES: Excuse me. 10:54:45AM

12 THE WITNESS: I'm sorry. 10:54:46AM

13 MR. BRIDGES: All the same objections. 10:54:46AM

14 BY MR. FEE: 10:54:46AM

15 Q If I asked you today to take a standard 10:54:47AM

16 from your website and post it on another website, 10:54:49AM

17 are you capable of doing that? 10:54:52AM

18 MR. BRIDGES: Objection, hypothetical, 10:54:54AM

19 argumentative, lacks foundation, vague and 10:54:55AM

20 ambiguous. 10:54:56AM

21 THE WITNESS: I have a website. 10:54:59AM

22 BY MR. FEE: 10:55:00AM

23 Q Yeah. Are you capable of posting one of 10:55:00AM

24 the standards taken from your website on another 10:55:03AM

25 website? 10:55:06AM

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1 Q Do you know if this anonymous donor 11:11:31AM
2 convinced the fire department that he was 11:11:35AM
3 referencing to make a donation to Public Resource? 11:11:38AM

4 MR. BRIDGES: Lacks competence, calls
5 speculation, vague and ambiguous. 11:11:42AM

6 THE WITNESS: I've never received any 11:11:44AM
7 money from a fire department. 11:11:45AM

8 BY MR. FEE: 11:11:47AM

9 Q Have you received any other e-mails that 11:11:49AM
10 suggest that somebody is interested in making a 11:11:54AM
11 donation in order to avoid paying for NFPA Codes? 11:11:56AM

12 A I don't recall. 11:12:06AM

13 MR. BRIDGES: By the way, right now on
14 record I think that on Exhibit 60, the
15 exhibit, I think there was an inadvertent 11:12:13AM
16 failure to redact the individual's name. So
17 would want to claw that back and we can 11:12:20AM
18 substitute for Exhibit 60 a substitute
19 without the individual's name. And that's
20 reason why I've designated the transcript as 11:12:36AM
21 confidential. 11:12:39AM

22 BY MR. FEE: 11:12:40AM

23 Q Mr. Malamud, do you have any
24 as to what quality control processes are in place 11:13:33AM
25 with respect to ASTM and its standards? 11:13:38AM

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1 MR. BRIDGES: Objection, lacks
2 vague and ambiguous. 11:13:45AM

3 THE WITNESS: No, I do not. 11:13:46AM

4 BY MR. FEE: 11:13:48AM

5 Q Is it fair to say, then, that you have
6 reason to believe that Public Resource's website 11:13:50AM
7 with HTML versions of ASTM standards underwent 11:13:56AM
8 ASTM's quality control procedures? 11:14:03AM

9 MR. BRIDGES: I'm sorry. I -- I think I 11:14:10AM
10 heard the question correctly, but I'm not
11 I understand it. So if the court reporter 11:14:15AM
12 could reread the question to me -- 11:14:15AM

13 THE REPORTER: Sure. 11:14:15AM

14 (The reporter read the record 11:14:15AM
15 as requested.) 9:21:05AM

16 MR. BRIDGES: Lacks foundation, assumes 11:14:30AM
17 facts not in evidence, argumentative, calls
18 speculation, vague and ambiguous. 11:14:43AM

19 THE WITNESS: I have no idea what the
20 quality control procedures are. 11:14:48AM

21 BY MR. FEE: 11:14:50AM

22 Q Did you engage in any efforts to comply 11:14:50AM
23 with ASTM quality control procedures before
24 any HTML versions of ASTM standards Public 11:14:56AM
25 Resource's website? 11:14:59AM

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1 MR. BRIDGES: All the same objections. 11:15:03AM

2 THE WITNESS: I have no idea what the
3 quality control procedures are. 11:15:06AM

4 BY MR. FEE: 11:15:07AM

5 Q Did you attempt to identify what ASTM's 11:15:08AM
6 quality control procedures were before you started 11:15:11AM
7 posting HTML versions of ASTM's standards on your 11:15:14AM
8 website? 11:15:17AM

9 MR. BRIDGES: Objection, lacks
10 assumes facts not in evidence, vague and 11:15:20AM
11 ambiguous, argumentative. 11:15:20AM

12 THE WITNESS: No, I did not. 11:15:20AM

13 BY MR. FEE: 11:15:21AM

14 Q Did you attempt to identify the quality 11:15:22AM
15 control standards of any of the plaintiffs before 11:15:24AM
16 you started posting HTML versions of their
17 on your website? 11:15:30AM

18 MR. BRIDGES: All the same objections. 11:15:32AM

19 THE WITNESS: What do you mean by
20 control standards," sir? 11:15:35AM

21 BY MR. FEE: 11:15:37AM

22 Q Do you have any idea what quality
23 is? 11:15:39AM

24 MR. BRIDGES: Objection, relevance,
25 foundation, vague and ambiguous. 11:15:44AM

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1 summarize quality control procedures that are 11:19:13AM

2 implemented by Public Resource? 11:19:18AM

3 MR. BRIDGES: Objection, vague and 11:19:20AM

4 ambiguous. 11:19:21AM

5 THE WITNESS: No. 11:19:22AM

6 BY MR. FEE: 11:19:22AM

7 Q Are you aware of whatever quality

8 procedures are implemented by the plaintiffs in 11:19:30AM

9 connection with their development of standards? 11:19:33AM

10 MR. BRIDGES: Objection, lacks

11 assumes facts not in evidence, vague and 11:19:39AM

12 ambiguous, argumentative. 11:19:41AM

13 THE WITNESS: I'm aware that two of the 11:19:44AM

14 publishers, NFPA and ASHRAE, frequently

15 errata when they find mistakes in their 11:19:52AM

16 standards. 11:19:56AM

17 BY MR. FEE: 11:19:56AM

18 Q Is that the full extent of your

19 of the quality control procedures that have been 11:19:59AM

20 implemented by any of the plaintiffs? 11:20:00AM

21 MR. BRIDGES: All the same objections. 11:20:02AM

22 THE WITNESS: I have read documents such 11:20:09AM

23 as the ASTM style guide and other documents 11:20:11AM

24 that purport to describe the format and use

25 terms in standards. 11:20:22AM

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1 BY MR. FEE: 11:20:27AM

2 Q Anything else? 11:20:27AM

3 MR. BRIDGES: All the same objections. 11:20:28AM

4 THE WITNESS: That's all I can recall. 11:20:29AM

5 BY MR. FEE: 11:20:30AM

6 Q You mentioned the ASTM style guide. Did11:20:31AM
7 you consult the ASTM style guide while posting
8 standards on your website? 11:20:37AM

9 MR. BRIDGES: Objection, lacks
10 vague and ambiguous, argumentative. 11:20:42AM

11 THE WITNESS: I read the document. 11:20:44AM

12 BY MR. FEE: 11:20:45AM

13 Q Did you consult the document while you 11:20:45AM
14 were posting standards to make sure that the 11:20:47AM
15 standards you were posting complied with the style11:20:50AM
16 guidelines? 11:20:53AM

17 MR. BRIDGES: Same objections. 11:20:54AM

18 THE WITNESS: Postings of standards 11:20:56AM
19 incorporated by reference is done without any11:20:59AM
20 change to the documents. What we do is take 11:21:02AM
21 the document that was incorporated by 11:21:05AM
22 reference, such as an ASTM standard, and post11:21:06AM
23 it exactly as it is on our website. 11:21:09AM

24 BY MR. FEE: 11:21:14AM

25 Q There's no difference -- 11:21:14AM

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1 Malamud. 11:26:17AM

2 (Recess taken.) 10:27:41AM

3 THE VIDEOGRAPHER: We're back on the 11:45:37AM

4 record. The time is 11:45 a.m. This marks

5 beginning of Disc No. 2 in the deposition of 11:45:44AM

6 Carl Malamud. 11:45:46AM

7 BY MR. FEE: 11:45:47AM

8 Q Mr. Malamud, does Public Resource have

9 quality assurance procedure in place to avoid 11:45:50AM

10 posting upside-down copies or scans of standards? 11:45:54AM

11 MR. BRIDGES: Objection, vague and 11:45:59AM

12 ambiguous. 11:46:00AM

13 THE WITNESS: If I see an upside-down 11:46:04AM

14 scan, I will rotate it and make it not upside 11:46:06AM

15 down. 11:46:09AM

16 BY MR. FEE: 11:46:10AM

17 Q Is there any mechanism in place to

18 to avoid posting pages upside down? 11:46:13AM

19 A I examine the scans as I do them and see 11:46:17AM

20 if I scan them properly. 11:46:20AM

21 Q Is that it? 11:46:24AM

22 A That would be it. 11:46:27AM

23 Q I'm going to hand you Exhibit 62, which

24 an e-mail chain between you and Rebecca Malamud, 11:47:18AM

25 Bates-labeled PRO_42334 through -35. 11:47:22AM

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1 (Exhibit 62 marked for identification.) 11:47:57AM

2 BY MR. FEE: 11:47:57AM

3 Q Do you identify Exhibit 62 as an e-mail 11:47:58AM

4 between you and Mrs. Malamud? 11:48:00AM

5 A Yes, it appears to be. 11:48:02AM

6 Q I want to draw your attention to, on the 11:48:04AM

7 first page -- well, actually, before I do that I 11:48:05AM

8 just want to take a step back. 11:48:06AM

9 Can you describe the circumstances under 11:48:09AM

10 which this series of e-mails went back and forth 11:48:10AM

11 between your wife? 11:48:14AM

12 A Well, Rebecca asked me whether she

13 her to -- whether I wanted her to redraw a 11:48:23AM

14 particular illustration and she furnished an

15 of that, which is not -- not rendered in this 11:48:32AM

16 electronic mail message. 11:48:34AM

17 Q About midway through the first page, the 11:48:51AM

18 one ending in 334, do you see there's an

19 at -- at January 28th, 2014 at 2:04 p.m. Ms.

20 wrote? 11:49:04AM

21 A Yes. 11:49:06AM

22 Q Okay. And then below that it says -- 11:49:06AM

23 first it says, "plus 1," and then it says,

24 I could see that image I sent to you reinterpreted 11:49:12AM

25 in our, quote, house style, end quote,

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1 no damages claim in this case? 11:51:06AM

2 A I do. 11:51:08AM

3 Q Then you continue by saying "and how 11:51:11AM

4 absolutely critically important it is that you do 11:51:14AM

5 exactly what I ask you to do, which is an exact 11:51:17AM

6 copy." 11:51:21AM

7 Do you see that? 11:51:21AM

8 A I do. 11:51:22AM

9 Q Okay. And did you, in fact, tell 11:51:22AM

10 Ms. Malamud prior to this e-mail that she was to 11:51:25AM

11 make exact copies of everything you sent to her? 11:51:28AM

12 A Since day one of the project of JPG to 11:51:32AM

13 SVG, the instructions have been very explicit, do

14 exact replica or don't do it. 11:51:41AM

15 Q Exact copy is what you said here, right? 11:51:43AM

16 MR. BRIDGES: Objection to the extent 11:51:45AM

17 you're trying to import legal -- specific

18 terminology here calling for a legal 11:51:51AM

19 conclusion. If you're asking his lay sense,

20 is merely vague and ambiguous. 11:51:56AM

21 THE WITNESS: That was a phrase Rebecca 11:51:59AM

22 used and then I repeated it in a message. An 11:52:00AM

23 exact replica is -- is the term that I would 11:52:05AM

24 use. 11:52:07AM

25 BY MR. FEE: 11:52:07AM

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1 THE REPORTER: 63. 11:59:47AM
2 (Exhibit 63 marked for identification.) 11:59:49AM
3 BY MR. FEE: 11:59:50AM
4 Q Mr. Malamud, I'm going to hand you
5 63, which is, I believe, a printout of the PDF 11:59:52AM
6 version of ASTM Standard D86-07 from your website. 11:59:57AM
7 A Okay. 12:01:10PM
8 Q Can you identify Exhibit 63 as a
9 of ASTM Standard D86-07 from your website? 12:01:15PM
10 MR. BRIDGES: Objection, lacks -- may
11 for speculation, vague and ambiguous. 12:01:24PM
12 THE WITNESS: It appears to be. I would 12:01:27PM
13 want to verify it. 12:01:33PM
14 BY MR. FEE: 12:01:34PM
15 Q You have no reason to doubt that it is a 12:01:34PM
16 copy from your website, do you? 12:01:37PM
17 MR. BRIDGES: Objection, argumentative, 12:01:39PM
18 lacks foundation, vague and ambiguous. 12:01:40PM
19 THE WITNESS: I don't know what it
20 to be. 12:01:43PM
21 BY MR. FEE: 12:01:43PM
22 Q Okay. I'm going to hand you Exhibit 64, 12:01:44PM
23 which appears to be an HTML version of ASTM
24 D86-07. 12:02:03PM
25 (Exhibit 64 marked for identification.) 12:02:11PM

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1 THE WITNESS: Okay. 12:03:06PM
2 BY MR. FEE: 12:03:06PM
3 Q Can you identify Exhibit 64 as a
4 from Public Resource's website of ASTM Standard 12:03:10PM
5 D86-07? 12:03:15PM
6 MR. BRIDGES: Objection, may call for 12:03:16PM
7 speculation, competence and lacks foundation, 12:03:18PM
8 vague and ambiguous. 12:03:23PM
9 THE WITNESS: It appears to be. 12:03:25PM
10 BY MR. FEE: 12:03:27PM
11 Q Okay. The footer at the bottom of Page 12:03:27PM
12 64 -- or bottom of the first page of Exhibit 64
13 an address. Do you see that? 12:03:37PM
14 A Yes, I do. 12:03:39PM
15 Q Is that the address where you would
16 to find ASTM Standard D86-07 on Public Resource's 12:03:41PM
17 website? 12:03:47PM
18 A Yes. 12:03:48PM
19 Q If you turn to Exhibit 63 again for a 12:03:50PM
20 second -- 12:03:53PM
21 A Uh-huh. 12:03:57PM
22 Q -- I want to ask you to turn to Page 18
23 that exhibit. 12:03:59PM
24 A Yes, I'm there. 12:04:11PM
25 Q Is the diagram on Page 18 or the entire 12:04:12PM

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1 page upside down? 12:04:15PM

2 MR. BRIDGES: I don't think that's Page

3 of the exhibit. 12:04:18PM

4 MR. FEE: No, it's Page 18 of the 12:04:19PM

5 standard. 12:04:21PM

6 THE WITNESS: The page marked 18? 12:04:22PM

7 BY MR. FEE: 12:04:23PM

8 Q Yes. 12:04:24PM

9 A It is upside down in this printed copy, 12:04:28PM

10 yes. 12:04:30PM

11 Q And if it was upside down on your

12 would that be a mistake? 12:04:33PM

13 MR. BRIDGES: Objection, lacks

14 hypothetical, vague and ambiguous. 12:04:37PM

15 THE WITNESS: I don't know if it is

16 down. 12:04:48PM

17 BY MR. FEE: 12:04:48PM

18 Q Have you tried to put all the pages

19 side up on your website? 12:04:52PM

20 A I do. 12:04:54PM

21 Q Okay. And so if one is upside down,

22 somehow slipped through your quality control 12:04:58PM

23 procedures? 12:05:01PM

24 MR. BRIDGES: Objection, hypothetical, 12:05:01PM

25 lacks foundation, vague and ambiguous. 12:05:02PM

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1 THE WITNESS: If it -- if it is, in
2 upside down, yes, that -- that is something 12:05:07PM
3 that if it was pointed out to me, I would --
4 would correct. 12:05:13PM
5 BY MR. FEE: 12:05:14PM
6 Q Mr. Malamud, would you turn to in
7 63 the page that's marked as Page 14 of the 12:05:53PM
8 standard? 12:06:01PM
9 A Okay. 12:06:07PM
10 Q Actually, Mr. Malamud, if you turn to
11 13 -- Page No. 13 at the bottom. 12:07:10PM
12 A Okay. 12:07:12PM
13 Q Do you see there's a chart at the top of 12:07:13PM
14 that page, Table 6? 12:07:15PM
15 MR. BRIDGES: I'm sorry. My exhibit 12:07:20PM
16 doesn't have a Page 13. 12:07:21PM
17 THE WITNESS: Are you sure? 12:07:27PM
18 MR. BRIDGES: I'm correct, yeah. 12:07:28PM
19 THE WITNESS: No, it's there. 12:07:29PM
20 MR. BRIDGES: No, I'm sorry. I -- I go 12:07:29PM
21 from -- oh, that's okay. I guess it's 12:07:30PM
22 backwards. That may have been a quality 12:07:36PM
23 control issue with this exhibit. 12:07:38PM
24 BY MR. FEE: 12:07:41PM
25 Q The -- do you see Table 6 in the

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1 in document -- Exhibit 63? 12:07:44PM

2 A Okay. So 63 is the printed version. 12:07:49PM

3 Q Right. 12:07:52PM

4 A And you are on Page 13? 12:07:52PM

5 Q Right, Table 6 at the top of the page. 12:07:54PM

6 A It says Table 8. 12:07:56PM

7 Q I'm sorry. Table 8. You're right? 12:07:59PM

8 A Yes. 12:08:02PM

9 Q At the bottom of that table you'll see 12:08:03PM

10 there's some sort of notation. It appears to say

11 or SF is the average slope or rate of change 12:08:09PM

12 calculated in accordance with 13.2. 12:08:13PM

13 A That is what it says. 12:08:20PM

14 Q Okay. I want you to take a look at 12:08:21PM

15 Exhibit 64, which is the HTML version of the 12:08:23PM

16 standard, and if you'd turn to Page 15 of 28 -- do 12:08:29PM

17 you see the page numbers at the top? 12:08:35PM

18 A Yes. 12:08:37PM

19 Q Do you see the same chart or table,

20 8? 12:08:41PM

21 A Yes, I do. 12:08:44PM

22 Q Okay. I want to look at the same

23 in the HTML version that we just read in the PDF 12:08:47PM

24 version. Do you see it says, "SG or SF is the 12:08:51PM

25 average slope or rate of change calculated in 12:08:53PM

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1 MR. FEE: We're not on 64 yet. 12:10:43PM
2 MR. BRIDGES: Okay. 12:10:44PM
3 THE WITNESS: No, we're not on 64. 12:10:45PM
4 MR. BRIDGES: Sorry. What was the 12:10:45PM
5 question again? 12:10:45PM
6 BY MR. FEE: 12:10:46PM
7 Q In exhibit -- well, in the second column 12:10:46PM
8 in the cell that corresponds to 90 percent 12:10:48PM
9 recovered, do you see there's a number there that 12:10:54PM
10 says 200.4? 12:10:57PM
11 A I'm sorry. I was not paying attention. 12:11:03PM
12 Where are we looking? 12:11:05PM
13 Q For 90 percent recovered, the cell that 12:11:07PM
14 corresponds with the second column, it says, 12:11:10PM
15 "200.4." Do you see that? 12:11:12PM
16 A That's the one that's underlined? 12:11:14PM
17 Q Yes. 12:11:16PM
18 A Did you underline that? 12:11:17PM
19 Q Yes. 12:11:18PM
20 A It says, "200.4." 12:11:18PM
21 Q Correct. Now, if you would turn to 12:11:20PM
22 Exhibit 64, Page 23 of 28 -- 12:11:21PM
23 A Uh-huh. 12:11:29PM
24 Q -- do you see you have Figure X.1 or X1.1? 12:11:29PM
25 A Yes. 12:11:36PM

1 Q Okay. And in the cell that corresponds
2 90 percent recovered in the second column, do you 12:11:42PM
3 see there's a 2, then a letter 0, then the number
4 then .4? 12:11:48PM
5 A I see 200.4, yes. 12:11:52PM
6 Q Are you suggesting that both those are 12:11:55PM
7 zeros? 12:11:58PM
8 MR. BRIDGES: Objection. The document 12:12:00PM
9 speaks for itself. 12:12:02PM
10 THE WITNESS: It's a round oval. 12:12:03PM
11 BY MR. FEE: 12:12:10PM
12 Q Okay. 12:12:12PM
13 A Uh-huh. 12:12:12PM
14 Q So you don't consider that to be a 12:12:12PM
15 mistake? 12:12:14PM
16 A I don't know. 12:12:16PM
17 Q You don't know? 12:12:19PM
18 A I mean, this is a whole series of
19 in that column and this one is 200.4. I think
20 pretty clear -- 12:12:30PM
21 Q Okay. 12:12:31PM
22 A -- what the value is. 12:12:31PM
23 Q Let's turn back to Exhibit 63, the PDF 12:12:32PM
24 version of this standard. On Page 24 of Exhibit
25 at the top of that page, do you see a Figure X3.1? 12:13:09PM

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1 A I do. 12:13:14PM

2 Q I'd like to draw your attention to the 12:13:17PM

3 cell that corresponds to the number of units being 12:13:19PM

4 three, and -- and it's in the second row. Do you 12:13:23PM

5 see it says, "1.15"? 12:13:27PM

6 A The second column "1.15," yes. 12:13:31PM

7 Q All right. Now, let's look at Exhibit

8 your HTML version. If you go to Page 24 of 28, do 12:13:36PM

9 you see the exhibit -- or Figure X3.1? It starts

10 Page 24 of 28 and carries over to Page 25 of 28.

11 you see that? 12:14:02PM

12 A Yes, I do. 12:14:03PM

13 Q All right. And then in the cell that 12:14:03PM

14 corresponds to units of three and in the second 12:14:05PM

15 column, it says, "1.16." Do you see that? 12:14:07PM

16 A I do. 12:14:11PM

17 Q Okay. And in the original PDF, it says, 12:14:12PM

18 "1.15" in that same place, correct? 12:14:15PM

19 A It does. 12:14:20PM

20 Q Okay. Is that a mistake? 12:14:20PM

21 A Those numbers are different. 12:14:21PM

22 Q Did you intend for them to be different? 12:14:24PM

23 MR. BRIDGES: Objection, lacks

24 vague and ambiguous. 12:14:27PM

25 THE WITNESS: They should be the same. 12:14:30PM

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1 BY MR. FEE: 12:14:33PM

2 Q All right. Let's go back to Table X3.1

3 the PDF version, which is 63, and just move down

4 rows to the cell that corresponds with 5? 12:14:46PM

5 A Uh-huh. 12:14:50PM

6 Q Do you see it says, 1.98 -- or "1.58"? 12:14:51PM

7 I'm sorry. 12:14:55PM

8 A Really? That looks like a 1.68 to me. 12:14:59PM

9 Q Does it? Okay. 12:15:02PM

10 MR. BRIDGES: Yeah, it does to me too. 12:15:03PM

11 BY MR. FEE: 12:15:05PM

12 Q All right. Let's go over -- 12:15:06PM

13 MR. BRIDGES: Are you saying -- is it

14 representation that it's 1.58? 12:15:08PM

15 MR. FEE: I'm just reading it like the 12:15:11PM

16 rest of you guys. If you don't -- 12:15:12PM

17 MR. BRIDGES: Yeah, well, we're reading

18 1.68. 12:15:14PM

19 MR. FEE: That -- that's fine. 12:15:16PM

20 BY MR. FEE: 12:15:16PM

21 Q Let's look at the cell that corresponds

22 Unit 4 and is in the third column. Do you see -- 12:15:19PM

23 well, why don't you tell me what number that is. 12:15:29PM

24 A These old standards are such poor print 12:15:37PM

25 quality. It looks like a 1.56 would be my guess.

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1 would want to magnify that, however, before 12:15:45PM

2 answering that definitively. 12:15:48PM

3 Q All right. It looks like a 1.56 to me 12:15:51PM

4 too. 12:15:54PM

5 Let's look at Exhibit 64, the HTML 12:15:54PM

6 version. In that same column do you see that the 12:15:57PM

7 HTML version says that the number is 1.66? 12:16:01PM

8 A It does. 12:16:05PM

9 Q So that's different than how you read
10 PDF version, at least without a magnifying glass? 12:16:11PM

11 A Yeah, I would definitely want to pull up
12 magnifying glass on something like that. 12:16:19PM

13 Q Okay. Let's go back to the PDF version, 12:16:21PM
14 Exhibit 64. In the cell that corresponds with
15 8 in the second column, what number does that say? 12:16:28PM

16 MR. BRIDGES: I'm sorry. What was the 12:16:37PM
17 question again? 12:16:37PM

18 THE WITNESS: What's the number in --
19 sorry. 12:16:40PM

20 (The reporter read the record 12:16:50PM
21 as requested.) 9:21:05AM

22 THE WITNESS: I see a 2.4, and again, I 12:16:52PM
23 can't really make out what's there. 12:16:55PM

24 BY MR. FEE: 12:16:59PM

25 Q I'm sorry. You can't read that one? 12:16:59PM

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1 A Again, without magnifying it, I can't. 12:17:08PM
2 It's a 2.4 and then something. 12:17:09PM
3 MR. FEE: I'm sorry. What was the 12:17:12PM
4 question again? 12:17:13PM
5 (The reporter read the record 12:17:14PM
6 as requested.) 9:21:05AM
7 MR. BRIDGES: Unit 8? 12:17:28PM
8 THE REPORTER: Yep. 12:17:28PM
9 MR. BRIDGES: Okay. I -- I believe that 12:17:29PM
10 the witness may have been looking at the
11 line. 12:17:33PM
12 THE WITNESS: Unit 8, Column 2, 2.4? 12:17:36PM
13 Is -- am I -- 12:17:40PM
14 BY MR. FEE: 12:17:43PM
15 Q Yeah. 2.47 is what it looks like to me. 12:17:43PM
16 A Yeah, it's a 2.4 -- it could be a 6, it 12:17:48PM
17 could be something else. It might be a 6. 12:17:50PM
18 Q Okay. If you're not sure, we'll move on 12:17:52PM
19 to another one. There's plenty of these. 12:17:54PM
20 Look in the cell that corresponds to
21 1. The 12th column, do you see there is a 0.86 -- 12:18:00PM
22 oh, I'm sorry -- 0.84? 12:18:16PM
23 A Which column? 12:18:22PM
24 Q I think it's the 12th column. 12:18:24PM
25 A Yes, I do. 12:18:26PM

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1 Q Do you see 0.84? Now, if we go back to 12:18:29PM
2 the HTML version, Exhibit 64, do you see that it 12:18:32PM
3 says 0.86 in that same place? 12:18:37PM

4 A It does. 12:18:41PM

5 Q So is that a mistake? 12:18:43PM

6 MR. BRIDGES: Objection, lacks
7 vague and ambiguous. 12:18:46PM

8 THE WITNESS: Yes. 12:18:51PM

9 BY MR. FEE: 12:18:52PM

10 Q Do you know what the significance of any 12:18:54PM
11 of these numbers are in this table? 12:18:56PM

12 MR. BRIDGES: Objection, lacks
13 assumes facts not in evidence, vague and 12:19:02PM
14 ambiguous. 12:19:09PM

15 THE WITNESS: Figure X3.1 can be used to 12:19:09PM
16 determine the corrected loss from the
17 loss in the barometric pressure in QPAs. 12:19:17PM

18 BY MR. FEE: 12:19:25PM

19 Q Do you know what that means? 12:19:25PM

20 A I would have to read the standard. 12:19:27PM

21 Q Okay. Would you expect to see
22 mistakes in some of these tables in this standard
23 the HTML version? 12:19:36PM

24 A Given what you've pointed out, I would 12:19:39PM
25 want to do a -- a -- a rigorous quality assurance 12:19:41PM

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1 check on this particular standard. 12:19:43PM

2 Q Would Exhibit 64 have gone through
3 Resource's ordinary quality control standards or 12:19:56PM
4 procedures prior to being posted on the Internet? 12:20:02PM

5 MR. BRIDGES: Objection, hypothetical, 12:20:06PM
6 vague and ambiguous, argumentative, lacks 12:20:07PM
7 foundation. 12:20:09PM

8 THE WITNESS: I would expect so. 12:20:10PM

9 BY MR. FEE: 12:20:11PM

10 Q So do you have any reason to believe
11 Exhibit 64 did not go through the ordinary quality 12:20:15PM
12 control standards or quality controls at Public 12:20:19PM
13 Resource? 12:20:21PM

14 MR. BRIDGES: Same objections. 12:20:22PM

15 THE WITNESS: I don't know. I -- I
16 have to research when it was done, what batch 12:20:25PM
17 it was in and -- and see what was going on. 12:20:29PM

18 BY MR. FEE: 12:20:32PM

19 Q Are these many mistakes in a particular 12:20:42PM
20 standard acceptable from your perspective? 12:20:43PM

21 MR. BRIDGES: Same objections. 12:20:47PM

22 THE WITNESS: No. If anybody notified
23 of these, I would do rigorous QA check again 12:20:53PM
24 and would correct any mistakes that were in 12:20:55PM
25 there. 12:20:57PM

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1 BY MR. FEE: 12:20:58PM

2 Q Do you have any explanation as to why 12:20:58PM

3 there are these mistakes in Exhibit 64? 12:21:00PM

4 MR. BRIDGES: Objection, lacks

5 vague and ambiguous, argumentative. 12:21:04PM

6 THE WITNESS: No. 12:21:07PM

7 BY MR. FEE: 12:21:07PM

8 Q You're aware of additional mistakes that 12:21:24PM

9 have been made in the standards that you posted

10 were originally published by one of the plaintiffs 12:21:30PM

11 in this case, aren't you? 12:21:32PM

12 MR. BRIDGES: Objection, lacks

13 assumes facts not in evidence, argumentative, 12:21:36PM

14 vague and ambiguous. 12:21:37PM

15 THE WITNESS: You'd have to refresh my 12:21:40PM

16 memory on specifics. 12:21:42PM

17 BY MR. FEE: 12:21:42PM

18 Q Are you aware that there's at least one 12:21:44PM

19 additional mistake that's been made in one of the 12:21:47PM

20 plaintiffs' standards other than the ones we just 12:21:49PM

21 identified? 12:21:51PM

22 MR. BRIDGES: Same objections. 12:21:52PM

23 THE WITNESS: I told you about the one 12:21:53PM

24 that I recollect which is the missing page 12:21:54PM

25 issue. 12:21:56PM

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1 BY MR. FEE: 12:21:56PM

2 Q Is that the only other mistake that

3 aware of? 12:21:59PM

4 MR. BRIDGES: Same objections. 12:22:00PM

5 THE WITNESS: That I can recollect. 12:22:01PM

6 MS. RUBEL: Is this 65? 12:22:26PM

7 THE REPORTER: Yes. 12:22:28PM

8 (Exhibit 65 marked for identification.) 12:22:28PM

9 BY MR. FEE: 12:22:29PM

10 Q Mr. Malamud -- I'm sorry. Mr. Malamud, 12:22:29PM

11 I'm going to hand you Exhibit 65, which is an e-

12 from you to a redacted person, Bates-labeled 12:22:34PM

13 PRO_221842. 12:22:37PM

14 A Okay. 12:23:00PM

15 Q First of all, can you identify Exhibit

16 as an e-mail that you sent to some donor or 12:23:04PM

17 potential donor? 12:23:07PM

18 A It appears to be e-mail from me to -- 12:23:08PM

19 MR. BRIDGES: I need time to object. 12:23:11PM

20 Objection, lacks foundation, vague and 12:23:13PM

21 ambiguous. 12:23:15PM

22 THE WITNESS: It appears to be e-mail

23 me to redacted. 12:23:19PM

24 BY MR. FEE: 12:23:20PM

25 Q Do you know the name of the person who

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1 redacted without telling me the name? 12:23:23PM

2 A I can't -- no. 12:23:28PM

3 Q Now, in this e-mail, the re: line is

4 Is that referring to this lawsuit that we're here 12:23:38PM

5 today about? 12:23:40PM

6 A Might be. 12:23:43PM

7 Q Okay. If you look below the re: line it 12:23:44PM

8 says, "in case you're interested about the

9 at issue, here's a good look." Then you have

10 addresses there, correct? 12:23:53PM

11 A That's correct. 12:23:55PM

12 Q And they reference the standards of the 12:23:57PM

13 three plaintiffs in this case, don't they? 12:24:00PM

14 A Those are Google searches for the term 12:24:04PM

15 NFPA, on the site Law.Resource.Org, so any 12:24:06PM

16 occurrence of that phrase would come up in that 12:24:11PM

17 Google search. 12:24:14PM

18 Q Okay. Then below that you say, "I 12:24:15PM

19 screwed up some of the PDFs and some of the SEO 12:24:17PM

20 stuff." 12:24:21PM

21 Do you see that? 12:24:21PM

22 A I do. 12:24:21PM

23 Q Okay. How did you screw up some of the 12:24:21PM

24 PDFs and some of the SEO stuff? 12:24:26PM

25 MR. BRIDGES: Objection, vague and 12:24:29PM

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1 process as effectively as you would have liked? 12:27:39PM

2 A The tool I use for doing OCR is Adobe 12:27:43PM

3 Acrobat Pro, which has a batch option, and it 12:27:46PM

4 appears there are occasions when the OCR batch 12:27:51PM

5 option crashes, meaning that some of the files in 12:27:54PM

6 the batch have OCR and others did not. 12:27:57PM

7 Q And that happened in connection with the 12:28:03PM

8 posting of some of plaintiffs' standards? 12:28:05PM

9 MR. BRIDGES: Objection, vague and 12:28:10PM

10 ambiguous. 12:28:11PM

11 THE WITNESS: Yes. I did discover some 12:28:12PM

12 standards in which it appeared OCR had not

13 completed. 12:28:17PM

14 BY MR. FEE: 12:28:17PM

15 Q How did that come to your attention? 12:28:18PM

16 A I pulled up the document and noticed 12:28:21PM

17 that -- that you could not select a piece of text, 12:28:24PM

18 which is an indication that OCR is present. 12:28:28PM

19 Q So besides the missing page and the 12:28:32PM

20 problems with the OCR, are you aware of any other 12:28:36PM

21 screwups with respect to PDFs of plaintiffs' 12:28:42PM

22 standards that were posted on your website? 12:28:45PM

23 A Well, missing pages. We saw the page

24 was upside down. We saw two pages that were --

25 flipped. So those are examples of things one can

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1 wrong with a PDF file. 12:29:00PM

2 Q To your knowledge, did all those
3 or screwups take place with respect to at least
4 of the plaintiffs' standards? 12:29:11PM

5 MR. BRIDGES: Objection, confusing,
6 and ambiguous, lacks foundation. 12:29:18PM

7 THE WITNESS: Well certainly, the 12:29:23PM
8 upside-down page occurred with an ASTM
9 because you just showed it to me. The missed 12:29:28PM
10 page in the scan issue I don't know -- I -- I 12:29:32PM
11 forget where that occurred. 12:29:34PM

12 BY MR. FEE: 12:29:36PM

13 Q Would -- and you did say already that
14 problem with OCR'ing happened at least in part
15 some of the plaintiffs' standards, right? 12:29:43PM

16 MR. BRIDGES: Objection, argumentative, 12:29:45PM
17 lacks foundation, vague and ambiguous. 12:29:45PM

18 THE WITNESS: Yes, there were a couple 12:29:48PM
19 ASTM standards I discovered. 12:29:49PM

20 THE REPORTER: 66. 12:29:51PM

21 (Exhibit 66 marked for identification.) 11:31:27AM

22 BY MR. FEE: 12:29:51PM

23 Q I'm going to hand you Exhibit 66, which
24 an e-mail from you to John Gilmore, Bates-labeled 12:31:10PM

25 PRO_211466. 12:31:14PM

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1 legal conclusion, vague and ambiguous, 1:02:25PM
2 argumentative. 1:02:27PM
3 THE WITNESS: I -- I'm aware that he sent 1:02:27PM
4 me a copy of this document that says ASTM 1:02:29PM
5 license agreement. 1:02:32PM
6 BY MR. FEE: 1:02:34PM
7 Q And did you understand that to be because 1:02:35PM
8 he was accessing the ASTM standards you asked him
9 access subject to these terms? 1:02:41PM
10 MR. BRIDGES: Same objections. 1:02:44PM
11 THE WITNESS: I don't know why he sent me 1:02:48PM
12 the ASTM license agreement, frankly. 1:02:50PM
13 BY MR. FEE: 1:02:53PM
14 Q Mr. Malamud, I'm going to hand you
15 69, which is a chain of e-mails between you and 1:03:47PM
16 Mr. Hall, Bates-labeled PRO_167210 through -11. 1:03:49PM
17 (Exhibit 69 marked for identification.) 1:03:55PM
18 THE WITNESS: Yes, this appears to be an 1:04:21PM
19 exchange between me and Mr. Hall. 1:04:22PM
20 BY MR. FEE: 1:04:24PM
21 Q I want to draw your attention to the top 1:04:24PM
22 of the first page of Exhibit 69. Do you see
23 an e-mail from you to Mr. Hall? 1:04:28PM
24 A I do. 1:04:30PM
25 Q First I want to look at the last couple 1:04:31PM

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1 Q Now, getting back to the e-mail, Exhibit 1:07:52PM
2 69, you say you want to look -- "I'd like to look
3 the docs, but under two provisos: one, you need to 1:07:59PM
4 stay anonymous and mum on this, no bragging about 1:08:04PM
5 it, talking about it, and I'm not going to do that 1:08:08PM
6 either." 1:08:11PM
7 Do you see that? 1:08:11PM
8 A Yes. 1:08:12PM
9 Q Why was it important that this be done 1:08:13PM
10 secretly? 1:08:15PM
11 MR. BRIDGES: Objection, misstates the 1:08:16PM
12 communication, argumentative, lacks
13 vague and ambiguous. 1:08:24PM
14 THE WITNESS: Because I did not want him 1:08:27PM
15 through a medium such as blogs or Twitter or 1:08:29PM
16 anything else to be speaking on behalf of 1:08:33PM
17 Public Resource. 1:08:37PM
18 BY MR. FEE: 1:08:38PM
19 Q Any other reason? 1:08:41PM
20 MR. BRIDGES: Same objections. 1:08:45PM
21 THE WITNESS: That is the reason I -- I 1:08:46PM
22 insist on speaking on behalf of Public 1:08:46PM
23 Resource. I don't like other people to do 1:08:49PM
24 that. 1:08:52PM
25 BY MR. FEE: 1:08:52PM

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1 Q But you didn't just tell him not to speak
2 on behalf of Public Resource; you told him to not
3 say anything about downloading these standards and
4 sending them to you, right? 1:08:52PM
1:08:54PM
1:08:57PM
1:09:00PM

5 MR. BRIDGES: Objection, mischaracterizes
6 the document, mischaracterizes testimony,
7 argumentative, lacks foundation. 1:09:01PM
1:09:04PM
1:09:06PM

8 THE WITNESS: I didn't want him speaking
9 about doing things for me, Public Resource. 1:09:12PM
1:09:14PM
10 That -- that's a role that I reserve for
11 myself. 1:09:19PM
1:09:22PM

12 BY MR. FEE: 1:09:22PM

13 Q And you also say in No. 2 here, "we're
14 going to use your docs." 1:09:33PM

15 What does that mean? 1:09:35PM

16 A It meant we were not going to post them
17 the Public Resource website even if they were
18 incorporated by reference into law. 1:09:40PM
1:09:43PM

19 Q Did you eventually post the standards
20 you got from Mr. Hall on Public Resource's website? 1:09:50PM

21 MR. BRIDGES: Objection, argumentative,
22 lacks foundation, vague and misleading. 1:09:53PM
1:09:54PM

23 THE WITNESS: No. 1:09:57PM

24 BY MR. FEE: 1:09:58PM

25 Q Did you post some other copy of the 1:09:59PM

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1 MR. BRIDGES: Objection to the extent it 2:32:12PM
2 touches on attorney work product or 2:32:14PM
3 attorney-client communications and I would 2:32:16PM
4 instruct to that extent. 2:32:20PM

5 THE WITNESS: He said he would be willing 2:32:23PM
6 to consider it. 2:32:24PM

7 BY MR. FEE: 2:32:25PM

8 Q What do you understand "willing to 2:32:29PM
9 consider it" to mean? 2:32:30PM

10 MR. BRIDGES: Objection, calls for 2:32:31PM
11 speculation, competence. 2:32:33PM

12 THE WITNESS: I don't know because I 2:32:35PM
13 turned his contact information over to our 2:32:36PM
14 legal team. 2:32:39PM

15 BY MR. FEE: 2:32:39PM

16 Q Have you now identified all the persons 2:32:41PM
17 with whom you've spoken regarding the possibility
18 an affidavit being submitted by them in connection 2:32:46PM
19 with this matter? 2:32:49PM

20 A To the best of my recollection. 2:32:51PM

21 Q Mr. Malamud, I'm going to hand you
22 70, which is a printout from archive.org. 2:33:27PM

23 (Exhibit 70 marked for identification.) 2:33:46PM

24 BY MR. FEE: 2:33:46PM

25 Q Do you recognize Exhibit 70 to be a 2:34:05PM

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1 printout from archive.org of a standard that you
2 posted -- of information that you had posted on 2:34:13PM
3 archive.org? 2:34:14PM
4 MR. BRIDGES: Objection, vague and 2:34:17PM
5 ambiguous, lacks foundation. 2:34:18PM
6 THE WITNESS: It appears to be. 2:34:22PM
7 BY MR. FEE: 2:34:23PM
8 Q I want to draw your attention to the
9 right below the image on the first page to the
10 where -- you see it says author, subject, language, 2:34:34PM
11 collection on the left-hand side? 2:34:38PM
12 A Yes, I see those. 2:34:42PM
13 Q Is that information that you would have 2:34:44PM
14 put into archive.org when you uploaded a standard
15 archive.org? 2:34:53PM
16 A Yes. 2:34:57PM
17 Q And at least with respect to this 2:34:59PM
18 particular standard, did you identify the author of 2:35:02PM
19 ASTM D975 to be American Society for Testing and 2:35:06PM
20 Materials? 2:35:11PM
21 A I used the label author, colon, and the 2:35:16PM
22 name of the standards organization, yes. 2:35:19PM
23 Q Is that your general practice for 2:35:21PM
24 identifying the author of any ASTM standard that
25 upload to archive.org? 2:35:27PM

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1 MR. BRIDGES: Objection to the extent the 2:35:30PM

2 word "author" depends upon a legal conclusion 2:35:33PM

3 and vague and ambiguous, lacks foundation. 2:35:36PM

4 THE WITNESS: That is a standard label 2:35:41PM

5 that I have used on other ASTM standards. 2:35:44PM

6 BY MR. FEE: 2:35:49PM

7 Q Are you aware of any person or 2:35:59PM

8 organization that has created a new work based on 2:36:02PM

9 any of the plaintiffs' standards that you have 2:36:06PM

10 posted to Public Resource's website? 2:36:09PM

11 MR. BRIDGES: Objection, may call for a 2:36:11PM

12 legal conclusion, vague and ambiguous. 2:36:13PM

13 THE WITNESS: What do you mean by "new 2:36:16PM

14 work"? 2:36:18PM

15 BY MR. FEE: 2:36:18PM

16 Q Has somebody drafted a different standard 2:36:21PM

17 that was based upon an ASTM standard, for example? 2:36:24PM

18 MR. BRIDGES: Objection, vague and 2:36:28PM

19 ambiguous. 2:36:28PM

20 THE WITNESS: I'm not aware of anything

21 that sort. 2:36:31PM

22 BY MR. FEE: 2:36:32PM

23 Q Are you aware of anybody compiling a 2:36:32PM

24 selection of various standards that are available

25 your website so that all the standards are easily 2:36:40PM

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1 business models of standards development 2:49:35PM
2 organizations and, in fact, indeed any 2:49:38PM
3 organization. 2:49:40PM
4 BY MR. FEE: 2:49:41PM
5 Q Okay. So when he was asking whether or 2:49:44PM
6 not you were providing standards for free, it was 2:49:47PM
7 going to put ASTM and others in the path of 2:49:52PM
8 bankruptcy, you said you didn't think that it would 2:49:55PM
9 yield bankruptcy for those organizations, but you
10 understand it poses a challenge for their business 2:50:02PM
11 models. Am I missing something there? 2:50:05PM
12 A I think -- 2:50:08PM
13 MR. BRIDGES: Objection, vague and 2:50:09PM
14 ambiguous, argumentative. 2:50:09PM
15 THE WITNESS: I think making standards 2:50:11PM
16 more freely available by myself or anybody 2:50:13PM
17 potentially poses a challenge to the current 2:50:17PM
18 business models of the standards development
19 of some standards development organizations. 2:50:21PM
20 BY MR. FEE: 2:50:24PM
21 Q Would that include the plaintiff standard 2:50:24PM
22 development organizations? 2:50:28PM
23 MR. BRIDGES: Objection, competence,
24 for speculation, vague and ambiguous. 2:50:33PM
25 THE WITNESS: I actually sincerely

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1 on those 169 standards as a source of revenue of 3:01:00PM

2 approximately 50 to \$100 million, according to you? 3:01:04PM

3 MR. BRIDGES: Objection, argumentative, 3:01:09PM

4 lacks foundation, vague and ambiguous. 3:01:11PM

5 THE WITNESS: As you see in the third 3:01:17PM

6 paragraph from the bottom, I -- I state that 3:01:21PM

7 organizations like NFPA get huge benefit from 3:01:25PM

8 being the provider of an important subset of 3:01:28PM

9 the law. 3:01:31PM

10 BY MR. FEE: 3:01:34PM

11 Q So you were expecting those organizations 3:01:35PM

12 to thank you for posting the standards online that 3:01:37PM

13 accounted for up to \$100 million? 3:01:40PM

14 MR. BRIDGES: Objection, lacks

15 assumes facts not in evidence, argumentative. 3:01:41PM

16 THE WITNESS: Maybe not on August 2,

17 BY MR. FEE: 3:01:49PM

18 Q Do you think it's coming someday soon? 3:01:49PM

19 MR. BRIDGES: Objection, argumentative. 3:01:51PM

20 THE WITNESS: I'm hopeful. 3:01:54PM

21 BY MR. FEE: 3:01:54PM

22 Q Okay. If Public Resource was unable to 3:01:55PM

23 continue to post the standards incorporated by 3:02:03PM

24 reference on its website, what impact, if any,

25 that have on Public Resource's financial ability to 3:02:10PM

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1 survive long term? 3:02:15PM

2 MR. BRIDGES: Objection, vague and 3:02:17PM

3 ambiguous. 3:02:18PM

4 THE WITNESS: Probably none. 3:02:21PM

5 BY MR. FEE: 3:02:22PM

6 Q Can you identify any harm that would be 3:02:23PM

7 suffered by Public Resource if it was precluded

8 posting standards incorporated by reference on its 3:02:29PM

9 website? 3:02:33PM

10 MR. BRIDGES: Objection, vague and 3:02:34PM

11 ambiguous. 3:02:37PM

12 THE WITNESS: We put a tremendous amount 3:02:40PM

13 of effort in -- into this and one hates to

14 wasted that -- that effort. 3:02:45PM

15 BY MR. FEE: 3:02:47PM

16 Q Anything else that you can think of? 3:02:48PM

17 A No. 3:02:51PM

18 Q What harm would be suffered by the public 3:03:19PM

19 if Public Resource was unable to post standards 3:03:22PM

20 incorporated by reference on its website in the 3:03:26PM

21 future? 3:03:28PM

22 A I think a large number of people would be 3:03:32PM

23 unable to easily access standards incorporated by 3:03:34PM

24 reference into the law and I think that would have

25 impact on public safety and -- and inform

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1 BY MR. FEE: 3:17:04PM

2 Q Did Congress amend -- (Cross-talking.) 3:17:06PM

3 MR. BRIDGES: Allow him to finish and

4 you can ask your questions. 3:17:08PM

5 BY MR. FEE: 3:17:09PM

6 Q -- the statute as you requested as of 3:17:09PM

7 today? 3:17:09PM

8 A Okay. So it's really important that we 3:17:10PM

9 allow the court reporter to hear what happens here. 3:17:12PM

10 Okay? 3:17:16PM

11 Q Tell your counsel that. 3:17:17PM

12 A No, you -- you interrupted me while I was 3:17:19PM

13 speaking, sir. 3:17:22PM

14 Q Your job here is to answer my questions, 3:17:23PM

15 not to say whatever you feel like. The question

16 did Congress amend the statute that you asked them 3:17:27PM

17 to amend as of today? 3:17:31PM

18 MR. BRIDGES: Objection, argumentative. 3:17:33PM

19 THE WITNESS: No. 3:17:36PM

20 BY MR. FEE: 3:17:37PM

21 Q And isn't it also true that you've asked 3:17:37PM

22 the executive branch to make changes to their 3:17:40PM

23 policies or regulations with respect to copyright 3:17:44PM

24 treatment or protection for standards incorporated 3:17:45PM

25 by reference? 3:17:52PM

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1 MR. BRIDGES: Objection, argumentative, 3:17:53PM
2 lacks foundation, vague and ambiguous. 3:17:54PM
3 THE WITNESS: We have filed comments on 3:17:55PM
4 the series of government proceedings
5 information from a variety of parties. 3:18:00PM
6 BY MR. FEE: 3:18:01PM
7 Q And isn't it the case that what you 3:18:02PM
8 proposed in those comments have not been adopted by 3:18:06PM
9 any executive branch as of today? 3:18:10PM
10 MR. BRIDGES: Same objections. 3:18:12PM
11 THE WITNESS: You -- you're speaking as
12 we are proposing changes in the law. And I'm 3:18:24PM
13 not. There's a long-standing principle that 3:18:29PM
14 the law is available, and we have commented 3:18:34PM
15 and -- and described that principle in a
16 of submissions to government agencies. We're 3:18:43PM
17 not asking them to change the law. 3:18:49PM
18 BY MR. FEE: 3:18:51PM
19 Q Were you asking the executive branch to 3:18:51PM
20 make any changes to an OMB circular? 3:18:53PM
21 MR. BRIDGES: Objection, lacks
22 vague and ambiguous. 3:19:00PM
23 THE WITNESS: The consideration of OMB 3:19:00PM
24 A-119 is currently underway. 3:19:04PM
25 BY MR. FEE: 3:19:07PM

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1 Q Have your proposals for any changes to 3:19:07PM
2 that circular been adopted as of today? 3:19:11PM

3 MR. BRIDGES: Objection, argumentative, 3:19:15PM
4 lacks foundation, assumes many facts not in 3:19:15PM
5 evidence. 3:19:17PM

6 THE WITNESS: Nobody's chance -- nobody's 3:19:19PM
7 changes to that circular have been adopted 3:19:20PM
8 because they're still considering the matter. 3:19:22PM

9 BY MR. FEE: 3:19:24PM

10 Q And isn't it also true that there hasn't 3:19:25PM
11 been an outpouring of donations to help fund Public 3:19:27PM
12 Resource's efforts to post standards incorporated
13 reference online? 3:19:37PM

14 MR. BRIDGES: Objection, argumentative, 3:19:38PM
15 lacks foundation, assumes facts not in 3:19:40PM
16 evidence, and extraordinarily vague and 3:19:43PM
17 ambiguous. 3:19:48PM

18 THE WITNESS: Yeah, I don't know what an 3:19:48PM
19 outpouring of donations is in the context of
20 very small 501(c)(3) nonprofit. 3:19:53PM

21 BY MR. FEE: 3:19:56PM

22 Q Well, we do know that you tried to raise 3:19:57PM
23 \$100,000 to Kickstarter and that failed, right? 3:20:00PM

24 MR. BRIDGES: Objection, lacks
25 vague and ambiguous. 3:20:04PM

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1 Internet standard series, but some officials I3:23:54PM
2 know -- Dr. Vint Cerf, widely considered as 3:23:58PM
3 father of the Internet, spent a considerable 3:24:02PM
4 period of time at DARPA, where he wrote a 3:24:05PM
5 protocol called the Internet protocol and 3:24:08PM
6 worked with his colleague, Dr. Bob Kahn, to 3:24:11PM
7 write the transmission control protocol known 3:24:16PM
8 as TCP, and TCP/IP is the basis for our modern3:24:18PM
9 Internet. 3:24:25PM
10 (Exhibit 73 marked for identification.) 11:31:27AM
11 BY MR. FEE: 3:24:33PM
12 Q Mr. Malamud, I'm going to hand you
13 73. It's an e-mail exchange between -- between you3:25:44PM
14 and Maura, M-A-U-R-A, Marx, M-A-R-X, Bates-labeled 3:25:47PM
15 PRO_177934 through -36. 3:25:53PM
16 A Yes, this appears to be an exchange 3:26:33PM
17 between me and Ms. Marx. 3:26:36PM
18 Q Who is Ms. Marx? 3:26:38PM
19 A Ms. Marx is currently the acting director3:26:41PM
20 of the Institute of Museum and Library Services, 3:26:44PM
21 IMLS, which is an agency of the United States 3:26:45PM
22 Government. 3:26:53PM
23 Q About halfway down the first page of 3:26:55PM
24 Exhibit 73 you see it says -- there is an e-mail 3:27:00PM
25 from you on April 20th, 2012 at 6:39 p.m.? 3:27:03PM

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1 A Yes. 3:27:08PM

2 Q It says, "BTW" -- by the way; is that 3:27:09PM

3 right? 3:27:13PM

4 A That's correct. 3:27:13PM

5 Q Okay. "This is why I'm going a little 3:27:13PM

6 batty by this time on a Friday. I spent the entire 3:27:17PM

7 week buying standards. Shopping is tough work in 3:27:21PM

8 this case. Lots of double-checking to find the 3:27:24PM

9 exact version. Took me an entire week and over

10 and this is what I have to show for it. What a way 3:27:32PM

11 to make a living." 3:27:38PM

12 Do you see that? 3:27:40PM

13 MR. BRIDGES: Objection. You're reading 3:27:41PM

14 almost all of it. Let's read the whole 3:27:41PM

15 message -- 3:27:41PM

16 MR. FEE: No. 3:27:42PM

17 MR. BRIDGES: -- into the record. 3:27:42PM

18 Then I object on the grounds that it's 3:27:43PM

19 selectively misquoting a document. 3:27:44PM

20 BY MR. FEE: 3:27:47PM

21 Q Did you see what I read? 3:27:48PM

22 MR. BRIDGES: Why don't you read the 3:27:53PM

23 thing. 3:27:53PM

24 MR. FEE: Andrew, you can't instruct him 3:27:54PM

25 to do stuff. 3:27:55PM

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1 MR. BRIDGES: I can -- I can instruct 3:27:57PM
2 the -- 3:27:58PM
3 MR. FEE: You can get -- 3:27:59PM
4 MR. BRIDGES: -- witness to read a 3:27:59PM
5 complete exhibit or to read a complete thing. 3:27:59PM
6 If you think it's -- that's improper, go ahead 3:28:01PM
7 and make your record, you think it's improper. 3:28:03PM
8 I'm objecting to the basis that you are 3:28:04PM
9 putting in the transcript a misdescription of 3:28:08PM
10 this exhibit. 3:28:12PM
11 BY MR. FEE: 3:28:12PM
12 Q Did I read an exact quote from your 3:28:13PM
13 e-mail? 3:28:15PM
14 A You read a partial quote. 3:28:16PM
15 Q Was it complete and accurate, the portion 3:28:18PM
16 I read? 3:28:20PM
17 MR. BRIDGES: Objection. It was not 3:28:21PM
18 complete and accurate as -- as to what the 3:28:21PM
19 e-mail was. 3:28:23PM
20 THE WITNESS: It was partial -- 3:28:24PM
21 MR. FEE: I didn't say it was the whole 3:28:25PM
22 e-mail, did I? 3:28:26PM
23
24 BY MR. FEE: 3:28:26PM
25 Q Did you hear me say that, Mr. Malamud? 3:28:28PM

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1 A I told you it was a partial quote and so 3:28:30PM
2 that -- 3:28:31PM
3 Q Okay. 3:28:31PM
4 A -- wouldn't be a complete quote, right? 3:28:32PM
5 Q I didn't say it was a complete quote. It 3:28:32PM
6 was a complete quote of the portion that I read. I 3:28:32PM
7 didn't skip over any words, did I? 3:28:38PM
8 A No, but you left off the last sentence of 3:28:40PM
9 the paragraph. 3:28:42PM
10 Q All right. I know you're really dying to 3:28:43PM
11 say it, so go ahead. I don't even care. It's 3:28:43PM
12 meaningless. That's why I left it off. 3:28:46PM
13 Go ahead. 3:28:46PM
14 A No, actually, it's quite important to the 3:28:47PM
15 context of that paragraph -- 3:28:49PM
16 Q Oh, I'm sure it is. 3:28:51PM
17 A -- to it's meaning. 3:28:52PM
18 Q Let's hear it. 3:28:53PM
19 A It says, "what a way to make a living, 3:28:53PM
20 much harder than assembling the paper copies." 3:28:54PM
21 Q Okay. Terrific. 3:28:59PM
22 Now, isn't it true that you make a living 3:29:00PM
23 by copying standards development organization 3:29:02PM
24 standards? 3:29:02PM
25 MR. BRIDGES: Objection, argumentative, 3:29:06PM

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1 vague and ambiguous. 3:29:07PM

2 THE WITNESS: "What a way to make a 3:29:08PM

3 living" was indicating the work I was doing on 3:29:10PM

4 a daily basis as my manual labor. 3:29:13PM

5 BY MR. FEE: 3:29:16PM

6 Q You do make a living by copying standards 3:29:17PM

7 written by other standard development

8 don't you? 3:29:23PM

9 MR. BRIDGES: Objection, argumentative, 3:29:25PM

10 lacks foundation, vague and ambiguous. He's 3:29:25PM

11 already answered the question. 3:29:28PM

12 THE WITNESS: That's not correct. I run

13 501(c)(3) corporation. We get grants that 3:29:31PM

14 support our overall programs, which include a 3:29:35PM

15 variety of things, such as posting 8 million 3:29:39PM

16 IRS Form 990s, 6,000 government videos from

17 National Archives and the law, including 3:29:47PM

18 standards incorporated by reference. That's 3:29:51PM

19 how I make a living. 3:29:53PM

20 BY MR. FEE: 3:29:54PM

21 Q How much have you paid yourself from 3:29:55PM

22 Public Resource since you started Public Resource? 3:29:57PM

23 MR. BRIDGES: Objection. Objection,

24 and ambiguous, also irrelevant. 3:30:01PM

25 THE WITNESS: I can tell you my current 3:30:04PM

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1 salary. 3:30:05PM

2 BY MR. FEE: 3:30:06PM

3 Q What's that? 3:30:07PM

4 A That's \$180,000 per year. 3:30:07PM

5 Q Is that lower than your salary has been

6 the past? 3:30:14PM

7 MR. BRIDGES: Objection, assumes facts

8 in evidence, lacks foundation, vague and 3:30:15PM

9 ambiguous. 3:30:17PM

10 THE WITNESS: I have made more money at 3:30:17PM

11 other forms of employ, yes. 3:30:19PM

12 BY MR. FEE: 3:30:20PM

13 Q Okay. Have you made more money while 3:30:21PM

14 working at Public Resource in a particular year? 3:30:22PM

15 MR. BRIDGES: Objection, irrelevant,

16 foundation, vague and ambiguous. 3:30:28PM

17 THE WITNESS: No, I keep my salary flat. 3:30:30PM

18 It's been the same for several years. I've 3:30:33PM

19 never made more than this. 3:30:36PM

20 BY MR. FEE: 3:30:38PM

21 Q How many years has your salary been flat? 3:30:38PM

22 MR. BRIDGES: Objection, irrelevant,

23 and ambiguous. 3:30:42PM

24 THE WITNESS: I started the organization 3:30:43PM

25 in 2007. At some point I had a -- a moderate 3:30:44PM

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1 bump in salary, so it's been several years 3:30:48PM
2 since I've been at 180. You can -- you can 3:30:52PM
3 pull my tax returns. They're public and, in 3:30:57PM
4 fact, they're available on my server, so... 3:30:59PM
5 BY MR. FEE: 3:31:02PM
6 Q So over the course of the past seven 3:31:03PM
7 years, is it safe to say that you've paid yourself 3:31:06PM
8 over a million dollars from Public Resource? 3:31:10PM
9 MR. BRIDGES: Objection, argumentative, 3:31:13PM
10 lacks foundation, assumes facts not in 3:31:13PM
11 evidence, vague and ambiguous. 3:31:16PM
12 THE WITNESS: Total salary since 2007 is 3:31:23PM
13 greater than a million dollars. 3:31:26PM
14 BY MR. FEE: 3:31:28PM
15 Q How much have you paid your wife during 3:31:28PM
16 that time frame? 3:31:31PM
17 MR. BRIDGES: Objection, lacks
18 vague and ambiguous and irrelevant. "You" at 3:31:34PM
19 this deposition is Mr. Malamud. Are you
20 how much he personally has paid his wife? 3:31:53PM
21 MR. FEE: No, the question -- my question 3:31:55PM
22 stands. 3:31:56PM
23
24 BY MR. FEE: 3:31:57PM
25 Q You can answer it. 3:31:58PM

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1 MR. BRIDGES: Well, there's going to be a3:31:57PM
2 spousal privilege issue at a certain point. 3:31:57PM
3 That has nothing to do with Public -- if it 3:31:57PM
4 does not have to do with payments by 3:31:57PM
5 Public.Resource.Org. 3:32:05PM
6 THE WITNESS: Public.Resource.Org paid 3:32:09PM
7 Point.B some money. Would you like to know
8 much that is? 3:32:09PM
9 BY MR. FEE: 3:32:10PM
10 Q Yes. 3:32:10PM
11 A Your deposition asked me for that 3:32:11PM
12 information from 2010 to the current. That's 3:32:16PM
13 approximately \$350,000 during that period. 3:32:17PM
14 Q And Point.B Studios is an unincorporated 3:32:21PM
15 d/b/a used by your wife, correct? 3:32:24PM
16 MR. BRIDGES: Objection, may call for 3:32:28PM
17 speculation, vague and ambiguous. 3:32:29PM
18 THE WITNESS: Actually, I don't know her 3:32:30PM
19 corporate structure currently. 3:32:31PM
20 BY MR. FEE: 3:32:32PM
21 Q But you at least understand that Point.B 3:32:32PM
22 Studios is completely owned by your wife? 3:32:34PM
23 MR. BRIDGES: Objection, may call for 3:32:40PM
24 speculation, vague and ambiguous. 3:32:40PM
25 THE WITNESS: I -- I actually don't know 3:32:41PM

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1 URL appears to conform to the National 4:09:44PM
2 Electrical Code of 2011. 4:09:47PM
3 BY MR. REHN: 4:09:50PM
4 Q And you uploaded that document to that 4:09:50PM
5 website; is that correct. 4:09:53PM
6 MR. BRIDGES: Objection, lacks
7 vague and ambiguous. 4:09:55PM
8 THE WITNESS: I did indeed upload the 4:09:56PM
9 National Electrical Code for 2011 to the 4:09:59PM
10 Internet Archive. 4:09:59PM
11 BY MR. REHN: 4:10:03PM
12 Q Under that identifier that's there on the 4:10:03PM
13 URL? 4:10:06PM
14 MR. BRIDGES: Objection, vague and 4:10:07PM
15 ambiguous, lacks foundation. 4:10:07PM
16 THE WITNESS: Yes. 4:10:08PM
17 BY MR. REHN: 4:10:10PM
18 Q And if you'll turn to the second page of 4:10:10PM
19 this document, you'll see where it says, licensed 4:10:13PM
20 URL. 4:10:15PM
21 A Uh-huh. 4:10:15PM
22 Q And then there's a URL for a Creative 4:10:15PM
23 Commons website. 4:10:19PM
24 A That's correct. 4:10:20PM
25 Q And you put that information into the 4:10:21PM

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1 Internet Archive interface when you uploaded this 4:10:24PM
2 document; is that correct? 4:10:27PM

3 A I specified that URL as the copyright 4:10:29PM
4 status. 4:10:35PM

5 Q So for persons who were to refer to this 4:10:35PM
6 information that you posted on the Internet,
7 for the copyright status of this document, you 4:10:43PM
8 directed them to this URL? 4:10:47PM

9 MR. BRIDGES: Objection, lacks
10 assumes facts not in evidence, vague and 4:10:50PM
11 ambiguous. 4:10:52PM

12 THE WITNESS: The Creative Commons
13 is actually on the first page, where it says 4:10:56PM
14 CC0 1.0 Universal, and that is underlined, 4:10:58PM
15 which means it goes to a URL. And that's the 4:11:05PM
16 same URL as you will find on the second page 4:11:08PM
17 where it says, licensed URL. And again, that 4:11:11PM
18 will go to the Creative Commons CC0 license, 4:11:14PM
19 which means no rights asserted. 4:11:17PM

20 MR. REHN: Can I ask the reporter to 4:11:19PM
21 reread the question and ask the witness to 4:11:19PM
22 answer the question I asked read? 4:11:19PM

23 (The reporter read the record 4:11:37PM
24 as requested.) 4:11:37PM

25 BY MR. REHN: 4:11:39PM

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1 Q Correct? 4:11:39PM

2 MR. BRIDGES: Object. Same -- all the 4:11:40PM

3 same objections. 4:11:41PM

4 THE WITNESS: Yes. 4:11:42PM

5 BY MR. REHN: 4:11:42PM

6 Q And if you could just look at Exhibit 70 4:11:44PM

7 and you'll see on the first page of Exhibit 70 it 4:11:50PM

8 lists Creative Commons license CC0 1.0 Universal. 4:11:54PM

9 A Uh-huh. 4:12:01PM

10 Q And then on the second page, there's the 4:11:57PM

11 same URL that we just saw on Exhibit 52? 4:12:02PM

12 A Both of those items are identical on both 4:12:06PM

13 of these exhibits. 4:12:08PM

14 Q And your answers with respect to the 4:12:09PM

15 significance of that information are the same for 4:12:11PM

16 this as they -- it was for Exhibit 52? 4:12:13PM

17 MR. BRIDGES: Objection, lacks

18 vague and ambiguous. 4:12:17PM

19 THE WITNESS: Yes. CC0 is a Creative 4:12:18PM

20 Commons CC0 license. 4:12:21PM

21 BY MR. REHN: 4:12:25PM

22 Q I'm going to hand you what's been marked 4:12:25PM

23 as Exhibit 75. 4:12:26PM

24 (Exhibit 75 marked for identification.) 4:12:35PM

25 BY MR. REHN: 4:12:35PM

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1 Q And I can represent to you that this is a4:12:39PM
2 screen capture as of 9:32 a.m. this morning from
3 URL that we just identified on Exhibits 52 and 70. 4:12:47PM
4 Is that what it appears to be to you? 4:12:51PM
5 MR. BRIDGES: Objection, may lack 4:12:55PM
6 competence, may call for speculation -- 4:12:59PM
7 THE WITNESS: This -- 4:13:02PM
8 MR. BRIDGES: -- and -- and lacks 4:13:02PM
9 foundation. 4:13:03PM
10 THE WITNESS: This appears to be the CC0 4:13:04PM
11 page. 4:13:07PM
12 BY MR. REHN: 4:13:08PM
13 Q CC0 1.0 Universal? 4:13:09PM
14 A That's correct. 4:13:14PM
15 Q And that's the page that you had 4:13:15PM
16 identified when you uploaded the documents at 4:13:18PM
17 Exhibit 70 and Exhibit 52? 4:13:20PM
18 MR. BRIDGES: Objection, lacks
19 vague and ambiguous. 4:13:24PM
20 THE WITNESS: That's correct. 4:13:30PM
21 BY MR. REHN: 4:13:30PM
22 Q And there's a heading -- there -- there
23 first go ahead and read the title of the document. 4:13:32PM
24 MR. BRIDGES: Objection, vague and 4:13:39PM
25 ambiguous. 4:13:40PM

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1 THE WITNESS: CC0 1.0 Universal, CC0 1.0 4:13:42PM

2 Public Domain Dedication. 4:13:49PM

3 BY MR. REHN: 4:13:52PM

4 Q Okay. And then do you see that there's a 4:13:53PM

5 section entitled, no copyright? 4:13:53PM

6 A I do. 4:13:58PM

7 Q And if you could read the first sentence 4:13:59PM

8 in that section. 4:14:02PM

9 A "The person who associated a work with 4:14:05PM

10 this deed has dedicated the work to the public 4:14:09PM

11 domain by waiving all of his or her rights to the 4:14:11PM

12 work worldwide under copyright law, including all 4:14:16PM

13 related and neighboring rights to the extent

14 by law." 4:14:24PM

15 Q And do you understand that this informs 4:14:26PM

16 the reader that the person that -- who attached

17 license has dedicated the work to the public domain?

18 MR. BRIDGES: Objection, lacks

19 vague and ambiguous, may call for speculation. 4:14:39PM

20 THE WITNESS: It says the person has 4:14:44PM

21 waived all of his or her rights. I have

22 all of my rights to a work by associating this 4:14:52PM

23 license. 4:14:57PM

24 BY MR. REHN: 4:14:58PM

25 Q Well, what does it actually say the

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1 has done? It doesn't say the person has waived. 4:15:01PM

2 Let's say -- the person has what? What's the verb 4:15:03PM

3 there after "has"? 4:15:07PM

4 A Has dedicated. 4:15:09PM

5 Q Okay. Continue. 4:15:11PM

6 A The work to the public domain by waiving 4:15:12PM

7 all of his or her rights to the work worldwide

8 copyright law. 4:15:19PM

9 Q So is it your understanding that this 4:15:20PM

10 document represents that the person who used this 4:15:21PM

11 license has dedicated the work to the public domain?

12 MR. BRIDGES: Objection, may call for a 4:15:29PM

13 legal conclusion, lacks foundation, vague and 4:15:34PM

14 ambiguous. 4:15:38PM

15 THE WITNESS: It said I waived all my 4:15:40PM

16 rights is what it said to the work. 4:15:42PM

17 BY MR. REHN: 4:15:44PM

18 Q And it also says, "has dedicated the work 4:15:45PM

19 to the public domain"; is that correct? 4:15:48PM

20 A It -- it does by waiving all my rights. 4:15:50PM

21 Q Okay. What's the -- let's go ahead and 4:15:54PM

22 read the second sentence? 4:15:59PM

23 A Uh-huh. "You can copy, modify,

24 and perform the work even for commercial purposes 4:16:03PM

25 all without asking information. See other 4:16:06PM

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1 information below." 4:16:09PM

2 MR. REHN: And if we could just reflect 4:16:11PM

3 that the witness misread the document. It 4:16:12PM

4 says, "all without asking permission." I 4:16:15PM

5 believe the witness said information. 4:16:16PM

6 THE WITNESS: No. 4:16:18PM

7 MR. BRIDGES: Yeah. Why don't you read

8 just reread the section. 4:16:20PM

9 BY MR. REHN: 4:16:22PM

10 Q Yeah, why don't you go ahead reread the 4:16:22PM

11 sentence. 4:16:24PM

12 A "You can copy, modify, distribute and 4:16:25PM

13 perform the work even for commercial purposes all 4:16:27PM

14 without asking permission. See other information 4:16:31PM

15 below." 4:16:34PM

16 Q And does -- does this indicate to you

17 a person reading this would take from this that

18 could -- can copy, modify, distribute and perform 4:16:42PM

19 the work even for commercial purposes all without 4:16:46PM

20 asking permission? 4:16:48PM

21 MR. BRIDGES: Objection, lacks

22 vague and ambiguous and misstates --

23 use of the document. 4:16:55PM

24 THE WITNESS: That's what sentence two of 4:17:01PM

25 the description says. 4:17:03PM

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1 BY MR. REHN: 4:17:04PM

2 Q And that's the document you directed 4:17:05PM

3 people to refer to when you posted the standards in 4:17:07PM

4 Exhibit 70 and Exhibit 52? 4:17:11PM

5 MR. BRIDGES: Objection, lacks

6 vague and ambiguous and misleading. 4:17:15PM

7 THE WITNESS: Yes, that is the license

8 this object at this identifier on the Internet 4:17:24PM

9 Archive. 4:17:28PM

10 BY MR. REHN: 4:17:30PM

11 Q Okay. You can go ahead and set those 4:17:30PM

12 aside. 4:17:43PM

13 Prior to posting plaintiffs' standards on 4:17:58PM

14 the Internet, did you consider what the effect that 4:18:01PM

15 would have -- what the effect would be on the 4:18:04PM

16 plaintiffs' ability to continue operating? 4:18:07PM

17 MR. BRIDGES: Objection, argumentative, 4:18:12PM

18 lacks foundation, vague and ambiguous. 4:18:13PM

19 THE WITNESS: As I testified before 4:18:18PM

20 Congress, I believe this is potentially a

21 opportunity for the plaintiffs. 4:18:22PM

22 BY MR. REHN: 4:18:24PM

23 Q And did you conduct any sort of analysis 4:18:24PM

24 or talk to anybody with any expertise in reaching 4:18:27PM

25 that conclusion? 4:18:29PM

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1 just winging it with respect to that issue? 4:19:29PM

2 MR. BRIDGES: Objection, lacks

3 vague and ambiguous. 4:19:32PM

4 THE WITNESS: I don't know. 4:19:35PM

5 BY MR. REHN: 4:19:37PM

6 Q You may have? 4:19:37PM

7 MR. BRIDGES: Objection. Same

8 THE WITNESS: I'd be happy to review 4:19:40PM

9 electronic mail. 4:19:42PM

10 BY MR. REHN: 4:19:43PM

11 Q Let's go ahead and do that. 4:19:44PM

12 (Exhibit 76 marked for identification.) 11:31:27AM

13 BY MR. REHN:

14 Q I'm going to hand you what's been marked 4:19:55PM

15 as Exhibit 76. And, for the record, this is a 4:19:57PM

16 document with the Bates stamp PRO_00168373. 4:20:04PM

17 Do you recognize this as a chain of 4:20:12PM

18 e-mails between yourself and Marshall Rose? 4:20:14PM

19 A That is what it appears to be. 4:20:36PM

20 Q Do you recall this e-mail conversation

21 had with Mr. Rose? 4:20:39PM

22 A Vaguely. 4:20:44PM

23 Q Who is Marshall Rose? 4:20:45PM

24 A Dr. Marshall T. Rose is a distinguished 4:20:50PM

25 computer scientist who has made many contributions 4:20:53PM

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1 reference into law, which is the only thing 4:39:16PM
2 we're talking about here, are more broadly 4:39:19PM
3 available, I believe that cements the premier 4:39:21PM
4 position of an organization such as the 4:39:25PM
5 National Fire Protection Association. It
6 their work more visible to more citizens by 4:39:31PM
7 definition, right? This is about informing
8 citizenry. And I believe that's a tremendous 4:39:37PM
9 market opportunity to sell, again, simply a 4:39:40PM
10 digitally signed version of a document. 4:39:44PM

11 BY MR. REHN: 4:39:49PM

12 Q Have you ever -- do you have any 4:39:51PM
13 experience with selling publications? 4:39:52PM

14 MR. BRIDGES: Objection, vague and 4:39:58PM
15 ambiguous. 4:39:58PM

16 THE WITNESS: Yes, I do. I've written 4:40:00PM
17 eight books. I have extensive experience 4:40:02PM
18 writing professionally for magazines and --
19 other types of operations. 4:40:08PM

20 BY MR. REHN: 4:40:11PM

21 Q Have you ever -- has anybody ever told
22 that they think it would improve the ability of the 4:40:15PM
23 standards development organizations to sell -- 4:40:19PM

24 THE REPORTER: Of the what? Of the 4:40:22PM
25 ability of the -- 4:40:22PM

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1 Q Do you -- do you hope that your website
2 the standards that are posted on your website in 4:47:03PM
3 particular, get a large amount of web traffic? 4:47:07PM

4 MR. BRIDGES: Objection, vague and 4:47:10PM
5 ambiguous. 4:47:11PM

6 THE WITNESS: No, I don't hope. I -- I 4:47:14PM
7 actually -- the -- the numbers really don't 4:47:16PM
8 matter to me. 4:47:18PM

9 BY MR. REHN: 4:47:19PM

10 Q Have you ever suggested to anyone that
11 are -- would hope that you would get a large amount 4:47:22PM
12 of web traffic? 4:47:25PM

13 MR. BRIDGES: Objection, lacks
14 vague and ambiguous and -- 4:47:28PM

15 THE WITNESS: Oh, on my -- I'm sorry. 4:47:30PM

16 MR. BRIDGES: Go ahead. 4:47:31PM

17 THE WITNESS: I -- I might have. I don't 4:47:32PM
18 know. 4:47:33PM

19 BY MR. REHN: 4:47:40PM

20 Q I'm going to hand you what we're marking 4:47:41PM
21 as Exhibit 77. 4:47:42PM

22 A This is a long one. 4:48:09PM

23 (Exhibit 77 marked for identification.) 11:31:27AM

24 BY MR. REHN: 4:48:10PM

25 Q Do you recognize this -- oh, and for the 4:48:10PM

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1 record, this is a document Bates-stamped 4:48:11PM
2 PRO_00213130, and it's got an attachment as well. 4:48:13PM
3 Do you recognize this as an e-mail you 4:48:23PM
4 sent to Josh Greenberg on August 24, 2011? 4:48:25PM
5 A I'm sorry for the delay. It's a rather 4:48:38PM
6 long document. 4:48:40PM
7 Q Just looking at the cover e-mail for now, 4:48:47PM
8 but feel free. Take your time. 4:48:49PM
9 A This appears to be a proposal that I sent 4:49:29PM
10 to the Sloan Foundation. Josh Greenberg is a 4:49:34PM
11 program manager there. 4:49:38PM
12 Q What's the Sloan Foundation? 4:49:40PM
13 A The Sloan Foundation is -- is one of the 4:49:44PM
14 preeminent public foundations in the United States. 4:49:47PM
15 They fund a -- a large variety of -- of programs. 4:49:50PM
16 Q And was this a fundraising proposal that 4:49:58PM
17 you sent them for them to give money to Public 4:50:04PM
18 Resource? 4:50:06PM
19 MR. BRIDGES: Objection, argumentative, 4:50:09PM
20 vague and ambiguous. 4:50:09PM
21 THE WITNESS: Yes, it was. 4:50:28PM
22 BY MR. REHN: 4:50:30PM
23 Q Do you remember how much money you were 4:50:31PM
24 asking for? 4:50:32PM
25 A \$200,000. 4:50:35PM

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1 Q Did the Sloan Foundation give you
2 in response to this proposal? 4:50:41PM

3 A The Sloan Foundation has never given me 4:50:43PM
4 one cent. 4:50:46PM

5 Q So -- so the proposal was declined? 4:50:47PM

6 A It was declined. 4:50:50PM

7 Q Did they give you a reason for that? 4:50:51PM

8 A They didn't like the proposal. 4:50:58PM

9 Q Did they explain their reasons for not 4:51:01PM
10 liking the proposal? 4:51:11PM

11 A No, not to me. 4:51:14PM

12 Q And just to be clear, this is an e-mail 4:51:16PM
13 you sent to Josh Greenberg at the Sloan Foundation 4:51:19PM
14 and it's attaching a proposal that you had drafted; 4:51:22PM
15 is that right? 4:51:25PM

16 A That is correct. 4:51:27PM

17 Q And was part of this proposal connected
18 your efforts to post standards that had been 4:51:33PM
19 incorporated by reference on your website? 4:51:36PM

20 A No, this was specifically focused on
21 24 of the California Code of Regulations. 4:51:45PM

22 Q And is it your understanding that Title
23 incorporates by reference some of plaintiffs' 4:51:53PM
24 standards? 4:52:00PM

25 A That is incorrect. It does not 4:52:00PM

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1 incorporate by reference. It actually -- it 4:52:03PM
2 publishes a series of documents under the official 4:52:04PM
3 authorship of the state of California. 4:52:10PM
4 Incorporation by reference says this document over 4:52:11PM
5 there is incorporated into this document. There is 4:52:17PM
6 no incorporation by reference in Title 24. 4:52:19PM

7 Q So if I could turn your attention to Page 4:52:25PM
8 6 of the proposal, which is the page Bates-stamped 4:52:27PM
9 213136. 4:52:30PM

10 A Yes. 4:52:39PM

11 Q And at the bottom under track 4, the 4:52:39PM
12 second -- or, no, the first sentence, the fourth 4:52:43PM
13 track addresses standards incorporated by reference 4:52:45PM
14 into Title 24, what did you mean when you wrote 4:52:48PM
15 that? 4:52:53PM

16 A Well, what this track proposes is to 4:52:58PM
17 assemble a series of engineers and look at
18 references, so standards that are mentioned in, for 4:53:10PM
19 example, the California Electrical Code. And it 4:53:12PM
20 says -- if -- if you can turn to Page 7 of the 4:53:17PM
21 proposal, which is the 213137 Bates stamp, the 4:53:21PM
22 second paragraph, it describes the purpose of track 4:53:27PM
23 4. It says, we don't feel it would be wise to 4:53:32PM
24 simply publish all secondary standards wholesale. 4:53:36PM
25 Rather, our strategy is to assemble a group of 4:53:39PM

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1 THE WITNESS: Yes. 5:00:50PM

2 BY MR. REHN: 5:00:51PM

3 Q And then you go on to say, "Our version
4 Title 24 should have more users than those that 5:00:54PM

5 purchased the books and DVDs or used the state or 5:00:57PM

6 SDO-provided website." 5:01:01PM

7 Do you see that? 5:01:03PM

8 A I do. 5:01:06PM

9 Q Was it your goal that the version of
10 24 you were producing would have more users than

11 websites provided by the standards development 5:01:14PM

12 organizations? 5:01:19PM

13 MR. BRIDGES: Objection, vague and 5:01:20PM

14 ambiguous. 5:01:21PM

15 THE WITNESS: Now, remember Title 24 is a 5:01:22PM

16 publication of the state of California, and 5:01:23PM

17 that's why I was very specific and used the 5:01:24PM

18 state or SDO-provided website. 5:01:26PM

19 BY MR. REHN: 5:01:29PM

20 Q It says SDO-provided website is one of
21 things you would have more users in; is that 5:01:32PM

22 correct? 5:01:33PM

23 A It says or use the state or SDO-provided 5:01:35PM

24 website. 5:01:36PM

25 Q So was it your goal that your version of 5:01:38PM

1 Title 24 would have more users than the SDO-
2 website? 5:01:44PM

3 MR. BRIDGES: Objection, lacks
4 vague and ambiguous, argumentative. 5:01:46PM

5 THE WITNESS: And that, of course,
6 that they weren't using the -- the work
7 that we were doing as part of this project and5:01:52PM
8 putting it on their website, and that's 5:01:54PM
9 something we would very much welcome and that 5:01:56PM
10 would have been counted in these metrics. 5:01:59PM

11 BY MR. REHN: 5:02:01PM

12 Q And then it says, "We'd like to be No. 1 5:02:02PM
13 in the marketplace by the end of the year." 5:02:03PM

14 What did you mean when you wrote that? 5:02:07PM

15 A It meant that I wanted a lot of people to5:02:09PM
16 use the work that we were doing. 5:02:10PM

17 Q Did you consider yourself to be in a 5:02:15PM
18 marketplace that also included websites provided by5:02:17PM
19 the SDOs? 5:02:23PM

20 MR. BRIDGES: Objection, argumentative, 5:02:24PM
21 lacks foundation, vague and ambiguous. 5:02:26PM

22 THE WITNESS: It's what I put in my 5:02:27PM
23 proposal for funding. 5:02:28PM

24 BY MR. REHN: 5:02:30PM

25 Q So you told your fund -- your prospective5:02:30PM