

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<p>AMERICAN SOCIETY FOR TESTING AND MATERIALS d/b/a/ ASTM INTERNATIONAL;</p> <p>NATIONAL FIRE PROTECTION ASSOCIATION, INC.; and</p> <p>AMERICAN SOCIETY OF HEATING, REFRIGERATING, AND AIR CONDITIONING ENGINEERS,</p> <p style="text-align: center;">Plaintiffs/ Counter-Defendants,</p> <p>v.</p> <p>PUBLIC.RESOURCE.ORG, INC.,</p> <p style="text-align: center;">Defendant/ Counter-Plaintiff.</p>	<p style="text-align: center;">Case No. 1:13-cv-01215-EGS</p>
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DECLARATION OF DENNIS J. BERRY
IN SUPPORT OF PLAINTIFF NATIONAL FIRE PROTECTION ASSOCIATION

I, Dennis J. Berry, declare as follows:

1. I am Secretary of the Corporation and Director of Licensing for Plaintiff National Fire Protection Association (“NFPA”). My duties include negotiating and overseeing the NFPA’s licenses for its codes and standards. The following facts are based upon my own personal knowledge, and if called upon to do so, I could and would testify competently hereto.

2. I understand that Public Resource has asked for licensing agreements for the NFPA standards at issue in this case. I also understand that Public Resource has asked the Court to compel production of these documents.

3. The NFPA maintains a list of current licenses for the current versions of its standards. Collecting and producing these license agreements is reasonably feasible.

4. It would impose an extremely difficult and onerous burden on the NFPA to locate and collect license agreements for older standards, particularly out of date standards from the early 2000 – 2006 time frame. I have taken some initial steps to assess the burden of producing these documents, and discovered that such a production would require hours of work attempting to locate, arrange and review out-of-date and in many cases terminated agreements to assess whether they were licenses for the works at issue in this case. Overall completion of this project including identification, retrieval, assessment, review, compilation and reporting would take approximately one to two hours per standard, where there had been a license issued. Standards that had not been subject to a license would take longer in order to eliminate licensing sources. Agreements for older standards are not all preserved in a central physical or electronic location, and may need to be retrieved from a number of electronic or physical locations.

5. In addition to license agreements, I handle copyright permissions for the NFPA standards. These copyright permissions are generally granted on a one-time basis by means of a letter from the NFPA. I handle approximately 300 to 400 copyright permissions per year.

6. The NFPA has copyright permissions for approximately the last year stored in its SharePoint system. SharePoint is an automated Microsoft program designed to include large amounts of data. This has been used over the last year to track, process, respond to and archive copyright permission requests. These can be retrieved and produced. Because copyright permissions involve one-time limited approval for a particular use of a portion of an NFPA standard, older permissions would involve uses that have long since expired.

7. Attempting to collect older copyright permission letters that are not stored on the SharePoint system, but are stored chronologically and not by standard, particularly for the standards designated in this action, would be extremely burdensome. These letters are likely to

be contained in boxes of paper correspondence, alongside correspondence on unrelated issues. Identifying, collecting, and reviewing these documents would take many hours of time for myself and my staff. Because of the chronological storage of the letters and the age of some of the standards at issue in this action it would be difficult to estimate the time required, which could be as much as 3 – 4 hours per year to review, identify, track and organize a response, for each of the years 2000 – 2013, the approximate dates needed to cover the standards at issue.

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

Executed on September 28__, 2014



Dennis J. Berry