

Am. Soc’y for Testing Materials v. Public.Resource.Org, Inc.
No. 13-CV-01215-TSC (D. D.C. Feb. 2, 2017) and
No. 14-CV-0857-TSC (D. D.C. Feb. 2, 2017), *appeal docketed*, Feb. 28, 2017

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| Year | 2017 |
| Court | United States District Court for the District of Columbia |
| Key Facts | This case joins two actions against a common defendant, Public.Resource.Org, a nonprofit organization. The two groups of plaintiffs consist of six nonprofit standards development organizations: (1) the “ASTM” plaintiffs, who are focused on industry-related technical and safety standards; and (2) the “AERA” plaintiffs, who are focused on educational standards. Plaintiffs own copyrights to various “voluntary consensus standards,” which are developed by numerous subject matter experts under guidance from the plaintiffs. Plaintiffs sell hard copies of their standards for between \$25 to \$200 and the ASTM plaintiffs also sell digital versions and make their standards available for free online in “read-only” mode. Defendant purchased physical copies of plaintiffs’ standards and, without authorization, scanned and made digital, verbatim, copies freely available online to the public. In particular, this case concerns 257 of the ASTM plaintiffs’ standards as well as a collection of the AERA plaintiffs’ standards referred to as the “1999 Standards.” All of these standards have been incorporated by reference into federal law, as authorized under 5 U.S.C. § 552 (which requires such standards to be available for public inspection at the relevant agency or the Office of the Federal Register). |
| Issue | Whether it is a fair use to make available for free online a verbatim copy of privately developed standards, which have been incorporated by reference into federal law, without obtaining authorization from the copyright owner. |
| Holding | On cross-motions for summary judgment, the district court held that plaintiffs’ “own[ed] valid copyrights over the standards at issue, and that the copyrights were not stripped upon the incorporation by reference into federal regulations.” The court then conducted its four-factor fair use analysis, found that all factors weighed against fair use, and issued a permanent injunction against the defendant. With regard to the first fair use factor, purpose and character of the use, the court found that defendant’s placing of “identical copies . . . into the online marketplace . . . simply [to] offer [the standards] for free in competition with [p]laintiffs” was commercial and not transformative, noting further that defendant did “not actually perform any analysis on the standards.” In assessing the second factor, nature of the work, the court explained that plaintiffs’ standards “involve technical scientific concepts and guidelines,” which “brings [them] closer” to “the core of intended copyright protection” under the Constitution and the Copyright Act because they are “vital to the advancement of scientific progress in the U.S.” The court next found that the third factor, the amount of work used, weighed “overwhelmingly in [p]laintiffs’ favor and against a finding of fair use” because defendant “copied and distributed identical versions of the [] standards in their entirety.” Like the preceding factors, the court found that the fourth factor weighed against fair use because defendant presented consumers with a choice between purchasing the works from plaintiffs or downloading “an identical standard for no cost”—leaving the “only logical conclusion” to be a “negative[] impact[on] the potential market for [p]laintiffs’ standards.” |
| Tags | DC Circuit; Education/Scholarship/Research; Textual Work; Used in government proceeding |
| Outcome | Fair use not found |

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