

April 21, 2022

The Honorable Jerrold Nadler
The Honorable Jim Jordan
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Jordan:

We write to express our strong opposition to H. R. 6769, the “Pro Codes Act” — ill-advised legislation that would allow special interest groups to control how people can read and disseminate thousands of federal, state, and local laws. The bill deceptively suggests that it will require better online access to law. In fact, it does the opposite by granting copyright in that law, contrary to 200 years of judicial precedent, including a recent decision by the U.S. Supreme Court, *Georgia v. Public Resource*, affirming that every citizen should have “free access” to our laws. If the bill passes, private organizations could use that new right to impose conditions on Americans’ access to the law, such as requiring people to submit personal information and to waive the ability to download, print, copy, or disseminate the law.

Specifically, the Act provides that any “original work of authorship” that is “adopted or incorporated by reference, in full or in part, into any Federal, State, or municipal law or regulation” would have copyright protection as long as the “owner of the copyright” provides these provisions of law “at no monetary cost for viewing by the public in electronic form on a publicly accessible website.”

Where is this proposal — to confer on private parties a right to control access to the law — coming from? Technical standards on subjects ranging from energy efficiency to product safety are produced under the auspices of private groups called Standards Development Organizations (SDOs), which push to make them part of the law. When government bodies incorporate those standards into law, they often do so by reference, meaning they declare the standards the law without reprinting their entire texts in the body of statutes and regulations. SDOs can then charge high fees and impose other restrictions on access to and dissemination of these laws. Now, under pressure from legislators and advocates to make these laws available, the SDOs seek to trade limited access for decades of control over these legal texts. Although the bill might deter SDOs from continuing to charge fees for basic access to standards incorporated by reference, it would confirm the SDOs’ practice of imposing other restrictions and terms of use.

We urge you to reject this misguided and undemocratic plan. It is essential that the law be readily accessible for all to read, understand, and disseminate. Citizens should be able to create new outlets for sharing the law and enhancing its usability, including accessibility for the disabled. Broad access to the law furthers public safety, economic opportunity, and innovation.

Moreover, our democracy is premised on an informed citizenry and freedom of speech. Citizens therefore should be able to access the law without first accepting terms of use or disclosing personal information to private actors, and they should be able to speak the law without restrictions.

We ask that you reject this effort to aid special interests at the expense of the public interest.

Sincerely,

[Electronic Frontier Foundation](#)

[Public Citizen](#)

[Public.Resource.Org](#)

[SPARC](#)

[Public Knowledge](#)

[Demand Progress](#)

[GovTrack.us](#)

[The Digital Democracy Project](#)

[Government Information Watch](#)

[Free Government Information \(FGI\)](#)

[Defending Rights & Dissent](#)

[Open The Government](#)

[Internet Archive](#)

[Library Futures](#)

[Fight for the Future](#)

[Authors Alliance](#)

Appendix: Memorandum regarding H. R. 6769, the “PRO Codes Act”

H. R. 6769, the “Protecting and Enhancing Public Access to Codes Act” or “PRO Codes Act” is ill-advised legislation that would allow private entities to impose restrictions on Americans’ full access to the texts of thousands of federal, state, and local laws. Under the bill, private organizations could require Americans to supply personal information and agree to onerous terms of use in order to access laws, and they could place restrictions on Americans’ ability to download, print, copy, or disseminate the law.

The bill runs counter to long-standing Supreme Court precedent recognizing that all citizens should have free access to the content of law. It also would pose serious constitutional concerns—concerns recently noted by the U.S. Court of Appeals for the District of Columbia Circuit—by permitting private ownership of standards that are essential to understanding legal obligations.

Under the PRO Codes Act, any “original work of authorship” that is “adopted or incorporated by reference, in full or in part, into any Federal, State, or municipal law or regulation” would retain copyright protection as long as the “owner of the copyright” provides these provisions of law “at no monetary cost for viewing by the public in electronic form on a publicly accessible website.”

The bill is being pushed by standards development organizations (SDOs)—industry groups that convene experts, including government officials, to draft technical standards on subjects ranging from energy efficiency to product safety to educational testing, and then publish those standards themselves. In many cases, an SDO’s very purpose is to have the standards enacted into law. And when government bodies incorporate those standards into law, they often do so “by reference,” meaning that they declare the standards to be the law without reprinting their entire texts in the body of statutes and regulations.

This approach originally was in part aimed at saving trees and library space, and the cost of printing might conceivably justify charging fees for copies of the referenced text – even if those texts were not copyrightable as such. In the Internet age, however, it is easy to allow citizens full access to all provisions of the law, all the time – and to share them with others. That unrestricted access and sharing can facilitate, in turn, commentary, research, comparison, and accountability.

However, the SDOs have refused to provide meaningful access, much less dissemination of laws incorporated by reference. Instead, they have demanded that people pay high prices, sometimes thousands of dollars, just to read them. Sometimes the SDOs even let standards that have the force of law go out of print, further restricting access to law.

In recent years, under pressure from legislators and advocates, some SDOs have made some standards that are incorporated into law available online without fees, but these SDOs often require registration and surrender of personal information, onerous terms of use, and restrict users’ ability to copy or disseminate the standards. And SDOs have been aggressively threatening, and suing for alleged copyright infringement, people who have posted these standards—these *laws*—online.

The “Pro Codes” act would ratify these practices by allowing private parties to determine how and where individuals may access mandates incorporated by reference, including whether other organizations and individuals could post them online.

The bill’s approach should be rejected. Standards incorporated by reference into law should be widely available to the public—not only without charge, but in the public domain, not subject to restrictions imposed by purported copyright holders.

It is essential that the law be readily accessible for all to read, understand, and disseminate. Citizens should be able to create new outlets for sharing the law and enhancing its usability, including accessibility for the disabled. And allowing free access to standards incorporated by reference strengthens the capacity of organizations like ours to engage in rulemaking processes, analyze issues, and work for solutions to public policy challenges.

Full access to our laws, including standards incorporated by reference, for businesses, government agencies, advocacy groups, researchers, journalists, and others also helps protect public safety, promote innovation and economic opportunity, increase access to justice, and strengthen citizen participation in our democracy.

The Pro Codes Act would put control of access to provisions of law in the hands of their copyright owners so long as the owners made them available for “viewing” online (but not necessarily copying or printing). In this way, the Act runs counter to well-considered legal precedent, starting with *Wheaton v. Peters* (1834), in which the U.S. Supreme Court held that no one could claim copyright over the Court’s decisions. More recently, in 2018, the D.C. Circuit in *American Society for Testing v. Public.Resource.Org*, noted “a serious constitutional concern with permitting private ownership of standards essential to understanding legal obligations.” Concurring, Judge Katsas stated, “As a matter of common-sense … access to the law cannot be conditioned on the consent of a private party.” And in 2020, the Supreme Court in *Georgia v. Public.Resource.Org* held that government-published material, even material without the force of law, is not copyrightable if promulgated by government bodies in the course of their lawmaking duties. Writing for the Court, Chief Justice Roberts affirmed, “no one can own the law.”

Taken together, these court decisions reinforce that standards incorporated into the law, including standards incorporated by reference, belong to the public. Use and distribution of the law should not be restricted.

Barring citizens from reading or disseminating public laws without a license from a private party runs counter to the very core of what it means to be a nation of laws. Our democracy is founded on an informed citizenry, and on freedom of speech, and never has the U.S. Congress required that citizens accept terms of use or register their private information before they are allowed to see the laws by which we have chosen to govern ourselves—or restricted the ability of citizens to speak their own laws.

We ask that you reject this ill-advised and undemocratic effort to aid special interests and undermine public accessibility to our laws.