

# WORLD STANDARDS WEEK 2023

## EVENT PROGRAM ANSI LEGAL ISSUES FORUM: COPYRIGHT IMPLICATIONS IN A CHANGING LANDSCAPE

Thursday, October 12, 2023

### In-person

Ronald Reagan Building and International Trade Center (Pavilion Room)  
1300 Pennsylvania Avenue NW, Washington DC

### Virtual

via Zoom

*ANSI's 2023 Legal Issues Forum (LIF) will focus on two hot topics for the standards community: the copyright implications of incorporating standards by reference into legislation (IBR), and the copyright implications of using AI in standards (and standards in AI). The LIF is expected to draw a broad group of legal experts, standards professionals, corporate leaders, and other stakeholders interested in the intersection of copyright, innovation, and standardization.*

Time	Discussion and Speakers
10:00 am	Registration Opens
11:00-11:05	<b>Welcome</b> <b>Patricia Griffin</b> , Senior Vice President and General Counsel, American National Standards Institute
11:05-11:25	<b>Keynote</b> <b>Cary Coglianese</b> , Professor of Law and Political Science; Director, Penn Program on Regulation, University of Pennsylvania
11:25-1:10	<b>Panel: What SDOs Need to Consider as the Incorporated by Reference (IBR) Legal Landscape Changes</b> <i>In a recent decision, the U.S. Court of Appeals for the DC Circuit determined that, in the particular factual circumstance presented in the case, the non-commercial dissemination of the standards-at-issue that were incorporated by reference into federal regulations by a non-profit group constituted "fair use" under the copyright laws. What does the decision mean for the U.S. standards system and</i>

	<p><i>government reliance on standards developed by U.S. standards developing organizations? This panel will examine this legal challenge, as well as pending court cases that have called into question the copyrightability of IBR'd standards.</i></p> <p><b>Moderator: J. Kevin Fee, Esq.</b>, Partner, DLA Piper, LLP</p> <p><b>Panelists:</b></p> <p><u>Org members</u></p> <ul style="list-style-type: none"> <li>• <b>Stephanie Reiniche</b>, Director of Technology, ASHRAE</li> <li>• <b>Michael A. Lindsay</b>, Partner, Dorsey &amp; Whitney LLP (representing IEEE)</li> </ul> <p><u>Gov members</u></p> <ul style="list-style-type: none"> <li>• <b>Elise Owen</b>, Standards Executive, U.S. Environmental Protection Agency</li> <li>• <b>Miriam Vincent</b>, Acting Director of Legal Affairs and Policy, Office of the Federal Register</li> </ul> <p><u>Legal expert</u></p> <ul style="list-style-type: none"> <li>• <b>Roy Kaufman</b>, Managing Director, Business Development and Government Relations, Copyright Clearance Center</li> </ul> <p><i>Audience Q&amp;A to follow.</i></p>
<p><b>1:10-2:10</b></p>	<p><b>Lunch</b></p>
<p><b>2:10-3:55</b></p>	<p><b>Panel: What are the Copyright Implications of Using AI to Develop Standards?</b></p> <p><i>What unique legal issues are raised by the intersection of copyright and AI—and who, if anyone, owns the copyright of AI-generated content? This panel will explore the potential perils of feeding standards content into AI tools and engines, as well as the opportunities of using generative AI to create content for standards. The session will also explore how standards developing organizations are currently using AI-generated content and how they can protect copyright in AI-generated content used in standards development.</i></p> <p><b>Moderator: Justin Pierce, Esq.</b>, Partner and Co-Chair, Intellectual Property Division, Venable</p> <p><b>Panelists:</b></p> <p><u>Legal representatives/experts</u></p> <ul style="list-style-type: none"> <li>• <b>Jonathan Band</b>, Copyright and Policy Lawyer, policybandwidth</li> <li>• <b>Ivy Estoesta</b>, Director, Sterne Kessler, Goldstein, &amp; Fox P.L.L.C.</li> </ul> <p><u>Standards Organizations</u></p> <ul style="list-style-type: none"> <li>• <b>Michael A. Lindsay</b>, Partner, Dorsey &amp; Whitney LLP (representing IEEE)</li> <li>• <b>Hussain Hadi</b>, Head of Publishing, International Organization for Standardization (ISO)</li> </ul> <p><i>Audience Q&amp;A to follow.</i></p>
<p><b>3:55-400</b></p>	<p><b>Closing and Adjournment</b></p> <p><b>Patricia Griffin</b>, ANSI</p>

## About the Presenters



**Jonathan Band (Panelist: What are the Copyright Implications of Using AI to Develop Standards?)** has helped shape the laws governing intellectual property and the Internet through a combination of legislative and appellate advocacy. Band received a B.A. in 1982 from Harvard College, and a J.D. from Yale Law School in 1985. From 1985 to 2005, Band worked at the Washington, D.C., office of Morrison & Foerster LLP, including 13 years as a partner. Band established his own law firm in May 2005. For 20 years, Band served as an adjunct professor at the Georgetown University Law Center, and he has written extensively on intellectual property and the Internet, including the books *Interfaces on Trial*, *Interfaces on Trial 2.0*, *Interfaces on Trial 3.0*, and many articles.



**Cary Coglianese (Keynote)** is the Edward B. Shils professor of law and professor of political science at the University of Pennsylvania, where he is also the founding director of the Penn Program on Regulation. He specializes in the study of administrative law and regulatory processes, with an emphasis on the empirical evaluation of alternative processes and strategies and the role of public participation, technology, and business-government relations in policymaking. The author of more than 250 scholarly works, Coglianese's most recent book projects have included *Achieving Regulatory Excellence* and *Regulatory Breakdown: The Crisis of Confidence in U.S. Regulation*. He also created a leading website for standards education: [www.Codes-and-Standards.org](http://www.Codes-and-Standards.org). Prior to joining the Penn faculty, Coglianese spent a dozen years on the faculty at Harvard University.



**Ivy Clarice Estoesta (Panelist: What are the Copyright Implications of Using AI to Develop Standards)** is a director in Sterne, Kessler, Goldstein & Fox's Mechanical & Design Practice Group and Trademark & Brand Protection Practice. Estoesta counsels a wide range of clients on strategically securing and enforcing intellectual property rights in the U.S. and abroad. She focuses her practice on design rights and brand protection for clients in various industries, including consumer electronics, apparel, household cleaning products, and software. Estoesta's multidimensional practice includes drafting and prosecuting design patent applications and enforcing design rights; clearing, prosecuting, and enforcing trademark rights; and advising on copyright protection. She also has experience in *ex parte* proceedings before the U.S. Patent Trial and Appeal Board and U.S. Copyright Review Board and *inter partes* proceedings before the U.S. Trademark Trial and Appeal Board.



**J. Kevin Fee (Moderator: What SDOs Need to Consider as the Incorporated by Reference (IBR) Legal Landscape Changes)** is partner at DLA Piper, where he focuses on high-stakes IP litigation before trial and appellate courts throughout the country. Fee's practice focuses on trademark, copyright, false advertising, and trade secret litigation. He also has substantial experience litigating patent and defamation claims. He has represented financial institutions, medical device and pharmaceutical companies, consumer products manufacturers, retailers, internet companies, and food and beverage companies through his trademark and false advertising practice. Fee also represents major publishers, standards development organizations, financial institutions, insurance companies, and software developers in copyright litigation.



**Patricia Griffin (Welcome, Closing Remarks)** is senior vice president and general counsel at ANSI. Griffin serves as ANSI's chief legal, ethics, and corporate governance officer and oversees all legal affairs of ANSI and its affiliates. She provides counsel to all of ANSI's program-oversight committees, including those groups responsible for ANSI's domestic standards and conformity assessment accreditation programs. Griffin joined ANSI in 2004 after nearly 20 years in private practice. At ANSI, she is responsible for providing the Institute with guidance and counsel on a wide range of matters, including litigation, HR, antitrust, contracts, GDPR, and OFAC, as well as patent, trademark, and copyright issues. During her 19 years at ANSI, Griffin has been involved in all aspects of the Institute's legal affairs. She is also responsible for providing guidance and counsel to the ANSI Intellectual Property Policy Advisory Group, including its various task forces and working groups.



**Hussain Hadi (Panelist: What are the Copyright Implications of Using AI to Develop Standards)** is head of publishing at ISO. Passionate about unlocking the potential of new technologies, AI, digital transformation, and bridging the digital literacy gap, he has more than 20 years of publishing experience at two FTSE 100 companies (RELX and Informa) and Oxford University Press. He previously served as a lecturer with the Legal Technology and Innovation Institute, and the Government of Dubai Legal Affairs CLPD program. Hadi has worked in London, Oxford, Paris, Dubai, and Geneva.



**Roy Kaufman (Panelist: What SDOs Need to Consider as the Incorporated by Reference (IBR) Legal Landscape Changes)** is managing director of both business development and government relations for the Copyright Clearance Center (CCC). Previously, Kaufman served as legal director, John Wiley and Sons, Inc. He is a member of the Bar of the State of New York, the Author's Guild, and the editorial board of UKSG Insights. Kaufman also advises the U.S. government on international trade matters through membership in International Trade Advisory Committee (ITAC) 13 – Intellectual Property, and the Library of Congress's Copyright Public Modernization Committee. He serves on the Executive Committee of the of the United States Intellectual Property Alliance (USIPA) Board. He has written and lectured extensively on copyright, licensing, open access, AI, metadata, text/data mining, new media, artists' rights, and art law. Kaufman is editor-in-chief of *Art Law Handbook: From Antiquities to the Internet* and author of two books on publishing contract law.



**Michael A. Lindsay (Panelist: What SDOs Need to Consider as the Incorporated by Reference (IBR) Legal Landscape Changes and What are the Copyright Implications of Using AI to Develop Standards?)** is a partner at Dorsey & Whitney LLP, where he has practiced for over 30 years and serves as co-chair of the Antitrust Practice Group. His practice focuses on antitrust matters, in litigation, M&A transactions, and client counseling. His practice spans a broad range of industries including airlines, agriculture, consumer electronics, energy and electricity, food retailing, medical devices and medical equipment, and financial services. His broad litigation experience includes antitrust, patents and trademarks, securities, product liability, insurance coverage, and general commercial litigation. He has advised standards development organizations, participants in SDOs, standards implementers, and essential-patent holders.

Mr. Lindsay serves as Editorial Chair of *Antitrust* magazine. He has taught antitrust as an adjunct professor at the University of Minnesota Law School and the University of St. Thomas Law School.



**Elise Owen (Panelist: What SDOs Need to Consider as the Incorporated by Reference (IBR) Legal Landscape Changes)** is the standards executive at the U.S. Environmental Protection Agency (EPA), facilitating implementation of the National Technology Transfer and Advancement Act (NTTAA). Owen has an extensive background in the facilitation of standardization activities, in both the public and private sectors. She most recently served as associate vice president, global strategy and analysis, at the Advanced Medical Technology Association (AdvaMed). In this role, she oversaw AdvaMed's activities in China with the objectives of increasing opportunities for the medical technology industry in China while supporting the country's long-term health and development goals. Prior to AdvaMed, Owen was director of international development for ANSI, working to expand the Institute's engagement internationally. Earlier in her career, Ms. Owen was a specialist on standards and technical barriers to trade at the U.S. Department of Commerce's International Trade Administration (ITA).



**Justin Pierce (Moderator: What are the Copyright Implications of Using AI to Develop Standards?)** is a co-chair of Venable's Intellectual Property Division. Pierce has significant experience advising companies and their executives on how best to acquire, develop, and apply their intellectual property to achieve their business objectives. He has guided clients through a wide range of matters involving patent litigation, trademark and brand protection, anti-counterfeiting initiatives, copyright, design rights, trade secrets, and licensing. Pierce is also well-versed in strategies for handling rights of publicity, domain name, and social media disputes. He routinely advises companies with respect to artificial intelligence and cutting-edge issues involving intellectual property.



**Stephanie Reiniche (Panelist: What SDOs Need to Consider as the Incorporated by Reference (IBR) Legal Landscape Changes)** is the director of technology at the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), where she has worked since 2003. Reiniche oversees the development (from concept through publication and appeals) of over 100 consensus standards and guidelines written by over 1000 volunteers; provides procedural and policy direction to committees responsible for developing all ASHRAE standards, guidelines, and addenda; and advises executive officers on standards-related activities. Reiniche also oversees ASHRAE's involvement in the ISO community, technical services, and research activities. Reiniche is a voting member of the ANSI Executive Standards Council, a non-voting member of ANSI's International Property Rights Committee, including sitting on the copyright working group, and a non-voting member of the ANSI ISO Forum. Reiniche previously co-chaired one of the working groups of ANSI's Energy Efficiency Standardization Coordination Collaborative (EESCC).



**Miriam Vincent (Panelist: What SDOs Need to Consider as the Incorporated by Reference (IBR) Legal Landscape Changes)** is currently the acting director of legal affairs and policy at the Office of the Federal Register (OFR). She has 25 years of federal service and has been a lawyer for 26 years. Vincent started her career working with victims of domestic violence in Appalachia and spent nine years with the Office of Disability Adjudication and Review, part of the Social Security Administration. The rest of her federal career has been spent as a paralegal (while a law student at Georgetown), staff attorney, and in her current position, totaling nearly 16 years of service. She has recently re-written the Incorporation by Reference Handbook (with help from the rest of her staff; currently a staff of 2). Vincent attended Pacific University in Forest Grove, Oregon, studying abroad in Japan and France.

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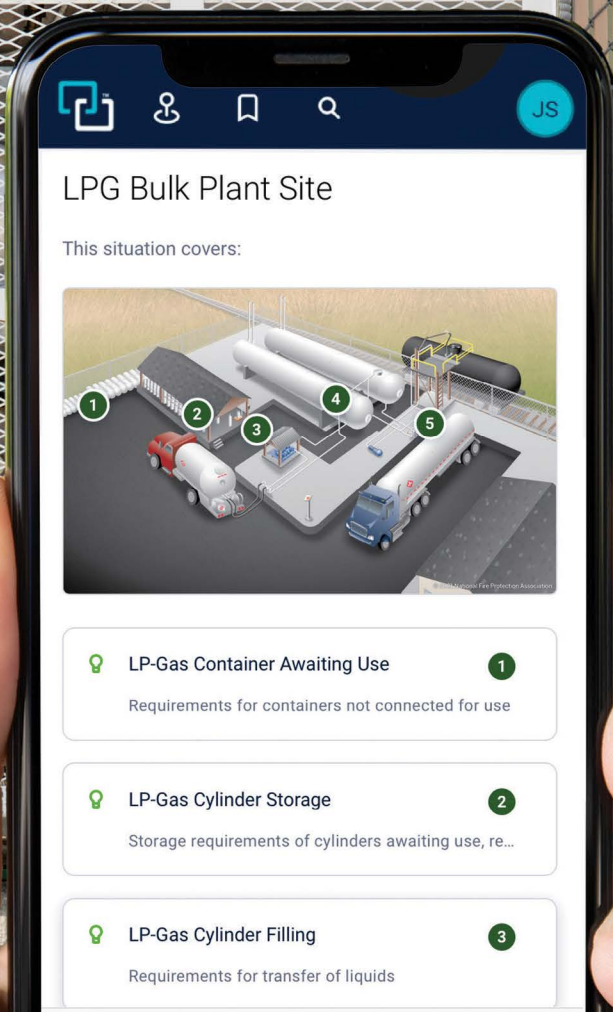


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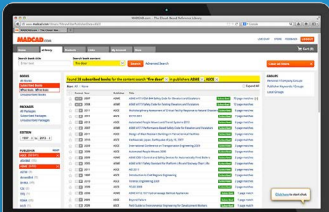
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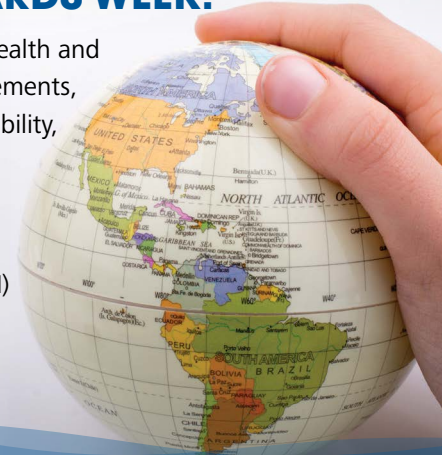
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