



AGENDA

ANSI LEGAL ISSUES FORUM

Thursday, November 14, 2024

National Housing Center, Washington DC | Virtual via Zoom

*ANSI's 2024 Legal Issues Forum will focus on three hot topics for the standards community: the implications of the Supreme Court ruling in *Loper Bright*; the evolving legal framework and developments surrounding the incorporation by reference (IBR) of standards into legislation; and the landscape of data security regulations, practices, and standards.*

Time	Discussion and Speakers
10:00	Registration and Breakfast
10:40–10:45	Welcome
10:45–12:30	<p style="color: #0070C0;">Panel 1: Navigating the Impact of the Supreme Court's <i>Loper Bright</i> Decision</p> <p>The recent Supreme Court ruling in <i>Loper Bright</i> overturns the Chevron deference doctrine—a principle that has long constrained courts’ authority to set aside agency regulations. This decision is expected to reshape the landscape of administrative law, particularly in how courts assess agency interpretations of statutes, and affect regulatory practices across various industries. This panel will explore the potential consequences of this landmark ruling on the development and application of standards in regulation, and the evolving relationship between the judiciary, regulatory bodies, and the standards community.</p> <p>Moderator: Harley L. Geiger, Counsel, Venable LLP</p> <p>Panelists:</p> <ul style="list-style-type: none"> • Thomas A. Berry, Director, Robert A. Levy Center for Constitutional Studies, Cato Institute • Kristin Hickman, McKnight Presidential Professor in Law, University of Minnesota Law • Cameron F. Kerry, Ann R. and Andrew H. Tisch Distinguished Visiting Fellow, The Brookings Institution • Richard Pierce, Lyle T. Alverson Professor of Law, George Washington Law • Michael E. Herz, Arthur Kaplan Professor of Law, Cardozo School of Law <p><i>Audience Q&A to follow.</i></p>
12:30–12:45	Break

<p>12:45–1:45</p>	<p>Lunch Discussion: New Legal Developments Impacting the Practice of Incorporation by Reference</p> <p>This LIF panel is the second in a series covering the increasing risk of loss of copyright protection for standards that are incorporated by reference into regulation. Through the practice of incorporation by reference, government agencies reference external standards developed by private organizations and, up until now, have protected the SDO’s copyright in the documents incorporated by reference. The SDOs, in turn, have made these standards “reasonably available” to the class of persons impacted by the regulation. While that approach has worked well for decades, some argue that standards incorporated by reference into regulations should be provided to everyone for free on the internet. This panel will analyze the current legal landscape, including recent decisions on point from United States Court of Appeals for the District of Columbia Circuit and the United States Court of Appeals for the Fifth Circuit, the status of proposed legislation to address the IBR issue and other ideas for minimizing the risk of copyright challenges to IBR’d standards.</p> <p>Panelists:</p> <ul style="list-style-type: none"> • Kevin Fee, Partner, DLA Piper • Miriam Vincent, Senior Staff Attorney, Legal Affairs and Policy, Office of the Federal Register <p><i>Audience Q&A to follow.</i></p>
<p>1:45-2:00</p>	<p>Break</p>
<p>2:00–3:45</p>	<p>Panel 2: What the Standards Community Needs to Know about Data Security Regulations, Practices and Standards</p> <p>An increasingly complex digital environment is profoundly altering how businesses operate and compete today, raising the stakes associated with protecting and securing data assets. The impact of threats to data security is being felt across multiple sectors– healthcare, financial services, manufacturing– as well as in corporate and government supply chains. Enterprises are creating, manipulating and storing an ever-increasing amount of data, driving a greater need for data governance. Computing environments have also become more complex, routinely spanning the public cloud, the enterprise data center and numerous edge devices such as Internet of Things (IoT) sensors, robots and remote servers. This complexity increases the risk of cyberattacks, making it harder to monitor and secure these systems. This LIF panel will explore the regulatory and legal frameworks that are being put in place to address and mitigate data security risks, and the role of standards and conformity assessment in enhancing data security.</p> <p>Moderator: Matthew Travis, CEO, The Cyber AB</p> <p>Panelists:</p> <ul style="list-style-type: none"> • Randy Gross, Chief Information Security Officer, CompTIA • Alex Joel, Senior Project Director and Adjunct Professor, American University Washington College of Law • Brandon Pugh, Policy Director and Resident Senior Fellow, Cybersecurity and Emerging Threats, R Street Institute • Ron Ross, Fellow, NIST • Sarah Scafidi, Managing Director, Security Advisory, SentinelOne • Justin Sherman, Adjunct Professor, Sanford School of Public Policy, Duke University <p><i>Audience Q&A to follow.</i></p>
<p>3:45–4:00</p>	<p>Closing and Adjournment</p>

SPEAKERS AND BIOS

Panel 1: Navigating the Impact of the Supreme Court's *Loper Bright* Decision



Harley L. Geiger (Moderator) of Venable LLP counsels organizations on a wide variety of cybersecurity law and policy matters. He regularly testifies before Congress and government agencies on technology laws and is actively involved in shaping related policies.

Geiger advises major companies, as well as small startups, on compliance with cybersecurity regulations, responding to cyber incidents, product cybersecurity, vulnerability disclosure, bug bounties, artificial intelligence red teaming, and other issues. Geiger works across disciplines, supporting Venable attorneys in the Privacy and Data Security, Regulatory, and Corporate practices on technology and cybersecurity issues.

Geiger leads the Hacking Policy Council, a trade association that facilitates best practices for vulnerability management. He also leads the Security Research Legal Defense Fund, a 501(c)(3) nonprofit that helps fund legal representation for good faith security researchers in cases that would advance the public interest.

Previously, Geiger was the senior director for public policy at a global cybersecurity company for nearly a decade. He also developed federal policy as senior legislative counsel for U.S. Representative Zoe Lofgren of California.



Thomas A. Berry is a director in the Cato Institute's Robert A. Levy Center for Constitutional Studies and editor-in-chief of the *Cato Supreme Court Review*.

Berry's areas of interests include the separation of powers, executive branch appointments, and First Amendment freedom of speech. Berry's academic work has appeared in *NYU Journal of Law and Liberty*, *Washington and Lee Law Review Online*, and *Federalist Society Review*, with shorter pieces in *Yale Journal on Regulation's Notice & Comment* blog, *Lawfare*, and *Law & Liberty*. His popular writing has appeared in many outlets including *The Wall Street Journal*, *USA Today*, *CNN.com*, *National Law Journal*, *National Review Online*, *Reason.com*, and *The Hill*.

Berry has testified before a subcommittee of the U.S. Senate on the Appointments Clause, and his work on the Vacancies Act has been cited by the U.S. District Court for the District of Columbia.



Kristin Hickman is the associate dean for research and intellectual life for the University of Minnesota Law School. She is a McKnight Presidential professor in law, a Distinguished McKnight university professor, a Harlan Albert Rogers professor in law, and associate director, Corporate Institute.

Hickman is a leading authority in the fields of tax administration, administrative law, and statutory interpretation. Her articles on these topics have appeared in the *Columbia Law Review*, *Virginia Law Review*, *Cornell Law Review*, and *Duke Law Journal*, among other publications. She co-authors the Administrative Law Treatise on federal administrative law with Richard J. Pierce, Jr., as well as a textbook on federal administrative law with Pierce and Christopher J. Walker.

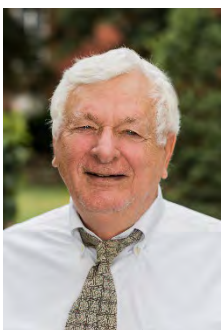
Her scholarly work has been cited several times in opinions of the United States Supreme Court and as well as regularly in lower court judicial opinions and court briefs.



Cameron F. Kerry is the first Ann R. and Andrew H. Tisch Distinguished Visiting Fellow for the Brookings Institution. He leads two projects: The Privacy Debate, which engages policymakers and stakeholders on the national legislative debate on privacy, and the Forum for Cooperation on AI, a series of roundtables bringing together officials and experts from several countries to identify avenues of cooperation on AI regulation, standards, and research and development.

Previously, Kerry served as general counsel and acting secretary of the U.S. Department of Commerce, where he was a leader on a wide of range of issues including technology, trade, and economic growth and security. He continues to speak and write on these issues, focusing primarily on privacy, artificial intelligence, and international data flows, along with other digital economy issues. During his time as acting secretary, Kerry served as chief executive of this Cabinet agency and its 43,000 employees around the world as well as an adviser to then President Barack Obama.

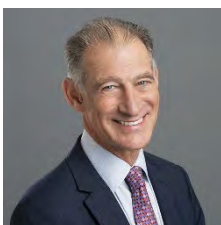
In addition to his Brookings affiliation, Kerry is a visiting scholar at the MIT Media Lab.



Richard Pierce is the Lyle T. Alverson professor of law at the George Washington University Law School. He has authored over 20 books and 130 articles on administrative law, government regulation, and the effects of various forms of government intervention on the performance of markets. His books and articles have been cited in hundreds of judicial opinions, including over a dozen opinions of the U.S. Supreme Court.

Prior to his work with George Washington University, Pierce was a professor of law at Columbia University, Southern Methodist University, the University of Pittsburgh, Tulane University, the University of Virginia, and the University of Kansas.

Pierce served in the United States Coast Guard.



Michael E. Herz is an Arthur Kaplan professor of law for the Benjamin N. Cardozo School of Law, Yeshiva University.

Herz came to Cardozo from the Environmental Defense Fund. Previously, he clerked for Associate Justice Byron R. White of the U.S. Supreme Court and for Chief Judge Levin H. Campbell of the U.S. Court of Appeals for the First Circuit. Herz was Cardozo's vice dean from 2006 to 2009, and served as senior associate dean from 1996 to 2000. For many years, he directed Cardozo's Floersheimer Center for Constitutional Democracy. He has also been co-director of the Israeli Supreme Court Project.

Herz was a visiting professor at New York University School of Law, taught at Columbia and Princeton, and spent a year as a Fellow in Princeton's program in law and public affairs. He is a former chair of the ABA's Section of Administrative Law and Regulatory Practice, and is a senior fellow of the Administrative Conference of the United States.

Lunch Discussion: New Legal Developments Impacting the Practice of Incorporation by Reference



Kevin Fee is a partner at DLA Piper. He focuses on high-stakes IP litigation before trial and appellate courts throughout the country. The World Trademark Review 1000 describes him as “the go to for big ticket litigation” and someone who “has a knack for zeroing in on what is most important in a case from a business perspective.” Some of his precedent-setting victories have been featured in Law360’s “Top 10 Copyright Rulings” and National Law Journal’s “IP Hot List.”

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.



Miriam Vincent is senior staff attorney of legal affairs and policy at the Office of the Federal Register (OFR). She has more than 25 years of federal service as an attorney. 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), in her current position as staff attorney, and served as Acting Director of the Legal Division on three separate occasions, totaling 17+ years with the OFR. She is responsible for maintaining the Incorporation by Reference Handbook (with help from the rest of the Legal staff). Vincent attended Pacific University in Forest Grove, Oregon, studying abroad in Japan and France.

Panel 2: What the Standards Community Needs to Know about Data Security Regulations, Practices, and Standards



Matthew Travis (Moderator) is the first chief executive officer of The Cyber AB. He oversees all Cybersecurity Maturity Model Certification (CMMC) accreditation and CMMC Ecosystem operations of the organization in support of the Department of Defense.

Previously, Travis served as the first deputy director of the Cybersecurity and Infrastructure Security Agency (CISA). There, he oversaw the day-to-day operations of the organization across the full range of its mission in cybersecurity, infrastructure protections, and emergency communications. Prior to this position, he was the deputy undersecretary for national protection (NPPD) within the Department of Homeland Security.

Before entering government service in 2018, Travis served as vice president of homeland security for Cadmus, a security, energy, and environmental professional services firm.

A former naval officer, Travis served as an engineering auxiliaries officer aboard the guided-missile frigate U.S.S. CARR (FFG 52). He then served a tour as White House Liaison to the Secretary of the Navy and was also a White House Military Aide.



Randy Gross is the chief information security officer (CISO) for CompTIA.

In this role, Gross and the InfoSec team eliminate CompTIA's undue technology risk, enabling its people, learning programs, and platforms to thrive. He also oversees corporate privacy. Previously, Gross served as CompTIA's chief information officer and executive vice president, certification operations, overseeing a global program.

Gross provides expert commentary on technology and workforce matters—most recently, on best practices for integrating consultants into IT teams and tech career progression advice. He has served as an expert source for many business and industry media outlets, including *CIO*, *Dice Insights*, *Forbes*, *InformationWeek*, *IT Brew*, *IT Pro Today*, and *TechRepublic*.

Prior to CompTIA, Gross worked for Accenture and the Consumer Technology Association. He attended the U.S. Air Force Academy.



Alex Joel is a scholar-in-residence and adjunct professor at the Washington College of Law. He conducts research, develops programming, and teaches courses focused on the intersections between the law, national security, technology, and privacy.

Previously, Joel was a senior officer with the Office of the Director of National Intelligence (ODNI), where he served as the Chief of the Office of Civil Liberties, Privacy, and Transparency (CLPT). Joel was the ODNI's Civil Liberties Protection Officer, a position established by the Intelligence Reform and Terrorism Protection Act of 2004. Since 2015, he has also served as the ODNI's Chief Transparency Officer.

Joel previously served on the board of directors of the International Association of Privacy Professionals. He also worked as an attorney at the Central Intelligence Agency's Office of General Counsel. Prior to that, he worked in private practice for Shaw, Pittman, Potts & Trowbridge (now Pillsbury Winthrop), and as the privacy, technology, and e-commerce attorney for Marriott International, Inc.



Brandon Pugh is the director and a resident senior fellow for the R Street Institute's Cybersecurity and Emerging Threats team.

Pugh serves in the U.S. Army Reserve as a national security law professor at The Judge Advocate General's Legal Center and School. He is also a nonresident fellow with the Army Cyber Institute at the United States Military Academy at West Point, a member of the International Association of Privacy Professional's Research Advisory Board, and a board member for both the Ithaca College Cybersecurity Program and a governor's advisory council.

Prior to joining R Street, Pugh was legislative counsel for the New Jersey General Assembly Minority Office. He has served as a fellow with the Federal Bureau of Investigation; managing editor of the *Journal of Law and Cyber Warfare*; president and CEO of a homeland security advisory company; member of the Rutgers University Cybersecurity Program Board; and an elected and appointed official at the local, county, and state levels.



Ron Ross is a fellow at the National Institute of Standards and Technology (NIST). His focus areas include cybersecurity, systems security engineering, and risk management.

Ross leads the Federal Information Security Modernization Act (FISMA) Implementation Project, which includes the development of security standards and guidelines for the federal government, contractors, and the U.S. critical infrastructure. He leads the Joint Task Force, an interagency group that includes the Department of Defense, Office of the Director National Intelligence, U.S. Intelligence Community, and the Committee on National Security Systems, with responsibility for developing a Unified Information Security Framework for the federal government and its contractors.

Previously, Ross served as the director of the National Information Assurance Partnership. He also supports the U.S. State Department in the international outreach program for cybersecurity and critical infrastructure protection. A graduate of the United States Military Academy at West Point, Ross served in many leadership and technical positions during his twenty-year career in the U.S. Army.



Sarah Scafidi is managing director, security advisory at SentinelOne. She has 19 years of management consulting experience focusing on preparedness evaluation and capability assessment, risk management, and operational resilience. Scafidi assists Fortune 500, government, and international clients confronting complex business and operational challenges. She helps clients identify and prepare for a range of threats and hazards with the potential for significant or catastrophic consequences and develop needed capabilities to enhance overall resiliency.



Justin Sherman is an adjunct professor at Duke University's Sanford School of Public Policy, where he teaches on cybersecurity, data privacy, and technology policy. He founded and runs its research program on data brokerage, and runs its research program on technology supply chain risk.

Sherman is the founder and CEO of Global Cyber Strategies, which provides research, risk, advisory, training and simulation-building, and expert witness services on cybersecurity, data privacy, tech policy, supply chain, and geopolitical risk. He is also a nonresident fellow at the Atlantic Council's Cyber Statecraft Initiative, a fellow at the Starling Lab for Data Integrity at Stanford University, a contributing editor at Lawfare, and an op-ed columnist at Slate.

Sherman has consulted and advised CEOs, investors, attorneys, product managers, communications strategists, and threat intelligence teams. He has testified to both houses of Congress; spoken at the White House, the United Nations, and NATO; and briefed White House officials, members of European Parliament, and many other policymakers around the world.

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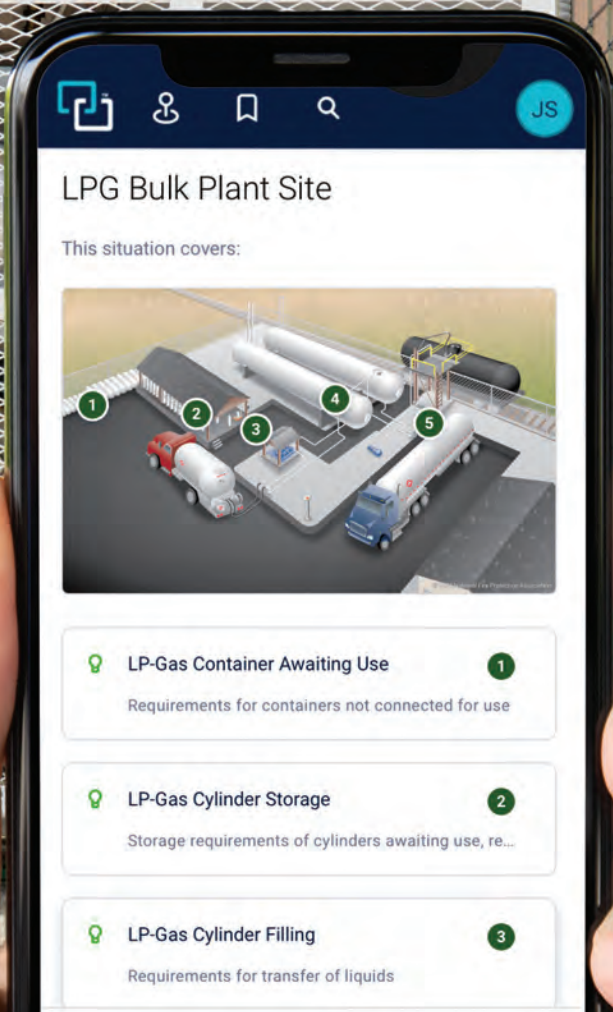
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The insights & policy analysis team proves data-driven intelligence to understand behaviors, emerging trends, and relative policy issues regarding safety, security and sustainability. Primary activities of their work includes quantitative and qualitative thematic insights and analysis to inform and support ULSE strategic engagement pillars and tracking core behavioral and attitudinal trends in consumer and industry sentiment.



Partnerships

The partnerships team builds relationships with partners and policymakers to educate them on the importance of safety standards while also connecting with industry leaders and trade associations on collaboration opportunities.



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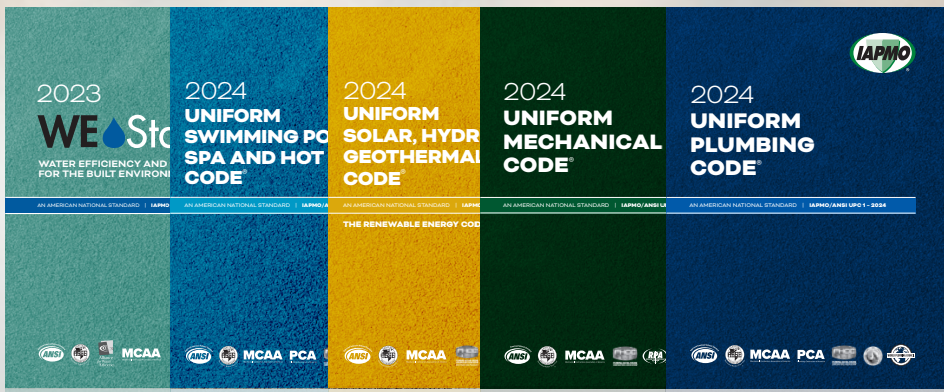
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