



Copyright Clearance Center

What SDOs Need to Consider as the Incorporated by Reference (IBR) Legal Landscape Changes – October 12, 2023 ANSI

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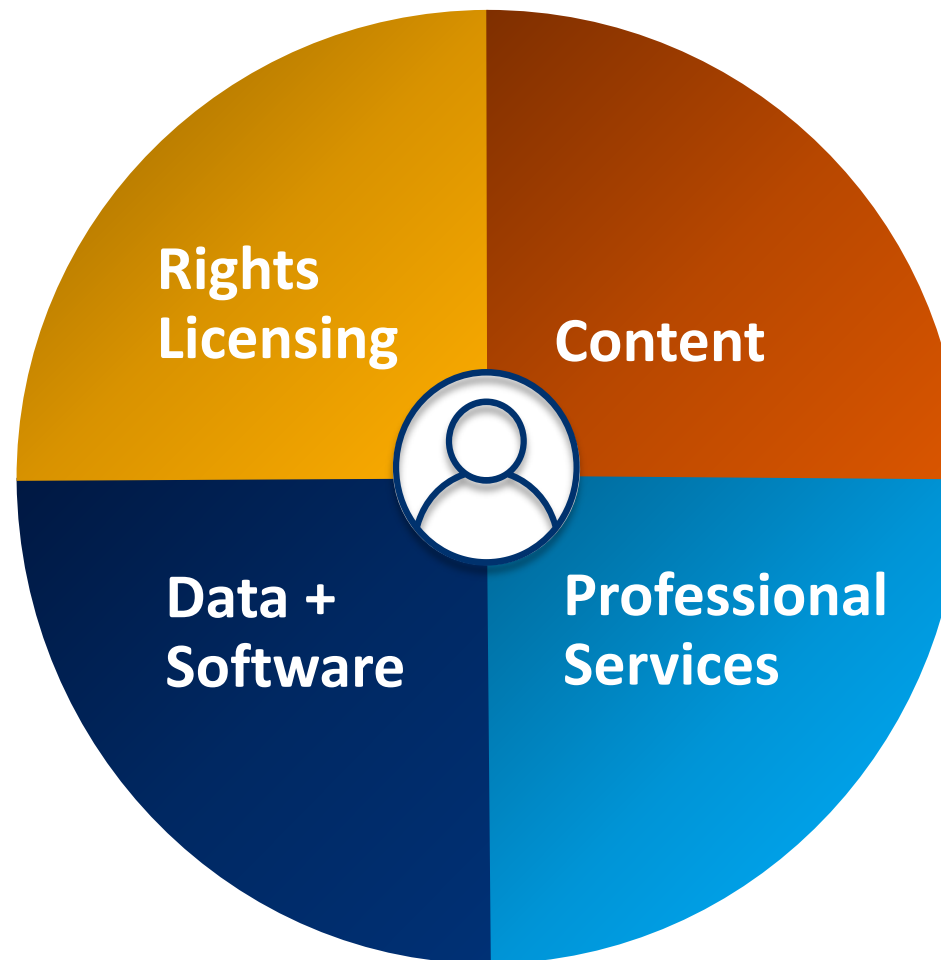
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Customer-focused product and service portfolio

- ▶ Enterprise-wide solutions
- ▶ Millions of rights from thousands of publishers
- ▶ Global coverage for all employees

- ▶ Data & Data Analytics
- ▶ Discovery Tools
- ▶ Access to Subscribed and Licensed Content
- ▶ Ontology Management
- ▶ Organizational Persistent Identifiers (PIDs)
- ▶ Semantic Enrichment



- ▶ Document Delivery
- ▶ Reprints & ePrints
- ▶ Subscription Sales

- ▶ Change Management / Project Management
- ▶ Managed Knowledge Services
- ▶ Knowledge Graphs
- ▶ Deep Search Solutions

What relevant role does CCC play?

Collective licensing



Reuse and storage rights,
and minimized copyright
infringement risk

RightFind



Discoverability,
subscription access,
rights checking, and
content delivery

Collective Licensing

Publishers with Standards covered by the Annual Copyright License include:

ASTM	American Society for Testing and Materials
ASCE	American Society of Civil Engineers
AWS	American Welding Society
BSI	British Standards Institute
DIN	Deutsches Institut für Normung e. V.
IEC	International Electrotechnical Commission
IEEE	Institute of Electrical and Electronics Engineers
ISO	International Organization for Standardization
SAE	Society of Automotive Engineering
WHO	World Health Organization

Common use cases



Authoritative Documents: Store a copy of a digital standard on a hard drive or network drive used by a project team or work group.



Collaboration: The Annual License is device agnostic and allows authorized uses of a standard by a project team or workgroup via commonly used collaboration applications such as Microsoft SharePoint, Microsoft Teams, or Slack as well as email, chat, etc.



Internal Presentations & Training: Include a portion of a standard in an internal presentation to project stakeholders.



Accessibility: Scan a printed standard into digital format when an electronic version is not readily available.



Submission: Include a standard as part of a regulatory or legal submission.

Standards in RightFind

Standards in RightFind

- *Discovery* of the standards teams need to do their important work
- *Ordering* standards through document delivery services
- *Collaboration* by project teams or work groups by accessing in one location
- *Copyright* awareness to work effectively and compliantly

“Collaboration is our biggest challenge. RightFind was sold to us to help us manage that. It does everything we were promised.”

“RightFind is now the main retrieval tool for standards, for our team and our many end-users.”

“Clearly the data is cleaner, especially with the standards.”

ASTM, et al. v. public.resources.org

- What was not fair use: Copying and posting of standards not incorporated by reference
- Fair use of IBR because:
 - ❖ “Public Resource’s use is for nonprofit, educational purposes”
 - ❖ Transformative: “For example, ASHRAE says its mission is to ‘advance the arts and sciences of heating, ventilation, air conditioning and refrigeration to serve humanity and promote a sustainable world.’” J.A. 7169. Public Resource’s mission in republishing the standards is very different—to provide the public with a free and comprehensive repository of the law. This distinction is fundamental: Public Resource publishes only what the law is, not what industry groups may regard as current best practices”
 - “Our mission is to unlock human potential by connecting education to meaningful career outcomes.” John Wiley & Sons mission statement

ASTM, et al. v. public.resources.org

- Nature of Work: Factual
- Amount of work: “This factor strongly supports fair use because the standards at issue have been incorporated and thus have the force of law”
- Market harm: “We conclude that the fourth fair-use factor does not significantly tip the balance one way or the other. Common sense suggests that free online access to many of the plaintiffs’ standards would tamp down the demand for their works. But there are reasons to doubt this claim, the record evidence does not strongly support it, and the countervailing public benefits are substantial”

Consequences when the bargain is broken

- Consequences:
 - ❖ Loss of licensing rights in databases?
 - ❖ Beware exception washing, e.g., reservation of commercial rights under EU DSM Article 4
 - ❖ Commercial licensing intact (Texaco); However, loss of document delivery opportunities

Responses when the bargain is broken

- Appeal, especially in light of Andy Warhol decision
- Pro Codes Act
- Charge governments?
- Avoid incorporation?
- Update faster?
- AI- Enablement and licensing

For further information please
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