



Codes and Standards: Developing Materials for Law & Public Policy Teaching

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Project Overview

Background reality

- Lack of supply and demand for courses on codes and standards in law and policy schools

Our Purpose

- Make it easy for instructors to incorporate material about codes and standards into existing courses

Project Design

1. Case Studies

- Two in-depth, multimedia case studies
 - State green building codes and federal preemption
 - Standard essential patents

2. Course Modules

- Lesson plans and materials for class sessions in property, administrative law, real estate law, environmental law, intellectual property law
 - Teaching notes, PowerPoint slides and study questions
 - Intended for use by instructors with little or no background in codes and standards
- Three main topics
 - Two built around case studies (above)
 - One about incorporation by reference

Project Communication

- Electronic and print distribution to academics, practitioners, professional organizations and advocacy groups
- *RegBlog.org* The logo for the Penn Program on Regulation's RegBlog. It features the text "PENN PROGRAM ON REGULATION" in a small, blue, sans-serif font above the word "REG" in a large, bold, blue, sans-serif font, followed by "BLOG" in a large, bold, red, sans-serif font.
- New codes & standards clearinghouse website

Project Website: Curricular Clearinghouse

- Accessible to non-specialists
- Provides “101” on codes and standards
- Access to case studies, course modules, and multi-media materials
- Living library of resources beyond the PPR project
 - Opportunity to submit additional resources

First Case Study: Federal Preemption

This Constitution, and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

- Constitution, Article VI

“Albuquerque Green”

- Congress enacts federal standards for HVAC equipment, specifically preempting state/local laws
- Albuquerque adopts a green building code based on ICC’s International Energy Conservation Code, which requires, in some cases, HVAC equipment exceeding the federal standards
- HVAC trade group sues Albuquerque based on preemption by Federal HVAC standards
- District of New Mexico decides Albuquerque code is preempted

How will first case study be used?

- Federal preemption
 - *For courses on:* Administrative law; constitutional law; local government law;
- Climate Change
 - *For courses on:* Environmental law & policy; climate change
- Building Codes
 - *For courses on:* Real estate law; property law

Second Case Study: Standard Essential Patents

- Tension between enforceable patent rights and standards setting organizations
- Told through the tale of *Microsoft v. Motorola* – relatable technology
- Problem is setting “FRAND” terms and deciding if injunction applies

Why this Story?

- *Apple v. Samsung* put SEPs in the popular press
- Not just a niche practice – IP lawyers (especially with tech clients) must be savvy to SSOs
 - Competitive effects
 - Potential liabilities
 - Damages in a patent suit
- Yet very few courses teach this critical topic

How does the Module Operate?

- Students assigned a side: Motorola or Microsoft
- “HBS – like” case study tees up the problem.
- Students prepare arguments for their client on three issues:
 - Was contract breached?
 - Were the terms offered FRAND?
 - Was an injunction appropriate?
- Meet in small groups to discuss, then report to class and finish with all group discussion

Resources for the Professor

- PPT slides for background
- Interviews with key players
- Teaching Guide
 - “Answer Guide” for student arguments
 - Background on what happened in case
 - Questions to further challenge the class
 - Suggestions for how to use for different length classes
 - Broader policy questions

Goals of Module

- Substance - it is very difficult to determine a FRAND rate. Hard to counsel a client on navigating.
- Format:
 - Introduce the topic in an interactive way that is interesting, matters and will stick
 - Make it easy for instructors to download, use, and customize to encourage participation
- Pedagogy: Provide a platform to inspire students to confront larger policy issues

Challenges of Creating the Module

Balance:

- Enough info to engage without overwhelming, especially figures
- Focus on policy, even as there are details
- Hard not to take a side, especially when outcome known

Testing out the Module

- Will debut in an IP Clinic setting
Nov 28
- Also will run in a lecture setting in
Spring 2017
- Look forward to reporting the
results

Conclusion

