A Primer on Voluntary Codes and Standards

What are voluntary codes and standards? Voluntary codes and standards are written documents that guide the design and development of products, industrial processes, and other facets of private economic activity. Among other purposes, they often aim to ensure that products or buildings are safe or that individual components of products or systems will work with each other. They are not established by legislatures or government agencies, but instead are created by standard-setting organizations that, in the United States, are nongovernmental organizations. The standards these organizations create are voluntary because they are not binding law. Nevertheless, voluntary codes and standards influence industry behavior and can have wide-reaching impacts on modern products and industry practices. Some of them may also become legally binding through their incorporation into laws or rules made by governmental bodies.

Where do voluntary codes and standards come from? Thousands of standard-setting organizations exist around the world. Some important standard-setting organizations are based in the United States, but many are based in other countries. Some of these organizations create codes and standards that are intended to be applied to businesses throughout the world. Several examples of standard-setting organizations include the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), ASTM International, the International Code Council (ICC), the International Organization for Standardization (ISO), and the National Fire Protection Association (NFPA).

In the United States, the American National Standards Institute (ANSI)—a nongovernmental organization—provides standards and accreditations that apply to standard-setting organizations. ANSI aims to ensure that the standards development processes followed by standard-setting organizations are reliable and fair. In addition, some federal agencies have established guidelines for how government can rely on voluntary codes and standards and incorporate them into binding law. Some examples of U.S. agencies with roles that intersect with standard-setting organizations include the National Institute of Standards and Technology (NIST), Office of Management and Budget (OMB), and Office of the Federal Register (OFR).

How are voluntary codes and standards created? Although each standard-setting organization follows its own procedures to create new codes or standards or amend existing ones, the development of voluntary codes and standards is generally a collaborative process that involves deliberation by committees of industry representatives, academic experts, other interested persons, and sometimes representatives from government. Because standard-setting often follows a consensus-based decision-making process, voluntary codes and standards are sometimes referred to as "consensus standards." ANSI has established what it calls "essential requirements" for any organization's standard-setting process. The aim of these ANSI standards on standard-setting is to provide a fair process used by standard-setting organizations.

How do voluntary codes and standards interact with the law? Voluntary codes and standards interact with the law in many ways. They can, for example, determine the standard of care in tort law, especially in products liability cases. They are commonly used in business contracts to define performance. In the criminal law system, voluntary standards actually guide the handling of evidence by crime labs. Because many voluntary codes and standards call for the use of a product or technique for which someone owns a patent, intellectual property lawyers can become involved in negotiations or disputes over the licensing of so-called standard-essential patents. In addition, federal and state regulatory agencies in the United States have incorporated by reference tens of thousands of provisions from voluntary codes and standards across many areas of the law, converting those provisions into mandatory codes and standards.