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From: Anne Caldas
Sent: Monday, March 22, 2021 8:31 AM
To: Scott Stuewe; Natasha Kreisle
Cc: Jim Thompson; Anne Caldas
Subject: Response to public comments - Proposed revisions to the ANSI Essential Requirements - DirectTrust
Attachments: ExSC_025_2021_ER TG Report from 2019.pdf; ExSC_017_2019_030921.pdf; ExSC_012_2021_balance_outreach.pdf; ExSC_017L_2019_DirectTrust.pdf

Greetings –

We hope that you are well.

Thank you for submitting the attached public comments in response to proposed revisions to the *ANSI Essential Requirements* (www.ansi.org/essentialrequirements) announced in *ANSI Standards Action* in December 2019. Background on the original proposed revision is included in the attached report (ExSC_025_2021). The ExSC has considered all public comments and as a result, edited the original proposed revision, now attached here in its final edited form (ExSC_017). This edited version was approved by the ANSI ExSC in February 2021 and will be submitted to the Executive Committee of the ANSI Board of Directors for final approval in March 2021 for incorporation into the 2022 edition of the *ANSI Essential Requirements*.

Note that the final revision (ExSC_017) includes updates to the following provisions:

- Openness – moved existing “Affiliation” footnote to main text to promote transparency
- Balance:
 - The interest category of a voting member to reflect the business interests of their primary source of support for participation on the consensus body
 - Definition of “sponsor” and “Consultant”
 - Clarification that sub-categories of interest categories should not be used to circumvent balance requirements and a clarification of the use of General Interest
 - Deletion of “Professional society” and “Trade association” from list of optional, sample, interest categories as these are more akin to membership categories than to interest categories, and the source of funding should be reflected in the interest category
- Project Initiation Notification System (PINS):
 - New requirement to list anticipated interest categories expected to comprise the consensus body to promote transparency
 - New requirement for a response from an ASD to a request for further information on a project or to discuss it
- Emphasis on timely and adequate notice of standards development activity
- Appeals: Clarification of ANSI appeals process and reference to applicable procedures based on the type of appeal, e.g., American National Standard (ANS) approval versus accreditation of a standards developer

Please also note that consistent with recommendations in the attached ExSC Task Group Report, ANSI has updated our website to provide easy access to information about the American National Standards (ANS) process and how to participate in it. Please visit the new ANS pages, including these: <https://www.ansi.org/american-national-standards/ans-introduction/overview#introduction> , <https://www.ansi.org/american-national-standards/info-for-the-general-public/general-public> and <https://www.ansi.org/american-national-standards/info-for-standards-developers/standards-developers> .

In addition to the discussion in the attached ExSC_025_2021 report which provides background and the edits reflected in the final version of ExSC_017, please see the following responses presented by section of the proposed revision:

Original Lines 25-71: 2.3 Balance

- Line 47, 2.3 the use of "consideration *shall* be given" is misunderstood as requiring the three interest categories (User-Producer-General Interest), which is not the case. A "General Interest" category is not required, but if one exists, it should include only those whose business or other interests are not covered by other existing interest categories used by the ASD. Please see edits to this section.
- The ExSC notes that balance is defined in 1.3 and 2.3 of the ANSI Essential Requirements and informed by other sections, such as 1.1 Openness.

Original Line 52: Footnote 3 – Interest Category examples

- With respect to the deletion from the optional list of interest categories listed in FN3, the ExSC views a "professional society" or "trade association" as a general membership category rather than the interest category they represent on a consensus body. For example, a trade association is presumed to represent the industry/stakeholders for which the trade association exists, so an industry trade association is appropriately classified as "industry".

Original Lines 73-88: 1.5 & 2.5 Notification of Standards Development

- Suggest that the *ANSI Essential Requirements* define "standards activity"/"standards development activity"/"standards development" which are used interchangeably, in the way the commenter understands the SDOAA.
 - Related comments and proposals were not accepted and are considered out of scope. The *ANSI Essential Requirements* defines the framework over which ANSI's jurisdiction applies with respect to the ANS process. It does not apply to every aspect of an ASD's organization, nor does it apply to conformity assessment activities or to the use of ANS or the development of an ASD's procedures and policies. For reference, *1.0 Essential requirements for due process* within the *ANSI Essential Requirements* states that "[t]hese requirements apply to activities related to the development of consensus for approval, revision, reaffirmation, and withdrawal of American National Standards (ANS)." The context in which the phrases at issue are used - "standards activity"/"standards development activity"/"standards development process" – is limited to the ANS process as defined and governed by the *ANSI Essential Requirements* which do not address how an ASD develops or maintains its accredited procedures. ASDs have flexibility with respect to how policies and procedures are developed.

Indeed, a Panel of the ANSI Executive Standards Council (ExSC) expressly rejected an argument that the process employed by an ASD to develop revisions to its Patent Policy did not reflect a consensus of all interested stakeholders in accordance with the *Essential Requirements*, stating that:

We do not find this argument persuasive as it rests on the false premise that the *Essential Requirements* apply to the development of an ASD's procedures. They do not. Instead, the *Essential Requirements* apply to the approval of standards (i.e., ANSs). As stated clearly in Section 1 of the *Essential Requirements*, the *Essential Requirements* apply to "activities related to the development of consensus for approval, revision, reaffirmation, and withdrawal of American National Standards (ANS)" (Section 1, emphasis added). Section 1.9 provides that "written procedures shall govern the methods used for standards development..." (Section 1.9, emphasis added). Section 1 thus makes clear that the *Essential Requirements* relate to standards development and not, as Appellants would have it, to the process by which an ASD's written procedures themselves are developed.

See ANSI Executive Standards Council (ExSC) Appeals Panel decision in response to the joint appeal filed by Alcatel-Lucent, Ericsson, and Qualcomm of the ExSC's prior decision to re-accredit IEEE. February 25, 2016 at page 5. (emphasis in original). To the extent the commenter uses the SDOAA to urge a broader definition of the term "standards development activity," such a definition does not align with the *Essential Requirements*.

- Comments concerning the varying use of "timely and adequate", etc. Please see the edited version of the proposal that uses "timely and adequate".

Original Lines 107-156: Appeals

- Please see the edits in ExSC_017 to the text concerning appeals and also the Operating Procedures of the ANSI BSR, ANSI ExSC and ANSI Appeals Board for appeals decision requirements.

Again, thank you for your interest and your comments.

Sincerely,
Anne

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