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From: Anne Caldas
Sent: Monday, March 22, 2021 8:33 AM
To: 'stefan.geyersberger@iis.fraunhofer.de'
Cc: Jim Thompson; Anne Caldas
Subject: Response to public comments - Proposed revisions to the ANSI Essential Requirements - Fraunhofer
Attachments: ExSC_025_2021_ER TG Report from 2019.pdf; ExSC_017_2019_030921.pdf; ExSC_012_2021_balance_outreach.pdf; ExSC_017S_2019_Fraunhofer.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 addresses some of your comments, 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 1-5: Section 1.3 Balance – NOTE: Not open for comment, included for reference

- Please note that section 1.3 was provided for background and was not open for public comment. See the attached ExSC report for background. See also sections 1.3 Balance & 2.3 Balance and 1.1 Openness and 2.1 Openness for current requirements. In addition, the definition of "standards activity" is out of scope of the proposed revisions; see further discussion below.

Original Lines 7-13: Section 2.1 Openness – NOTE: Not open for comment, included for reference

- Proposed revision to Openness was not accepted as it is considered out of scope with respect to the proposed revision announced for public comment.

Original Lines 20-23: 2.2 Lack of Dominance

- Line 20 (and section 1.2) Proposed revision to Lack of dominance was not accepted as it is considered out of scope with respect to the proposed revision announced for public comment. In addition, to confirm, the current language would allow for a claim by a "collective of interest categories, individuals or organizations"; who may claim dominance is only limited by standing.

Original Lines 25-29: 2.3 Balance – NOTE: Not open for comment, included for reference

- Proposal of the right to object to balance within ANSI decision-making bodies (Pages 6-8 of comments) was not accepted as it is out of scope. Please also see ANSI's Code of Conduct. The *ANSI Essential Requirements* does not govern ANSI's internal committees. In addition, within the context of a proposed ANS, it would be premature to object to "balance" at the PINS phase, when consensus body membership may still be under development.

Original Line 52: Footnote 3 – Interest Category examples

- With respect to the deletion from the optional list of interest categories listed in Footnote 3, 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".
- The sample interest categories are just that and developers are not required to use those specific interest categories. Developers have different categories and definitions based on the nature of the standards developed. The interest categories appropriate to the development of consensus in any given standards activity are a function of the nature of the standards being developed. Interest categories shall be discretely defined, cover all materially interested parties and differentiate each category from the other categories. Such definitions shall be available upon request.

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

- Suggest that the *Essential Requirements* define "standards activity"/"standards development activity"/"standards development" which are used interchangeably, in the way the commenter understands the SDOAA.
 - NOT ACCEPTED: Out of scope. The *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*.

- Propose right to object to balance at the PINS phase and again in 2.3. This proposal was not accepted. Balance is not required to be established at the PINS phase. Concerns about balance on a consensus body, once formed, may be brought to the attention of the standards developer.

Original Lines 107-156: Appeals

- Suggest referencing USSS, SDOAA and WTO CBP. These proposals are considered out of scope. In addition, reference to ANSI as a "quasi-regulatory" body (and similar references,) reflect a misunderstanding of ANSI. See also earlier response.
- The rules regarding appeals and appeals decisions are in the various ANSI Operating Procedures – see the Operating Procedures of the ANSI BSR, ANSI ExSC and ANSI Appeals Board.

Various:

- Suggest "Timely and adequate notification". Please see edited revision ExSC_017_2019.
- The suggestion to move the definition of "consensus" to section 1.0 of the *ANSI Essential Requirements* was not accepted as it is considered out of scope for the proposed revision.
- All proposed revisions to the *ANSI Essential Requirements* are subject to final approval by the Executive Committee of the ANSI Board of Directors. This is not an issue that the ExSC will debate.

Again, thank you for your interest and your comments.

Sincerely,
Anne

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