**Greg Saunders comments on ExSC 8096**

w/r/t ExSC 8096 I have numerous comments – some editorial, some editorial with substantive impact, and some substantive. In each case I identify the comment as editorial or substantive and in most cases I offer a proposed fix. There are a few cases where the fix is not immediately obvious and I leave those to the drafting group to figure out the best solution.

First I want to commend the ExSC for once again tackling this very difficult and very complex issue. I don’t believe that a perfect answer exists, but establishing principles and procedures is a very good approach to at least bringing some consistency to ANSI’s methodology in dealing with alleged and actual duplication and conflict.

With that said – here are my comments:

**Substantive:** General comment: the paper makes extensive use of the “and/or” construction. This construction is imprecise and vague and should be avoided. There are exceedingly few circumstances where “and/or” is actually appropriate. The ExSC should closely examine each use of “and/or” and figure out whether it means “and” or “or.” It may be necessary to insert an additional clause to a sentence or even to insert a new sentence to clarify the meaning, but particularly in this kind of procedural document where precision and specificity are important, the additional language should be far preferable to the ambiguity introduced by such a vague construction.

**Substantive:** General Comment: Avoiding duplicative standards is not the same as having some duplication of technical material among two or more standards. The Essential Requirements document generally cautions against duplicating another ANS but only twice mentions duplication of technical content. This revision of the ERs should recognize that duplication of technical content is sometimes helpful to a user and is not always either to be avoided or is the basis for refusing ANS designation. While there are pitfalls associated with duplicating content (mainly obtaining permissions and keeping content synchronized), if it helps a user to avoid having to track down a bunch of referenced documents in order to glean context and meaning, duplication, with attribution and permission, is a good thing. I’m not sure whether it makes more sense to try to fix the definition, to describe, perhaps in each of the places where it is discussed that there is “bad duplication and good duplication”, or to try to describe in the introductory material of paragraph 2.4 that though duplication of documents is usually undesirable, certain duplication of technical content may not be bad. Lastly, even apparent duplication of documents may be permissible with good rationale. Usually, the apparent duplication is justified by differences in intended purporse. Wish I had a better fix to recommend, but I think the ExSC needs to revisit this concept and make some appropriate adjustments. Perhaps (and I know this would be tricky at best) a bit more of a conceptual and philosophical introduction to the whole issue of duplication might be in order.

**Editorial:** Para 2.4, the second paragraph, insert “and” as indicated – “…and users of the standards, and the heightened potential for introducing…”

**Substantive:** Para 2.4.1, third sub-para: reproduction of text is only one way that duplication of technical content may occur. Sometimes text is *not* copied verbatim but has virtually identical meaning to text existing elsewhere. This possibility should be included in the definition of Duplication of technical content.

**Editorial w/Substantive impact:** Para 2.4.3, second sentence: Use of passive voice here leaves the reader to wonder who should make a good faith effort. A better construction would be, “Should there be claims of conflict or duplication the developer shall make a good faith effort to resolve them.”

**Editorial**: Para 2.4.3, first sub para following the bulleted list: Suggest adding results to the evidence that should be retained – reword as follows, “Developers shall retain evidence of such efforts and their results in order to demonstrate compliance…”

**Editorial**: Para 2.4.3, second sub para following the bulleted list: Reword for simplicity and clarity, “An ASD may reference existing standards and, if necessary, duplicate specific text after obtaining permission.”

**Editorial**: para 2.5.1.2, first sentence: suggest including the phrase “in whole or in part” after “or duplicates…” so the sentence would read, in part, as follows, “…assert that a proposed standard conflicts with or duplicates, in whole or in part, an existing American…”

**Substantive**: para 2.5.1.2, the bulleted list: Recommend adding an additional bullet to separate the concept of compelling need from existence of conflict or duplication. This is one of those cases where the “and/or” construction leads to an ambiguous statement. Recommend that the last bullet read as follows, “…to disagree about whether conflict or duplication exists; or…” and that an additional bullet be added that reads, “that duplication or conflict is justified by a compelling need or that the duplication or conflict is desirable and causes no harm or confusion to users of the standards in question.”

**Editorial**: para 2.5.1.3, last sentence of the first paragraph: “reasonably” as a modifier for “timely” is unnecessary and unmeasurable, suggest change as follows: “Any actions agreed upon from the deliberations shall be carried out in a timely manner, normally within 90 days following the deliberation.”

**Editorial**: Para 4.2.1.1, lettered list – remove the second “d.”

**Editorial**: Para 4.2.1.1, sub para d. – delete “and/or” and replace with “or”

**Editorial**: Para 4.2.1.1 g. 5. – delete “and/or” and replace with “or”

**Substantive**: Para 4.2.1.1, the paragraph beginning, “The BSR shall not approve standards…” This is another place where “and/or” gets the reader in trouble. It could be interpreted from the statement that “compelling need” trumps “good faith efforts” without stating who would make the determination of “compelling need.” Also, since we spent considerable space defining what “good faith effort” means, recommend we refer to it. So, the sentence should read, “The BSR shall not approve standards that conflict with or duplicate existing American National Standards unless good faith efforts as described in section 2.4.3 have been undertaken, or unless justification based on a compelling need or lack of harm or confusion was agreed to as stated in section 2.5.1.2”

**Substantive**: Para 4.3, the lettered list: Once again the passive voice makes for vague assignment of responsibility. In the sub para leading to the lettered list, the last sentence should read, “Additionally the developer should take the following steps:” In this way it is clear who is responsible for taking the steps. Also, the statements should either be declarative or should include an action. The list should read as follows:

1. Delineate scope, purpose, and intended application for each standard;
2. Thoroughly investigate the need for an ANS;
3. Thoroughly investigate existence of ANS and already announced proposed ANS prior to development of a new candidate ANS;
4. If conflict or duplication with an existing or proposed ANS exists, establish that there is a compelling need for the new candidate ANS;
5. Provide public notice of standardization activities in *Standards Action* and in relevant other publications;
6. If duplication or conflict exists, or is likely to exist (based on the investigations required by a) and b) above), establish joint and cooperative activities with the organizations where the duplication or conflict exists, including appointing liaison representatives;
7. Establish liaison with the organization responsible for the U.S. position on any corresponding international standards;
8. Use the ANSI PINS system;
9. Conduct good faith efforts to resolve claims of conflict or duplication.

**Substantive**: Para 5.4 e.: eliminate both “and/or” constructions. Good faith efforts are required twice by this sub paragraph. Rewrite as follows, “e. a declaration that good faith efforts were undertaken to resolve any alleged conflict or duplication with other American National Standards or candidate ANS’ that have been announced previously in *Standards Action*, other known ANS were examined with regard to harmonization and duplication of content, and if conflict or duplication exists, that there is agreement that there is a compelling need for the standard or that the conflict or duplication does no harm.”