

Anne Caldas

From: Anne Caldas
Sent: Thursday, June 18, 2020 1:08 PM
To: Cynthia Duncan
Cc: Anne Caldas; Jim Thompson
Subject: ANSI ExSC Response to Public Comments - AISC
Attachments: ExSC_066_2020_CTC_SA.pdf; ExSC_096C_2019_AISC.pdf

*****Please review and respond*****

Greetings –

Thank you for submitting the attached public comments, which have been reviewed by the ANSI Executive Standards Council (ExSC). As a result of this review, an updated proposal has been approved for public comment and will be announced in *ANSI Standards Action* (www.ansi.org/standardsaction) this Friday, June 19, 2020. A copy of the updated proposal is attached, with any new comments on this proposal due to psa@ansi.org by July 20, 2020.

The ExSC received a number of comments regarding section 3.2 of the *ANSI Essential Requirements*. In particular, commenters have raised questions about: (1) the meaning of the undefined term "proprietary"; and (2) the scope of some of the examples provided in subsection 3.2.2. In response, the ExSC has added a new second sentence to clarify that the word "proprietary" in this context means "products or services that are the property of an owner and cannot be obtained or recreated without the consent of such owner." The examples of "proprietary products or services" have been clarified ("label" and "copyrighted user manual" have been removed) and expanded ("copyrighted materials" has been added) in the third sentence, which now reads: "For example, an ANS may not endorse or require the purchase or use of brand-name tools or components, licenses, manufacturer lists, service provider lists, and copyrighted materials." These revisions are intended to make clear that the purpose of Section 3.2.2 is to preclude a situation where an American National Standards (ANS) obligates or actively encourages an implementer to acquire products/services from a particular source.

The ExSC believes the current revisions, adding a definition of "proprietary" and replacing "copyrighted user manual" and "label" with a revised list of examples, that now includes "copyrighted materials," will make clearer that this section is not intended to address what a manufacturer decides is appropriate to include or not include in its own product manual or how the manual is used but, rather, to what an ANS itself can and cannot compel. In addition, a footnote has been added making clear that the term "copyrighted materials" is not intended to include manufacturers' instruction/safety manuals when a reference to such documents is incorporated by reference into the text of an ANS when done for non-commercial technical, or safety-related purposes, as long as such references do not otherwise violate other provisions of the Commercial Terms and Conditions Policy (*e.g.*, they cannot also contain warranties, guarantees and like commercial clauses).

The ExSC's response to your specific comments follows:

1. Contractual terms are not allowed in an ANS now, under the present 3.2 Commercial terms and conditions provision. It is recommended that AISC staff contact ANSI staff and withdraw or revise the PINS as the Project Need in the example included in your public comment says: "This standard provides contractual requirements for steel buildings and is referenced by other ASIC standards, as well as building codes." ANSI staff will work with your organization, consulting as needed with the ANSI BSR. AISC is also encouraged to consider appropriate action with regard to other standards and government agencies that

reference any AISC standards that may not be in compliance with section 3.2 in the event that such standards are withdrawn as ANS if they are not in compliance.

2. Please refer to edits shown in the updated draft attached.
3. A definition of "proprietary product" has been added to the updated proposal:
 - a. "Proprietary in this context means products or services that are the property of an owner and cannot be obtained or recreated without the consent of the owner."
4. Section 3.1 applies to patented technology and has distinct requirements that are appropriately separate from the provisions in 3.2, which applies to other commercial terms.

Please review this response and let me know when this month we can discuss in more detail, the example included in your public comments.

Sincerely,
Anne

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