

Anne Caldas

From: Anne Caldas
Sent: Thursday, June 18, 2020 1:25 PM
To: Stefanie Mielert
Cc: Anne Caldas; Jim Thompson
Subject: ANSI ExSC Response to Public Comments - Fraunhofer
Attachments: ExSC_066_2020_CTC_SA.pdf; ExSC_096E_2019_Fraunhofer.pdf

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. "Except as otherwise permitted" means "as otherwise provided for", including for example, patented technology addressed in section 3.1, which is an example of the exception covered by the introductory language in 3.2. In other words, this section is not trying to supplant any other parts of the *Essential Requirements*.
2. Commercial terms are not allowed now in an ANS and so your comments on a)ii are based on an incorrect assumption.

3. “Reciprocity” in terms of patents would not be text included in an ANS and would be governed by section 3.1 ANSI Patent Policy, which provides developers flexibility with respect to provisions like reciprocity.
4. Objection to listing sources: the ExSC disagrees with your objection, as the choice will be the ASD's to make and the current attached proposal is viewed as providing greater transparency/user-friendliness.
5. Support for current text regarding a footnote or informative annex: the proposed revision is intended to improve the clarity overall, so reverting to the original text is not consistent with the ExSC's goals.
6. Not compliant with WTO: The ExSC disagrees. ANS must be revised to ensure currency on a regular basis. If information comes to light that changes any provision, then a revision to the standard would be considered. If ANS are not maintained in accordance with the ANSI Essential Requirements, then they are withdrawn.
7. Generic conformity assessment requirements are allowed now, as is “accredited” conformity assessment – both must be generic and may not specify the name of a conformity assessment body.
8. Recommend that IPRPC review: The ExSC has periodically asked the IPRPC for comments on this section of the *Essential Requirements* as needed and not in all cases. In this case, the ANSI ExSC and ANSI Outside Counsel's involvement, informed by public review comments is deemed sufficient. Please note that all interested parties had the right to submit public comments – and the IPRPC was notified of this opportunity at its December 2019 meeting and given additional time to comment. In addition to Fraunhofer, other IPRPC members commented including IEEE, CISCO, Apple, and Qualcomm.

Sincerely,
Anne

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