



From A to Veck:
Standardization and the Law

2005 ANSI Annual Conference



Copyright in Standards: Yours, Mine and Ours

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Copyright in Standards – Yours, Mine and Ours

- Copyright vis-à-vis standards as written documents
 - Copyright 101
 - Issues during evolution into a standard
 - Issues if the standard is submitted to a second standards body



Copyright Law

- Protects original works of authorship in a fixed medium
 - Literary, musical, pictorial, etc.
 - Examples include books, photographs, reports, architectural drawings, instruction sheets, etc.
- Protects creative “expression”
 - Not the ideas, facts or principles reflected in the work
- Exclusive ownership rights include:
 - Publishing
 - Making and/or distributing copies
 - Preparing derivative works
 - Displaying it publicly
- Formal registration not required (but beneficial)



Sample Standard

ANSI K100.1-1974

American National Standard

**safety code and requirements
for dry martinis**

ANSI



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Slide 4

Standards-setting Activities

- Committee of technical experts get together to “create” the standard
 - Example: The martini standard was created by the American National Standards Committee on Liquids Management (K100) and approved by ANSI in 1974 (24 committee members)
- Copyright issues arise in several ways:
 - Often such experts make contributions (formally or informally)
 - As a group, they create a final document
 - The SDO publishes and promulgates the document



Contributions

- Presume that Horace Beefeater, from the Gin Council of America, contributed the following diagram to illustrate the “radiation” method for mixing dry martinis:

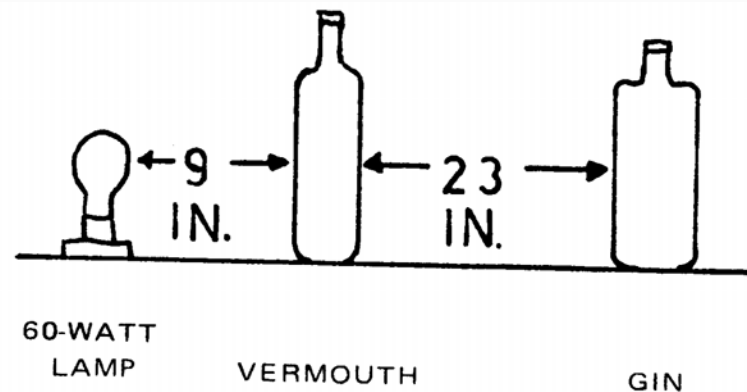


Fig. 2
Radiation Mixing Method

Contributions

- Presume G.O. Home from the Yankee Know-How Institute contributed all of the definitions, such as:
 - “Rocks. The solid state of H₂O on which an American National Standard dry martini is never served.”

- All of the committee members make contributions and edit the standard until finalized



Contributions

- Each contribution may be protected by its own copyright and “owned” by the participating expert or that person’s employer
- What happens when Horace and G.O. make their contributions?
 - Often the contributor wants to retain copyright ownership
 - Horace’s employer spent resources developing the radiation mixing method diagram and wants to use it for other internal and external purposes
 - At the same time, SDO often wants/needs explicit “permission” to include it in the standard



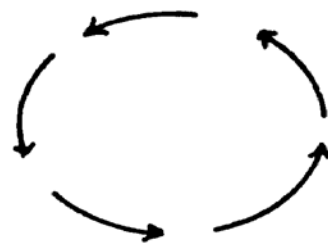
Transfer of Copyright

- Outright transfer of any of the copyright interests must be in writing (assignment)
- One practice is for the participants (in a manner that binds their employer) to either share ownership rights with the SDO or license the SDO to use the material in the standard
 - Further provide that the SDO can do all of the usual things with the standard (such as making and distributing copies, granting rights to make derivative works of the standard, rights to sublicense, etc.)
- Minimizes “joint work” issues
 - “[P]repared by two or more authors with the intention that their contribution be merged into inseparable or independent parts of a unitary whole”
 - Intent to create joint ownership is key factor
- Mechanisms for accomplishing this vary
- SDOs then usually assert copyright in the final standard

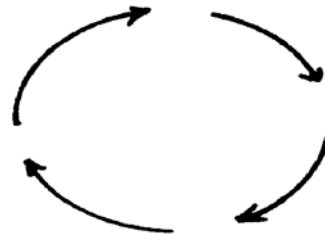


Transfer of Copyright

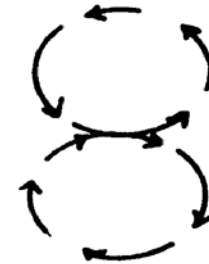
- Absent any written “license” obligation, what rights can a contributor give by virtue of that person’s conduct?
- Ex.: Boylan Murdock from the Standard Stirrers of the US gave the committee this diagram and encouraged its inclusion:



Counterclockwise



Clockwise



Both

Fig. 1
Stirring Patterns

Transfer of Copyright

- While fact specific analysis must be undertaken, Boylan likely gave an implied license through his conduct
 - Scope defined by actual knowledge and conduct
 - What did Boylan do to encourage its inclusion?
 - What did Boylan know that the SDO was going to do with the resulting standard?



Standard Goes to SDO #2

- In this example, the ANSI committee submits the Safety Code and Requirements for Dry Martinis to the International Beverages Utilizing Relaxation Protocols (IBURP) standards body in Geneva
- What are the copyright issues?



Scenario1: IBURP endorses the ANSI Standard Without Change

- Does IBURP have an explicit or an implied license to issue the standard as an IBURP standard?
 - Same factors regarding conduct and intent
 - Was there a formal arrangement between ANSI and IBURP?
 - What did ANSI know and what were its intentions vis-à-vis how the standard was submitted to IBURP?



Scenario 2: IBURP Modifies the ANSI Standard

- Derivative work issues
 - Original work is changed
 - Recast, transformed or adopted into new work
 - Often includes translations
 - New work may have original elements that may be separately copyrightable
 - Copyright in derivative work covers only the new elements
 - Copyright issues cycle begins again in that context
 - Only copyright owner can permit derivative works to be created
 - Copyright right that should be addressed in a license or other written mechanism
 - Risk of implied licenses

