Standards and Certification Training

Module C – Legal
C4. Intellectual Property
MODULE C COURSE OUTLINE

C1. Conflict Of Interest/Code Of Ethics
C2. Antitrust
C3. Torts
C4. Intellectual Property
C5. Speaking For The Society
## REVISIONS

<table>
<thead>
<tr>
<th>Date</th>
<th>Change</th>
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<tbody>
<tr>
<td>04/21/20</td>
<td>Revised to reflect current ASME Policies, Procedures and Guidelines</td>
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<tr>
<td>10/20/18</td>
<td>Numerous Slides were updated with moderate changes</td>
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<tr>
<td>01/09/10</td>
<td>Reformatted entirely and revised or added notes throughout. Removed</td>
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<td>from previous edition slides 17, 23 and 24. Revised slides 3, 7, 12, 16,</td>
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<td>18, 20, 21, 23, 24, 25, 28, 30 and 31</td>
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At the end of this module, you will be able to describe ASME’s policies for the protection and use of intellectual property including...

- Copyrighted material
- Trademarks
- Referencing of patented items and trademarks in standards
This Module will Cover the following topics:

I. Protection of ASME Copyrights
II. Protection of ASME Trademarks
III. Referencing of Patented Items and Trademarks
I. PROTECTION OF ASME COPYRIGHTS

Protection of ASME Copyrights
A copyright is a property right which grants certain exclusive rights to creators ("authors") of original works.

Exclusive rights include protection against unauthorized printing, reprinting, publishing, copying, selling, translating, conversion, arrangement, adaptation, delivery or performance of the copyrighted work.

Registration with US copyright office is not required, but grants important legal privileges.
ASME Policy requires all standards publications be registered with the U.S. Copyright Office upon publication.

- Registration protects the Society and its members from unauthorized copying and distribution of standards.
- Registration also protects against use of Codes and Standards (C&S) extracts out of context.

ASME policy requires all Standards and Certification (S&C) committee members to acknowledge in writing:

- That the ASME copyright and all rights to all materials produced by ASME Standards committees are owned by ASME.
- That ASME may register copyright in its own name.
- The only permitted reproduction of ASME copyrighted material is for Committee business.

Reference: Society Policy P-12.15, CSP-11
COPYING FROM ASME DOCUMENTS

Obtaining permission

- Request must be submitted in writing either electronically or by hard copy to the Manager of Intellectual Property Rights (IPR) in the ASME Standards and Certification Department
- Must include:
  - List of material to be copied
  - Number of copies to be made
  - Brief description of intended use

To copy ASME documents, one must request permission in writing with a list of material to be copied, the number of copies to be made and a brief description of the intended use.

A hard copy and an electronic copy of the written request must be sent to the Manager of Intellectual Property (IPR) in the ASME Standards and Certification Department.
RESPECTING THE INTELLECTUAL PROPERTY RIGHTS OF OTHERS

ASME policies:

- Copyright and other intellectual property rights of third parties must be respected.
- An individual submitting copyrighted material for use by ASME is responsible for notifying ASME staff so they can obtain permission.
- Identify copyrighted material early; ASME staff will seek permission to use.

- ASME policy respects copyrighted material and other intellectual property rights of third parties.

- Anyone submitting copyrighted material for use by ASME is responsible for notifying ASME staff so that ASME can obtain permission.

- ASME use of copyrighted material should be identified as early as possible.
RESPECTING THE INTELLECTUAL PROPERTY RIGHTS OF OTHERS

Identifying the copyright owner

- Notice of copyright generally located at front of document
- Notice of copyright includes
  - Name of copyright owner
  - Year in which published

CAUTION: Lack of a notice of copyright is no guarantee that the document is not protected by copyright
II. PROTECTION OF ASME TRADEMARKS

Protection of ASME Trademarks
A trademark is a word, phrase, symbol or design, which identifies and distinguishes the source of goods or services of one party from those of others.

Types of marks include…
- Trademarks and Service marks
- Certification marks
- Collective trademarks and membership marks
Trademark rights are established by actual use of the mark and registering the mark with US Patent and Trademark Office (USPTO), although registering the mark is not required.

- The “TM” for trade mark and “SM” for service mark may be used by anyone, while the registered trademark symbol “®” may be used only with trademarks that are registered with the US Patent and Trademark Office or another country’s trademark office.
A certification mark is a word, symbol, device, or combination used by parties other than the mark’s owner to indicate inspection or checking by someone other than the mark user. The right to use this mark is obtained by applying to the mark owner.

Certification marks are used to certify...

• The quality, materials, or mode of manufacture of goods or services.
• The manufacturer.
Certification marks differ from Trademarks in that...

- Certification marks may not be used by the mark owner.
- Certification does not control the nature and quality of marked products.
- The Owner controls the use of certification mark by others.
- Certification marks do not indicate the source of the product.
- Certification does however indicate that the goods or services have been inspected or in some way checked by someone other than the producer.
This slide identifies the registered ASME Certification mark. Certification designator varies depending on the code compliance.
The ASME mark may only be applied to items fully compliant to the standard to which they were fabricated or assembled.

The Mark may only be applied by the Holder of the Certificate of Authorization

If found to not be in compliance with the requirements contained in the standard to which the item was built, the Certificate Holder will be required by ASME to either remove all ASME markings and ASME nameplate from the item in question or to bring the Code stamped item into standard compliance through corrective action taken by Certificate Holder which will be verified by an ASME designated independent third party.

This third party will verify that statements and corrective actions taken by the Certificate Holder were agreed to by the third party and that all applicable technical requirements in the standard to which the item was built have been met.
ASME requires oversight of all ASME certification programs that utilize the ASME mark. This oversight:

- Provides reasonable assurance that all activities requiring the use of the ASME mark comply with the applicable standard.
- Is accomplished thru the use of ASME certification committees that work under the standard committee responsible for the certification program being used and are responsible for ensuring the Certificate Holder has complied with requirements in the standard.
- Also accomplished thru the use of authorized third parties.
Designated oversight is performed by:

- The Authorized Inspection Agency (AIA), an ASME accredited insurance company or enforcement authority, or engineering organization which uses Authorized Inspectors (AI).
- Another designated oversight group is the Qualified Inspection Organization (QIO), which is an ASME qualified organization, but not an AIA. QIO are not authorized to use ASME marks, but do use Qualification Inspectors.
The third are Certified Individuals (CI). A CI is an employee of an entity authorized to use ASME mark. The individual is qualified and certified by the entity, certified by the National Board and is subject to evaluation by ASME during entity’s certification review.
Use of the ASME mark requires documentation specific data reports or certificates of conformance signed by the person responsible for oversight.

Reports and certificates must be traceable to the Certificate Holder. The Standard establishes retention period for reports and certificates.
Next we will go into referencing of patented items and trademarks.
Codes & Standards Policy 59 states that patented items should not be referenced explicitly in the standards. Requirements should be written in performance language. If performance language is not practical, patented items may be referenced. If the use of patented items is necessary to meet the standard, the ANSI patent policy should be followed.
The ANSI Patent Policy

The ASD shall receive from the patent holder or a party authorized to make assurances on its behalf, in written or electronic form, either:

a) assurance in the form of a general disclaimer to the effect that such party does not hold and does not currently intend holding any essential patent claim(s); or

b) assurance that a license to such essential patent claim(s) will be made available to applicants desiring to utilize the license for the purpose of implementing the standard either:

i) under reasonable terms and conditions that are demonstrably free of any unfair discrimination; or

ii) without compensation and under reasonable terms and conditions that are demonstrably free of any unfair discrimination.

Early disclosure of patents enhance efficiency of process. Licensing terms are not subject to committee deliberation.
Codes & Standards Policy 59 also states that trademarked items should not be referenced explicitly in the standards and that requirements should be written in performance language. If performance language is not practical, trademarked items may be referenced. But if trademarked items are referenced is necessary, the words "or the equivalent" shall follow the reference.
A copyright is a property right which grants certain exclusive rights to creators, or sometimes referred to as "authors", of original works.

A trademark is a word, phrase, symbol or design... which identifies and distinguishes the source of goods or services of one party from those of others.

Trademarked and patented items should only be referenced in standards when performance language is not practical. When referenced, the words "or the equivalent" shall follow the trademarked item, and ANSI’s patent policy shall be followed for patent items.
ASME policies are available online through the addresses listed on this page.

REFERENCES

Codes & Standards Policies
- CSP-53 Protection of ASME Marks
- CSP-59, Referencing Patented Items and Trademarks in Codes and Standards
  [Link: https://cstools.asme.org/csconnect/FileUpload.cfm?View=yes&ID=7614]