Module C - Legal

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

This submodule will describe ASME’s policies for the protection and use of intellectual property including:
- Copyrighted material
- Trademarks
- Referencing of patented items and trademarks in codes and standards
AGENDA

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

Agenda

In Part I, we will examine copyrights and the policies and the procedures ASME uses to protect copyrighted material like codes and standards.
In Part II, we will look at trademarks and the policies and procedures used to protect Code symbol stamps and other marks.
Finally, in Part III, we will look at the policies and procedures related to the inclusion of patented items and trademarks in codes and standards.
Part I - Protection of ASME Copyrights
Copyright

Definition:
A copyright is a property right which grants certain exclusive rights to creators ("authors") of original works of authorship which are fixed in any tangible medium of expression, such as books, manuscripts, magazines, journals, codes, satellite broadcasts, movies, and other audiovisual works, paintings, sound recordings, photographs, computer programs, music, architectural works, pictorial, graphic and sculptural works.

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

Although registration is not required to hold a copyright on a document, it does grant important legal privileges. In general, registering a document with the U.S. Copyright Office establishes a public record of the copyright claim and is ordinarily necessary before any infringement suits may be filed in court.
Protecting ASME’s intellectual property

Policy:
ASME’s intellectual property must be protected, regulated and maintained, no matter how widely information is distributed, in print, electronically, or otherwise. The Society reserves the right to copyright any of its print, electronic products, databases, audio/visual products and other copyrightable subject matter. ASME Codes and Standards publications are registered with the U.S. Copyright Office upon their publication.

Registration is intended to protect the Society and its members from unauthorized copying and distribution of codes and standards. It also protects against third parties copying sections of codes or standards and placing these sections within the text of another document out of context, which could cause a safety hazard.
PROTECTING ASME’S INTELLECTUAL PROPERTY

• Policy (cont’d)
  – All C&S committee members must acknowledge in writing:
    • Copyright and all rights to all materials produced by ASME Codes and Standards committees are owned by ASME.
    • 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

Protecting ASME’s intellectual property (cont’d)

Policy (cont’d):
Codes, standards, and related documents developed by ASME committees under the Codes and Standards Board of Directors are copyrighted by the Society. When an individual accepts appointment to a Codes and Standards committee, the individual acknowledges in writing that copyright and all rights to all materials produced by ASME Codes and Standards committees are owned by ASME and that ASME may register copyright in its own name. They also acknowledge that the only permitted reproduction of ASME copyrighted material is for Committee business. See Society Policy P-12.15 and CSP-11 for related wording.
POP QUIZ #1

True or False. Copyright protection of ASME codes and standards is important only because unauthorized copying would mean loss of an important source of revenue.

Pop Quiz #1

Answer: False. It also ensures that excerpts from codes and standards are not used out of context, which could be a safety hazard.
COPYING FROM ASME DOCUMENTS

- **Obtaining permission**
  - Request must be submitted in writing.
  - Must include:
    - List of material to be copied
    - Number of copies to be made
    - Brief description of intended use
  - Must be submitted as follows:
    - Hard copy: to C&S Systems Administrator
    - Electronic copy: to Managing Director, C&S Operations

**Copying from ASME Documents**

Obtaining permission:
ASME Codes and Standards does grant requestors permission to incorporate portions of ASME Codes and Standards into their own documents. Requests must be submitted in writing and should include the following:
- A detailed list of the material to be copied (identify the document and specific pages)
- The number of copies you wish to make
- A brief description of how the material will be used

Requests for hard copy reproduction should be sent to Ivette Rodriguez, Codes & Standards Systems Administrator at the ASME Codes and Standards Department. Once permission is granted, the requestor will receive notification from ASME of the appropriate permission statement to be placed in the document to clearly acknowledge ASME as the creator of the work and of any applicable royalty.

Requests for electronic reproduction should be forwarded to Michael Merker, Managing Director, C&S Operations.
Copying from ASME Documents (cont’d)

Royalty charges:
The List Price is ASME’s list price for the document being copied from.
The Royalty Charge in each case is equal to a specified percentage of the list price times the number of copies that will be made.
Translating ASME Documents

Obtaining permission:
Companies or individuals who wish to obtain rights to translate ASME codes and standards must have or purchase an English version (complimentary copies will not be provided). They must agree to include a statement in each document, in both English and the language it has been translated into, to the effect that the English version is the official version of the document and that permission to translate and reproduce was granted by ASME. They must also agree to provide ASME with one copy of the translated version. Requests for translation should be forwarded to Michael Merker, Managing Director, C&S Operations.
TRANSLATING ASME DOCUMENTS

Royalty charges

Number of Copies to be Printed

1-500
> 500

Royalty Charge
15% of List Price x # copies
First 500:
15% of List Price x 500 copies
Copies over 500:
10% of List Price x # copies

Translating ASME Documents (cont’d)

Royalty charges:
The List Price is ASME’s list price for the document being copied from.
The Royalty Charge in each case is equal to a specified percentage of the list price times the number of copies of the translated document that will be printed.
Respecting the Intellectual Property Rights of Others

ASME Policies:
It is also ASME's policy that the copyright and other intellectual property rights of third parties be respected and not infringed by ASME or any of its units or any employee, member or other person acting on behalf of ASME or any of its units. It is the responsibility of each individual who submits copyrighted materials for use by ASME or any of its units to notify ASME staff to ensure that all legally required permissions of third parties have been received.

If in developing a code or standard, a committee proposes to incorporate material from the copyrighted publication of another organization, the committee should request ASME staff to obtain written permission from the publisher to reprint the material. This is best done early in the process to avoid last minute rewrites if permission can not be obtained. Also, the more detail you can provide about the source of the material, the easier it will be to track down the permission.
Respecting the Intellectual Property Rights of Others

Identifying the copyright owner:
The notice of copyright can generally be found on a page in the front matter of the document. This page informs the reader that the material is in fact copyrighted, who the owner of the copyright is, and the year in which the work was published. The typical wording used in ASME Codes and Standards documents is as follows:

No part of this document may be reproduced in any form, in an electronic retrieval system or otherwise, without the prior written permission of the publisher.

Copyright © 20XX by
THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS
All Rights Reserved

This notice is an important means that copyright holders use to announce their ownership to the world. Once you determine who the owner of the copyright is, we can write and request permission to reprint. It is important to recognize, however, that the lack of appearance of a Notice of Copyright is no guarantee that the document is not protected by copyright. Check with the author or publisher before making any assumptions.
Pop Quiz #2

Answer: c. The individual submitting the material
Part II - Protection of ASME Trademarks
Trademarks

Definition:
A trademark is either a word, phrase, symbol or design, or combination of words, phrases, symbols or designs, which identifies and distinguishes the source of the goods or services of one party from those of others. A service mark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product.

Types of Marks:
In addition to trademarks and service marks, the Trademark Act provides for federal registration of other types of marks, such as certification marks, collective trademarks and collective membership marks.
The term “trademark” is used generically to refer to all of these types of marks.
Trademark, Copyrights & Patents

It is important to understand the distinction between trademarks, copyrights and patents. Trademarks were defined in the previous slide. A **copyright** protects an original artistic or literary work. A **patent** protects an invention.
Trademarks (cont’d)

Establishing Trademark Rights:
Trademark rights arise from either: (1) actual use of the mark, or (2) the filing of a proper application to register a mark in the Patent and Trademark Office (PTO).

Use of the "TM," "SM" and "®" Symbols:
Anyone who claims rights in a mark may use the TM (trademark) or SM (service mark) designation with the mark to alert the public to the claim. It is not necessary to have a registration, or even a pending application, to use these designations. The claim may or may not be valid. The registration symbol, ®, may only be used when the mark is registered in the PTO. It is improper to use this symbol at any point before the registration is issued.
Certification marks

Definition:
**Certification mark** means any word, name, symbol, or device, or any combination thereof used by a person other than its owner, or which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register.

Types:
There are generally three types of certification marks.
First, there are marks which certify that goods or services originate in a specific geographic region (e.g., ROQUEFORT for cheese).
Second, there are marks which certify that the goods or services meet certain standards in relation to quality, materials, or mode of manufacture (e.g., approval by Underwriters Laboratories).
Third, marks may certify that the performer of the services or the manufacturer of the goods has met certain standards or belongs to a certain organization or union (e.g., ILGWU - UNION MADE for clothing).
CERTIFICATION MARKS

- Certification mark (vs. Trademark)
  - Certification mark may not be used by mark owner.
  - Certification mark owner does not control nature and quality of marked products.
  - Owner controls use of certification mark by others.
  - Certification mark does not indicate source of product.
  - Goods or services have been inspected or in some way checked by someone other than producer.

Certification marks (cont’d)

Certification mark vs trademark:
The statutory definition differentiates certification marks from trademarks or service marks by two characteristics. First, a certification mark is not used by its owner and, second, a certification mark does not indicate commercial source nor distinguish the goods or services of one person from those of another person.

A certification mark may not be used, in the trademark sense of “used,” by the owner of the mark; it may be used only by a person or persons other than the owner of the mark. That is, the owner of a certification mark does not apply the mark to his or her goods or services. The mark is applied by other persons, to their goods or services, with authorization from the owner of the mark. The owner of a certification mark does not produce the goods or perform the services in connection with which the mark is used, and thus does not control their nature and quality.

What the owner does control is use of the mark by others. Such control consists of the taking of steps to assure that the mark is applied only to goods or services which contain the requisite characteristics or meet the specified requirements which the certifier/owner has established or adopted for the certification.

The purpose of a certification mark is to inform purchasers that the goods or services of a person possess certain characteristics or meet certain qualifications or standards established by a party other than the producer. A certification mark does not indicate who manufactured the goods or performed the services; on the contrary, a particular certification mark is generally used by many different producers. A certification mark indicates that the goods or services have been examined, tested, inspected, or in some way checked against requirements specified by the mark owner, using methods determined by the mark owner and by a person who is not the producer.
Registered ASME marks

ASME has 28 certification marks which are registered with the U.S. Patent and Trademark Office. Many of them are also registered in foreign countries. All of these marks are included in one or more of ASME’s codes or standards and signify that a product, process, or management system conforms to the applicable standard.
Use of ASME Marks

Use of marks on items:
All of the Code Symbol Stamps and other markings are registered trademarks of ASME and in order
to maintain the registration, ASME must do everything in its power to see that the marks are not misused. This means that:
The marks may only be applied to items which, without exception, conform to all of the applicable code requirements.
The marks may only be used by the holder of a current Certificate of Authorization (Certificates of Accreditation do not involve the use of a mark.)
The organization must surrender the mark to ASME at any time the Society so requests, or immediately when the organization discontinues the manufacture and certification of items or no longer possesses a current Certificate.
The organization agrees to remove the mark from any item found not be in compliance with the applicable code requirements.
Use of ASME Marks (cont'd)

Use of marks in advertising:
An organization holding a Certificate of Authorization may, however, state in advertising literature that products “are built (produced or performed) or activities conducted in accordance with the requirements of the code,” or “meet the requirements of the code.” Facsimiles of the Code Symbols may be used in advertising to show that clearly specified items will carry the symbol. General usage is permitted only when all of a manufacturer's items are constructed under the rules. The ASME logos are not permitted to be used by any organization other than ASME.
Use of ASME Marks (cont’d)

The ASME 9000 symbol:
The policy is somewhat different for the ASME 9000 symbol for companies registered under ASME’s ISO 9000 program. This mark is not permitted to be used on products since it signifies certification of a company’s quality system, not any product or service. It may be used in advertising or even on a company’s letterhead provided that it accurately represents the scope for which registration has been granted by ASME.
A Certificate of Authorization holder is entitled to display the appropriate ASME Code symbol…

a. In any advertisement
b. In any advertisement related to the product covered by the Certificate of Authorization
c. In no advertisement without specific written permission from ASME

Pop Quiz #3

Answer: b. In any advertisement related to the product covered by the Certification of Authorization.
Pop Quiz #4

Answer: False. The ASME logo may never be displayed.
CSP 53 Policy on the Protection of ASME Marks

Policies:
All ASME programs that specify the use of an ASME mark shall provide for designated oversight of those activities that affect the proper utilization of ASME marks. Only ASME programs with measures established for designated oversight may utilize ASME marks. The measures established for designated oversight shall comply with ASME-developed criteria. The criteria shall provide oversight measures that establish reasonable assurance that the activities (of the entity authorized by ASME to use its marks) that affect the use of ASME marks are accomplished in accordance with the appropriate ASME codes or standards. Where such activities are not accomplished in accordance with the appropriate ASME codes or standards, the criteria shall provide for notification of ASME and appropriate redress. ASME shall establish criteria for and administer the qualification of those agencies, organizations, and individuals authorized to provide designated oversight.
CSP 53 Policy on the Protection of ASME Marks (cont’d)

Authorized types of designated oversight:
Each ASME program that utilizes ASME marks shall provide for one (or more than one, where applicable) of the types of authorized designated oversight given below.

An ASME accredited authorized inspection agency (AIA), i.e., an authorized insurance company or Enforcement Authority that provides designated oversight through the use of authorized inspectors (AI), qualified to criteria specified in the appropriate code or standard, and is not a qualified inspection organization.

An ASME qualified inspection organization (QIO), i.e., an organization that is qualified by ASME to criteria specified in the appropriate code or standard, to provide designated oversight through the use of qualified inspectors (QI). A QIO is not an authorized inspection agency, and is not an entity authorized by ASME to use its marks. QIOs are not currently being used in any program.
CSP-53 Policy on the Protection of ASME Marks (cont’d)

Authorized types of designated oversight (cont’d):
A certified individual (CI), i.e., an individual employee of the entity authorized by ASME to use its marks; the CI is qualified and certified by the entity authorized by ASME to use its marks, to criteria specified in the appropriate code or standard. The qualification and certification are subject to evaluation by ASME during the survey or review. The CI is neither an AI nor QI.
CSP 53 Policy on the Protection of ASME Marks (cont’d)

Required documentation for use of mark:
The use of all ASME marks shall be documented with data reports or certificates of conformance that are signed by a responsible representative of the entity authorized by ASME to use its marks and the appropriate inspector or individual authorized to perform the designated oversight activities (i.e., either an AI, QI, or CI).

Record retention:
ASME programs that utilize ASME marks shall provide for record retention of all data reports and certificates of conformance, such that the use of the ASME marks is documented and traceable to the entity authorized by ASME to use its marks. All data reports and certificates of conformance shall be retained for a period established by the appropriate code or standard.
Pop Quiz #5

Answer: True
Part III - Referencing of Patented Items and Trademarks
Referencing Patented Items (CSP-59)

Guidelines:
Patented items should not be referenced explicitly in ASME codes and standards. Rather, the requirements should be written in performance language that would enable the use of applicable patented products, materials, etc. as one means of satisfying the stated requirements. When performance language cannot be developed, a patented item may be included or referenced in a standard. ANSI’s patent policy (see next slide) must be followed when it is necessary to use the patented item in order to conform to the standard.
ANSI Patent Policy

If a standard is proposed which requires the use of a patented item, the identified party or patent holder must supply ANSI with either:
A general disclaimer to the effect that such party does not hold and does not anticipate holding any invention the use of which would be required for compliance with the proposed standard OR
A written assurance that a license will be made available without compensation to applicants desiring to utilize the license for the purpose of implementing the standard OR
A written assurance that a license will be made available to applicants under reasonable terms and conditions that are demonstrably free of any unfair discrimination

Experience has indicated that early disclosure of patents is likely to enhance the efficiency of the process used to finalize and approve standards. Early disclosure permits notice of the patent to the standards developer and ANSI in a timely manner, provides participants with the greatest opportunity to evaluate the propriety of standardizing the patented technology, and allows patent holders and prospective licensees ample time to negotiate the terms and conditions of licenses outside the standards development process itself.

The determination of specific license terms and conditions, and the evaluation of whether such license terms and conditions are reasonable and demonstrably free of unfair discrimination, are not matters that are properly the subject of discussion or debate at a development meeting. Such matters should be determined only by the prospective parties to each license or, if necessary, by an appeal challenging whether compliance with the Patent Policy has been achieved.
Referencing Trademarked Items (CSP-59)

Guidelines:
Similarly, trademarked items should not be referenced explicitly in ASME codes and standards. Rather, the requirements should be written in performance language that would enable the use of applicable trademarked items as one means of satisfying the stated requirements. When performance language cannot be developed, a trademarked item may be included or referenced in a standard. When a trademarked item is included in a standard, the words “or the equivalent” shall be added to the reference.
Pop Quiz #6

Answer: Write the requirement in performance terms so that other qualified products might be used to meet the standard.
SUMMARY

I. Protection of ASME Copyrights
II. Protection of ASME Trademarks
III. Referencing of Patented Items and Trademarks
REFERENCES

- Codes & Standards Policies*
  - CSP-53, Protection of ASME Marks
  - CSP-59, Referencing Patented Items and Trademarks in Codes and Standards

*Available on C&S Web site at:
http://cstools.asme.org/csconnect/CommitteePages.cfm?Committee=A01000000&Action=7609

References