



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

<u>Date</u>	<u>Change</u>
04/21/20	Revised to reflect current ASME Policies, Procedures and Guidelines
10/29/18	Numerous Slides were updated with moderate changes
01/08/16	Reformatted entirely and revised or added notes throughout. Removed from previous edition slides 17, 23 and 24. Revised slides 3, 7, 12, 16, 18, 20, 21, 23, 24, 25, 28 30 and 31.
07/07/08	Revised entirely

LEARNING OBJECTIVES

Describe ASME's policies for the protection and use of intellectual property including

- Copyrighted material
- Trademarks
- Referencing of patented items and trademarks in standards

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

MODULE OUTLINE

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

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

COPYRIGHT

Definition

- 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

A copyright is a property right which grants certain exclusive rights to creators, or sometimes referred to as "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

PROTECTING ASME'S INTELLECTUAL PROPERTY

Policy

- All standards publications must be registered with the U.S. Copyright Office upon publication
 - Protects the Society and its members from unauthorized copying and distribution of standards
 - Protects against use of Codes and Standards (C&S) extracts out of context
 - Policy All Standards and Certification (S&C) committee members must acknowledge in writing:
 - Copyright and all rights to all materials produced by ASME 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

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 the copyright in its own name.
- and that reproduction of ASME copyrighted material is only permitted for Committee business.

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

Copyright Owners are identified at the front of ASME documents. The notification provides the name of the copyright owner and year in which the referenced document was published.

As a word of 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

TRADEMARKS

- Definition
 - 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
 - Trademarks™, Service marks (SM)
 - Certification marks
 - Collective trademarks and membership marks

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

TRADEMARKS

- Trademark rights established by:
 - Actual use of mark
 - Registering mark with US Patent and Trademark Office (not required)
- Use of “TM”, “SM”, and registered trademark symbol “®”
 - “TM” and “SM” may be used by anyone
 - ® may be used only with trademarks that are registered with the US Patent and Trademark Office or another country’s trademark office

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.

CERTIFICATION MARKS

- Definition: A word, symbol, device, or combination thereof...
 - Used by parties other than the mark's owner
 - Indicates inspection or checking by someone other than the mark user
 - Right to use obtained by applying to mark owner
- Uses
 - To certify the quality, materials, or mode of manufacture of goods or services
 - To certify the manufacturer

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.

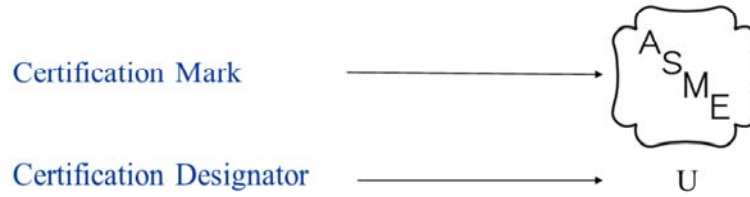
CERTIFICATION MARKS

- 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 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.

REGISTERED ASME CERTIFICATION MARK AND DESIGNATOR



This slide identifies the registered ASME Certification mark. Certification designator varies depending on the code compliance.

USE OF ASME MARKS

- Mark may only be applied to items fully in compliance with the applicable standard
- Mark may only be applied by the Holder of the Certificate of Authorization
- If found to not be in compliance with the requirements of the standard, the mark must be removed
 - Corrective actions can be taken by the Certificate Holder to bring the item in question into compliance
 - Verification that the item meets all applicable standard requirements by an independent third party accepted by ASME is required

- 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.

CSP-53 PROTECTION OF ASME MARKS

- ASME requires oversight of all ASME certification programs that use 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

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 applicable standard committee responsible for the certification program being used and are responsible for ensuring the Certificate Holder has complied with requirements in the standard to which the item was fabricated or assembled.
- Also accomplished thru the use of authorized third parties. These authorized third parties periodically visit the Certificate Holder's shop to ensure that all applicable technical requirements in the standard during the fabrication or assembly of the ASME Marked item

CSP-53 PROTECTION OF ASME MARKS

- Authorized types of designated oversight
 - Authorized Inspection Agency (AIA)
 - ASME accredited insurance company or enforcement authority
 - Uses Authorized Inspectors (AI)
 - Qualified Inspection Organization (QIO)
 - ASME qualified organization (but not an AIA)
 - May not be an entity authorized to use ASME marks
 - Uses Qualified Inspectors (QI)

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) accredited by the National Board.
- Another designated oversight group is the Qualified Inspection Organization, which is an ASME qualified organization, but not an AIA. QIO are not authorized to use ASME marks, but do use Qualification Inspectors.

CSP-53 PROTECTION OF ASME MARKS

- Authorized types of designated oversight (cont'd)
 - Certified Individual (CI)
 - Employee of an entity authorized to use ASME marks
 - Qualified and certified by the entity
 - Obtain certification from the National Board
 - Subject to evaluation by ASME during entity's certification review

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 .

CSP-53 PROTECTION OF ASME MARKS

- Required documentation for use of mark
 - Data reports or certificates of conformance
 - Signed by person responsible for oversight
- Record retention
 - Reports/certificates must be traceable to Certificate Holder
 - Standard establishes retention period

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.

III. REFERENCING OF PATENTED ITEMS AND TRADEMARKS

Next we will go into referencing of patented items and trademarks.

REFERENCING PATENTED ITEMS (CSP-59)

Guidelines

- Patented Items should not be referenced explicitly in standards
- Requirements should be written in performance language
- If performance language not practical, patented item may be referenced
- If use of patented item is necessary to meet standard, follow ANSI's patent policy

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 are necessary to meet the standard, the ANSI patent policy should be followed.

ANSI PATENT POLICY

If proposed or approved standard proposes the use of a patented item, patent holder must supply ASME and ANSI with:

- General disclaimer that they do not hold or intend to hold essential patent claim(s) OR
- Assurance that a license to essential patent claim(s) will be made available
 - Under reasonable terms and conditions, OR
 - Without compensation under reasonable terms

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.

REFERENCING TRADEMARKED ITEMS (CSP-59)

Guidelines

- Trademarked Items should not be referenced explicitly in standards.
- Requirements should be written in performance language
- If performance language not practical, trademarked item may be referenced
- If reference to trademarked item is necessary, words “or the equivalent” shall follow the reference

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.

MODULE SUMMARY

- 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.

- 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.

REFERENCES

Codes & Standards Policies

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

<https://cstools.asme.org/csconnect/FileUpload.cfm?View=yes&ID=7614>

ASME policies are available online through the addresses listed on this page.