

SOCIETY POLICY

INTELLECTUAL PROPERTY RIGHTS

I. PREFACE

- A. Article C2.1 of the ASME Constitution states in part: "The purposes of this Society are to: Promote the art, science and practice of mechanical and multidisciplinary engineering and allied sciences...among engineers and others..."
- B. By-Law B7.1.5 states: "The Society reserves the right to copyright any of its papers, discussions, reports, or publications."
- C. Society Policy P-12.7 (Permission for Reprinting of ASME Publications) discusses the use of copyright protection for Society publications and the Society's policy regarding the reprinting of ASME's copyrighted materials and the taping of ASME sponsored or co-sponsored sessions or meetings.
- D. The preamble of the ASME Constitution and By-Laws defines and illustrates the seal and emblem of the Society.
- E. Society Policy P-14.6 (Society Name, Logo, Seal, Emblem, Initials, Titles, Identification and Certificates) illustrates the seal, logo and emblem and defines the Society name and initials; designates the use of the Society's name, logo, seal, and emblem; establishes rules governing the name, logo, seal, emblem, initials, titles, identification, and certificates of the Society; and assigns responsibility for notification of misuse of the Society's name, seal and emblem and designates the procedure for taking action.
- F. Society Policy P-16.1 (Research), provides the policies and procedures governing operation of the Society's Center for Research and Technology Development, includes a discussion of patent rights and the Society's policies regarding those rights. "Because patentable discoveries are always possible in research, all agreements with individuals and with research agencies shall contain provisions concerning patent rights." (P-16.1, Research, Section III.G.1.)
- G. Intellectual property includes patents, trademarks, copyrights and trade secrets.
 - 1. A patent is a property right granted by the government to an inventor as a reward for his/her contribution to "science and the useful arts" in making his/her invention and disclosing it to the public. Patents may be granted on any new and useful process, machine, manufactured article, or composition of matter, or any new and useful improvements thereof. The right conferred by a patent is the right to exclude others from making, using, or selling the invention.
 - 2. 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.

3. Four kinds of "marks" are generally considered--trademarks, service marks, certification marks, and collective marks.
 - a. A trademark is any word, name, symbol or device, or any combination of these, adopted and used by a manufacturer or seller to identify and distinguish its goods from those manufactured and sold by others.
 - b. A service mark is a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others and includes the marks, names, symbols, titles, designations, slogans, and character names or other advertising used in commerce.
 - c. A certification mark is a mark used upon, or in connection with, the products or services of one or more persons, other than the owner of the mark, to certify region or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services or to certify that the work or labor on the goods or services was performed by members of a union or other organization. Examples include "seals of approval" conferred on goods by magazines, testing laboratories, trade associations, and professional societies, such as ASME.
 - d. A collective mark is a mark used by the members of a cooperative, an association, or other collective group or organization (such as ASME), which includes marks used to indicate membership in a union, or association, or other organization (such as ASME). A collective mark is used to indicate membership, as on letterheads, whereas trademarks or service marks are applied to goods or services that are sold or performed.
4. A trade secret is any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others. It may be an unpatented or unpatentable invention, a formula, pattern, machine, process, customer list, blueprint, table of data, manufacturing technique, design, plan, or other information such as costs, pricing and marketing plans or other financial or commercial information. If it is decided to protect a discovery as a trade secret, it is important to have appropriate practices put in place to maintain its secrecy.

The law of trade secrets is governed by the laws of individual countries and political subdivisions throughout the world, states and, in common law jurisdictions such as the United States, is derived largely through judicial decisions. Most of the states in the United States have also adopted statutes, based on The Uniform Trade Secrets Act.

- H. Accepted use of ASME trademark and logo are covered by Society Policy P-14.6, "Society Name, Logo, Seal, Emblem, Initials, Titles, Identification and Certificates".

II. PURPOSE

- A. To describe the work products of the Society for which intellectual property rights are pertinent.
- B. To describe the means by which each of the responsible Sectors has addressed protection of the Society's rights and recognition of the intellectual property rights of others. This Policy applies to ASME products from any of its five Sectors and in any form.

III. POLICY

- A. ASME's intellectual property must be protected, regulated and maintained, no matter how widely information is distributed, in print, electronically, or otherwise.
- B. The Society reserves the right to copyright any of its print, electronic products, databases, audio/visual products and other copyrightable subject matter. This is intended to protect the Society and its members from unauthorized copying and distribution of ASME materials, including papers, videos, courses, codes, and standards.
- C. ASME's Policy
 - 1. It is 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.
 - 2. It is the responsibility of each individual who submits technical papers or other materials for use by ASME or any of its units to assure that all legally required permissions of third parties have been received.
- D. Electronic Networks
 - 1. Copyright laws of the world protect original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.
 - 2. As sophisticated scanning, editing, manipulation and transfer of data on high-speed networks become available, it is increasingly difficult to determine and enforce ownership. Therefore, inputting, uploading, reproducing or transmitting of any ASME work without ASME's permission is prohibited, provided that this prohibition is not intended to limit the applicability of the "fair use" doctrine developed under the United States Copyright Act or any analogous concept under the laws of other countries.

IV. PROCEDURE

A. Standards and Certification

1. The Standards and Certification Sector establishes policies and procedures on the protection of the Society's intellectual property rights for its codes, standards, and accreditation and registration marks.
2. Codes, standards, and related documents developed by ASME committees under the Standards and Certification Sector are copyrighted by the Society. When an individual accepts appointment to a Standards and Certification committee, the individual acknowledges in writing that copyright and all rights to all materials produced by ASME Standards and Certification committees are owned by ASME and that ASME may register copyright in its own name.
3. If in developing a code or standard, a committee proposes to incorporate material from the copyrighted publication of another organization, the committee requests ASME staff to obtain written permission from the publisher to reprint the material. Reference to a patented item should be avoided; ASME should be consulted for guidelines if patented items are to be referenced in a code or standard.
4. ASME codes and standards currently include copyrighted material reproduced under agreement with others. Similarly, the Society may permit others to reprint its material based on royalty agreements.
5. The provision stated in IV.A.4 (above) applies to products in any form, including, for example, both hard copy publications and electronic products.
6. The Society registers its accreditation and registration marks in the United States and in countries around the world. As a condition for accreditation or registration, the applicant agrees that the marks are the property of the Society at all times and will be returned or removed upon request by the Society. The Standards and Certification Sector provides due process procedures to address allegations of code or standard violation and misuse of registered marks.
7. Guidance to codes, standards, and accreditation and registration committees on protection of ASME's intellectual property rights and avoidance of infringement of the rights of others is provided by the ASME staff assigned to the committees.

B. Education

1. The ASME Training and Development Department establishes policies and procedures on the protection of the Society's intellectual property rights for its educational and training course materials and products.

2. The ASME Training and Development Department recognizes different ways to assign intellectual property rights:
 - a. When the preparation of a course, course material or product originates with an individual for use by ASME, without subsidy from ASME, the ownership of the material remains with the author.
 - b. When the preparation of the course, course material or product is subsidized by ASME, a “work for hire” or assignment agreement must be signed by the author. In this case, the copyright is assigned to ASME. The author may enter into a royalty agreement with ASME.
 - c. When the course, course material or product is developed by a unit of the Society at its expense, ASME shall claim and register the copyright under the name of ASME. Such units may include, among others, technical divisions and components of the Standards and Certification Sector.
3. When ASME publishes the course material or product and offers to members and third parties, the Society may do so in whatever manner it decides. This will not, however, preclude the use of the intellectual material by the author.
4. ASME may enter into an agreement with any other author/instructor on the same or substantially similar topic, provided the material is prepared by the other author/instructor and does not otherwise infringe on the rights of the original developer.

C. Sectors, Institutes and Other Units

1. Reproduction of ASME copyrighted material, whether contained in a paper or in collected articles, bound volumes, magazines or journals consisting primarily of ASME-generated papers, requires permission from ASME Headquarters. (See Policy P-12.7, III.B)
2. Technical Papers
 - a. Form 1903, Offer of a Technical Paper, ASME’s Copyright Release form, must accompany all papers submitted to the Society for presentation or publication, and must be signed by each author.
 - b. The author must also indicate one of the following two cases:
 - 1) The author grants and assigns exclusively to ASME any and all rights protected by the Copyright Laws of the United States and all other countries; or

2) That the work was performed in the course of the author's employment by the U.S. Government, and hence the work is in the public domain.

c. The Society will take reasonable precautions to preserve the property rights of an author of a paper not accepted for publication by the Society.

D. Ethics

1. The Committee of Past Presidents/Ethics Committee occasionally considers cases involving violations of publication rights and authorship of papers, to ensure strict adherence to applicable legal requirements and soundly-based ethical standards.
2. Lack of clear direction about publication rights and authorship can lead to charges of copyright infringement and ethics violations. Such cases often involve student researchers and supervising faculty, as well as supervisors and researchers in industry.
3. To avoid an ethics violation, an author should acknowledge all those who have participated significantly in the technical aspects of an ASME paper or recognize them as co-authors.

E. Public Affairs

1. ASME activities in the area of public affairs and public statements are governed by Society Policy 15.1, Public Affairs and Public Statements.
2. Statements are not copyrighted and the Society encourages their wide use and dissemination.

Responsibility: Board of Governors

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