



For IEC use only

C/2291/DV

2020-06-26

INTERNATIONAL ELECTROTECHNICAL COMMISSION

COUNCIL

SUBJECT

Document for NC approval: IEC Copyright Policy

BACKGROUND

Discussions regarding activities to strengthen IEC copyright protection have been ongoing for many years and Council Board (CB) stressed the importance of establishing an IEC Copyright Policy in 2016.

At its October 2019 meeting, Council Board established a Copyright and Database Rights Ad Hoc Group (CDAHG), comprising legal representatives from different National Committees, to discuss the IEC Copyright and Database Rights Policies.

CDAHG met four times and created a sub-working group, which worked intensively to draft wording for the Copyright Policy and Implementation Guidelines. The external IP advisor contributed extensively to CDAHG work and advice from Swiss legal counsel was also sought throughout the process. Within the CDAHG, the various national approaches and legal requirements of the CDAHG member countries were reviewed and the group noted that it was important to strengthen IEC copyright protection. CDAHG considered various mechanisms as well as the reduction of risk they provided to the IEC community and the feasibility of implementation. If properly implemented, the proposed IEC Copyright Policy is considered to substantially increase protection for IEC in terms of demonstrating copyright ownership in court. The draft Copyright Policy (see attachment 1) represents the consensus of CDAHG and was approved by Council Board at its June 2020 meeting for circulation to Council for final approval.

For transparency, the associated Implementation Guidelines, approved by CB at its June meeting are provided in attachment 2. A background paper presented to Council Board is provided in attachment 3 to explain the process and approach to the Implementation Guidelines.

If approved, it is planned to launch implementation of the IEC Copyright Policy and Implementation Guidelines as of next year.

ACTION

Full member National Committees are invited to approve the draft IEC Copyright Policy as provided in attachment 1 to document **C/2291/DV**, using the Council electronic voting/commenting system **by 28 August 2020 at the latest**.

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Attachments

DRAFT

IEC Copyright Policy

1. Copyright in IEC publications, including International Standards, and other materials is an important asset for the IEC.
2. Subject to 3 below, the policy of the IEC is to own copyright in all publications and other materials produced by the IEC.
3. The IEC will respect copyright of third parties, and where necessary license such third-party copyright for use in publications and other materials produced by the IEC.
4. The IEC will license use of copyright in IEC publications in accordance with the Object of the IEC as set out in the Statutes and Rules of Procedure of the IEC.
5. Guidelines for the implementation of the IEC Copyright Policy, including guidelines on the ownership and licensing of IEC copyright, can be found at: *(link to Copyright Guidelines)*

IEC Copyright Policy – Implementation Guidelines¹

Implementation

1. Securing IEC Copyright Ownership and access to Third Party Copyright.

- 1.1 The IEC Directives on Procedures for Technical Work² include statements supporting assertion of IEC ownership of copyright in IEC International Standards and other publications, and general instructions regarding third party copyright.
- 1.2 IEC document drafting guidelines³ include procedures for recognizing third party copyright works and/or securing appropriate licences to third party copyright works included in IEC International Standards and other publications.
- 1.3 IEC employee contracts operate to transfer copyright in IEC International Standards and other publications from the employee to the IEC.
- 1.4 The IEC marks materials with appropriate copyright notices.
- 1.5 The IEC includes on IEC websites and other materials informative notices regarding the use by third parties of IEC copyright.
- 1.6 Acquiring Licences to Copyright in Pre-Existing Copyright Works

“Pre-Existing Copyright Work” is a work enjoying copyright created and in existence outside the collaborative work of the IEC and contributed to the IEC for incorporation into an IEC International Standard or other publication.

1.6.1 The IEC will put in place terms and conditions for use of the IEC IT tools that:

- will confirm a licence to the IEC of any Pre-Existing Copyright Work owned by the expert or its employer that is contributed by the expert to the work of the IEC, and
- oblige an expert to draw to the attention of the IEC any Pre-Existing Copyright Works owned by a third party before it is used in a contribution to the work of the IEC.

1.6.2 Where an expert has been appointed by an employer to participate in the work of the IEC, the IEC will seek to affirm with the expert's employer that

¹ As approved by Council Board on 11 June 2020, CB Decision 2020/010

² Relevant IEC Directives include ISO/IEC Directives Part 1 and IEC Supplement; ISO/IEC Directives Part 2; and ISO/IEC Directives Supplement.

³ Relevant IEC drafting guidelines are in ISO/IEC Directives Part 1 and IEC Supplement; ISO/IEC Directives Part 2; and ISO/IEC Directives Supplement.

the employer accepts the terms and conditions under which Pre-Existing Copyright Works are licensed to the IEC.

1.7 Acquiring Copyright in Collaborative Copyright Works

“Collaborative Copyright Work” is a work enjoying copyright created as part of an IEC International Standard or other IEC publication by an expert in collaboration with other experts in the development of such standard or publication.

1.7.1 The IEC will put in place terms and conditions for use of the IEC IT tools that will confirm transfer to the IEC of any copyright an expert creates in a Collaborative Copyright Work.

1.7.2 Where an expert has been appointed by an employer to participate in the work of the IEC, the IEC will seek to affirm with the expert’s employer that the employer accepts the terms and conditions under which copyright in Collaborative Copyright Works is transferred to the IEC.

1.8 Exceptions to Acquiring Licences to Copyright under 1.6 and Transfer of Copyright under 1.7

In circumstances where an expert nominated by a Member (National Committee) or that expert’s employer is unable to comply with 1.6 and/or 1.7, including:

- where a Member (National Committee) has a pre-existing arrangement with an expert and/or an expert’s employer, which means that an expert is unable to comply with 1.6 and/or 1.7,
- where due to national law of a Member (National Committee) an expert or an expert’s employer is unable to comply with 1.6 and/or 1.7 or
- where special circumstances exist which in view of the relevant Member (National Committee) and the IEC justify the making of an exception,

the relevant Member (National Committee) and IEC will use commercially reasonable efforts to put in place agreed upon alternative arrangements, which have the equivalent effect to 1.6 and/or 1.7 for the IEC and thus ensure that the IEC can maintain its obligations towards all Members (National Committees) under the Copyright Policy.

1.9 Where additional or updated information is needed, the IEC will put in IEC Directives and document drafting guidelines appropriate instructions regarding the creation of and access to copyright in IEC International Standards and other publications.

2. Copyright Licensing

2.1 Royalty terms and other terms and conditions for sale of International Standards and other IEC publications by Members are codified in the IEC Sales Policy.

2.2 Members are individually licensed under IEC copyright for sale of IEC International Standards and other publications under agreed terms and conditions in a licence agreement to use IEC Products, which is subject to the IEC Sales Policy and its associated Implementation Conditions.

2.3 Members are individually licensed for National Adoptions under IEC copyright under agreed terms and conditions in a licence agreement to use IEC Products. Members

formally acknowledge that all National adoptions (identical or modified) of IEC International Standards and other publications remain IEC copyright, except to the extent that a modified National Adoption contains modifications or deviations developed by the NC, in which case the copyright in those modifications or deviations is owned by the NC.

- 2.4 Regional Organizations are licensed to refer to IEC International Standards for Regional Adoptions under agreed terms and conditions in a respective Regional Adoptions Agreement. Regional Organizations formally acknowledge that all Regional adoptions (identical or modified) of IEC International Standards will not contain text from the original IEC International Standard. Members formally acknowledge that such text from the original IEC International Standard remains IEC copyright and is subject to licensing terms and conditions to be agreed between IEC and a Member.
- 2.5 Members are individually licensed to use draft IEC International Standards and other draft publications under IEC copyright under terms and conditions in a licence agreement to use IEC Products.
- 2.6 End users of International Standards and other publications legitimately purchased from the IEC, Members or authorized sales outlets, including any software such as code components contained in the International Standards and other publications, and including any automatic updates, are licensed under an end user copyright licence (EULA), which sets out the general permissions for and obligations of end users.
- 2.7 In exceptional circumstances, end users wishing commercial variations to the end user copyright licence (EULA) for International Standards and other publications can contact the IEC CO directly or be referred by Members to the IEC CO, so that the end user can negotiate an individual licence agreement with IEC CO on a case-by-case basis.
- 2.8 End users are licensed under IEC copyright in IEC Databases under specific end user copyright licences.
- 2.9 In exceptional circumstances, end users wishing commercial variations to the end user copyright licences for IEC Databases can contact IEC CO directly or be referred by Members to the IEC CO, so that an end user can negotiate with IEC CO variations to the end user licences to copyright in IEC Databases for commercial purposes on a case-by-case basis.
- 2.10 The IEC will include in relevant agreements with Members, Affiliates, and End Users provisions covering licensing XML and HTML content of IEC International Standards and other publications.
- 2.11 The IEC will include in relevant agreements with Members and Affiliates a nominal royalty for use of IEC International Standards and other publications, where no commercial royalty rate is applied.
- 2.12 The IEC will include in relevant agreements with Members and Affiliates provisions allowing Members and Affiliates to adapt IEC International Standards and other publications to create and sell Derived Products.

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Background paper

Background

During the 2010s the importance of intellectual property to the IEC became more evident. As a result, at the request of the Council Board, the General Secretary initiated an update of the IEC Sales Policy and complete review of the IEC's approach to IP protection. A number of areas for improvement were identified and at the June 2016 CB meeting the General Secretary recommended a number of actions including the creation of a Copyright Policy to encompass the IEC's existing copyright statements, currently scattered across numerous documents. The CB concurred that it was essential for the Commission to fully secure and protect its IP including copyright, particularly in the context of the growing number of requests for standards to be available free of cost, in order to secure the continuation of NC and IEC revenue streams.

Development of Copyright Policy and Copyright Implementation Guidelines

In February 2017, the General Secretary presented to ExCo for consideration a proposal to establish an overarching IP policy, comprising the IEC policies on Patents, Brand, Copyright and Database Rights. The intention was that each policy would be supported by guidelines, which would set out detailed implementation of the policy. Once reinstated in 2017, the Sales Advisory Group took on responsibility for overseeing development of guidelines for implementing the Copyright and Database Rights Policies from ExCo, and SAG decided that the Implementation Guidelines should have a simple outline format, with any necessary detailed procedures being included in supporting documents. In 2019, Council Board established a Copyright and Database Rights Ad Hoc Group (CDAHG), comprising legal representatives from different National Committees, to discuss the IEC Copyright and Database Rights Policies.

CDAHG review of draft Copyright Policy.

The CDAHG has reviewed the draft Copyright Policy and recommends an updated version (see attachment 2) which more explicitly recognises third party copyright.

CDAHG review of draft Copyright Implementation Guidelines

The Copyright Implementation Guidelines are intended to codify existing implementation practices and add new procedures, and in particular new mechanisms intended to better ensure transfer to the IEC of copyright in IEC standards and other publications (clauses 1.6 to 1.8).

The challenges for any copyright transfer mechanism are:

- the number of experts involved in IEC committees is large, estimate 20k;
- experts may be independent (self-employed) or employed
- NCs may have existing arrangements with experts addressing copyright
- National laws and accepted practices vary widely

The new mechanism (clauses 1.6, 1.7 and 1.8) developed within CDAHG replaces the previously proposed mechanism involving a two-stage process where each National Committee would acquire relevant rights from experts in accordance with its national law, and then each National Committee would transfer rights to the IEC. This old mechanism was considered by CDAHG to be too cumbersome and onerous on the National Committees. Under the new CDAHG mechanism prime responsibility rests on the IEC, and in particular the IEC CO is the hub of the new mechanism.

The CDAHG approach follows a virtual "sign-in-sheet" mechanism via IEC's IT tools, as a practical solution where each expert can acknowledge and accept a "Copyright Notice", and so agree to abide by IEC copyright rules, by ticking a "check box" when using the IT tool. The IEC's Swiss IP lawyer has indicated that under Swiss law such a mechanism works for independent (self-employed) experts, but for employed experts further action is needed. The most robust solution

under Swiss law would be written agreements with each employer, but that would be impractical due to the number of employers. The IEC's Swiss IP lawyer has advised that an "affirmation" process where the IEC advises an employer that their expert has signed up to the IEC copyright rules would provide the IEC with reasonable assurance of the employer's acceptance of the IEC rules. It is important to note that under the "affirmation" process an employer only has to respond when they do *not* wish to accept the IEC copyright rules. The key obligations for experts and/or their employers are set out in clauses 1.6 and 1.7 of the revised Copyright Implementation Guidelines.

Clause 1.6 of the Implementation Guidelines addresses the licensing of pre-existing copyright to the IEC, so that an expert or the expert's employer retains ownership of their copyright and permits the IEC to use it in IEC International Standards. Clause 1.7 addresses the transfer to the IEC of copyright created in the collaborative work of the IEC, i.e. copyright in the final standards themselves. So, these provisions maintain the status quo of who owns copyright, as the IEC has consistently made clear that it respects third party copyright and that copyright in International Standards belongs to the IEC, while providing a more secure legal mechanism for the IEC to own copyright in International Standards.

There may be some special circumstances where the mechanism of clauses 1.6 and 1.7 may not be applicable, and clause 1.8 sets out a series of exceptions and a process for creating an alternative mechanism which has the same effect for the IEC and National Committees as the mechanism of clauses 1.6 and 1.7. The process involves the IEC (IEC CO) and the relevant NC working together to develop an alternative mechanism having the same effect as clauses 1.6 and 1.7.

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