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29 February 2008

DOCUMENT
C-M(2008)0017
Silence Procedure ends:
28 Mar 2008 16:00

NATO COMMITTEE FOR STANDARDISATION

**NATO INTELLECTUAL PROPERTY RIGHTS POLICY FOR NATO STANDARDS AND
NATO DISPOSITIONS RELATED TO THE ISSUE OF COPYRIGHTS FOR NATO
STANDARDS**

Note by the Deputy Secretary General

1. I attach herewith the NATO Intellectual Property Rights (IPR) for NATO Standards and NATO Dispositions related to the issue of Copyrights for NATO Standards.
2. The document outlines procedures to ensure the protection of intellectual property rights of NATO standardization community from the civilian standardization community. It has been approved by the NATO Committee for Standardization following coordination with the senior committees concerned, and is now forwarded to the Council for notation.
3. These procedures will resolve potential conflicts between the objective of standardization (the widespread diffusion of a common technology) and the principles of intellectual property rights (the securing of private monopoly rights over a technology as an incentive to develop new products and processes).
4. Unless I am informed to the contrary **by 16:00 hours on Friday, 28 March 2008**, I shall assume that the Council has noted the document 'NATO Intellectual Property Rights for NATO Standards and NATO Dispositions related to the issue of Copyrights for NATO Standards'.

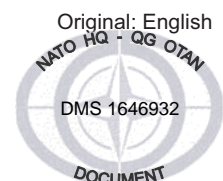
(Signed) Claudio Bisogniero

2 Annexes

1 Appendix

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**NATO INTELLECTUAL PROPERTY RIGHTS POLICY FOR NATO
STANDARDIZATION DOCUMENTS
AND
NATO DISPOSITIONS RELATED TO THE ISSUE OF COPYRIGHTS FOR NATO
STANDARDIZATION DOCUMENTS**

Introduction

1. Taking account of the responsibilities assigned to the NSA in its Terms of Reference (inter alia paragraphs 3.11, 3.16 and 5.5 as attached to the Charter of the NATO Standardization Organization) and in support of the NATO Framework Document on Civil Standards¹, the NATO Committee for Standardization (NCS) has established the following Intellectual Property Rights (IPR) Policy.

Policy Objectives

2. NATO standardization documents of various kinds shall be based on solutions that best meet the full range of tasks and objectives of NATO defined by the NATO Policy for Standardization, the NATO Policy for Interoperability², and other relevant documents including the North Atlantic Treaty.

3. In order to further support the interoperability of resources within the full range of NATO's tasks, it is important to reduce the risk to its standardization community, that investment in the preparation, adoption and application of NATO standardization documents is wasted as the result of an Essential IPR³ being unavailable to parties seeking to use the NATO standardization document.

4. To meet this objective, it is desirable to reach an agreement of mutual benefit to meet the needs of NATO and the holders of IPRs.

5. IPR holders should be adequately and fairly rewarded for the use of essential protected material or proprietary material.

¹ C-M(2004)0009(INV), dated March 2004

² C-M(2005)0016, dated March 2005

³ 'Essential' IPR means: An IPR, that –if not taken in account within a NATO standardization document– would void the standardization document of its sense.; For the avoidance of doubt in exceptional cases where a standardization document can only be implemented by solutions, all of which are infringements of IPR, all such IPR shall be considered essential. Essential IPR encompasses Government Background IPR and Background of third parties as outlined in footnote 1 of EAPC(NCSREPs)N(2005)0011 as well as Foreground IP. Foreground IP is defined in this context as IP generated in the performance of NATO standardization. Background IP in this context is defined as IP owned by the involved governments or a third party and needed to achieve the objectives of the NATO standardization concerned, but which has been generated otherwise than in the performance of NATO standardization.

6. Measures will be implemented, to the greatest extent possible, to ensure that all activities related to the preparation, adoption and application of NATO standardization documents, enable NATO standardization documents to be available to potential users in accordance with the general principles of standardization and NATO overall security rules.

Disclosure of Essential IPRs

7. Intellectual Property Rights (IPR) include design rights, patents, utility models, trade secrets and copyright. Where a NATO standardization document can only be implemented by solutions, all of which are protected by IPR, that IPR shall be considered to be an "Essential IPR".

8. Each working group member involved in standardization activities shall use reasonable endeavours to identify and inform NSA on Essential IPRs.

9. Working Group members shall expeditiously inform the NSA of essential IPRs instrumental to the development of a NATO standardization document.

10. The obligations pursuant to Para. 8 above do however not imply any obligation on working group members to conduct IPR searches. Nevertheless, at the request of a NATO nation or the NAC for a specific NATO standardization document, or a class of NATO standardization documents, NSA shall arrange to have carried out an IPR search, in a competent and timely manner, with the objective of ascertaining whether Essential IPR exists which may be essential to a proposed NATO standardization document. This investigation shall be subject to NATO nations meeting all reasonable expenses that may occur, in accordance with detailed arrangements to be worked out within the NCS prior to the investigation being undertaken.

11. The NCS shall provide essential IPR guidance for NATO standardization committees (Tasking Authorities).

12. When essential protected material relating to a particular NATO standardization document is brought to the attention of NSA, the Civil Standards Co-ordinator under NSA P&C Branch shall immediately request the holder, who can be either a group participant or a third party to give within three months an undertaking in writing that the holder is prepared to grant irrevocable licence on fair, reasonable and non-discriminatory terms and conditions for all such IPRs to at least allow the use of methods and concepts.

13. At the request of a NATO nation, the NCS or the NAC for a specific NATO standardization document or a class of NATO standardization documents, NSA shall arrange to have carried out in a competent and timely manner an investigation including an IPR search, with the objective of ascertaining whether IPRs exist or are likely to exist which may be or may become essential to a proposed NATO standardization documents and the possible terms and conditions of licences for such IPRs.

14. Any published (promulgated⁴) NATO standardization document shall include information pertaining to how to obtain licences for Essential IPR.

Non-availability of Licences

15. Where, in respect of a proposed NATO standardization document, NSA becomes aware that licences are not available from a third party in accordance with Para 12 above, that NATO standardization document shall be referred to the Director NSA for further consideration in accordance with the following procedure:

15.1 The Director NSA shall request full supporting details from any member who has complained that licences are not available in accordance with Para 12 above.

15.2 The Director NSA shall write to the IPR owner concerned for an explanation and request that licences be granted according to Para 12 above.

15.3 Where the IPR owner refuses NSA's request or does not answer the letter within three months, the Director NSA shall inform the NCS and the appropriate Tasking Authority. The NCS adopts by consensus to immediately refer the NATO standardization document to the relevant working group to modify it, so that it no longer contains matter protected by Essential IPR.

15.4 Where the discussion in the NCS does not succeed, the NCS shall consult with the appropriate TA and task the NSA staff to find a solution for the problem. In parallel, the NCS may request appropriate NATO member nations to use their good offices to find a solution or alternative for the issue.

Ownership of IPRs produced within the NATO Framework

16. The ownership on NATO standardization documents created by NATO groups or any of their committees, working groups or other entities involved in NATO Standardization is described in Annex 2.

Additionally, acknowledgements shall be given to material protected by copyright owned by third parties that are identified or identifiable in NATO copyrighted works.

17. In respect to IPR other than the copyright in NATO standardization documents, NSA shall only seek ownership of IPR generated either by its staff officers or by those personnel seconded to NSA and/or NATO from organisations, who are not linked with NATO nations or depending on a NATO nation.

⁴ Promulgation as defined within the AAP-42

19. NATO-owned IPRs are available to all NATO member nations on a no-fees basis for all purposes, except for a commercialisation of the NATO standardization document as a sales object.

20. NSA may, on request by a non-member⁵ and if the NATO security environment does not oppose such an action, grant licence to non-members on fair and reasonable terms and conditions in respect of any IPRs owned by NATO.

Confidentiality⁶

21. Except when expressly agreed to the contrary, the proceedings of a committee, working group or other entity involved in standardization shall be regarded as non-confidential except as expressly provided in Para 22 and all information submitted to a committee, working group or other entity involved in standardization shall be treated as if non-confidential and shall be available for public inspection.

22. In order to be considered unavailable for public inspection in the framework of the overall spirit of Standardization, information must be clearly identified as confidential when submitted. Its use must be accepted by the chairman of the committee, working group or other entity involved in NATO Standardization.

23. Responsibilities of confidentiality shall not apply to information which:

23.1 Is, or becomes, rightfully into the possession of the receiving Participant without relevant restrictions; or

23.2 Is in, or enters the public domain without breach of this Policy and is made available for unrestricted use; or

23.3 Is received by the receiving Participant from a third party who himself has the right to disclose it without relevant restrictions; or where the Participant to whom it was supplied can demonstrate that it was independently developed by or for that Participant without reference to the information disclosed under these arrangements.

24. Confidential information incorporated in a NATO standardization document shall be regarded as non-confidential by NATO and NATO nations, from the date on which the NATO standardization document is published, unless the NATO standardization document is marked otherwise.

⁵ In the context of this policy, a non-member is either a PfP nation or a supranational, multinational, international or non-governmental organization, chiefly a so-called standards developing organisation (SDO) or similar structure (e.g. an international user group or an international association of interested parties in a given subject of standardization)

⁶ Confidential in this context shall mean: All information deemed pursuant to Clause 9 of the NATO IPR Policy, disclosed directly or indirectly to the NATO member nations.

25. A NATO standardization document containing confidential information can only be published after the beneficiary of this confidentiality has lifted it from said information.

Law and Regulations

26. IPR policy has been developed to facilitate and develop the relationship between NATO and civil standards organizations and will not impose any additional, legal and financial responsibility to NATO Member Nations.

27. Without prejudice to NSA's Terms of Reference, the Charter of the NSO, the rights of NATO member states and the rights of third parties, which may be concerned by these dispositions occasionally and whose individual agreement may be necessary on specific issues, no decisions shall be taken by NSA in relation to the implementation of this IPR Policy unless supported by the NCS.

NATO DISPOSITIONS RELATED TO THE ISSUE OF COPYRIGHTS FOR NATO STANDARDIZATION DOCUMENTS

In this Policy:

- “Foreground Information” means Works generated by the delegates, technical experts, staff or contractors of Member States, whether individually or collaboratively, for the purposes of creating or revising a NATO standardization document.
- “Background Information” means Works to be reproduced within a NATO standardization document, but which were not generated for the purposes of creating or revising a NATO standardization document.
- “Works” means works protected by copyright and includes text; data, diagrams; and compilations of text, data and/or diagrams.
- “Copyright” includes database rights and other rights analogous to copyright.

General Provisions

1. The NSA owns for NATO copyrights in the NATO standardization documents and retains the right to exploit such copyrights.
2. The NSA shall ensure that it acquires as a minimum all rights, worldwide, in Foreground Information necessary to:
 - 2.1 reproduce, translate and adapt the Foreground Information in whole or in part, in any material form;
 - 2.2 issue reproductions of, lend, or communicate, the Foreground Information, or adaptations of the Foreground Information in whole or in part, in any material form;
 - 2.3 authorise others to reproduce, translate and adapt the Foreground Information in whole or in part, in any material form;
 - 2.4 authorise others to issue reproductions of, lend, or communicate, the Foreground Information, or translations or adaptations of the Foreground Information in whole or in part, in any material form.
3. NSA shall provide support to implement this Policy, including the provision of legal documents necessary to vest these rights in Foreground Information in itself. Participants shall assist the NSA by providing legal documents fulfilling the formalities of their own national laws, if required by the NSA to implement this Policy.
4. Nothing in this Policy shall affect the ownership or exercise of rights in Background Information.

Background Information

5. Working Groups shall expeditiously identify and inform the NSA of Background Information to be reproduced in a NATO Standard. Working Groups shall also establish the owner of the copyright in that Background Information

Obtaining Licences in Background Information

6. When Background Information is brought to the attention of NSA, the Civil Standards Co-ordinator under NSA P&C Branch shall immediately request the copyright owner (who can be either a group participant or a third party) to grant a world-wide licence to NSA, permitting NSA to:

- 6.1 Reproduce, translate and adapt the Background Information;
- 6.2 Issue reproductions of, lend, or communicate, the Background Information, or translations or adaptations of the Background Information;
- 6.3 Authorise others to reproduce, translate and adapt the Background Information;
- 6.4 Authorise others to issue reproductions of, lend, or communicate, the Background Information, or translations or adaptations of the Background Information in whole or in part, in any material form.

7. Published NATO standardization documents shall identify the owners of rights in Background Information that have been incorporated into the NATO standardization document.

Non-availability of Licences

8. Where the NSA becomes aware that a licence to reproduce the Background Information is not available, the NATO standardization document shall be referred to the Director NSA for further consideration in accordance with the following procedure:

9. The Director NSA shall request full supporting details from the Working Group who has complained that a licence is not available.

10. The Director NSA shall write to the owner of the copyright in the Background Information concerned for an explanation and request that licence be granted

11. Where the owner of the copyright in the Background Information refuses the Director NSA's request or does not answer the letter within three months, the Director NSA shall inform the NCS and the appropriate Tasking Authority. The NCS decides by consensus to immediately refer the NATO standardization document to the relevant working group to

modify it so that it is no longer necessary to reproduce the Background Information in the NATO standardization document.

12. If there is no consensus within the NCS, the NCS consults with the appropriate TA and tasks NSA staff with finding a satisfactory solution. In parallel, the NCS may request appropriate NATO member nations to use their good offices to find a satisfactory solution

Exercise of Copyright

13. NSA assumes the protection, the defence and the legal responsibility for the copyright it owns in NATO standardization documents.

14. NSA will grant Member States and PfP countries a license, free of charge, to:

14.1 Reproduce, translate and adapt in whole or in part, in any material form, all NATO standardization document for the Member States' or PfP country's own use;

14.2 Issue reproductions of, lend, or communicate, in whole or in part, in any material form, all NATO standardization document, or translations or adaptations thereof; and

14.3 Licence or permit the sub-licensing of any of these rights to non-member nations or PfP countries;

14.4 The rights provided above do not extend to commercial sales of the NATO standardization documents.

15. The marking of the NATO Standardization documents is laid down in the directive regarding the production, the maintenance and the management of NATO standardization documents.

Law and Regulation

16. Where a choice of law is available to govern the vesting, transfer or licensing of rights and obligations under this Policy, the laws of Belgium shall apply⁷.

⁷ Noting in particular the formalities required by, for example, Article 35 § 2 of the Belgian "Loi relative au droit d'auteur et aux droits voisins" of 30 June 1994 to assign future copyright, as related to EU Directive 2001/29 of 22 May 2001 on the harmonization of certain aspects of authors' rights and related rights in the information society and defined to consolidate the legislations of member states in the fields of authors' and artists' rights with relation to the impact of new information technologies.

Policy Decisions

17. Without prejudice to NSA's Terms of Reference and the Charter of the NSO, no decisions shall be taken by NSA in relation to implementation of the NATO Copyright Policy unless supported by the NCS.

Disclaimer for NATO Standardization documents

All producers of NATO standardization documentation must include the following disclaimer in all NATO Standardization documentation and all other works further to publishing those in any form:

“No part of this publication may be reproduced, stored in a retrieval system, used commercially, adapted, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the publisher. With the exception of commercial sales, this does not apply to member nations and PfP countries, or NATO commands and bodies.”