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17 December 2021

DOCUMENT
PO(2021)0476
Silence Procedure Ends:
7 Jan 2022- 15:30hrs

To : Permanent Representatives (Council)
From : Secretary General

**INTELLECTUAL PROPERTY RIGHTS POLICY FOR
NATO STANDARDIZATION DOCUMENTS**

1. I attach the revised Intellectual Property Rights Policy for NATO Standardization Documents, as agreed by the Committee for Standardization (CS).
2. In NATO's Coherent Implementation Strategy on Emerging and Disruptive Technologies, the Council tasked the Committee for Standardization to update the Alliance's Intellectual Property Rights Policy for NATO Standardization Documents. The resulting proposal at the annex takes account of lessons identified by multiple committees¹ to help NATO better manage intellectual property, which is at the centre of standards development.
3. Due to its nature, the approved IPR policy is intended to be available to the public.
4. I do not believe this policy requires discussion in the Council. **Unless I hear to the contrary by 15:30 hrs on Friday, 7 January 2022**, I shall assume that the Council has approved the Policy agrees to its public release.

(Signed) Jens Stoltenberg

1 Annex

Original: English

¹ The Integrated Air and Missile Defence Policy Committee, the Aviation Committee, the Civil Emergency Planning Committee, the Command, Control and Communication Board, the Conference of National Armaments Directors, the Logistics Committee, the Military Committee and the Science and Technology Board.

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**Intellectual Property Rights Policy
for NATO Standardization Documents²**

I. INTRODUCTION

1. NATO standardization is the development and implementation of procedures, designs and terminology to the level necessary for the interoperability³ required by Allies, or to recommend useful practices in multinational cooperation.⁴ In 2021, Allies agreed to update this policy and reaffirmed their commitment to preserve NATO's technological edge by collaborating with the private sector.⁵ This revised Intellectual Property Rights policy reflects organizational changes within NATO, as well as lessons identified by the NATO standardization community across different fields of standardization, to help NATO better manage IPR, primarily copyrights and patents, which are at the center of standards development.

II. AIM

2. The aim of this policy is to:
- a. Guide the use of intellectual property (IP) protected by IPR in the development of NATO standardization documents, to ensure that the use of IP protected by IPR is disclosed and recorded.
 - b. Develop an approach for requesting permission to utilize protected work or proprietary material in NATO standardization documents.
 - c. Foster an environment in which IPR of Standards Developing Organizations (SDOs) and other IPR holders are respected.

² As defined in C-M(2018)0006, Directive for the Production, Maintenance and Management of NATO Standardization Documents, AAP-03 Edition (K): NATO standardization documents are classified into three categories that are "Covering Documents," "Allied Standards" and "Standard-Related Documents (SRDs)." Covering Documents cover NATO Standardization Agreements (STANAGs) and NATO Standardization Recommendations (STANRECs). A STANAG specifies the agreement of member nations to implement a standard, in whole or in part, with or without reservation, in order to meet an interoperability requirement. A STANREC is used exclusively in the materiel field and lists one or several NATO or non-NATO standards relevant to a specific Alliance activity unrelated to interoperability.

³ Interoperability is the ability to act together coherently, effectively and efficiently to achieve Allied tactical, operational and strategic objectives.

⁴ PO(2016)0315, Revised NATO Policy for Standardization, 13 May 2016.

⁵ PO(2021)0059, Foster and Protect: NATO's Coherent Implementation Strategy on Emerging and Disruptive Technologies, 15 Feb 2021.

III. SCOPE

3. This policy covers IPR related to NATO standardization document development activities and shall apply to all the NATO standardization community.⁶

IV. DEFINITIONS⁷

4. Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

5. Intellectual Property Rights (IPR) are the rights given to persons over the creations of their minds.

6. Copyright (or author's right) are the rights that creators have over their literary and artistic works⁸. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps and technical drawings.

7. A patent is a document, issued, upon application, by a government office (or a regional office acting for several countries), which describes an invention and creates a legal situation in which the patented invention can normally only be exploited (manufactured, used, sold, imported) with the authorization of the owner of the patent.

V. POLICY

10. Use of IPR in NATO Standardization Documents

10.1 NATO encourages the early identification and disclosure of IP protected by IPR that may relate to NATO standardization documents under development. In doing so, greater efficiency in standards development is possible and potential IPR problems can be avoided.

10.2 In the course of the development of NATO standardization documents:

- a. Each custodian shall request the disclosure of any known IP protected by IPR essential to the document.

⁶ As defined in PO(2016)0315, Revised NATO Policy for Standardization, 13 May 2016.

⁷ The definitions listed in this section are sourced from the World Intellectual Property Organization and World Trade Organization.

⁸ Work is a term used in copyright to refer to a wide range of intellectual creations, from novel to architecture, computer programs and more.

- b. Each working group member or participant must inform the custodian if their intended contribution contains any IP protected by IPR.
- c. If working groups or its members seek to contribute, embed or incorporate protected works⁹ (e.g., text, images, figures) into a NATO standardization document, they shall request and obtain an explicit permission from the IPR holder.
- d. When permission is granted to copy material from protected works, the NATO standardization document shall include a normative or informative reference or citation to the original protected works, and display an appropriate notice (e.g., "Included here by permission") or include a permission letter.
- e. TA/DTAs shall ensure an appropriate notice or all permission letters are reflected in the draft NATO standardization document before deciding to enter the ratification or approval process.

11. Patents

11.1 There is no objection in principle to including in a NATO standardization document IP protected by a patent if for technical reasons it is considered necessary to implement the standard.

11.2 Participants in the NATO standardization document development process are required to bring IP potentially protected by a patent to the attention of the TA/DTA and to NATO Standardization Office (NSO). Moreover, that information should be provided in good faith and on a best effort basis, but there is no requirement for patent searches.

11.3 Upon notice that a proposed NATO standardization document may require the use of IP protected by a patent, the TA/DTA, if necessary with advice from the NSO, shall request from the patent holder or a party authorized to enter into an agreement on its behalf, in written or electronic form, the following:

- a. a willingness to negotiate licences free of charge with other parties; or
- b. a willingness to negotiate licences with other parties on a fair, reasonable and non-discriminatory basis.

⁹ "Protected works" is a broader concept beyond copyrights, which includes design protection and business confidentiality.

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11.4 The assurance shall also indicate that it is intended to be binding on successors-in-interest regardless of whether such provisions are included in the relevant transfer documents. A record of the patent holder's statement shall be retained in the files of both the TA/DTA or subordinate working group and the NSO. When the patent holder provides the assurance set forth above, the NATO standardization document shall include a note substantially as follows:

NOTE – The user's attention is called to the possibility that compliance with this standard may require use of an invention covered by patent rights.

By publication of this standard, no position is taken with respect to the validity of any such claim(s) or of any patent rights in connection therewith. If a patent holder has filed a statement of willingness to grant a license under these rights on reasonable and non-discriminatory terms and conditions to applicants desiring to obtain such a license, then details may be obtained from the standards developer.

11.5 Whether the identification of the patent took place before or after the approval of the NATO standardization document, if the patent holder is unwilling to license under subparagraphs a. or b., TA/DTA or NSO will promptly advise the working group responsible for the affected NATO standardization documents for taking appropriate mitigation measures and related actions¹⁰.

11.6 NATO will not interfere with licensing negotiations, or engage in settling disputes on patents; this is the responsibility of users of the NATO standardization documents.

12. Management of NATO IP

12.1 Measures will be implemented, in accordance with agreed responsibilities and capabilities, 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 applicable NATO policy¹¹.

12.2 The Director of the NSO is responsible for and authorized to promulgate all NATO standardization documents.¹² S/he ensures compliance with NATO requirements related

¹⁰ Such actions include, but may not be limited to, a review of the NATO standardization document or its draft in order to remove the potential conflict or to further examine and clarify the technical considerations causing the conflict.

¹¹ Standardization documents marked NATO classified and NATO non-classified documents shall be handled in accordance with C-M(2002)49-REV1 and C-M(2002)60, respectively. NATO does not charge users a fee to use its standardization documents.

¹² C-M(2014)0012, Governance Model for a Definitive Solution for NATO Standardization Support, 17 Feb 2014; PO(2016)0315, Revised NATO Policy for Standardization, 13 May 2016; C-M(2018)0006, Directive

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to the issue of copyrights and logos for NATO standardization documents and shall include a NATO copyright marker and disclaimer in the promulgation letter maintaining consistency across standards of the same type and classification level. The NATO disclaimer shall not contradict agreed NATO policy. Allies agreed the following disclaimer paragraphs.

- a. For non-classified standardization documents: *This NATO standardization document is issued by NATO. In case of reproduction, NATO is to be acknowledged. NATO does not charge any fee for its standardization documents at any stage, which are not intended to be sold. They can be retrieved from the NATO Standardization Document Database (<http://nso.nato.int/>) or through your national standardization authorities.*
- b. For classified standardization documents: *This standardization document is issued by NATO. Reproduction and handling of this document shall conform to NATO security policy¹³. NATO does not charge any fee for its standardization documents at any stage, which are not intended to be sold. They can be retrieved through the NSO or through your national standardization authorities.*

13. Implementation of the Policy

13.1 Allies and Partners are encouraged to incorporate this policy into relevant national policy and guidance to the maximum extent.

13.2 NATO senior committees, including their supporting staff, and NATO Bodies¹⁴ shall fully implement this policy in their respective field.

for the Production, Maintenance and Management of NATO Standardization Documents, AAP-03, Edition (K), 16 Feb 2018.

¹³ E.g., C-M(2002)49-REV1, Security within the North Atlantic Treaty Organization, 20 Nov 2020.

¹⁴ For more information on NATO's structure, visit <https://www.nato.int>.