to: Dr. Ing. Konstantinos Karachalios, Managing Director, IEEE Standards Association

from: IEEE 802 Executive Committee

date: <Draft: 2019-08-19>

Subject: Comments regarding “IEEE-SA Copyright Policy” as distributed 2019-05-28

Dear Konstantinos,

As active participants in the IEEE-SA and experienced members of the IEEE 802 LAN/MAN Standards Committee, we are taking the initiative to bring to your attention our concerns with the proposed slide set entitled “IEEE-SA Copyright Policy,” as distributed 2019-05-28 to volunteer participants following its presentation by invitation in an IEEE-SA webinar.

We have studied the proposed procedure and urge IEEE-SA to defer its introduction pending its thorough review, particularly from the perspective of those would be called upon to implement it. We believe that such a review will show that the procedure is impractical and largely nonsensical. We believe that it is possible to create alternative procedures, within the existing IEEE-SA Bylaws and IEEE-SA Standards Board Operations Manual, that secure the results desired by IEEE-SA without imposing delays, inefficiencies, roadblocks, and mandated falsehoods.

To illustrate the issues, we highlight three top-level concerns:

1. "Previously Published"

The term "Previously Published" is used in 11 places in the slide set, 5 times in the IEEE-SA Bylaws, and 7 times in the IEEE-SA OpsMan. The term is clearly essential to the policy and procedures, and yet it is not defined. The term “Published” is defined, but the documentation does not refer to that term without the adjective "Previously,” so it is apparent that there is a difference. The meaning of "Previously Published" can be discerned from careful analysis.

"Published" is defined in the Bylaws:

"Published" shall mean material for which a claim of copyright is apparent (e.g., the presence of the copyright symbol; an explicit statement of copyright ownership or intellectual property rights; stated permission to use text; a text reference that indicates the insertion of text excerpted from a copyrighted work; or a visual indication of an excerpt from another work, such as indented text).

One way to understand "Previously Published", based on this definition, is that it is descriptive of material for which a claim of copyright was formerly apparent but is no longer apparent. This appears not to be the intent.

The only other way to understand "Previously Published", based on the definition, is as descriptive of material for which a claim of copyright was apparent prior to a particular set time. The set time is not specified. However, since the documentation is aimed at contributions, we understand that the set time can only be time at which the contribution was submitted to IEEE. In this sense, we understand that the restrictions and procedures specified as applicable to "Previously Published" material applies only to material that was in the “Published” state prior to its submittal to IEEE. Therefore, we understand that material submitted to IEEE with an apparent claim of copyright but which was not in the “Published” state prior to that submission is not "Previously Published” and the restrictions do not apply.

This distinction can be useful and meaningful. If a participant submits a contribution including a figure from a textbook, that contribution contains “Previously Published” material, and IEEE therefore requires a permission letter. But if a participant draws and submits a figure, then the contribution was not in the "Published" state before submission, so it is not "Previously Published" and can be submitted without a permission letter. Since the participant owns the copyright to the work, it makes no difference to IEEE if the participant exercises the right to put a © symbol on the figure; in any case, IEEE claims the rights it needs under 7.2.2.

This understanding of "Previously Published" is a logical way to understand Bylaw 7, but it is challenging for the average reader to understand without more explicit language. A definition to interpret the Bylaws is imperative. We propose:

"Previously Published" shall mean material that existed in the “Published” state prior to its submission to IEEE.

1. “context for usage”

The Bylaws state that:

At the time of submission, all Contributions from previously Published sources that are not Public Domain shall be accompanied by a Copyright Permission Form... The Copyright Permission Form request shall outline the specific material being used and, where possible, the planned context for its usage in the Work Product. Contributions that are previously Published shall not be submitted for consideration or incorporated in a Work Product until copyright permission acceptable to IEEE has been granted.

This Bylaw can be the basis of a practical process, but not under the terms described in the slides. The key is to allow flexibility in the understanding of “context for its usage in the Work Product,” allowing the Copyright Permission Form (as well as the request) to provide various forms of permission, depending on the “planned context” for usage in the Work Product, ranging from “no usage” to “discussion only” to “discussion and distribution” to “republished” and/or “modified.” Ultimately, IEEE-SA must recognize that many Contributions (as broadly defined in the Bylaws) are not intended for inclusion in the Work Product but are nevertheless important to its successful development.

In the slide set, no provision is made for flexibility of the planned usage. Instead, the slides specify that “IEEE Permission Request and Response Form Templates are available (https://standards.ieee.org/develop/stdsreview.html) and are to be used whenever requesting permission.” That leads to an utterly impractical procedure, as summarized in the following sequence of events:

1. Contributor has “previously Published” material to present to the group. Per Slide 18, Contributor is responsible to “inform the Working Group (WG) Chair or Industry Connections (IC) Activity Chair that the Contribution(s) requires permission from copyright owner(s) and cannot be presented or included in the draft until that permission is granted).”
2. Per Slide 21, Chair is responsible to “Use IEEE-SA Permission Request and Response Form Templates to request permission ([http://standards.ieee.org/develop/stdsreview.html)](http://standards.ieee.org/develop/stdsreview.html%29)”.
3. Accordingly, Chair identifies copyright owner and appropriate contact information and sends the obligatory letter, which specifies that the WG has reviewed the copyright owner’s document and would like permission to modify the material and use for standards development purposes, noting also that “IEEE requests non-exclusive, irrevocable, royalty-free permission, and requires world rights for distribution and permission to modify and reprint in future revisions and editions of the resulting draft and approved IEEE standard and in derivative works based on the standard, in all media known or hereinafter known.”
4. The Copyright owner issues the requested permission letter.
5. The Contribution is submitted.
6. Per Slide 6, “Working Group decides whether to include the material in the IEEE-SA Work Product.”

This process, specified in the slide set, makes no sense whatsoever. Note:

* In Step 3, the letter sent by the Chair is inherently false. It is certainly inaccurate for the Chair to state that the WG has reviewed the document and seeks permission to use it in a standard because, at this stage, the WG has not even seen the document, because the policy precludes that. The WG is required to lie in order to accommodate the policy. Furthermore, the Copyright owner is solicited to grant rights to IEEE based on the false representation that it is expected to be used in a standard.
* In Step 3, the Chair is forced to undertake this extra administrative burden even though it may be useless. In particular, the request may be absurd because the Contributor may have had no intent that the material be included in an IEEE standard; it may be for the group’s information but not for publication in a standard. The request may be embarrassing to the Chair in the case that the material clearly has no role in a Work Product.
* The requirement for the broad permission letter adds a large delay before the group has an opportunity to see the material. This delay hurts the Contributor and the group.

An alternative process can be enabled, within the Bylaws and OpsMan, by providing procedural support for the Bylaws’ text on “the planned context for its usage in the Work Product.” In particular:

1. Contributor has “previously Published” material to present to the group.
2. Contributor submits a document to WG along with a statement from the copyright holder noting that the planned context for its usage is to be posted to an IEEE web site and reviewed in meetings of a WG, granting permission to IEEE use the material in that context. The statement could also optionally indicate that the planned context for its usage is inclusion in the Work Product subject to WG agreement and appropriate permissions. A formal permission letter for such publication could also be included.
3. The WG discusses the document, with the Chair responsible to inform group that the Contribution (unless the proper permission letter is complete) cannot be included in the draft until permission is granted. The process may terminate here, with the WG benefitting from the shared information.
4. If the WG decides that it would like to include “previously Published” material in a Work Product, then, per Slide 21, Chair is responsible to “Use IEEE-SA Permission Request and Response Form Templates to request permission ([http://standards.ieee.org/develop/stdsreview.html)](http://standards.ieee.org/develop/stdsreview.html%29)”. The Chair issues the request, which accurately reports that the WG has reviewed the copyright owner’s document and would like permission to incorporate the material in a Work Product.
5. The copyright holder issues the permission.

The key here is that a disastrous procedure can be converted into a reasonable and practical one simply by taking advantage of the room specified in the Bylaws for a range of possible usage of the “previously Published” material.

1. Verbal contributions

Taking into account the definition from the Bylaws such that "Contribution" includes “any material that is presented verbally or in recorded or written form,” we caution that the verbal contributions are yet another “context for usage,” and procedures must account for them. Consider, for example, that Bylaw 7.2.1 requires that, “At the time of submission, all Contributions from previously Published sources that are not Public Domain shall be accompanied by a Copyright Permission Form that is completed by the copyright owner, or by a person with the authority or right to grant copyright permission.” If the procedures implementing the “Copyright Permission Form” are inflexible, as proposed in the slides, then even the discussion of the content of a textbook, technical publication, or standard would be prohibited (note: unfortunately, we see no exceptions even if IEEE is the copyright holder). This is a very unhealthy restraint on a group intended to operate openly and to all available technical information in arriving at its decisions. To our knowledge, discussion of copyrighted material without recording is not a violation of copyright; if it were, then book groups and family dinners throughout the world need to be put on notice. The IEEE-SA must craft procedures to allow freedom of discussion. To the extent that copies of discussion material are to be placed on group web servers for distribution, it is clear that, in some cases, IEEE-SA may require formalized permission, but, again, that does not imply that permission to republish in a standard is required.

Having carefully considered the “IEEE-SA Copyright Policy” slides of 2019-05-28, we have a number of specific comments on the details. However, rather than expose all of those at this time, we hope to first encourage IEEE-SA to pause and take another look at least at the three high-level issues we have raised. We hope that, following that pause, IEEE-SA will decide to reopen its planning for the copyright procedures and revise them with input from and consideration of the perspective of standards developers and Working Group leaders. We are confident that volunteer participants from among the IEEE 802 Executive Committee are willing to assist in this process.

Regards,

Paul Nikolich

Chair, IEEE 802 Executive Committee