



CEN-CENELEC GUIDE 10

**Policy on the distribution,
sale and copyright of CEN
and CENELEC Content**

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European Committee for Standardization

European Committee for Electrotechnical Standardization

Rue de la Science, 23

B – 1040 Brussels – Belgium

Tel: +32 2 550 08 11

Fax: +32 2 550 08 19

www.cencenelec.eu

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1 Scope and purpose

This Guide sets out the policy for the distribution, sale, copyright and therefore any Reproduction of Content. Compliance with this Guide is mandatory for CEN, CENELEC, their respective Members, Organizations having a cooperation framework or partnership agreement with CEN or CENELEC, CEN and CENELEC staff members, experts, delegates, and other contributors to the work of Technical Committees or Working Groups and other parties recognized by the CEN and CENELEC Rules.

Reproducing the Content, including structured data related to Publications, does not only fulfil the objective of disseminating and encouraging the application of Publications throughout Europe and the rest of the world. It is also the primary funding mechanism for standardization activities for many of the Members and a cornerstone of the sustainability of the CEN and CENELEC standardization system. Therefore, the Reproduction of the Content must be based on commercial principles and conducted in a way that secures the value of the Content to CEN, CENELEC, their respective Members and the End-Users.

This Guide establishes practices in line with European Union (EU) competition law. As a result, this Guide is not intended to give rise to or encourage any direct or indirect price fixing, market sharing and/or exchange of commercially sensitive information between CEN, CENELEC and their respective Members. This Guide also complies with the World Trade Organization (WTO) principles regarding dissemination of adopted standards, including voluntary application, openness, effectiveness, and relevance in terms of availability to End-Users.

Any issue regarding the Reproduction of the Content that is not covered by this Guide or related documents, or may require specification, shall be referred to the CEN and CENELEC Director General, who shall reasonably seek the advice of the relevant governing bodies of CEN and CENELEC.

Any issue regarding compliance with this Guide shall be addressed to CCMC. In case of non-compliance with this Guide, CCMC will take appropriate action according to the CEN and CENELEC Rules. In particular, Members that do not comply with this Guide may ultimately be expelled from CEN or CENELEC according to article 9.1.2 of the Statutes of CEN or CENELEC. Organizations having a cooperation framework or partnership agreement with CEN or CENELEC, technical experts, delegates or other contributors to the work of Technical Committees or Working Groups may be excluded from CEN and CENELEC activities, in accordance with the CEN and CENELEC Rules.

2 Terms and definitions

For the purposes of this Guide, the following terms and definitions apply.

2.1

Organization having a cooperation framework or partnership agreement with CEN or CENELEC

Independent entity that is not a Member but has a cooperation framework or partnership agreement with CEN or CENELEC acknowledged by the CEN and CENELEC Rules and approved by the CEN and CENELEC General Assemblies, including

- Affiliates according to CEN-CENELEC Guide 12,
- Companion Standardization Bodies (“CSBs”) according to CEN-CENELEC Guide 13,
- Stakeholder organizations representing SMES, consumers, and social or societal interests,
- Other organizations or stakeholders according to CEN-CENELEC Guide 25,
- European stakeholders, including EFTA, the European Commission, and its Agencies,
- Standardization Organizations at national and regional levels

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2.2

Active Marketing

Marketing the Content or a Derivative Work whilst actively approaching End-Users or a specific end user group. In particular, Active Marketing is to

- engage in any advertising campaign in any media, whether by print, broadcasting, on the internet or any other electronic means, specifically aimed at the National Territory of other Members,
- pay a search engine to show adverts to End-Users in the National Territory of other Members,
- establish any branch or maintain any distribution depot for Providing the Content or a Derivative Work to End-Users in the National Territory of other Members,
- actively approach End-Users in the National Territory of other Members through direct marketing activity or customer relations management, whether by email, phone call, website push technology, sales force activity or similar, or
- respond to a call for tender when it is restricted to the National Territory of another Member

2.3

CEN and CENELEC Rules

The Statutes of CEN and CENELEC, the CEN-CENELEC Internal Regulations and decisions of the CEN and CENELEC General Assemblies taken in accordance with the Statutes and Internal Regulations, including Guides

2.4

Content

Every work produced according to the CEN and CENELEC Rules as part of the standardization work at every stage of the development (including drafts and working documents), in whole or in parts, in any format. The Content consists of

- Publications, and
- structured data relating to the Publications

2.5

Definitive text

Publication disseminated by CCMC, after approval according to the CEN and CENELEC Rules

2.6

Derivative Work

Product or service (e.g. publication, software, application, website, training) which includes (and thus reproduces) the Content

2.7

End-User

Entity who ultimately uses or is intended to ultimately use the Content or a Derivative Work

2.8

Member

CEN National Standardization Body (NSB) and CENELEC National Committee (NC)

2.9

National Territory

Country in which the headquarters of a Member, or an Organization having a cooperation framework or partnership agreement with CEN or CENELEC (including any regional standardization organization and the territory(ies) of its Members), are located, including any of the country's territories outside its main boundaries

2.10

Publication

Deliverable as defined according to the CEN and CENELEC Rules which groups parts of the Content which are not structured data (e.g. text, picture), including European Standards, Technical Specifications, Technical Reports and CWAs

2.11

Reproduction of Content

Any and all exploitation of the Content for any purpose, by any means and in any form, whether commercially or not, including distributing the Content, granting mere access to the Content, translating the Content, text or data mining of the Content, developing a Derivative Work or distributing such Derivative Work.

Reproduction consists in particular of

- CEN and CENELEC, via CCMC, providing Content to its Members and Organizations having a cooperation framework or partnership agreement with CEN or CENELEC,
- Members distributing the Content directly to End-Users,
- Members developing a Derivative Work and distributing a Derivative Work directly or via Third Party Entities to End-Users,
- Members providing the Content to Third Party Entities to let them develop a Derivative Work for the End-User

2.12

Third Party Entity

Independent entity appointed by a Member to execute the Member's rights in accordance with this Guide

2.13

Passive Marketing

Marketing the Content or a Derivative Work whilst responding to unsolicited requests from End-Users. In particular, Passive Marketing is to

- advertise on a website and reference to a web shop in emails,
- answer questions initiated from End-Users, or
- respond to a call for tender when it is restricted to the National Territory of the Member concerned

3 Granting of rights

The Content is protected by national copyrights and related rights (e.g. literary works, illustrations, computer programs, databases). Therefore, any Reproduction of the Content requires the consent (licence) of the holder of those rights.

CEN and/or CENELEC are the owner of the rights to Reproduce the Content, as, in accordance with the CEN and CENELEC Rules, each participant or other contributor (including, under specific terms, contributors like ISO, IEC or others) involved in the development of the Content must grant the necessary rights to its contribution to CEN and/or CENELEC. CEN and/or CENELEC ensure(s) that it/they have the necessary rights to exploit the Content worldwide, in any format, at any time and to grant exploitation rights to Members and Organizations having a cooperation framework or partnership agreement with CEN or CENELEC.

CEN and/or CENELEC grant according to the laws of Belgium each of their respective Members the right to Reproduce the Content in accordance with this Guide. CEN and/or CENELEC may grant according to the laws of Belgium an Organization having a cooperation framework or partnership agreement with CEN or CENELEC the right to Reproduce the Content only in specific ways by means of a specific licence agreement in accordance with this Guide. Any Reproduction of the Content which exceeds the rights explicitly granted and/or which is not legally permissible according to applicable copyright law is prohibited.

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When an organization ceases to be a Member or an Organization having a cooperation framework or partnership agreement with CEN or CENELEC, for whatever reasons, all rights are immediately and automatically withdrawn, including the right to Reproduce the Content within a Derivative Work. Such Members or Organizations having a cooperation framework or partnership agreement with CEN or CENELEC that need, as part of their obligations according to agreements with Third Party Entities or End-Users, to continue to Reproduce the Content must refer to the Director General to negotiate time-limited potential options. Only the CEN and CENELEC General Assemblies can decide to temporarily grant exploitation rights, or decide that such rights are temporarily transferred, to another organization within the ceased Member's National Territory, or the National Territory of an Organization having a cooperation framework or partnership agreement with CEN or CENELEC, until a new Member or Organization is formally designated.

4 CEN and CENELEC

CEN and CENELEC entrust CCMC to distribute the Content to Members through appropriate means or IT tools according to the CEN and CENELEC Rules.

Furthermore, CCMC may distribute the Content and grant the right

- to Organizations having a cooperation framework or partnership agreement with CEN or CENELEC to access the Content, through appropriate means or IT tools, and to use the Content internally as a source of information, and
- to Affiliates, CSB's or Standardization Bodies in National Territories where there is no Member to translate the Content into the official language of its National Territory (Translation), to nationally implement the Translation in identical form or with minor modifications (National Implementation), and to Reproduce the National Implementation. In those cases, the Translation and/or the Reproduction of the National Implementation in its National Territory does not have to be financially remunerated.

Neither CEN nor CENELEC, via CCMC or otherwise, shall Reproduce the Content in any other way, in particular to distribute the Content to End-Users or to develop or to distribute a Derivative Work.

5 Marketing and National Territory

There is only one CEN and/or CENELEC Member in each National Territory. In its National Territory, each Member is encouraged to actively market the Content and a Derivative Work (Active Marketing). Members are also encouraged to actively market in other National Territories where there is no Member.

A Member, or an Organization having a cooperation framework or partnership agreement with CEN or CENELEC, may only passively market the Content and a Derivative Works (Passive marketing) in the National Territory of another Member. A Member may only actively market in the National Territory of another Member where it has been given explicit consent by that Member.

6 Value of the Content

CEN and CENELEC and their Members shall appropriately value the Reproduction of the Content in a consistent and transparent way which acknowledges that the Reproduction of Content is the primary funding mechanism for standardization activities for many of the Members and a cornerstone of the sustainability of the CEN and CENELEC standardization system. In particular, the distribution of Content and/or a Derivative Work to Organizations having a cooperation framework or partnership agreement with CEN or CENELEC, Third Party Entities and End-Users shall be financially remunerated, unless this Guide expressly provides otherwise for specific cases (e.g. the Reproduction of the National Implementation in its National Territory by Affiliates, CSB's or Standardization Bodies according to paragraph 4 or the dissemination of Drafts for Public Enquiry according to paragraph 10). Remuneration may exceptionally be waived for a specific type of Reproduction which is permitted by applicable copyright laws or by applicable law requiring the provision of Publications to the national deposit library.

When determining the value of the Reproduction of the Content, the guidelines described in Annex A may be taken into consideration.

7 Protection measures

CEN, CENELEC and each Member (in particular in its National Territory and in national territories where the Member appoints a Third Party Entity) shall in good faith make all reasonable efforts to adopt technical, organizational and contractual measures to prevent unauthorized Reproduction of the Content and to ensure that recipients of the Content (in particular Organizations having a cooperation framework or partnership agreement with CEN or CENELEC, Third Party Entities and End-Users) do not engage in any unauthorized Reproduction of the Content. These measures include at least the following:

- a) (Communication): To take every opportunity to remind recipients of the Content as well as all state authorities that the Content is protected by copyrights and related rights and that this protection is upheld even if state authorities refer to the Content in legislation or otherwise.
- b) (Copyright-notice): To annotate all Content and Derivative Work provided to Organizations having a cooperation framework or partnership agreement with CEN or CENELEC, Third Party Entities or End-Users with a clearly visible copyright notice which indicates that the Content is protected by national copyright and related rights, and which identifies the holder of those rights.
- c) (Watermark, Tracing): To watermark Publications and – with regard to other types of Reproduction of the Content – use other appropriate means to trace any recipient of the Content for the purpose of identifying and stopping unauthorized Reproduction of the Content.
- d) (Licence agreement): To bind every recipient of the Content with an appropriate agreement that safeguards compliance with this Guide and to ensure the agreement is monitored accordingly. If the recipient is allowed to Reproduce the Content, the agreement shall clearly and specifically define at least the licensee, the licensor, the Content licenced, the authorized types of Reproduction (including its restrictions), the territory, an appropriate choice of law, the financial remuneration and the duration of the agreement.
- e) (Individual action against unauthorized Reproduction): To document any unauthorized Reproduction of the Content and to take appropriate action to stop it as soon as it becomes known.
- f) (Internal compliance): To make reasonable efforts of organizational nature to ensure internal compliance with the rules of this Guide, including the use of suitable and trained personnel and the periodic review of the handling of this Guide by e.g. Legal.

8 Third Party Entities

Each Member may appoint one or more national or transnational Third Party Entities to exercise the Member's rights and obligations regarding the distribution of Publications, the development of a Derivative Work and/or the distribution of a Derivative Work to End-Users in accordance with this Guide.

Third Party Entities may not be appointed to distribute Content which is not implemented into a Derivative Work (except for Publications), or the distribution of Publications or a Derivative Work to other entities than End-Users. CEN or CENELEC may not appoint Third Party Entities.

If a Third Party Entity does not comply with this Guide, the issue shall be addressed to CCMC according to paragraph 1. Members may be prohibited from appointing this Third Party Entity.

9 Exceptional sponsored access

To equip the Members with a mechanism of last resort, for the purposes of responding to requests from public authorities or private organizations wanting to provide free access to the Content to the general public, Members may, after having used all reasonable efforts to reject such requests, grant in close consultation with CEN and CENELEC a sponsored access agreement subject to the following conditions:

- a) (Sponsor): Access shall be prepaid (sponsored) by a suitable public authority or private organization which must not use it for commercial purpose.
- b) (Content): Access may only be granted to the full text of a limited number of national adoptions of current and historical (excluding drafts) Publications in the available language of the National Territory of the Member that is party to the sponsoring agreement.
- c) (Type of access): Access may only be granted online via the internet to a specific group of End-Users by means of a platform controlled by the Member; access shall be restricted to allowing the End-User to read individual sections of the Publications (read-only); in particular, the End-User must not download or print the Publications; notwithstanding paragraph 7, the Member shall in good faith make all reasonable efforts of technical (e.g. Digital Rights Management - DRM, geoblocking) and contractual nature (e.g. terms of use) to prevent access from outside the National Territory and to prevent the End-User from downloading or printing the Publications.
- d) (Registration): Access may only be granted to End-Users who have registered for the use of the platform and accepted the terms of use.
- e) (Layout): The layout of the platform shall include visible information for the End-User that the Publications are protected by copyright, that the access is sponsored and that the Publications can be acquired and licenced, including hyperlinks to the relevant points of sale (e.g. webshop of the Member).
- f) (Sponsoring agreement): The Member shall conclude with the Sponsor an appropriate agreement that safeguards compliance with this Guide, that clearly and specifically defines at least the sponsor, the Publications granted access to, the type of access (including its restrictions), the financial remuneration, the duration of the agreement which shall be terminable at least every three years, and ensure the agreement is monitored accordingly.

The Member will report annually to CCMC on all relevant sponsoring agreements. CCMC may share any such report and/or any associated content with relevant CEN and CENELEC Governing Bodies, to the extent legally permitted.

Any request for exceptional sponsored access in national territories in which there is no CEN or CENELEC Member shall be referred to the CEN and CENELEC Director General, who will bring the case to the competent CEN and CENELEC advisory bodies for advice, and to the competent CEN and CENELEC governing bodies for approval.

The possibility of exceptional sponsored access must not be promoted.

10 Draft Content and definitive texts

The dissemination of all working drafts prior to Public Enquiry is restricted to the participants and observers in the relevant technical bodies.

Drafts for Public Enquiry must be disseminated in a way that meets the requirements of the enquiry process. They shall be made accessible from the Member's web site or from a dedicated public commenting site for the duration of the enquiry period without requiring remuneration from the End-User, strictly in accordance with the Internal Regulations, after which they may be distributed on the Member's normal commercial terms.

The dissemination of final drafts for approval is restricted to the participants and observers in the relevant technical bodies. Only in exceptional cases final drafts for approval may be distributed on the Member's usual commercial terms. Final Drafts for Approval distributed in hard copy may be subject to a handling charge at the Member's discretion.

Members may distribute definitive texts to End-Users as an interim measure for a limited period of time, pending the publication of the national implementation. In such cases, they shall not be represented as national implementations or as having the same authority as national implementations.

Annex A

Guidelines for licensing the Reproduction of selected parts of CEN and CENELEC Publications or their national implementations

CEN, CENELEC and their Members are responsible for promoting the widest possible dissemination of standards that supports our business model, along with greater understanding of the value of standards or other deliverables, and for ensuring an adequate protection of the value of the CEN and CENELEC Publications and their national implementations.

Although the value of standards is not always easily measurable, the multiple benefits of standards are well known. Millions of individuals, business and organizations are applying and using standards every day. To name a few benefits, standards play a major role in safeguarding societal and environmental interests, as well as in enhancing the safety, health, and well-being of consumers. When products and services conform with European Standards, this means that standards are safe, reliable and of good quality.

Standardization also brings together different and potentially competing interests with the relentless attempt to build consensus around common languages, whether technical or not. By doing so, standards contribute to increase competition and facilitate the free movement of goods and services in the European single market. In innovative sectors, standards also enable technical interoperability and compatibility that is needed to help industries generate efficiencies and performance, and then increase value for consumers.

When determining the value of any CEN and CENELEC Publications and their national implementations, the following elements or indicators may be taken into consideration:

Estimated Market

Elements for determining an adequate value of a Publication:
<ol style="list-style-type: none"> 1. The parties (Licensor and Licensee) needs and interests. 2. The size of the market or sector concerned (market potential). 3. The potential end-user base or number of potential licensees/organizations (market penetration). 4. Sales and subscription usage statistics of previous editions of the Publication(s). 5. Impact assessments for the value of standards generally or for individual Publication(s) created by Members or third parties. These can include elements such as national GDP growth supported by the use of standards or trends in technical innovation as suggested by patenting activity, 6. The extent to which the Publication support conformity assessment, assurance, or public policy. 7. The potential benefits and impact of the licensed Publication for a given market or end-users. 8. Others: emerging market, response to an immediate need or sanitary crisis. 9. A percentage of the gross income received from a product reproducing selected parts of the Publication. <p>These elements provide a check list for Members to include in their calculation of the value and importance of their content in the requested solution and should result in a numeric Value Factor which can be used in the calculation below. One way to generate the Value Factor is to score each of the elements above and take the average, but note that each case is individual, and the elements are not necessarily equivalent in value. Members should also be careful that any calculation does not result in an unrealistic multiplier.</p>
Complementary elements for subscriptions:
<ol style="list-style-type: none"> 10. The number of end-users (minimum 2) in a company or organization(s) 11. The total value of a collection of Publications (standards or others)

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For the purpose of calculating royalty fees, the following indicators may be considered:

Royalty Calculation

Elements for calculating a royalty fee:

1. The NSB's own price list of the Publication(s)
2. Number of projected copies or downloads, based on the elements above
3. Number of Publication(s) licensed
4. Percentage of the Publication(s) licensed
5. Intended use (informational, educational, internal, or commercial use). Commercial use will generally be the most expensive due to the potential impact on sales of the original Publication(s)
6. Type of licensee (e.g. SME, micro-businesses, public authorities, universities, students). See https://ec.europa.eu/growth/smes/sme-definition_en for the relevant definitions for SMEs.
7. Use of snippets, graphics, tables, drawings, formulas in electronic form
8. Specific format of the Publication(s) delivered (e.g. ('read-only', html, data format).
9. Agreement of a minimum duration of one year, and a maximum duration of three years.
10. Discount % applied

The example below provides a rough method for a license:

$$\text{Estimated market}^* \times \text{Average catalogue price of the Publications}^{**} \times \text{Value factor} = \text{Total}$$

* e.g. number of downloads, hard copy distributions, network licences

** according to the NSB own policy, not subject to any concerted practices

CEN, CENELEC and their Members may determine, at their discretion and within their remit and responsibilities, the adequate payment and reporting modalities towards licensees, third party distributors or end-users, for Publications or national implementations licensed or sold. To that end, the following elements may be considered:

Elements for a compensation mechanism:

1. A fixed and single upfront payment (lump sum). This can be determined by estimating the likely market using the elements above and calculating an appropriate fee.
2. An amount paid periodically or annually. This can be based on an agreed sum as calculated in option 1 above and paid in instalments, or on actual downloads, copies sold, subscriptions, users etc.
3. A combination of the above two methods
4. A compensation under the 'Sponsored Access' detailed in section 9 above
5. Any existing schemes at international level (e.g. IEC, ISO)

Reporting modalities:

1. Total number of sold or downloaded Publication(s) on a quarterly basis.
2. Total number of sold or downloaded Publication(s) on an annual basis.