



CEN/TC 440
Electronic Public Procurement

Email of secretary: dkh@ds.dk
Secretariat: DS (Denmark)

CCMC Implementing derivative use within TC 440

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**Implementation of the “derivative use” concept -
CCMC document for use and distribution within
CEN/TC 440 “Electronic Public Procurement”**

As part of the derivative use pilot, which CEN/TC 440 has been part of, CCMC has developed a note that clarifies the CEN copyright framework and derivative use in relation to CEN/TC 440 deliverables.

Committee URL: <https://cen.iso.org/livelihood/livelihood/open/centc440>

Implementation of the 'derivative use' concept – CCMC document for use and distribution within CEN/TC 440 'Electronic Public Procurement'

1. CEN copyright framework

CEN Publications are voluntary documents containing intellectual property of demonstrable economic value, which are protected by national laws and international agreements, including when they are supporting public policies or referenced in technical regulations.

CEN has the copyright in all their Publications. Publications, including their entire content and their associated metadata, as compiled and structured in the databases of CCMC and the [CEN Members](#), together with their national implementations, are works constituting individuality and originality and are therefore [copyright-protected](#). CEN assigns the right to exploit the Publications to each individual CEN member. CEN members are primarily responsible for distributing Publications in their own territories.

The CEN-CENELEC copyright framework is described in the CEN-CENELEC [Guide 10](#) "Policy on dissemination, sales and copyright of CEN-CENELEC Publications".

2. CEN/TC 440 specifications

The objective of the deliverables to be developed by CEN/TC 440 'Electronic Public Procurement' is to provide specifications as a tool to ensure interoperability between independent software solution supporting electronic procurement processes. The intended users of these deliverables are (notably) software developers who are expected to incorporate/reproduce the content into derivative applications e.g. software. Another user group are policy makers, typically at national level and/or within a business sector, responsible for developing derivative guiding material on the implementation of the content to support (national) policy objectives.

This includes the reproduction of text from the standard, e.g. warning messages, definition and representation of business terms to be displayed to end-users in software implementations, and the reproduction of source code which may be included in the CEN deliverables.

CEN and its members have been invited to address this aspect of derivative use, in order to provide clarity to end-users on the implementation of the future CEN/TC 440 deliverables.

3. CEN/TC 440 pilot on derivative use

Some CEN standards contain images, information texts or software components that must be used by licensees to be able to use or apply the standard in a meaningful way. CEN and its members are inclined to recognize the copyright on such designs, information texts and software components.

The CEN/CA (Administrative Board), through decision 38/2019, approved the launch of a pilot within CEN/TC 440 to address the specificities of derivative use.

It is proposed that whenever there is an expectation that images, text or source code need to be reproduced in order to implement the CEN deliverables, **no additional licence or additional fee** should be requested to the implementers other than the usual fee to get access to the deliverables. This approach assumes that the **reproduction is within the intended scope of implementation** of the deliverables.

The CEN/CA and the CENELEC/CA with decisions 115/2019 and 154/35 respectively confirmed that the reproduction of standard content by user's, in order to fulfil the standard requirements, i.e., intended implementation, shall not require an additional licence or fee unless the reproduction is for commercial purposes. And further invited CEN and CENELEC members to inform the Joint Commercial Advisory Group (JCAG) of any future requests for standard content reproduction, so that JCAG can assess the potential impact to the members sales of standards, including the need to revise CEN-CENELEC Guide 10.

4. Intended use of implementation of the deliverable

Only within this scope of intended implementation as described above, the CEN members allow the users, when purchasing a Publication, a non-exclusive, non-transferable right of use of images, texts and software components contained in a Publication, provided always that this is necessary for correct use of the standard by the intended user - licensee. The granting of the license would concern exclusively the unchanged use of the images, texts or software components.

The functional scope of the right of use shall be limited to the correct use of the Publication. Hence, as every Publication needs to give instructions for its field of application, it is proposed to include a description of the scope of the intended use within the Publications, and of the intended users in order to avoid conflict and confusion.

'Intended use' can be defined as the intended purpose of the Publication as defined by the relevant technical committee under conditions which can be reasonably foreseen. Usually, this is the intended use of the Publication.

Considering the scope of CEN/TC 440, which is about the development of Publication "to support the electronic public procurement processes and their accompanying information flows", the intended use of the Publication can be drafted along those lines:

"The Publication has been developed for use by XXXXX (e.g. software development companies), for the purpose of developing XXXXX (e.g. software applications –), which will be used by XXXXX (e.g. local governments). The product needs to be developed by XXXXX (e.g. software development companies) as a tool that complies with the requirements of this Publication".

This approach assumes that images, text or source code need to be reproduced unchanged in order to implement meaningfully the CEN deliverables.

This approach will be applicable for all CEN/TC 440 publications, current and future (including any update, revision). If successful, the intention is to transform the pilot into a policy applicable to all CEN and CENELEC TCs.

5. Identification of the clauses/figures intended for derivative use

As mentioned above, the intentions in terms of derivative use must be addressed in the scope of the deliverables. There is no specific requirement for the amount of clauses/figures that can be subject to derivative use. The key principle is the compliance with the deliverable. It must be evident from the standard content which clause are intended to be reproduced. Hence, efforts must be put on precisely defining the intended use, which has to be as clear as possible.

However, it is understood that the identification of specific clauses/figure can be part of the guidelines that one deliverable can provide, either as a requirement or as a recommendation. If CEN/TC 440 believes that the reproduction of a specific clause/figure into a software application is necessary to comply with the deliverable, the following example would be acceptable: *"Figure X.XX shall/should/could be reproduced in XXXX in order to demonstrate.."*

Further, the question of the modified reproduction of clauses/figures. If the content to be reproduced would be modified, then this would likely be a derivative use outside the scope of the intended implementation. However, this would need to be evaluated on each case, depending on the specific context. It is proposed that CEN/TC 440 provides guidance directly in the specific clause of the deliverable on what can be acceptable in terms of modification of a specific clause/figure – always keeping in mind that the reproduction is permitted within the scope of compliance with the deliverable.

If there is a need for policy makers, responsible for developing derivative guiding material on the implementation of the content to support (national) policy objectives, to reproduce contents of the deliverables into their own specifications, it will have to be addressed to CEN/TC 440 so that CEN/TC 440 can integrate this dimension in the scope of the deliverable. It would be part of the intended use of the deliverable, which could also concern the restriction and/or extensions of the specifications.

The TC is invited to collect information which could help clarify when such modification may be needed and in what context.

CCMC will be available to support CEN/TC 440 when drafting the specifications.

6. Experts participating in Technical Committees and copyright

A standard document or other technical deliverable is developed by a team of experts participating in a TC or a WG.

In the framework of the Berne Convention, the CEN/CENELEC national members shall ensure that the exploitation rights in contributions to European Standardization made by themselves, their delegates in Technical Committees/Subcommittees and their experts in Working Groups are assigned to CEN/CENELEC for the benefit of its members.

However, it is recognized that the original copyright holder is not precluded from continuing to exploit his own contribution for his own purposes provided that such exploitation does not adversely affect the exploitation of the common work.