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SPECIAL OPERATIONS FORCES ACQUISITIONS, TECHNOLOGY & LOGISTICS (SOF AT&L)

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SOJA-AQ

Intellectual Property from the Government Perspective

Date: March 2025



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(U) Agenda

- Intellectual Property v. Data Rights
- Key Data Rights Definitions
- Intellectual Property –Common Types
- Rights in Technical Data and Computer Software under the DFARs
- Emerging Technologies and Issues



(U) Intellectual Property v. Data Rights

- Intellectual Property –expression of a new and useful concept; legally protected; originator (e.g. inventor, author) granted certain exclusive rights –“Intangible assets”
- “Data Rights” –shorthand way to refer to the Government’s license rights in two major categories of valuable intellectual property (e.g. Technical data & Computer software).The Federal Acquisition Regulations (FAR) prescribe policies, procedures and clauses pertaining to data rights for civilian agencies and the Defense Federal Acquisition Regulations (DFARS) for DoD



(U) Key Data Rights Definitions

- “Computer Software” –programs, source code, code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material; enables the software to be reproduced, recreated, or recompiled; Does not include computer databases or computer software documentation
- “Computer Software Documentation” –manuals, instructions, and other similar items that explain the capabilities of the computer software or instructions for using the software


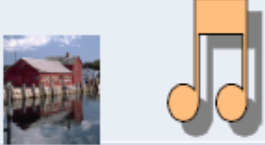




(U) Key Data Rights Definitions

- “Technical Data” –recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation); Does not include computer software or data incidental to contract administration (e.g. financial, management information)



(U) Intellectual Property –Common Types

IP	Subject	Published	Examples
Patents 	New technology know-how	Yes	a drug formula, Blackberry® server method
Copyrights 	Artistic expression in tangible form	Yes	music, paintings, novel blueprint of a house or machine, software
Trade Secrets 	Any information more valuable for business due to its secrecy	No	blueprint of a machine Coke® formula, a customer list
Trademarks 	A name, mark, color, pattern, sound indicating a source of goods or services	Yes	KFC®, General Mills®, Ownings-Corning® pinl Intel,® sound, milCloud,® DCS, Defense Collaboration Services



(U) Rights in Technical Data and Computer Software under the DFARs

Funding Source		
Private	Mixed	Government
<u>Limited (TD) or Restricted (CS)</u> Gov't can share data with other government for unlimited use except manufacture, but not third parties	<u>Government Purpose</u> Gov't can share data with third parties, but data can't be used for commercial purposes	<u>Unlimited</u> No restrictions on use of data
<p>← Specifically Negotiated Rights → (In between Limited & Unlimited, but never less than Limited)</p>		

Unlimited Rights always apply to Form, Fit, Function (FFF) data; Operational, Installation, Maintenance, & Training (OMIT) data; and Computer Software Documentation.



(U) Emerging Technologies and Issues

- Modular Open Systems Approach (MOSA)- individual licensing
- Open Source Software (OSS)- No “restrictions” on use or re-distribution of the code; But there may be conditions or affirmative obligations
- Cloud computing, AI, 3-D printing, cybersecurity, supply chain- what is the nature if the IP?



(U) Emerging Technologies and Issues

From the Government Perspective

- Identifying IP/Data Rights needs
- Obtaining Sufficient IP and Data Rights Data
- Technology Provided with Disputed Assertion of Rights
- Lack of IP Expertise/Training
- IP/Data Rights and Acquisition Planning



(U) Emerging Technologies and Issues

From Industry Perspective

- IP overreach
 - GPR in everything (regardless of need)
 - Unlimited Rights when limited Rights may be sufficient
- Failure to account for industry investment business model
- Change sustainment model
- Forces industry to investment decisions without knowing customer IP plans creating disconnect
- Ambiguous and poorly defined contract terms



(U) Final Questions

Questions?