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SPECIAL OPERATIONS FORCES ACQUISITION, TECHNOLOGY, & LOGISTICS

Intellectual Property from the Government Perspective

TRUSTED EXPERTS

**Special Operations Judge Advocate - Acquisition
(SOJA-AQ)**



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Current as of 20260205

Agenda

- **Intellectual Property v. Data Rights**
- **Key Data Rights Definitions**
- **Intellectual Property – Common Types**
- **Rights in Technical Data and Computer Software under the DFARs**
- **Revolutionary FAR/DFARS Overhaul**
- **Emerging Technologies and Issues**

https://www.acquisition.gov/sites/default/files/page_file_uploads/DoD_RFO_Deviation_Part-27.pdf

<https://www.acquisition.gov/far-overhaul/far-part-deviation-guide>

<https://www.waru.edu/tools/revolutionary-far-overhaul-rfo-update-dfars-part-227-patents-data-and-copyrights-guidance-0>

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

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<https://business.defense.gov/Portals/57/MARC%20Presentation.pdf?ver=2019-11-06-084251-993>

<https://www.acq.osd.mil/asda/dpc/api/ip-cadre.html>

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


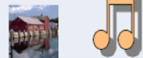


https://www.acquisition.gov/sites/default/files/page_file_uploads/DoD_RFO_Deviation_Part-27.pdf

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)**

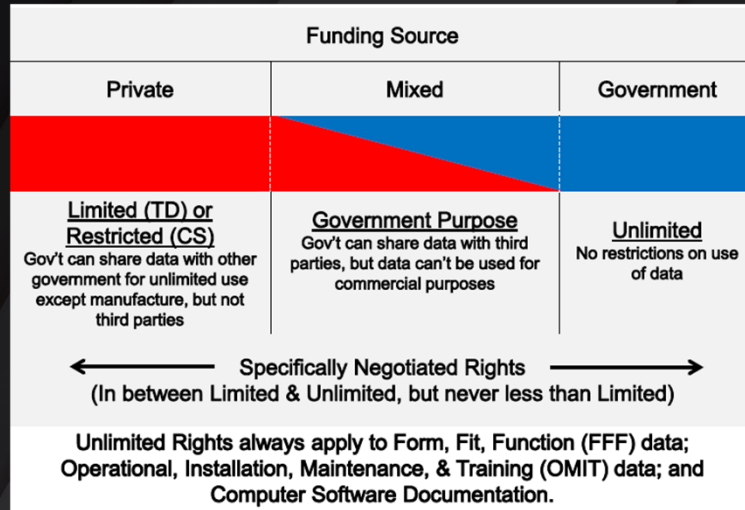
https://www.acquisition.gov/sites/default/files/page_file_uploads/DoD_RFO_Deviation_Part-27.pdf

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®, Owens-Corning® pin, Intel,® sound, milCloud,® DCS, Defense Collaboration Services

<https://www.govinfo.gov/content/pkg/GOVPUB-D-PURL-gpo76355/pdf/GOVPUB-D-PURL-gpo76355.pdf>

DFARs Rights Allocation



<https://www.govinfo.gov/content/pkg/GOVPUB-D-PURL-gpo76355/pdf/GOVPUB-D-PURL-gpo76355.pdf>

Revolutionary FAR/DFARS Overhaul

- **New “Hemispheres”:** The data rights guidance is now split into two subsections based on commerciality:
- **DFARS 227.71:** For other than commercial products and services.
- **DFARS 227.72:** For commercial products and services.

<https://www.waru.edu/tools/revolutionary-far-overhaul-rfo-update-dfars-part-227-patents-data-and-copyrights-guidance-0>

Revolutionary FAR/DFARS Overhaul

New Class Deviation Clause	Former Clause(s)	Title
252.227-7989	-7013 & -7014	Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services
252.227-7990	-7015	Technical Data—Commercial Products and Commercial Services
252.227-7991	-7016	Rights in Bid or Proposal Information
252.227-7992	-7017	Identification and Assertion of Use, Release, or Disclosure Restrictions
252.227-7993	-7018	Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program
252.227-7994	-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends
252.227-7995	-7027	Deferred Ordering of Technical Data or Computer Software
252.227-7996	-7030	Technical Data—Withholding of Payment
252.227-7997	-7019 & -7037	Validation of Asserted Restrictions
252.227-7998	-7040	Additional Preaward Requirements for Small Business Technology Transfer Program
252.227-7999	-7041	Additional Postaward Requirements for Small Business Technology Transfer Program

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<https://www.waru.edu/tools/revolutionary-far-overhaul-rfo-update-dfars-part-227-patents-data-and-copyrights-guidance-0>

DFARS Deviation 227:

https://www.acquisition.gov/sites/default/files/page_file_uploads/DoD_RFO_Deviation_Part-27.pdf

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 of the IP?**

<https://www.dsp.dla.mil/Programs/MOSA/>

Government Perspective- IP Issues

- **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**

<https://www.justice.gov/archive/oip/courtdecisions/segregability.html>

Industry Perspective- IP Issues

- **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**

<https://www.jagcnet.army.mil/Sites%5C%5Ccontractandfiscallaw.nsf/6B84581274D9A48985257B2D006DE2A4/%24File/Data%20Rights%20Handbook.pdf>

Final Questions

Questions?

<https://www.jagcnet.army.mil/Sites%5C%5Ccontractandfiscallaw.nsf/6B84581274D9A48985257B2D006DE2A4/%24File/Data%20Rights%20Handbook.pdf>