

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

AIR FORCE INSTRUCTION 51-303

22 JUNE 2018



Law

INTELLECTUAL PROPERTY

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This instruction provides guidance and procedures on intellectual property, to include handling inventions, filing for patents, and various other matters pertaining to patents, copyrights, trademarks, and proprietary information. It implements DoD Instruction 2000.03, *International Interchange of Patent Rights and Technical Information*, dated 17 January 2006, and Air Force Policy Directive 51-3, *Civil Litigation*, dated 21 May 1993. This instruction applies to all Regular Air Force personnel and members of the Air Force Reserve and Air National Guard (ANG), except where noted otherwise. This publication may be supplemented at any level, but all supplements must be routed to the Office of Primary Responsibility (OPR) listed above for coordination prior to certification and approval. Refer recommended changes and questions about this publication to the OPR listed above using the AF Form 847, *Recommendation for Change of Publication*; route AF Forms 847 from the field through the appropriate chain of command. The authorities to waive wing/unit level requirements in this publication are identified with a Tier (“T-0, T-1, T-2, T-3”) number following the compliance statement. See AFI 33-360, *Publications and Forms Management*, for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the requestor’s commander for non-tiered compliance items. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with AFMAN 33-363, *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule (RDS) located at the Air Force Records Information Management System (AFRIMS).

This Instruction requires the collection and/or maintenance of information protected by the Privacy Act of 1974 authorized by Title 5 United States Code Section 4503, Title 10 United States Code Section 1124, Title 35 United States Code Sections 100 and 200 *et. seq.*, and Executive Order 10096 dated 23 January 1950. Forms affected by the Privacy Act have an appropriate Privacy Act statement. System of Records Notice (SORN) F051 AFJA B, *Invention, Patent Application, Application Security, and Patent Files* applies and is available online at: <http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-Component-Notices/Air-Force-Article-List/>.

SUMMARY OF CHANGES

This document has been substantially revised and must be completely reviewed. Major changes include providing more extensive guidance on intellectual property matters, particularly as it relates to trademarks, copyrights, and proprietary information. Optional, but recommended, templates are provided for use in formalizing common copyright transactions and cross references are made to other Air Force activities having a primary role in the topics discussed. Where possible, existing guidance has been streamlined by directing readers to applicable legal authorities rather than duplicate them in this instruction.

1. Responsibilities

1.1. The General Counsel of the Department of the Air Force (SAF/GC) is generally responsible for the direction, control, and coordination of inventions, patents, copyrights, trademarks (including trade names, domain names, and the like), trade secrets, and related matters and the legal aspects of the Air Force Technology Transfer Program. SAF/GC may elect to direct the litigation of significant cases involving intellectual property and the Air Force Technology Transfer Program, or defer such direction to The Judge Advocate General (TJAG).

1.1.1. Within SAF/GC, the Acquisition Law Division (SAF/GCQ):

1.1.1.1. Establishes Air Force policy and interfaces with other governmental agencies and branches of the Government on all legal issues concerning intellectual property and technology transfer;

1.1.1.2. Provides related guidance, advice, and assistance to all Secretariat Offices, program executive offices, the major command legal offices, and the servicing legal offices;

1.1.1.3. Provides written determinations regarding rights in inventions under paragraph 2.3.3;

1.1.1.4. Coordinates on license and assignment agreement matters under paragraph 9.3; and;

1.1.1.5. Performs other intellectual property related duties as assigned.

1.2. TJAG is responsible for directing, coordinating and managing intellectual property claims and infringement actions.

1.2.1. Among these responsibilities, TJAG has the authority to settle claims pertaining to intellectual property matters under paragraph 10, subject to the availability of funds. TJAG may redelegate this authority to settle claims for \$100,000 or less.

1.2.2. Reporting to TJAG, the Air Force Legal Operations Agency (AFLOA) coordinates with the Department of Justice on civil litigation matters. Within AFLOA, AFLOA's Commercial Law and Litigation Directorate (AFLOA/JAQ) investigates and handles intellectual property claims, infringement actions, and breach of contract claims involving the Air Force Technology Transfer Program.

1.3. The Command Counsel, Air Force Materiel Command (AFMC/JA), obtains patents and handles patent-related matters for TJAG and SAF/GC. AFMC/JA also designates the servicing patent counsels and provides related legal services and advice to Air Force activities.

1.4. Each Air Force activity responsible for handling or advising on intellectual property and technology transfer matters should regularly consult and coordinate with SAF/GCQ, AFLOA/JAQ, the Air Force Materiel Command Acquisition Law Division (AFMC/JAQ), and other offices identified in this instruction, particularly with regards to lessons learned and the effectiveness of existing policies and procedures. A report of all activities and other developments related to this instruction will be provided to them upon request.

2. Inventions.

2.1. Air Force personnel frequently invent patentable inventions as part of their official duties. As such, all Air Force personnel are responsible for keeping accurate records regarding their duties—especially those duties involving research, development, and engineering—and any potentially patentable inventions that may result.

2.1.1. Air Force personnel regularly engaged in research, development, and engineering are encouraged to create and maintain laboratory notebooks for purposes of paragraph 2.1. Guidance on developing and maintaining laboratory notebooks can be obtained from the servicing patent counsel.

2.1.2. To ensure Air Force interests in an invention are preserved, Air Force personnel shall refrain from publicly disclosing the invention or any related details until a patenting decision has been made or a patent application has been filed, whichever occurs later. Coordinate all public disclosures with the servicing patent counsel and local public affairs personnel according to local procedures.

2.1.3. In the performance of their official duties, Air Force personnel shall only engage non-Air Force personnel in research projects when specifically authorized to do so by an Air Force contract or similar written agreement. (T-2) Such an agreement should describe how rights in any inventions resulting from these projects will be allocated or shared. Without such an agreement, the Government's rights in inventions derived from such projects can be jeopardized.

2.2. Air Force personnel will report all inventions made while employed with the Air Force by submitting an AF Form 1279, *Disclosure and Recording of Invention*, to the servicing patent counsel for patenting consideration. (T-0) This report should be accompanied by a supervisor's recommendation for patenting the invention using an AF Form 1981, *Invention*

Evaluation. An evaluation from the activity's Invention Evaluation Board can be provided in lieu of an AF Form 1981 when authorized by the commander or director of the pertinent Air Force activity but, such an evaluation should contain all relevant information found in the AF Form 1981.

2.3. When reporting an invention, Air Force personnel must indicate whether they intend to assign all of their rights in the invention to the Air Force. (T-0) Airmen who indicate that they intend to assign all of their rights in the invention to the Air Force are eligible to participate in the awards program described in paragraph 5. Those Airmen who decline to do so must request a determination of rights by submitting an AF Form 1280, *Invention Rights Questionnaire*, to the servicing patent counsel. (T-0)

2.3.1. To avoid delays when requesting a determination of rights, Air Force personnel should include their job description at the time of invention and any other information that may be useful for determining rights in the invention. The servicing patent counsel may request additional information when necessary to determine the respective rights of the inventor and the Government in the invention.

2.3.2. The servicing patent counsel prepares and forwards to SAF/GCQ a written recommendation with supporting rationale as to what the respective rights in the invention should be.

2.3.3. SAF/GCQ reviews the recommendation, rationale, and any other relevant information and provides a written determination as to the rights in the invention, any conditions pertaining to patents for the invention, and any on-going obligations of the inventor prescribed by Title 37, Code of Federal Regulations, Part 501, *Uniform Patent Policy for Rights in Inventions Made by Government Employees*.

2.3.4. Inventors may appeal a rights determination made by SAF/GCQ following the procedures set forth in 37 C.F.R. Part 501. For purposes of 37 C.F.R. Part 501, AFLOA/JAQ serves as a liaison to the Under Secretary of Commerce and represents the Air Force in appellate proceedings.

2.4. Air Force contractor personnel may be included as co-inventors when reporting an invention made in part by Air Force personnel. Such reporting does not take the place of other reporting requirements that may apply under the contract to contractor personnel, such as reporting the invention to their organization's patent personnel or the appropriate contracting officer.

2.5. Air Force contractors may report to the appropriate contracting officer that they will not pursue a patent on an invention, will discontinue prosecuting a patent for an invention, or will stop paying maintenance fees on a patent. Such reports should be forwarded to the servicing patent counsel who treats decisions related to these matters as if the underlying invention were made by Air Force personnel. Upon receiving a recommendation to obtain title to the invention from the Air Force activity administering the contract or having expertise in the invention, the servicing patent counsel advises and assists the contracting officer in obtaining title to the invention and taking other steps to preserve the Government's interests in the invention.

3. Invention Secrecy Act.

3.1. AFMC/JAQ consults and coordinates with SAF/GCQ on matters pertaining to DODD 5535.02, *DoD Patent Security Review Process*, and the Invention Secrecy Act, Title 35 United States Code Sections 181 through 188. AFMC/JAQ also designates a servicing patent counsel to interface with the Defense Technology Security Administration for these purposes.

3.2. The servicing patent counsel under paragraph 3.1 conducts patent security reviews, transmits patent applications containing classified subject matter to the U.S. Patent and Trademark Office, and maintains procedures related to the Invention Secrecy Act for use by Air Force activities.

3.3. When requested by the servicing patent counsel, Air Force activities review, with the support of the servicing legal office, patent applications referred for patent security reviews to determine whether disclosure of the invention would be detrimental to national security.

3.4. Grants, contracting, and agreements officers and representatives of the same are responsible for interfacing with the servicing patent counsel when receiving patent applications containing classified subject matter. When this person lacks the appropriate clearance level, or when a patent application having classified subject matter is not subject to guidance prescribed by a grant, contract, or other funding agreement, the Air Force representative monitoring the project is responsible for interfacing with the servicing patent counsel.

3.5. Air Force personnel engaged in patent security reviews and other matters arising under DODD 5535.02 should act promptly in discharging their duties while also taking all necessary steps to ensure the interests of national security are protected.

4. Patents.

4.1. The Air Force prepares and prosecutes patent applications for inventions in which it has a right, title, or interest to protect the results of its research investments, attract private investment for further development, and showcase the innovations of its workforce.

4.2. AFMC/JA provides legal services for obtaining and maintaining patents on behalf of the Air Force by designating a servicing patent counsel for each Air Force activity. In managing these services, AFMC/JA may assign invention disclosures to other servicing patent counsels to align technical expertise with the subject matter of the disclosure.

4.3. Patent applications are prepared, filed, and prosecuted for inventions having sufficient value to the Air Force to justify patent protection. The activity where the invention was made or, alternatively, an activity having expertise in the invention, determines whether an invention has sufficient value to the Air Force to justify patent protection and documents this determination on an AF Form 1981.

4.3.1. To ensure patent applications are filed in a timely manner, Air Force activities should prioritize their invention disclosures when providing them to the servicing patent counsel.

4.3.1.1. Air Force activities should consider using Invention Evaluation Boards to assist with this prioritization. An Invention Evaluation Board may request a preliminary review of patentability from the servicing patent counsel if it believes such a review would facilitate its prioritization.

- 4.3.1.2. The servicing legal office and servicing patent counsel can provide assistance and guidance in establishing Invention Evaluation Boards, if needed.
- 4.4. Before the servicing patent counsel files a patent application for an invention on behalf of the Air Force, at least one inventor must assign his/her entire right, title, and interest in and to the invention to the Government. (T-1) When a patent application will not be filed for an invention, the inventor(s) may request, from the servicing patent counsel, title to the invention pursuant to Title 15 United States Code Section 3710d.
- 4.5. When the Air Force will share title in an invention with another federal agency or non-federal entity, the servicing legal office or servicing patent counsel, as appropriate, will initiate a joint ownership agreement to ensure patent rights are preserved. (T-1) Examples of joint ownership agreements can be obtained from the servicing patent counsel.
- 4.6. The Air Force activity where the invention was made or the Air Force activity responsible for managing the patent will determine whether maintenance fees will be paid. These determinations should be based on such considerations as the age of the patent, the expressed interest of potential licensees, and the relevance of the patent to the remainder of the Air Force patent portfolio.
- 4.7. All assignments, licenses, and other instruments evidencing an Air Force right, title, or interest in a patent or an application for a patent shall be documented and recorded in the appropriate register at the U.S. Patent and Trademark Office (e.g., the Electronic Patent Assignment System). (T-1)
- 4.7.1. When a contractor reports a subject invention as part of an Air Force contract, the pertinent Air Force program manager, contracting officer, servicing legal office, and servicing patent counsel ensure that the Government's patent rights have been reported and confirmed by (T-3):
- 4.7.1.1. Ensuring full disclosure of all subject inventions.
 - 4.7.1.2. Ensuring every patent application filed by or on behalf of the contractor includes a government interest statement.
 - 4.7.1.3. Obtaining, from the contractor, a confirmatory instrument and recording it with the U.S. Patent and Trademark Office in the Departmental Register (see Title 37, Code of Federal Regulations, Section 3.58, *Governmental Registers*).
 - 4.7.1.4. Taking such action as is needed to obtain patent protection for the Government once it takes title to the subject invention.
- 4.7.2. At contract completion and as a part of the contract closeout process, Air Force activities engaged in experimental, developmental or research work conduct a patent clearance procedure to ensure that all subject inventions have been disclosed. (T-0) The servicing patent counsel can provide guidance on establishing and conducting a patent clearance procedure, which generally includes consulting with appropriate technical personnel to understand the contract effort and searching the records of the U.S. Patent and Trademark Office for subject inventions.
- 4.8. The Air Force activity where the invention was made or the Air Force activity responsible for managing the invention also make foreign filing determinations. Air Force activities considering non-domestic patent protection for an invention should consult with the

servicing patent counsel to determine whether such protection is warranted. When the Air Force will not obtain non-domestic patent protection, the inventor may request non-domestic filing rights by submitting an AF Form 1280 to the servicing patent counsel. Such requests must be made before the invention has been publicly disclosed and within 8 months from the filing date of any domestic application. (T-0) SAF/GCQ determines whether to grant foreign filing rights as prescribed by 37 C.F.R. Part 501.

4.9. Issues associated with the international exchange of patent rights and privately owned technical information under DODI 2000.03, *International Interchange of Patent Rights and Technical Information*, should be referred to the servicing patent counsel, AFLOA/JAQ, or SAF/GCQ, as appropriate.

5. Awards for Inventions and Patents.

5.1. The Air Force offers incentive awards, as authorized by Title 5 United States Code Sections 4501 through 4505 and Title 10 United States Code Section 1124, to encourage its personnel to use their inventive talents to advance the Air Force mission and further the nation's defense.

5.2. Inventions made by Air Force personnel become eligible for an incentive award upon issuance of an initial Letters Patent. Patent applications subject to secrecy orders become eligible for incentive awards upon receipt of a Notice of Allowability. If two or more joint inventors make an eligible invention, the incentive award is shared equally among them.

5.3. Upon receiving a Notice of Allowability or Issue Notification, the servicing patent counsel recommends an incentive award to the Deputy Under Secretary of the Air Force, Management (SAF/MG) through the Airmen Powered by Innovation Program.

5.3.1. Recommendations for incentive awards will include a copy of the Letters Patent or Notice of Allowability.

5.3.2. Upon receipt of an award recommendation, SAF/MG processes the incentive award in accordance with AFI 38-402, *Airmen Powered by Innovation and Suggestion Program*.

5.4. To recognize the accomplishments of their personnel, Air Force activities may establish additional awards programs for invention disclosures and the licensing of inventions consistent with Title 5 United States Code Section 4502 and Title 10 United States Code 1124.

5.5. An award authorized under this section is in addition to the regular pay and allowances normally due the recipient. Such awards will only be made if the recipient agrees:

5.5.1. That use by the United States of any invention for which the award is made will not be the basis of a claim against the United States; and

5.5.2. That the recipient's rights in the invention have not been transferred, assigned, or otherwise divested.

6. Copyrights.

6.1. The Air Force recognizes private rights in copyrighted works and uses and acquires rights in these works consistent with applicable laws, regulations and established policies. Examples of copyrightable works include: written text, music compositions, choreography,

photographs, paintings, drawings, sculpture, movies, websites, computer programs, and sound recordings.

6.2. Air Force activities and personnel acting within the scope of their official duties will: (T-3)

6.2.1. Respect copyrights and acknowledge the owner's copyrighted material when used in Air Force publications or other officially released material;

6.2.2. Avoid using copyrighted material without first obtaining permission from the copyright owner. In the case of a joint work of authorship, permission from one of the work's joint authors usually is adequate permission to use the copyrighted work; and

6.2.3. Avoid condoning, facilitating, or permitting the unlicensed use by Air Force facilities of public performance or unauthorized reproduction of copyrighted sound or video recordings, as prescribed by DODD 5535.4, *Copyrighted Sound and Video Recordings*. Examples of activities that may constitute a "public performance" include showing all or a part of a motion picture, reciting or acting out a play or literary work, playing a musical recording, or uploading a sound or video recording to a website. Air Force activities that engage in such activities are encouraged to seek guidance from their servicing legal office, as needed.

6.3. The Air Force often obtains rights in copyrighted works through a variety of grants, contracts, and other funding agreements. Air Force activities should ensure appropriate contract clauses are included in these agreements for obtaining rights in such works, particularly computer software, technical data, and special works. In general, the Air Force does not pay multiple times to access or use copyrighted works in which it already has a license, and, in many instances, the original grant, contract, or other funding agreement is the means by which the Air Force obtains a license. Questions as to the rights in a copyrighted work created or delivered during performance of a grant, contract, or other funding agreement should be directed to the responsible agreements/contracting officer or the servicing legal counsel, as appropriate.

6.4. An Air Force activity also may need to obtain permission to use a copyrighted work as part of a separate agreement, license, or release, with or without charge. The letter template provided at Attachment 2 to this instruction is an example of an acceptable copyright permission request letter that can be used for this purpose.

6.4.1. Ordinarily, no special formalities are needed to obtain permission to use copyrighted material without charge, although requesters should seek review and support from the servicing legal office and observe the following checklist when doing so. Such requests should:

6.4.1.1. Be for no greater rights than are actually needed;

6.4.1.2. Specifically identify the material for which permission is requested;

6.4.1.3. Adequately explain the proposed use and conditions of use so that the copyright owner or agent need only give affirmative consent to the request; and

6.4.1.4. Not require signature by more than one corporate officer, an impression of the corporate seal or certificate, a warranty regarding title, or more than one copy of the signed permission or license.

6.4.2. When a copyright owner is unwilling to permit use of the work without charge, a license, and, in some instances an assignment, can be purchased. When purchasing a license or assignment for a copyrighted work, Air Force activities should do so through their assigned contracting office with assistance and support from the servicing legal office. For purchases in excess of \$2,500, additional support should be obtained from AFLOA/JAQ.

6.4.3. Air Force activities that obtain a copyright license, assignment, or other form of permission shall retain a copy of the agreement as an official record consistent with the Air Force Records Disposition Schedule table and rule T 51 - 02 R 09.00 or 10.00. (T-2)

6.5. Air Force authors occasionally are asked to sign publishing agreements, including copyright releases, relating to the works they create in the course of their official duties as a condition of publication. Air Force personnel are not authorized to sign a publishing agreement, copyright release, assignment of rights, or other contract or agreement relating to their works of authorship without first obtaining pre-publication legal review. A sample publishing release is provided at Attachment 3.

6.6. Advice and counsel on copyright-related issues can be obtained from the servicing legal office. Servicing legal offices are encouraged to seek copyright-related advice or guidance from the other legal offices referenced throughout this instruction. For additional information regarding music copyrights, including licensing research and support, refer to AFI 35-110, *U.S. Air Force Bands*.

7. Trademarks.

7.1. Each Air Force activity should respect private trademark rights and acknowledge those rights when using a trademark in an Air Force catalog, correspondence, contract, or publication. Where possible, avoid using private trademarks to describe any goods or services in Air Force supply catalogs, contracts, correspondence, publications or other written materials. For further information on using private trademarks in Air Force publications, see AFI 33-360, *Publications and Forms Management*.

7.2. The Air Force may register its logos, names, terms, designs, and symbols as trademarks when doing so is in the Air Force's interest. Obtaining such protection can be valuable for preserving the image of the Air Force, preventing others from exploiting that image, and maintaining a public record of the Air Force's ownership of the mark.

7.2.1. When use of the mark meets the requirements for federal trademark protection under the Trademark Act of 1946 (Lanham Act), Title 15 United States Code Sections 1051 through 1127, federal registration may be appropriate. When use of the mark does not meet federal trademark registration requirements and only local protection is appropriate, the Air Force should seek trademark protection under applicable state law.

7.2.2. Air Force activities responsible for official Air Force magazines, newspapers, or other publications should refer to DODI 5120.04, *DoD Newspapers, Magazines, Guides, and Installation Maps*, for guidance on registering the name(s) of their publication(s) as federal trademarks.

7.3. An Air Force activity can request or suggest registration of an Air Force trademark by submitting a request to the Air Force Branding and Trademark Licensing Program Manager via the website at <http://www.trademark.af.mil/>. All such requests should contain:

- 7.3.1. The name of a local point of contact who is knowledgeable about the mark, its prior use, and the objectives for trademark registration;
- 7.3.2. The date of first use of the trademark (if available);
- 7.3.3. The date of first use of the trademark in commerce;
- 7.3.4. A description of how the trademark is affixed to the goods on which it is used;
- 7.3.5. A suitable number of specimens showing the trademark as it is being used in commerce, such as a label or tag that incorporates the mark and is affixed to a good or associated with delivery of a service; and
- 7.3.6. Identification of the local servicing legal office that can coordinate on or support the registration.

7.4. Even when formal registration of a mark is not appropriate under federal or state law, Air Force activities remain responsible for: protecting local marks that could be used to show an affiliation with, endorsement by, or sponsorship from the Air Force; maintaining records of the marks' use; and taking protective measures to ensure marks are not misused or otherwise appropriated by others.

7.5. SAF/GCQ maintains a record of all trademark registrations obtained by the Air Force and approved by the Air Force Branding and Trademark Licensing Program Manager, except in those instances in which the servicing legal office has agreed to maintain such records. When the servicing legal office has agreed to maintain trademark registrations records, a copy of all such registrations and points of contact for management of the mark will be provided to SAF/GCQ by the servicing legal office. (T-1)

7.6. Advice and counsel on trademark-related issues can be obtained from the servicing legal office. Servicing legal offices are encouraged to seek trademark-related advice or guidance from the other legal offices referenced throughout this instruction. For information regarding the use of Air Force trademarks, the collection of royalties, their protection and consistent use with one or more elements of the Air Force Brand, refer to AFI 35-114, *Air Force Branding and Trademark Licensing Program*.

8. Proprietary Information and Non-Disclosure Agreements.

8.1. While Air Force personnel generally do not require access to proprietary information in the course of their official duties, they may occasionally be provided such information. Proprietary information refers to information that is not publicly available and is obtained from, or may have originally been provided by, a disclosing party outside of the Government.

- 8.1.1. In many instances, the party disclosing proprietary information is a private party who asserts that the information should not be disclosed to others. As such, Air Force personnel may be asked to sign a non-disclosure agreement governing the handling of such information with the disclosing party. Air Force personnel typically do not have authority to bind the United States through these agreements and should not sign them. Moreover, Air Force personnel may be required by existing law or regulation to protect

proprietary information from public disclosure. In such instances, Air Force personnel should explain these existing obligations to the disclosing party and provide no additional non-disclosure agreement.

8.1.2. When no other non-disclosure obligation exists, the disclosing party should be required to reduce the proprietary information to writing and to mark it as such, either prior to disclosure or within a limited time thereafter. Any Air Force obligations associated with handling the information should be limited in duration and memorialized in an agreement applicable to the Department of the Air Force through one or more individuals with the authority to bind the United States rather than through individual agreements binding specific Air Force personnel. Before addressing any additional non-disclosure obligations with a disclosing party, Air Force personnel should ensure that the information to be disclosed is not governed by an existing Air Force contract or agreement—particularly one that grants rights to the Government in the same information.

8.2. All inquiries or problems relating to the handling of proprietary information, non-disclosure agreements, and related issues can be directed to the servicing legal office or other offices referenced throughout this instruction.

9. Licenses, Assignments, and Transfers of Inventions.

9.1. The Air Force licenses and assigns inventions as a part of commercial technology transfer and to promote their transition into defense technologies. To ensure rights in the invention are preserved, inventions subject to license or assignment should be the subject of an issued patent or described in a pending patent application filed with the United States Patent and Trademark Office.

9.2. The servicing legal office, with assistance from the servicing patent counsel, normally participates in the creation and execution of all license and assignment agreements for Air Force inventions. License and assignment agreements are based substantially on model agreements approved by SAF/GCQ.

9.3. SAF/GCQ coordinates on the transfer of custody and administration of any invention in which the Air Force has a right, title, or interest pursuant to Title 35 United States Code Section 207, and adjudicates appeals under Title 37, Code of Federal Regulations, Part 404, *Licensing of Government Owned Inventions*.

9.4. For additional information on responsibilities and policies related to licensing, assigning, and managing Air Force inventions and patents, see AFI 61-301, *The Domestic Technology Transfer Process and the Offices of Research and Technology Applications*.

10. Allegations of Infringement, Claims, and Related Licenses.

10.1. Each Air Force activity should forward communications offering the Air Force an assignment of, or a license in, a patent, copyright, trademark, or any information protected by law, to the servicing legal office. AFLOA/JAQ and SAF/GCQ are available to provide assistance to the servicing legal office in these matters, as needed.

10.2. Each Air Force activity must forward to AFLOA/JAQ any communication asserting a claim for intellectual property infringement, breach of a license or contract related to a patent, copyright, or trademark, or the mishandling of any proprietary information. (T-1) To

expedite handling, all pertinent facts and documentation concerning the claim or allegation should be provided to AFLOA/JAQ with the communication. Examples of communications to be forwarded include those that:

10.2.1. Allege or assert that the manufacture, use, or disposition of any article, material, or process by or for the Air Force involves the use of any invention or design, whether patented or unpatented;

10.2.2. Allege or assert that the Air Force has improperly copied, prepared a derivative work, distributed, performed, displayed, or transmitted any work of authorship owned by another;

10.2.3. Request, either expressly or implicitly, compensation because of the use of any article, material, or process;

10.2.4. Allege or assert that the Air Force or its employees have mishandled any proprietary information or other non-public information in violation of a non-disclosure or related obligation; or

10.2.5. Allege or assert that the Air Force or its employees have infringed a trademark.

10.3. A patent or copyright owner who believes that the Air Force has infringed his or her patent or copyright and an owner of a patent application that has been withheld from issuance based on sponsorship by the Air Force pursuant to Title 35 United States Code Section 181 can file a claim for compensation with AFLOA/JAQ. Such claims are administrative claims and can be filed as specified in Defense Federal Acquisition Regulation Supplement (DFARS), Part 227, Subpart 227.70, *Infringement Claims, Licenses, and Assignments*.

10.4. Air Force employees who own a patent or copyright are not eligible to file administrative claims as described in paragraph 4.3. However, they may bring suit against the United States in the United States Court of Federal Claims under 28 U.S.C. § 1498 if they believe the Air Force has infringed their patent or copyright. Suits for infringement may be limited when:

10.4.1. The employee was in a position to order, influence, or induce use of the invention or copyrighted work by the Government;

10.4.2. The invention or copyrighted work was related to the official functions of the employee; or

10.4.3. Government time, materials, or facilities were used in making the invention or creating the copyrighted work. In this regard and unlike inventions, works created by Air Force personnel as part of their official duties are not subject to copyright protection.

10.5. When communications suggesting patent, copyright, or trademark infringement, or offers for licenses or assignments of rights in these subject matters, are made in the context of an on-going or contemplated procurement, the contracting officer should coordinate the handling of such matters with AFLOA/JAQ, through the servicing legal office. Matters pertaining to potential disputes over rights in technical data or computer software under the rules provided by DFARS Part 227 should be similarly coordinated.

THOMAS E. AYRES
General Counsel

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

- DODI 2000.03, *International Interchange of Patent Rights and Technical Information*, 17 January 2006
- DODD 5535.02, *Patent Security Review Process*, 28 July 2017
- HAF MD 1-14, *General Counsel and The Judge Advocate General*, 29 December 2016
- AFPD 51-3, *Civil Litigation*, 21 May 1993
- SORN F051 AFJA B, *Invention, Patent Application, Application Security, and Patent Files*
- Title 37, Code of Federal Regulations, Part 501, *Uniform Patent Policy for Rights in Inventions Made by Government Employees*, current edition
- Title 35 United States Code Sections 181 through 188
- Title 15 United States Code Section 3710d
- Title 37, Code of Federal Regulations, Section 3.58, *Governmental Registers*, current edition
- Title 5 United States Code Sections 4501 through 4505
- Title 10 United States Code Section 1124
- AFI 38-402, *Airmen Powered by Innovation and Suggestion Program*, 9 February 2018
- AFI 33-360, *Publications and Forms Management*, 15 February 2018
- Trademark Act of 1946 (Lanham Act), Title 15 United States Code Sections 1051 through 1127
- DODI 5120.04, *DoD Newspapers, Magazines, Guides, and Installation Maps*, 20 November 2017
- DODD 5535.4, *Copyrighted Sound and Video Recordings*, 16 November 1994
- AFI 35-110, *U.S. Air Force Bands*, 12 September 2017
- AFI 35-114, *Air Force Branding and Trademark Licensing Program*, 26 March 2015
- AFI 61-301, *The Domestic Technology Transfer Process and the Offices of Research and Technology Applications*, 30 May 2001
- Title 37, Code of Federal Regulations, Part 404, *Licensing of Government Owned Inventions* current edition
- Defense Federal Acquisition Regulation Supplement (DFARS), Part 227, Subpart 227.70, *Infringement Claims, Licenses, and Assignments*, current edition
- Title 28 United States Code Section 1498
- Title 35 United States Code Section 183

Prescribed Forms

- AF Form 1279, *Disclosure and Recording of Invention*

AF Form 1981, *Invention Evaluation*

AF Form 1280, *Invention Rights Questionnaire*

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

AFI—Air Force Instruction

AFRIMS—Air Force Records Information Management System

DOD—Department of Defense

DODD—Department of Defense Directive

HAF—Headquarters, Air Force

RDS—Records Disposition Schedule

SORN—System of Record Notice

Terms

Assignment—A transfer of an entire right or other legal interest from one party to another as part of a contract, obligation, or gift.

Copyright—The exclusive right granted under Title 17, United States Code, to the owner of an original work to reproduce and to distribute copies or phonorecords, to make derivative works, and to perform or display certain types of the works publicly.

Employee—Any uniformed member or civilian employee, including part-time consultants and part-time employees, of the Department of the Air Force.

Intellectual Property—A category of intangible rights associated with protecting products of the human intellect, source indicators in the marketplace, or certain other commercial interests. These rights traditionally are granted or recognized through patent, copyright, trademark, and trade secret law. A group of rights closely associated with these rights include publicity rights, moral rights, rights against unfair competition, and rights related to semiconductor mask works and ship hull designs.

Invention—A potentially patentable device or process resulting from skill or ingenuity including, but not limited to, the following: (1) a new and useful process, machine manufacture, composition of matter, and improvements thereof, (2) an asexually reproduced, distinct, and new variety of plant other than a tuber-propagated plant or a plant found in any uncultivated state, and (3) any new, original, and ornamental design for an article of manufacture.

Invention Disclosure—A written description of an invention or discovery in such full and complete terms as to allow an easy understanding thereof, a thorough evaluation of Air Force interest therein, and a patentability search thereon.

Inventor—An employee or other person, acting alone or in concert with another, who makes an invention or discovery, whether or not patentable under the patent laws of the United States.

Invention Evaluation Board—A multi-person and preferably multi-disciplinary body that reviews invention disclosures and evaluation information submitted by Air Force personnel to determine whether an invention has sufficient value to justify patent protection, and what types of protection (e.g., domestic and foreign protection) are appropriate.

License—Unless qualified, the term “license” means any one of an exclusive, partially exclusive, and nonexclusive license granted under the authority of Title 35 United States Code Section 207 *et seq.*

Made—As it is used in the context of official duties, “made” means that point in time when the employee (i) has performed all of the mental or experimental work or a combination thereof necessary to accomplish his or her purpose so that he or she is able to clearly demonstrate to a person of ordinary skill in the art or science that his or her invention is operable and practicable, and (ii) has actually disclosed the invention fully and completely to others in some tangible form.

Patent—A grant issued by the Government, giving the owner the right to exclude all others from making, using, or selling the patented invention within the United States, its territories and possessions. The term “patent” includes utility, design, and plant patents.

Servicing Patent Counsel—A legal office designated by AFMC/JA to provide patent-related services to Air Force activities, such as filing patent applications, processing invention disclosures, and handling patent security reviews. A list of the servicing patent counsels can be obtained from AFMC/JAQ.

Secrecy Order—An order by the Commissioner for Patents, U.S. Patent and Trademark Office, requiring an inventor that has filed a patent application to keep the invention described therein secret. The determination to impose such an order requires the Commissioner for Patents to withhold the publication of the patent application or the grant of a patent while the order remains in effect.

Subject Invention—Any invention conceived or first actually reduced to practice in the performance of a contract or other funding agreement.

Trademark—Any word, name, symbol, device, or any combination thereof used to identify the source of goods or services and to distinguish them from those of another.

Attachment 2

SAMPLE FORMAT FOR REQUESTING PERMISSION

SAMPLE FORMAT FOR REQUESTING PERMISSION
(LETTERHEAD)

[DATE]

MEMORANDUM FOR: [Name of copyright owner or agent]
[Address]

FROM: [Name of Air Force Activity]
[Address]

SUBJECT: Request for Copyright License

1. [Name of Air Force activity] requests your permission as copyright owner or legally authorized agent for the copyright owner to [reproduce, create derivative works from, publicly perform] the identified material for the following purpose by or for the U.S. Air Force:

[Identification of the copyright protected work by title, including version or edition, if any]
[Specific portion of the work to be reproduced or publicly performed]
[Intended use of the copyright protected work]
[Any contemplated modifications to the copyright protected work]

2. If the requested permission is granted, please sign below and return this original letter in the enclosed self-addressed envelope. A copy of this letter is included for your records.

[complimentary close]
[signature of requester]
[title]

PERMISSION:

The above requested permission is granted, royalty-free. A notice of copyright and credit line is desired as follows (if none, leave blank):

I hereby certify that I have the authority to grant this permission.

Date: _____ By: _____

Title: _____

Signature: _____

Attachment 3

SAMPLE TEMPLATE OUTSIDE PUBLISHING RELEASE

SAMPLE TEMPLATE OUTSIDE PUBLISHING RELEASE
(LETTERHEAD)

[DATE]

MEMORANDUM FOR: [Name of publisher or publisher’s agent]
[Address]

FROM: [Name of Air Force Activity]
[Address]

RE: [Title of Air Force Employee-authored Work, including version, etc., (the “Work”)]
[Author Name]
[Publication purpose (journal article, book, book chapter(s), etc.)]

SUBJECT: Request for Copyright Release

1. [Name of publisher or publisher’s agent] has requested the assignment or license of copyright rights in the Work, referenced above, together with agreement of other rights and obligations. The Work is a work of the United States Government, as it was authored as part of the official duties of a U.S. government employee, and copyright protection is not available for the Work within the United States under 17 U.S.C. § 105; however, foreign rights in the Work may accrue to the United States Government under applicable foreign law.

2. The Department of the Air Force authorizes [name of publisher or publisher’s agent] use of the Work, [author’s name], [employing organization], [position], [title], [general background information for attribution purposes, consistent with applicable ethics law] for the referenced publication purpose [also include name of journal or other work if the Work will form part of a larger collection or compilation.] As a condition of publishing, we request that the publisher include a statement specifically identifying the Work as a work of the U.S. Government and informing the reader that the Work is not protected by U.S. copyright law, but that foreign copyright law may apply. This statement should be located together with the foregoing information relating to the author of the Work.

The Department of the Air Force asserts that this memorandum is sufficient publishing authorization.

Date: _____ By: _____
Title: _____