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This instruction implements Air Force Policy Directive (AFPD) 51-3, *Civil Litigation*, 21 May 1993 and references Air Force Instruction (AFI) 51-303, *Intellectual Property--Patents, Patent Related Matters, Trademarks and Copyrights*, 01 Sep 1998, and addresses the issue of copyrights as it relates to the publication of books, papers, and other "works for hire" that are generated by United States Air Force Academy (USAFA) staff, military members, Visiting Professors, and contractors. Refer recommended changes and conflicts between this and other publications to HQ USAFA/JA, 2304 Cadet Drive, Suite 2100, USAF Academy CO 80840, on Air Force (AF) Form, *Recommendation for Change of Publication*. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with AFMAN 37-123, (will convert to AFMAN33-363), *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule (RDS) located at <https://afrims.amc.af.mil>. See **Attachment 1** a Glossary of References and Supporting Information.

**SUMMARY OF CHANGES**

This document is substantially revised and must be completely reviewed.

1.	Policy .....	3
2.	General Rule: .....	3
3.	What is a copyright? .....	3
4.	Typical Events that Generate Copyright Issues. ....	4
5.	Works of the Government and Copyright. ....	4
6.	Compensation for Teaching, Speaking and Writing. ....	5
7.	Restrictions on Employees who have a Copyrightable Interest in a Work. ....	6
8.	Works Generated by Visiting Professors and in Collaboration with Visiting Professors. ....	7

9.	Generation of Works by Contractors. ....	7
10.	Compilation of Works into a Book Intended for Publication. ....	8
11.	Requests for "Works" under the Freedom of Information Act (FOIA). ....	8
12.	Responsibility of Government Officers, Agents and Employees. ....	9
13.	Fair Use. ....	10
14.	Infringement Claims and Litigation. ....	11
15.	Delegations of Authority. ....	12
16.	Information Collections, Records, and Forms. ....	12
<b>Attachment 1— GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION</b>		<b>13</b>
<b>Attachment 2— EDITOR COPYRIGHT ASSIGNMENT AGREEMENT BETWEEN THE DEPARTMENT OF THE AIR FORCE AND</b>		<b>16</b>
<b>Attachment 3— AUTHOR COPYRIGHT ASSIGNMENT AGREEMENT BETWEEN THE DEPARTMENT OF THE AIR FORCE AND</b>		<b>19</b>

**1. Policy :** It is the policy of the Air Force Academy to honor copyrights owned by others and to obtain releases or assignments when the Academy hires contractors to generate copyrightable works. The Air Force Academy is a federal academic institution that is subject to certain federal laws and regulations that do not apply to civilian academic institutions. These federal laws and regulations restrict the actions of members of the Air Force Academy who are government employees. These restrictions arise in both the copyright and ethics arenas and will be fully addressed in this instruction.

**2. General Rule:** The government does not "own" copyrights unless it purchases or receives assignments of a copyright from an individual or entity that owns a copyright. It typically obtains a nonexclusive license of varying scope for use of copyrighted works; unless the ownership, title, to a copyright is necessary to protect the government's interest and further the government's mission. For example, if the ownership of a copyright furthers the mission of the organization by ensuring the maximum distribution of the work; or, if ownership would allow control of licensing to maximum the commercial use of the work, ownership would be justified.

### **3. What is a copyright?**

3.1. A copyright is a Constitutional right codified in Title 17, United States Code (U.S.C.), Copyrights. Copyright protection subsists in original works of authorship fixed in any tangible medium of expression. Works of authorship include: literary works, musical works, dramatic works, choreographic works, pictorial, graphical or sculptural works, sound recordings, architectural works, databases, software, and digital works.

3.2. A copyright establishes exclusive legal rights for authors over their works for a limited period of time. Such rights include:

3.2.1. Copying the works (including parts of the works);

3.2.2. Making derivative works: i.e., a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, any other form in which a work may be recast, transformed, or adapted, or a work consisting of editorial revisions, annotations, elaborations, or other modification which, as a whole, represent an original work of authorship;

3.2.3. Distributing the works;

3.2.4. Performing the works: i.e., showing a movie or playing an audio recording, as well as performing a dramatic work; and

3.2.5. Electronic transmission of a work.

3.3. Rights of an author begin when the work is created. That is, the author's rights begin when the work is "fixed," not when the work is conceived. A copyright notice is no longer required to put the public on notice that the author has a copyright in a work. Copyright protections attach for a limited period of time, as per the Constitutional requirement that "[secures] for limited times to authors and inventors the exclusive right to their respective writings and discoveries. For "works" created after 1978, copyright protection for a work of an individual author lasts for the life of the author plus 70 years. Copyright protection for "works made-for-hire" last for 95 years from publication or 120 years from creation, whichever comes first (see 17 U.S.C. 302). "Works made-for-hire" generally include "works" made by employees for their employer.

3.4. Copyrights are granted in order to protect an individual's original work and also possible derivatives there from. Copyrights also protect the author's right to be compensated for others' use of his or her original "work". This protection automatically attaches to a work as soon as it is "fixed" in a tangible medium. For example, merely reciting an original poem to an audience is insufficient to obtain copyright protection for that poem. Rather, the poem must be recorded or placed in written form for copyright protection to attach. Note that registration, designation, or notice is not necessary to generate the copyright protection. However, registration and notice is required (and recommended) in order for the copyright holder to take advantage of all protections afforded to him or her under the Copyright Act.

3.5. A copyright protects the "expression" of the work, not the idea, procedure, process, system, method of operation, concept, principle, or discovery contained within the work. The exclusion of facts and ideas from copyright protection promotes the public policy goal of promoting the progress of science and useful arts. Likewise, the facts contained within a database are not subject to copyright protection. Rather, the presentation and organizational scheme of the database, itself, is what is protected by copyright.

3.6. Copyright protection only extends to the reproduction and distribution of the "works". It does not restrict access to them. This means that the public has a right to inspect the works without regard to copyright interests.

#### **4. Typical Events that Generate Copyright Issues.**

4.1. Publication of a book, chapters of books or articles by a professor, cadet or contractor at the Academy.

4.1.1. Preparation and performance or publication of movies, slideshows, lectures, presentations by a professor, cadet or contract at the Academy.

4.2. Publication of papers given at a conference attended by Academy personnel.

4.2.1. Who owns the copyright: the author, the Government, the publisher, a university, a contractor, or some other third party?

4.3. Deliverables that are paid for by the government under a contract.

4.3.1. Does the agreement include a government use license?

4.3.2. Does the agreement transfer copyright ownership to the government?

4.4. A deliverable is the "work" that is to be delivered under the contract. Examples include a book, paper, drawing, painting, etc.

4.4.1. Does the contract include a government use license?

4.4.2. Does the agreement transfer copyright ownership to the government?

#### **5. Works of the Government and Copyright.**

5.1. If a government employee (See also Paragraph 9. below, Generation of Works by Contractors) prepares a work as part of his or her official duties the work does not have copyright protection. See 17 U.S.C. 105. As a result, there is no copyright that can be transferred or assigned in this work. Often, publishers will require authors to assign their copyright interest to the publisher using a form letter. If

the "work" was created as part of his or her official duties, authors should use the section signifying that the "work" was created by the government. If this option is not available, consult your servicing legal office. (See Paragraph 15. below, Delegations of Authority)

5.2. A government employee can secure a copyright in a work written (1) at that person's own volition and (2) outside of his or her duties. This is true even if the subject matter of the work involves the professional field of the official or employee.

5.3. Whether a particular work is prepared as part of employee's official duties requires a case-by-case inquiry that weighs the following (non-exhaustive) list of factors. No one factor is dispositive. The author should consult his or her servicing judge advocate for advice prior to writing. (See Paragraph 15. below, Delegations of Authority)

- 5.3.1. Was preparation of the work listed in the employee's job description or key duties in an official performance report?
- 5.3.2. Was the employee directed to create the work by superiors?
- 5.3.3. Was the employee a high-ranking official whose duties should be interpreted broadly?
- 5.3.4. Was the work created, in whole or in part, on government time?
- 5.3.5. Was the work created, in whole or in part, using government resources?

## **6. Compensation for Teaching, Speaking and Writing.**

6.1. An employee, including a special government employee, shall not receive compensation from any source other than the Government for teaching, speaking, or writing that relates to the employee's official duties. The following criteria are taken from 5 C.F.R. 2635.807 (a)(2)(i) (B)-(E), Outside Activities. If the work falls under one of the following, then compensation cannot be accepted. Note that the definition for "official duties" for compensation in ethics is different than the one for copyright in paragraph 5.3. above.

- 6.1.1. The activity is undertaken as part of the employee's official duties as set forth in the employee's job description;
- 6.1.2. The circumstances indicate that an employee has been invited to engage in generating the work primarily because of his or her official position rather than the individual's expertise on the particular subject matter.
- 6.1.3. The employee has been invited to engage in the generation of a work or been offered compensation for the generation of a work, directly or indirectly, by a person who has an interest that may be affected substantially by performance or nonperformance of the employee's official duties;
- 6.1.4. The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information (See 5 C.F.R. 2635.703(b), Use of Nonpublic Information); or
- 6.1.5. Unless an employee is serving as a "Special Government Employee", the subject of the activity deals in significant part with
  - 6.1.5.1. Any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period; [and]
  - 6.1.5.2. Any ongoing or announced policy, program or operation of the agency.

6.1.5.3. See 5 C.F.R. 2635.807(a)(2)(i)(E)(4) for an explanation of Special Government Employee.

6.1.6. If an employee's work does not fall under one of the above, the next step is to determine if:

6.1.6.1. The employee's work specially and significantly overlaps with the substantive work of the Academy. If so, the work should be considered part of the employee's official duties.

6.1.6.2. The work is the result of an employee's individual choice rather than the result of a specific tasking by an academic department. If so, it supports a finding that the work is not part of the employee's official duties.

6.1.6.3. The work is self directed, self motivated by the employee as part of the employee's desire to enhance his or her professional standing in the profession. If so, it also supports a finding that the work is not part of that employee's official duties for ethics purposes.

## 7. Restrictions on Employees who have a Copyrightable Interest in a Work.

7.1. If an employee possesses a copyright in a work, the employee may have a conflict of interest regarding the acceptance of payments or royalties from the publication or sale of the work to others. In order to avoid these conflicts of interest, the employee should seek an ethics opinion from his or her servicing legal office (See Paragraph 15. below, Delegations of Authority) prior to negotiation of any such agreement.

7.2. If a work is generated as part of an employee's official duties, the employee is authorized to use Government resources,

7.3. If a work is generated as a non-commercial personal work, and it is to be presented to a nonprofit professional association, learned society, or to be published in a professional journal, the employee may make limited use of Federal Government equipment and administrative support services to prepare such works, when:

7.3.1. The work is related to the employee's official position or to Department of Defense (DoD) functions, management or mission;

7.3.2. The Academy can derive some benefit from the participation or preparation, such as expansion of professional expertise by Academy employees or improved public confidence derived from the professional recognition of the Academy's employee's competence; and,

7.3.3. The preparation of the work does not interfere with the performance of the employee's official duties.

7.3.4. Further guidance is found in Joint Ethics Regulation (JER, DoD 5500.7- R) §3-300, Participation, and a formal ethics opinion from the servicing legal office (See Paragraph 15. below, Delegations of Authority) is suggested prior to initiation of a project to generate a work for this non-commercial purpose.

7.4. If a work is being generated for a commercial purpose and is not part of an employee's official duties, the employee must obtain permission from the head of the department if any use of Government resources is anticipated. **Note:** No assistance from government employees is authorized to support such a project. Because of the potential of a JER violation, the employee should obtain an "advance" ethics opinion from his or her servicing legal office (See Paragraph 15. below, Delegations of Authority) prior to using Government resources. JER §2-301, subsection (b), Official Use of Fed-

eral Government Resources, provides guidance for the use of Government resources for commercial purposes. Before Government resources can be used, a formal determination must be made that:

- 7.4.1. The use does not adversely affect the performance of official duties by the DoD employee or organization;
- 7.4.2. The use is of reasonable duration and frequency, and made only during the DoD employee's personal time such [as] after duty hours or lunch periods;
- 7.4.3. The use serves a legitimate public interest (such as support local charities or volunteer services to the community; enhancing the professional skills of the DoD employee; job-searching in response to Federal Government downsizing);
- 7.4.4. The use does not put Federal Government resources to uses that would reflect adversely on DoD or the DoD Component (such as involving commercial activities; unofficial advertising, soliciting or selling; violation of statute or regulation; and other uses that are incompatible with public service); and
- 7.4.5. The use creates no significant additional cost to DoD or the DoD Component.

## **8. Works Generated by Visiting Professors and in Collaboration with Visiting Professors.**

8.1. If a Visiting Professor prepares a work, that work will most likely be copyrightable. The rights to the copyright should be controlled by the Agreement between the government and the college or university. If possible, the government should obtain an assignment of the Visiting Professor's copyright so the public can enjoy the benefit of that work without copyright restrictions.

8.2. When Visiting Professors work with government employees to create works, the copyright interest of the Visiting Professors needs to be resolved. If the Visiting Professor retains a copyright interest in the work, that work may not be releasable as a public document and any subsequent publication must address the Visiting Professor's copyright interest.

8.3. As a matter of policy, a Visiting Professor should grant the government a special purpose license to the copyrighted work so the government can use the work for its intended purposes. If the Visiting Professor will not grant the license, that issue should be raised and addressed by the Head of the Department. The Visiting Professor's copyright interest must be established prior to generation of the work and documented by the Department. This documentation is necessary to defend infringement claims and is also necessary as part of any future FOIA analysis.

## **9. Generation of Works by Contractors.**

9.1. If a contractor employee prepares a work that is eligible for copyright protection, the rights to the copyright are governed by the contract. Care should be taken to ensure that the copyright issues are addressed and represent the intent of the parties.

9.2. As a general rule, the government acquires only a nonexclusive license in copyrighted works prepared under a funding agreement, (i.e., procurement contract, grant cooperative agreement) or under a cooperative research and development agreement (CRADA). If the government has specific need to control the distribution of works first produced, created, or generated in the performance of the funding agreement or CRADA, an alternate clause, known as a special works clause, must be substituted in the agreement.

9.3. If the government has a significant interest in the work being generated and wants the public to have open access to the work, the government should purchase the copyright interest. The purchase of the copyright interest must be addressed during the negotiation of the contract to avoid restrictions on the use of the document by the contractor after the work is completed.

## **10. Compilation of Works into a Book Intended for Publication.**

10.1. If a department intends to compile articles, papers, charts, or other copyrightable documents into a book, the copyright interests of the authors should be addressed.

10.2. The department must take one of the following steps with each of the articles, papers, charts, or other copyrightable documents that it intends to compile to address copyright issues when it intends to compile documents with copyrightable interests:

10.2.1. Obtain a release of copyright from all authors prior to publication;

10.2.2. Negotiate a copyright license that is sufficiently broad to address the government intended use of the book once published; or

10.2.3. Purchase the copyright as government property.

10.3. The supporting legal office shall provide the necessary support needed to provide the department with the appropriate legal documents required to address these copyrightable interests.

10.4. Databases are also an issue when evaluating technical reports and results of research that are to be published. Facts cannot be copyrighted, but the selection, arrangement, and display of the facts may be copyrighted if the treatment of these facts is sufficiently original to support copyright protection.

## **11. Requests for "Works" under the Freedom of Information Act (FOIA).**

11.1. All FOIA requests should be reviewed by your supporting legal office. Particular attention should be paid to proprietary and (or) personal information that may be protected from disclosure under trade secret law, Privacy Act restrictions and medical data disclosure under the Health Insurance Portability and Accountability Act (HIPAA).

11.2. If a work has no copyright, it, generally, may be reproduced and published without restriction. It is a work that is in the public domain. Such works include works of the U.S. Government and works for which copyrights have expired. Note that the lack of a copyright symbol © does not necessarily indicate that the work is in the public domain. Consult with your supporting legal office prior to making any decision regarding the public domain status of the work you wish to use.

11.2.1. The internet raises special copyright concerns because copyright interests may not be fully disclosed on the internet but the copyright interests, even if not disclosed, are still enforceable. Particular care should be taken to address copyright issues when citing documents that have been the result of internet searches.

11.3. The following examples highlight situations in which FOIA impacts copyrights and publication restrictions:

11.3.1. If the government sponsors a symposium that includes the delivery of technical or scientific papers, those papers may be released to a publisher under the FOIA and published as long as the individuals who generated those papers assigned their copyrights to the government.

11.3.2. An article or dissertation written by an employee or cadet as part of an Air Force Institute of Technology (AFIT) sponsored degree program is, in almost all cases, not copyrightable and is usually subject to release under FOIA.

11.3.3. An article submitted for publication that was generated as part of an employee's official duties as a government employee is not copyrightable and subject to release under FOIA.

11.3.4. If a government employee generates a book or article as part of his or her official duties, any publisher can request a copy of that work under FOIA and publish it.

11.4. The above examples highlight why it is important to know the copyright status of a work and document the copyright status of works generated by the Academy. The following steps are necessary to document whether or not a work is subject to FOIA:

11.4.1. The department who generates a work must keep a file of any copyrights retained by individuals as a result of the generation of a work.

11.4.2. The department must document the circumstances surrounding the generation of the work and seek a legal opinion from their servicing legal office. (See Paragraph 15. below, Delegations of Authority) Pre-planning is important in order to avoid "selling" copyrights that do not exist; or losing copyrights that could otherwise be protected.

## 12. Responsibility of Government Officers, Agents and Employees.

12.1. Each government officer, agent, and employee acting within the scope of his or her official duties should:

12.1.1. Honor private copyrights and acknowledge the owner's copyrighted material, if it is used in Air Force publications or other officially released material.

12.1.2. Avoid the unauthorized use of copyrighted material. In order to avoid an unauthorized use, first seek permission from the copyright owner as hereinafter provided, but see Paragraph 13.4. below regarding "Fair Use."

12.1.3. Each Air Force activity may seek permission in the form of a license or release to make limited use of copyrighted material without charge. Ordinarily, no need for special formality is required to obtain permission to use copyrighted material free of charge, although requesters should observe the following checklist in requesting permission. The request should:

12.1.3.1. Be for no greater rights than are actually needed.

12.1.3.2. Identify fully the material for which permission to use is requested.

12.1.3.3. Explain the proposed use and state the conditions of use, so that the copyright proprietor or agent need only give affirmative consent to the proposed use.

12.1.3.4. Be submitted in duplicate to the copyright proprietor.

12.1.3.5. Or so that the proprietor may retain one copy and return the other copy signed to evidence assent to the request.

12.1.3.6. Include a self-addressed return envelope.

12.2. When requesting permission to use copyrighted material, without cost, for use by the Academy in the support of its mission, Academy personnel should *not* require:

- 12.2.1. A signature by more than one corporate officer of the corporation that owns the copyright,
- 12.2.2. A raised corporate seal or certificate, or
- 12.2.3. More than one copy of the signed permission or license.

### 13. Fair Use.

13.1. Copyrighted material can be used without paying a license fee or without permission when the use would stimulate productive thought and public instruction without excessively reducing the incentives of individuals to be creative. This use, however, must be "fair" and the factors listed below are considered in determining whether or not the intended use is fair. **Note:** a "fair use" determination is a legal analysis that is highly fact-specific and strictly based upon the facts of each individual situation. Only your supporting legal office should conduct this examination.

- 13.1.1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- 13.1.2. The nature of the copyright work;
- 13.1.3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- 13.1.4. The effect of the use upon the potential market for or value of the copyrighted work.

13.2. The factors referenced in paragraph **13.1.** above are not to be treated in isolation, but are to be treated together. No one single factor is dispositive. Consideration in evaluating these factors include:

- 13.2.1. Whether the use will be used to generate a profit.
  - 13.2.1.1. It is not appropriate to use copyrighted material where the purpose is to generate a profit.
- 13.2.2. Whether the use is limited to a discrete and limited audience within the government.
  - 13.2.2.1. If the use is for a classroom and not for general use, that factor supports a finding of "fair use."
- 13.2.3. Whether the use is planned or spontaneous.
  - 13.2.3.1. If the use is part of a planned curriculum or a spontaneous handout. If the use is spontaneous, it supports a finding of "fair use."
- 13.2.4. Whether the original expression of the copyrighted material is used, or only the facts or ideas contained with the material is used.
  - 13.2.4.1. In no event does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery.

13.3. If there is a question regarding the "fair use" of copyrighted material; the proposed use should be reviewed by the legal office that provides support to the organization proposing the use.

13.4. A copy of each license, assignment or release purchased by USAFA, or any permission (license) obtained without charge, shall be maintained by the purchaser for 6 years. A copy of licenses, assignments or releases totaling over \$2,500 shall be forwarded to Office of the General Counsel, Acquisitions (SAF/GCQ).

13.5. Note that other defenses from unauthorized copyright use may be found in 17 U.S.C. 110. Your supporting legal office should make the decision regarding the applicability of these defenses.

#### **14. Infringement Claims and Litigation.**

14.1. The Judge Advocate General (TJAG) coordinates and controls all claims and infringement actions concerning copyrights. The Commercial Litigation Division, Air Force Legal Services Agency (AFLOA/JACN) is the organization responsible for the investigative handling and administrative determinations of all such intellectual property infringement claims and litigation, including appeals of determination of rights, for TJAG.

14.2. A copyright owner who believes that his or her copyright has been infringed by the Air Force, prior to filing suit against the United States in the United States Court of Federal Claims, may file an administrative claim before the Air Force pursuant to Title 10 United States Code, Section 2386, Copyrights, Patents, Designs, Etc.; Acquisition, for compensation for any liability arising under Title 28 United States Code, Section 1498(a) or (b), Patent and Copyright Cases, Title 17 United States Code, Section 504, Remedies for Infringement: Damages and Profits, Title 35 United States Code, Section 183, Right to Compensation, or Title 22 United States Code, Section 2356, Patents and Technical Information.

14.3. Claims settlement authority may be re-delegated for settlement amounts not exceeding \$100,000. The Secretary has delegated authority to settle claims pertaining to intellectual property matters under the above cited authority (see paragraph 13.) to TJAG. Consistent with that delegation, the Secretary has designated TJAG as the organization that represents the Air Force in all civil litigation, and that takes all actions necessary to protect the Air Force when its interests may be affected. The Intellectual Property Branch, Commercial Litigation Division, Air Force Legal Services Agency (AFLOA/JACN-P), with the assistance of the Office of the Staff Judge Advocate, Air Force Materiel Command, (AFMC/JA) as requested, directs those activities pertaining to intellectual property law matters.

14.4. AFLOA/JACN-P, with assistance from AFMC as requested, will investigate each claim for copyright infringement filed before the Air Force that complies with the requirements of Defense Federal Acquisition Regulation Supplement (DFAR) Part 227, Subpart 227.70, Infringement Claims, Licenses, and Assignments, for docketing a claim and take all necessary steps to settle administratively, deny, or otherwise dispose of the claim prior to suit against the United States.

14.5. Office of the Staff Judge Advocate, Headquarters United States Air Force Academy (HQ USAFA/JA) shall forward under cover letter directly to AFLOA/JACN-P each communication asserting or believed to assert a claim of copyright infringement. Forward communications which:

14.5.1. 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.

14.5.2. Request, either expressly or implicitly, compensation because of use.

14.5.3. Offer to grant an assignment of a copyright or a license for its use.

14.5.4. Request that alleged unauthorized use by or for the government cease.

14.5.5. The Air Force activity must state all pertinent facts concerning the claim or allegation that are known, and provide AFLOA/JACN-P with all pertinent documentation.

#### 14.6. Suits for Copyright Infringement--Employees

14.6.1. An employee may bring suit against the United States in the United States Court of Federal Claims under 28 U.S.C. 1498(a) or (b) for copyright infringement, except where:

14.6.1.1. The employee was in a position to order, influence, or induce use of the work of authorship by the government.

14.6.1.2. The work of authorship was related to the official functions of the employee; or

14.6.1.3. Government time, materials, or facilities were used in making or preparing the work of authorship.

#### 15. Delegations of Authority.

15.1. The HQ USAFA/JA is the office of primary responsibility for copyright and ethics issues at the Academy.

15.2. The Department of Law (DFL) is delegated the authority to issue copyright and ethics related opinions to members of the Dean of Faculty (DF).

15.3. All ethics or copyright issues that involve Academy-wide policy, potential litigation, or unusual circumstances are to be forwarded to the HQ USAFA/JA for legal advice and resolution.

15.4. Copies of opinions issued by DFL will be forwarded to HQ USAFA/JA for information and filing.

#### 16. Information Collections, Records, and Forms.

16.1. Information Collections. No information collections are created by this publication.

16.2. Records Accountability. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with AFMAN 37-123, *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule (RDS) located at <https://afrims.amc.af.mil>.

16.3. Forms (Adopted and Prescribed).

16.3.1. Adopted Forms: AF Form 847, *Recommendation for Change of Publication*.

16.3.2. Prescribed Forms: No forms are prescribed by this publication.

MICHAEL A. RODGERS, Colonel, USAF  
Staff Judge Advocate

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

5 U.S.C. 552, *Public Information; Agency Rules, Opinions, Orders, Records, and Proceedings*

5 U.S.C. 551, *Definitions*

10 U.S.C. 2386, *Copyrights, Patents, Designs, etc.; Acquisition*

15 U.S.C. 3710a, *Cooperative Research and Development Agreements*

15 U.S.C. 3710d, *Employee Activities*

17 U.S.C. 504, *Remedies for Infringement: Damages and Profits*

28 U.S.C. 1498(a) and (b), *Patent and Copyright Cases*

17 USC 101, *Definitions*

17 USC 102, *Subject Matter of Copyright: In General*

17 USC 103, *Subject Matter of Copyright: Compilations and Derivative Works*

17 USC 104, *Subject Matter of Copyright: National Origin*

17 USC 104A, *Copyright in Restored Works*

17 USC 105, *Subject Matter of Copyright: United States Government Works*

17 USC 106, *Exclusive Rights in Copyrighted Works*

17 USC 107, *Limitations on Exclusive Rights: Fair Use*

17 USC 108, *Limitations on Exclusive Rights: Reproduction by Libraries and Archives*

17 USC 109, *Limitations on Exclusive Rights: Effect of Transfer of Particular Copy or Phonorecord*

17 USC 110, *Limitations on Exclusive Rights: Exemption of Certain Performances and Displays*

17 USC 117, *Limitation on Exclusive Rights: Computer Programs*

17 USC 302, *Duration of Copyright: Works Created on or after January 1, 1978*

17 USC 501, *Infringement of Copyright*

18 USC 1905, *Disclosure of Confidential Information Mask Works*

17 USC 901, *Definitions*

17 USC 902, *Subject Matter of Protection*

17 USC 904, *Duration of Protection*

17 USC 905, *Exclusive Rights in Mask Works*

17 USC 906, *Limitation on Exclusive Rights: Reverse Engineering; First Sale*

17 USC 911, *Civil Actions*

FAR Subpart 27.4, *Rights in Data and Copyrights*

FAR Subpart 52.227, *Patents, Data, and Copyrights Clauses*

DFARS Subpart 227.4, *Rights In Data and Copyrights*

DFARS Subpart 227.6, *Foreign License and Technical Assistance Agreements*

DFARS Subpart 227.71, *Rights In Technical Data*

DFARS Subpart 227.72, *Rights in Computer Software and Computer Software Documentation*

DFARS Subpart 252.227, *Patents, Data, and Copyrights Clauses*

Freedom of Information Act

Secretary of the Air Force Orders

SAFO 111.5, *Functions and Duties of the General Counsel and the Judge Advocate General*

SAFO 350.4 (Rescinded)

DoD Directive 5535.4, *Copyrighted Sound and Video Recordings*

DoD Directive 5535.7, *License Agreements with Foreign Performing Rights Societies Proprietary Information*

AFPD 51-3, *Civil Litigation*

AFPD 61-3, *Domestic Technology Transfer*

AFI 38-401, *The Air Force Innovative Development Through Employee Awareness (IDEA) Program*

AFI 61-301, *The Domestic Technology Transfer Process and the Offices of Research and Technology Applications*

AFI 61-302, *Cooperative Research and Development Agreements*

JER §2-300, *Gifts*

JER §2-301(b), *Use of the Federal Government Resources*

JER §1-202, *Agency Designee*

5 CFR §2635.807, *Teaching, Speaking, and Writing*

### **Terms**

**Copyright**—The exclusive right granted under Title 17, U.S.C., 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.

**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.

**Special Government Employee**—shall mean an officer or employee of the executive or legislative Branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 during any period of 365 consecutive days, temporary duties either

on a full-time or intermittent basis, or a part-time United States commissioner, a part-time United States magistrate [United States magistrate judge], or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28, Independent Counsel, and any person appointed by that independent counsel under section 594(c) of title 28, Authority and Duties of an Independent Counsel. Notwithstanding section 29(c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of 130 days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee. The terms "officer or employee" and "special Government employee" as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces. (See 18 U.S.C. 202, Definitions; JER 5- 403, Representation of Others).

### ***Contacts***

Office of the General Counsel (Acquisition) (SAF/GCQ), 1740 Air Force Pentagon, Room 4D980, Washington, DC 20330-1740. DSN 426-9036 or 426 9037 Commercial (703) 696-9036 or 9037, Fax Commercial (703) 697-3796 or Fax DSN 426-8579.

Air Force Legal Services Agency, Commercial Litigation Division, Intellectual Property Branch (AFLOA/JACN-P), 1501 Wilson Blvd., Suite 805, Arlington, VA 22209-2403, DSN 426-9034 or Commercial (703) 696-9034, Fax DSN 426-8579.

Air Force Materiel Command Law Office, Directorate of Intellectual Property Law (AFMC LO/JAZ), 2240 B St, Rm 100, Wright-Patterson AFB, OH 45433-7109, Duty Phone/Fax (DSN) 785- 2838/3733.

Office of the Staff Judge Advocate, Electronics Systems Center, Intellectual Property Division, (ESC/JAZ), 40 Wright St, Bldg 1120, Hanscom AFB, MA 01731-2903, Duty Phone/Fax (DSN) 478-4075/4820.

Office of the Staff Judge Advocate, Human Systems Center, Intellectual Property Division (HSC/JAZ), 8005 Chennault Rd, Brooks AFB, TX 78235-5313, Duty Phone/Fax (DSN) 240-5359/4253.

Under Secretary of Commerce-The Under Secretary of Commerce for Technology, U.S. Department of Commerce, Washington, DC 20230.

**Attachment 2**

**EDITOR COPYRIGHT ASSIGNMENT AGREEMENT  
BETWEEN THE DEPARTMENT OF THE AIR FORCE  
AND**

\_\_\_\_\_

This Copyright Assignment Agreement, (hereinafter called "AGREEMENT") is made and entered into by and between the United States of America as represented by the Secretary of the Air Force (hereinafter called "GOVERNMENT") and (EDITOR'S Name), at \_\_\_\_\_(EDITOR'S Address) (hereinafter referred to as "EDITOR") with respect to a Work(s) already prepared or to be prepared by number of different Authors, which may include the EDITOR with the intention that the contribution has been or shall be included in a United States Government produced textbook, website, spreadsheet calculator, or other teaching or reference material, titled:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. EDITOR hereby sells, grants, conveys, assigns and transfers to the GOVERNMENT, all of its right, title and interest in and to the Work(s), including, without limitation, copyrights, renewals and/or extensions thereof for all territories of the world, and all derivative works resulting from the Work(s) covered by this Agreement in consideration for payment of the Work(s) made under Contract No. \_\_\_\_\_ and subject to the retained rights set forth in Paragraph 2. Such assigned rights include, but are not limited to, the right throughout the world to:

(a) edit, print, publish, republish, and distribute the Work(s) and to prepare, edit, print, publish, republish and distribute derivative works based thereon, in any language and in all media of expression now known or later developed; and

(b) to license and permit others to do so.

2. EDITOR retains the rights to:

(a) Retains the right to reproduce or authorize others to reproduce the Work(s), material extracted verbatim from the Work(s), or create derivative works, for the EDITOR's academic and training purposes only, but shall not be for purposes that directly compete with GOVERNMENT's use of the Work(s).

- (b) Make limited distribution for academic and training purposes only of all or portions of the Work(s) prior to publication if Author/Editor informs GOVERNMENT in advance of the nature and extent of such limited distribution.
3. EDITOR represents and warrants that the Work(s):
  - (a) Is original or has in part been obtained from copyrighted works for which the Author/Editor has obtained written permission from the copyright owner,
  - (b) Has not been previously published and is not in the public domain;
  - (c) Owns and has right to convey all rights herein conveyed to the GOVERNMENT;
  - (d) Contains no libelous material or material which may infringe upon or violate the copy right, trademark, trade secret or other right of another;; and
  - (e) That all statements asserted as facts in the Work(s) are either true or based upon generally accepted professional research practices and principles.
4. This Agreement shall commence on the Effective Date and shall continue for the duration of the existing copyright term of the Work(s), and the duration of any renewals or extensions thereof. The Effective Date shall be the latest of the dates after which both parties have signed this Agreement.
5. If any part of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other part or provision of this Agreement, which other part or provision shall remain in full force and effect.
6. This Agreement shall be governed by and construed in accordance with the laws of the United States, as applicable to contracts made and to be performed within the United States, and all disputes had by one party against the other shall be brought in a court of competent jurisdiction the United States under Federal Acquisition Regulation (FAR) clause 52.233-1, *Disputes*, which is hereby incorporated into this agreement (found in full at <http://www.farsite.hill.af.mil>).
7. The waiver of any provision of this Agreement by either party, or the failure of either party to require performance of any provision of this Agreement shall not be construed as a waiver of its rights to insist on performance of that same provision, or any other provision, at some other time. Any effective waiver, modification or amendment must be in writing, and signed by both parties.
8. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, and expressly supersedes any prior written or oral understandings or agreements between them with respect to the subject matter hereof.

SIGNED:

EDITOR:

GOVERNMENT (Contracting Officer):

\_\_\_\_\_ date: \_\_\_\_\_

\_\_\_\_\_ date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

**Attachment 3****AUTHOR COPYRIGHT ASSIGNMENT AGREEMENT  
BETWEEN THE DEPARTMENT OF THE AIR FORCE  
AND**  

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This Copyright Assignment Agreement, (hereinafter called "AGREEMENT") is made and entered into by and between the United States of America as represented by the Secretary of the Air Force (hereinafter called "GOVERNMENT") and (AUTHOR'S name), at \_\_\_\_\_ (AUTHOR Address) (hereinafter called "AUTHOR") and governs a Work(s) already prepared or to be prepared by the AUTHOR with the intention that the contribution has been or shall be included in a United States Government produced textbook, website, spreadsheet calculator, or other teaching or reference material, titled: \_\_\_\_\_

1. AUTHOR hereby sells, grants, conveys, assigns and transfers to the GOVERNMENT, all of its right, title and interest in and to the Work(s), including, without limitation, copyrights, renewals and/or extensions thereof for all territories of the world, and all derivative works resulting from the Work(s) covered by this Agreement in consideration for payment of the Work(s) made under Contract No. \_\_\_\_\_ and subject to the retained rights set forth in Paragraph 2. Such assigned rights include, but are not limited to, the right throughout the world to:
  - (a) edit, print, publish, republish, and distribute the Work(s) and to prepare, edit, print, publish, republish and distribute derivative works based thereon, in any language and in all media of expression now known or later developed; and
  - (b) to license and permit others to do so.
  
2. AUTHOR retains the rights to:
  - (a) Reproduce or authorize others to reproduce the Work(s), material extracted verbatim from the Work(s), or create derivative works, for the AUTHOR's business purposes, but shall not use these rights for purposes that directly compete with the GOVERNMENT's use of the Work(s).
  - (b) Make limited distribution of all or portions of the Work(s) if AUTHOR informs GOVERNMENT in advance of the nature and extent of such limited distribution.
  - (c) First refusal for the creation of any derivative works resulting from the generation of this Work(s).

3. GOVERNMENT agrees :
  - (a) To abide by accepted academic standards in the use of the Work(s), specifically the Work(s) will be published with the name of the Author(s) attached to the Work(s).
  - (b) No part of the Work(s) will be used in a subsequent or derivative work without both a citation of the source and, if a large amount of material is used, without the name of the Author(s) attached.
  - (c) If a portion of the Work(s) is to be modified, updated, changed, or otherwise used in another Work(s), AUTHOR will be given an opportunity to update the material and will be compensated for this update effort at a fair and reasonable rate. For such updates, GOVERNMENT agrees to exert reasonable efforts to contact the recipient. If the AUTHOR declines or is unable to update the Work(s) within a reasonable period of time, the GOVERNMENT is authorized to engage an alternate author to update the Work(s). When the Work(s) is being updated by an alternate author, the chapter, section, or material in question will include the original author's name with an appropriate inscription, such as "based on, or "updated from."
  
4. AUTHOR represents and warrants that the Work(s):
  - (a) Is original or has in part been obtained from copyrighted works for which the Author has obtained written permission from the copyright owner, has not been previously published and is not in the public domain.
  - (b) Is owned by AUTHOR who has the right to convey all rights herein conveyed to the GOVERNMENT.
  - (c) Contains no libelous material or material which may infringe upon or violate the copyright, trademark, trade secret or other right of another.
  - (d) And that all statements asserted as facts in the Work(s) are either true or based upon generally accepted professional research practices and principles.
  
5. This Agreement shall commence on the Effective Date and shall continue for the duration of the existing copyright term of the Work(s), and the duration of any renewals or extensions thereof. The Effective Date shall be the latest of the dates after which both parties have signed this Agreement.
  
6. If any part of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other part or provision of this Agreement, which other part or provision shall remain in full force and effect.
  
7. This Agreement shall be governed by and construed in accordance with the laws of the United States, as applicable to contracts made and to be performed within the United States, and all

disputes had by one party against the other shall be brought in a court of competent jurisdiction the United States under Federal Acquisition Regulation (FAR) clause 52.233-1, *Disputes*, which is hereby incorporated into this agreement (found in full at <http://www.farsite.hill.af.mil>).

- 8. The waiver of any provision of this Agreement by either party, or the failure of either party to require performance of any provision of this Agreement shall not be construed as a waiver of its rights to insist on performance of that same provision, or any other provision, at some other time. Any effective waiver, modification or amendment must be in writing, and signed by both parties.
  
- 9. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, and expressly supersedes any prior written or oral understandings or agreements between them with respect to the subject matter hereof.

SIGNED:

AUTHOR:

GOVERNMENT (Contracting Officer):

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone Number