



INTRODUCTION TO DATA RIGHTS IN US GOVERNMENT CONTRACTS

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Traditional IP vs. U.S. Government Contracts IP

- **Traditional Intellectual Property:**
 - Patents
 - Copyrights
 - Trademarks
 - Trade Secrets
 - Right of Publicity/Right of Privacy
- **Intellectual Property in Government Contracts (Data Rights):**
 - Technical Data (FAR 52.227-14, DFARS 252.227-7013(a)(15))
 - Computer Software (FAR 52.227-14, DFARS 252.227-7013(a)(3))
 - Other modified regulations – e.g., DEAR, NASA

Correcting A Common Misconception

The Government **DOES NOT** own the intellectual property rights in technical data and software developed under Government contracts with Government funding

- In general, the Government gets a broad license in the technology it funds
- Why?
 - ❖ Better deal for the Government and the Contractor
 - ❖ Government can use the IP however it wants
 - ❖ Contractors can reuse the IP for additional ROI
- Some exceptions
 - Government can require ownership in some cases
 - Possible limitations in other FAR/DFARS provisions

What is Licensed?

Technical Data:

recorded information, regardless of the form or method of the recording, of a scientific or technical nature (e.g., white papers, reports, drawings, flow charts, etc.)

Computer Software:

computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated or recompiled

Categories of License Rights

- **Unlimited Rights**
 - Allows Gov't to use data "in any manner and for any purpose whatsoever."
- **Government Purpose Rights (GPR)**
 - Only DFARS (not in FAR)
 - Allows Gov't to use data within USG and authorize others to use for Gov't purposes (including in support of competitive procurements) for 5 years, then automatically become Unlimited Rights (negotiable time period)
- **Practical Difference between Unlimited Rights and GPR?**

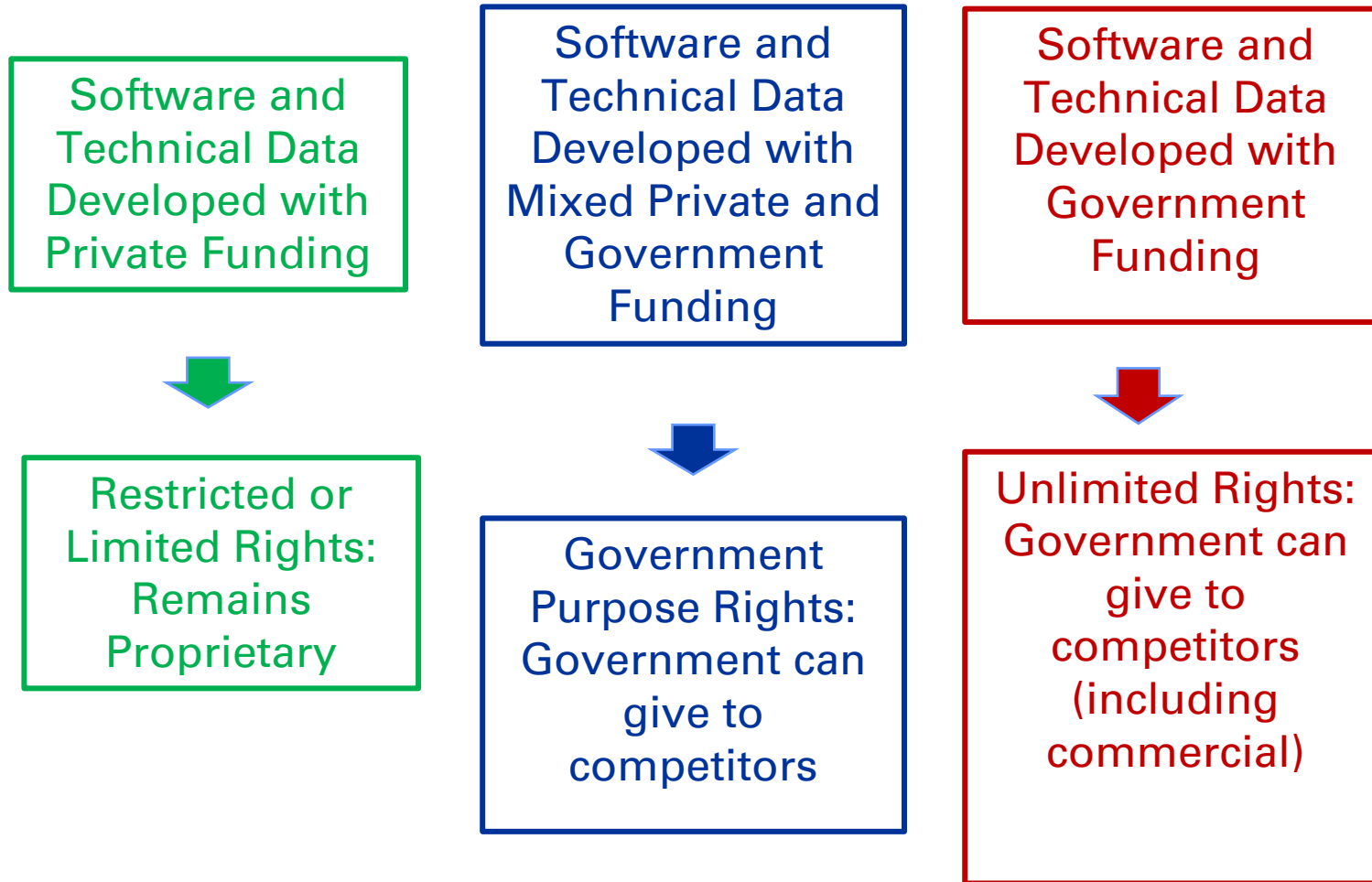
Categories of License Rights

- **Limited Rights for Technical Data**
 - Right to disclose within the Gov't
 - No disclosure outside the Gov't
 - Except for emergency repair
 - Except as needed for segregation and reintegration
 - Remains Proprietary
- **Restricted Rights for Computer Software**
 - Right to use with one computer at one time
 - Right to transfer to another Gov't agency if transferor destroys copy
 - Right to modify the software
 - Remains Proprietary

Categories of License Rights

- **Specifically Negotiated Rights**
 - Standard Gov't rights may be modified by mutual agreement but no less than Limited/Restricted
 - May remain Proprietary
 - Statutory preference to enable better balance of IP between contractor and Government
- **Commercial Licenses**
 - Caveat - Must comply with federal procurement law

Which License Applies? Determined by Funding



Except ...

Under DFARS 272.227-7013, **regardless of funding source**, Government gets **unlimited rights** in:

1. Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;
2. Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;
3. Form, fit, and function data;
4. Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
5. Corrections or changes to technical data furnished to the Contractor by the Government;
6. Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;
7. Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or
8. Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with—
 - Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or*
 - Government purpose rights and the Contractor's exclusive right to use such data for commercial purposes has expired.*

FAR 52.227-14 has similar provisions.

Data Rights Summary

Rights Category	Applies to These Types of TD or CS	Rights Criteria	Permitted Uses Within the Government	Permitted Uses by Third Parties Outside the Government ¹
Unlimited Rights (UR)	Noncommercial TD and CS	Developed exclusively at Government expense, and certain types of data (e.g., FFF, OMIT, CSD)	All uses; no restrictions	All uses; no restrictions
Government Purpose Rights (GPR)	Noncommercial TD and CS	Developed with mixed funding	All uses; no restrictions	For "Government Purposes" only; no commercial use
Limited Rights (LR)	Noncommercial TD only	Developed exclusively at private expense	Unlimited; except may not be used for manufacture	Emergency repair or overhaul ²
Restricted Rights (RR)	Noncommercial CS only	Developed exclusively at private expense	Only one computer at a time; minimum backup copies; modification ³	Emergency repair/overhaul; certain service/maintenance contracts ²
Negotiated License Rights	Any/all TD and CS—including commercial TD and CS	Mutual agreement of the parties; use whenever the standard categories do not meet both parties' needs	As negotiated by the parties; however, must not be less than LR in TD and must not be less than RR in noncommercial CS (consult with legal counsel as other limits apply)	
SBIR Data Rights	Noncommercial TD and CS	All TD or CS generated under an SBIR contract	All uses; no restrictions	Cannot release or disclose except to Government support contractors
Commercial TD License Rights	Commercial TD only	TD related to commercial items (developed at private expense)	Unlimited in FFF and OMIT; other rights as negotiated	
Commercial CS Licenses	Commercial CS only	Any commercial CS or CS documentation	As specified in the commercial license customarily offered to the public ⁴	

Rights ≠ Delivery

- **Data that is used or even created under contract is not necessarily “delivered”**
 - “Inchoate” rights in data not delivered
 - Statements of Work and deliverables can be negotiated to reduce delivery burden
- **Deliverables must be marked with approved marking**
 - Government gets unlimited rights in unmarked data
- **No need for Government marking on data that is not a deliverable**