

**BY ORDER OF THE
SUPERINTENDENT**

**HQ UNITED STATES AIR FORCE ACADEMY
INSTRUCTION 51-303**

15 SEPTEMBER 2003



Law

**PUBLICATION OF BOOKS
AND OTHER "WORKS"**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction implements AFI51-303, *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. See **Attachment 1** a Glossary of References and Supporting Information.

1. Policy: It is the policy of the Air Force Academy to honor copyrights owned by others and to obtain releases 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 academy 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 a copyright from an individual or entity that owns a copyright. It typically obtains a nonexclusive license of varying scope for use of copyrights works.

3. What is a copyright?

3.1. A copyright is the exclusive right granted under 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 copying the works (including parts of the works), making derivative works,

distributing the works, and performing the works (this means showing a movie or playing an audio recording, as well as performing a dramatic work).

3.3. Rights of an author begin when the work is created. A copyright notice is no longer required to put the public on notice that the author has a copyright in a work. Copyright protections attached for an extended period of time. 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. “Works made-for-hire” generally includes “works” made by employees for their employer.

3.4. Copyrights are granted in order to protect an individual’s right to compensation for the original “work”. This protection automatically attaches to a work as soon as it is “fixed” in a tangible medium. No registration, designation or notice is necessary to generate the copyright.

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.

3.6. Copyright protection only extends to the reproduction and distribution of “works”, not access to them which means that the public has a right to inspect them 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 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, 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 prepares a work as part of his or her official duties the work does not have copyright protection, it is considered in the public domain. As a result, there is no copyright that can be transferred or assigned to another. 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 at that person's own volition and outside of his or her duties. This is true even though the subject matter of the work involves the professional field of the official or employee.

5.3. Examining whether a particular work is prepared as part of employee's official duties requires a case-by-case inquiry weighing the following nonexhaustive list of factors. No one factor is dispositive. The author should consult their 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?

5.4. If a work qualifies as a government work, it is subject to the Freedom of Information Act (FOIA) and may be releasable under FOIA. This is a separate analysis that must be conducted before a document is released to the public.

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 has a copyright as a result of generating a work, the employee may have a conflict of interest as regards 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 their 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, including the assistance of other employees, in the generation of that work.

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 their ser-

vising legal office (See Paragraph 15. below, Delegations of Authority) prior to using Government resources. JER §2-301, subsection (b), *Official Use of Federal 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, may or may not be copyrightable. If a Visiting Professor generates a work, the rights to the copyright are 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 copyrightable 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 copyrightable 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 may be copyrighted; the rights to the benefit of 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 fund-

ing 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. This purchase 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 copyrightable interest of the authors needs to be addressed.

10.2. The department must take one of the following steps 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 license to use the copyright that is sufficiently broad to address the government intended use of the book once published;

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.

11. Requests for “Works” under the Freedom of Information Act (FOIA).

11.1. If a work has no copyright; it 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. The following examples highlight examples where FOIA impacts copyrights and publication restrictions:

11.1.1. 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.

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

11.1.3. 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.

11.1.4. 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.

11.2. The above examples highlight why is it 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:

11.2.1. 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.

11.2.2. 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.

11.3. **CAUTION:** Copyrighted material may be released under FOIA. If a department receives a request for documents under FOIA, it needs to be processed as a normal FOIA request and will or will not be released under FOIA guidelines.

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 12.3. 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,

12.2.3. A warranty regarding title, or

12.2.4. More than one copy of the signed permission or license.

12.3. 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 following factors are considered in determining whether or not the intended use is fair:

12.3.1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

12.3.2. The nature of the copyright work;

12.3.3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

12.3.4. The effect of the use upon the potential market for or value of the copyrighted work.

12.4. The factors referenced in paragraph 12.3. 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:

12.4.1. Whether the use will be used to generate a profit.

12.4.1.1. It is not appropriate to use copyrighted material where the purpose is to generate a profit.

12.4.2. Whether the use is limited to a discrete and limited audience within the government.

12.4.2.1. If the use is for a classroom and not for general use, that factor supports a finding of "fair use."

12.4.3. Whether the use is planned or spontaneous.

12.4.3.1. 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."

12.4.4. Whether the original expression of the copyrighted material is used, or only the facts or ideas contained with the material is used.

12.4.4.1. In no event does copyright protection for an original work of authorship extends to any idea, procedure, process, system, method of operation, concept, principle, or discovery.

12.5. 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.

12.6. 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. Office of Primary Responsibility: Office of the Judge Advocate General

13.1. The Judge Advocate General (TJAG) coordinates and controls all claims and infringement actions concerning copyrights. The Commercial Litigation Division, Air Force Legal Services Agency (AFLSA/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. Infringement Claims and Litigation.

14.1. A copyright owner who believes that his or her patent or 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*.

14.2. Claims settlement authority may be redelegated 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 (AFLSA/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.

14.3. AFLSA/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.

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

- 14.4.1. 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.
- 14.4.2. Request, either expressly or implicitly, compensation because of use.
- 14.4.3. Offer to grant an assignment of a copyright or a license for its use.
- 14.4.4. Request that alleged unauthorized use by or for the government cease.
- 14.4.5. The Air Force activity must state all pertinent facts concerning the claim or allegation that are known, and provide AFLSA/JACN-P with all pertinent documentation.

14.5. Suits for Copyright Infringement--Employees.

- 14.5.1. 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:
- 14.5.2. The employee was in a position to order, influence, or induce use of the work of authorship by the government.
- 14.5.3. The work of authorship was related to the official functions of the employee; or
- 14.5.4. 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.

WAYNE H. KELLENBENCE, Col, USAF
Director of Staff, USAF Academy

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

- 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings
- 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
- DFARS Subpart 252.227-Patents, Data, And Copyrights Clauses
- AFPD 51-3, Civil Litigation
- AFI 38-401, The Air Force Innovative Development Through Employee Awareness (IDEA) Program
- 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
- DoD Directive 5535.4, Copyrighted Sound and Video Recordings
- DoD Directive 5535.7 License Agreements with Foreign Performing Rights Societies Proprietary Information
- 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 Freedom of Information Act

5 U.S.C. 551. Definitions

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)

Air Force Policy Directives

AFPD 61-3, Domestic Technology Transfer

Air Force Instructions

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

AFI 61-302, Cooperative Research and Development Agreements

DoD Joint Ethics Regulations

JER §2-300, Gifts

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

JER §1-202, Agency Designee

Code of Federal Regulations

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, *Domestic and Foreign Protection of Federally Owned Inventions*.

SAF/GCQ—Office of the General Counsel (Acquisition), 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.

“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*).

Air Force Legal Services Agency, Commercial Litigation Division, Intellectual Property Branch (AFLSA/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. ESC/JAZ-Office of the Staff Judge Advocate, Electronics Systems Center, Intellectual Property Division, 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.