

DTIC® Guidelines for Determining Copy Rights

Purpose

Because R&D managers and STI information center staff are often uncertain about what to do with documents that come to them with copyright notices, these guidelines have been written to help managers and staff in determining Government rights in copyrighted works. However, they are not a substitute for professional legal advice: *Because the copyright law is complex and situation-based, consult your agency legal counsel with specific copyright questions.*

1) Is this a document authored by Government employees?

If yes, it is NOT COPYRIGHTED and the Government may reproduce and distribute the work.

2) Is this document a joint work by Government and non-Government authors?

If yes, the Government may reproduce and distribute works made jointly by non-Government parties and Government employees working within the scope of their Government jobs.

3) Is this a document produced by work done under Government contract?

If yes, the contractor usually owns the copyright and the Government has certain rights to the work. Generally the Government has unlimited or Government purpose rights and may reproduce and distribute the work.

4) Is this document the result of work done under a federally-funded grant?

If yes, the grantee usually owns the copyright and the Government has certain rights to the work. Generally the Government has unlimited or Government purpose rights and may reproduce and distribute the work.

5) Was this document received under an agreement, partnership or exchange?

If yes, the Government may have Government purpose rights in accordance with the agreement and may reproduce and distribute the work.

6) If none of the above apply, is your use a "fair use?"

If not, DO NOT reproduce or distribute without permission!

Definitions

PUBLIC RELEASE

"Public release" means information which is publicly disclosed and disseminated through open sources. The majority of public release information is copyrighted and available through newspapers, books, magazines, television, and the Internet. U.S. Government information that is publicly releasable has undergone appropriate security and policy reviews by agency Public Affairs Offices, and has been declared for open publication. Federal laws and agency policies govern the public release of U.S. Government information. Examples include Department of Defense [Directive 5230.9](#), Clearance of DoD Information for Public Release, 9, 1996, ASD(PA) and [DoD Instruction 5230.29](#), Security and Policy Review of DoD Information for Public Release.

PUBLIC DOMAIN

"Public domain" means information that is both public release and not copyrighted. Public

domain works may be used by anyone, anywhere, anytime without permission, license or royalty payment. A work may enter the public domain because the term of copyright protection has expired, because copyright has been abandoned, or because it is a U.S. Government work and there is no other statutory basis for the Government to restrict its access. Not all Government information is in the public domain. Only "Government Works" - a subset of the broad category of Government information - are in the public domain. Government works are created by officials and employees of the U.S. Government as part of their official duties. Contractors and grantees are not considered Government employees; generally they hold copyright to works they produce for the Government. Additionally, a privately created work (e.g. quote, photograph, chart, drawing, etc.) used with permission in a U.S. Government work does not place the private work in the public domain. Therefore, it is important to read the permissions and copyright notices on U.S. Government publications and Web sites. Many Government agencies follow the practice of providing notice for material that is copyrighted and not for those that are in the public domain. Some examples of Government agency copyright policies and statements are:

◆ [National Archives and Records Administration Copyright, Restrictions and Permissions Notice](#)

◆ [National Agriculture Library](#)

GOVERNMENT PURPOSE RIGHTS LICENSE

is a nonexclusive, irrevocable, paid-up royalty-free worldwide license to use, modify, reproduce, release, perform, display or disclose the work by or on behalf of the Government. Under a Government Purpose Rights License, the Government may use the work within the Government without restriction, and may release or disclose the work outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the work for Government purposes.

FAIR USE

As stated in ◆ [17 USC §106](#) the owner of copyright has the exclusive rights to do and to authorize others to do any of the following with their copyrighted work: reproduce copies, prepare derivative works, distribute copies, perform publicly or display publicly. A "fair use" of a copyrighted work may include the practice of any of the exclusive rights provided by copyright, for example, reproduction for purposes such as criticism comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.

The "fair use" limitation found at ◆ [17 USC §107](#), is not defined in the statute and does not provide a bright line rule for determining what is or is not a fair use. Rather it identifies four factors which should be evaluated on a case-by-case basis in order to determine if a specific use is "fair". These factors, which should be considered together when determining fair use, are:

1. Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. Nature of the copyrighted work;
3. Amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. Effect of the use upon the potential market for or value of the copyrighted work.

The distinction between "fair use" and infringement can be unclear and is not easily defined. There is no right number of words, lines or notes that qualify as a fair use.

INTERNET

The Internet is another form of publishing or dissemination; therefore, copyright applies to Websites, e-mail messages, web-based music, etc. Simply because there is access to the information does not mean that the information is in the [public domain](#). Read carefully for copyright notices. As in the print environment, it is not necessary for an author to include a copyright statement on the material in order for the work to maintain its copyright protection. It may be necessary to review notices on the home page or on special terms and condition pages to find some of these notices that apply to materials on the site.

It is important to read the permissions and copyright notices on U.S. Government Web sites. Many Government agencies follow the practice of providing notice for material that is copyrighted and not for those that are in the public domain. Some examples of Government agency copyright policies and statements are:

- ◆ [National Library of Medicine](#)
- ◆ [Smithsonian Institution Copyright Terms and Conditions](#)
- ◆ [Library of Congress](#)

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1) Is this a document authored by Government employees?

If yes, it is **NOT COPYRIGHTED** and the Government may reproduce and distribute the work.

Background

- ◆ [17 USC §105](#), **Subject matter of copyright: United States Government works**, states that "Copyright protection is not available for any work of the United States Government," defined in ◆ [17 USC §101](#), as a work prepared by an officer or employee of the United States Government as part of that person's official duties.
- Standard publishing industry practice requires authors to transfer their copyright to publishers. Although publishers acknowledge that works authored by U.S. Government employees are not copy protected and are in the public domain in the U.S., they are not obligated in publication to mark or note these works as exempt from permissions, royalties, and copyright fees. Often no notice is given or it may appear along with the publisher note.
- If an article is written by a Government employee as part of his or her official duties and the publisher does not add copyright protected content, then the Government may reproduce and disseminate an exact copy of the published work either in paper or digital form. [\[1\]](#)
- A publisher or individual can publish a U.S. Government work, but the publisher or individual cannot assert copyright unless they added original, copyright protected material such that the resulting published work is a derivative work based on the Government work.

Copyright for a derivative work extends only to the original material that has been added. If the Government work is published without change in anthology or compilation form, such as a journal or conference proceeding, the publisher's copyright extends only to the selection and arrangement of the material as a whole. The publisher or editor cannot claim copyright on any part that is a Government work, such as an article or paper that is included in the collection. ♦ [17 USC §403](#), **Notice of Copyright: Publications incorporating United States Government works** states that a notice of Government works is not required, but there may be loss of statutory protections for the copyright claimant if it is not used.

- However, copyright protection is available for works prepared by Government employees outside of their official duties and certain works of the National Institute for Standards and Technology and the U.S. Postal Service are protected by copyright.

What to Look for and Where to Look

What?	Where?
Author Biographical Information	Usually found at the bottom of either the first or last page
Organization/ Agency Affiliation	Usually found after or below the author's name. Sometimes found in biographical note
Copyright Notice	Usually found at the bottom of the first page (generally in very small print)

Sample Statements

- *The text of this article is in the public domain pursuant to Sec. 105 of the Copyright Act of 1976.*
- *"This is a work of the U.S. Government and is not subject to copyright protection in the U.S. Foreign copyrights may apply."*
- *"This material is declared a work of the U.S. Government and is not subject to copyright protection in the United States."*
- *"This work was prepared by a U.S. Government employee and, therefore, is excluded from copyright by Section 105 of the Copyright Act of 1976."*
- *"This article is the work of a U.S. Government employee, and therefore, is a work of the U.S. Government and is not protected by copyright law."*

DTIC Full-Text Examples

Note: These examples are full-text versions in Adobe PDF format. Linking to these AD numbers will require access to the DTIC Technical Reports database [\[2\]](#) and the Adobe Acrobat Reader software.

♦ [ADA382134](#) - "Fire Suppression Efficiency Screening Using a Counterflow Cylindrical Burner"

♦ [ADA379526](#) - "Aerobic Degradation of Dinitrotoluenes and Pathway for Bacterial Degradation of 2,6- Diitrotoluene."

2) Is this document a joint work by Government and non-Government authors?

If yes, the Government may reproduce and distribute works made jointly by non-Government parties and Government employees working within the scope of their Government jobs

Background

- A "joint work" is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole. (See: ◆[17 USC §101](#)) The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary. (See: ◆[17 USC §201](#).)
- Government is in the position of a joint author when a Government employee and a non-Government person together create a joint work. As a joint author the Government has the right to copy, distribute and use the work.

If a joint work is interdependent, contributions are generally created independently by separate co-authors with the intention to merge them into a unitary whole, and therefore they comprise separable parts. One should be able to isolate the contributions of a U.S. Government employee from the contributions of a non-Government employee. If, on the other hand, co-authors collaborated on much or all of a joint work, it will be considered inseparable, and it may be impossible to determine where the contributions of one author end and the other author or authors begin. In either case, while the Government is a joint owner of the "entire work" (i.e., the unitary whole), the law on how much of the "entire work" is protected by copyright is unsettled and is open to differing interpretations. The notes following section 201 of the Copyright Act (17 U.S.C §201) state that, "Under the bill, as under current law, co-owners of a copyright would be treated generally as tenants in common, with each co-owner having an independent right to use or license the use of a work, subject to a duty of accounting to the other for any profits."

That joint authors each have the right to copy and distribute the work is well established. See *Herbert v. United States* 36 Fed. Cl. 229 (1996). *Herbert* is a case decided by the US Court of Federal Claims, which is the court that has the jurisdiction over copyright infringement claims against the Government. Additionally, a US House of Congress report (H.R. Rep No. 1476, at page 121, cited in *Herbert*) says that each joint author has an independent right to use the work.

The Government is the owner of works made by Government employees in the scope of their employment and is regarded as their author. This is so because of the "works

made for hire" doctrine of 17 USC 201(b). Instances where a court recognized that the Government owns works created by its employees made in the course of their federal employment are *The Reporters Committee for Freedom of the Press v. Vance*, 442 F. Supp. 383 (D.C.D.C. 1977) and *Scherr v. Universal Match Corporation*, 417 F. 2d 497 (C. A. 2 1969).

Since the Government is the "author" and owner of works created by federal employees in the scope of their employment, and since joint authors can each copy and distribute the joint work, the Government can copy and distribute works made jointly by non-Government parties and employees working within the scope of their Government jobs.

What to Look for and Where to Look

What?	Where?
Copyright Notice	Usually found at the bottom of the first page.
Acknowledgement	Usually found at the end of the article before the bibliography.
Author biographical information	Usually found at the bottom of either the first or last page
Organization/Agency affiliation	Usually found after or below the author's name. Sometimes found in biographical note

Sample Statements

- Some of the authors of this manuscript are military service members or employees of the U.S. Government. This work was prepared as part of their official duties. Title 17, USC 105 provides that "Copyright protection under this title is not available for any work of the United States Government." Title 17 USC 101 defines a United States Government work as a "work prepared by a military service member or employee of the U.S. Government as part of that person's official duties."*

DTIC Full-Text Example

Note: These examples are in a full-text version in Adobe PDF format. Linking to these AD numbers will require access to the DTIC Technical Reports database and the Adobe Acrobat Reader software. [\[2\]](#)

◆ [ADA393278](#) - *"Interrelationships of Malnutrition and Diarrhea in a Periurban Area Outside Alexandria, Egypt"*

◆[ADA383517](#) - "Ventilation-Perfusion Alterations after Inhalation Injury in an Ovine Model"

◆[ADA455680](#) - "The Wireless Network Jamming Problem (Preprint)"

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3) Is this a work done under Government contract?

If yes, the contractor usually owns the copyright and the Government has certain rights to use the work. Generally the Government has unlimited or Government purpose rights and may reproduce and distribute the work.

Background

- Generally, contractors own the copyright in the works they create under a Government contract unless there is particular wording in the contract that assigns or transfers it to the Government. Civilian agencies and NASA are guided by the ◆[Federal Acquisition Regulations \(FAR\)](#). The Department of Defense (DoD) is guided by the ◆[Defense Federal Acquisition Regulation Supplement \(DFARS\)](#) Subpart 227.4 and Part 211 and Part 252.
- The FAR requires that any contractor claiming copyright ownership to material first produced under a Government contract, affix an acknowledgement of Government sponsorship on all copies delivered to the Government, on all published copies, and on all copies deposited with the U.S. Copyright Office (FAR 27.404(f)(1)(v)). The DFARS does not have a similar requirement.
- Under the DFARS, the Government typically gets unlimited rights to use the work in any manner and for any purpose. However, the contract may reduce the Government's rights to either Government purpose or limited/restricted rights.

What to Look for and Where to Look

What?	Where?
Acknowledgement that cites the sponsoring agency and/or contract number.	Usually found at the end of an article before the bibliography.

Sample Statements

- *"This work was made possible by EOARD contracts F6170896WW029, F6177598WE045, and F170899WW095."*
- *"COPYRIGHT STATUS: Documents authored by (contractor) employees, was funded in whole or in part by (federal agency) under U.S. Government contract (number), and is, therefore, subject to the following license: The Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in these documents to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. All other rights are reserved by the*

copyright owner."

DTIC Full-Text Examples

Note: These examples are full-text versions in Adobe PDF format. Linking to these AD numbers will require access to the DTIC Technical Reports database [\[2\]](#) and the Adobe Acrobat Reader software.

◆ [ADA3556300](#) - "Electroactive and Photoactive Nanostructured Materials from Self-Organized Rod-Coil Copolymers: Synthesis and Electroluminescent Devices."

◆ [ADA379621](#) - "Emergency Planning Council. Denver Conference Proceedings."

◆ [ADA377625](#) - "Proceedings of the 2000 Space Control Conference."

◆ [ADA455649](#) - "Fast Multi-Spectral Liquid-Crystal-On Silicon Spatial Light Modulators (Preprint)"

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4) Is this work done under a federally-funded Grant?

If yes, the grantee usually owns the copyright and the Government has certain rights to the work. Generally, the Government has unlimited or Government-purpose rights and may reproduce and distribute the work.

Background

- The data rights clauses in Grants and Cooperative Agreements are flexible but generally allow the recipient to assert copyright. When identified in the grant, the federal awarding agency reserves a paid-up royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.

What to Look for and Where to Look

What?	Where?
Acknowledgement	Usually found within the first few pages of a technical report or at the end of the article before the bibliography.

Sample Statement

- *"This work relates to Department of Navy Grant N00014-99-1-1014 issued by the Office of Naval Research International Field Office Europe. The United States has a royalty-free license throughout the world in all copyrighted material contained herein."*

Full-Text Examples

Note: These examples are full-text versions in Adobe PDF format. Linking to these AD numbers will require access to the DTIC Technical Reports database [\[2\]](#) and the Adobe Acrobat Reader software.

◆ [ADA358570](#) - *"Proceedings of the Tenth International Winterschool on New Developments in Solid State Physics."*

◆ [ADA375135](#) - *"Electromagnetic Effects on System Reliability."*

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5) Is this a work received under an agreement, partnership or exchange?

If yes, the Government may have Government purpose rights in accordance with the agreement and may reproduce and distribute the work. DTIC examples of these include works published by:

- ◆ [National Defense Industrial Association \(NDIA\)](#)
- ◆ [NATO Research Technology Organization \(RTO\)](#)
- ◆ [United Kingdom. Defence Science and Technology Laboratory \(DSTL\)](#)
- ◆ [Australian Defence Science and Technology Organization \(DSTO\)](#)

6) If none of the above apply, is your use a "fair use?"

If not, **DO NOT** reproduce or distribute without permission!

Background

- [Fair use](#) of copyrighted material includes the use of protected materials for non-commercial educational purposes, such as teaching, scholarship, research, criticism, commentary, and news reporting.
- U.S. Department of Justice Office of Legal Counsel opinion, [\[3\]](#) dated April 30, 1999, Subject: Whether Government Reproduction of Copyrighted Materials Invariably is a "Fair Use" under Section 107 of the Copyright Act of 1976. states that the U.S. Government does not have any special rights to use copyrighted information.
- While Government reproduction of copyrighted material for Governmental use would in many contexts be non-infringing because it would be a 'fair use' under 17 USC §107, there is no 'per se' rule under which such Government reproduction of copyrighted material invariably qualifies as a fair use. The Congress specifically provided that a work protected by

copyright laws could be "infringed by the United States. 28 USC §1498(b) (1994)." (See also H.R. Rep. No. 86-624, at 2 (1959) "When the Government deliberately publishes a copyrighted article without obtaining the prior consent of the copyright proprietor, the general assumption would be that the owner, pursuant to the principles of 'just compensation' under the fifth amendment of our Constitution, should be entitled to an action against the Government for infringement.")

- Permission is not needed if the work is clearly in the public domain, is a fair use, or if the intended use is covered by a license or agreement. In all other cases it should be assumed that permission must be sought
- If you want to contact the rights owner for a permission, license or release, the best place to start is with the work itself. Look for the rights owner identification in the work. Most owners will be apparent, particularly for relatively current works. Affiliation may also be somewhat indicative of ownership or may help to locate the individual author, but is not in itself definitive. The copyright statement and exemptions are often printed on the back of the title page in books. However, identifying the specific owner may be more difficult for journal articles, gray literature and older works.
- When requesting permission, reasonable rights should be requested, covering the intended uses of the work and considering potential uses in the future. Copyright owners generally treat permissions as being more informal than licenses. Permissions are usually royalty-free, so the rights requested should be reasonably narrow. Licenses and often releases are obtained with a payment. However, in all cases, consideration should be given to platforms/formats, geographical or marketing areas, duration, warranties and indemnities for incorrect information, one-time only or multiple uses, and current version versus revisions.

For examples of permission letters, see:

- [U.S. Air Force Instruction AFI 33-360](#), Publications and Forms Management Program. Paragraph 2.17.6.1, Copyrighted and Contributed or Loaned Material, dated 18 May 2006 .
- [U.S. Army Regulation AR 25-30](#). *The Army Publishing and Printing Program*. Section 2-5, Copyright Material, dated 27 Mar 2006.

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Notes

1 [Matthew Bender & Co. v. West Publishing Co.](#), 158 F.3d 674 (2d Cir. 1998), cert. denied, 119 S. Ct. 2039 (1999)

2 [DTIC Scientific and Technical Information Network \(STINET\)](#)

3 [U.S. Department of Justice, Office of Legal Counsel, Washington, D.C. 20530 , April 30, 1999: MEMORANDUM FOR ANDREW J. PINCUS, GENERAL COUNSEL, DEPARTMENT OF COMMERCE FROM: Randolph D. Moss, Acting Assistant Attorney General](#)