Copyright Issues and DoD Funded Research

Vakare Valaitis
Policy Analyst, DTIC User Services
• The views expressed are those of the librarian author and not those of the United States Government or the U. S. Department of Defense

• The information presented here is not to be construed as legal advice

• This presentation is not subject to copyright protection in the United States

• Reference herein to any specific commercial products, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government
• DoD Scientific and Technical Information (STI) & some examples
• STI in the federal sector - CENDI
• Copyright and intellectual property working group
  – Copyright FAQ
  – Open source software FAQ
  – Best practices
  – Mass digitization
  – Public access policy
• Copyright fun facts
• Intangible personal property interest in original creative ideas or creative means of expressing ideas that are protected by statute, regulation and case law. IP includes:
  – Patents - right to exclude others from making, using or selling an invention
  – Trademarks - word, name, symbol used in commerce to identify a source of goods
  – Trade secrets - information that
    (1) has economic value by not being known to the public, and for which
    (2) the owner takes reasonable steps to protect from disclosure
  – Copyrights - exclusive right to copy, distribute, perform, display and modify a creative work
Intellectual Property (cont)

- Federal statutes permitting patenting and copyrighting have been enacted under the authority of Article 1, Section 8 of the U.S. Constitution, which states:
  
  “The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”

- Intellectual property laws provide an incentive to inventors and authors (the acquisition of possible wealth) and to industry (the improvement of their competitive position)
Copyright Guidance

The Defense Technical Information Center (DTIC) is a U.S. Government agency and provides information on this Web site as a public service of the U.S. Department of Defense. It includes both material that is and is not protected by copyright law.

What is not protected by Copyright.

U.S. Government works prepared by officers and employees of the U.S. Government as part of their official duties are not protected by copyright in the U.S. (See 17 USC §105). These works may be copied and distributed in their entirety without permission. Users should note and attribute the U.S. Government agency and private author when incorporating works of the U.S. Government in a copyrighted publication. (See 17 USC §403)

Caution: Be advised that government works may contain copyrighted material (e.g., quote, photograph, chart, drawing, etc.) used with permission. Copyrighted material incorporated in a U.S. Government work retains its copyright protection. Permission from the copyright holder may be necessary if you wish to reproduce this material separately in another context.

What is protected by Copyright.

Contractors and grantees are not considered Government employees; generally they hold copyright to works they produce for the Government. Other non-Government organizations and authors, including foreign governments and international organizations, also hold copyright in their works.

U.S. Government Uses of Copyrighted Works

DTIC provides copyrighted materials under a nonexclusive, irrevocable, paid-up royalty-free worldwide license which permits the U.S. Government to use, modify, reproduce, release, perform, display or disclose these works by or on behalf of the U.S. Government. Federal employees and agencies may use these works in accordance with the Government data rights license.

General Public Uses of Copyrighted Works

The Government license in copyrighted materials is non-transferable to the public. The Copyright Law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Based on your analysis, you may need to seek permission from the copyright owner if your intended use of copyrighted information is beyond the limitations on author exclusive rights allowed by law (17 USC §107 - §122).

DTIC Products

Databases and some publications created by DTIC staff are works of the U.S. Government. These may be reproduced or used without permission. DTIC should be acknowledged as the source. Credit byline: Defense Technical Information Center. U.S. Government Work (17 USC §105)

Technical Reports Database

Citations not copyrighted

Citations to individual documents in the DTIC Technical Report (TR) Database are created by DTIC federal employees. These are U.S. Government works and may be reproduced or used without permission from DTIC.

Full-Text documents may be copyrighted

Individual full-text documents will have different copyright conditions that will be noted on those documents or in the citation.
Copyright Management Categories

- Category 1: Authored by government employees within the scope of their government jobs
- Category 2: Jointly authored by government employees working within the scope of their job and non-government parties
- Category 3: Authored by contractor or grantee for which the government has an unlimited license
- Category 4: Authored by others who grant the government permission for unlimited public release
- Category 5: Authored by contractors & grantees; published journal articles & conference papers
- Category 6: All other copyrighted works
A “work of the United States Government” is a work prepared by an officer or employee of the United States Government as part of that person’s official duties. 17 USC §101

100% written by a government employee

Does not matter how or where published – whether as a monograph, book chapter, technical report, journal article, in a conference proceeding or on the web

No copyright
• Created jointly by non-government parties and government employees working within the scope of their government jobs
• The non-government author holds a copyright in the work
• The government is co-owner of the work
• Co-owners of a copyright are generally treated as tenants in common, with each co-owner having an independent right to use or license the use of a work
• Contractors and grantees hold copyright to works they produce for the government

• The government generally* has a nonexclusive, irrevocable, paid-up royalty-free worldwide license which permits the U. S. Government to use, modify, reproduce, release, perform, display or disclose these works by or on behalf of the U. S. Government

• The government license in copyrighted materials is non-transferable to the public

*The government’s rights in works created by the non-federal authors depends on the terms of the contract or other governing legal instrument
• A work received under an agreement, partnership or exchange

• DTIC examples of these include works published by:
  – National Defense Industrial Association (NDIA)
  – North Atlantic Treaty Organization (NATO), Research and Technology Organization
  – United Kingdom, Defense Science and Technology Laboratory
  – Australia, Defense Science and Technology Organization
  – Canada, Defense Research and Development Canada
Journal Articles & Conference Papers

- Contractor or grantee-authored journal articles or conference papers that are copyrighted by third parties with whom the government does not have a direct business relationship
- Government has limited data rights through acquisition regulations for government use and distribution
- Storage in a non-public archive/system is permitted; display and use by federal employees are permitted
Accession Number: ADA559974
Title: Gravitational Lens: Deep Space Probe Design
Descriptive Note: Master's thesis
Corporate Author: AIR FORCE INST OF TECH WRIGHT-PATTERSON AFB OH SCHOOL OF ENGINEERING AND MANAGEMENT
Personal Author(s): Davis, Berkley R
Report Date: Mar 2012
Pagination or Media Count: 164

- Kindle ($5.95) and paperback ($12.95) editions available on Amazon
- “AIR FORCE INST OF TECH” 1,143 results for Books – starting at $200.00
1. Work of the U. S. Government
   – Title 10 U.S.C.
   – DoD Directive 5230.09

2. Paperwork Reduction Act, P.L. 104-13 § 3506 (4)(B)
   – [ ] agency shall[ ]not, except where specifically authorized by statute[ ]restrict or regulate the use, resale, or re-dissemination of public information by the public

Scientific and Technical Information (STI)
in the Federal Sector
• Interagency group of senior federal STI managers
• 12 member agencies manage over 97% of the annual federal research and development (R&D) budget
• CENDI began with four agencies and took its name from the beginning letter of each member agency:
  - COMMERCE – National Technical Information Service (NTIS)
  - ENERGY – Office of Scientific and Technical Information (OSTI)
  - NASA – Scientific and Technical Information Program (STI)
  - DEFENSE – Defense Technical Information Center (DTIC)
  - INFORMATION
CENDI STI Managers Group

- Department of Energy - OSTI
- National Transportation Library (NTL)
- National Library of Medicine (NLM)
- Environmental Protection Agency (EPA)
- Library of Congress (LC)
- U.S. Geological Survey (USGS)
- Department of Education (Ed)
- Department of Homeland Security (DHS)
- National Agricultural Library (NAL)
- National Archives and Records Administration (NARA)
- National Science Foundation (NSF)
- National Technical Information Service (NTIS)
- National Aeronautics & Space Administration (NASA)
- Department of Defense (DTIC)
Copyright & Intellectual Property

Working Group

• Monitors copyright and intellectual property issues and legislation nationally and internationally
• Identifies and monitors best practices in identifying both the government’s and public’s rights to information created, published, disseminated or used by the government
• Identifies common issues and areas for cooperation among the CENDI members
• 66 members - 95% federal attorneys
Frequently Asked Questions About Copyright

Issues Affecting the U.S. Government
CENDI 2008-1
October 8, 2008

Prepared by
CENDI Copyright Working Group

Edited and updated by
Bonnie Klein
Defense Technical and Information Center
and
Gail Hodge
Information International Associates, Inc.

Published by
CENDI Secretariat
Information International Associates, Inc.
Oak Ridge, TN
October 2008

Purpose and Use of This Document

This document is prepared by the CENDI Copyright Task Group in response to a request from the task group members and CENDI principals to address the issue of copyright from an operations perspective. In 1997, the CENDI Task Group identified a series of questions concerning copyright and intellectual property. These were documented as part of the Task Group's report, "Copyright and Intellectual Property: Operational Issues for CENDI Agencies." Realizing that it was not in a position to provide guidance for any particular agency, CENDI developed the concept of a Frequently Asked Questions document (FAQ) that could be used to educate librarians, information center staff, publications staff and agency authors about copyright.

The Copyright Law is complex and situation-based. Therefore, professional counsel for specific cases is advised. However, it is also hoped that this document will serve as a template for the development of agency Office of General Counsel approved documents that can provide more specific guidance for the individual agencies. It should be noted that this document primarily addresses U.S. Copyright Law as provided at Title 17 of the United States Code (17 USC - Copyright) and Title 37 of the Code of Federal Regulations, Chapter II (GFR, Chapter II - Copyright Office, Library of Congress).

Copyright Notice
This is a work of the U.S. Government and is not subject to copyright protection in the United States. Foreign copyrights may apply.

Notice of Change
The information presented in this FAQ is subject to changes enacted by U.S. Government policies, legislation and case law. Direct comments about this document to copyright@dtic.mil.

TABLE OF CONTENTS

1.0 Glossary of Terms
2.0 Copyright Basics
3.0 U.S. Government Works
4.0 Works Created Under a Federal Contract or Grant
5.0 Use of Copyrighted Works
6.0 Applicable Copyright Legislation and Other Resources on the Internet

Frequently Asked Questions About Copyright

http://www.cendi.gov/publications/04-8copyright.html

DISTRIBUTION STATEMENT A. Approved for public release.
Defense Technical Information Center (DTIC)
http://www.dtic.mil
Working Group - Projects

CENDI 2009-1

Frequently Asked Questions about Copyright and Computer Software

Issues Affecting the U.S. Government with Special Emphasis on Open Source Software

Copyright and Intellectual Property

Working Group - Projects

Permissions - Government-Prepared and Non-federal Authored Works:

*Best Practices for U.S. Government Agencies*

*Part 1*

Working Group - Projects

“Permissions - Part 2”

– Expected Publication Date – late 2015 or early 2016
– Will include scenarios taken from real workplace situations, for example:
  • Images
  • Music
  • Text including translations
  • Works produced under government contracts
  • Audiovisuals
  • Sculptures
Copyright and Intellectual Property

Working Group - Projects

• “Mass Digitization”
• Clarifies the assumption that all U.S. Government documents are in the public domain

Working Group - Projects

- Public Access to the results of Federally Funded Research
  - Legal considerations
- Is Public Access a Federal Purpose?
- Author transfer of copyright
- Government rights?
  - Submitted manuscript: yes
  - Accepted manuscript: yes
  - Published article: no
Copyright Fun Facts

• Sherlock Holmes and the Case of the Vanishing Copyright
  – 4 novels, 46 stories in public domain, 10 stories protected until 2022
  – U.S. federal district court recently ruled on which elements are protected and which are not. Guide for Sherlock fan-fic writers:
    • Fair game: cocaine use, martial artist, 221B Baker Street, Watson, Watson’s first wife
    • Off limits: Watson’s athletic background, Watson’s second wife, Holmes’ retirement

• “Happy Birthday To You” in the public domain?
  – The court held that the tune to “Happy Birthday,” originally written for a song called “Good Morning To You,” is in the public domain. The court remained uncertain about the lyrics

• Goebbels: A Biography by Peter Longerich Random House 2015
  – Heirs sued the publisher for royalties because biography used extracts from his diaries
  – Debate focuses on whether or not it is appropriate for money to go to a war criminal
Disclaimer of Endorsement

Reference herein to any specific commercial products, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government, and shall not be used for advertising or product endorsement purposes.
Vakare Valaitis
Policy Analyst
DTIC User Services
vakare.k.valaitis.civ@mail.mil
703-767-9159