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**DoD Instruction 5010.44, Intellectual Property (IP) Acquisition and Licensing  
Rapid Deployment Training (RDT)**



# Agenda

- Overview - DoD Instruction (DoDI) 5010.44, Intellectual Property (IP) Acquisition and Licensing
- Table of Contents – List of Sections Titles
- Summary of Sections 1-4
- Implementation Considerations
- DAU Educational Current and Future Resources



# Overview - DoDI 5010.44

**Originating Component:** Office of the Under Secretary of Defense for Acquisition and Sustainment

**Effective:** October 16, 2019

**Purpose:**

- Establishes policy, assigns responsibilities, and prescribes procedures for the acquisition, licensing and management of IP
- Establishes the DoD IP Cadre
- Designates the Assistant Secretary of Defense for Acquisition (ASD(A)) as the senior DoD official overseeing development and implementation of DoD policy and guidance for acquisition, licensing, and management of IP for DoD



# Table of Contents – DoDI 5010.44 Sections

- Section 1: General Issuance Information
- Section 2: Responsibilities
- Section 3: The IP Cadre
- Section 4: IP Implementation Guidance



# Section 1: General Issuance Information

- **Applicable to:** OSD, Military Departments, Office of the Chairman of the Joint Chiefs of Staff, Combatant Commands, Office of Inspector General of Department of Defense, Defense Agencies, DoD Field Activities and all other organizational entities within DoD (i.e. DoD Components);
- **Not applicable to:** (a) Licensing or other technology transfer of U.S. Government-owned IP or technology covered by DoD Directive 5535.09; (b) Branding and trademark licensing by DoD Components covered by DoD Directive 5535.09 and DoD Instruction 5535.12
- **DoD Policy to acquire, license, and manage IP to:**
  - Enable coordination and consistency across DoD Components in developing and implementing strategies for acquiring and licensing IP and communicating with industry
  - Ensure program managers are aware of rights and obligations of Government and contractors in IP and consider and use available techniques and best practices for acquiring and licensing IP early in the acquisition process
  - Encourage customized IP strategies for each system based on characteristics of the system and its components, product support strategy, organic industrial base strategy of the military department and commercial market



# Section 1: General Issuance Information Cont.

- **Core Principles Governing Acquisition, Licensing, & Management of IP:**
  - Integrate IP planning into acquisition strategies and product support strategies to protect core DoD interests over entire life cycle
  - Ensure acquisition professionals have relevant knowledge of how IP matters relate to their official duties; cross-functional input and coordination critical to planning and life-cycle objectives
  - Negotiate specialized provisions for IP deliverables and associated license rights to effectively balance DoD and industry interests than standard or customary license rights
  - Communicate clearly and effectively with industry regarding planning, expectations and objectives for system upgrade and sustainment
  - Respect and protect IP resulting from technology development investments by both the private sector and the U.S. Government
  - Clearly identify and match deliverables with the license rights in the deliverables



## Section 2: Responsibilities

- **ASD(A)** – Senior DoD official overseeing development/implementation of DoD IP policy and guidance; manages IP cadre (experts in the acquisition, licensing and management of IP)
- **DAU President** – In collaboration with IP Cadre, develops and updates IP curricula and reference materials, makes use of lessons learned from case studies; provides and continuously improves IP training
- **DoD GC** – provides legal advice and services in support of DoDI 5010.44 and the IP Cadre
- **DoD Component Heads with Acquisition Authority or Contract Administrative Responsibilities** –
  - Oversee implementation of DoDI 5010.44 and identify IP Cadre matters
  - Ensure program personnel engaged in all stages of the acquisition life cycle have relevant knowledge of Government and contractors IP rights and obligations re: IP matters, IP law and regulations, program management, logistics, contracts, data management, valuation etc.
  - Incorporate consideration of types of IP deliverables and level of associated license rights into source selection evaluation factors and as negotiation objectives in sole-source awards
  - Facilitate coordination and consistency across DoD strategies for determining IP deliverables and rights necessary for operation, maintenance, modernization, sustainment



## Section 2: Responsibilities Cont.

- **DoD Component Heads with Acquisition Authority or Contract Administrative Responsibilities Cont. -**
  - Incorporate IP planning elements into acquisition strategies, emphasizing the criticality of long-term analysis and planning during the earliest phases of the program
  - Communicate clearly and effectively with industry on IP matters early in program life cycle
  - Explore ways to share appropriate details with industry about the program's IP strategy and product support strategy
  - Acquire necessary IP deliverables and associated license rights at fair and reasonable prices, while supporting product support and reuse strategy; improve quality of financial analysis and valuation
  - Ensure IP strategies identify and enable actions to ensure return on U.S. Government investment in IP developed at USG expense
  - Ensure IP deliverables (e.g. technical data and computer software) and associated license rights are acquired and managed
  - Establish and maintain IP management procedures to ensure time-sensitive actions are executed to avoid unintentional loss of IP rights, e.g., inspection and acceptance of IP deliverables, challenge and validation of asserted restrictions on deliverable IP, exercise of time-limited contract options for IP deliverables or IP rights





## Section 3 – IP Cadre

- **Purpose:** Facilitates development and use of competent and consistent approaches across DoD for acquiring, licensing, and managing IP by providing timely expert advice to the acquisition workforce on IP matters; advise, assist, and provide resources to DoD Components on IP matters at various stages of system life cycle
- **Under ASD(A) authority, direction and control – OSD IP Cadre** consists of a director and subordinate organizational elements and members; interacts with DoD Components to facilitate consistent approach; **Responsibilities:** coordinate actions and exchange information with DoD organizations; identify and distribute best practices; interface with Congress, industry, academia, other organizations; support development of requirements for training and credentialing the acquisition workforce; provide assistance to DoD Components within scope of IP Cadre roles and responsibilities
- **IP Cadre Members Roles and Responsibilities**
  - Issue and interpret policies relating to acquisition, licensing and management of IP
  - Advise and assist in development of acquisition strategy, product strategy and IP strategy for a system
  - Conduct or assist with financial analysis and valuation of IP
  - Assist program offices in drafting relevant IP provisions in solicitations, contracts, OTAs and licenses
  - Assist contracting officers in interactions with contractors (e.g. communications, negotiations)



## Section 3 – IP Cadre Cont.

### • **IP Cadre Members Roles and Responsibilities**

- Issue and interpret policies relating to acquisition, licensing and management of IP
- Advise and assist in development of acquisition strategy, product strategy and IP strategy for a system
- Conduct or assist with financial analysis and valuation of IP
- Assist program offices in drafting relevant IP provisions in solicitations, contracts, OTAs and licenses
- Assist contracting officers in interactions with contractors (e.g. communications, negotiations)
- Assist contracting officers in the conduct of challenges to contractors' asserted restrictions on IP or if IP deliverables are incomplete or don't comply with contract terms
- Coordinate with DAU, academia and industry to develop and update IP curricula and reference materials (e.g. guidance, training courses, case studies)
- Address management of IP deliverables and IP rights to support creation and sustainment of a competitive environment, from inception through sustainment
- Facilitate coordination and consistency across DoD in strategies for determining IP deliverables and IP rights for operation, maintenance, modernization and sustainment.



# IP Cadre Point of Contacts

- **OSD** – Mr. Richard Gray, Director IP Cadre, Assistant Secretary of Defense Acquisition (Acquisition)/Acquisition Enablers/Acquisition Approaches and Management/IP Cadre
- **Army** – Mr. Brian Raftery, Acting Deputy Assistant Secretary of the Army (Strategy and Acquisition Reform)(DASA-SAR)
  - **Contact Alternate-** Ms. Glenna Downes, Acquisition Policy Specialist, DASA-SAR
- **Navy** – Mr. Daniel Nega, Deputy Assistant Secretary of the Navy (Air Ground)
  - **Contact Alternate** – Mr. Richard Tschampel, Deputy Assistant General Counsel, Research, Development & Acquisition
- **Air Force** – Ms. Angayurkanni (Kanna) Annamalai-Brown, Chief of the Air Force Smart IP Cadre
  - **Contact Alternate-** Mr. Matt Bailey, Director, Intellectual Property Law, Office of the General Counsel, Acquisition Law Division
- **DAU**– Ms. Vicki Allums, Learning Director, Intellectual Property
  - **Contact Alternate-** Mr. Mark Dvorscak, Professor of Acquisition Management (Intellectual Property), Defense Systems Management College



## Section 4: IP Implementation Guidance

- **IP Strategy** – DoD programs must have a robust IP strategy to identify and manage full spectrum of IP and related matters (e.g. technical data and computer software deliverables, patented technologies, license rights) from program inception and throughout life cycle
- **IP strategy will describe, at a minimum:**
  - Assessment of long-term program requirements, ownership costs of IP deliverables, associated license rights necessary for competitive and affordable operation maintenance, modernization, and sustainment over product life cycle
  - IP and related matters support use of modular open systems approaches will be addressed
  - Customized IP strategies based on, at a minimum, common, shared, and unique characteristics of system and its components, system architecture and interfaces, product support strategy
  - Consider use of specially negotiated licenses to acquire customized IP deliverables (e.g. technical data, computer software) and associated license rights
- **DoD Component Requirements**
  - Use direct competition at various levels and indirect means (e.g. best value considerations over life cycle) to create competition to improve performance and cost control
  - Use available techniques and best practices for developing and refining requirements (IP developed at private expense)
  - Use all available techniques and best practices (e.g. MOSA) when cost effective and feasible
  - Information



# DoDI 5010.44 Implementation Considerations

- **1) Are your program and contracting offices complying with the core principles identified in Section 1?**
- **2) Are you working with your IP Cadre Point of Contact, Contracting and IP attorneys and other SMEs?**
- **3) Does your program have an IP strategy, which includes the elements identified in Section 4, as an element of a acquisition strategy?**
- **4) In developing the IP strategy, have you and a cross-functional team (e.g. PM, KO, SME (e.g. technical, financial), Contracting and IP attorneys, considered the following questions:**
  - What type of data or technology (e.g. GOTS, COTS or hybrid) do you need?
  - If COTS, will the vendor need to reconfigure or integrate into a Govt. platform or system?
  - What does this mean from a technical perspective?
  - How will you use it (short and long-term)?
  - What type of data rights do you need?
  - What's your budget and what does the data cost (short and long-term)?
  - Are all the stakeholders (e.g. KO, PM, Technical SMEs, Contracting & IP attorneys) at the table during all contract phases?
  - Do you have a meeting of the minds with the vendor?
- **5) Has the program management office considered and complied with the requirements in Section 4.2?**
- **6) Has the program management and contracting office complied with separate military IP policies and implementing guides?**
  - **Army** - [https://armypubs.army.mil/epubs/DR\\_pubs/DR\\_a/pdf/web/ARN14261\\_AD2018\\_26\\_Final.pdf](https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/ARN14261_AD2018_26_Final.pdf)  
Implementation Guide -<https://armypubs.army.mil/Publications/Administrative/POG/CPOG.aspx>
  - **Air Force** - To access, please contact DAU at [IPDR@dau.edu](mailto:IPDR@dau.edu)



# DAU Educational Current and Future IP and Data rights Resources

- CLE 068 – online foundational IP and Data rights module  
[https://icatalog.dau.edu/onlinecatalog/print.aspx?crs\\_id=1911](https://icatalog.dau.edu/onlinecatalog/print.aspx?crs_id=1911)
- IP and Data rights Community of Practice  
<https://www.dau.edu/cop/ipdr/Pages/Default.aspx>
- Future Learning Assets
  - Developing an IP Strategy Workshop/Job aid
  - Foundational IP Valuation module/Job aide