

ADVISORY

PROPER HANDLING OF PROPRIETARY CONTACTOR DATA

Recently an incident occurred in which a TACOM employee may have given proprietary technical data to a contractor without permission from the data's owner. The risk of further such events is heightened by the increased presence of contractor employees working in the same offices, labs or shops as TACOM employees. Many of these contractor employees are doing jobs traditionally done by TACOM employees. It has thus become easier to have conversations, briefings or data exchanges where a contractor's employee unauthorizedly gets proprietary data. All of this is disturbing because the Government can violate a data owner's rights. Additionally, a Government employee can be jailed or fined under 18 USC 1905 for unauthorized release of data.

In view of these circumstances, Government employees who handle proprietary technical data must observe the rules summarized below. The rules are grouped by the type of markings that are put on proprietary data.

1. Restricted Rights or Limited Rights Data. Restricted rights relates to technical data on computer software or software documentation, and limited rights relates to technical data on any other sort of item. The basic rule in either case is that the data can not be released by the Government without permission from the provider of the data. Drawings, disks, documents or other material that have restricted rights data or limited rights data are labeled "Restricted Rights" or "Limited Rights." These materials will also have the contractor's name, the contractor's address and the contract number. With very limited exceptions nobody outside the Government may ever see these materials without the provider's permission. Generally too, no information from these materials can be in a conversation or briefing where nonGovernment people are present.

2. SBIR Rights Data. This relates to data acquired under the Small Business Innovative Research (SBIR) Program. SBIR rights data has the same rules as restricted rights data or limited rights data, except that the restriction on the Government's use of the data expires after a certain period, usually five years. Materials with SBIR rights data will be labeled "SBIR Rights" instead of "Limited Rights" or "Restricted Rights."

3. Government Purpose License Rights (GPLR) Data. This kind of rights can pertain to any sort of item, including software and software documentation. This kind of data can be disclosed to others for governmental purposes only. Briefly, "governmental purposes" means any activity to which the Government is a party. This includes competitive procurements. The recipients of GPLR data must sign an agreement that they will not disclose the data to third parties or use the data for anything but government purposes. Otherwise no information from GPLR materials may be given to people outside

the Government without permission. GPLR materials will bear the legend. "Government Purpose License Rights," the contractor's name, the contractor's address and the contract number.

4. Other Proprietary Data. In most cases, government contractors or business partners are required by regulation to categorize and label technical data they deliver as one of the types discussed in paragraphs 1 through 3 above. In a few other cases, the contractor or business partner can put any restriction or label it desires on technical data. This happens, for example, when a contractor gives the Government technical data without a contractual obligation to do so. In these other cases, Government employees must abide by whatever restrictions or labels are on the technical data.

For more detailed information on data rights questions, please contact one of the following TACOM intellectual property (IP) law attorneys.

Peter Taucher, Chief, IP Law Division at TACOM-Warren, 4-6552

David Kuhn, IP Law Division at TACOM-Warren, 4-5681

Gail Soderling, IP Law Division at TACOM-Warren, 4-8682

John Moran, Chief, IP Law Division, TACOM-ARDEC, DSN 793-

6590

Verlyn E. Richards
Chief Counsel