Picture a Government Attorney sitting at her desk, surfing eBay.com during work hours and later describing the great bargain she found there to her Supervisor! My Supervisor demanded that I attend ethics training immediately before I interjected to explain the situation. A few weeks ago, I surfed the web regularly because an anonymous seller was auctioning a military item, the Interceptor Body Armor (IBA), to the highest bidder on eBay, an online auction operator. The manufacturer of the item informed this office about the auction in progress which continued for another few days. Time was of the essence. E-mails deluged the Legal Office's computer systems, including one from our Commanding General, inquiring about what actions this Office would employ to rectify this situation. My gut reaction prompted ruminations on whether the situation was the pinnacle of commercialization. Is this merely a harbinger of the future for Government procurement? Should we venture out to the auction block and hope to offer the highest bid? After revisiting the numerous e-mails, I got down to business.

SBCCOM, Natick awarded the contract for IBA to introduce a lighter, bulletproof jacket for front line troops. The armor consists of a tactical vest and small arms protective inserts. Only the vest portion was available on eBay. The manufacturer sells IBA exclusively to the U.S. Army and the U.S. Marines Corps.

I contacted eBay's General Counsel to inquire about the auction and the seller's description, which came directly from official Government publications. The seller copied and pasted the description from the Warrior, a Natick Publication. See http://www.natick.army.mil:80/warrior/99/septoct/bitingthebullet.htm. EBay's Counsel directed me to their safeharbor guidelines a few mouse clicks away and described their policy for withdrawal of an item during an auction. The safeharbor guidelines describe prohibited, questionable and potentially infringing items. The recent story involving the auction of a kidney highlights their guidelines. EBay abruptly halted the kidney auction since human parts and remains are on their prohibited list. Additionally, EBay will purge an item if the requester can articulate a legal basis for removal. If the legal basis is sound, eBay will not alter the content but remove both the description and the item from sale. For example, eBay would remove an item from its webpage if it violated copyright laws. In this case, the Government cannot claim copyright violation since Government publications fall into the public domain. Furthermore, there was no proof to allege the seller had stolen the item or possessed stolen merchandise since any manufacturer could have obtained the performance specification. I reluctantly acknowledged that any manufacturer could have produced its version of the item. There was no sound basis to officially request removal by eBay so I proceeded to the next alternative, the source of the sale.

I contacted the mysterious seller, known to me only as "taurus954", via e-mail and expressed a strong objection to the posting of the "Interceptor Body Armor System" on the eBay website. I requested the seller inform offerors that the item is not tested by the U.S. Government since its origin is unknown and requested a description of the seller's basis to copyright this material as stated at the end of the description, "[c]opyright 2000 militarysurplusenthusiast's [a]uction. All rights reserved." The seller succinctly replied as follows, "Ok, I'll do that. I always copyright my html's so it's not just this one." The text on the website remained unaltered and I accepted

the most likely outcome would involve an uncooperative seller who would not convey the Government's concerns.

The manufacturer of the body armor intended to purchase the item from the website and trace its origin via the item's serial number. They were unsuccessful. Their Counsel is currently in discussions with eBay's Counsel to ensure that eBay does not provide a venue for the sale of their body armor in the future.

After inquiries from this office and the manufacturer, Ebay decided to call the seller. However, eBay could not contact the seller using the telephone number provided by the seller. After subsequent e-mail communications without a response, eBay suspended this item from auction because the seller gave "false contact information," an incorrect phone number, which is also against EBay's policy. EBay suspended the auction immediately. Coincidentally, my days surfing eBay.com during work hours came to an abrupt halt and my Supervisor supplemented my existing training agenda to include attendance at several ethics trainings.