

Rights In Computer Software

DOD Intellectual Property (“IP”) Policy generally provides that:

- Contractors keep ownership, or title, to Computer Software developed under DOD contracts;
- Government receives a nonexclusive license to use Computer Software delivered under DOD contracts;
- License Rights in commercial computer software should be similar to those customarily provided to the public provided the Government’s needs are satisfied; and
- Scope of the Government’s license rights will depend upon the nature of the computer software, the source of funding used for its development, and negotiations between the parties.

Within this broad framework, DOD IP policy, procedures and regulations are found at FAR Part 27, DFARS Part 227 and the associated contract clauses. DFARS 252.227-7014 governs the Government’s license rights in Noncommercial Computer Software. The Government’s license rights in Noncommercial Computer Software are divided into four (4) broad categories:

1. Unlimited Rights

This broad license allows the Government to use, duplicate, release, or disclose Computer Software for any purpose and to give it freely to others, including Government agencies and contractors. Disclosure for any purpose could include use by a recipient for a commercial purpose or for competing on a Government contract. Typically, Contractors grant Unlimited Rights to the Government in Computer Software developed exclusively with Government funds. Unlimited Rights are very close to ownership rights.

2. Government Purpose Rights

This type of license is similar to Unlimited Rights, except that the Government’s rights to use, duplicate, release and disclose the Computer Software are restricted to Government purposes only, which includes competitive procurement but excludes a recipient’s commercial purposes. Release outside the Government is conditioned upon prior written acknowledgement by the recipient of these restrictions.

3. Restricted Rights

This license in Computer Software restricts the Government's license rights to using the Computer Software on one computer at a time. When the Government receives a Restricted Rights license, the Computer Software can not be used by, or released or disclosed to, a third party Contractor, except in cases of emergency repair and overhaul or pursuant to a Service Contract calling for certain maintenance or service functions, and, in that circumstance, only if a non-disclosure agreement is signed, and the party furnishing the software is notified. Restricted Rights allows making a back-up copy of the Computer Software and transferring it to another Government agency if the transferor destroys their copy of the Computer Software.

4. Specifically Negotiated License Rights

The parties are encouraged to negotiate specifically negotiated license rights whenever the "standard" rights set out above do not meet their needs. The Government, however, may not accept less than Restricted Rights.

As noted previously, the foregoing relates to non-commercial computer software. Commercial software is handled a little differently, and may be obtained by the Government pursuant to the supplier's standard license terms, provided those terms meet the Government's needs. The typical Windows PC license is a good example of a commercial computer software license.

The regulatory provisions for Non-Commercial Technical Data are found at DFARS 252.227-7013 and are very similar to those outlined above for Computer Software, except that the term Limited Rights, having its own rights regime associated with it, is used instead of Restricted Rights.

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