AUGUST 27, 2019

Department of Defense to Overhaul Intellectual Property Policies Through New Office

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Dealing with intellectual property (IP) on government contracts can be a confusing maze of laws, regulations, and directives. Contractors and defense agencies can clash in any number of areas: who owns what; infringement and indemnity; and conflicting clauses. To help clear this confusion, the Department of Defense (DoD) will soon be opening an office to help harmonize how IP is handled between the DoD and the contracting industry. The new office was announced by the Defense Undersecretary for Acquisition and Sustainment and implements a requirement to do so from the National Defense Authorization Act from FY 2018.

The new office is anticipated to be open by October and will be focused on developing DoD policies pertaining to data rights. The office will also be tasked with protecting U.S. IP from data theft by foreign entities, including the Chinese.

What can we expect from the new office? According to the Defense Undersecretary, the new office would build from the Army's IP directive published in December 2018. That policy requires the Army to better plan for the rights the Government will need and communicating those needs to the contracting community early in the acquisition process. The Army policy also encourages the pursuit of "creative, customized licenses" and directs the Army to pursue only the IP necessary to meet the agency's needs.

As with most new department offices, the devil will be in the details but the objective is laudable and if executed correctly could bring some clarity to an opaque area. We will follow the office and inform you of significant developments. In the interim, companies should be thinking about the IP that is involved in their current and anticipated contracts and ensure they understand what rights they have—and what rights the Government does—in that IP.