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# Demystifying Data Rights

## Department of Defense Guest Speaker Panel

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# Disclaimer

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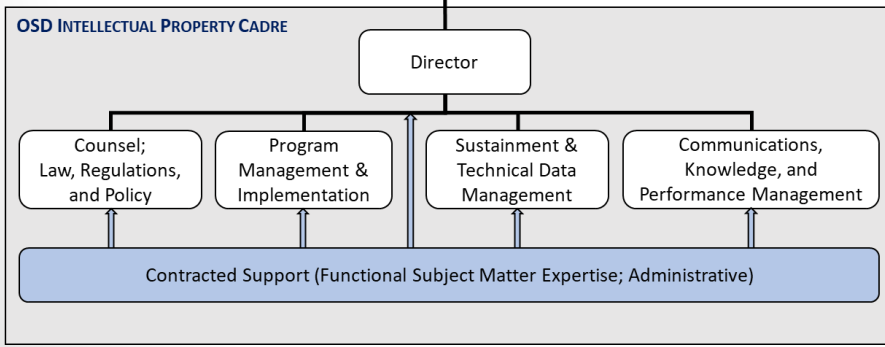
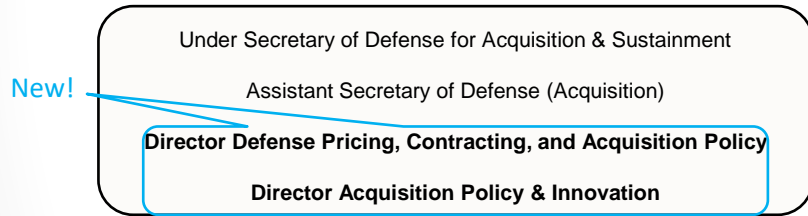
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# Who is the DoD IP Cadre

- **DoDI 5010.44 “Intellectual Property (IP) Acquisition & Licensing”** (16 Oct 2019)
- Designated ASD(A) as the DoD Senior Official for IP acquisition, licensing, and management; established the OSD IP Cadre as ASD(A)’s dedicated execution mechanism; created a federated model for the DoD-wide IP Cadre; and established the first-ever DoD-wide IP policy (implementing 10 USC 1707 & 3791)

- **Federated DoD IP Cadre:** DoD-wide, multi-disciplinary, community of experts for IP program support throughout the life cycle.
- Recognizing the limited reach of a small OSD office and the criticality of robust accessible resources to the workforce, the functions of the IP Cadre extend to each MILDEP and DAU with their own IP experts dedicated to implementing the directives.
- Experts across functional areas serve as catalysts for change in each discipline and the integration that IP plays across the program life-cycle.
- **Nine** required areas of expertise – **in addition to IP!**: law, program management, contracting, engineering, acquisition, logistics, configuration management, fiscal analysis, and valuation.
- **We encourage Industry to include the same cross-functional expertise in their IP shops**



# Army IP Cell of Experts

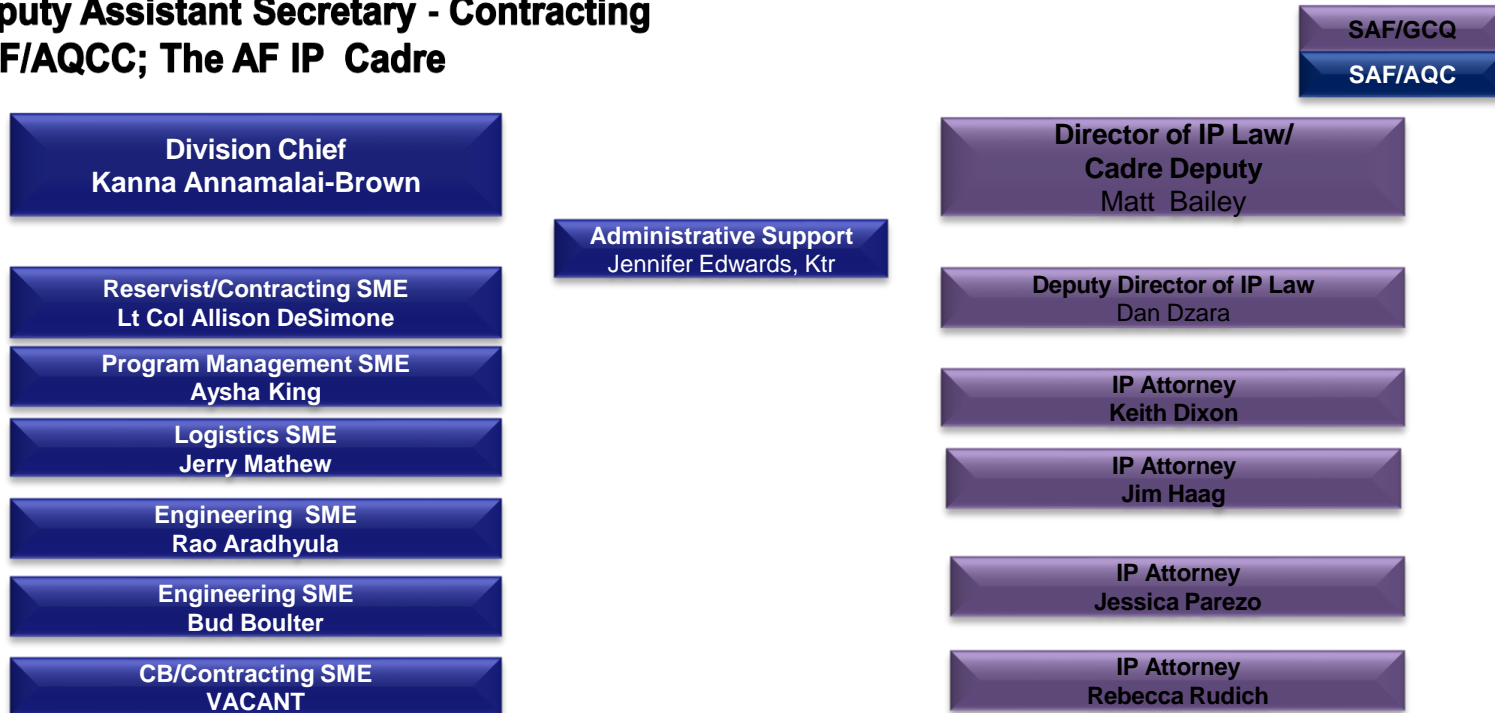


- The IP Cell of Experts provides advice, assistance and resources to the acquisition workforce on IP matters.
- The initial focus area will be to incentivize participation from small businesses that are developing innovative technologies.
- Key responsibilities of the IP Cell of Experts include:
  1. Provide direct support to program offices in the development of balanced IP strategies that encourage, enable, and ensure access to cutting edge technologies.
  2. Work with small businesses and requirements owners on identified R&D efforts to ensure the Army is developing a balanced approach to IP.
  3. Participate in technology scouting efforts conducted by the Army's S&T community to advise on IP matters.
  4. Working with small businesses and integrators to identify IP-related challenges and incentives.
  5. Inform and promulgate policies and programs to incentivize industry participation in Army programs.

# AQCC Organizational Chart



## Assistant Secretary of the Air Force - Acquisition, Technology, & Logistics Deputy Assistant Secretary - Contracting SAF/AQCC; The AF IP Cadre



# DAF IP Cadre Mission



**Provide the Department of Air Force with tools and advice to strategically execute cost efficient acquisitions and enable appropriate flexibility in life cycle support by obtaining mission-essential intellectual property deliverables and associated license rights.**

# Army IP Approach



Army Regulation 70-1, and Army Directive 2018-26 (*Enabling Modernization through the Management of IP*)

## Plan Early and Develop Customized IP Strategy

- Identify necessary IP
- Should be intertwined with requirements process
- Account for program-specific and product sustainment considerations
- Account for data deliverable considerations
- Develop a tailored IP strategy

## Negotiate for Tailored Data and/or Licenses

- Negotiate in accordance with new data rights allocation framework
- Emphasize use of Specially Negotiated Licenses
- Exercise deferred ordering, if necessary
- Utilize deferred delivery when possible
- Seek the necessary, not all, IP

## Negotiate Early in the Process for Competitive Prices

- Leverage competition for economical pricing
- Leverage priced contract options
- Fairly compensate contractor industry-generated IP
- Seek compensation for government-generated IP

## Foster Open Communication

- Disclose as much as possible about Product Support Strategy and IP Strategy
- Discuss MOSA approach & impacts on IP Strategy
- Protect industry IP and use non-disclosure agreements in early stages

**Army IP approach underpinned by four key principles**

# Contact Information

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# Modernizing the IP Acquisition Regulations



Eleven separate formal rulemaking "cases" managed in parallel, simultaneously

## DFARS Cases Complete

Revisions are effective now, after final rule was published

- (1) [Streamlined Challenges/Validation for Commercial](#) Tech Data (2018-D069 (S)\*)
- (2) Class [Deviation: Immediate implementation](#) of selected SBA Policy Directive updates for [Small Business Innovation Research](#) (SBIR) Program Data Rights (2020-O0007, Rev 1)
- (3) Ensuring Needed Software Delivery During Program LifeCycle (2018-D018 (S)\*)

## DFARS Cases Underway

"Enhanced Engagement" rulemaking process (adds ANPR\* phase & public meetings for ANPR\* & PropR\*)

- (4) Enabling [Modular Open Systems Approaches](#) (MOSA) (2021-D005 (S)\*; pending: ANPR\* comments closed)
- (5) Enhanced [Deferred Ordering](#) for Tech Data & Software (2019-D044 (S)\*; pending: ANPR\* comments closed)
- (6) Flexible, tailored, business-case supported [Negotiations](#) for IP (2018-D071 (S)\*; pending: PropR\* publication)
  - i. Up-front [pricing](#) for Technical Data
  - ii. [Preference](#) for Specially Negotiated Licenses
- (7) Full Implementation [SBIR/STTR](#) Data Rights Policy Updates (2019-D043 (S)\*; pending: FinalR\* publication)
- (8) [Doubling the Challenge Period](#) (3 → 6 yrs) for DR Validations (2022-D016 (S)\*; pending: PropR\* publication)

Not required to use the Enhanced Engagement rulemaking process

- (9) Protection for DoD [Program Names & Weapon System Designations](#) -- including trademarks (2021-D002) (pending: FinalR\* publication)

## FAR Cases Underway

Proposed rules managed by the FAR Law Team, not subject to an enhanced engagement process

- (10) USG (non-DoD) Implement SBIR/STTR Data Rights Updates (FAR 2020-010) (Ref: DFARS cases (2) & (7))
- (11) Implementing updated Dept. of Commerce policy, practice & streamlining for [Patent Rights](#) (FAR 2018-012) (Note: On Hold for consideration of further Commerce policy/rulemaking activities)

\*Notes: "(S)" = statutory revision; "ANPR" = Advance Notice of Proposed Rulemaking; "PropR" = Proposed Rule; "FinalR" = Final Rule