PUBLIC CONTRACTING INSTITUTE

Demystifying IP/Data Rights in Government Contracts

Virtual Class Series 2024

Session 4: Special Cases and Data Rights in Practice

Ralph C. Nash
Scott A. Felder

April 10, 2024

PUBLIC CONTRACTING INSTITUTE

Roadmap

- Special Data Rights Cases
- Data Rights in Practice
  - The “Data Rights Trinity”
  - Validation and Challenge Process
  - Non-Conforming Marking Process

Today's Goals

- Understand special cases for the allocation of rights in technical data and computer software
- Understand what a contractor must do in order to protect its technical data and computer software
- Understand data rights disputes

SPECIAL DATA RIGHTS CASES

Small Business Innovation Research (SBIR) Small Business Technology Transfer (STTR)

- The SBIR and STTR programs are designed to encourage domestic small businesses to engage in federally-sponsored research/research & development with the potential for commercialization
- Stated goals:
  - Stimulate technological innovation
  - Meet federal research and development needs
  - Foster and encourage participation in innovation and entrepreneurship by socially and economically disadvantaged persons
  - Increase private-sector commercialization of innovations derived from federally-sponsored research and development
- More information: May 2019 SBIR/STTR Policy Directive

SBIR Program Eligibility

- No more than 500 employees
- Ownership
  - More than 50% owned or controlled by US citizen or permanent resident aliens; or
  - More than 50% owned or controlled by multiple venture capital operating companies (VCOC); or
  - Joint venture meeting these requirements
- Work must be performed in the US
- SBIR contractor must perform:
  - 2/3 of the work in Phase I
  - 1/2 of the work in Phase II

SBIR Program Phases

- Phase I: Technical Merit & Feasibility
  - $150K - $225K from dedicated SBIR funds
  - <6 months
- Phase II: Further Research & Development
  - Only Phase I SBIR or STTR award winners are considered
  - $1M - $1.5M from dedicated SBIR funds
  - <2 years
- Phase III: Commercialization
  - Not funded from dedicated SBIR funds
  - Awarded to a Phase I/II "graduate" "to the extent practicable"
    - Required to document whether a requirement involves Phase III work and, if so, whether a sole-source award is practicable
    - If a sole-source award is not practicable, agency must document other ways to give Phase I/II "graduates" a preference
    - Must notify SBA of any intent not to issue a Phase III award
  - There is no limit on the number, duration, type, or dollar value of a Phase III award

SBIR Data Rights: Current FAR Clause FAR 52.227-20

- SBIR Data = Data generated in the performance of a SBIR contract
- Government rights in SBIR Data
  - Use for Government purposes only
  - No disclosure outside the Government, including for procurement purposes
- Protection Period
  - Extends for 4 years after acceptance of all items delivered under the contract
  - Subject to extension (*e.g.*, by negotiation or by the award of another SBIR contract)
- After expiration of the protection period, the Government gets what are essentially Government Purpose Rights

SBIR Data Rights: Current DFARS Clause DFARS 252.227-7018

- SBIR Data = Data generated in the performance of a SBIR contract
- Government Rights in SBIR Data
  - During the SBIR Protection Period:
    - Limited rights in SBIR Technical Data
    - Restricted rights in SBIR computer Software
  - After the SBIR Protection Period: Unlimited Rights
- Protection Period
  - Extends for five years after **project** completion
  - No express reference to extensions, but successive Phase III awards *de facto* extend the Protection Period (arguably)

SBIR Data Rights: May 2019 Policy Directive

- SBIR Data = Data generated in the performance of a SBIR contract
- Government rights in SBIR Data
  - During the SBIR Protection Period
    - Limited rights in Technical Data
    - Restricted rights in Computer Software
  - After the SBIR Protection Period: Government Purpose Rights
- Protection Period: Runs 20 years from award
- Not yet implemented in the FAR/DFARS
  - DoD has published a deviation (2020-O0007)
  - Most civilian agencies are simply negotiating an extension of the protection period from 4 years to 20 years as permitted by the clause, without realizing that the rights themselves are not *quite* the same

Special Works: DFARS 252.227-7020

- Applicable to "works" first created, generated, or produced and required to be delivered under the contract
  - "Works" includes literary, musical, choreographic, or dramatic compositions; pictorial, graphic or sculptural compositions; motion pictures and other audiovisual compositions; sound recordings; computer databases; software documentation; and software
- Clause is used when the Government has a specific need to control the distribution of these works, or when it needs to control the copyright
- The Government obtains unlimited rights in special works, and copyright is assigned to the Government (meaning that the contractor cannot reuse the special work without license from the Government)
- Analogous FAR clause: 52.227-17

Existing Works: DFARS 252.227-7021

- Applicable to existing "works" to be acquired without modification
  - "Works" includes literary, musical, choreographic, or dramatic compositions; pictorial, graphic or sculptural compositions; motion pictures and other audiovisual compositions; and sound recordings
  - "Works" excludes financial reports, cost analyses, and other information incidental to contract administration
- Clause is used wen the Government will acquire existing works, without modification, and needs to be able to prepare derivative works or to publicly perform/display the works
- The Government gets a non-exclusive, paid-up license throughout the world to distribute, perform, display, and authorize others to do the same
- Contractor retains ownership of the work (and the copyright therein)
- Analogous FAR clause: 52.227-18

Bid and Proposal Information
Unsolicited Proposals (FAR Subpart 15.6)

- Generally, the Government shall not use data, concepts, ideas, or other parts of an unsolicited proposal as the basis for a solicitation or negotiation with other firms, unless the offeror is notified and agrees (FAR 15.608(a))
- The Government shall not disclose restrictively-marked unsolicited proposal information (FAR 15.608(b))

Unsolicited Proposals
Title Page Legend

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this proposal. However, if a contract is awarded to this offeror as a result of-or in connection with-the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained in Sheets [insert numbers or other identification of sheets].

Unsolicited Proposals
Subsequent Page Legend

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

- If any other legend(s) is (are) used, the Government is required to return the proposal with a return letter indicating that it will review the proposal if resubmitted with the prescribe legend (FAR 15.609(c))

Bid and Proposal Information
Solicited Proposals

- FAR 52.215-1(e)(1)
  - Allows offerors to restrict the Government's rights in data contained in proposals that are responsive to solicitations
  - Requires marking with legends virtually identical to those used for unsolicited proposals
- FAR 52.227-23
  - Allows the Government to obtain unlimited rights in technical data contained in successful proposals
  - The offeror can carve technical data out of this grant by specific identification (*see* FAR 27.407, 27.409(*l*))

Bid and Proposal Information Solicited Proposals (cont'd)

- DFARS 252.227-7016
  - Pre-award, the Government may copy ***non-deliverable*** technical data and computer software for evaluation purposes only, and may not disclose to others unless authorized by the contracting officer or agency head to receive the information
  - Post-award, the Government may use and disclose ***non-deliverable*** information within the Government
  - No prescribed legend (best practice: borrow from the FAR)
- The Government's rights in ***deliverable*** data are in accordance with the data rights clauses contained in the contract

Proprietary/Confidential Information

- Protection is largely contractual (*e.g.*, non-disclosure agreements; proprietary information agreements)
  - Enter into agreements *before* disclosing information
  - Get agreements from *all parties* – do not assume that all parties working a particular program are automatically covered
- Certain information is exempt from disclosure under FOIA (*see* FAR Subpart 24.2; FAR 15.506(e))
- Additional protections exist under the Trade Secrets Act and Procurement Integrity Act
- Use a legend to indicate that information is proprietary/confidential and exempt from disclosure/subject to the Trade Secrets Act (*e.g.*, "Acme Co. Confidential and Proprietary Information. Portions or all of the information contained in this document are exempt from release under the Freedom of Information Act, 5 U.S.C. § 552(b)(4).")

DATA RIGHTS IN PRACTICE: THE DATA RIGHTS TRINITY

The "Data Rights Trinity"

- Contractor restrictions are not self-executing
- The contractor must:
  - **Document**
    - Have, maintain, and follow written procedures to ensure that restrictive markings are used only when authorized
    - Keep sufficient accounting and engineering records to justify restrictive markings
  - **Assert** restrictions prior to contract formation
  - **Mark** deliverables as prescribed

"Assert" (DFARS Requirements)

- DFARS 252.227-7017 requires offerors to identify, "to extent known at the time an offer is submitted," the tech data/CS that the offeror, its subs or suppliers, or potential subs or suppliers, assert should be furnished with restrictions.
  - Assertions at all tiers to be submitted as an attachment to offer in the prescribed format; must be dated and signed by authorized rep of offeror.
    - Subs should provide assertions in prescribed format for ease of incorporation into proposal.
  - If awarded the contract, the assertions shall be listed in an attachment; CO may request information to evaluate assertions.
  - **Follow the prescribed assertion format** (*e.g.*, DFARS 252.227-7017 and/or other requirements set forth in the solicitation).

"Assert" (DFARS Requirements) (cont'd)

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software

The Offeror asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)*****	(LIST)	(LIST)	(LIST)

"Assert" (DFARS Requirements) (cont'd)

*For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such items, component, or process. For computer software or computer software documentation identify the software or documentation.

**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).

****Corporation, individual, or other person, as appropriate.

*****Enter "none" when all data or software will be submitted without restrictions.

DatePrinted Name and TitleSignature(End of identification and assertion)

"Assert" (DFARS Requirements) (cont'd)

- Additional data to be provided with restrictions may be identified and added to the attachment after award if based on new information or inadvertently omitted.
- If GPR apply, remember to extend standard 5-year term if necessary to protect for longer period (DFARS 227.7103-5(b)(2)).
  - May be requested any time before delivery without consideration by either party (presumably if requested after, USG may require consideration).
  - Period begins upon execution of contract or option exercise that requires the development.

"Assert" (FAR Requirements)

- Identify any tech data/CS to be delivered with less than unlimited rights.
  - FAR 52.227-15 requires offeror to represent whether tech data/CS required to be delivered under contract (as specified in solicitation) either:
    - Qualifies as limited/restricted rights data and specifically identify the data/CS, or
    - That none of the tech data/CS to be delivered under the contract qualifies as limited/restricted rights data/CS

"Mark" (DFARS Rules)

- Markings must be conforming – the appropriate legend is required.
- May not deliver with restrictive markings unless that data is identified on the attachment.
- Must be "conspicuous and legible."
  - Placed on the transmittal document or storage container.
  - Legend should be applied to *each page* of printed material.
    - Specifically identify portions of pages (circling, underscoring or annotating).
    - Data on a single page may be subject to different restrictions – mark appropriately.
    - Reproduce legends verbatim; no short forms (unless otherwise agreed).
  - Embed in software (e.g., splash screens, source code headers).
    - But not in a way that will interfere with or delay operation in a combat situation or simulation.

DFARS GPR Legend (Technical Data)

GOVERNMENT PURPOSE RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

DFARS Limited Rights Legend

LIMITED RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data--Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

DFARS SNLR Legend (Technical Data)

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. _____(Insert contract number)____, License No. ____(Insert license identifier)____. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

"Mark" (cont'd)

- DFARS 252.227-7014 prescribes similar legends for computer software
- FAR 52.227-14, Alternates II and III, also prescribe legends.
- No prescribed legend for Commercial Tech Data (DFARS 252.227-7015) or Commercial Computer Software.
  - Recommend use of legend with language similar to that of either Limited Rights or SNLR legend or EULA reference.
- ***If non-commercial data are delivered without any legend, they are presumed to be delivered with unlimited rights***.
  - *What about commercial data?*

DATA RIGHTS IN PRACTICE: VALIDATION, CHALLENGES, AND NON-CONFORMING MARKINGS

Challenges to Rights Assertions

- Applies when the Government believes that a contractor's restrictive assertion is untenable
- The process for validating restrictive assertions in technical data is set forth in DFARS 252.227-7037
  - DFARS software counterpart at 252.227-7019
  - FAR counterpart at FAR 52.227-14(e)
- The burden of proof in a challenge is generally on the contractor, except for the presumption that commercial items were developed at private expense
  - CO not to challenge assertion unless DOD provides information to demonstrate item, component, process was NOT developed exclusively at private expense (this is evolving)

The Challenge Process

- Pre-challenge request for information (DFARS 252.227-7037(d))
  - CO may request written justification for any restriction asserted and may request further information if deemed necessary to justify basis for assertion.
    - Contracts, correspondence, engineering documents, accounting/financial records, etc.
  - If CO determines reasonable grounds exist to question validity of marking, may initiate challenge pursuant to subparagraph (e).

The Challenge Process (cont'd)

- Formal Challenge: CO sends written challenge notice to contractor which:
  - States specific grounds for challenging assertion
  - Requires a response within 60 days that justifies and provides "sufficient evidence" as to current validity of asserted restriction
    - A CO's final decision sustaining the validity of an identical restrictive marking within a 3-year period prior to challenge shall serve as justification
  - States that failure to respond to notice may result in final decision.
    - CO shall extend time for response as appropriate in response to a written request from contractor that additional time is needed.
    - Contractor's (or sub's) response shall be considered a CDA claim and shall be certified in the form prescribed by FAR 33.207 regardless of $ amount.
    - If more than one CO challenges same restrictive marking, contractor shall notify each CO of the other challenge(s); challenges to be coordinated by CO with first in time unanswered challenge.

The Challenge Process (cont'd)

- A failure to respond to a formal challenge will result in a CO's final decision pursuant to Disputes clause.
- If CO determines that contractor has justified the validity of the marking, the CO shall issue a final decision within 60 days (or other period) sustaining the restrictive marking and USG will be bound by it.
- If CO determines the marking is not justified, CO shall issue a final decision; USG generally bound by restrictive marking for at least 90 days pending notice of intent to appeal (either to ASBCA or COFC) and until final disposition if appealed.
- The Government has the right to challenge restrictive assertions for 3 years after final payment.
- Subcontractors may transact directly with the Government in connection with challenges (**at least** until submission of a claim)
  - Challenges are contractor claims *even if initiated by the Government*

Non-Conforming Marking Procedures

- Applies when the contractor has applied a marking, purporting to restrict **the Government's** rights in the deliverable data (*see The Boeing Company v. Sec'y of the Air Force*, 983 F.3d 1321 (Fed. Cir. 2020)) that is not in the form prescribed by the regulation
  - May run in parallel with a challenge to the restriction itself, but it is a distinct issue
- CO notifies the contractor of the non-conformity.
- If not corrected or removed within 60 days, the Government may remove, ignore, or correct the non-conforming marking.
- Disputes over whether or not a marking is conforming often also end up as CDA claims

FlightSafety Int'l, Inc. (ASBCA No. 62659)

- Air Force awarded task order to CymSTAR for various services for the C-5 Aircrew Training System
- CymSTAR awarded subcontract to FlightSafety by issuing a purchase order for supply and installation of a visual system replacement
- Purchase order included FlightSafety's proposal which stated "[t]his is a commercial offering"
- Relevant to the Appeal, CymSTAR's contract and task order and its purchase order with FlightSafety incorporated the following DFARS clauses:
  - DFARS 252.227-7015—Technical Data – Commercial Items (Fed 2014) [Commercial Technical Data clause]
  - DFARS 252.227-7025—Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (May 2013) [Limitations clause]
  - DFARS 252.227-7037—Validation of Restrictive Markings on Technical Data (June 2013) [Validation clause]

FlightSafety—Factual Background

- The -7015 clause generally states in paragraph (b)(2) that "Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only"
- Government may not use data to manufacture additional quantities of commercial items or release the data outside the government without the contractor's written consent
- Paragraph (b)(1) specifies certain types of data, including OMIT data, in which the government has "unrestricted rights"
- FlightSafety identified the 21 drawings at issue as proprietary and granted only limited ((b)(2)) rights in the data on the basis they were "exclusively developed [at] its own private expense"
- Air Force informed CymSTAR that it disapproved of FlightSafety's drawings because of "nonconformal proprietary markings"
- Air Force did not dispute drawings were developed exclusively at private expense and conceded they were commercial technical data

FlightSafety—Factual Background

- FlightSafety declined to remove markings but agreed that Air Force could disclose documents pursuant to DFARS requirements
- Proposed alternate proprietary marking for its drawings which provided the government with unrestricted rights pursuant to the requirements in the task orders and limited by the procedures in DFARS 252.227-7015 and 227.7103-1
- Air Force again challenged FlightSafety's legends and invoked Validation clause
  - CO must assume contractor's asserted use or release restrictions are justified on the basis the item was developed at private expense
  - CO cannot challenge such assertions unless the CO has evidence the item was not developed at private expense
  - "[I]f the [CO] determines that a challenge to the restrictive marking is warranted, the [CO] shall send a written challenge notice to the Contractor . . . asserting the restrictive markings" and stating the "specific grounds for challenging the asserted restriction"

FlightSafety—Factual Background

- CO asserted FlightSafety's drawings constituted OMIT data and that DFARS 252.227-7015(b)(1)(iv) gave Air Force "unrestricted rights"
- Flight Safety filed claim with CO contesting Air Force's determination
- In response to FlightSafety's claim, Air Force found:
  - Validation clause does not prohibit government from challenging OMIT data because Commercial Technical Data clause required FlightSafety to provide an unrestricted rights license in OMIT data
  - Commercial Technical Data clause unequivocally gave Air Force unrestricted rights in OMIT data and Air Force could use such data for any purpose including "future source selections"
  - Word "necessary" in Commercial Technical Data clause suggested that as the end user of the data, government is best positioned to determine what is necessary for OMIT purposes
  - FlightSafety's markings were unjustified because OMIT data cannot be delivered with markings that restrict government's rights to use data
- FlightSafety appealed to ASBCA

FlightSafety—ASBCA Decision

Validation Clause

- ASBCA held that plain language of Validation clause demonstrated Air Force could challenge FlightSafety's restrictive markings regardless of whether data was developed at private expense
- Rejected argument that phrase "such assertions" relates to all assertions and not just those based on funding source
  - Clause text that CO must "[s]tate the specific grounds for challenging the asserted restriction" makes no sense if they can only challenge funding sources
- FlightSafety's interpretation also renders other clauses superfluous because CO would be unable to challenge restrictions on other types of data so long as the contractor could show the data was developed exclusively at private expense (*See* DFARS 252.227-7037(i)(1)–(3))
- ASBCA noted interpretation was supported by statute's plain meaning
  - 10 USC § 2320(a)(2)(C) allows government to release technical data outside the government for certain purposes, including data necessary for OMIT, form, fit, and function, and repairs
- "If the government could not challenge restrictions on commercial technical data developed exclusively at private expense . . . the contractor could restrict the government from releasing" technical data the statute specifically allows it to release

FlightSafety—ASBCA Decision cont.

Unrestricted Rights License and Manufacture of New Items

- Commercial Technical Data clause gave Air Force unrestricted license in OMIT data "other than detailed manufacturing or process data"
  - Detailed manufacturing or process data = restrictive (b)(2) license
- FlightSafety originally argued drawings were detailed manufacturing or process data, but mooted through partial settlement
  - FlightSafety provided Air Force with unrestricted rights license
- Because Air Force had unrestricted rights license, ASBCA held that the plain language of the Commercial Technical Data clause permitted Air Force to manufacture additional items using the technical data
  - *Expressio unius est exclusio alterius*—Paragraph (b)(2) "explicitly prohibits the Air Force from using or disclosing any data covered by the [clause] for manufacturing purposes" but (b)(1) "[n]otably, places no use or disclosure limitation on the unrestricted rights license"
- "Thus, the Commercial Technical Data clause prohibits manufacturing commercial items only for the technical data subject to the license in paragraph (b)(2), not the unrestricted rights license in (b)(1)"

FlightSafety—ASBCA Decision cont.

- ASBCA rejected FlightSafety's argument that Noncommercial Technical Data clause suggested Air Force was prohibited from using unrestricted rights data for manufacturing additional items
  - Neither clause prohibits government from using unlimited or unrestricted rights data to manufacture additional commercial items
- Further explained that the statute, legislative history, and regulatory history supported clause's plain meaning that government permitted to manufacture additional commercial items with unrestricted rights
- While Congress considered making statutory technical data requirements inapplicable to commercial items, it ultimately decided not to exempt data from 10 U.S.C. § 2320(a)
- Likewise, DoD considered comment in rulemaking suggesting license rights were inconsistent with those granted to commercial customers, but rejected such suggestion, noting that the "[r]ights under the clause are consistent with 10 U.S.C. § 2320"

FlightSafety—ASBCA Decision cont.

Commercial Restrictive Legends

- Unlike Noncommercial Technical Data clause, the Commercial Technical Data clause does not prescribe specific language
- ASBCA rejected Air Force's attempt to import "broadest reasonable interpretation test" from patent law
  - "ASPR committee repeatedly rejected adopting patent law concept"
  - "[P]atent rights are distinct from technical data rights"
- Explained that board "will not use unrelated patent law concepts to assess commercial restrictive legends placed on technical data absent a showing that the clauses were developed with those patent law concepts in mind"
- Also rejected FlightSafety's contention that commercial restrictive markings are only intended to identify data as proprietary and do not describe the government's rights in the data
- While government cannot dictate specific language of commercial restrictive markings, it is not precluded from questioning markings that contradict government rights
  - A "contractor's legends – whatever the wording – may not contradict the license rights the government obtains under the Commercial Technical data clause"

FlightSafety—ASBCA Decision cont.

- Held that FlightSafety's legends contradicted government's rights
  - "Proprietary" is ambiguous because it conveys that the Air Force could not disseminate the data received
  - Copyright notice conveyed that the Air Force could not reproduce the drawings, but Air Force had right to "modify, reproduce, release, perform, [or] display" under DFARS 252.227-7015(b)(1)
  - Legend providing that drawings "shall not be reproduced, distributed, or disclosed to others, except as expressly authorized in writing" contradicted the government's rights under DFARS 252.227-7015(b)(1) which does not require consent prior to release of data
    - While legend might be appropriate for third parties, the language must explicitly denote its applicability to government/non-government recipients
  - Alternative legend contradicted Commercial Technical Data clause
- Appeal denied

FlightSafety—Takeaways

- Validation clause permits the Government to challenge restrictions on commercial technical data, even absent evidence of Government funding, provided the challenge isn't funding-based
- Does the Government ***really*** get to unilaterally decide what data are "necessary" for OMIT purposes?
- Commercial restrictive markings must not contradict government license rights…so what commercial markings are permissible on unrestricted rights commercial technical data?
- Is a copyright notice really a restriction on the Government's unlimited/unrestricted rights?
  - The Federal Circuit said it is in the 2020 *Boeing* decision, but look at the eventual settlement agreement in that case – the agreed legend *includes a copyright notice!*

Presenters

Scott A. Felder
Wiley Rein LLP
202.719.7029
sfelder@wiley.law

Scott helps clients identify, protect, manage, and enforce their intellectual property rights. His practice focuses on the complex intellectual property issues confronted by government contractors, including patent rights and rights in technical data and computer software, with emphasis on the aerospace, defense, and intelligence sectors.

Ralph C. Nash, Jr.
Professor Emeritus,
The George Washington University

Professor Ralph C. Nash, Jr. founded the academic discipline of government contacts law with the late John Cibinic. He was Professor Emeritus of Law of The George Washington University, Washington, D.C., and founded the Government Contracts Program. Professor Nash is currently a consultant for government agencies, private corporations, and law firms on government contract matters. He is active in the Public Contracts Section of the American Bar Association, is a member of the Procurement Round Table, and is a Fellow and serves on the Board of Advisors of the National Contract Management Association.