

# PCI DATA RIGHTS SERIES

## GUEST LECTURE

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### OFFICE OF SECRETARY OF DEFENSE INTELLECTUAL PROPERTY (IP) CADRE OVERVIEW, CURRENT EFFORTS, CRITICAL CONCEPTS



11 July 2023

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# ***DISCLAIMER***

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**The opinions expressed in this briefing are those of the author(s) or presenter(s) and do not necessarily represent the opinions of, and should not be attributed to, the Department of Defense or the United States Government.**



# AGENDA

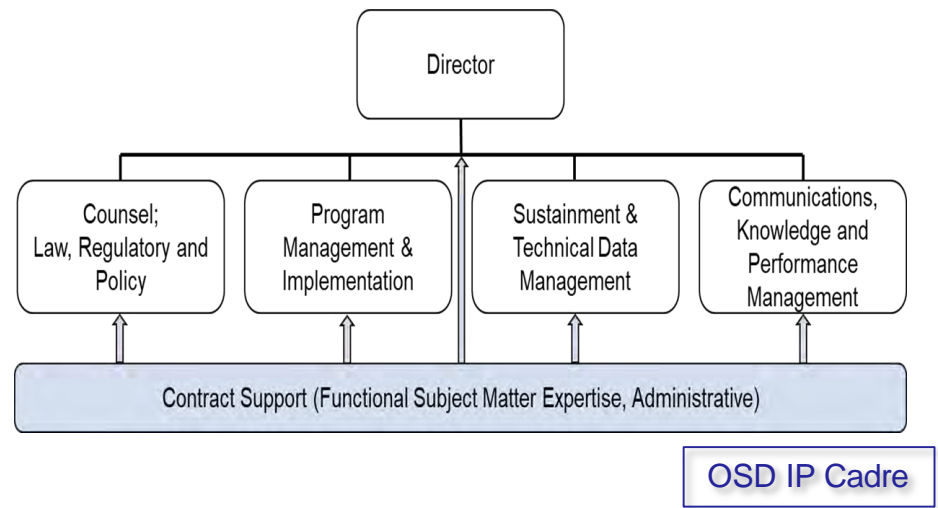
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- Introduction to DoD and OSD IP Cadre
- IP Cadre Current Efforts
- Foundation and Critical Concepts
- OSD IP Cadre Contact Info



# DoD IP CADRE: THE OSD IP CADRE AND THE DoD-WIDE FEDERATED MODEL

**DoDI 5010.44 “Intellectual Property (IP) Acquisition & Licensing”** → established the OSD IP Cadre under USD(A&S) and 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 Team of Cross-Functional Experts:** DoD-wide engagement with OSD, MILDEPs, and other DoD Components to advise and support DoD programs and the acquisition workforce. Experts across functional areas serve as catalysts for change in each discipline to connect critical connections and dependencies IP plays across the program life-cycle. Statutorily-required areas of expertise: law, program management, contracting, engineering, acquisition, logistics, configuration management, fiscal analysis, and valuation.

**Mission:** Enable and empower the cross-functional acquisition workforce with data-driven intellectual property policies, flexible strategies, and digital best practices to deliver and sustain cost-effective technological overmatch for the Warfighter at scale, faster



# ***CURRENT EFFORTS***

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- Section 801\* Pilot Program – IP Evaluation & Valuation
- IP and Modular Open Systems Approaches (MOSA)
- Modernizing IP Policy, Regs, and Guidance
  - NDAA for FY2023, Sec. 841 - 10 USC 3791(c)
- Workforce: IP/MOSA training & education (cross-functional)
- Planning for more Industry Outreach opportunities

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\* *Sec. 801 of the FY 2020 NDAA → a multiple year pilot through FY 2023*



# PILOT PROGRAM ON IP EVALUATION IN DoD PROGRAMS

## Congressionally-authorized Joint OSD-MILDEP Pilot Program (Sec. 801, FY20 NDAA)

### Specific Pilot activities authorized

- Establish a Team of experts (incl. IP Cadre) to make recommendations
- Assessment of: commercial valuation methods; agency-level oversight; contracting mechanisms; acquisition planning for IP/rights for life-cycle (sustainment)
- Must include industry engagement on IP requirements, strategies, valuation methods
- Requires Annual Reports due each Nov 1st, 2020 through 2023 (3<sup>rd</sup> annual report is in final coord with MILDEP & OSD stakeholders)
- Note: no new authorities, nor relief from existing requirements or procedures, was provided in the statutory authorization

### Department Engagement

- 5+ “case study” Pilot Programs from Army, Navy, AF, CDAO illustrating IP Best Practices
- First DoD-wide Government Data Calls on IP E. valuation
  - FY22 Lifecycle Retrospective Government Data Call captured metrics from **270 completed surveys** from programs in sustainment

### Industry Engagement

- Issued RFI soliciting recommendations on IP evaluation/valuation from industry, academia, and other interested parties
- Series of 6 IP Roundtable Discussions with Industry in June 2022
- Developing coordination strategy and assessing specific industry recommendations from RFI within the following areas:
  - IP Evaluation/Valuation; IP Strategies; Workforce Development; and Engagement with Industry

- **On the Horizon (FY23):** Planning to host a joint DoD, industry, academia engagements to further identify and refine existing and emerging best practices, specific “tools” for IP evaluation and valuation that balance the interests of DoD and industry in a more open, transparent, consistent, and effective manner.



# ***IP & MOSA -- HOW DO THEY RELATE TO EACH OTHER?***

- Each is supported by, and supporting for, the other
- **MOSA – you can’t do it without IP. Period.**
  - "O" = Open – referring to the ability to share as needed
    - Note: In practice "O" is more like "available to authorized partners" that open-open (as in unrestricted or publicly available)
  - “M” = Modular here is close-kin to “segregable” in IP/data rights
  - Contracting for MOSA – must address IP deliverables & rights
- **IP – you can’t really do it without MOSA (concepts & techniques)**
  - “Doctrine of Segregability” → “Doctrine of Modularity”: data rights based on development funding – at “lowest practicable segregable level”
  - “Mixed funding” → divided into blocks of all-private & all-USG funded
  - Epiphany: segregation of the system for IP rights determinations should be mapped to modularity (MOSA) for design, engineering, procurement, operation, sustainment, upgrade ...
    - ... or is it vice-versa, or a bidirectional analysis
  - MOSA allows a “black box” approach to a proprietary modules ... it does NOT address a DoD need for the detailed IP within that black box module



# ***IMPLEMENTING MODULAR OPEN SYSTEMS APPROACHES***

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- **Implementing MOSA Tiger Team – NDAA FY21, Section 804(c) actions:**
    - MILDEPs established repositories and indexes for Modular System Interfaces (MSI) and supporting documentation
    - Developing MSI Repository Operating Guide
  
  - **Contracting for MOSA Tiger Team:**
    - Working with MILDEPs and OUSD(R&E) to provide guidance on Contracting for MOSA in the forthcoming MOSA Guidebook and Systems Engineering Contracting Guide
  
  - **Industry “Enhanced Engagement” for IP Acquisition Regs (DFARS)**
    - Publish “early” discussion draft → Public Meeting(s) & written comments/edits
    - Coming in CY23: The MOSA Case (DFARS Case #2021-D005)
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# ***MODERNIZING IP POLICY, REGULATIONS, AND GUIDANCE***

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- **Intellectual Property: A Strategic and Tactical Guidebook (IP Guidebook)**
    - Part of overarching effort: Guidance supporting the Adaptive Acquisition Framework (separate topic-specific guidebooks as successor to the Defense Acq Guidebook (DAG))
    - Will cover:
      - Fundamental Concepts: Data rights, return-on-investment, delivery, licenses, etc.
      - Development and execution of IP Strategies
      - IP source selection issues
      - Special/Emerging topics, MOSA, etc.
      - Tools and Resources
    - Major milestone in IP Guidance, but will evolve
  
  - **DoD Manual 5010.12 “Procedures for the Acquisition and Management of Technical Data”**
    - First substantive update since May 1993 (*minor update in 2018*)
  
  - **MOSA Guidebook**
    - Published by OUSD(R&E), IP Cadre is supporting with focus on IP, business, contracting elements
  
  - **Multiple DFARS Cases**
    - More detail on following slide
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# MODERNIZING THE IP ACQUISITION REGULATIONS:

(4/19/23)

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

<p><b>DFARS Cases Complete</b></p>	<p><b>Revisions are effective now, after final rule was published</b></p> <ul style="list-style-type: none"> <li>(1) <a href="#">Streamlined Challenges/Validation for Commercial</a> Tech Data (2018-D069 (S)*; FinalR* 4/28/22)</li> <li>(2) Class <a href="#">Deviation: Immediate implementation</a> of selected SBA Policy Directive updates for <a href="#">Small Business Innovation Research</a> (SBIR) Program Data Rights (2020-O0007; 3/17/20)</li> <li>(3) Ensuring Needed <a href="#">Software Delivery</a> During Program Life Cycle (2018-D018 (S)*; FinalR* 3/22/23)</li> </ul>
<p><b>DFARS Cases Underway</b></p>	<p><b>"Enhanced Public Engagement" rulemaking process (adds ANPR* phase &amp; public meetings for ANPR* &amp; PropR*)</b></p> <ul style="list-style-type: none"> <li>(4) Flexible, tailored, business-case supported <a href="#">Negotiations</a> for IP (2018-D071 (S)*; pending: PropR* publication) <ul style="list-style-type: none"> <li>i. Up-front <a href="#">pricing</a> for Technical Data</li> <li>ii. <a href="#">Preference</a> for Specially Negotiated Licenses</li> </ul> </li> <li>(5) Enabling <a href="#">Modular Open Systems Approaches</a> (MOSA) (2021-D005 (S)*; pending: ANPR* publication)</li> <li>(6) Enhanced <a href="#">Deferred Ordering</a> for Tech Data &amp; Software (2019-D044 (S)*; pending: ANPR* publication)</li> <li>(7) Full Implementation <a href="#">SBIR/STTR</a> Data Rights Policy Updates (2019-D043; PropR* published 12/19/22, first public meeting held 2/02/23, high public interest required a 2<sup>nd</sup> public meeting 3/02/23)</li> <li>(8) <a href="#">Doubling the Challenge Period</a> (3 → 6 yrs) for DR Validations (2022-D016 (S)*; ANPR* published 12/16/22, public meeting held 1/26/23)</li> </ul> <p><b>Not required to use the Enhanced Engagement rulemaking process</b></p> <ul style="list-style-type: none"> <li>(9) Protection for DoD <a href="#">Program Names &amp; Weapon System Designations</a> -- including trademarks (2021-D002) (pending: PropR* publication; public meeting(?) TBD)</li> </ul>
<p><b>FAR Cases Underway</b></p>	<p><b>Proposed rules managed by the FAR Law Team, not subject to an enhanced engagement process</b></p> <ul style="list-style-type: none"> <li>(10) USG (non-DoD) SBIR/STTR Data Rights Updates (FAR 2020-010) PropR: 4/07/23 (Ref: DFARS (2) &amp; (7))</li> <li>(11) Implementing updated Dept. of Commerce policy, practice &amp; streamlining for <a href="#">Patent Rights</a> (FAR 2018-012) (Note: On Hold for consideration of further Commerce policy/rulemaking activities – as of 3/21/22)</li> </ul>

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



# ENABLING WINS FOR ALL PROGRAMS: ACQUISITION WORKFORCE TRAINING

## Back-to-Basics: IP Knowledge Area



**DAU Back-to-Basics:** modernizes Defense Acquisition Workforce training to a 21<sup>st</sup> Century talent management framework. The initiative significantly streamlines the certification framework and re-focuses training resources to be on-demand, just in time, and tailored for the real-world challenges faced by acquisition professionals

### IP Cadre Support & Deliverables:

- IP Knowledge Area Lead: Director, IP Cadre, serves as the IP Knowledge Area Lead, supporting the Program Management Functional Area: leading an effort to provide tailored who/what/how recommendations for all relevant functional areas of expertise (this also aligns with action #4 of DoD's response to the Nov 2021 GAO report)
- DAU IP Team: Two full-time personnel; coordinating integration of IP content with 3 asset leads
- Created: Foundational IP Credential (September 2020)
  - Planning for additional credential offerings for more advanced IP expertise, specialized topics/practices,
- Launched: IP & Data Rights Community of Practice Website (March 2020)
- New Course to Train the Lawyers: created (and taught multiple sessions at) a week-long IP course at the Army JAG School (May 2021-Advanced Contract Law Course)
- Specific DAU Learning Assets– created or updated
  - Seven online videos; with two more in-process
  - Six workshops & webinars
  - New Mission Assistance Workshops added to curriculum:
    - Intellectual Property/Data Rights Workshop For FAR-Based Contracts (WSM 022)
    - Intellectual Property Strategy Workshop (WSM 024)
  - Two-year project to update the entire DAU suite of IP courses (CLE 068, 071-077)
  - Incorporated IP into existing Executive Level Courses and Workshops (PMT 4010, 4020, Defense Acquisition Executive Overview Workshops (DAEOWS))
- DAU 5-Year Strategic Plan (FY21-26): created overarching strategy, enabling execution aligned to priorities & resourcing



# 2023 NDAA SEC. 841 ADDING NEW 10 USC 3791(c)

## (c) GUIDELINES AND RESOURCES.—

(1) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, shall develop guidelines and resources on the acquisition or licensing of intellectual property, including—

(A) intellectual property strategies and other mechanisms **supporting the use of modular open system approaches** (as defined in section 4401(b) of this title);

(B) evaluation and negotiation of intellectual property licenses in competitive and non-competitive awards;

(C) models and best practices for specially negotiated licenses, including specially negotiated licenses described in section 3774(c) of this title; and

(D) definitions, key terms, examples, and case studies that clarify differences between—

(i) detailed manufacturing and process data;

(ii) **form, fit, and function data**;

(iii) data required for operations, maintenance, installation, and training;

(iv) **modular system interfaces** (as defined in section 4401(b) of this title); and

(v) **technical data pertaining to an interface** between an item or process and other items or processes necessary for the segregation of an item or process from, or the reintegration of that item or process (or a functionally equivalent item or process) with, other items or processes. ...



# **2023 NDAA SEC. 841**

## **ADDING NEW 10 USC 3791(c)**

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(2) **GUIDELINES AND RESOURCES LIMIT.**—The guidelines and resources developed under paragraph (1) may not alter or affect any authority or duty under this section or section 1707 of this title.

(3) **REVIEW AND CONSULTATION.**—In developing the guidelines and resources described in paragraph (1), the Secretary shall—

(A) review the applicable statutory and regulatory history, including among the definitions and key terms in section 3771 of this title, to ensure consistency; and

(B) regularly consult with appropriate government and industry persons and organizations.

(4) **TRAINING.**—The Secretary of Defense shall ensure that the acquisition workforce receives training on the guidelines and resources developed under paragraph (1).



# ***PLANNING FOR MORE INDUSTRY OUTREACH OPPORTUNITIES***

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- **Planning to host an inaugural DoD Intellectual Property Forum**
  - Multi-purpose – IP Evaluation Pilot, IP/MOSA hot topics
    - ~November 2023
  - In-person, DC Metro Area
  
- **Registration information will be shared publicly as soon as it is available**
  
- **In-person participation will be encouraged!**



# IP [CADRE] – FOUNDATIONAL CONCEPTS

- **The Words Matter. They really matter. More than [most of us] think.**
  - IP = “intangible” property. Managed ~entirely by the written word: contracts (← regs, policy, statute).
  - “Possession is nine-tenths of the law...” Forget that! Wait... maybe focus on that (deliverables!!)
- **The Timing Matters. It really, really, matters. Perhaps our Achilles Heel.**
  - Competition changes everything. Uncertainty: Earlier planning for longer-term (risk & reward).
  - The “Minimum Needs” conundrum (see also: funding & bona fide needs).
- **Partnering: Keep Your Friends Close ...**
  - IP is the business model. Industry keeps what is not “taken” by DoD. DoD focus on mission & critical path.
- **This Requires Changing the Acquisition *Culture*.**
  - Resistance. Incentives. Accountability. Smart PMs are consistently opting out of proactive IP management.
  - The [IP] Cadre Paradox: it’s not just the lawyers — cross-functional engagement/teaming is always critical.
- **Seeking the Elusive Sweet Spot: Flexibility vs. Structural Support.**
  - Unequal Power: Negotiating without competition (... operating in a compromised environment)
  - Example: DFARS allocates IP license rights, but does NOT require delivery of any data/software. None.
- **Measures & Metrics: for Data-Driven IP Planning, Decision-Making, Assessment...**
  - No direct M&Ms for program IP health. Yet. Current challenges to meet Deming’s charge to “...bring data.”
- **Welcome Support from Senior Leaders.**
  - Top-down drives execution. IP supporting program assessment: action & reality aligned with strategy?



# CRITICAL CONCEPTS FOR FLEXIBLE PROGRAM EXECUTION

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- **IP Strategy: For Real This Time. Not a checklist or a template. A strategic plan.**
    - Must Rethink the Model: as a hybrid of a DoD strategy and industry's strategy for the same program
    - Must Really Understand the Rules, whether FAR or non-FAR
    - Timing, Timing Timing: **Act Now** to manage uncertainty and risk – for life cycle needs
    - Must **Think** Hard to ID Life Cycle IP Requirements
    - Must **Plan How** to Acquire IP Requirements – just asking is not enough
    - Aligns program strategies and plans (SAMP, SEP, TEMP, PSS) with IP needed to execute
  
  - **IP Evaluations (and Valuations)**
    - Strategic and tactical enabler for any/every DoD decision where IP is a factor (IP Strategies, source selection, negotiated sole source awards, negotiation of specialized licenses or deliverables, etc.)
    - IP evaluation while in competition can be the most effective tool for communicating and obtaining IP requirements, but must not be overplayed
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# CRITICAL CONCEPTS FOR FLEXIBLE PROGRAM EXECUTION

- **Show Me the Money: Return on Investment & Cost Avoidance/Should Cost**
  - Privately developed (funded) Tech: “You pay for what you get...” (we have to “buy down”)
  - DoD Developed (funded) Tech: “You get what you pay for...” (But only if we actually capture it)
- **Engaging with Industry: Helping the DIB put their money (and ours!) where their mouth is**
  - The “Marriage Counselor” metaphor – pressing for DoD-industry “hard conversations” – from individual RFPs & source selection, to tailored license negotiations, to DFARS rulemaking
- **Modular Open Systems Approaches (MOSA) – teaming with OUSD(R&E)**
  - Successful MOSA relies on successful IP Strategy – and vice versa
  - Leverages digital revolutions led by R&E: digital engineering, model-based systems engineering
  - Countermeasure to “Cherry Picking” – proprietary modules locking-up larger DoD-funded systems
  - Enables competition and program flexibility – via a “black box” approach to subsystems/component
  - Creates opportunities for “vendor neutral” tech insertion (Agile, DevSecOps)



# *THE OSD IP CADRE CIVILIAN LEADERS & CONTACT INFO*

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# BACKUP SLIDES





# *IP CADRE KEY FOCUS AREAS*

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- **Technical Enablers: System Engineering**
  - Functional & Operational – Architecture & Modularity
  - Digital Data Artifacts: Tech Data, Software design



**Work Breakdown Structure**

- **Business & Legal Enablers: Intellectual Property**
    - Investment in technology development
    - Return on Investment: through exclusive IP rights
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# ***HOT TOPICS FOR DISCUSSION***

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- **Digital Engineering/Digital Acquisition and IP/contractual issues**
    - (e.g. Digital Delivery modes vs. Physical Delivery; Data rights)
  
  - **Including IP considerations in the evolution to Digital Systems Engineering/Digital Acquisition**
  
  - **MOSA implementation and interface rights & access/delivery**
    - Interface Repositories & Index -- FY21 NDAA, Sec. 804(c)
    - DFARS Case 2021-D005 – draft revisions & public mtg(s) in CY23
  
  - **Advanced/Automated manufacturing** (e.g. “Additive Manufacturing”) technical data and rights issues (e.g. "Maker files" - digital mfg "scripts" (data)).
  
  - **How is System Engineering affected by IP? And Vice Versa?**
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# OVERVIEW: SEC. 801 PILOT PROGRAM ON IP EVALUATION IN DoD ACQUISITIONS

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- **Sec. 801 of the FY 2020 NDAA**
    - Spawned by the Sec. 813 Panel final report
  
  - **OSD & MILDEPs joint pilot program to assess IP valuation techniques & commercial valuation methods' benefits on--**
    - IP Strategies
    - Management of IP costs throughout lifecycle,
    - Use of commercial & nondevelopmental technology, vice new development for USG.
  
  - **Specific activities authorized--**
    - Establish a team of experts (incl. IP Cadre) to make recommendations
    - Assessment of:
      - commercial valuation methods;
      - agency-level oversight;
      - contracting mechanisms;
      - acquisition planning for IP/rights for life-cycle (sustainment)
    - Industry engagement on IP requirements, strategies, valuation methods
  
  - **Joint Report to Congress: Annually 2020 through 2023**
    - Fourth (final) annual report is underway
      - Includes – Additional Government data call, Industry recommendations & engagement, wrap-up & way ahead
    - Previous annual reports to Congress are publicly available on our website:  
<https://www.acq.osd.mil/asda/ae/ip-cadre.html>
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## *THE IP-MOSA GHOSTS OF THE PAST*

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- **OUSD(AT&L)'s “Better Buying Power” (BBP) → formally linked MOSA (OSA) and IP (Data Rights (DR))**
    - OSA-DR Working Group
  - **2013: OSA Contract Guidebook for Program Managers**
  - **“Segregation and reintegration data” (FY12 Sec. 815):**
    - Enabling MOSA (prior to new MOSA terminology) → to address Form, Fit, or Function (FFF) data including an interface the vendor argues is proprietary even at FFF level-of-detail
    - Note: also create statutory “deferred ordering” scheme
    - DFARS Case 2012-D022 – superseded before final
  - **DFARS Part 227 “Transformation” (Case 2010-D001) – revise & streamline entire Part, create PGI – superseded before final**
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## ***THE IP-MOSA GHOSTS OF THE PRESENT***

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### ■ **FY16 NDAA**

- Sec. 813 Government-Industry Advisory Panel -- final report Nov 18
- Sec. 875 Independent Review of USG Access to Private IP for Organic DIB
- DoD response to both via USD(A&S) memo dtd 03 Feb 2019

### ■ **FY17 NDAA – Acquisition Agility Act – created statutory MOSA scheme including IP enabling (and updates)**

- Sec. 805: MOSA codification (defined and required MOSA in requirements development and acquisition strategy)
- Sec. 809: New MOSA-enabling data rights (e.g., GPR in MSI for mixed and DEPE) and revisions to FY12 IP elements (S/R data; deferred order)

### ■ **FY18 Sec. 802 – Management of IP Matters Within the DoD (originally 10 USC 2322)**

- IP Policy Required (now 10 USC 3791): implemented via DoDI 5010.44
- IP Cadre (now 10 USC 1707) -- see forthcoming slide -->

### ■ **FY20 NDAA**

- Sec. 838: Report to Congress: IP Policy and the Cadre of IP Experts - April 2020
- Sec. 801: Pilot Program on IP Evaluation for Acquisition Programs – Annual reports required 2020 through 2023





## THE IP-MOSA GHOSTS OF THE PRESENT

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### ■ FY21 NDAA

- Sec. 804: Implementation of MOSA (nomenclature changes; expand to “all systems” TMEP; MSI repositories)
- Sec. 839: GAO 10752: Defense Acquisitions: DOD Should Take Additional Actions to Improve How It Approaches Intellectual Property - November 2021

### ■ Adaptive Acquisition Framework (AAF) – acquisition pathways & associated overhaul of the entire DoD 5000 series regulations

- Functional Policies: IP Policy at new DoDI 5010.44
- Replace the Defense Acquisition Guidebook -- for IP, this is the IP Guidebook (more formally: “Intellectual Property: A Strategic and Tactical Guidebook”)

### ■ DFARS Regulations/Rulemaking – see the chart for overview of current pending DFARS cases (upcoming slide →)

- 2016 – Regulatory activity “freeze” pending results of the Sec. 813 Advisory Panel
- 2019: Un-Freeze – massively parallel actions on backlog and charge to implement an “enhanced engagement” rulemaking

### ■ 5010.12-M update “Acquisition and Management of Contractor-Prepared Data” (replacing “Procedures for the Acquisition and Management of Technical Data,” May 1993)

### ■ DAU -- back to basics transformation; overhaul of IP Strategic Plan

### ■ MOSA Guidebook – in development led by USD(R&E), expected in 2023

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# ***MOSA GHOST OF THE PRESENT***

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- **PMS must execute MOSA requirements as well as they can**
  - **However, 2021 NDAA MOSA GPRs for MSIs<sub>new</sub> (developed partly or fully at private expense) will not be available until implemented in the DFARS, perhaps years from now**
  - **So, rights to MSIs<sub>new</sub> or any interface must be obtained under current DFARS (if in FAR contract)**
  - **Tools available now:**
    - Unlimited rights in form, fit, or function data
    - Unlimited rights in data for operations, maintenance, installation and training (other than detailed manufacturing and process data)
    - Funding test
    - IP evaluation and special license negotiation



# **ACT III: THE IP-MOSA GHOSTS OF THE FUTURE**

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- **FY21 Sec. 804 MOSA update ... MSI repositories & authorized access**
  - **DFARS cases -- serial publication and mtgs likely as the cases break loose serially**
    - Focus on 2021-D005 statutory elements to be addressed (w/o revealing details of how -- more framing the charge)
  - **The IP Guidebook**
  - **The MOSA Guidebook**
  - **Acquisition Workforce Development -- DAU** – overhaul of the IP content across the board, new teaching products (stand-alone)
  - **Final year of the Sec. 801 IP Pilot → transitioning to DoD-wide IP Cadre activities**
  - **Hot off the presses! FY23 NDAA Sec. 841 revising IP Cadre statute (10 USC 3791)**
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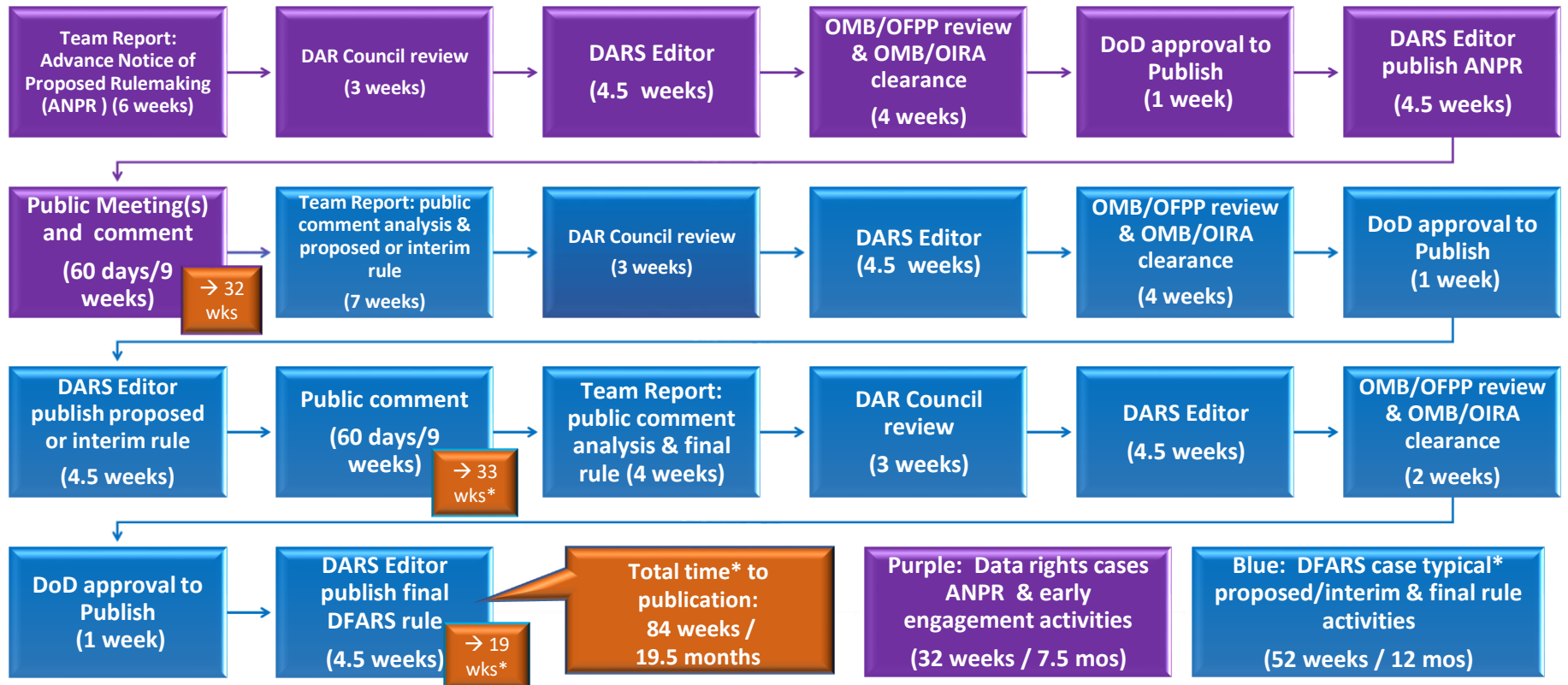


# ***MOSA GHOST OF THE FUTURE (SORT OF) 2021 NDAA MOSA REVISION***

- Requires (regs and guidance) for program officer (of MDAP) to include “desired modularity” (with specified details) for system in acq. strategy or other program documentation
- Recognizes MOSA where “no common interface standard has been established, to enable communication between such weapon systems, platforms, and components”
- Introduces new term—modular system interface (MSIs<sub>new</sub>) and drops MSI<sub>old</sub>
- Requires delivery of MSIs<sub>new</sub> deemed relevant in program document
- Requires creation of interface repositories – for access by authorized USG & non-USG personnel
- MOSA applied to all programs to maximum extent practicable; and may be expanded to software-based non-weapon systems
- GPRs for MSIs<sub>new</sub> if privately funded (in whole or part) & identified in the solicitation/contract; for GPRs in exclusively privately funded MSIs<sub>new</sub>, USG must negotiate “appropriate and reasonable compensation”
- Many terms defined in statute but not “key interface”
- DFARS case 2021-D005 is pending – publication as ANPR with public meeting

# DFARS Data Rights Cases -- Enhanced Public Engagement Expanded Timeline

NOTE: Individual cases may have longer or shorter timelines, depending on the complexity of the case.



\* It is not yet clear whether the early engagement activities will reduce the time required for some elements in later stages of rulemaking