NASA in the Digital World: Policies and Procedures

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Talking Points

- NASA Policies on Copyright in General
  - 17 USC - NASA Interpretations
  - FAR Construct for Data Rights
- NASA Policies Regarding Software
  - NASA Software Release Process
  - NASA FAR Supplement
  - Commercially Licensing NASA Software
  - NASA Open Source Agreement (NOSA)

NASA Policies on Copyright in General

- 17 USC 105: "Copyright protection under this title is not available for any work of the United States Government . . . ."

- 17 USC 101: "A 'work of the United States Government' is a work prepared by an officer or employee of the United States Government as part of that person's official duties."

- **NASA POLICY**: While civil servant created works are not protected by US Copyright Law, such works are protected by copyright in all other jurisdictions world-wide unless specifically prohibited. Therefore, civil servant created works are NOT IN THE PUBLIC DOMAIN.

NASA Policies on Copyright in General

- 17 USC 101: "A 'work made for hire' is—(1) a work prepared by an employee within the scope of his or her employment." Also see 17 USC 201(b)

- **NASA POLICY**: Since civil servant created works are not in the public domain, such works are a "work made for hire" originally owned by the US Government.

- 17 USC 101: "A 'joint work' is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole."

- 17 USC 201(a): "The authors of a joint work are co-owners of copyright in the work."

- **NASA POLICY**: The US Government is a co-owner of joint works in which at least one of multiple authors is a civil servant.

NASA Policies on Copyright in General

- NASA follows the Federal Acquisitions Regulations (FAR) construct for data rights:
  - Contractor agrees not to assert copyright in data first produced under the contract without obtaining contracting officer approval
  - NASA receives unlimited rights in data first produced in performance of a contract
  - NASA receives something less in data produced before the contract at private expense, but can use Special Works clause
- NASA rarely allows contractors to assert copyright
  - A mutually beneficial alternative
  - One notable exception: Jet Propulsion Laboratory/CalTech GOCO

NASA Policies Regarding Software

- NASA Policy Requirement (NPR) 2210 governs the release of NASA software.

- NPR 2210 defines several categories of release, ranging from restrictive releases (limited to use on a particular government contract or project) to general releases (open source release, general public release, US only release)

- Each NASA Center has a Software Release Authority to manage release requests

- Each release is reviewed by legal, export control, 508 compliance, and technology transfer

NASA Policies Regarding Software

- NASA FAR Supplement 1852.227-14(4)(i) "The Contractor agrees not to assert claim to copyright, publish or release to others any computer software first produced in the performance of this contract unless the Contracting Officer authorizes through a contract modification."

- NASA FAR Supplement 1852.227-14(4)(iii) "If the Government desires to obtain copyright in computer software first produced in the performance of this contract . . . the Contracting Officer may direct the contractor to assert . . . a claim to copyright in such data and to assign . . . such copyright to the Government or its designated assignee."

NASA Policies Regarding Software

- Added control of copyright in software allows for a wider range of possibilities otherwise not available:
  - Commercial License of Software – NASA can license its software for commercialization purposes – generally follow the traditional 37 CFR 404 licensing regulations, however royalties go to Treasury
  - License Back – NASA can authorize a contractor to commercialize the software in the copyright assignment document
  - Open Source License – NASA has released over 100 software programs as open source software subject to an approved open source license:
    - NASA Open Source Agreement (NOSA)
    - Apache 2.0

NASA Policies Regarding Software

- NASA Open Source Agreement
    - Written in 2003 in response specific needs at Ames Research Center and Goddard Space Flight Center (Earth Science Data Policy)
    - Designed to account for 105 issues by using contract theory (in addition to copyright theory) to protect the US Government as a third party beneficiary
    - NASA Legal Team was convened to work on NOSA – this team is still active today
    - NOSA was certified in 2004 by the Open Source Initiative as compliant with the Open Source Definition
    - While still the preferred open source license for NASA open source releases (necessary in the case of civil servant only created code), Apache 2.0 may be used in certain circumstances

Questions?