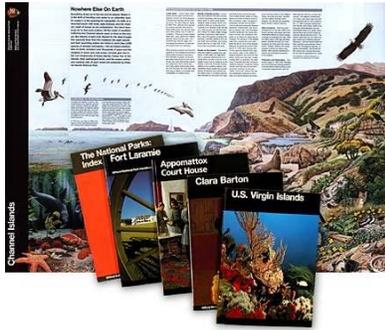




# Intellectual Property Guidelines for Harpers Ferry Center Interpretive Media





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## **Preface**

These guidelines were prepared by Harpers Ferry Center to address intellectual property issues that commonly arise in the development and procurement of interpretive media. Because intellectual property laws are complex and often situation-based, these guidelines should not be substituted for professional counsel. They are instead meant to provide general information, basic guidance, and procedures for dealing with common issues.

## **Chapter 1 – Introduction to Intellectual Property**

The term intellectual property refers to a right to one's own ideas or products of an individual's intellect. These creations of the mind can be expressed in a variety of ways and, over time, various laws have developed to grant certain rights in these intellectual products. Those rights enable an exclusive benefit to be derived from the creation of intellectual property. It is important to note that intellectual property is an "umbrella term" that encompasses several distinct categories, each of which has specific rules and regulations.

While the scope of each category of intellectual property rights is well defined, a particular item may have components that qualify for protection in more than one category. The major categories of intellectual property are copyright, patent, trademark, and trade secret.

### **Introduction to Copyright**

Copyright is a form of protection granted to the authors of certain original works of authorship. In the United States, this protection originates from Article 1, Section 8 of the U.S. Constitution which provides:

"To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

As that clause states, securing individual rights is not the purpose of copyright. Rather, copyright is a method to achieve the purpose of promoting progress. Copyright can be seen as a contract between the author and the federal government: for a limited time the author is granted certain exclusive rights in exchange for making their ideas available in a tangible form of expression. This scheme protects authors from those who would steal their ideas and allows others to benefit and build upon the intellect presented in those ideas.

Copyright is available only after the ideas are fixed in some tangible form of expression, but publishing that form of expression is not a prerequisite to copyright. Registering the work with the U.S. Copyright Office is also not required for copyright protection and even if registered, the work is not reviewed to make sure it meets the criteria for copyright protection before the registration is issued. In short, under the current U.S. law, it is fairly easy to obtain copyright for creative works.

## **Introduction to Patents**

Patent rights originate in the same constitutional clause as copyrights and serve a similar public purpose. They grant certain rights in exchange for disclosure of the idea. One procedural difference is that patent rights are only granted after the U.S. Patent and Trademark Office issues a valid Patent. Once a patent is issued, it grants to the inventor the right to exclude others from making, using, offering for sale, selling or importing the invention. Generally, the term of a new patent is 20 years from the date of filing the application for the patent in the United States or, in certain cases, from the date a related provisional patent application was filed. A provisional patent application provides a lower-cost first patent filing in the United States. Applicants are entitled to claim the benefit of a provisional application in a corresponding non-provisional application if filed within 12 months after the provisional application filing date. The benefit derived from a provisional patent application is that patentability is evaluated based on the provisional application filing date and patent protection is effective from the earlier provisional application filing date. A provisional patent allows inventors to place the “patent pending” notification on their inventions and places domestic applicants on equal footing with foreign applicants with respect to the patent term. Inventors may file U.S. provisional applications regardless of citizenship, but U.S. patent grants are effective only within the United States, U.S. territories, and U.S. possessions.

The three types of patents are:

- 1) Utility patents, the most common type, may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;
- 2) Design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture. In some countries, similar rights are termed industrial design rights; and
- 3) Plant patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

To obtain a valid patent, an inventor must submit an application that fully describes the invention. The patent office will then thoroughly review the application to determine whether the invention is novel, useful, and not an obvious progression of existing technology. If these criteria are met, a valid patent may be issued.

## **Introduction to Trademarks**

Trademarks are typically thought of as a brand or logo, but trademarks can be a device, brand, label, name, signature, word, letter, numeral, shape of goods, packaging, color or combination of colors, smell, sound, movement, or any combination thereof. Basically, many things can qualify as a trademark so long as the "mark" is capable of distinguishing goods and services of one business from those of others. Technically, a mark used to identify services is called a "service mark," but all types of marks are commonly referred to as trademarks. Trademarks are regulated by both federal and state law, and most, if not all states have their own registration system. Anyone claiming a trademark under state law can notify others of their claim by placing "TM" for a trademark or "SM" for a service mark next to the actual mark.

The protections that trademarks afford are based on consumer recognition of the mark and can be limited by factors that inhibit consumer recognition. For example, a regional housekeeping chain in the D.C. metro area may have a service mark that consumers in and around D.C. immediately recognize and associate with the company, but consumers in Dallas, Texas, would not know what company the mark belongs. The D.C. - Dallas scenario is obvious, but consumer recognition is not clear cut in practice. This aspect of trademark law has led to the national registration system controlled by the Lanham Act and administered by the U.S. Patent and Trademark Office. Essentially, the national registration system provides a form of notice to the world of one's claim to trademark protection. Once the national registration is complete, an ® is placed next to the mark to identify it as a registered mark.

## Introduction to Trade Secrets

Trade secrets derive their value from being a secret, so trade secret laws are designed to protect against improper disclosure of the secret. Conversely, they are not designed to protect the actual intellectual genius contained in the subject matter of the secret. The advantage gained by the exclusive use of a trade secret lasts for as long as the subject matter remains secret. While trade secrets can contain a wide range of subject matter, some of the most famous trade secrets are recipes or formulas. Examples are the Kentucky Fried Chicken Original Recipe and the formula for Coca Cola Classic. These examples demonstrate the high value of some trade secrets — and why companies go to great lengths to protect them against disclosure. However, once the trade secrets are disclosed or reverse-engineered then the exclusive rights to the subject matter cease.

## Chapter 2 – Copyrights In Depth

### Background of US Copyright Law

Authorized by the U.S. Constitution, the first federal Copyright Act became law in 1790 and was essentially codified a longstanding judicial doctrine that recognized rights of authors and publishers. For a time, copyright protection could be had under state laws, but eventually the supremacy of the federal statute was established, making copyrights governed solely by federal law. Since the first Copyright Act, Congress has occasionally revised the statute. The last major revision came in 1976 and along with several subsequent amendments, the 1976 Act represents the current U.S. copyright law. Because of the various revisions of the Copyright Act, analysis of copyrights in specific works depends on which version of the statute applies.

### Glossary of Common Copyright Terms

Before delving too deeply into copyrights, it is important to become familiar with common terms and their meaning with respect to copyright law. These terms are defined as follows:

**Author** - Either the person who actually creates a copyrightable work or, if the copyrightable work is created within the scope of employment, the employer of the person who actually creates the copyrightable work.

**Collective Work** - A work, like a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

**Copies** - Material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "copies" includes the material object, other than a phonorecord, in which the work is first fixed.

**Compilation** - A work formed by the collection and assembling of pre-existing materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

**Copyright** - The exclusive rights granted to an author or owner of a copyrightable work.

**Copyright Owner** - The owner of one or more of the exclusive rights in a copyright. The exclusive rights provided by Copyright are completely divisible. Copyright in a work vests initially in the author or authors of the work. However, the author may assign some or all of their rights to another, e.g., to a publisher, if the work has appeared in a formal publication, who then becomes the owner of the rights assigned.

**Derivative Work** - A work that is based on, or modifies, one or more pre-existing works. A copyright owner has the exclusive right to prepare or authorize the preparation of a derivative work based on the copyrighted work. If a derivative work, considered as a whole, represents an original work of authorship, it may be separately copyrightable. However, the copyright covers only original portions of the derivative work.

**Display** - Showing a copy of a work, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

**Fair Use** - A statutory exception that allows the use of a copyrighted work for certain purposes without requiring permission.

**Federal Acquisition Regulation (FAR)** - Federal statutory framework that sets forth uniform policies for acquisition of supplies and services by executive agencies.

**First Sale Doctrine** - The right of a buyer of a material object in which a copyrighted work is embodied to resell or transfer the object itself. Ownership of copyright is distinct from ownership of the material object. Section 109 of the Copyright Act permits the owner of a particular copy or phonorecord lawfully made under the Copyright Law to sell or otherwise dispose of possession of that copy or phonorecord without the authority of the copyright owner. This provision permits such activities as the sale of used books. The first sale doctrine is limitations in that a copyright owner may prevent the unauthorized commercial rental of computer programs and sound recordings.

**Government Distribution or Dissemination** - Government-initiated distribution of information to the public. Dissemination does not include distribution limited to government employees or agency contractors or grantees, intra- or inter-agency use or sharing of government information, and responses to requests for agency records under the Freedom of Information Act (FOIA) or Privacy Act.

**Government Publication** - Informational matter published as an individual document at Government expense or as required by law.

**Government Records** - All books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government under federal law or in connection with the transaction of public business. Government records are preserved or are appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.

**U.S. Government Work or a "work of the United States Government"** - A work prepared by an officer or employee of the United States Government as part of that person's official duties.

**Joint Work** - A work prepared by two or more authors with the intention that their respective contributions be merged into inseparable or interdependent parts of a unitary whole. The authors of a joint work are co-owners of copyright in the work.

**License** - A contractual agreement from a copyright owner or the owner's authorized agent, like a third party vendor, allowing another party to exercise one or more of the exclusive rights provided the copyright owner under the Copyright Law. Licenses usually involve the payment of a fee or royalty or both.

**Literary Works** - Works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, like books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.

**Motion Pictures** - Audiovisual works consisting of a series of related images that when shown in succession impart an impression of motion, together with accompanying sounds, if any.

**Perform** - To recite, render, play, dance, or act a work, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

**Permission** - An agreement from a copyright owner allowing another party to exercise one or more of the exclusive rights provided the copyright owner under the Copyright Law. Permission generally does not involve the transfer of any fees or reimbursements. Permission is sometimes referred to as a Copyright Release.

**Phonorecords** - Material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

**Pictorial, Graphic, and Sculptural Works** - Two-dimensional and/or three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.

**Publication** - The distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

**Transfer of Copyright Ownership** - The act of transferring any or all of the exclusive rights comprised in a copyright from the copyright owner to another person or institution. Ownership is generally transferred through an assignment, mortgage, or exclusive license, whether or not it is limited in time or place of effect, but not including a non-exclusive license. To be legally valid, transfers must be in writing and must be signed by the party making the transfer.

**Unlimited Rights License** - The license defined in FAR 52.227-14, Rights in Data – General that provides to the government a royalty-free, non-exclusive, and irrevocable license throughout the world to reproduce, distribute (except for computer software), perform or display publicly the work, and prepare derivative works from the work by or on behalf of the government. Other rights in data clauses, including FAR 52.227-17, Rights in Data – Special Works, refer back to the General Clause’s unlimited rights specifications.

## Copyright Requirements

Copyright protection is only available for original works of authorship that are fixed in any tangible medium of expression from which the work can be perceived either directly or with the aid of a machine or device.

Another subject matter limitation is that facts cannot be copyrighted. However, the creative selection, coordination and arrangement of information and materials forming a database or compilation may be protected by copyright. In such a case, copyright protection only extends to the creative aspect, not to the facts contained in the database or compilation. The creative input from the author need only be minimal.

It is critical to realize that copyright protects the form of expression only and does not extend to the idea or concept underlying the work. For example, while an original photograph of Mount Rushmore would qualify for copyright protection, the underlying idea of taking a picture of the famous monument does not qualify.

In summary, the requirements for copyright protection are as follows:

- Fixation – The work must be fixed in a tangible medium of expression.
- Creativity – There must be some creative input by the author, not just facts.
- Originality – The work must not be copied but can be similar to other works so long as it is independently created.

The requirements for copyright can be met through a variety of mediums. Common categories of copyrightable works are outlined in the chart on the next page.

## CATEGORIES OF COMMON COPYRIGHTABLE WORKS

<b>TYPE OF WORK</b>	<b>DEFINITION</b>	<b>SPECIFIC EXAMPLES (FORMS OF EXPRESSION)</b>
Literary	Expressions in written words or numbers	Novels, nonfiction books, databases, poetry, software
Musical	Composition, melody, parts & words, but not if in motion picture or other audiovisual soundtrack	Sheet music, arrangements
Dramatic	Directions guiding portrayal of story in performance using dialogue or acting, includes associated music	Script with any accompanying sheet music included, if applicable
Pantomime, Choreography	Dance movements & patterns (successive static & kinetic body movements) following rhythmic relationships	Video, film, dance notation
Pictorial, Graphic, Sculpture	Two- and three-dimensional works of fine, graphic & applied art; must be physically or conceptually severable from functional aspects	Photographs, maps, paintings, 3D sculptures, pottery, textiles, macramé, jewelry, furniture, computer graphics, still cartoon & characters, prints, art reproductions, maps, globes, charts, technical drawings, diagrams, models, games
Motion Picture, Audiovisual	Series of related images shown by machine, accompanied by sounds	Disks, tapes, or other storage media shown by projector or viewed on a monitor
Sound Recordings	Series of musical, spoken, or other sounds	Phonorecords (tape, disks, mp3, wave file, or other storage media)
Architectural	Building design, architectural plans or drawings including overall form, arrangement & composition of spaces & design elements	Plans, blueprints, drawings, models, structures built after 1990

## **Scope of Copyright Protection**

Once the copyright requirements are met, the author or those deriving their rights from the author are granted the exclusive right to:

- reproduce the copyrighted work
- prepare derivative works
- distribute copies of the copyrighted work
- perform the copyrighted work publicly including by digital audio transmission
- display the copyrighted work publicly

These exclusive rights operate to give the copyright owner a monopoly on their creation for the term of the copyright.

## **Term of Copyright Protection**

Because of U.S. Copyright Law revisions and amendments, the length of copyright protection depends on the date of authorship and, in some cases, the date of publication. Any work produced after January 1, 1978 (the effective date of the 1976 Copyright Act), enjoys copyright protection for the life of the author plus 70 years after the author's death. For works created before January 1, 1978, the length of copyright term can be difficult to determine. The chart on the following page outlines the length of copyright terms in various situations.

## LENGTH OF COPYRIGHT TERMS

<b>DATE OF WORK</b>	<b>PROTECTED FROM</b>	<b>TERM OF PROTECTION</b>
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years (or if work of corporate authorship, the shorter of 95 years from publication or 120 years from creation)
Published before 1923	In public domain	None
Published from 1923 – 63	When published with notice	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not renewed then now in public domain
Published from 1964 – 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047, whichever is greater

## The Public Domain

Once the term of copyright protection ends, all exclusive rights granted to the author vanish. The work is then said to be in the “public domain” and is available for use by all without violation of copyright laws. Works created by government employees under the scope of their employment, some works created by government contractors, and works that were published without copyright notice under older copyright laws are also in the public domain.

Using a work that it is the public domain has the advantages of being cost effective and having unlimited use-rights. However, use caution in determining whether a particular work is, in fact, in the public domain, because there may be circumstances that complicate such a determination. For instance, a work that is in the public domain can be resurrected in a sense by the preparation of a derivative work. The author of the derivative work must add some element of creativity to qualify for copyright protection and this could be accomplished by something as simple as retouching a photograph or remastering an audiovisual work. While the original work would still be in the public domain, the new and possibly better work could be subject to copyright restrictions.

Not surprisingly, determining whether the creative input added to a public domain work is sufficient to trigger new copyright protection depends on the facts of the specific situation. However, because initially claiming copyright in a work is a non-adversarial process, an analysis of the situational facts only occurs after an alleged copyright infringement. These characteristics of the process can lead to claims of copyright protection and subsequent licensing of use-rights for works that are nothing more than a digitization of a public domain work. While in these types of cases an individual work’s qualifications for copyright may be debatable, infringing a copyright based on a belief that the copyright is invalid is prohibited.

## Fair Use

While the exclusionary rights granted under the Copyright Act are quite comprehensive, certain exceptions to copyright infringement do exist. One such exception is the doctrine of fair use. Fair use exceptions developed through court decisions over the years and are now codified in Section 107 of the Copyright Act. Some actions that commonly qualify as fair use exceptions like criticism, comment, news reporting, teaching, scholarship, and research are listed in the statute and in addition, the statute identifies four factors that should be evaluated on a case-by-case basis to determine if a specific use qualifies as a fair use. The factors, which should be considered together when determining fair use, are as follows:

- Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
- Nature of the copyrighted work
- Amount and substantiality of the portion used in relation to the copyrighted work as a whole
- Effect of the use upon the potential market for or value of the copyrighted work

Under the first factor, courts focus on two primary issues. First, they consider whether the use is a transformative use that adds something to the work (e.g., literary criticism or scholarship) or whether the use is merely a copy offered as a substitute for the original. Second, the courts consider whether the use is for commercial or nonprofit purposes. A nonprofit use for socially beneficial purposes, while not determinative, weighs in favor of a fair use finding.

Under the second factor, courts find the scope of fair use is greater with respect to factual works than non-factual works. Under this factor, courts have also found that the scope of fair use is much narrower for high-priced newsletters than for inexpensive mass circulation periodicals.

Under the third factor, courts disfavor the copying of entire articles or publications. Courts consider not only the percentage of the original used but the importance of the portion used. Use of a portion that is the “heart of a work” is less likely to be considered a fair use.

Under the fourth factor, courts are less likely to find fair use if widespread practice of the challenged use would adversely affect the market for the copyrighted work.

In making “fair use” determinations, courts are not restricted to the four factors discussed. Also, the weight courts assign to each factor varies with the specific circumstances. Since the determination of whether a particular use is considered fair is essentially a judicial balancing act, the distinction between fair use and copyright infringement can be very complicated and unclear.

If a fair use is found to exist, it may include the practice of any of the exclusive rights provided by copyright. As previously mentioned, reproduction for purposes like criticism, comment, news reporting, teaching, scholarship, or research is considered fair use. However, this is not always the case and as such, assuming that a particular use is fair can be costly.

The fair use exception applies to the U.S. Government just as it applies to any other user. However, fair use should be used only as a last resort, not to circumvent an available license or to otherwise cut corners. For NPS purposes, fair use should only be used when specific content cannot be obtained by any other means and only upon written permission of the Chief of the Contracting Office. In making the determination whether to grant permission, the Chief of the Contracting Office will rely on the advice of legal counsel that will perform a comprehensive fair use analysis.

### **Chapter 3 – The Contractor Relationship**

Because much of our creative work is performed through contractors, it is important to realize that works by NPS contractors are not considered U.S. Government works. Instead, contractors are considered the authors of works first produced under the contract and, as such, they have rights to that work. If no agreement exists regarding the respective rights to works produced under contract, NPS would be left with a final product that, when used, could be considered copyright infringement. It is therefore necessary to specify the allocation of rights through contractual terms. In government contracts these terms are typically standard “Rights in Data” clauses contained in the FAR.

Copyright in works arising out of NPS contracts are governed by FAR Subpart 27.4, which specifies several clauses to insert into contracts where use and/or production of copyrightable works is contemplated. Each clause is similar in its basic effect, with each ensuring that government use will not be restricted due to a limitation of rights. However, each clause differs in its specific allocation of rights, procedures for claiming copyright, and other related terms. The clauses apply to many types of works that in FAR terminology are generally called “data.”

The basic Rights in Data clause is FAR Clause 52.227-14, Rights in Data – General. This clause states that the contractor may establish copyright in scientific and technical articles without government approval. However, this clause does require the approval of the Contracting Officer before a contractor may establish copyright in all other data first produced under a contract. Due to the type of work that HFC contractors perform, approval from the Contracting Officer would be required in most cases. Even if the contractor requests and is granted permission to retain copyright protection, the clause specifies that the contractor grants the government a royalty-free, nonexclusive, and irrevocable license throughout the world to reproduce, distribute (except for computer software), perform or display publicly the work, and prepare derivative works from the work by or on behalf of the government. When this clause is used in the contract, the contractor may use any data first produced under the contract in other ways without the need for government permission.

In place of the above data rights clause, Clause 52.227-17, Rights in Data - Special Works may be used. Under this clause the contractor agrees not to assert copyright to any work first produced in the performance of the contract without prior written permission of the Contracting Officer. If permission is not granted, the government can obtain copyright by requiring the contractor to formally register for copyright protection and assign the copyright to the government or a designated assignee. If permission is granted, then the government is again granted a world-wide, royalty-free, nonexclusive, and irrevocable license to reproduce, distribute, perform, or display publicly the work, and to prepare derivative works. The Special Works clause also prohibits the contractor from using data first produced under the contract for other purposes outside the contract without first obtaining the written permission of the Contracting Officer. Finally, the clause specifies that the contractor will indemnify the government against any liability arising out of intellectual property rights violations by the contractor.

The rights in data clauses are designed for use in a range of government contracts and, the Rights in Data – Special Work Clause is usually the most appropriate for HFC interpretive media contracts. However, this may not always be the case, therefore the requirements of each individual procurement must be assessed to ensure that the necessary clauses are used. Furthermore, the NPS now uses more and more technology-based methods to deliver interpretive stories. These new methods require use of contractual clauses that contemplate using computer software, cell phone applications, and other technologies that potentially introduce patent and trade secret concerns.

The table on the next page identifies common Rights In Data clauses and briefly describes their purpose.

## **SUMMARY OF RIGHTS IN DATA CLAUSES**

<b>CLAUSE</b>	<b>BRIEF DESCRIPTION</b>
52.227-11, Patent Rights— Ownership by the Contractor	Contractor retains ownership of any subject invention or else retains a license to any subject invention to which the government asserts ownership
52.227-13, Patent Rights— Ownership by the Government	Ownership of any subject invention is transferred to the government, with contractor retaining certain limited license rights.
52.227-14, Rights in Data – General	Contractor may establish copyright in scientific and technical articles without permission, and other data first produced under the contract with permission. If contractor asserts copyright then government receives a broad license.
52.227-15, Representation of Limited Rights Data and Restricted Computer Software	Requires contractor to specify whether the use of trade secrets or other confidential data is contemplated in fulfilling the contract requirements.
52.227-16, Additional Data Requirements	Allows the government to order data first produced or used in performance of the contract but not delivered under the terms of the contract.
52.227-17, Rights in Data – Special Works	Contractor cannot assert any copyrights in data first produced under the contract without permission. Government may assert copyright if it chooses.
52.227-18, Rights in Data – Existing Works	Specifies the license transferred to the government in contracts exclusively for the acquisition, without modification, of existing copyrighted works
52.227-19, Commercial Computer Software License	Specifies the specific rights needed when contractor acquires “off the shelf” software under government contracts
52.227-23 Rights to Proposal Data (Technical)	Specifies that the government receives unlimited rights in any technical data contained in the proposal upon which the contract is based.

## **Chapter 4 – Acquiring Use Rights for Copyrighted Works**

Along with work first produced under contract, the FAR contemplates that contractors will also include pre-existing copyrighted works in their final deliverables. Using these works requires contractors to procure use-rights from outside sources if the needed content cannot be found in the public domain. Also, HFC's current needs dictate that use-rights for certain projects are acquired by government employees without the use of a contractor. Regardless of the scenario, a general understanding of the license agreements used to acquire use-rights can prove invaluable for making sound business judgments.

### **License Agreements**

In essence, a "license" is nothing more than a permission to do something that would otherwise not be proper without the license. For example, you must not drive a car without a driver's license or fish, in most places, without a fishing license. In the realm of copyright, a license entitles the end user to do something with the copyrighted media that would otherwise be considered copyright infringement.

A license agreement is a contract between the licensor (owner of the copyright) and the licensee (person or entity requesting use rights) that specifies the terms by which permission to use the copyrighted media will be granted. Because the exclusive rights granted under copyright are severable from one another, the use-rights transferred by the license agreement can vary significantly. In addition, the differences between types of copyrighted material and the general nature of contract law combine to make the terms on which use-rights may be granted practically unlimited.

The FAR Rights In Data clauses that apply to copyright use the term "data" to describe copyrightable media. The FAR contemplates two types of data to be delivered under the contract. The first type, data for which only the contractor could assert copyright protection, is described as "data first produced in performance of the contract." The respective rights of the parties concerning this type of data are controlled by the rights in data provisions in the contract. The second type of data contemplated by the FAR, "data not first produced in performance of the contract," includes any content that the contractor would have to license from another party. Ultimately, this data is also transferred to the government under the terms of the Rights In Data clauses. Because a contractor cannot transfer more rights than it has acquired, it is important to inform the contractor of the needs of the project and also to review the license agreements to ensure those needs are met. This review process should, at a minimum, involve the Contracting Officer's Representative, the Contract Specialist, and the Contracting Officer.

In addition to reviews of contractor submissions, reviews of any license agreement entered into by NPS are required to ensure that the use-rights obtained correspond to NPS needs. Please note that *only* the Chief of the Contracting Office has the authority to enter into a license agreement on behalf of NPS, either by signing a written agreement or by accepting license terms electronically.

A typical license agreement contains a variety of terms, conditions, representations, warranties, and other contractual language. This wealth of legalese can make it hard to determine whether the agreement is compatible with the intended use of the material. The following information will help you understand and review license agreements:

### Types of Licenses

**Limited.** The term “limited” simply alerts the reader that the specified rights granted elsewhere in the agreement are fewer than the rights held by the copyright owner, or are otherwise restricted or limited in some way. By contrast, an unlimited grant would give the licensee use-rights equal to those of the copyright holder. Because virtually all licenses are limited and use of the term is unnecessary, the term is commonly not used.

**Exclusivity.** License agreements either make a non-exclusive or exclusive grant of use-rights. Through a non-exclusive grant, a copyright owner can license the content to any number of licensees, but under an exclusive grant there is only one licensee which enjoys exclusive use of the content for the term of the license agreement.

**Transferability.** A license agreement may state that the license is “non-transferrable” or contain a similar statement that prohibits the transfer of rights from the original licensee to another person or entity. A non-transferrable license usually contains language whereby any attempted transfer voids the license. This language can present problems when contractors are acquiring use rights in the contractor’s own name and then transferring those rights to NPS. It is therefore necessary for the contractor to acquire use-rights under license terms that accurately reflect the contractor’s intention to transfer the rights to the NPS as the ultimate end user.

**Revocability.** Many license agreements contain provisions that allow one party to void or revoke the agreement upon a breach of the agreement by the other party. Terms like these are common in all types of contracts and present no problem for NPS. However, some agreements allow the licensor to revoke or terminate the agreement at any time and without cause. No terms like these should be permitted in any license agreement regardless of whether the agreement is executed by a contractor or by the government.

## Rights Granted and Permitted Uses

To recap, the five exclusive rights granted to a copyright owner are as follows:

- reproduce the copyrighted work
- to prepare derivative works
- to distribute copies of the copyrighted work
- to perform the copyrighted work publicly, including by digital audio transmission
- to display the copyrighted work publicly

Because the listed rights are completely severable, a license agreement may grant permission for any number and combination of the listed rights. Also, the agreement can place more terms and conditions on use like limiting the use to a defined project or limiting the geographical area of the use. License agreements should state the types of rights granted and the permitted uses of the copyrighted content.

## Length of Use

The grant of a license often comes with an expiration date on which any rights granted automatically terminate. If no expiration date exists then the unlimited length of use is denoted as “in perpetuity” or “forever” or a similar term. HFC prefers use-rights that continue in perpetuity, but HFC does recognize that such rights are often difficult to obtain. If rights in perpetuity cannot be reasonably obtained, then use-rights for the “life of the project” are acceptable.

Any proposed acquisition of use-rights that are limited to a term that is less than the “life of the project” must be approved in writing by the Chief of the Contracting Office. The request for limited-term approval should contain a detailed description of both the steps taken to find another source for the content and the inability to negotiate “life of the project” rights. Finally, the request must also include an acknowledgement from the Park which recognizes the limited term-of-use and specifies the understanding that the content must either be removed or re-licensed when the term expires.

## Payment Terms

Payment terms in a license agreement are generally fee-based, royalty-based, or both. A fee-based payment is the familiar one-time payment. A royalty-based scheme contains provisions for a recurring payment usually based on the amount or length of use.

Any proposed acquisition of use-rights that requires royalty payments is prohibited unless approved in writing by the Chief of the Contracting Office. Like the limited-term approval detailed above, this approval should detail the steps taken to find another source for the content, the inability to negotiate a one-time fee and an acknowledgement from the Park which recognizes the recurring payments.

Not surprisingly, use-rights may also be obtained at no cost. This type of license is generally referred to as a “permission” rather than a license agreement. Even though the content is provided at no cost, there are often restrictions and conditions that go along with the permission. As with any license agreement, it is important to review the grant of permission to ensure that the government’s needs are met.

### Indemnification and Hold Harmless Clauses

Indemnification and hold harmless clauses are contractual methods by which one party agrees to cover losses sustained by another party. Inclusion of these clauses in copyright license agreements is commonplace, especially when the licensor is not the author of the work but an outlet that licenses content for many different authors. To understand how an indemnity provision works, consider the following simplified scenario:

A photographer has an agreement with a large image house whereby the image house will act as an agent to license the photographer’s work. ACME Corporation licenses one of the photographer’s images from the image house, pays the license fee, and signs a license agreement containing an indemnification/hold harmless provision. Subsequently, something goes wrong with the use of the licensed photograph, and the photographer wants to sue for damages. The photographer chooses to sue the image house because that is the party he has a contract with. The image house then relies on the indemnification provisions to make ACME pay the costs of litigation and damages.

Indemnification provisions create a problem for the federal government because they give rise to a potential contingent obligation to pay money in the future in an unlimited amount. Such an obligation violates the Anti-Deficiency Act, which limits the authority of contracting agencies to make legally binding financial commitments in excess of appropriated funds. Because government contracting professionals have no authority to agree to indemnify another party, such terms are strictly forbidden.

Any occurrence of an indemnity/hold harmless provision necessitates a closer inspection and in many cases the language will have to be modified. However, it is important to determine which party is indemnifying the other, because the obligation can be written to go either way or both ways. If the NPS is being indemnified by the licensor without an indemnification of the licensor by NPS, then no change is necessary.

### Choice of Law/Jurisdiction/Venue

As strange as it may seem, it is often difficult to determine what law applies to a particular dispute. To clear up the uncertainty, most contracts, including license agreements, contain terms that specify what law applies. Some contractual provisions go as far as specifying a jurisdiction or even a particular court in which a legal action may be pursued. If a state's law is specified as controlling or a state's courts are specified as the appropriate venue for a legal action, then the provisions must be changed. Because the federal government does not generally subject itself to state law or jurisdiction, such terms should be appropriately changed to allow for U.S. federal law to be controlling with the venue being the US Federal Court System.

### Arbitration/Mediation

Substantial benefits can accrue from using alternative dispute resolution (ADR). ADR can greatly reduce the expense and effort required to litigate a dispute. Because of the potential benefits, license agreements often have mandatory arbitration or mediation provisions. Both the FAR and DIAR encourage the use of alternative dispute resolution, but specified limits and procedures regarding the use of ADR must be followed. Therefore it is necessary to compare any ADR provisions with the regulations in FAR 33.214. Most notably, binding arbitration is allowed only if specific agency guidelines are established, and because the Department of the Interior does not have guidelines regarding binding arbitration now, such a clause cannot be agreed to. The clause may be modified to comply with the FAR or else removed from the agreement.

## **Use-Right Acquisition by Government Employees**

Any license agreements required for “in-house” use-right acquisition must be reviewed and signed by the Chief of the Contracting Office unless that authority has been specifically delegated. To obtain approval for the license agreement, the problematic terms outlined above must either be modified or removed as appropriate. Negotiating the necessary modifications to license agreements may be simple if the licensor is willing and the agreement to be modified is simple. However, many licensors are reluctant to change contractual terms, and license agreements are often long and complex. The specifics of each situation will dictate the best processes to use to negotiate an acceptable agreement. For example, if a proposed license agreement only needs an indemnification clause and/or choice of law provision removed, then it may be best to simply negotiate removing the clause or replacing with the substitute language found in Appendix A-1. On the other hand, if many terms need to be changed then the Addendum found in Appendix A-2 may be the appropriate choice. Regardless of method used to modify the license agreement, the changes must be mutually agreed to, with the licensor signing-off on the modifications.

Any proposed acquisition of use-rights which are limited to a term that is less than the “life of the project” or contains reoccurring royalty-type fees must be approved in writing by the Chief of the Contracting Office. The request for limited-term approval must contain a detailed description of the steps taken to find another source for the content and the inability to negotiate the appropriate rights and/or fees. The request must also include an acknowledgement from the Park that accepts the problematic license terms and specifies the understanding that appropriate future action is necessary to comply with such terms. In the case of limited-term rights, the Park must understand that the content must either be removed or re-licensed when the term expires. In the case of reoccurring fees, the Park must understand that additional payments are necessary to maintain use of the subject content.

## Use-Right Acquisition by Contractors

The mechanics of use-right acquisition by contractors is slightly more complex than government employee acquisitions, because the contractor/government relationship is governed by an agreement that should specify how the use-rights are to be transferred through the rights in data clause. The Rights-in-Data Clauses typically used in HFC contracts specify that when a contractor delivers data not first produced under the contract, the data shall come with "a paid-up, non-exclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government." Such a broad license is commonly impossible to acquire or is prohibitively expensive. In most cases, the contractor will submit content with more narrowly tailored license rights than those specified by the FAR. Such limitations are acceptable as long as the rights acquired adequately cover the intended uses of the copyrighted content. Also, the contractor must provide license rights that cover the extent of the intended use, which may be represented by time, number of printed copies, or similar measure. It is therefore imperative that the contract specify NPS expectations regarding use-right acquisition so that the contractor is made aware of the requirements that need to be met. Again use-rights in perpetuity are preferred and, at a minimum, rights for the "life of the project" are required. Any proposed contractor submission that offers a term which is less than life of the project requires approval from the Chief of the Contracting Office. Likewise, any content that requires reoccurring royalty-type payments must also be approved by the Chief of the Contracting Office. As detailed above, the approval request must include a description of the steps taken to find an acceptable source, the inability to negotiate acceptable terms, and the Park's acknowledgement of the terms and the necessary future action.

The restrictions on indemnification clauses, choice of law provisions, and other problematic license terms do not apply equally to contractors as they do to government employees as long as the appropriate terms are in the contractor agreement. Certain right in data clauses, including the Special Works clause, state that the contractor will indemnify the Government against any liability incurred as the result of intellectual property rights violations. This indemnification allows the government to use the licensed material provided by the contractor without taking on the contractual liability, which in turn allows the contractor to agree to terms that the government cannot agree to.

While the contractor may be allowed to agree to some terms that the NPS may not, the preferred practice is for the contractor to negotiate the modification or removal of problematic terms if possible. The Addendum found in Appendix A-2 may be used by the contractor to negotiate appropriate changes.

## **Chapter 5 – Review and Retention of Contractor Submissions**

### **Data First Produced in Performance of the Contract**

Like any other work performed by the contractor, use-rights must be reviewed to ensure that the government's needs, as specified in the contract, are being met. For data first produced in performance of the contract, the review should be fairly simple. This review consists of examining submissions to make sure that the contractor, subcontractor, or other source has not placed any copyright notices on submissions or included any similar language that would limit NPS ownership and/or use-rights in the final product. In general, HFC contracts prohibit attaching a copyright notice to a work without first obtaining permission from the Contracting Officer. If a copyright notice is found then the contractor should be immediately asked to remove the notice, and the Chief of the Contracting Office must be notified. Any refusal to remove the copyright notice will be immediately handled by the Contracting Officer.

### **Data NOT First Produced in Performance of the Contract**

The review of data not first produced in performance of the contract is more complicated and involves examining the license agreements provided by the contractor. This examination should focus on confirming the following:

- the term of the license is either “in perpetuity” or “for the life of the project” or else a justification approved by the Chief of the Contracting Office has been obtained
- licensed use-rights adequately cover the intended uses of the content
- license is either transferable or else the agreement contemplates that the NPS is the intended end-user
- license is not unilaterally revocable by the licensor without adequate cause
- geographic use-area does not limit the intended use
- no royalty or other reoccurring payments are required
- no provisions that require specific crediting of the author are present

This list is not all-inclusive and any other license agreement provisions that are confusing or contain extraordinary terms should be scrutinized by the COR and Contracting Officer, who will seek legal advice if necessary.

## Maintaining Records Regarding Use-Rights

Licenses for copyrighted content specify how the content may be used. If everything came to the NPS with unlimited rights in perpetuity, then conceivably there would be little need to maintain records on license agreements. However, most licenses have restrictions that while are adequate for the current requirement, may not be adequate for any future purposes. Needs change with time and unless records of license rights are kept, there is no way to tell if those rights are consistent with the now current need. Furthermore, if it is determined that additional use-rights are needed, the license agreement offers excellent information about the source of the content and the potential cost of the additional rights.

## Chapter 6 – Computer Software

Computer programs can be protected as “literary works” under the U.S. Copyright Act and are included within the FAR Rights In Data clauses. However, the unique nature of computer programs requires special considerations that differ from those of a traditional literary work. Also, terminology in the computer field, as it pertains to copyright, must be understood as it is used in the industry. Common terms and definitions are as follows:

**Computer Program** - A set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

**Computer Software** - One or more computer programs.

**Commercial Computer Software** - Software developed or regularly used for non-governmental purposes, which has been sold, licensed or leased to the public or is a commercial item.

**Derivative Work** - As previously defined a derivative work means a work that is based on, or modifies, one or more preexisting works. A copyright owner has the exclusive right to prepare or authorize the preparation of a derivative work based on the copyrighted work. If a derivative work, considered as a whole, represents an original work of authorship, it may be separately copyrightable. However, the copyright covers only original portions of the derivative work. In the computer industry, a second version of a software program is generally considered a derivative work based on the earlier version. The term “derived work” is often used in commercial parlance to mean “derivative work.”

**Executable Code** - A subroutine, method, procedure, or subprogram of a larger program that performs a specific task and can operate relatively independently of the remaining code. It can be self-contained or call upon other code to take a specific action.

**Object Code** - Computer program code that is written in machine-readable language.

**Open Source License** - A license to use software that provides the licensee the freedom to use the software for any purpose, to study and modify the software, and to redistribute copies of the original or modified software without payment of royalties. To provide the user these freedoms, open source licenses require that the user have access to and use the software source code.

**Open Source Software** - Software provided to users under an open source license. Open source software is commercial computer software licensed under a scheme that provides broad rights to modify and redistribute the original source code and, sometimes, any distributed modified versions (e.g., derivative works).

**Permissive Open Source Licenses** - Licenses that allow for distribution of the original and derivative works of the open source software under different terms than the original open source license. Under a Permissive Open Source License, derivative works can become proprietary and the original open source software can be incorporated into proprietary software.

**Proprietary Software** - Software in which an owner has a legally protectable property interest that allows the owner to limit how others treat the software. Many proprietary software products are considered commercial computer software.

**Source Code** - Any sequence of computer programming statements or declarations written in some human-readable computer or programming language.

**Strongly Protective Open Source Licenses** – An open source license that requires the original open source licensed software, derivative works based of the licensed software, and any software that dynamically links to the licensed software be distributed under the same terms as the original open source license. This prevents the open source software and any derivative works from becoming proprietary or being incorporated into any proprietary software. A **General Public License (GPL)** is an example of a strongly protective open source license. In the open source community, “strongly protective” open source licenses are also known as **“copyleft strong” licenses**. Copyleft Strong licenses require that derivative works be distributed under the same terms as the original license.

**Weakly Protective Open Source Licenses** – An open source license that allows derivative works to be distributed under terms different than the original license. This prevents the open source software component from becoming proprietary, yet permits it to be part of a larger proprietary program. Examples of weakly protective open source license include the **Lesser General Public License (LGPL)**. In the open source community, “weakly protective” open source licenses are also known as **“copyleft weak” licenses**. Copyleft Weak licenses allow derivative works to be distributed under terms different than the copyleft provisions of the original license.

## **Acquisitions Involving Software**

In addition to copyright protection, computer software may, under certain conditions, be protected as a patent and as a trade secret. Therefore, it is important to consider additional clauses for incorporation into a contract that involves software development and/or delivery. Patent rights in software created under a government contracts are addressed under FAR 52.227-11 and 52.227-13. FAR 52.227-14, Rights in Data – General, allows the contractor to restrict the delivery of certain computer software. If this clause has been used in the contract then FAR 52.227-15, Representation of Limited Rights Data and Restricted Computer Software, should be considered to allow for disclosure of the use of restricted data prior to contract award. Finally, when contracting (other than from GSA’s Multiple Award Schedule contracts) for the acquisition of commercial computer software, FAR 52.227-19, Commercial Computer Software License, may be used. In any event, the contract needs to contain terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired.

## **Open Source Software (OSS)**

OSS is software distributed under a license that provides broad rights to use, modify, and redistribute the original source code and, sometimes, any distributed modified versions (i.e., derivative works) as well. Many types of OSS license types exist; each imposes certain obligations that have various legal implications. For example, many open source licenses do not require payment of royalties or place redistribution limits typically associated with proprietary software licenses. Most open source licenses automatically terminate if the licensee violates the license. Thus, once a licensee violates the terms of an open source license, the licensee has breached the contract and has infringed any copyright in the open source software.

Most open source licenses impose a share-alike clause. This requires that any redistribution of the original open source code and its derived works occurs under the same or similar open terms as the original license. Open source licenses ensure that the rights granted cannot later be revoked and that derivative works must be provided in a form that facilitates modification. For software, this requires that the source code of the derivative work be made available with the software itself. Open source proponents claim that the share-alike clause fosters the free and open development and improvement of the software by a broad open source software development community and equal participation by all users. Opponents claim that share-alike creates undesirable licensing complications and restrictions.

The three major categories of OSS licenses are strongly protective, weakly protective, and permissive licenses.

Open source licenses are typically referred to as being “strongly protective” (aka “copyleft strong”) or “weakly protective” (aka “copyleft weak”), based on the extent to which open source provisions can be imposed on derived works. Strongly protective licenses require that any derivative works and any software that dynamically links to the licensed work be treated as a derived work and distributed under the same open source terms. Thus, strongly protective licenses are sometimes referred to as viral licenses — because any software that links to the licensed work (even if that software is originally proprietary code) must be released under the same open source terms license.

Weak protective licenses require derivative works of the open source software to be redistributed under the same or similar open source terms, but specifically allow other software to link to the original open source software or derivative work without imposing the open source license requirements on the linked software. Only changes to the open source software itself become subject to the open source provisions, not the software that links to it. This allows software distributed under other licenses (including proprietary licenses) to be linked to the weakly protected software and then redistributed under its own terms.

Permissive licenses do not impose the share-alike clause. Permissive licenses place limited restrictions like crediting the original author and stating that the original author makes no warranties on the work. Permissive licenses permit redistribution of the original and derivative works of the open source software under their own terms and conditions, which can differ from those of the original work. Permissive licenses offer many of the same freedoms as releasing a work to the public domain. Thus, derivative works can become proprietary and the original open source software can be incorporated into proprietary software.

Copyright owners licensing software using a proprietary license typically restrict a licensee's rights to modify, prepare derivative works, and distribute the software program. By allowing licensees to freely modify, create derivative works, and redistribute the original and modified source code, the copyright owner is providing a broad, but revocable, license of its exclusive rights. If the licensee violates the terms of the open source license, the open source licensor can terminate the license (actually, most open source licenses automatically terminate upon violation of their terms) or enforce the license under both copyright and contract.

The copyright owner(s) may provide the broad license of their rights for a variety of motivations (e.g., to encourage others to contribute improvements, to gain recognition/reputation, to gain a competitive advantage, so the company can sell service/support, or simply to provide a service to the world).

The FAR treats open source software as "commercial software," which would be licensed to the government under the same terms as licensed to the general public. 41 USC § 4037 defines a commercial item as "... any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and (i) has been sold, leased, or licensed to the general public ... or (ii) has been offered for sale, lease, or licensed to the general public."

FAR Section 12.212 provides that commercial software is acquired under licenses customarily provided to the public to the extent that such licenses are consistent with federal law and otherwise satisfy the government's needs. (See FAR 1.105-2 (c) (3) (iii)). Because open source software is licensed to the public and not developed exclusively for government use, it meets the definition of commercial software and would be licensed to the government under the same open source terms as to the general public.

In cases where commercial software, including open source software, is used as part of an application created by a contractor for government use, the contractor should seek the government's permission to use the open source software and provide a copy of the license to the agency for review to ensure that the terms of use do not pose problems.

## **Chapter 7 – Other Considerations**

### **Illustrations**

In most ways, illustrations are treated like any other copyrightable work delivered under government contract. However, illustrations must be accounted for under the Department of the Interior Federal Property Guidelines and Director's Order #44. For guidance on the proper handling of HFC acquired illustrations, refer to Administrative Guideline 5 found in Appendix A-3.

### **Donated Works**

It is not uncommon for individuals to donate photographs and other copyrighted works to the NPS or a park. These altruistic gestures often come with no documentation to define the donation. This leads to the question: Did the author intend to allow the NPS to use the work while the author retains copyright ownership, or did the author intend to transfer all copyright ownership to the government? Without an agreement to the contrary, it must be assumed that the author retains copyright ownership. Ideally, any donation should come with complete documentation of its ownership, copyright, and use-rights.

Donations consisting of artwork to be placed in the HFC Artwork Repository can only be accepted by the Director, Harpers Ferry Center and the Property Accountable Officer. For guidance on accepting artwork donations, refer to Administrative Guideline 5 found in Appendix A-3.

### **Privacy and Publicity Rights**

In contrast to copyright, privacy and publicity rights protect an individual's name, likeness, or identity rather than property rights in intellectual creations. These rights could conceivably protect the author of a work in some circumstances, but they typically are vested with the identifiable subjects of the work. Issues pertaining to privacy and publicity rights most commonly arise when using letters, diary entries, photographs and film of individuals, and interviews.

Copyrights also differ from privacy and publicity rights in that both privacy and publicity rights are controlled by state law instead of federal law. The only exception is a prohibition against using a person's identity to create a false endorsement contained in the Lanham Act (federal trademark act). This distinction is important to note because, as a creature of federal copyright law, the fair use doctrine provides no defense to claims of violation of privacy or publicity rights. Furthermore, privacy rights generally end upon the person's death, while publicity rights have no mandated expiration. Finally, neither privacy nor publicity rights are subject to the public domain.

Because privacy and publicity rights are separate and distinct from copyrights and vest in the subjects of the work, it is necessary to define the relationship between the author and the subject by using a release form. A properly executed release form effectively waives the subject's rights and clears the work for its intended use. Any project that uses a person's identity should refer to HFC Administrative Guideline 14 and the associated Photo Release Form found in Appendix A-4 or the General Release found in Appendix A-5.



## **Appendix A**

### List of Appendices

A-1.....	Substitute Indemnification and Choice of Law Provisions
A-2.....	Amendment to License Agreement for Federal Government End Users
A-3.....	Administrative Guideline #5, Purchase and Accountability of Illustrations
A-4.....	Administrative Guideline #14, Photo Release Form
A-5.....	General Release Form
A-6.....	Standard Operating Procedures for Ordering from iStockphoto



## **Substitute Indemnification and Choice of Law Provisions**

The following language may be substituted for Indemnification provisions:

The National Park Service agrees to cooperate, to the extent allowed by law, in the submission of claims, pursuant to the Federal Tort Claims Act, against the United States for any costs or expenses of any nature related or arising out of the improper use of the subject photograph. This includes claims related to or arising out of any infringement of any copyrights owned by others as a result of the use of the photograph in any manner not permitted by the terms of the agreement.

The following language may be substituted for choice of law provisions:

This Agreement and any disputes thereof shall be governed by the laws of the United States of America without regard to choice of law principles. Any action arising out of this Agreement must be brought in the United States Federal Court System.



**AMENDMENT TO LICENSE AGREEMENT  
APPLICABLE TO FEDERAL GOVERNMENT END USERS**

This Amendment, which takes precedence over any other Agreement between the Parties regarding licensing of content, applies to acquisitions of licenses by the National Park Service (NPS) or by any prime contractor or subcontractor under any contract with the NPS where the NPS is the intended end-user of the licensed material.

As a United States Government entity, the NPS is required, when entering into agreements with other parties, to follow applicable federal laws and regulations. You and the NPS (collectively referred to as the "Parties") agree that modifications to any agreement regarding licensing of copyrighted content are necessary to accommodate the special requirements of federal law.

The Parties agree as follows:

**Transferability:** The NPS is the intended end-user of all licensed content. If the content is licensed by a contractor, then a transfer of the license shall not void the Agreement.

**Indemnification:** The NPS will not be liable for any claim for indemnification as such payments violate the Anti-Deficiency Act (31 U.S.C. Section 1341(a)). NPS agrees to cooperate, to the extent allowed by law, in the submission of claims, pursuant to the Federal Tort Claims Act, against the United States for any costs or expenses of any nature related or arising out of the improper use of the licensed content. This includes claims related to or arising out of any infringement of any copyrights owned by others as a result of the use of the licensed content in any manner not permitted by the terms of the Agreement to which this Amendment pertains.

**Governing law, Jurisdiction and Venue:** Any claim or dispute involving the NPS arising out of this Agreement is governed by the laws of the United States of America without regard to choice of law principles. All actions involving the NPS must be brought in the United States Federal Court system.

**No Cost Agreement:** The Parties agree that the rights and obligations of this Amendment are not contingent upon the payment of additional fees by one party to the other.

**Attorney's Fees:** Attorney's fees are only payable by the NPS pursuant to the Equal Access in Justice Act, 5 U.S.C. Section 504. Any inconsistent obligation is waived.

**Copyright Infringement:** Copyright infringement suits brought against the United States as a party may only be defended by the U.S. Department of Justice (28 U.S.C. Section 516). Therefore any indemnification on the part of licensee regarding copyright infringement suits shall not be contingent upon licensee having control over the resulting litigation.

**No Obligation Created:** This Amendment is intended to modify existing obligations. Nothing in this Amendment shall be construed to create an obligation on the part of the NPS where such obligation does not exist by the terms of the Agreement to which this Amendment pertains.

**LICENSOR:**

**LICENSEE:**

\_\_\_\_\_

\_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_



**ACQUISITION MANAGEMENT  
HARPERS FERRY CENTER  
ADMINISTRATIVE GUIDELINE NUMBER 5  
PURCHASE AND ACCOUNTABILITY OF ILLUSTRATIONS  
SEPTEMBER 2010**

**I. BACKGROUND**

As Harpers Ferry Center (HFC) assists in the development of media to help parks tell their story, the purchase of illustrations may occur. The illustrations are primarily two- or three-dimensional or may be computer-generated. They are used to explain, educate, clarify, and highlight the interpretive story being presented in exhibits, multimedia, outdoor and indoor exhibit production, printed media reproduction publications, audiovisual media, and historic furnishings reports. Illustrations, unless contractual documents state otherwise, are government property. The individuals responsible for the activities set forth in this guideline are listed in Attachment A.

**II. PURPOSE**

The purpose of this Administrative Guideline is to establish and outline the policies and procedures for the purchase, accountability, and disposition of illustrations at HFC.

**III. POLICY**

All illustrations, whether purchased or donated, regardless of the dollar value, must be accounted for using the procedures outlined in this guideline and its attachment.

Illustrations required by HFC may be purchased through a competitive or non-competitive contract, upon approval from the Contracting Officer. While the intended use may vary depending on the needs of the project, illustrations must be accounted for under the Department of the Interior Federal Property Guidelines and Director's Order #44: Personal Property Management and are considered working graphics rather than fine art. It is therefore necessary to include the Rights in Data – Special Works clause (FAR 52.227-17) in any contract for the procurement of illustrations or, in the case of a task order, confirm that the Special Works clause is contained in the basic IDIQ contract. Under the Special Work clause, original illustrations would be considered data first produced in performance of the contract and, as such, the government may assert copyright in the finished illustration. Allowing the contractor to assert copyright or else not specifying how copyright ownership will be handled under the contract could potentially leave the government with license rights rather than full ownership.

Although not preferred, circumstances may exist in which full ownership of the illustration cannot be obtained and the government is left with a license granting specific use rights. Under these conditions, it is necessary that the contract specify use rights that are either "unlimited rights" as defined by FAR 52.227-17 (a) or are otherwise consistent with the government's intended use. Permission from the Contracting Officer is required before procuring an illustration in which full copyright ownership is unavailable.

#### IV. **PROCEDURES FOR ILLUSTRATION PURCHASE, ACCOUNTABILITY AND DISPOSITION**

##### A. **Purchase**

When it is determined that an illustration is required, the requestor will search the Commissioned Art Repository database for an illustration suitable for use. The Commissioned Art Repository database can be accessed on the web at: <http://www.hfc.nps.gov/hfc-insite/cfml/art-default.cfm>. If an illustration is not found in the Commissioned Art Repository database, the requestor must contact the Commissioned Art Repository Manager to verify that all possible illustrations have been entered into the Commissioned Art Repository database. If an illustration is found, the requestor shall contact the Commissioned Art Repository Manager to verify that the illustration is suitable for the media type. The Commissioned Art Repository Manager will send an email to the requestor and the Art Coordinator to confirm the findings. If an illustration is not available, the requestor may proceed with the procurement of a suitable illustration.

The requestor will prepare the work statement and government estimate and provide them to the Art Coordinator before proceeding with the procurement request. Once review has been completed by the Art Coordinator, a recommendation of approval, disapproval, or request for additional information is sent to the requestor via email. Additional information is contained in the guideline entitled "Commissioning Original Reflective and/or Computer-Generated Illustrations," which can be accessed on the web at: [http://www.nps.gov/hfc/pdf/com\\_illus\\_apr06.pdf](http://www.nps.gov/hfc/pdf/com_illus_apr06.pdf).

Once the illustration has been approved for purchase, a purchase request (PR) will be initiated and submitted to the Office of Acquisition Management. The work statement, government estimate, justification, and justification for other than full and open competition, if required, must accompany the PR. All PRs between \$3,000 and \$25,000 should contain three recommended sources.

The PR should be named identifying HFC, the Four-Digit Park Acronym, Artwork and then the Product Line. Examples follow:

HFC-CHOH-Artwork/WE  
HFC-CHOH-Artwork/AVA  
HFC-CHOH-Artwork/PUB  
HFC-CHOH-Artwork/EX  
HFC-CHOH-Artwork/HF

The PR route must be set up for approval by the requestor's supervisor and then routed to the Office of Programs and Budget and the Office of Acquisition Management.

Once the complete PR package is received, a request for quotation is issued. The quotes are received, reviewed, and negotiated, as may be appropriate. Then a contract is awarded.

Distribution of illustration contracts and modifications follow:

- A .pdf file to the requestor on the PR
- A .pdf file to the Art Coordinator
- A .pdf file to the Commissioned Art Repository Manager
- A .pdf file to the Contracting Officer's Representative (COR) with a copy of their delegation memorandum, which must be immediately signed and returned to the Contracting Officer

**B. Accountability and Disposition**

The Property Accountable Officer is responsible for the delegation of all custodial officers, one of which is the Commissioned Art Repository Manager, who oversees the repository and verifies locations for all illustrations.

The final illustration is received and accepted by the COR identified in the contract. In addition to the COR's inspection of the technical aspects of the illustration, the COR must also confirm that there are no attached copyright notices unless prior permission has been granted to the contractor to retain copyright. Payments under the small purchase threshold, where a purchase order document is used, are handled by the Office of Programs and Budget. Task order and contract payments are handled by the Office of Acquisition Management. At the time the receiver is submitted to the appropriate office, the COR or Administrative Technician must simultaneously notify the Office of Acquisition Management, HFC Art Coordinator, and the Commissioned Art Repository Manager via email that the final illustration has been accepted.

Within five days of acceptance, the COR must also complete the Art Documentation form and Contractor's Performance Report. The Art Documentation form can be accessed on the web at: [http://www.nps.gov/hfc/pdf/com\\_illus\\_apr06.pdf](http://www.nps.gov/hfc/pdf/com_illus_apr06.pdf). An Art Documentation form must be completed for each illustration and sent to the Commissioned Art Repository Manager. The Commissioned Art Repository Manager will notify the Contract Specialist via email upon receipt of the Art Documentation form and provide the accession number. This will be followed-up with the signed Art Documentation form. The Contractor's Performance Report must be sent to the Purchasing Agent or Contract Specialist. Once the report has been signed by the Contracting Officer, a copy will be sent to the Art Coordinator.

When the COR is finished with the illustration, the Receipt for Property form (DI-105) must be completed. The Receipt for Property form is used to document the relocation of the illustration from the media division to the HFC Artwork Repository. This form can be accessed on the web at: [http://www.nps.gov/hfc/pdf/com\\_illus\\_apr06.pdf](http://www.nps.gov/hfc/pdf/com_illus_apr06.pdf). This form identifies the person accepting responsibility for the property listed and the liability that accompanies possession. This form may be used by itself or as a supplement with a memo. Illustrations will not be accepted into the Artwork Repository without a Receipt for Property and the Art Documentation forms.

The Commissioned Art Repository Manager will review the forms and illustration and then sign the Receipt for Property form to show the illustration is now located in HFC Artwork Repository. After this review, all paperwork and the illustration(s) are officially transferred to the Commissioned Art Repository Manager. The Commissioned Art Repository Manager will then send a signed copy of the Receipt for Property form to Acquisition Management. Acquisition Management will file this form in the contract file.

The Commissioned Art Repository Manager is responsible for entering each illustration into HFC Commissioned Art Repository database. The purchase order number is used as the identification number.

The Commissioned Art Repository Manager also chairs the Art Advisory Board. The committee meets to determine the status of obsolete illustrations. Elimination of these illustrations is coordinated with the Property Accountable Officer. Harpers Ferry Center Art Advisory Board meets on an "as-needed" basis, but at a minimum annually.

C. **Derivatives of Commissioned Art Images**

Designers, other team members, or park staff proposing to alter an existing illustration in any way MUST first determine its ownership and copyright status.

When commissioned art owned by the NPS has been altered, the project's designer must provide a clear list of changes made, date, reason for the changes, and the name of staff or contractor making the change. This digital derivative image and the information MUST be added to the art inventory records by the HFC Commissioned Art Repository Manager.

When the NPS owns only limited rights to a commissioned original artwork, but copyright and/or ownership has been retained by the artist, do nothing to the art until written permission can be obtained from the owner/copyright holder to do so. This requires a written request through the HFC Contracting Officer. The request, owner/copyright holder's written response, list of changes, reasons, and person making the changes become part of the contract record as an authorized derivative that the NPS has the right to use. This digital derivative image and requisite information MUST be added to and maintained in the art inventory records by the HFC Commissioned Art Repository Manager.

D. **Donation and/or Transfers of Property**

The Director, Harpers Ferry Center and the Property Accountable Officer are the only two individuals who are authorized to accept donations of artwork into the HFC Artwork Repository.

In the case of art donations or transfers as part of our technical assistance to parks, no illustration will be accepted into the system without complete documentation concerning its ownership, copyright, use rights or intellectual property rights, purchase price, and transfer of property.

E. **Subcontracting of Illustrations**

Contractors may elect to *subcontract* a portion or elements of a project. If an illustration is one of these elements, the COR has the responsibility to ensure that the illustration review process includes the project team and the park. The COR must review the HFC Commissioned Art Repository database before putting an illustration requirement in the prime contract. The COR must also ensure that ownership and/or use rights are covered in the procurement request

document. Illustrations produced under a *subcontract* would be considered data first produced in performance of a contract so long as the Rights in Data – Special Works clause is included in the prime contract. If the Special Works clause is not included, then a modification to the prime contract to incorporate the clause may be needed. It is important for the prime contractor to ensure that any illustration produced under a *subcontract* meet the requirements of a “work made for hire” as defined by Section 101 of the 1976 Copyright Act (17 U.S.C §101) so that the subcontractor cannot retain any copyrights against the prime contractor and in turn, against the government. Illustrations purchased through a *subcontract* must also be entered into the HFC Artwork Repository within five working days after receipt and acceptance using the Art Documentation form. When the COR has accepted the illustration, a Receipt for Property form must be completed. The Commissioned Art Repository Manager will enter the value, artists name, and description of the *subcontracted* art in the Commissioned Art Repository Database. The COR will provide this information.

**ATTACHMENT A**  
**HARPERS FERRY CENTER**  
**RESPONSIBLE PARTIES**  
**ILLUSTRATION PURCHASE AND ACCOUNTABILITY GUIDELINE**

<b><u>TITLE</u></b>	<b><u>NAME</u></b>
Property Accountable Officer	Michael Alvarez
Art Coordinator	Anita Smith
Commissioned Art Repository Manager	Wade Myers
Contracting Officer	JoAnne Grove
Art Advisory Board Member	Mary Ann Kave
Art Advisory Board Member	Linda Meyers
Art Advisory Board Member	Mitch Zetlin
Art Advisory Board Member	Chris Dearing
Art Advisory Board Member	Betsy Erhlich
Art Advisory Board Member	Neil Mackay
Art Advisory Board Member	Mark Johnson

**ACQUISITION MANAGEMENT  
HARPERS FERRY CENTER  
ADMINISTRATIVE GUIDELINE NUMBER 14  
PHOTO RELEASE FORM**

**I. BACKGROUND**

Photo releases grant rights to use an individual's likeness under circumstances in which their rights to privacy or publicity may be violated. An individual may waive their right to privacy by consenting to a publication of their image by signing a Photo Release Form. Therefore, the U.S. Government considers it a best practice that a release be sought in all cases where a person's voice or recognizable image will be included in the Government work. It is important to remember that while a release may have been obtained for one purpose, such as a photo, it may not necessarily cover additional uses. If authorization to use a picture or video for government purposes is obtained, use for nongovernmental purposes (for example, commercial use) may require additional authorization.

**II. PURPOSE**

The purpose of this Administrative Guideline is to set forth uniform guidelines and procedures for use of the Photo Release Form.

**III. POLICY**

**A. Staged Photographs**

Staged photographs are characterized by placing subjects, whether professional models or common citizens, in a specific scene and/or pose. Obviously an agreement would need to exist between the photographer and the subjects for this purpose. In this case, the agreement between the parties should always include a photo release.

**B. Un-staged Public Photographs**

Un-staged photos of persons, whether adult or child, in a public place do not generally require a photo release because privacy rights are waived when an individual has voluntarily placed themselves in a public place. However, many people erroneously believe that a public photo of themselves or their children is prohibited. For this reason and as a best practice, photo releases should be obtained whenever possible, especially when children are involved. At the very least, it is always best to get an individual's verbal permission prior to taking his or her photo.

Even though privacy rights may be waived when an individual is in a public place, publicity rights are not. Therefore, if a photo containing identifiable individuals will be used for a commercial purpose, such as advertising or endorsement, then a photo release must be obtained.



National Park Service  
U.S. Department of the Interior

## Photo Release Form

I hereby grant the National Park Service permission to use my likeness in a photograph in any and all publications for Government or nongovernment purposes, including web site entries, without payment or any other consideration in perpetuity. I understand and agree that these materials will become the property of the National Park Service and will not be returned.

I hereby irrevocably authorize the National Park Service to edit, alter, copy, exhibit, publish or distribute this photo for purposes of publicizing the National Park Service's programs or for any other lawful purpose. In addition, I waive the right to inspect or approve the finished product, including written or electronic copy, wherein my likeness appears. Additionally, I waive any right to royalties or other compensation arising or related to the use of the photograph.

I hereby hold harmless and release and forever discharge the National Park Service from all claims, demands, and causes of action which I, my heirs, representatives, executors, administrators, or any other persons acting on my behalf or on behalf of my estate have or may have by reason of this authorization.

I am 18 years of age or older and am competent to contract in my own name. I have read this release before signing below and I fully understand the contents, meaning, and impact of this release. I agree to indemnify and hold the Government harmless for any and all losses, claims, expenses, suits, costs, demands and damages or liabilities on account of personal injury, death, or property damages of any nature whatsoever and by whomsoever made, arising out of the photographed activities in which I am taking part.

Signature/Date

\_\_\_\_\_

Printed Name/Date

\_\_\_\_\_

Address

\_\_\_\_\_

City

State

Zip Code

\_\_\_\_\_

Phone

If the person signing is under age 18, there must be consent by a parent or guardian, as follows:

I hereby certify that I am the parent or guardian of \_\_\_\_\_, named above, and do hereby give my consent without reservation to the foregoing on behalf of this person.

Parent or Guardian's Signature/Date

\_\_\_\_\_

Parent or Guardian's Printed Name/Date

\_\_\_\_\_

**Privacy Act Statement:** This information is provided to comply with the Privacy Act (PL 93-579). 5 U.S.C. 301 and 7 CFR 260 authorizing acceptance of the information requested on this form. The data you furnish will be used only to provide the National Park Service with contact information pertaining to this release form.

EXPERIENCE YOUR AMERICA™

08/2006

The National Park Service cares for special places saved by the American people so that all may experience our heritage.





National Park Service  
U.S. Department of the Interior

## National Park Service Release Form

I hereby grant the National Park Service, or its authorized representatives and contractors, the right to make visual recordings, audio recordings, still images, and/or to otherwise capture material of me and any minor child under my control at the time the material is collected.

I hereby agree that the material will become the property of the National Park Service and will not be returned. As such, I agree that the National Park Service and its assigns have the right to reproduce, prepare derivative works of, distribute or display and use these materials in whole or in part, for government and non-government purposes, in any manner or media (whether now existing or created in the future), in perpetuity, and in all languages throughout the world. Use of this material shall include, but not be limited to, audiovisual programs; museum exhibits; websites; publications; product artwork; and project publicity. Additionally, I waive the right to inspect or approve any use of the material and any right to royalties or other compensation arising or related to the use of the material.

I hereby hold harmless and release and forever discharge the National Park Service from all claims, demands, and causes of action which I, my heirs, representatives, executors, administrators, or any other persons acting on my behalf or on behalf of my estate have or may have by reason of this authorization.

I am 18 years of age or older and am competent to contract in my own name. I have read this release before signing below and I fully understand the contents, meaning and impact of this release. I agree to indemnify and hold the Government harmless for any and all losses, claims, expenses, suits, costs, demands and damages or liabilities on account of personal injury, death, or property damages of any nature whatsoever and by whomsoever made, arising out of the activities associated with the project in which I am taking part.

Description of Material: \_\_\_\_\_

Signature/Date: \_\_\_\_\_

Printed Name \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone (please include area code): \_\_\_\_\_

Organization/Group Name (if applicable): \_\_\_\_\_

If the person signing is under age 18, there must be consent by a parent or guardian, as follows:  
I hereby certify that I am the parent or guardian of \_\_\_\_\_, named above,  
and do hereby give consent without reservation to the foregoing on behalf of this person.

Parent or Guardian's Signature/Date \_\_\_\_\_

Parent or Guardian's Printed Signature \_\_\_\_\_

**For NPS/Contractor Administrative Use Only:**

Park	Project	Location	Date	Contractor	NPS COR

Privacy Act Statement: This information is provided to comply with the Privacy Act (PL 93-579), 5 U.S.C. 301 and 7 CFR 260 authorizing acceptance of the information requested on this form. The data you furnish will be used only to provide the National Park Service with contact information pertaining to this release form.



## **NPS STANDARD OPERATING PROCEDURES for Acquiring Images and other Content from iStockphoto**

### **Overview:**

iStockphoto (iStock) is a company that licenses royalty-free images and other audiovisual content that is submitted by individuals. iStock has a vast selection of content and its business is conducted exclusively through the company's webpage, with purchasing of use-rights accomplished through an online user interface. To license an image, a user must first establish an account with a username and password and then select licensing options based on the intended use of the selected content. As with many other companies that license copyrighted material, iStock's standard license agreement contains indemnification and other terms to which the federal government absolutely cannot agree. To circumvent the prohibited license terms, a "Special License Agreement" with iStock has been negotiated and acts as an amendment to the standard license agreement. This amendment is connected to a specific NPS user account and *only* applies to content licensed through that account. Even with the special license agreement in effect, there remain two significant concerns in licensing content from iStock. The first concern is ensuring that the content is licensed through the one and only appropriate user account, and the second concern is determining the need for, and selecting the correct licensing options.

### **Procedures for ordering:**

- 1. Go to [www.istockphoto.com](http://www.istockphoto.com) to search for content.** You may want to create your own user account because this enables enhanced search features and will also allow you to arrange and save content into folders called "lightboxes" which allow for an easy recall of saved content. You **must not** purchase images through any account that you set up because the special license terms will not apply.
  
- 2. Determine if any exceptions to the standard license options are needed.** The standard permitted uses granted by iStock should cover most intended uses of the selected content. However, iStock offers extended terms under five separate options, four of which may be needed by NPS for certain situations. The HFC policy is to purchase only standard use-rights with publication projects always upgrading to unlimited print runs. You must compare your intended use against the standard permitted uses and the extended use options to determine if you will require an exception to the purchasing policy. If a policy exception is needed then you must request and receive permission from the Associate Manager, Office of Acquisition Management before the actual purchase of the content. The extended use options offered by iStock are described in detail at [www.istockphoto.com/extended\\_license\\_provisions.php](http://www.istockphoto.com/extended_license_provisions.php) and are summarized in the following table.

Terms of use under NPS amended, standard license	Extended Option Description	Terms of use under NPS amended, extended license options
Permitted uses of content, including web use but excluding resale, are unlimited but access to content file is limited to one user/one workstation at a time	<b>Multi-seat (unlimited)</b>	Number of users with access and use of content file is unlimited
Print runs are limited to 500,000 reproductions	<b>Unlimited Reproduction / Print runs</b>	Print runs are unlimited. (NOTE: HFC policy requires this option for publications unless an exception is granted)
Any resale of items containing licensed content is prohibited	<b>Items for Resale (limited run)</b>	Resale of items containing content limited to: up to 100,000 cards, stationery items, stickers, or paper products, or up to 10,000 posters, calendars, mugs, or mousepads, or up to 2,000 t-shirts, apparel items, games, toys, entertainment goods, or framed artwork
Any resale of electronic items containing licensed content is prohibited	<b>Electronic Items for Resale (unlimited run)</b>	Unlimited resale of electronic templates for e-greeting or similar cards, electronic templates for web or applications development, PowerPoint or Keynote templates, screensavers, and email or brochure templates

**3. Coordinate with Teresa Vazquez to purchase the selected content.** Once you have identified the content, determined whether extended license options are needed, and received permission from the Contracting Officer for any needed extended license options, you must then coordinate your purchase with Teresa Vazquez. Teresa has been designated as the controller of the iStock account. Remember, only purchases made through this specific account are allowed. In the event Teresa Vazquez is unavailable and purchase of the image cannot wait until she is available, then purchase must be coordinated through Bill Blake.

**TIP:** A personal iStock account is useful when coordinating purchase through Teresa because you may send directly to her a “lightbox” link containing the needed content.

**4. Prohibition on using the account by others.** There may be instances when Teresa allows others to use the NPS specific iStock account under her direction. If this occurs, then you may not keep the account login information and purchase again from iStock without first coordinating with Teresa before each purchase. This rule is necessitated by iStock’s credit payment system. Allowing multiple users would be unmanageable.

**5.** Any questions regarding the purchase of use-rights from iStock should be directed to Teresa Vazquez or Bill Blake.

## **Appendix B – Links for Additional Information**

United States Copyright Office..... [www.copyright.gov](http://www.copyright.gov)  
United States Patent and Trademark Office..... [www.uspto.gov](http://www.uspto.gov)  
Federal Acquisition Regulation..... [www.acquisition.gov/far](http://www.acquisition.gov/far)  
Commerce, Energy, NASA,  
Defense Information Managers Group (CENDI)..... [www.cendi.gov](http://www.cendi.gov)  
Expanded Term of  
Copyright Chart..... <http://copyright.cornell.edu/resources/publicdomain.cfm>