

General Counsel

INVENTIONS, PATENTS, COPYRIGHTS, AND TRADEMARKS

BY ORDER OF THE DIRECTOR



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AUTHORITY: Defense Commissary Agency Directives Management Program is established in compliance with DoD Directive 5105.55, Defense Commissary Agency (DeCA), November 1990.

HOW TO SUPPLEMENT: Lower echelon units may not supplement this directive.

MANAGEMENT CONTROL SYSTEM: The OPR has determined that this directive does not contain Management Control provisions that are subject to evaluations, testing, and other requirements of DeCAD 70-2 and as specified by the FMFIA.

DISTRIBUTION: Directive is available on DeCA's Intranet.

SUMMARY: This directive provides guidance on matters pertaining to inventions, patents, copyrights, and trademarks as they apply to DeCA and its employees.

SUPERSEDES: DeCA Directive 80-10, July 1, 1992
OFFICE OF PRIMARY RESPONSIBILITY (OPR): HQ DeCA/GC
COORDINATORS: HQ DeCA/IR/DP/DO/IM/IG/FM/PL/AM/SA

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CHAPTER I-GENERAL

1-1. **EXPLANATION OF TERMS:**

a. **Copyright.** The exclusive right granted under Title 17, United States Code, to the author of an original work to reproduce and to distribute copies or phonorecords, to make derivative works, and to perform or display certain types of the works publicly.

b. **Government Employee.** Any military or civilian employee, full time or part time, of DeCA.

c. **Invention.** Any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, or any new, original and ornamental design, or any asexually reproduced distinct and new variety of plant, which is or may be patentable under the patent laws of the United States.

d. **Patent.** A grant issued by the United States Government giving an inventor the right to exclude all others from making, using, or selling the invention within the United States, its territories and possessions. The term of a patent is 17 years except for patents on ornamental designs which may have terms of 3 1/2, 7 or 14 years.

e. **Patent Officer.** Any employee or delegatee of the Office of the General Counsel, DeCA, who is assigned to process invention, patent, copyright, and trademark matters.

f. **Trademark.** Any word, name, symbol, device, or any combination thereof used to identify the source of goods or services and to distinguish them from those of another.

1-2. **CONTROL AND COORDINATION.** The control and coordination of all DeCA invention, patent, copyright, and trademark activities are assigned to the General Counsel, DeCA.

1-3. **FORMS.** DeCA Forms 80-1, Disclosure and Record of Invention and 80-2, Invention Rights Questionnaire, prescribed by this DeCAD, may be obtained from the General Counsel, DeCA.

CHAPTER II--INVENTIONS AND PATENTS

2-1. INVENTIONS OF GOVERNMENT EMPLOYEES AND DETERMINATIONS OF THEIR RIGHTS:

a. Invention Policy. DeCA policy is to encourage and stimulate the inventive talents of Government employees and to obtain patents on their inventions that may be of value to the DeCA mission. As authorized by DeCAD 50-8: Recognition and Incentive Awards. DeCA gives cash awards to Government employees for their inventions. The acceptance of a cash award by a Government employee inventor constitutes an agreement that Government use of the invention is not a basis for a claim against the Government.

b. Rights Policy. The respective rights of the Government and its employee-inventors are set forth in Executive Order No. 10096, 23 January 1950 (15 Fed. Reg. 389) as amended by Executive Order No. 10930, 28 March 1961 (26 Fed. Reg. 2583), which established a uniform patent policy. These Executive Orders provide that, in certain conditions, the Government may acquire title to an invention made by an employee. Under other conditions an employee-inventor may either retain title subject to a license in the Government or retain the entire right in the invention.

2-2. **IMPLEMENTING THE DETERMINATIONS OF RIGHTS:** Administrative orders and instructions issued by the Commissioner of Patents, United States Patent and Trademark Office, restate the Government's basic policy established by the President and set forth the responsibility of Government agencies. Agency responsibility includes determining whether an employee's accomplishment amounts to invention; determining rights in inventions; determining whether patent protection will be sought; and furnishing certain reports. The General Counsel, DeCA, is responsible for determining rights and through an authorized representative performs the above responsibilities for DeCA.

2-3. DETERMINING RESPECTIVE RIGHTS OF GOVERNMENT AND EMPLOYEE-INVENTOR:

a. If any of the conditions below are equitably sufficient and the Government has sufficient interest in an invention, then the Government may require assignment of title to inventions made by its employees and to any patents that may be issued on such inventions:

(1) Invention made during work hours. Work hours for civilian employees mean time spent during the official assigned duty hours including official overtime; and for military personnel, time spent during the hours actually engaged in officially assigned duties;

(2) Invention made with a Government contribution of facilities, equipment, materials, funds, information, or the time or services of other Government employees on official duty; or

(3) Invention bears a direct relation to or was made in consequence of the official duties of the inventor. This condition is presumed to be present when the inventor is employed or assigned to:

(a) Invent, improve, or perfect any art, machine, manufacture, design, or composition of matter;

(b) Conduct or perform research or development work or both;

(c) Supervise, direct, coordinate, or review Government financed or conducted research and development work; or

(d) Act as liaison among governmental or non-governmental agencies or individuals engaged in such research and development work.

b. For employee-inventors to whom these conditions apply, the Government permits submission of evidence that enables DeCA to establish the absence of any one or more of the conditions, or determine that the conditions present are insufficient equitably to justify a requirement that the Government be assigned the invention and also any patent that may issue on the invention.

c. If assignment of inventions under the conditions set forth in a above is not required, the employee may be required to grant the Government a nonexclusive, irrevocable, nontransferable, royalty-free license in the invention and under any domestic or foreign patents which may be issued thereon, with power to grant sublicenses for all governmental purposes.

d. Cases may arise where the Government neither obtains the entire right, title, and interest in and to an invention nor requires a nonexclusive, irrevocable, nontransferable, royalty-free license for all governmental purposes. In such cases the entire right, title, and interest in and to the invention is left in the Government employee, subject to law. See paragraph 32.

e. The employee will grant the Government an option to acquire the foreign rights in and to the invention whenever an assignment of the domestic rights is required.

2-4. REVIEW OF DeCA DETERMINATIONS AND PETITIONS FOR RECONSIDERATION:

a. If the General Counsel, DeCA, pursuant to Executive Orders 10096 and 10930, determines that rights in an invention should be left with an employee, a report of this determination must be submitted to the Commissioner of Patents.

b. The Commissioner of Patents reviews the General Counsel, DeCA's, determination, then makes a decision that confirms or modifies the determination. The employee or DeCA may petition the Commissioner of Patents for reconsideration within 30 days after the employee receives notice of the decision (or such longer period as the Commissioner may fix, for good cause, in any case). A request for an extension of time should be submitted to the Commissioner of Patents within the 30-day period.

2-5. APPEALS FROM DeCA DETERMINATIONS OF RIGHTS:

a. If the General Counsel, DeCA, determines that the Government is entitled to an assignment of all rights to the invention of the employee, the determination will be sent to the employee. The employee may in writing request reconsideration by the General Counsel, DeCA, or, a review of this determination by filing a written appeal to Commissioner of Patents, United States Patent and Trademark Office. The employee must also send a copy of the appeal to the General Counsel, DeCA. The employee must file an appeal within 30 days after receiving written notice of the determination from the General Counsel, DeCA (or such longer period as the Commissioner may fix, for good cause, in any case).

b. For each appeal filed, the General Counsel, DeCA, furnishes both the Commissioner of Patents and the employee with a copy of a report containing the following information:

(1) A description of the invention in sufficient detail to permit a satisfactory review.

(2) The inventor's name and employment status, including a detailed statement of official duties and inventor's responsibilities at the time of the invention.

(3) A detailed statement of the nature of the dispute or controversy, copies of the agency determination, briefs or written arguments that may have been considered by the agency, and other relevant material.

c. The decision of the Commissioner of Patents on any appeal is final, subject to the right of the employee to petition the Commissioner for reconsideration of the decision.

2-6. **PATENTS OBTAINED WITHOUT COST TO EMPLOYEE INVENTORS.** To the extent possible, DeCA processes inventions for patenting without cost to inventors when the inventions appear to be patentable and of value to the DeCA mission, provided that the inventors grant to the Government at least a nonexclusive, irrevocable, and royalty-free license for all governmental purposes.

2-7. **PROTECTION OF INVENTION RIGHTS.** To ensure that an invention contribution is protected the government employee-inventor should keep accurate records. All of the records should be signed and dated by two or more competent witnesses who can attest that they have read and understood the description of the invention, its function, and the method of using it. If the invention has been built and operated, it should be shown to the witnesses and a document prepared for their signature stating that they understand the invention and saw the device work successfully on that date. The witnessed documents should be carefully preserved in the event that the inventor ever needs to prove date of inventorship.

2-8. **PUBLICATION, USE OR SALE OF INVENTION.** By law, if an invention is described in a printed publication, or is used publicly, or is on sale for more than 1 year prior to the date of the application for patent in the United States, a valid United States Patent may not be issued for it. This is commonly referred to as a statutory bar. Therefore, to protect the rights of the Government and the inventor, any development, suggestion, or other contribution that appears to constitute an invention must be promptly reported to the General Counsel, DeCA, for evaluation, review and processing as set forth in this regulation. It is especially important that the invention be reported before, or as soon as possible after, it is described or illustrated in a printed publication, is used publicly, or is on sale. Any publication, use, or sale of the invention submitted to DeCA which would result in a statutory bar must be brought to the attention of the General Counsel, DeCA.

2-9. **PROCEDURES FOR SUBMITTING INVENTIONS MADE BY GOVERNMENT EMPLOYEES:**

a. In order to comply with Executive Orders No. 10096 and 10930, all DeCA employees (military or civilian) must disclose in writing all inventions made by them during the period of their employment.

b. Each employee invention disclosure should include, except when the employee voluntarily agrees in writing to grant Government title to the inventions, an original and two signed copies of DeCA Form 80-2, Invention Rights Questionnaire, for each inventor so as to provide the information necessary to determine the respective rights of the employee and the Government in the invention. A copy of each employee's job description in effect at the time the invention was made should be attached to the DeCA Form 80-2. Also each employee invention disclosure should include a statement clearly indicating whether or not the inventor desires to have the invention processed for patenting by DeCA. If the General Counsel, DeCA, determines that the Government is entitled to greater rights than the employee has indicated a desire to grant in DeCA Form 80-2, the employee may be required to complete DeCA Form 80-1, Disclosure and Record of Invention.

c. In those instances when the employee inventor intends to have an invention processed for patenting by DeCA, the report of the invention should include a completed DeCA Form 80-1, Disclosure

and Record of Invention. This information is essential to properly evaluate and search the invention and to prepare a complete and proper patent application. Where sketches, prints, drawings or other illustrations form a part of the disclosure, reference characters should be used and incorporated into a written description of the invention for easy understanding of the disclosure.

d. If the inventor voluntarily agrees in writing to grant to the Government an assignment of the entire right, title and interest to the invention, whether or not an assignment of the invention to the Government is or may be required, DeCA Form 80-2 need not be submitted with the disclosure of the invention. Employee-inventors will send complete invention disclosures, including DeCA Form 80-2, when they apply, to the General Counsel, DeCA.

2-10. CONFIDENTIAL HANDLING OF ALL DeCA EMPLOYEE INVENTION

DISCLOSURES. A DeCA employee invention disclosure shall not be disclosed, duplicated, or used outside the Government in whole or in part for any purpose other than for security review, invention evaluation and patent prosecution unless prior permission is obtained from the inventor and the General Counsel, DeCA, or title to the invention has been granted to the Government.

2-11. NOTICE OF ACQUISITION OR DISPOSITION OF RIGHTS IN EMPLOYEE

INVENTIONS. DeCA personnel should notify the General Counsel, DeCA, of any patent applications filed on their inventions and of any patents obtained on their inventions through other than DeCA channels. They should also notify the General Counsel, DeCA, about any assignments, licenses, or other interests affecting their inventions, pending applications, or unexpired patents.

2-12. CONTRACTOR EMPLOYEE INVENTIONS. If specified in DeCA contracts, the contractor is required to furnish to the contracting officer a complete written disclosure of each invention under which the Government obtains rights in accordance with the terms of the contract. The policies, administrative requirements, procedures, and other information pertinent to the rights of the Government with respect to inventions, patents and related matters involved in DeCA contracts are set forth in the Federal Acquisition Regulation. Any controversies, problems, or questions not resolved administratively should be reported to the General Counsel, DeCA.

2-13. DISCLOSURE OF CONTRACTOR INVENTIONS. DeCA Form 80-1 is not required for invention disclosures submitted by contractors. However, the disclosure must be complete and provide sufficient information in order to be useful in evaluating and searching the invention and in preparing and prosecuting a patent application. The disclosure must include a statement of the objects of the invention and a detailed description of its significant features. Sketches, prints, drawings or other illustrative material should be used as much as possible. Reference characters should be used on the illustrative material and should be referred to in the written disclosure.

2-14. PROCESSING INVENTION DISCLOSURES. The General Counsel, DeCA, will arrange for the processing of inventions, patents and appeals through Interservice Support Agreements.

CHAPTER III-COPYRIGHTS

3-1. COPYRIGHT PROTECTION:

a. The Copyright Act of 1976 as amended. The law preempts all State laws in the nature of copyright and establishes a single Federal copyright system. Under this law, the author owns copyright from the time a work is first fixed in a tangible medium of expression, that is, when its embodiment in a copy, by any method, is sufficiently permanent to permit it to be perceived, reproduced, or otherwise communicated for more than a transitory period. Copyright, for works created after 1 January 1978 lasts for the life of the author plus 70 years or, in the case of anonymous or pseudonymous works and works made for hire, for 95 years from the year of publication or 120 years from the year of creation, whichever expires first. Registration of claim to copyright, deposit of copies in the Copyright Office, and inclusion of a copyright notice on published works are formal requirements of the law; however, omission of any one of these requirements does not invalidate copyright.

b. Authors and Owners Rights and Limitations. Ownership of copyright is distinct from ownership of the material object in which the copyrighted work is embodied. The owner of copyright has the exclusive right to reproduce and to distribute copies of the copyrighted work, to prepare derivative works and to perform or display certain types of works publicly. Any of these acts, if done without the copyright owner's permission, may be infringement. Fair use of a copyrighted work, however, is not an infringement upon the owner's exclusive rights. In addition, the law permits certain specified reproductions, performances, transmissions, and displays which are considered to be in the public interest. The law also provides for compulsory licenses to record musical works, to operate juke boxes, to transmit by cable television, and to use works for public broadcasting.

c. Government Works. A "work of the United States Government" is defined as a work prepared by an officer or employee of the United States Government as part of that person's official duties. Protection under the US copyright law is not available for any work of the United States Government. However, the Government is not precluded from receiving and holding copyright transferred to it by assignment, bequest, or otherwise. (See paragraphs 19c and 19d)

3-2. DeCA POLICY:

a. Use of Copyrighted Material. It is DeCA policy to recognize that a copyright owner has a legally enforceable property right. Copyrighted materials will not be incorporated, to an extent that would clearly infringe the copyright, in works prepared by or for DeCA, without the written permission of the copyright owner unless approved by the Director, DeCA, or his duly authorized representative, the General Counsel, DeCA.

b. Copyright Licenses. If a copyright owner refuses permission to use a copyrighted work royalty-free, or if it would be inequitable to request such permission, it is DeCA policy to purchase a license at a reasonable royalty. In special situations the General Counsel, DeCA, may approve use of copyrighted material without prior consent or license if such use is considered necessary to accomplish a function of DeCA.

c. Works Prepared by Employees:

(1) All rights in works prepared by officers and employees of the Government as part of their official duties belong to the Government. Where such a work is to be published outside the Government, the employee-author shall not sign any document which purports to transfer to the publisher any rights in the work. However, a statement that the work was prepared as part of the official duties of

the employee may be signed.

(2) The copyright in a work prepared by a Government employee, if it is not prepared as part of that person's official duties, belongs to the author. However, if in the preparation of the work, the employee used Government time, materials, or facilities, the Government is not liable for infringement and may reproduce, distribute, perform or display publicly, or prepare derivative works of the copyrighted work without payment of royalty.

d. Contractor and Grantee Works. A work prepared by a private person under a contract with or grant from the Government is not a "work of the United States Government." The rights of the Government and of the contractor or grantee with respect to copyright in such works are to be determined by the terms of the contract or grant, and by operation of law in the case of "works made for hire."

e. Foreign Copyrights. The copyright laws of each country apply only within the territorial limits of that country. Even though protection under the U.S. copyright law is not available for a work of the United States Government, it is DeCA policy to assert its right to enforce copyright for the benefit of the Government where appropriate under the laws of other countries. Likewise, it is DeCA policy to purchase licenses for use of privately owned copyrighted works in foreign countries where such action serves a purpose of the Government.

3-3. **RELEASE OF DeCA PUBLICATIONS CONTAINING COPYRIGHTED MATERIAL:**

a. Inspection and Authorized Copies. DeCA publications and records otherwise releasable pursuant to Freedom of Information Act may be permitted to be inspected regardless of whether they contain copyrighted material. If a request is received for a copy of a DeCA publication that incorporates copyrighted material with the permission of the copyright owner, and if there is no agreement with the copyright owner to the contrary, a copy lawfully produced for DeCA's use may be furnished to the requester. The requester should be advised, however, that the copyrighted material therein may not be reproduced without permission of the copyright owner.

b. If a DeCA record or document contains copyrighted material, and making a copy specifically to satisfy a request would amount to more than fair use and could subject the Government to liability for infringement by reason or such copying, the requester should be referred to the copyright owner for a copy or for permission to have a copy made.

3-4. **IDENTIFICATION OF COPYRIGHTED MATERIAL:**

a. Published Works. A published work is one that has been reproduced in copies and distributed to the public. Published works are required to have a copyright notice which consists of the word "Copyright", the abbreviation "Copr", or the symbol "©", plus the name or identification of the copyright owner. However, omission of this notice does not necessarily invalidate the copyright.

b. Unpublished Works. Unpublished works do not require a copyright notice for protection but are not prohibited from having such a notice.

c. Referral. Because both published and unpublished works may be protected by copyright whether or not they contain a copyright notice, all works that are not clearly known to be in the public domain should be treated as protected by copyright.

3-5. **AUTHORITY FOR PURCHASE OF COPYRIGHTS AND COPYRIGHT LICENSES AND RELEASES.** Purchase of copyrights, or licenses or releases, before suit is brought, for past infringement of copyrights, may be made with appropriated funds. The authority to make such purchases using

appropriated funds is delegated exclusively to the General Counsel, DeCA.

3-6. USE OF COPYRIGHTED MATERIAL IN DeCA PUBLICATIONS:

a. General Information. Before using copyrighted material not licensed to the Government, DeCA activities must obtain permission (a license) in writing from the copyright proprietor authorizing the planned use. This does not apply if fair use is applicable, if the specific material that is to be used is in the public domain, or if the proposed use of the copyrighted material without permission of the proprietor has been approved as provided in paragraph 19a. Credit for copyrighted material included in a DeCA publication and the exact location of such material in the publication will be shown.

b. Fair Use. Fair use of a copyrighted work for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use under certain circumstances), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

- (1) The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purpose;
- (2) The nature of the copyrighted work;
- (3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) The effect of the use upon the potential market for or value of the copyrighted work.

c. Obtaining Licenses or Releases for DeCA Use of Copyrighted Material Without Charge. Copyright proprietors are usually willing to grant the Government permission to make limited use of copyrighted material without charge. In obtaining such permission there ordinarily is no need for the formalities required to obtain more substantial rights.

(1) Request by Using Activity. The request for permission to use copyrighted material free of charge is submitted to the copyright proprietor or agent by the DeCA activity planning to use the material.

(2) Checklist. The following checklist must be rigorously observed in requesting free permission or license:

- (a) The request must be for no greater rights than are actually needed.
- (b) The request must identify fully the material for which permission to use is requested.
- (c) The request must explain the proposed use and state the conditions of use, so that the copyright proprietor or agent need only give affirmative consent to the proposed use.
- (d) The request must be submitted in two copies to the copyright proprietor so that proprietor may retain one copy and return the other signed to show assent to the request.
- (e) A self-addressed return envelope will be enclosed with the request.

- (3) The following will not be requested:
 - (a) Signature by more than one corporate officer.
 - (b) Corporate seal.
 - (c) Corporate certificate.
 - (d) Warranty as to title.
 - (e) The return of more than one copy of the signed permission or license.

(4) **Sample Format.** **Appendix A** is a sample format of request for permission to use copyrighted material free of charge. Any request for such permission will be patterned after this sample format, modified to suit the specific situation.

(5) **Legal Review.** When a request for permission deviates significantly from the format provided in **Appendix A**, or when the format is altered by the copyright proprietor or agent, any question as to whether the revised document is adequate to protect the Government is submitted for legal review to the General Counsel, DeCA.

d. **Obtaining Licenses by Purchase:**

(1) **When Permissible.** License and releases under, or title to, copyrights may be purchased when it is determined that:

(a) The extent of circumstances of the publication or other use of the copyrighted material by DeCA would make it inequitable to request a free license or release, or

(b) Use by DeCA of the copyrighted material, where the proprietor upon request has refused to permit such use royalty-free, is sufficiently desirable to warrant purchase of the copyright or a license under the copyright.

(2) **Instruction.** Personnel planning to use copyrighted material should seek assistance from the General Counsel, DeCA.

e. **Reporting Free or Purchased Licenses or Releases:** The original copy of each permission (license) obtained without charge, and of each license or release purchased must be forwarded to the General Counsel, DeCA.

3-7. **OTHER USES OF COPYRIGHTED MATERIAL:**

a. **Classroom Copying.** The following guidelines set minimum standards for fair use for teaching purposes in not-for-profit educational institutions.

(1) **Single Copying for Teachers.** A teacher may make or have made, for scholarly research or use in teaching or preparation to teach a class, a single copy of any of the following:

- (a) A chapter from a book;
- (b) One article from a periodical or newspaper;

(c) A short story, short essay or short poem whether or not from a collective work;

(d) A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

(2) Multiple Copies for Classroom Use. Multiple copies, but not more than one copy per pupil in a course, may be made for classroom use or discussion by or for the teacher giving the course. The copying must meet certain standards of brevity and cumulative effect. Each copy must be made at the direction and inspiration of the individual teacher, and the decision to use the work and the timing of the use for maximum teaching effectiveness must be so close in time that it would be unreasonable to expect a timely response to a request for permission.

b. Performances, Displays, Transmissions. The following uses are among those not considered to involve infringement of copyright:

(1) Performance or display in the course of face-to-face teaching activities.

(2) Performance of a nondramatic literary or musical work, or display of a work, in a transmission (Radio or TV broadcast, closed circuit, etc.) if it is:

(a) Part of a systematic instructional activity of a governmental body or a nonprofit educational institution; and

(b) Directly related to the teaching content; and

(c) Primarily for reception in classrooms, or by disabled or handicapped, or by officers or employees of governmental bodies as part of their duties.

3-8. **LIABILITY FOR COPYRIGHT INFRINGEMENT.** Title 28 United States Code, Section 1498(b), provides that when a work protected under the copyright laws of the United States is infringed by or for the Government, the owner's exclusive remedy is against the United States in the Court of Claims. Therefore, DeCA personnel who may infringe upon the rights of a copyright owner in connection with their Government employment are not personally liable for such infringement.

3-9. **COPYRIGHT INFRINGEMENT CLAIMS:**

a. Title 28 United States Code, Section 1498(b), gives authority to the heads of Government Departments to enter into an agreement in settlement for copyright infringement, out of available appropriations, before suit is brought. This authority is delegated to the General Counsel, DeCA.

b. All communications received in any DeCA activity asserting or relating to copyright infringement by or for DeCA must be forwarded to the General Counsel, DeCA. Claims of copyright infringement are investigated by the General Counsel, DeCA, and, if appropriate, settlement is negotiated.

CHAPTER IV-TRADEMARKS

4-1. **GOVERNMENT TRADEMARK REGISTRATION.** There is no prohibition against the Government, any of its agencies, wholly owned corporations, or other Federal bodies obtaining a Federal trademark registration. Registration is available under the laws of most states for goods or services which do not qualify for Federal registration.

4-2. **TRADEMARK PROBLEMS.** All trademark problems arising in any DeCA activity, including all communications asserting or alleging trademark infringement by or for DeCA, should be referred to the General Counsel, DeCA.

4-3. **TRADEMARK INFRINGEMENT.** Although the United States is immune from suit for trademark infringement, Government officers, agents, and employee's acting within the scope of their official duties, are required to abide by the policy and procedures set forth herein.

4-4. **USE OF TRADEMARK TERMS:**

a. Indiscriminate use of a trademark term in place of the proper descriptive terms may turn a distinctive mark into a generic term, with loss of trademark protection to the trademark owner. Accordingly, the proprietary nature of the trademark should be respected and the use of such terms should be limited when possible. However, if a trademark term is used in DeCA correspondence, contracts, or publications, there should be suitable acknowledgment that it is a trademark; for example, by a statement that the goods are sold under that trademark or by setting off the term in quotation marks, or by both.

b. The use of legitimate trademark terms in DeCA publications or contracts ordinarily should be avoided since such use may discriminate against other suppliers selling the same kind of goods under other trademarks. In such cases, the proper generic term preferably will be used to designate the goods in question.

CHAPTER V--PATENT INFRINGEMENT CLAIMS

5-1. **POLICY.** Any patent owner who believes that DeCA infringed on his or her patent may, prior to filing suit against the United States, file an administrative claim for compensation with DeCA pursuant to 10 U.S.C. 2386 (acquisition of patents, copyrights, designs, etc.), for any liability arising under 28 U.S.C. 1498(a) (patent infringement suits), 35 U.S.C. 183 (withholding of patents in the interest of national security), and 22 U.S.C. 2356 (interchange of patents and technical information). When a claim for patent infringement is filed before this Department, it is the policy of DeCA to take all necessary steps to investigate, and to settle administratively, deny, or otherwise dispose of such claims.

5-2. **LIMITATIONS ON EMPLOYEES' RIGHT TO SUE THE UNITED STATES FOR PATENT INFRINGEMENT.** A Government employee may bring suit under 28 U.S.C. 1498(a) in the Court of Claims for patent infringement except in those cases where:

- a. The inventor was in a position to order, influence, or induce use of the invention by the Government;
- b. The invention was related to the official functions of the employee which included research and development; or
- c. Government time, materials, or facilities were used in making the invention.

5-3. **AUTHORITY TO SETTLE PATENT INFRINGEMENT CLAIMS.** The authority to settle claims pertaining to patent matters pursuant to 10 U.S.C. 2386, 28 U.S.C. 1498(a), 35 U.S.C. 183, and 22 U.S.C. 2356 is delegated to the General Counsel, DeCA.

5-4. **PROCESSING INFRINGEMENT CLAIMS:**

- a. The Federal Acquisition Regulation (FAR) Subpart 27.3 contains requirements for filing an administrative claim for compensation for patent infringement.
- b. The control and coordination within DeCA of the processing, investigation and administrative disposition of each patent infringement claim and matters relating thereto is under the direction of the General Counsel, DeCA.

5-5. **PATENT INFRINGEMENT CLAIMS RECEIVED OUTSIDE THE GENERAL COUNSEL, DeCA:**

a. When communications are received in any activity, asserting or relating to patent infringement claims, they will be processed in accordance with established procedures. All communications asserting or relating to patent infringement claims received in any other DeCA activity are forwarded without further action directly to the General Counsel, DeCA. This includes all communications which:

- (1) Allege or assert that the manufacture, use, or disposition of any article, material, or process by or for DeCA involves the use of any invention or design, whether patented or unpatented; and
- (2) Request, either expressed or implied, compensation because of such use; or
- (3) Offer to grant an assignment of a patent or a license for such use; or

(4) Request cessation of such use by or for the Government.

b. The letter of transmittal must state all pertinent facts known to the activity concerning the claim or allegation.

**APPENDIX A
SAMPLE FORMAT FOR REQUEST FOR PERMISSION TO USE
COPYRIGHTED MATERIAL**

(LETTERHEAD)

Date _____

Name of Company
Address

Dear Sir or Madam:

This office is preparing a work to be published for the Department of Defense entitled
_____ (Insert Title When known)

Permission is requested to include in it the following material:

_____ (Insert the page and line numbers of the illustrations and/or textual matter to be used)

published by your company and written by _____.

Indicate on one copy of this letter if this material, with an appropriate copyright credit line, may be used in the above work. A self-addressed envelope is enclosed for your convenience.

Signature
Title

Permission:

The above requested PERMISSION is hereby granted, royalty-free.

The material covered by this permission may (may not) be placed on sale in the Government Printing Office.

(Name of copyright proprietor or
authorized agent)
Title

DATE: _____