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ADS Chapter 318 Intellectual Property Rights

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ADS Chapter 318 - Intellectual Property Rights

318.1 OVERVIEW

Effective Date: 03/16/2010

This chapter provides guidance on intellectual property (IP) rights and IP issues that may arise during the planning and implementation of Agency programs and operations. Specifically, this chapter addresses patents, copyrights, and marks.

USAID often finances the development of IP, such as software; manuals; textbooks; and, Web sites for the benefit of host governments, the U.S. Government (USG), and other institutions and beneficiaries. The IP may be incidental to the purpose of the award but has the potential to provide continuing value to the immediate beneficiaries and other parties. USAID must ensure that the IP meets its development goals and that beneficiaries continue to use the IP as appropriate after the USAID project concludes. Additionally, IP may be implicated in Agency-funded activities even if not specifically created under such funding.

When USAID obtains or retains IP rights (IPR), these rights generally include the right to share the materials developed under the contract or grant with USAID Missions or partners working on behalf of the USG. By allowing a wider use of IP, USAID has the ability to leverage its resources.

In some instances, IP materials involve a contractor's proprietary information or a contractor-developed product using non-USG financing. In cases where the USG does not have a right to material, the USG will need to secure contractor or partner approval before USAID can utilize the IP. It is important to consider IPR during the design phase of an activity and while establishing program objectives, before entering into a contract or agreement. If the IPR is addressed after a contract or agreement is formalized, any additional rights needed by the USG could increase costs or may be unavailable.

This chapter provides guidance on IPR to ensure that:

- The USG obtains the benefit of its investments.
- Implementing partners do not develop an unfair competitive advantage.
- Contracting Officers (CO) and Agreement Officers (AO) consult with the Office of the General Counsel (GC) in Washington, DC or the cognizant Regional Legal Advisor (RLA) so they can ensure that the proper clauses are included in contracts and agreements.
- COs, AOs, and their technical representatives monitor partner compliance with all U.S. laws and applicable regulations.
- The USG and its partners do not unknowingly infringe upon the rights of others.

This chapter also explains and clarifies IPR issues that commonly occur when employing acquisition and assistance instruments. Information or guidance on IPR issues not discussed in this chapter may be obtained by contacting GC or your cognizant RLA. In particular, even if a USAID program does not include the acquisition or development of IP, IPR may still be a factor in the program's acquisition and assistance activities. If you think that you may be dealing with IP or IPR when planning a program or facilitating an acquisition or assistance agreement, it is important that you consult with GC or your RLA. Moreover, this chapter only addresses patents, copyrights, and marks under United States law. For the impact of local law governing IPR, COs and AOs should consult their cognizant RLA.

NOTE: Any roles or responsibilities of partners described within this chapter may only apply if the relevant clauses are included in the contract or agreement. Please review the terms of the contract or agreement if it is already in effect and consider carefully what to include in a contract or agreement before it is executed. USAID COs and AOs should consult GC or their cognizant RLA with any questions concerning applicability of the legal and policy requirements described herein to a particular contract or agreement. Personal services contractors (PSCs) are subject to the same laws and restrictions regarding intellectual property as direct-hire employees.

318.2 PRIMARY RESPONSIBILITIES

Effective Date: 03/16/2010

- a. The **Office of General Counsel (GC)** serves as the primary USAID office for intellectual property (IP) issues arising from
- Patent development, including USAID-funded research, technology development, and technology transfer for commercialization or other distribution;
 - The creation and funding of copyrighted material and marks; and,
 - The handling of information that are trade secrets.

GC reviews and provides guidance on intellectual property rights (IPR) reports and tracks patents on behalf of USAID by utilizing the National Institutes of Health (NIH) Edison system. GC also coordinates with USAID COs, Contracting Officer's Representatives (CORs), AOs, and Agreement Officer's Representatives (AORs) to ensure that contractors and recipients report USAID-funded inventions through the NIH Edison patent tracking system in accordance with U.S. regulatory and statutory requirements.

- b. The Contracting Officers (CO) and Agreement Officers (AO):**
- Ensure that the appropriate IPR provisions and clauses from the [Federal Acquisition Regulation \(FAR\)](#) and [USAID Acquisition Regulation \(AIDAR\)](#) are included in solicitation documents and contracts;
 - Ensure that the appropriate IPR provisions and clauses from [22 CFR Part 226](#) are included in grants and cooperative agreements with U.S. nongovernmental organizations (NGOs);
 - Ensure that the appropriate IP provisions are included in grants and cooperative agreements with non-U.S. NGOs, public international organizations, or any other entities with whom USAID has agreements, when necessary or applicable;
 - Closely examine and confirm claims by offerors, applicants, or current implementers of exclusive or proprietary rights to IP that has specific and frequent application in USAID activities; and
 - Analyze valuations of IP that is offered as a cost-sharing contribution or as leveraging in a public-private partnership, and ensure that the USG does not already have rights to the IP.
- c. The Contracting Officer's Representatives (CORs) and the Agreement Officer's Representatives (AORs) ensure that the provisions of the [FAR](#), [22 CFR Part 226](#), and other applicable regulations are met. This action includes**
- Electing to retain rights (through the CO/AO, as appropriate),
 - Determining whether to shorten the time for election of title, if applicable, and
 - Determining whether to grant the contractors and recipients deadline extensions for disclosure, if applicable.

For IP materials used overseas, the COR and AOR must coordinate with the Regional Legal Advisor to ensure that the beneficiary rights in IP developed for a project are properly documented under local laws; for example, using licenses when necessary.

318.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

Effective Date: 03/16/2010

This section describes patents, copyrights, and marks and how they are addressed in contracts, cooperative agreements, and grants.

318.3.1 Patents

Effective Date: 03/16/2010

A patent is a written instrument from the U.S. Patent and Trademark Office (USPTO) granting an inventor the right to exclude others from making, using, or selling his or her invention for a specified period of time, generally 20 years. (See [35 U.S.C. 154](#)) A majority of patents are utility patents, those that implement a new and useful process or create a new machine, product, or composition of matter (for example, a medical drug). The patent rights addressed in this chapter pertain to inventions created in the performance of work under a U.S. Government (USG) contract or subcontract or with USG assistance.

If USAID activities involve the purchase or use of patented or generic versions of patented inventions, particularly pharmaceuticals, COs, AOs, and their technical representatives should seek the advice of the Office of General Counsel or the cognizant Regional Legal Advisor concerning intellectual property right issues that may pertain to these activities. For example, specific source, origin, and nationality and other statutory and regulatory restrictions apply to pharmaceuticals. (See [ADS 312.3.3.3](#), [22 C.F.R. 228.13\(c\)](#), and [22 C.F.R. 228.51\(b\)](#)) Additionally, [28 U.S.C. 1498](#) and [FAR 27.201-1](#) deal with patent infringement issues.

318.3.1.1 Patent Rights - General

Effective Date: 03/16/2010

Under [35 U.S.C. 202](#), [FAR 27.302\(b\)\(1\)](#), and [22 CFR Part 226](#), USAID partners may acquire the patent rights to subject inventions. Subject inventions are inventions conceived or reduced to practice under a USG contract or agreement. If a partner elects to retain the title to any subject invention, the USG must receive a non-exclusive, non-transferable, irrevocable, and paid-up license to practice, or have practiced for or on behalf of the U.S., the subject invention throughout the world [see [FAR 52.227-11\(d\)\(2\)](#) and [37 C.F.R. 401.14\(a\)\(b\)](#)]. In other words, the USG receives the right to use the subject invention for USG purposes while the partner retains all typical and usual rights that are secured by the patent protection process. This includes the USG allowing partners to use the IPR for USG program purposes.

318.3.1.2 Invention Disclosure, Election of Title, and Filing of Patent Applications by Contractors or Recipients - General

Effective Date: 03/16/2010

- a. Under [FAR Clause 52.227-11](#) or [37 C.F.R. 401.14](#), within two months of creating or discovering a subject invention, the contractors or recipients must disclose it to USAID through their COR/AOR. The CO/AO or COR/AOR, after consulting with the General Counsel (GC) point of contact for the NIH Edison patent tracking system, must provide these partners with information on how to use the system. The CO/AO will

determine whether to include this responsibility in the COR/AOR designation. The contractors or recipients then must provide the NIH with detailed invention disclosures for entry into the system.

In addition, after making the disclosure to USAID, the contractors or recipients must promptly notify USAID of the acceptance of any manuscript for publication that describes the invention or of any sale or public use of the invention planned by the contractors or recipients.

- b. Unless indicated otherwise in the contract or grant, the contractors or recipients must elect whether to retain ownership of a subject invention by notifying the CO/AO in writing within two years of the invention's disclosure to the Agency. (See [FAR clause 52.227-11\(c\)\(2\)](#) or [37 C.F.R. 401.14\(c\)\(2\)](#)) The contractors or recipients fulfill this declaration requirement by notifying the relevant USAID operating unit via NIH Edison and meeting the applicable acquisition and assistance regulations.

When a contractor or recipient elects to retain patent rights, it must file an initial patent application for the subject invention. [AIDAR clause 752.227-70 Patent Reporting Procedures*](#) is required to be inserted into USAID contracts whenever the clause at [FAR 52.227-11](#) is included. The "Patent Reporting Procedures" and "Patent Rights**" provisions must be used in assistance agreements when appropriate.

*Currently found in CIB 99-19 but to be included in the AIDAR in 2010.

**Currently found in CIB 99-19 but to be included in ADS 303 in 2010.

- c. When publication, sale, or public use has initiated the one-year statutory period to file a patent application and valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the CO/AO to a date 60 or fewer days prior to the end of the one-year statutory period.
- d. The CO/AO may grant requests for extension of the deadlines for disclosure, election, and filing.
- e. The CO/AO must refer any reports of inventions to USAID/GC. USAID/GC must reconcile this information with the data entered into the NIH Edison system.

318.3.1.3 Rights and Responsibilities with Respect to Inventions

Effective Date: 03/16/2010

Unless the contract or agreement states otherwise, the contractors or recipients have rights and responsibilities regarding subject inventions under [FAR 27.302\(c\)](#) and [52.227-11\(d\)\(2\)](#), and [37 CFR 401.14](#). When the regulations direct or allow USAID to take action or approve a contractor's, grantee's, or recipient of

cooperative agreement's requests regarding an invention, the responsibility for taking such actions and granting approvals rests with the CO/AO, in consultation with GC.

318.3.1.4 Patents and Contracts

Effective Date: 03/16/2010

Typically, the contractor elects to retain the title to a patent developed in whole or in part with Federal funds. Under [FAR 27.302\(c\)](#) and [52.227-11\(d\)\(2\)](#), USAID retains, at a minimum, a nonexclusive, nontransferable, irrevocable, and paid-up license to practice, or have practiced for or on behalf of the USG, any subject invention throughout the world. A contractor may transfer additional rights to USAID via a license, but this must be negotiated and agreed upon by all parties. If the parties do not resolve all rights transfers prior to signing a contract, the Agency could incur additional costs to secure additional rights.

318.3.1.5 Patents and Assistance Agreements

Effective Date: 03/16/2010

Pursuant to [22 C.F.R. 226.36\(b\)](#), assistance awards to U.S. small businesses and nonprofit firms should include [37 CFR 401.14](#). This provision allows the recipient to take title to subject inventions, subject to certain rights and restrictions, including providing the USG a non-exclusive, non-transferable, irrevocable, paid-up license to use, or authorize others to use, the subject invention throughout the world.

For general guidance on assistance awards to non-U.S. firms, see [ADS 303](#).

318.3.1.6 Royalties

Effective Date: 03/16/2010

The CO/AO must include the appropriate royalty clauses in contracts, grants, and cooperative agreements. COs must request royalty information in accordance with the requirements of [FAR Part 27](#).

Under [FAR 27.202-1\(a\)](#), COs are required to reduce or eliminate excessive or improper patent royalties. If at any time the CO/AO has reason to believe that royalties paid, or to be paid, under any contract, grant, cooperative agreement, subcontract, or subaward are inconsistent with the terms of the contract or agreement, excessive, or otherwise improper, the CO/AO (or someone else with knowledge of the case) must promptly report the facts in writing to the Office of the General Counsel (GC). GC must review the information and recommend appropriate action to the CO/AO, as appropriate. Pursuant to [FAR 27.202-1\(b\)](#), such consultation must be conducted prior to contract award when royalty information is provided in a response to a solicitation.

In coordination with GC, the CO/AO must promptly act to protect the USG against payment of royalties on supplies or services when the

- USG has a royalty-free license,
- Rate exceeds the rate at which the USG is licensed, or
- Royalties in whole or in part otherwise constitute an improper charge.

318.3.2 Copyrights

Effective Date: 03/16/2010

Copyright law gives the author of an original creative work the exclusive right to reproduce the work, create derivative works (including translations), distribute copies of the work, and perform or display the work in public. A copyrightable work is a work that is fixed in a tangible medium of expression from which it can be observed either directly or with the aid of a machine or device. Copyrights normally last the life of the author plus 70 years. (See [17 U.S.C. 301-305](#)) For copyright protection in the U.S., copyright holders may, but are not required to, record their copyright with the [U.S. Copyright Office](#). The author has the ability extend his or her copyrights to another party by granting a license.

Generally, works created by the USG are not copyrightable; however, works created for the USG under a contract or agreement by another may be copyrighted. USG works may also receive copyright protection in other countries depending on local rules and law. The USG may hold a copyright license and can receive and hold copyrights transferred to it (e.g., through assignment or bequest). (See [17 U.S.C. 101, 105](#))

As with all other forms of IPR, non-US legal considerations may require further evaluation by the CO/AO in consultation with the Office of the General Counsel or the cognizant Regional Legal Advisor. For example, the standard clauses and provisions discussed in this ADS chapter may warrant modification if a cooperating country's regulation of copyrighted material impacts a contract or grant awardee's ability to sufficiently meet its IPR obligations as contained in the agreement.

318.3.2.1 Copyright Notice and Data Marking

Effective Date: 03/16/2010

USAID-created work must contain a notice to the public regarding the copyright status. An example of an appropriate copyright notice for a USAID-created work that cannot be copyrighted would be, "This is a work of the U.S. Government and is not subject to copyright protection in the United States. Foreign copyrights may apply."

When a partner is furnishing deliverables under a USAID acquisition agreement, the partner is required to clearly mark any data that is proprietary or that the USG

has only limited or restricted rights to use. USAID may cancel, ignore, or return to the contractor unauthorized markings contained on data. Data delivered under a contract containing [FAR clause 52.227-14, Rights-in-Data General](#), that does not have limited or restricted rights and copyright notices is presumed to have been delivered with unlimited rights. The USG assumes no liability for the disclosure, use, or reproduction of such data. (See [FAR 27.404](#) or [AIDAR 727.4](#))

318.3.2.2 Copyrights and Contracts

Effective Date: 03/16/2010

Works created by contractors on behalf of the USG are commissioned works (i.e., works created under a work made for hire agreement). As such, contractors may obtain copyrights on the works they produce. Before making a copyright claim, a contractor must obtain the prior, express written permission of the CO. Also, depending on the type of data produced, a USG agency generally reserves unlimited, limited, or restricted license rights. (See [FAR 27.403](#) and [FAR 52.227-14](#))

a. Rights-In-Data General – Federal Acquisition Regulations (FAR)

(1) Unlimited Rights Data

Under the Rights-in-Data General clause, the USG obtains “unlimited rights” to data developed exclusively with USG funding. Generally, “unlimited rights” means that the USG may “use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.” (See [FAR 52.227-14\(a\)](#))

When a contractor establishes a claim to a copyright involving data produced under a contract, the USG generally is granted a paid-up, non-exclusive, irrevocable, worldwide license to unlimited rights for all such data. For computer software, the USG receives every right it would have with any other data, except that it does not have the right to distribute it to the public.

NOTE: The FAR Rights-in-Data clauses ([FAR 52.227-14](#)) only address respective rights and not deliverables. Deliverables must be specifically identified in the contract. Also, **FAR 52.227-16, Additional Data Requirements**, gives the USG the right to request data not specifically identified under the contract. In some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be feasible to ascertain all the data requirements at contract award. The clause at **52.227-16** may be used to enable the subsequent ordering by the CO of additional data first produced or specifically used in the

performance of a contract as the actual requirements become known. Data may be ordered under the clause at **52.227-16** at any time during contract performance or within a period of three years after acceptance of all items to be delivered under the contract.

When developing programs or drafting language for a USAID contract or license, consider the following:

- Platforms/formats
- Geographic/market area
- Duration
- Warranties and indemnities for incorrect information
- One-time or multiple uses
- Current version versus revisions
- Privacy and publicity

For software, the contract terms and conditions must specify the type of format required as a deliverable, e.g., source versus object code versus form, fit, and function data.

When asserting copyright, the contractor must place a copyright notice on the work acknowledging USG sponsorship. This notice must include the contract number when the work is delivered, published, and registered with the U.S. Copyright Office.

(2) Limited Rights Data

If data embodies trade secrets, or is commercial or financial and confidential or privileged, the USG generally obtains limited rights to the material. These rights pertain to items, components, or processes developed at private expense, including minor modifications thereof.

When the USG has limited rights to data, it may reproduce and use the data within the USG, but it may not use the data for manufacture or disclose the data to the public without permission of the contractor. (See [FAR 27.404-2 \(c\)](#))

(3) Restricted Rights in Restricted Computer Software

Restricted computer software is any computer software that is developed at private expense and is a trade secret, commercial or financial and confidential or privileged, or published copyrighted.

(See [FAR 52.227-14\(a\)](#)) An example of this would be off-the-shelf software. The USG receives only restricted rights in such software.

When the USG has restricted rights in computer software, the USG generally may not use or reproduce it or disclose it outside the USG without permission from the party owning the copyright. The USG may only use or copy the restricted computer software in accordance with the licensing rights the USG obtained (usually including the computers for which the software was acquired and their back-ups). (See [FAR 27.404-2\(d\)\(3\)](#))

b. Scientific and Technical Publications

In general, contractors are authorized, without prior approval of the CO, to assert a claim to a copyright in technical or scientific articles based on or containing data generated under a contract and published in academic, technical, or professional journals; symposia proceedings; or, similar works. (See [FAR 27.404-3](#))

If the **FAR Rights-in-Data** clause is utilized – “and if the release or publication of data first produced in the performance of the contract may be sensitive to USG relations with the cooperating country” – the CO must also use the clause at [48 CFR 752.227-14](#). (See [AIDAR Subchapter E – Part 727.409](#))

The USG may reserve unlimited rights in such copyrighted scientific and technical data. Under these reserved rights, the USG and others acting on its behalf have a paid-up, nonexclusive, irrevocable, worldwide license in the copyrighted work to reproduce, prepare derivative works, distribute copies to the public, and display it publicly. See the standard clause at [FAR 52.227.14](#).

c. Special Works

The Special Works clause (see [FAR 27.405](#) and [52.227-17](#)) gives the USG the right to limit the contractor’s exercise of claim to copyright and limits the contractor’s release and use of the data. Special works include, but are not limited to,

- Audiovisual works;
- Histories of the respective agencies, departments, services, or individual units;
- Works pertaining to the instruction or guidance of USG officers and employees in the discharge of their official duties;

- Collections of data containing personal information, the disclosure of which would violate individuals' right of privacy;
- Investigative reports; and,
- Computer software programs that either may give a commercial advantage or is agency mission sensitive.

The CO must insert **FAR 52.227-17** in the solicitation and the resultant contract if the Agency needs to prevent a contractor from asserting and obtaining copyright to data produced under the contract,

d. Acquisition of Existing Computer Software

The CO may insert the clause at [FAR 52.227-19, Commercial Computer Software License](#), in a solicitation and resulting contract for existing computer software to fulfill the need for which the software is being acquired. At a minimum, the CO shall assure that the contract contains terms to obtain sufficient rights for the USG and is otherwise consistent with [FAR 27.405-3](#). (See FAR 27.409(g))

318.3.2.3 Copyrights and Assistance Agreements

Effective Date: 03/16/2010

A recipient may assert copyright to works created under an assistance award under [22 CFR Part 226](#). The USG reserves a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes and to authorize others to do so. For non-U.S. implementing partners, the AO must consider including language similar to that found in **22 CFR Part 226**, the [FAR](#), or the [AIDAR](#), as appropriate.

318.3.3 Marks

Effective Date: 03/16/2010

Marks, commonly referred to as trademarks, take two main forms: trademarks for products and service marks for services. The [Lanham Act of 1964](#) sets forth Federal trademark law. Trademark law allows manufacturers and service providers to use and restrict others from using marks that distinguish their goods and services from the goods and services of others.

The USG can register and hold marks. Registration of a mark with the U.S. Patent and Trade Office is not required to obtain rights to the mark in the United States, but this action establishes undeniable evidence of the registrant's exclusive right to use the mark. If the user registers the mark and continuously uses the mark for five years, the user's right to continued use of the mark becomes uncontestable.

In certain instances, the Agency may seek to obtain rights to marks developed under USAID-funded awards. Such efforts must be coordinated with the Office of General Counsel and the Bureau for Legislative and Public Affairs.

The guidance in this section does not impact the policies established in [ADS 320, Branding and Marking](#).

318.3.3.1 Marks and Contracts

Effective Date: 03/16/2010

Neither the FAR nor the AIDAR addresses rights to marks. Nevertheless, there are several situations where USAID may seek to assert or register marks in the U.S. or other countries to protect its interests in products developed under USAID-funded contracts. For example, when a Mission uses a contractor or grantee to develop a particular brand of health product (e.g., mosquito nets) to be marketed within a particular country, it may be advisable for USAID to first register the rights to use or allow others to use that mark and then transfer those rights to a partner for the duration of the contract or agreement. Operating units developing social marketing or branding programs must consult with the CO and the Office of the General Counsel or the Regional Legal Advisor to ensure that the proper IP clauses are incorporated into contracts.

318.3.3.2 Marks and Assistance Agreements

Effective Date: 03/16/2010

For assistance recipients, [22 CFR Part 226](#) includes trademarks in its definition of intangible property. The regulation states that title to IP is given to the recipient and the recipient must use that property for the originally authorized purpose. Further, the recipient cannot encumber (i.e., utilize the IP in a way that prohibits USAID use or prohibit USAID use altogether) the IP without approval of USAID. (See [22 CFR 226.36](#)) When the IP is no longer needed for the originally authorized purpose, disposition must occur in accordance with the provisions of [22 CFR 226.34\(g\)](#).

Because of the complex issues associated with developing, registering, and maintaining a mark, the operating unit must consult with the CO/AO and the Office of General Counsel/Regional Legal Advisor as early as possible in advance of the Request for Application/Annual Program Statement and resulting award. Such early interaction allows the parties the time to appropriately determine what rights USAID may want to retain in a mark developed under an activity.

318.3.3.3 Sample Trademark Clause

Effective Date: 03/16/2010

When the operating unit, in consultation with the Office of General Counsel (GC)/Regional Legal Advisor (RLA) and the CO/AO, concludes that USAID will

retain mark rights in products or services developed with USG funding, the CO/AO should consider including a marks clause in the acquisition or assistance instrument. Such a decision should take into consideration whether the acquisition or assistance award includes:

- a) Marks to be developed using USG funds,
- b) Marks developed solely with non-USG funds, or
- c) Marks previously developed with USG funds.

The Model Marks Clause that COs/AOs and their GC or RLA representatives may use or adapt for use can be found through the Internal Mandatory References section below.

318.4 MANDATORY REFERENCES

318.4.1 External Mandatory References

Effective Date: 03/16/2010

- a. [17 U.S.C. 101, 105](#)
- b. [17 U.S.C. 301 - 305](#)
- c. [22 CFR Part 226](#)
- d. [35 U.S.C. 100-212](#)
- e. [37 CFR Part 401, "Rights to Inventions Made by Nonprofit and Small Business Firms under Government Grants, Contracts, and Corporate Agreements" \(implementing the Bayh-Dole Act\)](#)
- f. [AIDAR Subchapter E – Part 727](#)
- g. [FAR Part 27 – Patents, Data, and Copyrights](#)
- h. [FAR 52.227-11, "Patent Rights – Ownership by the Contractor" \(short form\) \(for U.S. nonprofit firms or small businesses\)](#)
- i. [FAR 52.227-13, "Patent Rights – Ownership by the Government" \(for other than U.S. nonprofits and small businesses with work to be performed overseas\)](#)

318.4.2 Internal Mandatory References

Effective Date: 03/16/2010

- a. [ADS 303, Grants and Cooperative Agreements to Nongovernmental Organizations](#)
- b. [ADS 318maa, Model Marks Clause](#)
- c. [ADS 320, Branding and Marking](#)

318.5 ADDITIONAL HELP

Effective Date: 03/16/2010

- a. [2 CFR Part 215 \(former OMB Circular A-110\)](#)
- b. [15 USC 1051 - 1141, The Lanham Act of 1964](#)
- c. [15 U.S.C. 1501 – 1534, Technology Transfer Act of 1986](#)
- d. [15 U.S.C. 3710a](#)
- e. [35 U.S.C. 200-212, The Bayh-Dole Act of 1980](#)
- f. [AAPD 04-16, Public-Private Alliance Guidelines Collaboration Agreement](#)

318.6 DEFINITIONS

Effective Date: 03/16/2010

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

computer software

See data. (Chapter 318)

copyright

Copyright is a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression. Copyright covers both published and unpublished works. (Chapter 318)

data

Recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information. (Chapter 318)

form, fit, and function data

Data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability. Data identifying source, size, configuration; mating and attachment characteristics; functional characteristics; and performance requirements. For computer software, it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software. (Chapter 318)

invention

Invention means any creation or discovery which is or may be patentable or otherwise protectable under Title 35 of the U.S. Code. (Chapter 318)

limited rights

When the U.S. Government (USG) has limited rights in data, it may reproduce and use the data within the USG, but it may not use the data for manufacture or disclose the data to the public without permission of the contractor. (Chapter 318)

limited rights data

Data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications. (Chapter 318)

patent

A patent is a written instrument from the U.S. Patent and Trademark Office (USPTO) granting an inventor the right to exclude others from making, using, or selling the invention for a period of time. (Chapter 318)

restricted computer software

Computer software developed at private expense that is a trade secret and is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software. (Chapter 318)

restricted rights

Generally, restricted rights bar USAID from using, reproducing or disclosing copyrighted information outside the U.S. Government without permission from the party owning the copyright. (Chapter 318)

service mark

Similar to a trademark, except that it identifies and distinguishes the source of a service rather than a product. (Chapter 318)

subject invention

Any invention of the contractor, grantee, or recipient of a cooperative agreement conceived or first actually reduced to practice in the performance of work under USAID agreements. (Chapter 318)

technical data

See data. (Chapter 318)

trademark

A word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods of one party from those of others. (Chapter 318)

unlimited rights

The ability to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so. (Chapter 318)

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