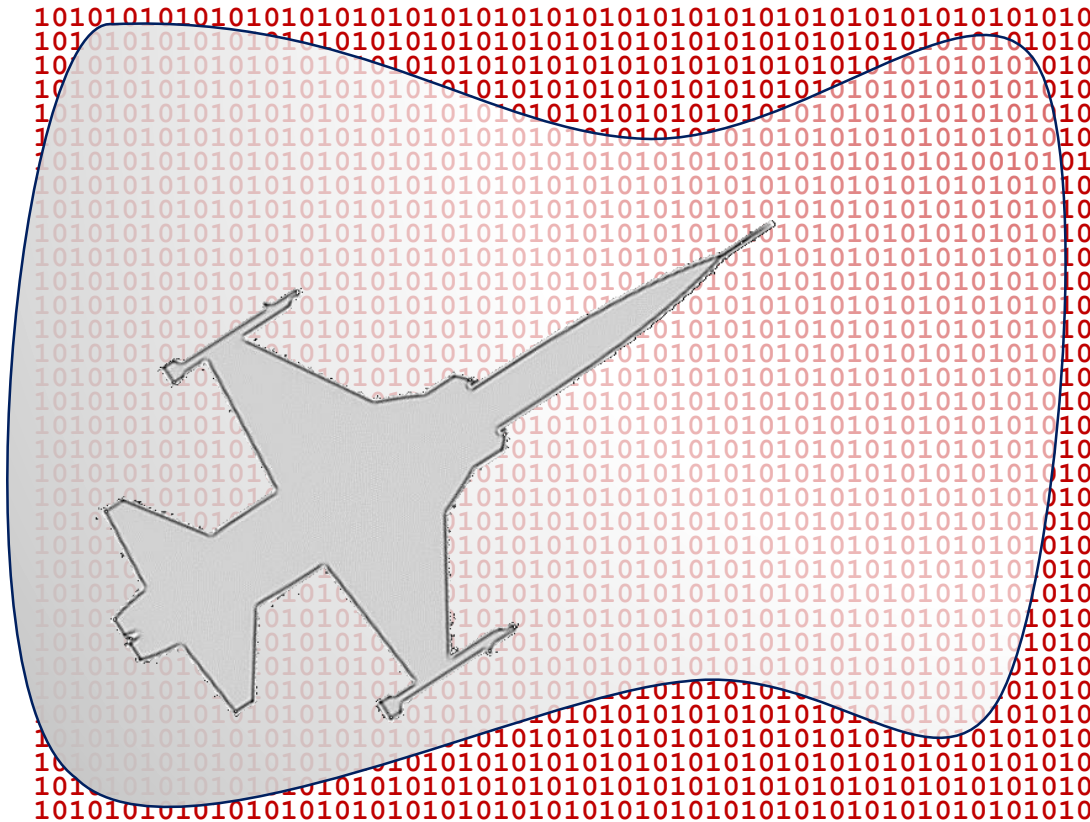


Data Requirements and Rights: Time for a Reassessment



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Data Requirements and Rights: The Challenge in the Information Age

Understanding the interests of government and industry:

- **To meet national security objectives, the Air Force must affordably acquire, operate, sustain, and modernize**
 - ***Affordability requires carefully derived data rights to sustain and modernize these capabilities over the long term***
- **Industry must protect their technical data, software, and intellectual property to maintain their competitive value and innovation engines**
 - ***Without the participation of industry, there are no viable means to construct military power***
- **Balancing these two objectives is key to a win-win strategy that assures the warfighter gets what the warfighter needs while industry thrives**



DFARS Guidance...

Limits U.S. Government acquisition of data rights to:

“only the technical data, and the rights in that data, necessary to satisfy agency needs...”

And requires the acquisition manager to:

“address acquisition strategies that provide for technical data and the associated license rights...”

DFARS 227.7103

***But... what data is “necessary” to satisfy agency “needs”?
And what “associated license rights” are necessary?***



The Air Force's Problem





The Air Force's Problem





What is Technical Data?

Technical Data: Any information contained within computer databases, product design, documentation, specifications, and maintenance material

- **OMIT:** Operations, Maintenance, Installation, Training
- **Funding Source?** POR, CRAD, IRAD, Private
- **Licensing?** Unlimited, Government Purpose, Limited, Specially Negotiated



Computer Software is NOT Technical Data



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Commercial



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Not All Acquisitions are Created Equal

Air Force acquisition programs encompass a broad range of programs, with widely varying requirements, ranging from major weapon systems to commercial products including:

- **Large, purpose built weapon systems with no civilian equivalent (F-35, B-21, GBSD)**
- **Aircraft programs with mixed military and commercial uses (Helos, Biz Jets)**
- **Non-flying C4ISR programs (TBMCS, DCGS)**
- **Purely commercial goods and services (IT, telephony, networks)**

“The factors driving the Department of Defense and the Air Force to seek greater access to data are rational and reasonable, as are the marketplace dynamics that make protecting intellectual property an imperative for industry.”



A Sampling of Current Major Acquisition Programs

Our research included a review of acquisition programs to examine how data rights was handled in the RFPs

■ Aircraft Programs

- UH-1N Helicopter Replacement Program
- T-X Advanced Pilot Training Program
- OA-X Light Attack Experiment

■ Space and Missile Programs

- Evolved Expendable Launch Vehicle (EELV)
- Ground Based Strategic Deterrent (GBSD)

■ Non-Flying IT Based Programs

- Open Architecture Distributed Common System
- Command and Control Systems





Inconsistent Data Rights Approach in Major Acquisition Programs

Program	Data Rights Approach
<ul style="list-style-type: none"> • UH-1N Helicopter Replacement 	<ul style="list-style-type: none"> • OMIT Clause for Tech Data and Software
<ul style="list-style-type: none"> • T-X Advanced Pilot Trainer 	<ul style="list-style-type: none"> • OMIT Clause for Tech Data and Software; OTB Pilot Program
<ul style="list-style-type: none"> • OA-X Light Attack Experiment 	<ul style="list-style-type: none"> • Data rights approach TBD; opportunity for industry engagement
<ul style="list-style-type: none"> • Evolved Expendable Launch Vehicle (EELV) 	<ul style="list-style-type: none"> • Standard DFARS clauses for tech data with no assertion for software
<ul style="list-style-type: none"> • Ground Based Strategic Deterrent (GBSD) 	<ul style="list-style-type: none"> • Standard DFARS clauses for tech data with no assertion for software; OTB Pilot Program
<ul style="list-style-type: none"> • Open Architecture DCGS 	<ul style="list-style-type: none"> • RFI. Government will fund software development; open mission
<ul style="list-style-type: none"> • Future Command and Control 	<ul style="list-style-type: none"> • TBD. Open mission standards prob



Observations

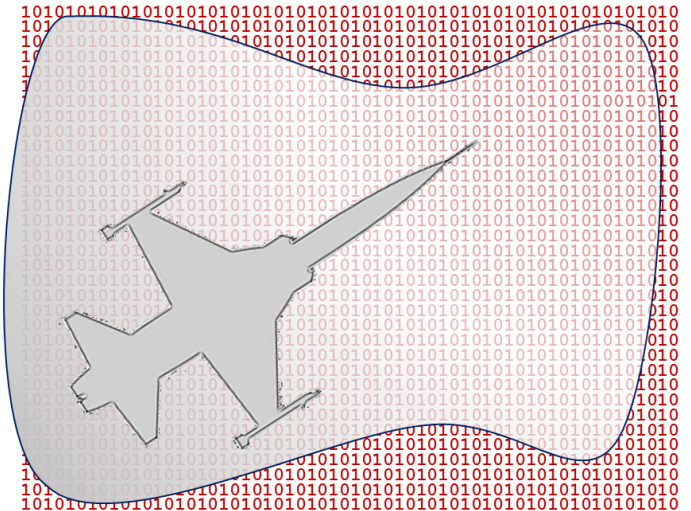
The following observations from a review of recent solicitations:

- **The Air Force appears to be seeking more expansive data rights in aircraft programs than in equally complex space, missile and non-flying programs**
- **While government advocates removing barriers to commercial technology, it is not clear government understands the role of Intellectual Property valuation in development and innovation**
- **Innovation can be continuous and evolutionary or discontinuous and disruptive – both are needed. This can be impacted by up-scoped demands for rights in lieu of strategically defined requirements**
- **Highly innovative firms – especially non-traditional defense suppliers – state that they will not place their IP at risk**
- **The Air Force is in competition with other buyers...to attract the most technologically innovative providers, it must set conditions for mutual success**



A Call to Action for a Stronger Defense

- **To obtain the best solutions to warfighter requirements in the context of surging threats and threat capabilities the Air Force must execute**
 - **a disciplined, enforced process of defining data needs**
 - **through a trained and organized workforce**
 - **to precisely derive data requirements**
 - **based on a lifecycle sustainment strategy**





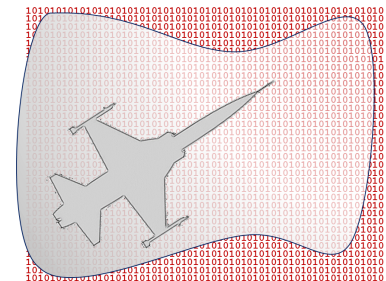
Recommendations

- **Finding a balance--requires more than more policy**
 - **Affordability/value from a life-cycle perspective remains a priority—congress is demanding lower sustainment costs**
 - **AF can pay too much, buy what it doesn't need or already has, can drive up costs, reduce competition, add protest delays**
- **The way ahead: “Restate the destination or tune the engine?”**
 - **Need for a deep look at the nature of the system today—extensive regulation, protest focused, compartmented**
 - **Improved process policy and regulation may fall short without a structured, prepared and integrated workforce**
- **Stand up a cadre of acquisition officers specializing in data requirements and rights and contract language translation**
- **Develop a series of data rights templates that can be adapted for unique program variations**

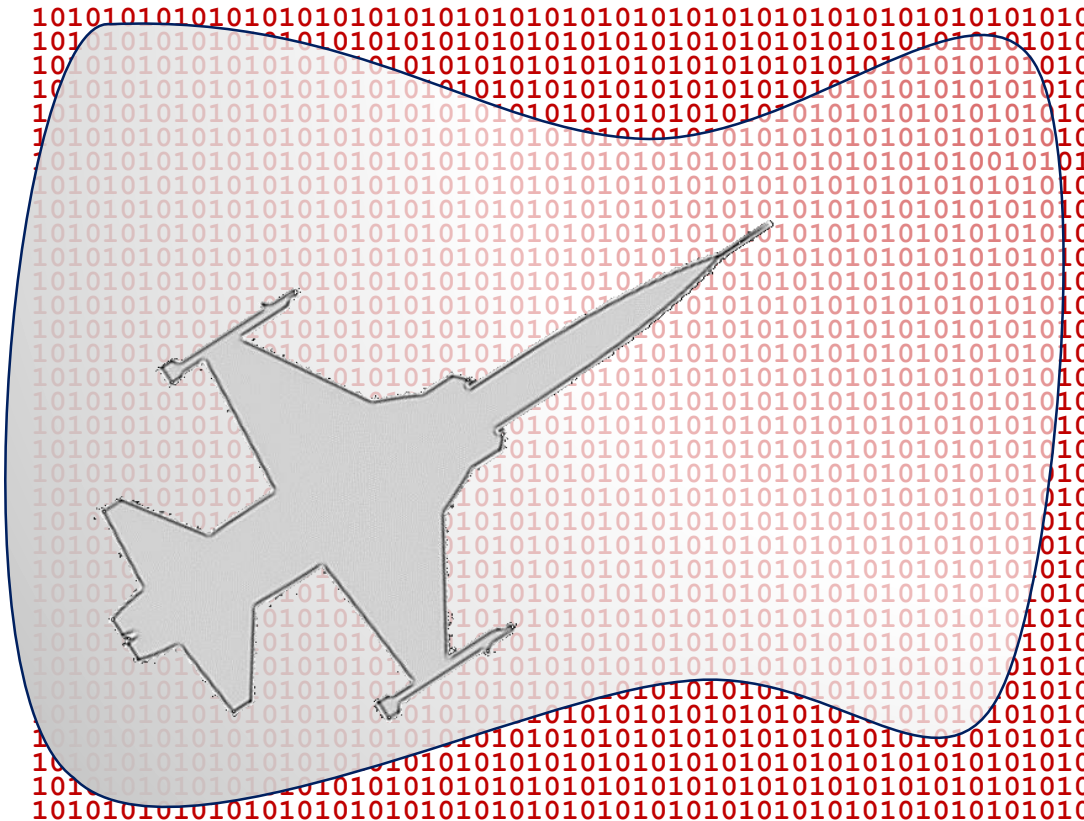


Recommendations

- **Review the plan and supporting guidance for defining data requirements and standardize, train to it, and enforce**
- **Include data requirements and rights during acquisition reviews—aggregate insights to ensure compliance and improve “the engine.”**
- **Improve government-industry discussion—from the recently charged cross-functional Air Force team to individual program activities leading to a request for proposal**
- **Other specific recommendations:**
 - **Review expiration timelines on Government Purpose Rights**
 - **Use of Specially Negotiated Licenses**
 - **Commercial products**
- **The 813 Panel continues its work**



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