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ISSUE BRIEF

U.S. Copyright Status of U.S. Federal Government Works¹

Works that are prepared by employees of the government pursuant to their official duties are in the public domain in the U.S.² due to an express statutory provision prohibiting the U.S. Government from claiming copyright in such works.

17 U.S.C. §105 provides, “Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.”³ Section 101 defines “work of the United States Government” as a “work prepared by an officer or employee of the United States Government as part of that person’s official duties.” The House Report discussing this provision confirms, “The effect of section 105 is intended to place all works of the United States Government, published or unpublished, in the public domain.”⁴ Thus, reports, manuals and other works produced by government employees as part of his official duties cannot receive copyright protection and are in the public domain. While the U.S. Government may hold the copyright for works that have been transferred to it, it cannot claim copyright over the works its employees create in their course of work.⁵

This prohibition on copyright for works of the United States Government has been explicitly confirmed by various agencies, as well as the White House. The Copyright Office, for example, issued a circular on “Copyright Basics,” which notes, “Works by the U.S. Government are not eligible for U.S. copyright protection.”⁶ Numerous agencies include a copyright statement on their respective websites disclaiming copyright protection for material created by that agency

¹ Prepared by Krista L. Cox, Director of Public Policy Initiatives

² This issue brief is focused on the copyright status in the U.S. of Federal Government works. While these works may not enjoy U.S. copyright protection, they may enjoy foreign copyright protection and the U.S. may hold copyright to these works in other countries.

³ 17 U.S.C. §105. An exception exists, however, for the 1968 Standard Reference Data Act for the Secretary of Commerce “in all or any part of any standard reference data which he prepares.” This exception is very narrow and not applicable in the vast majority of cases.

⁴ H.R. Rep. No. 94-1476 at 59 (1976).

⁵ H.R. Rep. No. 94-1476 at 59 (1976) notes “The bill deliberately avoids making any sort of outright, unqualified prohibition against copyright in works prepared under Government contractor grant. There may well be cases where it would be in the public interest to deny copyright in the writings generated by Government research contracts and the like; it can be assumed that, where a Government agency commissions a work for its own use merely as an alternative to having one of its own employees prepare the work, the right to secure a private copyright would be withheld. However, there are almost certainly many other cases where the denial of copyright protection would be unfair or would hamper the production and publication of important works. Where, under the particular circumstances, Congress or the agency involved finds that the need to have a work freely available outweighs the need of the private author to secure copyright, the problem can be dealt with by specific legislation, agency regulations, or contractual restrictions.” Independent contractors may, therefore, receive copyright protections which may be transferred to the U.S. Government. However, the House Report seems to prohibit the use of independent contractors merely to circumvent Section 105 (“it can be assumed that where a Government agency commissions a work for its own use merely as an alternative to having one of its own employees prepare the work, the right to secure a private copyright would be withheld”).

⁶ United States Copyright Office, *Circular 1: Copyright Basics* at 5, available at <http://www.copyright.gov/circs/circ01.pdf>.



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and noting that these works are in the public domain. The Department of Labor,⁷ the Patent and Trademark Office,⁸ the Department of Energy,⁹ the National Science Foundation,¹⁰ the Department of Agriculture,¹¹ and the Department of Treasury¹² are just some examples of agencies that expressly note that materials produced by its government employees are not eligible for copyright protection. Similarly, the White House website notes in its Copyright Policy, “Pursuant to federal law, government-produced materials appearing on this site are not copyright protected.”¹³

⁷ United States Department of Labor, Copyright Policy, <http://www.dol.gov/dol/aboutdol/copyright.htm> (last visited April 9, 2015) (“Public Domain: Materials created by the federal government are generally part of the public domain and may be used, reproduced and distributed without permission. Therefore, content on this Web site which is in the public domain may be used without the prior permission of the U.S. Department of Labor (DOL).”).

⁸ United States Patent and Trademark Office, Terms of Use, <http://www.uspto.gov/terms-use-uspto-website> (last visited April 9, 2015) (“Copyrights are administered by the Copyright Office, a division of the Library of Congress. Copyright law (17 U.S.C. §105) states that all materials created by the United States government are in the public domain. . .”).

⁹ United States Department of Energy, Web Policies, <http://energy.gov/about-us/web-policies> (last visited April 9, 2015) (“Copyright, Restrictions and Permissions Notice: Government information at DOE websites is in the public domain. Public domain information may be freely distributed and copied, but it is requested that in any subsequent use the Department of Energy be given appropriate acknowledgement.”).

¹⁰ National Science Foundation, Copyright and Reuse of Graphics and Text, <http://www.nsf.gov/policies/reuse.jsp> (last visited April 9, 2015) (“Most text appearing on NSF web pages was either prepared by employees of the United States Government as part of their official duties and therefore not subject to copyright or prepared under contracts that gave the Foundation the right to place the text into the public domain. The same is true of most publications available for downloading from this web site. You may freely copy that material and, at your discretion, credit NSF with a ‘Courtesy: National Science Foundation’ notation.”).

¹¹ United States Department of Agriculture, Policies and Links, http://www.usda.gov/wps/portal/usda/usdahome?navid=POLICY_LINK (last visited April 9, 2015) (“Digital Rights and Copyright: Most information presented on the USDA Web site is considered public domain information.”).

¹² United States Department of Treasury, Site Policies, <http://www.treasury.gov/SitePolicies/Pages/privacy.aspx> (last visited April 9, 2015) (“Copyright Status: No copyright may be claimed for any work on this web site that was created or maintained by Federal employee in the course of their duties. Images and text appearing on this web site may be freely copied.”).

¹³ White House Copyright Policy, <https://www.whitehouse.gov/copyright> (last visited April 9, 2015).