

SUMMARY REPORT

INTELLECTUAL PROPERTY VALUATION IN THE DEFENSE ACQUISITION PROCESS

Hosted virtually on September 9, 2021

*Presented by Georgetown University in collaboration with the
Acquisition Innovation Research Center (AIRC)*



ACQUISITION INNOVATION
RESEARCH CENTER

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Summary Report

The Acquisition Innovation Forum [“Intellectual Property \(IP\) Valuation in the Defense acquisition Process”](#) was held virtually on September 9, 2021 (9AM-1PM ET) and presented by Georgetown University in collaboration with the Acquisition Innovation Research Center (AIRC), selected Department of Defense (DoD) leaders, academic researchers, industry stakeholders and other thought leaders. Following is a summary of the morning’s events.

Introduction to AIRC

Dr. Dinesh Verma, Executive Director, SERC and AIRC

The AIRC was established by the Department of Defense in September 2020 as part of a larger effort to improve defense acquisition outcomes by leveraging insights and capabilities from academia. The September 9 Acquisition Innovation Workshop supported AIRC’s effort by uniting various sectors to examine past, present and emerging intellectual property (IP) evaluation and valuation practices and policies to identify those most likely to employ innovative mechanisms, tactics, techniques and practices (MTTPs) that can increase the value and applicability of acquired IP across the DoD.

Georgetown’s preliminary research suggests that the DoD and the commercial sector may be speaking different languages and inhabiting different cultures with respect to IP and innovation. Bridging this gap is important to better leverage connections with commercial enterprises toward the goal of defense acquisition innovation.

Panel 1 – Evaluating IP’s Role in Driving Innovation and Competitiveness

Moderator: *Stan Soloway*, President and CEO, Celero Strategies, LLC.

Panelists: *Alison Brown*, President and CEO, NAVSYS Corporation

William C. Greenwalt, Nonresident Senior Fellow at the American Enterprise Institute

Adriana Luedke, Director and Associate General Counsel, Lockheed Martin

Moshe Schwartz, President, Etherton and Associates

Where is the DoD today in terms of innovation?

The moderator opened the discussion by asking panelists to consider this question. It was noted that the U.S. government has lost its competitive edge in technology. The ongoing, long-time conversation about the need to focus on IP has yielded limited progress. A change in the DoD mindset regarding IP and a sense of urgency regarding the need for change must be internalized.

Current DoD acquisition policies and processes regarding IP “scare away” and impede the department’s opportunities to work with private industry partners, particularly smaller non-traditional companies. The panelists generally agreed it is these smaller non-traditionals that can introduce the innovation needed by the DoD to effectively deliver the best technology to the warfighter. However, these non-traditionals see mostly risk and no effective protections nor recourses in giving up their IP rights to work with the DoD. This leaves the U.S. further behind other countries such as China that have found ways to access the commercial market and benefit from its technologies.

Workforce training and education was one strategy discussed to enable DoD staff to be “smart buyers” who are well-equipped and informed for IP rights and valuation negotiations with private industry companies, particularly the non-traditionals, hesitant to engage with the government. Current regulations such as FAR encourage the institutional culture of relying on traditional, increasingly ineffective acquisition processes. Increasing the DoD workforce’s knowledge of the needs and “pain points” of potential private industry partners provides greater leverage with these, reduces the fear of risk of working with the DoD and leads to better licenses for both parties.

The panel emphasized that understanding the value IP holds for the non-traditional companies is critical for these to want to engage in conversations and negotiations with the DoD. Current requirements that companies provide everything and deliver source code are potential deal breakers. There is little to no restriction on where the source code can go once it is handed over to the DoD, and there is little ability for companies to hold the government accountable for exposure of their IP to the market and/or competitors. The DoD needs to consider alternatives regarding rights and licenses that will appeal to companies, particularly the non-traditionals.

Effective DoD workforce training and education may include the opportunity for individuals to specialize. It was noted in the discussion that establishing best practices in IP negotiations would benefit both the DoD and

the private sector, and organizations such as the Acquisition Innovation Research Center (AIRC) play a key role in this task.

Keynote Address

Speaker: *John Tenaglia*, Principal Director, Defense Pricing and Contracting, Department of Defense

Introduction of Speaker: *Richard Gray*, Director, Intellectual Property Cadre, OUSD (Acquisition & Sustainment)

Mr. Tenaglia noted the diversity of backgrounds and experiences represented by the September 9 workshop's panels and audience, and the value of these to a discussion on IP valuation. He reiterated Panel 1's point that improved IP management by the DoD—improved policies, procedures and business processes—would attract companies capable of providing the U.S. government and DoD with technology that can be rapidly and continually integrated into systems.

Mr. Tenaglia noted that the discussion about what is paid for IP is not different than other pricing discussions. The DoD workforce needs increased ability to negotiate prices that are fair for industry partners. Improvement will take significant effort. Reforms focused on valuation, particularly in the acquisition process, need to be collaborative and improvements may be achieved through forums such as the September 9 Acquisition Innovation workshop.

Increased knowledge of and ability to negotiate attractive licensing rights will help the DoD reach out to smaller companies capable of producing the innovative technology to address key areas of focus such as supply chain management and sustainment of major programs. Acquisition portfolio reviews can provide opportunities to identify IP matters that need better management.

Questions were fielded that resulted in discussions on issues such as:

- Consideration of different pricing for licensing agreements—Public comments on the matter can be expected, which speaks to the responsibility to address the negotiation of licensing rights and the need for a new engagement mechanism and preparation of the workforce to be sophisticated negotiators.
- Existing disconnect between the innovative sector (young, non-traditional companies) and budgeting (they're funded separately)—There needs to be fair compensation to companies for their IP and guards to ensure their ability to sell their products is not impeded by the government's and DoD's use.
- Effective management of different families of IP stakeholders—Improvement may be achieved through embracing modular principles that place all stakeholders into one giant framework, aligning with modular licensing schemes and supporting IP strategies that cover an entire program.

Panel 2 – IP Valuation: Impacts on Industry Engagement and Innovation

Moderator: *Steven Schooner*, Nash & Cibinic Professor of Government Procurement Law

Panelists: *Bill Elkington*, Managing Member, Mind IC

Ben McMartin, Managing Partner, Public Spend Forum

Lorna Tedder, Principal DoD Program Manager and Agile Acquisition SME, The MITRE Corporation

Tim Webb, Venture Capitalist and Independent Entrepreneurship Consultant

Where is the DoD on the journey of valuing data rights?

Panelists agreed that the discussion regarding IP rights is important and needs improvement. While the DoD has made progress, valuation still needs attention. The current culture of overreliance on traditional processes was identified as a hurdle to equipping the workforce with the skill needed to appropriately value IP and attract partners who can bring much needed innovation. It was pointed out that contract negotiations are typically done outside of and without influence from the OSD, resulting in GPR set as the default, which can be a dealbreaker.

The ensuing panel discussion highlighted different things to consider that can move the DoD further along the journey of addressing IP valuation, including:

- Contracting officers and programming managers need to develop an IP strategy early in the acquisition stages that allows industry to keep the appropriate rights from the beginning of the process, which in turn will make them “willing to play”. The private and government sectors tend to have opposite views on IP: private companies don’t understand why the government wants rights to everything, and the government doesn’t seem to understand IP is the bread and butter for many smaller companies. Both sides need greater understanding of the needs and pain points of the other; an example in the case of the government and the DoD is identifying how to carve out specific, different rights for access at different points in the product and program lifecycle.
- Education and training can empower the workforce to engage in negotiations as “smart buyers” and have positive effects on the current environment and culture that impede innovation. Valuation is a discipline with a great deal of variability. More effective negotiations require having the right people at the table who understand what may go wrong and how the economic value of IP may be compromised. This conversation again introduced the idea of workforce specialization for the DoD to consider.
- IP valuation is a big problem that will not solve itself, as evidenced by the decades-long endurance of the conversation about the issue. An idea that merits consideration is reaching out to the workforce and asking what they need. They are a vital resource for information that can contribute solutions to

the ongoing discussion about IP valuation and rights, and ultimately contribute to acquisition innovation.

Discussion – Outcome and Closing Remarks

The workshop ended with moderators and panelists sharing final points, a summary of which follows:

- Everything old is new again. It's the context that changes. Conversations regarding IP valuation and rights have been happening for years, and there needs to be recognition of the current context in which the ownership of technology has changed. The private sector sees risk in engaging with the government and DoD, and little recourse offered by policies and procedures that provide little protection.
- Moving the conversation regarding IP valuation does not require reinventing the wheel. There is expertise, knowledge and literature already available regarding IP. These resources need to be captured, organized and exploited. For example, business practices established by the commercial marketplace need to be examined and adopted as appropriate. It was also suggested to examine the approaches used by other nations, particularly those that have developed innovative technologies despite constrained budgets.
- Again, the question of how to incentivize companies to work with the government and the DoD was identified as the pressing question in the IP conversation. The DoD conducts price analyses for every purchase and valuation is happening all the time; the process is not differentiated when it comes to IP. Entering negotiations with an understanding sensitive to the needs of commercial companies and how to deal with the uncertainties associated with valuation is the conversation that the DoD does not yet know how to have but must learn to make progress and gain closure to long-lingering questions.