

## USE OF FEDERAL PROPERTY AND EQUIPMENT

This section discusses issues associated with allowing non-Federal partnerships to conduct activities on Federal land, to use Federal buildings, or use Federal equipment. It does not address the transfer of these things to non-Federal parties through the use of grants and cooperative agreements, which is addressed in the “tools” section.

*Use of Governmental Equipment.* The general rule is that Government furnished equipment is for the use of the Government and that its use is limited to official purposes only. There is no independent authority for the Department to loan a “group” Government facilities or equipment to use in supporting the Department’s mission. However, the individual volunteer authorities provide the basis for allowing individual volunteers to occupy government office space, use equipment, or operate Federal vehicles. Groups may appropriately be treated as collections of individual volunteers when determining the parameters of appropriate use of equipment, with the group acting as a managing and facilitating entity through a blanket agreement covering their volunteer members. This is not to be taken to mean that the group is not volunteering as a group, but is simply a way of applying the relevant authorities to determine appropriate limitations.

The rules governing individual volunteers result in some general principles that may be applied to providing equipment to groups. The first is that a Department employee must be assigned to supervise the volunteer activities of the group, including ensuring that volunteers are qualified to do the work performed, to issue of instructions and guidance, as well as maintain any necessary records. Next is that the group must ensure that its volunteers who use Federal equipment have sufficient experience or training to safely operate the equipment (e.g., operators of Government vehicles must have a valid Government operators license). When properly trained and/or qualified, a group and its members may be provided whatever available equipment, including office space, necessary to accomplish their role in supporting the Department. The Department, however, should be careful not to provide equipment provided in support of a volunteer group in a manner that displaces existing employees. Although groups may volunteer in support of general compliance and regulatory functions of the Department, they must not perform law enforcement functions, including carrying firearms or being assigned to duties that would place them in life-threatening situations.

*Construction on Governmental Land.* Generally, construction projects on Federal land are accomplished through the use of a procurement contract on the theory that such an activity “is for the benefit” of the Government. Construction projects on Department land may be performed through a partnership with a non-Federal group provided that the group’s members in limited circumstances. At a minimum, the group’s members must be properly trained in the tasks to be performed and that job safety and job hazard issues are addressed (using the standards that would be applicable to employees). Employees must ensure that they consult with the Solicitor’s Office prior to entering into a partnership involving construction on Federal lands.

*Inability to Offer Permanent Occupancy.* The Department does not have authority to grant permanent rights to occupancy of Federal land or buildings.

*Use of government “marks” and “symbols.”* Government logos, marks, and symbols are generally for official use only. The Department may give partners the authority to use a government’s “marks” and “symbols” when the use is approved by the Department. For example, the use of the Department’s seal can only be approved by the Director of the Office of Administrative Services. Under our procedures, the Director of the Office of Administrative Services is authorized to grant such permission. Section 310 DM 4.1(A)(1) of the Departmental Manual states that the Director of Administrative Services is the custodian of the Department seal and also sets forth a procedure in which individuals may request permission to use the seal for other than official Government purposes.

*Intellectual Property and Partnerships.* The creation, use, and/or transfer of Intellectual Property may be the intended or unintended consequence of a partnership. Intellectual Property is generally defined as intangible assets, either in the form of Copyrights, Trademarks, or Patents.

A partnership that involves the creation of a trademark, copyright, or patent will require consultation with SOL early in the process. The most common circumstance for the creation of intellectual property in partnerships is copyrights. A simple definition of a copyright is the protection of the expression of ideas against unauthorized copying by others. The expression of an idea may be in the form of visual art, architecture, computer programs, written text, content on websites, and the like. A patent is defined as a grant of right to exclude others from making, using or selling one’s invention. Finally a trademark is any word, name, symbol (e.g., the Artist formerly known as Prince), or device (e.g., shape of the Honeywell thermostat) that is used in commerce to identify and distinguish the goods of one manufacture or seller from those of another.

When the partnership encompasses the creation of intellectual property *and* the Federal government is paying for the cost of the creation of the copyright, trademark, and/or patent, the government must receive at least a “government purpose” license. A government purpose license provides the Department the right 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. If the partnership is creating intellectual property and the costs associated with the asset are shared between the government and the partner, the issue of ownership and use can become very complicated. Again, the government should almost always seek to receive a government purpose license. However, there may be instances where Federal ownership would further the governmental interest. Unfortunately, due to the complexity of the subject matter, we cannot provide a full discussion in the Primer. Therefore, we recommend contacting the Branch of Acquisition and Intellectual Property promptly if you have any questions.

If the proposed partnership involves the use of trademarks, service marks, copyrighted materials, or patents, the supporting partnership agreement most likely functions as a license. A license is an agreement between party A and party B where party A permits B to use its patents, trademarks, copyrights, and/or other technology for a limited time and usually for a limited use.

If a partnership involves the use of any federal agency insignia, logo, or designs, the following information should be obtained prior to any agreement. First, what is the purpose of the use of the insignia, logo, or design by the partner? Second, what is the duration of such use? Third, is it suggesting an endorsement of the partner or its products or services? If after these basic questions are answered, the following basic guidelines for use of any federal agency insignia, logo, or design should be followed:

1. Use of any federal agency insignia, logo, or design service marks must be consistent with the statutory purpose of the program.
2. Any other use of any federal agency insignia, logo, or design by any partner must be authorized in writing.

*Insurance and Liability Issues.* A variety of liability issues should be considered before entering into a partnership. A partner may desire that the government hold it harmless for certain actions, but this is not always a permissible arrangement in a partnership, due to the fact that the Government cannot indemnify a partner for actions which may injure a third party. For example, the Department may not agree to indemnify where the amount of the liability is indefinite, indeterminate, or potentially unlimited.

Generally, a group's members would be protected by the Federal Tort Claims Act from liability for negligent acts done while in the scope of their volunteer activities, when they are volunteering under a bureau's statutory authority. Further, most Department volunteer statutes provide for compensation for injuries that occur during volunteer status, usually through the Federal Employee Compensation Act. Nonetheless, partner organizations generally remain responsible for their own arrangements concerning liability.