



Intellectual Property and Copyright Information for Councils on Developmental Disabilities

General Information

At times, DD Council projects and initiatives have products and publications associated with contracted work. Frequently, the topic of copyrighting and ownership of intellectual property comes up and additional information is needed.

There are several resources available on intangible property and copyrights. Specifically, the Code of Federal Regulations - 45 CFR §75.322 Intangible property and copyrights and the HHS Grants Policy, Section II-68-71 provide Council staff with information and guidance.

The most common questions DD Council staff face are:

What is intangible property?

In general, intangible property is something that has no physical substance, but is something a person can have control of and is considered property, for example, knowledge/intellectual property.

Intangible property that is developed or acquired with DD Council funds must be used for the original purpose as authorized and must not be encumbered without federal approval.

What is intellectual property?

Intellectual property includes copyrights, patents, trademarks, and trade secrets. A copyright is a form of intellectual property available for original works of authorship that are fixed and in a material form, published or unpublished. DD Councils are most frequently asked about copyrighting.

Who owns the intellectual property?

Ownership for intellectual property paid for by Federal funds rests with the DD Council.

45 CFR 75.322 indicates title to intangible property that is acquired under a federal award vests upon acquisition in the non-Federal entity (DD Council).

Can products developed with DD Council funding be copyrighted?

Yes. DD Councils may copyright any work that was developed or acquired under the federal grant award. However, HHS reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and authorize others to do so (45 CFR §75.322).

Does the DD Council need permission to copyright something?

No special permission is needed as 45 CFR §75.322 (b) indicates the non-Federal entity (DD Council) may copyright any work that is subject to copyright and was developed or for which ownership was acquired, under a Federal Award.

Can a DD Council give permission to a sub-recipient to copyright something?

The DD Council can give permission to a sub-recipient to copyright something paid for with Council funds, but the Council should keep clear documentation of the permission.

Additionally, the Council staff should consider obtaining assurances from a sub-recipient about copyrighting (patents, and program income can also be included) work supported with DD Council federal funds. The assurance should be obtained prior to the work being started. The DD Council assurance should include the following items:

- ✓ The DD Council reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal or state government purposes. (This item is in addition to the 45 CFR §75.322 requirement).
- ✓ The copyright of any work developed under a grant, sub-grant, or contract must be approved by the appropriate DD Council staff.
- ✓ Any rights of copyright to which a sub-recipient or a contractor purchased ownership with Council funds.

Are costs related to securing copyrights allowable?

Some costs are allowable, however, not all costs are allowable. 45 CFR §75.448 provides information on allowable and unallowable costs.