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**Q1** What are the core Federal technology transfer principles and practices that should be protected, and those which should be adapted or changed?

Federal CRADA Authority should be protected

Intellectual property rights for federal inventors and the ability to patent and license federal technologies should be protected.

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**Q2** What are the issues that pose systemic challenges to the effective transfer of technology, knowledge, and capabilities resulting from Federal R&D? Please consider those identified in the RFI as well as others that may have inhibited collaborations with Federal laboratories, access to other federally funded R&D, or commercialization of technologies resulting from Federal R&D.

Inability for federal agencies to assert copyright in the United States

Lack of clarity in certain aspects of the CRADA authority.

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## Request for Information Regarding Federal Technology Transfer Authorities and Processes

**Q3** What is the proposed solution for each issue that poses a systemic challenge to the effective transfer of technology, knowledge, and capabilities resulting from Federal R&D? Please consider the approaches identified in the RFI.

Recommendation 1: Amend copyright legislation to allow for limited (10 year) copyrights in the United States for federal and federally-funded software

Much of the technology transfer legislation was created in the mid-80's, well before the explosion of software and software-based applications we are now seeing. Similarly, the legislation covering federal copyright was developed before this massive cultural and economic change. The result is that federal agencies with Government Owned, Government Operated (GOGO) are not able to protect and possibly license mission-critical software applications without specific authority. In addition, the federal government is often working in partnership with academia on many of its software-based products, which results in a bundled mess of open source, public domain, and copyrighted code. Allowing the federal government a limited copyright would allow for a much clearer transfer of rights and transfer of technology under Bayh-Dole or in the case of Open Source licensing, which is not the case now. The end user would also not be hampered by the mixed bag of rights, making the adoption of the technology much less risky.

Recommendation 2: Expand and refine CRADA authority

The Cooperative Research and Development Agreement (CRADA) provides a number of benefits to the federal and private partners. However, the authority is vague in certain areas, which may limit its use. We recommend the following be considered.

### 2.A - Technology Evaluation and Sole Source Capability

The CRADA is an excellent instrument for federal agencies to evaluate technology platforms for their mission in a collaborative, no cost forum. However, a pre-contract engagement with industry to evaluate a product may lead to claims of unfair competition, if the CRADA opportunity is not initially competed. Additionally, contracting regulations do not provide the opportunity for a sole source to a company that has previously partnered under a CRADA.

We believe federal labs should have access to evaluate and assess a wide range of state of the art technologies from the private sector for their mission needs and then be able to sole source contract to those entities which best meet their mission needs following the evaluation period. In order to accomplish this, we would like to see a Technology Evaluation CRADA or TEC, that could be broadly offered through a Sources Sought notice, would be limited to 1-3 years, could not be renewed, and would include the option for a sole source contract with the initiating agency following the CRADA period. Use of a TEC would allow the agency to evaluate the technology, conduct R&D with the company to customize technology to best meet the agency mission requirements, and lay the foundation for a much more productive contractual relationship in the future.

### 2B - User Facilities

The CRADA authority is vague on allowing reimbursement for use of federal facilities and which facilities may be offered. In theory, it can be done, but the legislation could be amended to make clear all federal facilities are eligible for use by industry in a cost recovery manner. Calculation of costs should be made clear, as should avoiding competition with the private sector. In addition, this capability should allow the federal government to waive any intellectual property provisions which are normally included under the CRADA.

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**Q4** What are other ways to significantly improve the transfer of technology, knowledge, and capabilities resulting from Federal R&D to benefit U.S. innovation and the economy? What changes would these proposed improvements require to Federal technology transfer practices, policies, regulations, and legislation?

The ability to license know-how in addition to intellectual 'property' would be useful to increase technology transfer. As it stands now, GOGOs without specific authority must initiate a patent application to establish the existence of property that can then be licensed. However, in many cases, the expertise and know-how are of greater value than the "patentable" material. The ability to quickly execute a license to transfer that know-how in exchange for a one-time or ongoing royalty would be useful. This type of transfer can be done through a CRADA, but the knowledge being transferred may just be a series of schematics or other material, which doesn't really fit under the CRADA statute.

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## #2

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**Q1** What are the core Federal technology transfer principles and practices that should be protected, and those which should be adapted or changed?

1. Federally developed technology should be for the benefit of the U.S. economy and not to the benefit of foreign nations or companies (US or otherwise) manufacturing in foreign countries.
  2. Intellectual property should be prosecuted and protected vigorously to protect US rights and rights of the inventor(s).
  3. Royalty sharing plans include inventors and inventors' organization.
  4. Protection and licensing of software at all agencies is made a priority.
  5. Fair market value for pre-patented inventions, patented IP and copyrighted software is essential for obtaining the value of federally developed intellectual property.
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**Q2** What are the issues that pose systemic challenges to the effective transfer of technology, knowledge, and capabilities resulting from Federal R&D? Please consider those identified in the RFI as well as others that may have inhibited collaborations with Federal laboratories, access to other federally funded R&D, or commercialization of technologies resulting from Federal R&D.

1. Publication of research that blurs the boundaries of 'basic research' and 'enabling technology' systemically compromise the patentability of new technology.
  2. Effective notification (i.e., marketing and advertising) to commercial entities of available technologies is a systemic communications issue.
  3. The lack of effective implementation and recognition of the mission requirement to transfer technology at the Federal laboratory level systemically inhibits employee involvement.
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**Q3** What is the proposed solution for each issue that poses a systemic challenge to the effective transfer of technology, knowledge, and capabilities resulting from Federal R&D? Please consider the approaches identified in the RFI.

1. Rethink the open publication of research by implementing a review function of papers slated for publication to ensure commercialization opportunities are intelligently considered.
  2. Require Federal laboratories to publish innovation opportunities and new technology developments.
  3. Grade Federal laboratories on their mission readiness including effective technology transfer.
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## Request for Information Regarding Federal Technology Transfer Authorities and Processes

**Q4** What are other ways to significantly improve the transfer of technology, knowledge, and capabilities resulting from Federal R&D to benefit U.S. innovation and the economy? What changes would these proposed improvements require to Federal technology transfer practices, policies, regulations, and legislation?

1. Increase the opportunity for federal employees to take entrepreneurial leave and be able to return to their federal employment for a period of time.
  2. Enforce patent infringement against foreign countries and companies including publishing the identity of violating entities.
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