

# ORA Office Hours: Publication Restrictions

School of Medicine  
Office of Research Administration

February 13, 2025  
11:00 AM



JOHNS HOPKINS  
M E D I C I N E

# Office Hours Overview

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I. Welcome

II. ORA Guidance on Publication Restrictions

III. Khaleena Anderson, Facility Security Officer

# What is a Publication Restriction?

- **Publication restriction**
  - Prior approval to publish
  - Editorial control over content
- **Acceptable requests**
  - Advance copies
  - Consideration of feedback and comments
  - Acknowledgment

# JHU's Policy on Publication Restrictions

- “The University **shall** enter into contracts or other binding commitments to conduct research and training **only if they permit the disclosure and publication of research**” (emphasis added).
  - Johns Hopkins University Intellectual Property Policy (Rev. 10/5/11), <https://policies.jhu.edu/d/MsgwQqsm>
- Shall = Commandment

# Office of General Counsel's Guidance

- “Publication language giving the Sponsor the ability to approve a publication ***must be struck***... as requiring Sponsor approval constitutes a publication restriction.”
- ORA has no wiggle room!

# Examples of Publication Restrictions – Industry, Non-Profits, Academia

- Explicit:
  - “The University shall not issue a Publication without the prior written consent of [Company] (which [Company] may withhold in its absolute discretion and which consent may be conditional on such amendment to the proposed Publication as [Company] considers appropriate for the protection of its rights and commercial interests).”
  - “Johns Hopkins University may only issue publications or communications regarding the Project as agreed in writing between Johns Hopkins University and the University.”

# Examples of Publication Restrictions – Industry, Non-Profits, Academic

- Hide-the-ball:
  - Defining “Confidential Information” to include JHU data and/or research results
  - No path for JHU to independently publish outside of a joint publication
  - Prohibiting publication when a study is terminated early
  - Delaying publication in excess of 120 days to facilitate Sponsor patent filing (IP Policy)

# Examples of Publication Restrictions – Federal

- Legalese:
  - 52.227-17 Rights in Data-Special Works
    - “The Contractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer.”
  - DFAR 252.204-7000
    - (a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless (1) The Contracting Officer has given prior written approval.”



# ORA Solutions

- Strike term entirely
- Potential compromises (not involving government information)
  - Joint publication, with each party having the right to independently publish if no joint publication is forthcoming after a defined time and/or exhaustion period
  - Defined publication order. E.g., JHU is permitted to publish after another Collaborator first publishes
- Exception for Classified/Restricted Work

# Classified/Restricted Work

## Definitions

- *Classified work*: the U.S. government has determined that the information or materials are sensitive/protected for national security reasons
- *Restricted work*: involves Controlled Unclassified Information (“CUI”), an umbrella term that refers to government-created or -owned unclassified information that is separated into dozens of categories, including information which is “export controlled” under U.S. laws and regulations

# Procedure to Review Proposed Classified/ Restricted Work

- 1. Initial Facility Security Review** – Working with the FSO to evaluate the specific details of the contract, the proposed structure and requirements for the contract to determine whether JHU can feasibly take on the work at this time (logistically and from a resource perspective);
- 2. Written Request for Classified Work Review** – Once established to be feasible, the FSO and PI develop an internal written proposal request for review and approval by the JHU Committee;
- 3. Formal University Committee Review** – Written proposal is reviewed by the relevant Dept Chairs and Deans, and the “Classified/Restricted Work Review Committee”

***Please notify the FSO when the University is made aware of new or renewed classified or restricted work.***

# Template Proposal for Classified/Restricted Work Review Committee

1. Principal Investigator
2. Department
3. Title of Proposed Project
4. Proposed Project Sponsor
5. Proposed Prime Sponsor
6. Proposed Funding Level
7. Proposed Duration
8. Proposed physical location for project
9. Will students be involved in the project? If yes, please describe to academic level of the students and the number of students anticipated to participated in the project
10. Will junior faculty be involved in the project?
11. Please briefly describe the proposed project and your academic interest in pursuing the project
12. Please describe the proposed restriction for the project. (Examples of academic restrictions including publication restrictions, restrictions on foreign national participation in the project, designation of data related to the project as Controlled Unclassified Information, a sponsor determination that the project is classified, etc.)

# Proposed Classified/Restricted Key Terms

- Background Investigation
- CAGE Code
- Classified Information
- Controlled Unclassified Information
- DD-254
- Export Controlled
- Facility Clearance (FCL)
- International Traffic in Arms Regulations (ITAR)
- National Industrial Security Program (NISP)
- National Industrial Security Program Operating Manual (NISPOM)
- Need-to-Know
- NIST 800-171
- Personnel Clearance (PCL)
- Protected Information
- Publication Restriction
- Public Trust
- SF-328

# Q & A Panelists

- Khaleena Anderson, Facility Security Officer
- Mike Harmon, Assistant Director (Contracts)
- Daryl Carson, Associate Director (Contracts)
- Adam Sosnik, Sr. Contracts Associate
- Liane Howey, Sr. Contracts Associate
- Sharel Brown, Associate Director (Grants)
- Jessica Atlass Roscoe, Sr. Operations Manager