

**May 28, 2025**

## **MEMORANDUM FOR MOAA COUNCIL & CHAPTER LEADERSHIP**

**FROM:** MOAA General Counsel

**SUBJECT:** Guidance on Use of DoD, Military Department, and Military Service Seals, Marks, Symbols, and other Trademarked or Copyrighted Material

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### **INTRODUCTION**

MOAA-National routinely receives requests from our affiliated Councils and Chapters related to use the official seals of the Department of Defense (DoD) and its constituent military departments and services. We also continue to learn of isolated incidents of potential trademark and copyright infringement of this intellectual property among various Councils and Chapters.

Understanding intellectual property rights and their application to MOAA affiliates, can be confusing to some and non-sensical to others. To ensure MOAA affiliates receive clear, unambiguous information, I am issuing this memorandum as MOAA-National's legal position<sup>1</sup> on the topic.

### **DISCUSSION**

DoD manages the intellectual property rights for seals, marks, symbols, and other trademarked and copyrighted material owned by DoD. Each military service also has its own Trademark Licensing Program Office that manages its specific trademarked and copyrighted material.

At a virtual Council & Chapter meeting earlier this year, I stated that no one may use the DoD, Military Department, or Military Service seals, marks, or symbols without the express consent of the appropriate Trademark Licensing Program Office. These offices manage branding

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<sup>1</sup> MOAA (aka MOAA-National) is a non-profit, tax-exempt 501(c)(19) Veterans Service Organization incorporated in the state of Virginia. It is a separate legal entity from chartered MOAA Councils and Chapters, which are MOAA "affiliates." MOAA-National's Bylaws makes clear that, though they may share mutual objectives, neither is authorized to "participate in the organizational or managerial concerns of the other." (MOAA Bylaws, Article II – Affiliates) As such, this memo DOES NOT constitute legal advice to affiliates, and they may not rely upon it as such. MOAA's General Counsel does not and cannot represent affiliates.

and licensing programs established in law pursuant to 10 U.S.C. § 2260, and implemented through DoDI 5535.12, *DoD Branding and Trademark Licensing Program Implementation*. You will find useful information on those programs at: [Branding and Trademarks](#). The [DoD Trademark Licensing Guide](#) is particularly helpful.

In Part III of the Guide, DoD recognizes that Non-Federal Entities (NFEs) may wish to honor and support members of the Armed Forces; however, with only *very limited* exceptions (e.g., prescribed uses during parades, school assemblies, funerals for veterans, and individual recognition programs), **NFEs must first obtain written authorization** to use trademark and copyright protected material.<sup>2</sup> Importantly, copyright infringement can rise to the level of criminal activity under 17 U.S.C. § 506(a), *Criminal Offenses*, and 18 U.S.C. § 2319, *Criminal Infringement of a Copyright*. The intentional disregard of intellectual property laws would be a factor for prosecutorial consideration.

Also instructive is [Part II: General Guidance of the Licensing Guide](#) that specifically addresses NFE usage, including use by Veterans Service Organizations (VSOs). Here you will find a list of permissible VSO usage, regarding the publication of photographs that include seals or marks, a topic also discussed during our virtual conference. For clarity, it would **not** be permissible to take a photograph of a valid seal, then crop and strategically place it on a Council or Chapter newsletter or any other material.

Additionally, the bottom of the [Branding and Trademarks](#) page contains a concise overview of the DoD Licensing Program and its purpose. Following this is a list of contacts for each of the Military Service Trademark Licensing Program Offices. ***If you wish to use a DoD, Department, or Service seal or mark, you must obtain permission from the appropriate Military Service Trademark Licensing Program Office.***

Based on my experience,<sup>3</sup> the DoD and Military Department's rationale for non-approval of requests and aggressive policing of unauthorized usage is understandable. As stated by the [DoD Standards of Conduct Office](#), with regard to relations with NFEs, DoD (all components) must "act impartially and not give preferential treatment to any private organization or individual." 5 C.F.R. § 2635.101, *Basic Obligation of Public Service*, Subsection (b)(8). This means what a

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<sup>2</sup> Even in these rare circumstances, where use of a seal is approved by DoD or a Service the mark or seal may not be used with the NFE name, logo, or language that implies endorsement by, or connection with, the DoD or the Military Services. This is **not** general permission to use marks and seals so long as they do not imply an indorsement. It is only a further condition for use even in the limited circumstance where approved.

<sup>3</sup> Experience includes serving as: 4 years—DAF Deputy General Counsel (Fiscal, Ethics & Administrative Law), including as the Deputy Designated Agency Ethics Official, overseeing the DAF Ethics Office, and working closely with the DoD Standards of Conduct Office; 4 years—DAF Deputy Administrative Assistant, addressing requests for use of marks and seals to the HQ DAF, resourced the DAF Intellectual Property Office, and managed cease and desist directions to offending individuals and organizations.; 6 months—DAF Principal Deputy General Counsel overseeing all of the above.

component does for one NFE, it must be prepared to do for all NFEs; otherwise, the treatment is preferential, risks liability in litigation, and puts the DoD's or Service's ownership of the mark or seal in legal jeopardy. Also, expanding the permissible use of marks and seals in some circumstances but not others creates a program that is impossible to enforce and presents all the same risks to DoD and its components.

If DoD or a Military Department or Service allows MOAA Chapter A to use a mark or seal, to avoid preferential treatment, it may result in having to allow political interest group X, social interest group Y, and religious interest group Z to use them. The concerns of implied endorsements and government establishment and sponsorship of certain groups and ideas should be obvious. In fact, there are times when a DoD, Military Department, or Service position does not align with MOAAs. Consider pay increases for active-duty personnel. Where MOAA might support that as an earned benefit, DoD components may not support it due to an impact on the sources and levels of other funding. So that MOAA maintains its independence as advocates for our members, we do not seek the use of DoD-related marks and seals. Were we ever to do so, we would follow the established guidelines and processes when making such a request.

Similarly, in separate but related matters of potential liability, several Chapters have approached MOAA-National after having received cease and desist letters from law firms representing news, media, and artist groups and organizations claiming a chapter has illegally posted or printed an item without permission from the copyright holder. This happens despite our continued recommendations that Councils and Chapters ensure they have permission to print and publish material. Because the MOAA Councils and Chapters are independent legal entities separate and apart from MOAA-National and the charities, the Councils and Chapters are not covered by any MOAA-National insurance policy. To maintain that legal separation, MOAA-National is unable to intercede on behalf of a Council or Chapter that receives such a letter.<sup>4</sup>

Whether the aggrieved party is DoD, a military component, or a private party, there is a notable rise in allegations of copyright infringement specific to the unauthorized use of material online. Online activities, especially posting, sharing, or using copyrighted and trademarked material, are constantly monitored by sophisticated and easily deployable web crawlers and search engine detection software. **WARNING:** There are also phishing scams in which someone purporting to be from a copyright law firm alleges you have infringed upon a client's copyright and seeks payment of money. While these may be perfectly valid claims, you are encouraged to exercise due diligence in investigating the matter before attempting to engage (e.g., check to make sure the underlying facts of the allegation are correct, ensure you do not have permission or a license to use, confirm the email address is not suspicious, look up the attorney or law firm independently and call the number listed to confirm representation, etc.) The rise in infringement

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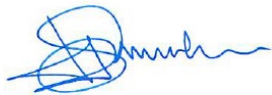
<sup>4</sup> Also, as a term of employment and bar licensure, neither is the MOAA General Counsel able to represent a Council or Chapter in these or other matters.

has resulted in more legal disputes between copyright holders and alleged infringers, including MOAA affiliates. To avoid copyright infringement liability, MOAA affiliates should:

- Not use copyrighted (or trademarked) material unless the owner provides a use license – this includes obtaining permission to use DoD and Service Seals from the appropriate Trademark Licensing Program Office;
- Use material that is in the public domain and, therefore, not subject to intellectual property use restrictions;
- Depending on activities, consider obtaining insurance coverage for potential copyright infringement liability;
- Shift liability via contract to any webmaster or third-party entity who operates your web presence, social media, newsletters, and other postings; and/or
- Consult your own legal counsel for advice, including potential exemptions from copyright laws.<sup>5</sup>

I know this is not the outcome desired by some MOAA members, but it is the state of the laws, rules, and regulations that apply to trademark- and copyright-protected seals, marks, and symbols of the DoD and the uniformed services and other protected material. I am happy to engage in further discussions or to answer questions, as needed.

Sincerely,



Douglas D. Sanders  
General Counsel & Corporate Secretary

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<sup>5</sup> The cost of consulting an attorney to obtain a legal determination under the “fair use” doctrine or any other exception will likely cost hundreds if not thousands of dollars. Obtaining such advice in advance may be cost-prohibitive. Exploring this as a defense may be beneficial in the event of an actual infringement allegation or suit. The better, less costly, decision would be to not use the copyrighted material in the first place.