

CMMC Update: Defining CUI Part III – Operational Implications

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TODAY'S SPEAKERS

NDIA



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Ryan Bonner
CEO
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TODAY'S SPEAKERS

NDIA



Alex Major

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Vince Scott

CEO

Defense Cybersecurity Group

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Secure Your Networks and Systems In Physical Space and Cyberspace



- **Secure your Networks. Now**
- **Know your Contracts**
 - Your contracts should tell you what information you must protect
- **Established by EO13556, Controlled Unclassified Information (CUI) program standardizes the way the executive branch handles *unclassified* information that requires safeguarding or dissemination controls pursuant to and consistent with law, Federal regulations, & Government-wide policies**
- **Define & Understand your business processes to identify how & where you store / handle / transmit CUI**

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Identifying CUI: Ownership & Possession



- **Government should base defense CUI determination on two factors: Category & Ownership / Possession**
- **Commercially developed capabilities should generally not be subject to CUI labeling**
 - Exceptions for significant technical capabilities?
 - Burden of proof on the government to identify
- **Capabilities developed solely for the government or modified capabilities, modified via government contract, are subject to CUI**

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Contractor Responsibility to Mark CUI

Arguing Both Sides



- **Companies not responsible to identify and mark information CUI**
 - Identification and marking inherently governmental function
 - Lack of clear definition and marking guidelines make this responsibility fraught with peril
 - Contractors likely to drift toward “mark everything when unsure”
- **Know what is in your contract**
- **Note: Government has requested contractor assistance**
 - Government personnel busy
 - Without partnership, collaboration, incentives for Government to “mark everything” increase

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Good Questions

- **“Is software developed and delivered to the Gov’t in performance of a Gov’t contract considered CUI? The Gov’t contract has a DFARS 252.204-7012 clause, but doesn't specify whether these software deliverables are CUI or not.”**
- **Microsoft Office**
- **Commercial data analytic software product modified for Government data**
- **Large Language Model (Project MAVEN)**
- **“What if we simply removed all markings from all specs that go to our machine shop? Without DoD markings, will anyone want the spec?”**

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Good Questions

- **Is Commercial technology CUI?**
 - High-end NVIDIA Chips
 - RPAs
- **“We have a spec from 2010 that was marked 'Unclassified' but has limited distribution provided with a Proprietary Information Agreement, which at the time I think made it CUI. Is it still CUI if we do not have an updated spec with the correct markings?”**

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Good Questions

- **“IF our customers flow down CTI that is not marked as CUI ITAR, but we know our parts go into a program for military equipment, do we need to add the CUI markings at least for internal identification?”**
- **“We are a subcontractor of a prime. IF the prime asks for SPC data to verify compliance with their specifications to us, do we need to treat it as FCI or CTI even though the data does not flow to the Gov’t agency buying the end product?”**

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Good Questions

- **“If an employee is asked to participate in an NSF review panel and is sent a list of panel members with contact info marked CUI/PRVCY, how we handle? There is no contract and the person normally does not use the separate enclave established for CUI. Gov’t is creating confusion.”**
- **“So on ITAR and Proprietary they should also be marked CUI?”**
- **“How would you instruct people to handle improperly marked CUI received from another organization? Gov’t or contractor?”**

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Good Questions

- **“When a contractor is building a bid response to a DoD project, do companies need to handle the bid information gathered from multiple contractors to respond to the solicitation as CUI even if the information isn’t under contract?”**
- **“We are still actively using a spec from 2010 that is marked 'Unclassified' and has a statement limiting distribution to a 'need to know' per the Proprietary Information Agreement that we signed when we received the spec in 2010. The end item this product goes into has now been moved to general issue and in sustainment through DLA. Is this CUI? I can't seem to get an answer from any in the DOD.”**

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Good Questions

- **“Any indication on whether all ITAR will be CUI?”**
- **“The issues I have with anything that falls under CUI is flow down appears hit or miss from the Primes. When I do get flow down, it’s usually a summarized PO with nothing denoting required markings. I go back to prime and get push back. How, as a small business with government contracts both Prime and Sub can I get other organizations to properly mark flow down documents?”**
- **Examples -- Rachel**

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Pushback?

- **Some contractors receive DFARS 252.204-7012 clause in contracts but never received a properly marked CUI document or file**
- **Some contractors told, "everything on this contract is CUI"**
 - Cannot be true
- **Some contractors grow weary of inconsistent identification**
 - Decide to treat all export controlled technical data as CUI
- **Tools baked into 32 CFR**
 - **Contractors can use to limit the impact of unclear CUI definitions or contract language**

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Questions

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