Export Controls: What Are They and How Do They Impact Research?

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Overview and Background

• “Export Controls” are federal rules and regulations governing the shipment or transmission of items out of the U.S., including disclosures or transfers of technical data to foreign persons, whether in the U.S. or abroad.
Overview and Background

- Export control concerns arise due to three primary reasons:
  - The characteristics of the item itself (e.g. if it has military applications)
  - The destination of the item (both the country and the individual or entity) – See Entity List
  - The suspected end use of the item
Overview and Background

- Export controls are intended to address several concerns:
  - Protect U.S. national security
  - Implement U.S. foreign policy
  - Maintain a military and economic edge
Regulating Agencies

- Department of Commerce
- Department of State
- Department of Treasury
Restricted Parties

• The federal government publishes various lists which indicate certain parties (both individuals and companies) subject to restrictions.

• Primary lists include the Entity List, Specially Designated Nationals, Denied Persons, and Debarred Parties.

• Northwestern is now using screening software to conduct comprehensive and dynamic screening of restricted parties.
Embargoed Nations

- The U.S. has embargoes in place against several countries:
  - Cuba, Iran, the Sudan, Syria, and North Korea
  - Engagement with any of these countries requires a review of potential export control concerns
Export Controls Impact on Research

• “Deemed exports” involve the release of items subject to export controls to a foreign national.
  
  – The item is “deemed” to have been exported to the home country of the foreign national.

  – “Foreign national”: not a US citizen, a lawful permanent resident, or a “protected person.”
Fundamental Research Exclusion

Fundamental Research vs. Proprietary Research
Fundamental Research Exclusion

• The “Fundamental Research Exclusion” (“FRE”) was established in a memo signed by President Reagan
  – NSDD-189 Memo, issued in 1985
  – Characterizes “fundamental research”, “the results of which ordinarily are published and shared broadly within the scientific community.”
  – “It is the policy of [the federal government] that, to the maximum extent possible, the products of fundamental research remain unrestricted.”
Fundamental Research Exclusion

- The FRE is intended to control the flow of science, technology, and engineering information produced in federally-funded fundamental research at colleges, universities, and labs.

- Has subsequently been reaffirmed by 2 additional memos issued by the Department of Defense (DOD).
Fundamental Research Exclusion

- The FRE is destroyed when:
  - Sponsor is provided with the right to approve publications
  - Foreign nationals are restricted from participating in the research
  - “Side deals” are struck, wherein the researcher agrees to cooperate in some way with the sponsor to act inconsistent with “fundamental research”
Beyond the FRE

• The FRE does not apply to all university activities, e.g.:
  
  – All overseas physical shipments must be in compliance with export control regulations.
  
  – Anything provided under a non-disclosure agreement is potentially subject to controls.
  
  – Restricted parties and embargoes must always be considered when evaluating export control compliance concerns.
Consequences of non-compliance

- Failure to comply with export control regulations may have many consequences

- Criminal charges
- Monetary penalties
- Damage to reputation
- Loss of export control privileges
J. Reece Roth Case

- Professor Emeritus at the University of Tennessee who illegally exported sensitive technical information to China.

- Traveled to China with his laptop, which contained sensitive information.

- Shared information with foreign nationals, despite being put on notice by his employer and by the research contract.
In the News

- UMass Lowell was recently fined $100,000 for the unlicensed export of equipment to a company in Pakistan.
  - At the time, the company was listed on the Entity List.
  - The equipment was classified “EAR99.”

- Earlier this year, a former postdoc at the University of Michigan was criminally charged with exporting equipment to his home country of Iran.
  - The defendant faces up to 20 years in prison.
  - The violation involved the shipment of humanitarian items to an embargoed country.
The Role of OECC

• Established November 2012

• Intended to provide a central resource dedicated to export controls compliance.

• Coordinates with other offices to ensure that Northwestern is in compliance with the export control regulations.

• When in doubt, contact us.
Questions and Contact Information

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