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/information 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)
  - 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 controlled technology 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
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 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.”

• More recently, 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.
CITI Training for Export Compliance

- Northwestern has a subscription to CITI, the Collaborative Institutional Training Initiative
  
  https://citiprogram.org/

- Over ten different modules developed by experts in the field across the country (University-oriented)
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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