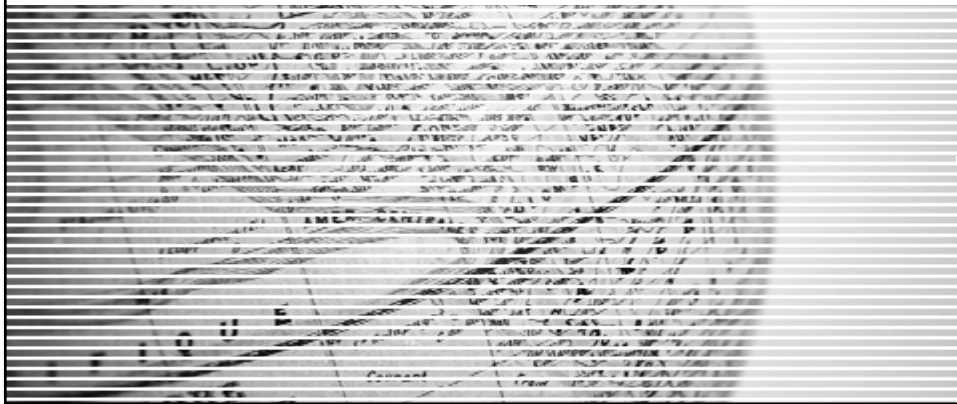


# Basics of Export Control

Kevin Licciardi and Haley Lincourt



## What is Export Control?

An extensive series of regulations enforced by the United States Federal Government to regulate the distribution of strategically important information, equipment, products and services.

## What is the Function of Export Control?

1. To restrict export of goods and technology that could contribute to the military potential of U.S. adversaries
2. To prevent the proliferation of weapons of mass destruction
3. To advance U.S foreign policy goals
4. To protect the U.S. economy and promote trade goods

## Challenges for Universities

- Maintaining a culture of free exchange of information, sharing of equipment and research
- Regulations are complicated and change frequently
- Licensing takes time - research could be halted
- Research may be impacted by:
  - Ability of foreign nationals (students, faculty, visiting scholars, etc.) to participate in research involving a controlled technology
  - Ability to provide services (including training in the use of controlled equipment) to foreign nationals and foreign entities
  - Ability to send controlled equipment to foreign nationals or countries

## Regulatory Environment

### United States Department of Commerce

EAR (Export Administration Regulations)

Controls: "dual use" items, potential military use (e.g. avionics, GPS, satellites)

### United States Department of State

ITAR (International Traffic in Arms Regulations)

Controls: defense articles, services, and related technical data

### United States Department of the Treasury

OFAC (Office of Foreign Assets Control)

Oversees trade embargoes, transfer of assets and travel to sanctioned countries

## EAR Controls

- Nuclear Materials, Facilities & Equipment
- Chemicals, Microorganisms, and Toxins
- Materials Processing
- Electronics
- Computers
- Telecommunications
- Information Security
- Sensors and Lasers
- Navigation and Avionics
- Marine
- Propulsion Systems, Space Vehicles and Related Equipment

[http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)

## ITAR Controls

Transfer and export (including deemed export) of technologies relating to military applications (including satellite technologies) listed on the U.S. Munitions List.

- Firearms
- Artillery projections
- Ammunition
- Launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs & mines
- Explosives, propellants & incendiary agents
- Vessels of war & special naval equipment
- Tanks & military vehicles
- Aircraft & assoc. equipment
- Misc. articles
- Military electronics
- Fire control, range finder, optical & guidance & control equipment
- Auxiliary military equipment
- Toxicological agents & equipment & radiological equipment
- Spacecraft systems & equipment
- Nuclear weapons design & test equipment
- Submersible vessels, oceanographic & associated equipment
- Military training equipment
- Protective personnel equipment

[http://www.pmdetc.state.gov/regulations\\_laws/itar\\_official.html](http://www.pmdetc.state.gov/regulations_laws/itar_official.html)

## OFAC Controls

Implementation of U.S. foreign policy

Trade sanctions against:

- Countries currently sanctioned (changes frequently) and
- Persons listed on the "Specially Designated Nationals and Blocked Persons List"

### Sanctioned Countries (as of 3-10)

Balkans  
Belarus  
Burma (Myanmar)  
Cote d'Ivoire (Ivory Coast)  
Cuba  
Democratic Republic of the Congo  
Iran  
Iraq  
Liberia (Regime of Charles Taylor)  
Lebanon  
North Korea  
Sudan  
Syria  
Zimbabwe

<http://treas.gov/offices/enforcement/ofac/>

## Definition of Foreign Person/Entity

### Foreign Person

- Not a U.S. citizen by birth
- Not a naturalized U.S. citizen
- Not a lawful permanent resident of the U.S.
- Not a protected person (political asylum)

### Foreign Entity

- Any foreign corporation or other business entity, or group that is not incorporated to do business in the U.S.
- Any foreign government

## Restricted or Prohibited Parties

Various government agencies maintain lists of individuals or entities both in the United States and abroad that are prohibited from trade or otherwise restricted by export control laws. These lists change frequently and should be consulted before entering into contracts or trade agreements.

### Prohibited parties include:

- Suspected or convicted drug traffickers
- Suspected or convicted terrorists
- Convicted export law violators

## Definition of Export

- 1) Transfers of controlled information, including technical data, to persons and entities outside the United States;
- 2) Shipment of controlled physical items, such as scientific equipment, that require export licenses from the U.S. to a foreign country; and
- 3) Verbal, written, electronic, and/or visual disclosures of controlled scientific and technical information related to export controlled items to foreign nationals ("deemed exports") in the United States.

## Deemed Export

In addition to actual shipment of a commodity out of the country, the export regulations also control the transfer, release or disclosure to foreign persons in the United States of technical data about controlled commodities.

The "deemed export" regulation states that a transfer of source code or "technology" (EAR term) or "technical data" (ITAR term) to the foreign person is "deemed" to be an export to the home country of the foreign person.

Verbal, written, electronic, and/or visual disclosures of controlled scientific and technical information related to export controlled items to foreign nationals ("deemed exports") in the United States.

### Examples of Deemed Exports

- Fax
- Telephone Conversations
- E-mail Communications
- Face to Face Conversations
- Lab Tours
- Training Sessions
- Computer Code or Data

## License Exclusions

An export license may not be required if one of the following exclusions apply:

- Fundamental Research Exclusion
- Education Exclusion
- Employment Exclusion

## Fundamental Research Exemption

No License is required to disclose to foreign persons basic and applied research in science and/or engineering where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research where the results are restricted for proprietary or specific national security reasons.

The Fundamental Research Exemption applies only to the dissemination of research data and information, not the transmission of material goods.

## Fundamental Research Exemption Lost

The fundamental research exemption can be lost if a university accepts a contract clause that:

- Forbids the participation of foreign nationals;
- Accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors to prevent inadvertent disclosure of their proprietary information or the compromise of the patent rights of sponsors;
- Otherwise operates to restrict participation on research and/or access to and disclosure of research results.

## Education Exemption

- An export control license is not required to share with foreign nationals “information concerning general scientific, mathematical or engineering principles commonly taught in universities or information in the public domain.”
- Students using controlled equipment to conduct research should be registered for a research credit class.

## Employment Exemption

No license is required to share covered information if the foreign national is:

- Not a national of certain countries
- A full time, *bona fide* university employee
- Has a permanent address in the United States while employed; and
- Advised in writing not to share covered information with any foreign national

## Cost of Non-Compliance

Violations of export control laws can result in:

- Potential civil and criminal penalties for the individual and the institution
- Loss of export privileges
- Reputational damage

## Cost of Non-Compliance

### EAR Violations

#### Criminal

##### *Willful Violation*

- Fine up to the greater of \$1 million or 5 times the value of the exports for each violation for the institution
- Fine up to \$250,000 and/or up to 10 years in prison for individuals per violation

##### *Knowing Violation*

- Fine up to the greater of \$50,000 or 5 times the value of the exports for each violation for the institution
- Fine up to the greater of \$50,000 or 5 times the value of the exports and/or up to 5 years in prison for individuals per violation

#### Civil

- Fine up to \$12,000 per violation for individuals and the university, except fine for violations involving items controlled for national security reasons is up to \$120,000 for each violation
- Suspension or debarment from government contracts
- Revocation of export privileges

## Cost of Non-Compliance

### ITAR Violations

#### Criminal

- Fine up to \$1 million for the university for each violation
- Fine up to \$1 million and/or up to 10 years in prison for each violation for individuals

#### Civil

- Fine up to \$500,000 per violation for individuals and the university
- Suspension or debarment from government contracts
- Seizure and forfeiture of article
- Revocation of export privileges

## Cost of Non-Compliance

### OFAC Violations

#### Criminal

- Fine up to \$1 million for the university per violation
- Fine up to \$1 million for individuals and/or up to 20 years in prison per violation

#### Civil

- Fine up to \$55,000 per violation for university and individuals

## Compliance Plan

A successful compliance plan for export controls should include the following key elements:

- An education plan – educate key administrators, deans, chairs, professors, researchers and students about export control laws
- A risk assessment of potential high risk area such as purchasing and sponsored research, and a plan to manage and mitigate risks
- Simple and clear training
- Central administrative oversight and meticulous record keeping
- Access to expert legal advice

## Recent Cases – Professor John Roth

University of Tennessee at Knoxville Professor, John Roth, was convicted of violating the AECA after he shared technical data with a restricted foreign national. Roth was developing plasma tech for use on unmanned air vehicles.

- Roth gave ITAR restricted technical data to both a Chinese and an Iranian student.
- Roth downloaded his project from a Chinese colleague's computer while in China.
- Roth had been warned against such actions by his University export control officer.

Roth was sentenced to 48 months in prison.

<http://www.justice.gov/opa/pr/2009/July/09-nsd-651.html>

## Recent Cases – Dr. Thomas Campbell Butler

Dr. Thomas Campbell Butler, M.D., a professor at Texas Tech University in Lubbock, was found guilty of numerous charges including two export control related charges: making false, fraudulent and fictitious statements regarding exports to federal agents, and making an illegal export to Tanzania.

- Butler reported to the FBI that 30 vials of deadly plague bacteria were missing and presumed stolen from his lab.
- Investigation proved that Butler had violated EAR regulations by exporting the bacteria to Tanzania without the required export licenses.

Butler was sentenced to 2 years in prison and his employment with Texas Tech was terminated.

<http://cases.justia.com/us-court-of-appeals/F3/429/140/494784/>

## Reference Material

Courtesy of The National Association of College and University Attorneys  
(NACUA)

From the publication:

### **“Compliance with Export Controls”**

NACUA November Workshop • Omni Shoreham Hotel • Washington, DC • November 11-13, 2009 College and University  
College and University Compliance Programs: Obligations, Organization and Implementation

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## Statutes and Regulations

### **Statutes:**

Arms Export Control Act ("AECA") - 22 U.S.C. § 2778 et seq.  
<http://law.justia.com/us/codes/title22/22usc2797.html>

The Export Administrative Act - 50 U.S.C. § 2401 et seq.  
<https://bxa.ntis.gov/whatsnew/cgi.html?filename=legauthxpri.asc&category=whatsnew>

The International Emergency Economic Powers Act ("IEEPA") - 50 U.S.C. § 1701-1707.  
[http://www.sourcewatch.org/index.php?title=International\\_Emergency\\_Economic\\_Powers\\_Act](http://www.sourcewatch.org/index.php?title=International_Emergency_Economic_Powers_Act)

### **Regulations:**

International Traffic in Arms Regulations ("ITAR") - 22 CFR 120-130.  
[http://www.pmdtc.state.gov/regulations\\_laws/itar.html](http://www.pmdtc.state.gov/regulations_laws/itar.html)

Export Administration Regulations ("EAR") - 15 CFR 730-774  
[http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)

Foreign Assets Control Regulations ("FACR") - 31 CFR 500-598.  
<http://www.ustreas.gov/offices/enforcement/ofac/>

## Responsible Federal Agencies

**Department of State** - the Directorate of Defense Trade Controls ("DDTC") safeguards the national security of the U.S. and promotes U.S. foreign policy by controlling the export and temporary import of defense articles and defense services covered by the United States Munitions List ("USML").

**Department of Commerce** - the Bureau of Industry and Security ("BIS") is primarily responsible for (1) protecting the national security, economic security, cyber security, and homeland security of the U.S.; (2) ensuring the U.S. has a strong economic base; and (3) ensuring that there is effective export control and treaty compliance.

**Department of Treasury** - the Office of Foreign Assets Control ("OFAC") is generally the primary responsible federal agency that administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the United States.

**U.S. Immigration & Customs Enforcement ("ICE")** - as a component of the Department of Homeland Security, ICE is charged with preventing terrorist and criminal activity by targeting people, money, and materials that support terrorist and criminal organizations. Specifically, ICE investigates national security threats, financial and smuggling violations, financial crimes, commercial fraud, human trafficking, narcotics smuggling, child pornography/exploitation, and immigration fraud.

**Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF")** - as a bureau of the Department of Justice, the ATF is a law enforcement agency primarily protects the U.S. from criminals, criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products. The ATF also has regulatory jurisdiction over the permanent importation of defense articles found on the United States Munitions Import List (22 C.F.R. 447.21).

## Compliance Tools

State Department Compliance Program Guidelines: [http://www.pmdtc.state.gov/compliance/documents/compliance\\_programs.pdf](http://www.pmdtc.state.gov/compliance/documents/compliance_programs.pdf)

Commerce Department Export Management and Compliance Program: <http://www.bis.doc.gov/complianceand enforcement/emcp.htm>

OFAC Frequently Asked Questions: <http://www.treas.gov/offices/enforcement/ofac/faq/index.shtml>

Screening Lists available at one website, "Lists to Check": <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>

Commerce Department Frequently Asked Questions, Supplement No.1 to Part 734: <http://www.access.gpo.gov/bis/ear/pdf/734.pdf>

BIS Online Training (Deemed Exports Module): <http://www.bis.doc.gov/seminarsand training/seminar-training.htm>

BIS Export Management & Compliance Program - Audit Module: Self-Assessment Tool:  
[http://www.bis.doc.gov/complianceand enforcement/emcp\\_audit.pdf](http://www.bis.doc.gov/complianceand enforcement/emcp_audit.pdf)

U.S. Department of State Directorate of Defense Trade Controls Website: <http://www.pmdtc.state.gov/>

U.S. Department of Commerce, Bureau of Industry & Security Website: <http://www.bis.doc.gov/>

U.S. Treasury Department, Office of Foreign Assets Control Website: <http://www.treas.gov/offices/enforcement/ofac/>

Case law/Legal Situations/Settlements: United States Department of Justice fact sheet of major export enforcement prosecutions between 2006 and 2008: <http://www.justice.gov/opa/pr/2008/October/08-nsd-959.html>

Please note that some information found on these websites may not reflect current policy or regulations. You should always consult the current set of applicable regulations when evaluating export control issues.

## Export Control Glossary

**Code of Federal Regulations (CFR)** - The United States Code of Federal Regulations (CFR) is the codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the Federal Government.

**Commerce Control List (CCL)** - A list of items under the export control jurisdiction of the Bureau of Industry and Security, U.S. Department of Commerce. The CCL is found in Supplement 1 to part 774 of the EAR.

**Commerce Control List (CCL) Category** - The CCL is divided into ten categories: (0) Nuclear Materials, Facilities and Equipment, and Miscellaneous; (1) Materials, Chemicals, Microorganisms, and Toxins; (2) Materials Processing; (3) Electronics Design, Development and Production; (4) Computers; (5) Telecommunications and Information Security; (6) Sensors and Lasers; (7) Navigation and Avionics; (8) Marine; (9) Propulsion Systems, Space Vehicles, and Related Equipment.

**Commerce Control List (CCL) Group** - The CCL is divided into 10 categories. Each category is subdivided into five groups, designated by the letters A through E: (A) Equipment, assemblies, and components; (B) Test, inspection and production equipment; (C) Materials; (D) Software; and (E) Technology.

**Controlled Country** - A list of countries designated controlled for national security purposes found in Country Group D: 1, including: Albania, Armenia, Azerbaijan, Belarus, Cambodia, Cuba, the People's Republic of China, Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Macau, Moldova, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam. All of the controlled countries except Cuba are listed in Country Group D:1 of the EAR. Cuba is listed in Country Group E:2.

**Deemed Exports** - transfers of controlled technology to foreign persons, usually in the U.S., where the transfer is regulated because the transfer is "deemed" to be to the country where the person is a resident or a citizen.

**Defense Article** - (ITAR 120.7) means any item designated in the USML. This term includes models, mock-ups, or other such items that reveal technical data directly relating to the particular item listed in the USML.

**Defense Service** - (ITAR 120.9) means the furnishing of assistance, including training, anywhere (inside the United States or abroad) to foreign persons in the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles, whether in the United States or abroad; or (b) The furnishing to foreign persons of any technical data, whether in the United States or abroad.

**Denied Persons List** - A list of specific persons that have been denied export privileges, in whole or in part. The full text of each order denying export privileges is published in the *Federal Register*. The Denied Persons List can be viewed at <http://www.bis.doc.gov/dpl/default.shtm>

## Export Control Glossary

**Dual-Use** - Items that have both commercial and military or proliferation applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items are also subject to the EAR (see §734.2(a) of the EAR).

**Educational Exclusion** - Under ITAR, a license is not required to share with foreign persons information (but not technology and materials) concerning general scientific, mathematical, or engineering principles commonly taught in universities or information in the public domain. Under EAR, a license is not needed for "educational information" released by instruction in catalogue courses and associated teaching laboratories.

**Employment Exemption** - In most cases a license is not required to share controlled technical information with a foreign person who is a bona fide full-time employee with a permanent address in the United States while employed, provided that person is 1) not a national of certain countries and 2) is advised in writing not to share controlled information with other foreign persons.

**Empowered Official** - a U.S. person who:

- (1) is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and
- (2) is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and
- (3) Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and
- (4) Has the independent authority to:
  - (i) Enquire into any aspect of a proposed export or temporary import by the applicant, and
  - (ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and
  - (iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

**End-use** - A detailed description of how the ultimate consignee intends to use the commodities being exported.

**End-user** - The person abroad that receives and ultimately uses the exported or re-exported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.

**Exclusions** - not subject to nor controlled by export control regulations

**Exemptions (ITAR), Exception (EAR)** - Subject to the regulation, reduced constraints

**Export** - Any item that is sent from the United States to a foreign destination is an export. "Items" include commodities, software or technology, such as clothing, building materials, circuit boards, automotive parts, blue prints, design plans, retail software packages and technical information.

## Export Control Glossary

**Export Administration Regulations** - The Export Administration Regulations (EAR), Title 15, sections 730-774 of the Code of Federal Regulations (CFR), means the regulations promulgated and implemented by the Department of Commerce that regulate the export of goods and related technology identified on the Commodity Control List (CCL).

**Export Control** - The set of laws, policies, and regulations that govern the export of sensitive items for a country or company.

**Export Control Classification Number (ECCN)** - Identifies items on the Commerce Control List that are subject to the export licensing authority of the Bureau of Industry and Security.

**Exporter** - The person who has authority of a principal party in interest to determine and control the sending of items out of the country.

**Export License** - The approval documentation issued by an export agency authority authorizing the recipient to proceed with the export, re-export, or other regulated activity as specified on the application.

**Foreign National** - Any person who is not a citizen or Permanent Resident Alien of the U.S. Under the EAR, the term applies to "persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals (i.e. has been admitted as a refugee or granted asylum). (See Immigration and Naturalization Act "Foreign national" is not an ITAR term per se, but the ITAR does define the term "foreign person" as any natural person who is not a lawful permanent resident or who is not a "protected individual", and may also include any corporation, business association, partnership society, trust or any other entity, organization or group that is incorporated to do business in the United States. This also includes any governmental entity.

**Forwarding Agent** - This is the person in the country of origin who is authorized by a principle party in interest to perform the services required to facilitate the export of the items from the country of origin. This may include air couriers or carriers. In routed export transactions, the forwarding agent and the exporter may be the same for compliance purposes under the EAR.

**Fundamental Research** - (EAR and ITAR) means basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or national security reasons (EAR) or pursuant to specific U.S. government access and dissemination controls (ITAR).

## Export Control Glossary

**Fundamental Research Exclusion** - The EAR provides that university research normally will be considered as fundamental research unless the university or its researchers accept sponsor restrictions on publication of scientific and technical information resulting from the project or activity. The EAR specifically permits limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor or to insure that publication will not compromise patent rights of the sponsor. The citation for the official definition of fundamental research under the EAR is 15 CFR § 734.8. The ITAR states that university research will not be deemed to qualify as fundamental research if: (1) the university or its researchers accept any restrictions on publication of scientific and technical information resulting from the project or activity; or (2) the research is federally funded and specific access and dissemination controls protecting information resulting from the research have been accepted by the university or the researcher. The ITAR citation is 22 CFR § 120.11(8).

**Good** - Any article, natural or man-made substance, material, supply, or manufactured product, including inspection and test equipment, and excluding technology.

**Intermediate consignee** - The person that acts as an agent for a principal party in interest for the purpose of effecting delivery of items to the ultimate consignee. The intermediate consignee may

**International Trafficking in Arms Regulations (ITAR)** - The International Traffic in Arms Regulations (ITAR), 22 CFR §§ 120-130, means the regulations promulgated and implemented by the Department of State that control the export of articles, services, and related technical data that are inherently military in nature, as determined by the State Department. These "defense articles," "defense services," and related "technical data" are listed on the Munitions List (USML), 22 CFR § 121. Even some articles and technologies that are not readily identifiable as inherently military in nature-for example, research satellites-are included on the USML.

**Munitions List** - articles, services and related technical data designated as defense articles and defense services pursuant to the Arms Export Control Act.

**National Security Decision Directive 189** - A policy adopted in 1985 and reaffirmed during the Bush Administration for controlling the flow of science, technology, and engineering information produced in federally-funded fundamental research at colleges, universities, and laboratories. It defined "Fundamental Research" as "basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons." The concepts of the NSDD 189 have been incorporated in the EAR and the ITAR.

**Non-Disclosure Agreement ("NDA")** - A legal contract between at least two parties that outlines confidential material, knowledge, or information the parties wish to share with one another for certain purposes, but wish to restrict access to by third parties. The parties agree in the contract not to share information. Often required by sponsors prior to transmission of confidential and proprietary business information. Signature of an NDA can in some cases, particularly under the ITAR, jeopardize the fundamental research protections because by definition information subject to an NDA is also subject to access and dissemination controls.

## Export Control Glossary

**Open meeting** - Under the EAR, a conference or gathering is "open" if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record (not necessarily a recording) of the proceedings and presentations. All technically qualified members of the public may be considered eligible to attend a conference or other gathering notwithstanding a registration fee reasonably related to cost and reflecting an intention that all interested and technically qualified persons be able to attend, or a limitation on actual attendance, as long as attendees either are the first who have applied or are selected on the basis of relevant scientific or technical competence, experience, or responsibility.

**Public Domain / Publicly Available** - Under ITAR 22 CFR § 120.11, "public domain" information is outside the scope of ITAR. Public domain means information that is published and that is generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information; (3) through second class mailing privileges granted by the U.S. government; (4) at libraries open to the public or from which the public can obtain documents; (5) through patents available at any patent office; (6) through unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the public, in the United States; (7) through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency; and (8) through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. Although the EAR does not contain the term "public domain," it does recognize "publicly available technology and software" as outside the scope of the EAR. The EAR defines information as "published" when it becomes generally accessible to the interested public in any form, including periodicals, books, print, electronic or other media available for general distribution to the public or a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution. It also includes information readily available at public or university libraries, patents and patent applications, or used at an open conference, meeting, or seminar.

**Published Information** - Under the EAR information that is generally accessible to the interested public in any form, including publication in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution, readily available at libraries open to the public or at university libraries, through patents and open (published) patents, and release at an open conference, meeting, seminar, trade show, or other open gathering. Software and information is published when it is available for general distribution either for free or at a price that does not exceed the cost of reproduction and distribution.

**Purchaser** - The person abroad who has entered into a transaction to purchase an item for delivery to the ultimate consignee. In most cases, the purchaser is not a bank, forwarding agent, or intermediary. The purchaser and ultimate consignee may be the same entity.

**Re-export** - an actual shipment or transmission of items subject to export regulations from one foreign country to another foreign country. For the purposes of the U.S. EAR, the export or re-export of items subject to the EAR that will transit through a country or countries to a new country, or are intended for re-export to the new country, are deemed to be exports to the new country.

## Export Control Glossary

**Specially Designated National (SDN)** - a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries, published by the Office of Foreign Assets Control (OFAC). It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are U.S. persons are generally prohibited from dealing with them.

**Technical Assistance** - Technical assistance may take forms such as instruction, skills training, working knowledge, consulting services, and may also involve the transfer of technical data.

**Technical Data** - means:

- (1) Information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.
- (2) Classified information relating to defense articles and defense services;
- (3) Information covered by an invention secrecy order;
- (4) Software directly related to defense articles;
- (5) This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

**Technology** - Specific information necessary for the "development", "production", or "use" of a product. The information takes the form of "technical data" or "technical assistance".

**Ultimate Consignee** - The principal party in interest located abroad who receives the exported or re-exported items. The ultimate consignee is not a forwarding agent or other intermediary, but may be the end-user.

**Use Technology** - Under the EAR, the "Operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing."

**U.S. Person** - An individual who is a citizen of the United States or a foreign national with a visa status of Lawful Permanent Residence (LPR), thus having a "green card" or under a protected asylum status.