U. S. Export Control Laws, Regulations, and Sanctions

A New Challenge for the University Community
**Purposes of Export Control Laws**

1. Restrict export of goods and technology with military potential
2. Prevent proliferation of WMD
3. Advance U. S. foreign policy goals
4. Protect economy and promote trade

- **LAWS OF THE LAND!**
  - Substantial criminal and civil penalties for violators
Why now??

- Civil War Era – “trading with the enemy laws”
- Laws crafted for industry
- Modern laws date to the 1940s –
  - Why all the fuss, **now?**
    - Cultural & economic evolution,
    - Apocalyptic potential of certain technologies, and
    - September 11, 2001
Current Case - “Former Professor is Convicted of Sharing Sensitive Research….

In a case that could have implications for universities that conduct militarily sensitive research, a former professor who worked as a consultant on a defense research project was convicted on Wednesday, September 3, 2008, of violating national-security laws.

After a weeklong trial in U.S. District Court in Knoxville, Tenn., the jury found J. Reece Roth, a retired professor of electrical and computer engineering at the University of Tennessee at Knoxville, guilty on 18 counts of conspiracy, fraud, and multiple violations of the Arms Export Control Act, a federal law that prohibits disclosing sensitive technology to foreign countries.”

Roth Case Study

- Professor’s conviction on export violations alerts U.S. universities
- Illegally exporting information to foreign countries via his graduate students and a trip to China
- Found guilty of conspiring to unlawfully export “defense articles” to a Chinese citizen, defrauding his university by illegally transporting sensitive information from a contract with the US Air Force, and violating the Arms Export Control Act.
- Universities ensure that faculty members do not violate such laws
- Violated the law by providing information to two graduate students working with him and by carrying information about the project on a computer to China. One of the graduate students was Chinese, and the other was Iranian.
- The contract to Mr. Roth clearly stipulated that the project was subject to export controls – meaning that he needed a license to export information about the project to a foreign national or a foreign country.
The Lists

- **Commerce Control List**
  * 47 pages
  * Technologies controlled to specific countries

- **U.S. Munitions List**
  * Smaller list

- **OFAC Sanctions & Embargoes**
  * Specific for each sanctioned country

- **Denied Persons Lists**
  * Bureau of Industry Security
  * OFAC
The Export Control Regulatory Catalog

- **Export Administration Regulations (EAR)** – Department of Commerce
  - Bureau of Industry and Security
  - Patent and Trademark Office (PTO)
  - Commerce Control List (CCL)

- **International Traffic in Arms Regulations (ITAR)** – Department of State
  - Directorate of Defense Trade Controls
  - U.S. Munitions List

- **Office of Foreign Assets Control [sanctions & embargoes] (OFAC)** – Department of the Treasury
  - Specific Country Sanctions

- **Denied Persons Lists**
A qualitative decision assistance program developed at Vanderbilt. Searches the EAR Commerce Control List and optionally elements of ITAR, U.S. Munitions List and Denied Persons and Entities List.

* Available free to Vanderbilt faculty and staff.
* Visit – www.listvue.net
EAR Categories

- Nuclear materials, facilities and equipment
- Materials, chemicals, micro-organisms and toxins
- Materials processing
- Electronics
- Computers
- Telecommunications and information security
- Sensors and lasers
- Navigation and avionics
- Marine
- Propulsion systems, space vehicles and related equipment
ITAR Categories

- Firearms and armaments
- Artillery projections
- Launch vehicles, missiles, torpedoes, bombs, and mines
- Explosives, propellants and incendiary agents
- Vessels of war and special naval equipment
- Tanks and military vehicles
- Aircraft and related articles
- Military training equipment
- Military electronics
- Fire control, range finder, optical and guidance systems
- Auxiliary military equipment
Export Control Basics

- **What is an “export”?**
  - Any **oral, written**, electronic, or visual disclosure, shipment, transfer or transmission of any commodity, **technology (information, technical data, assistance)** or software code
    - **Outside the U.S.** to anyone, **including U.S. citizens**, and
    - To a non-U.S. entity or **individual, wherever they are located**
Export Control Basics

- **Examples of Exports**
  - Physical objects
  - Software code
  - Technical data
  - Chemicals/Toxins
  - Biologicals
  - In some cases an export can occur in a conversation or an email exchange.
Export Control Basics

- “Foreign Person”
  - Foreign person means any person who is not a lawful permanent resident of the United States

- “Non-U.S. Entity”
  - Foreign corporations, business associations, partnerships, trusts, societies, etc.
    - Can include U.S. citizens working for a non-U.S. entity
**EAR: “dual-use” technology**

- "dual-use" – items that have both commercial and military applications or proliferation potential
  
  * **However**, purely commercial items without an obvious military use are also subject to the EAR.
EAR: “deemed” exports

- An export of technology or source code (except encryption source code) is "deemed" to take place when a foreign national gains access to the technology/source code while in the United States.
Defense service [ITAR] means:

(1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;

(2) The furnishing to foreign persons of any controlled technical data . . . whether in the United States or abroad; . . .
Furnishing of assistance to foreign persons:

* Anywhere
* Defense articles
* Technical data
**ITAR: “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 and 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 . . .
Applicability to the Academy

- “Fundamental Research Exclusion” (FRE) [OFAC does not have a similar exclusion.]
- Research results are “ordinarily published and shared broadly in the scientific community”
- No restrictions on publication or dissemination of research results
  * Including citizenship participation restrictions
- Neither the University nor its researchers can accept restrictions
  * Formal or informal - no ‘side-bar’ deals or agreements.
Losing the FRE - Example of Possible Contract Restriction

“DFAR Sup. 252.204-7000 Disclosure of Information.

... (a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) The Contracting Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

... (c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.”
Non-FRE Agreements

- Practice is to avoid restrictive agreements
- If FRE not applicable and research involves controlled technology –
  * Technology Control Plans (TCP) may be required
  * Structure research to avoid deemed exports
  * Deemed export licenses may be required
Examples of Restricted Markings

- **Title page legend:**
  “Use and Disclosure of Data
  This document contains data, which is subject to US Government Export Restrictions per US Department of Commerce Export Administration Regulations. Pages containing data subject to this disclosure restriction are so marked.”

- **Page legend:**
  “Use or disclosure of data contained on this sheet is subject to the restriction on the Title page of this document.”
Managing Deemed Exports

- Interplay of –
  * NDA agreements
  * Software licenses containing restrictions & used for teaching
  * Materials Transfer Agreements
  * Sponsored Research
  * Technology Transfer Licenses
Breadth of Impact at Vanderbilt University

- International Students
- Visitors – foreign nationals
- U.S. Faculty and Staff
- Administrative Services (Procurement, IT, HR, etc.)
- International Travel
- Sponsored and Non-Sponsored Research – Medical and Non-Medical
- Technology Transfer
  * Material Transfer Agreements
  * Non-disclosure Agreements
- International Shipments
Drafting a comprehensive Export Management System which includes:

- Policy statement supporting our continued commitment to export compliance
- Process for export control issues in research, foreign travel, visiting scholars, shipping, etc.
- Training
- Monitoring/Notification
- Record Keeping/Documenting
Visit Our Website Frequently For Updates Relating to:

- Training/Training Schedule
- Regulations
- The Vanderbilt University Export Management System

www.vanderbilt.edu/exportcompliance