Export Compliance Issues for the Research Community
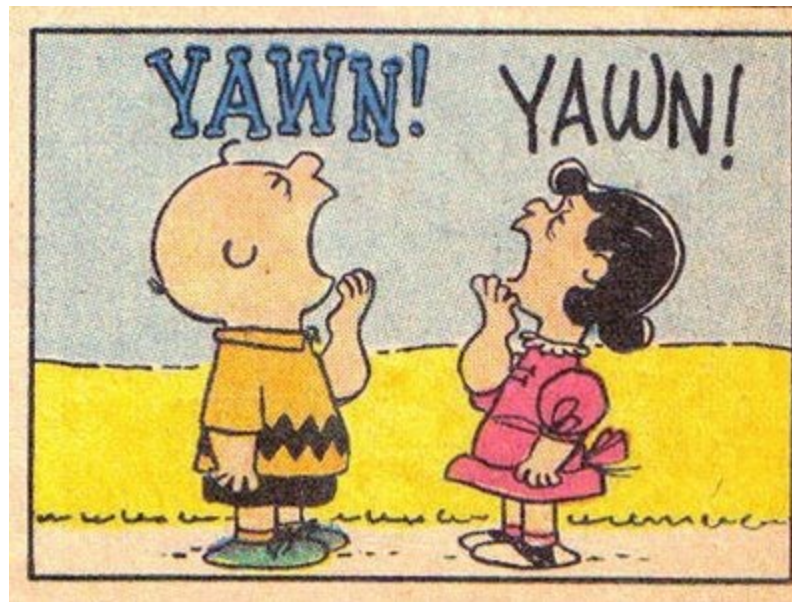
A Little Bit About Export Controls…

What are Export Controls?

- Export Control Laws are a set of federal regulations that restrict the release of certain items, information and software to foreign nationals in the United States and abroad. Those regulations are the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR), as well as regulations administered by the Office of Foreign Assets Control (OFAC).

Who is a Foreign National?

A "Foreign National" is any person who is **NOT** a:

- U.S. Citizen
- U.S. Lawful Permanent Resident (Green Card)
- Protected Individuals:
  - Person Granted Asylum
  - Person Granted Refugee Status

Why Do Export Controls Exist?

- National Security
- Missile Technology
- Nuclear Nonproliferation
- Chemical & Biological Weapons
- Anti-terrorism, Crime Control, Regional Stability, Short Supply, UN Sanctions

What is an Export?

- An export is any oral, written, electronic or visual disclosure, shipment, transfer or transmission of commodities, technology, information, technical data, assistance or software "source code" to:

  - anyone outside the U.S. including a U.S. citizen
  - a "foreign national" wherever they are (deemed export)
  - a foreign embassy or affiliate

Deemed Exports

- EAR and ITAR control disclosure of <u>technology</u>

- Technology is "information that is necessary to develop, make or use a controlled item"; includes software source code

- Deemed Export Rule is used to control disclosure of technology:

    - Release of technology to a foreign national in the United States is deemed to be an export to the home country of the foreign national
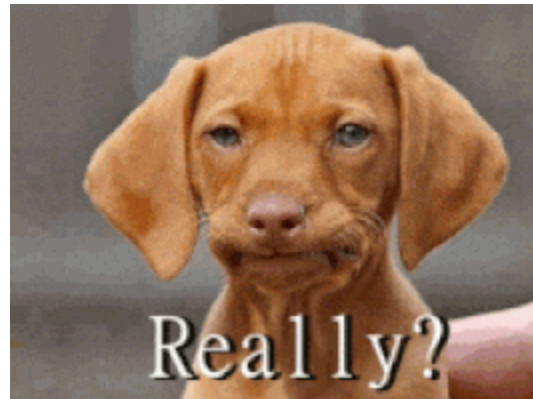
How are Deemed Exports Disclosed?

Exports can be disclosed via the following actions:

- Fax
- Telephone discussions
- E-mail communications
- Computer data
- Face-to-face discussions
- Training sessions
- Tours which involve visual inspections

But Does This Really Impact Us at Cornell?

International Impact at Cornell

- 37% of Cornell's graduating seniors have participated in international programs

- 4,921 international students study on Cornell's main campus

- Cornell University offers students numerous global opportunities including those to study abroad, improve language skills, conduct fieldwork, engage in service learning, participate in an internship or conduct research

- 1000 international researchers and professors representing over 90 countries

- The International Students and Scholars Office (ISSO) assists international students, academic staff and their families by advising on US federal immigration, tax and labor regulations, by providing counseling on personal, academic and cultural matters, and by promoting cross-cultural awareness in the Cornell community

International Impact at Cornell con't

- The Office of the Vice Provost for International Affairs welcomes important foreign dignitaries and representatives from international academic institutions to Cornell and prepares briefings for senior administrators when they travel abroad

- The VPIA is the university administrator charged with expanding Cornell's international presence. In this capacity the vice provost leads the strategic efforts to establish and develop the university's global center in China

- The OVPIA establishes policies that promote Cornell's international agenda and coordinates international agreements, promoting a wide range of international research collaborations and faculty and student exchanges with universities and research institutions around the globe

- VPIA serves as chair of the International Travel Advisory and Response Team

International Impact at Cornell con't

- **Global Cornell Initiative (2014)**
  - Represents the University's commitment to meaningful and effective global engagement
  - Works to enhance global learning opportunities, attract and support internationally engaged faculty and expand Cornell's global presence
  - Mobilizes funding and provides university infrastructure for internationalization efforts, developing partnerships, and providing expert leadership through advisory boards

- The University's Internationalization Council, is charged with identifying strategic initiatives and setting priorities to advance the Global Cornell Initiative.

How Can We Continue to Perform Research While Being Mindful of and Adhering to Export Requirements?

How Does One Legally Export Items Subject to the EAR or ITAR?

Licenses

> Dept. of Commerce – EAR controlled items & technology
>
> Dept. of State – ITAR controlled items & technical data
>
> Dept. of Treasury – Financial Transactions & Travel

Factors in determining License Requirements

> Who? (End User)
>
> Where? (Destination)
>
> For what purpose? (End Use)

Exceptions to the Licensing Rules?

Exclusions & License Exceptions

Although the regulations cover nearly everything leaving the U.S., there are exclusions to the regulations

Fundamental Research (EAR & ITAR)

Educational Information (EAR)

Publicly Available/Public Domain (EAR/ITAR)

Bona fide Employee (ITAR)

**There are also License Exceptions (discussed later) and General Licenses available

Definition of Fundamental Research

- 'Fundamental research' means 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. (National Security Decision Directive 189)

Fundamental Research at Cornell

In order to qualify as Fundamental Research, the research must be conducted free of any publication restrictions and without any access or dissemination restrictions.

Research results that qualify as Fundamental Research are NOT subject to export controls

Known as the Fundamental Research Exclusion

The Fundamental Research Exclusion

- The FRE will not apply if the university accepts any restrictions on the publication of resulting information

- Applies only to the dissemination of research data and information, not to the transmission of material goods provided

- Applies whether or not the research is published

- Can share with foreign nationals if published/generally accessible or available to the public – "in the public domain."

Loss of FRE

- FRE is destroyed by any clause – whether sponsorship is federal, state, private, nonprofit or other – IF the clause:
    - Gives the sponsor the right to approve publications

    - Restricts participation of foreign nationals in conduct of research by precluding access to research results

    - Results in a restriction of participation in research and/or access to and disclosure of research results

Foreign Travel & License Exceptions

- Foreign Travel:
    - When Cornell faculty/staff travel abroad for research, certain precautions need to be taken:
        - Identify items and technology which may be exported via shipping or hand carry to the foreign destination
        - Items such as commercial software and encryption code is subject to the EAR
            - Laptops, PDA's and digital storage devices

License Exception for Travel

License Exception 'TMP'

License Exception available for foreign travel with Cornell owned laptops and other equipment

For temporary exports – 'Tools of trade'

Restrictions:

Return in 1 year

Must retain effective control and ownership

Not eligible for travel to sanctioned countries

Export Control Management

- Contract Negotiations

- Restricted Party Screening

- Technology Control Plans

- Foreign Travel

- License Exceptions

Hot Topics and Reference Information

Hot Topics in Research Administration

- Flagged Entities – Visiting Scholars

- Shipments

- Contract Language

  - Notification required prior to receipt of any controlled technology

  - Receipt and handling of proprietary information

  - Restricted Party screening requirements

- International Conferences and Seminars

- ITAR controlled samples on campus

Reference

I.   Cornell Export Control Office

    I.   https://www.osp.cornell.edu/export/

    II.   exportcontrols@cornell.edu

II.   Export Control Reform
       http://export.gov/ecr/index.asp

Questions?

exportcontrols@cornell.edu