Supporting Compliance in Research

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"I'M AT THE MERCY OF THE ORGANIZATION OF LEMON-EXPORTING COUNTRIES."
Do Export Controls Apply at Michigan Tech?

- Pre-publication research is highly sought-after

- US Universities are prime targets for theft of patents, trade secrets, Intellectual Property, Research and sensitive information
DEFINITIONS

“US Person” – any individual who is a citizen of the United States, a lawful permanent resident alien of the United States, a refugee or someone granted asylum or amnesty.

“Foreign National” – any individual who is not a US person, any foreign government or organization that is not incorporated to do business in the US.

“Export” – sending or taking a controlled item or information out of the US in any manner (oral or visual), whether in the US or abroad.

“Technical Data” – is technical information that goes beyond general and basic marketing materials about a controlled article.
“Deemed export”

“Deemed Export” - Discussion of controlled technology with a foreign national, or providing them access to controlled research within the borders of the United States.

In essence – providing an export to that person’s country of origin.

Collaborations with foreign nationals, involving the use of controlled information or areas (labs), may trigger the need for an export license.
COMMON EXAMPLES OF EXPORTS

**Physical:** Sending or taking equipment out of the US for a research project

**Electronic:** Sending export controlled technical data out of the US by email, text, fax, etc.

**Information:** Discussing or releasing export controlled technical data with a foreign citizen, whether in US or abroad
“RELEASE” OF AN EXPORT

Examples of a “Release”:

- Allowing reading or inspection of technical specifications, plans, blueprints, diagrams, etc.
- Providing a tour of a facility that uses controlled technology
- Instructing someone on how to use controlled technology
- Giving a presentation about controlled technology
What Items are Export Controlled?

- Anything with an obvious military use, or items enhanced for a specific military use
- Encryption software and devices
- Anything intended for use in space, space launch, or for ground control of space craft or satellites
- Sonar, radar, laser, GPS, advanced computers, advanced computer technology and software
- Seismic equipment – streamers, geophones, recorders
**WHAT IS NOT CONTROLLED?**

- *Fundamental Research Exclusion* – information and technology arising during, or as a result of research, in science and engineering

- *Educational Exception* - information presented in a catalog course or associated teaching lab

- *Public Domain Exclusion* – information that has been published and is readily available to the public
WHAT EXACTLY IS “FUNDAMENTAL RESEARCH EXCLUSION” (FRE)?

“Basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community.”

- No restrictions on publication
- No restrictions on the use of foreign citizens
- No specific national security controls on the research or results
- Generally accessible to the interested public in any form

**NOTE:** Collaboration with foreign nationals of Sanctioned Countries may be prohibited
Proprietary Work

- If research is to be proprietary (i.e. subject to a Non-Disclosure Agreement, or contractual provision of confidentiality, etc.), then it is **NOT** Fundamental Research.
- It may be subject to export controls, but that does not mean that it is export controlled.
- Because it is **not** Fundamental Research, extra care must be exercised to confirm that it is not export controlled.
EDUCATIONAL EXCEPTION

- No license is required for information released by instruction in catalog courses and associated teaching laboratories of academic institutions.

- If you teach it in an open-enrollment class with NO registration restrictions, there is NO export license required.
PUBLIC DOMAIN EXCLUSION

- Information that is already published, publicly available, or in the public domain, including:
  - Books, newspapers, pamphlets
  - Publically available technology & software
  - Information presented at conferences, meetings and seminars – open to the public
  - Information included in published patent & patent applications
  - Websites freely accessible to the public
REGULATORY AGENCIES

- International Traffic in Arms Regulations (ITAR)
- Administered by the Department of State, Directorate of Defense Trade controls (DDTC)

- Applies to military, hardware, technical data & services
- United States Munitions List (USML)
- Contains the concepts of a “defense service” – which is any form of assistance by a US person to a foreign person in connection with ITAR controlled item or technology
  - For example, showing a foreign person in the US how to operate a sonar is a defense service and requires a license
REGULATORY AGENCIES

- Export Administration Regulations (EAR)
- Administered by the Bureau of Industry and Security (BIS) in the Department of Commerce
  - If it is not covered by the ITAR, then it is covered by the EAR
  - Controls commercial items, technology and the 600 series
  - Maintains the Commerce Control List (CCL) where the Export Control Classification Numbers (ECCN’s) are found
    - Get the ECCN information from the manufacturer – and keep documentation!!
  - If there is no ECCN, then it is designated as EAR99
    - EAR99 items may still be controlled – check with the Export Control Official
REGULATORY AGENCIES

- **Office of Foreign Assets Control (OFAC)**
  - Administered by the Treasury Department
    - Licenses will not be granted for citizens from, or destinations to sanctioned countries.
    - Implements *economic and trade sanctions* based on US Foreign policy and national security goals against targeted countries, individuals and entities.
    - US persons anywhere in the world cannot export to, or provide any assistance to those countries or persons in sanctioned countries.
    - What you can’t do directly you can’t do indirectly – exporting something to Canada for re-export to Syria is just as illegal as trying to send it to Syria.
    - This includes money and financing.
US AND INTERNATIONAL SANCTIONS

- Many countries are subject to comprehensive sanctions that prohibit the export of all military items and technology, as well as certain commercial items and technologies.
  - Significant restrictions on collaborating with researchers in those countries

- The US and other countries maintain lists of persons and organizations that are subject to sanctions or prohibitions.

- Michigan Tech has access to Visual Compliance Program that can check restricted party names instantaneously.
**How Does This Apply At Michigan Tech?**

- If a tangible item is leaving the US, that is an export
- Unless technical data is fundamental research or public domain information, it is subject to export controls
- Classify each item to be taken out of the country to determine whether the level of control, end-use, or end-user will require a license:
  - What is my item?
  - Who will receive it?
  - Where is it going?
  - What is the end-use?

- Classification is also necessary to determine whether a license exception is available
AREAS OF CONCERN FOR MICHIGAN TECH

- Sending technical specifications to vendors
- Collaborations or conference attendance with foreign nationals on behalf of work with the government
- International shipments
- Overseas Field Trips
- Re-exports
- Shadowing into restricted areas/labs
INTERNATIONAL TRAVEL

Anything you hand-carry or pack in your luggage outside of the US is an export -- there could be export control issues if you are physically taking items with you on a trip such as:

- Laptop
- Cell phone
- Tablet or e-reader
SPONSORED PROGRAMS OFFICE

- Proposals are reviewed for potential export control considerations – nature of the work, collaborations, conferences.
- An Export Control Review is completed for sponsored and non-sponsored research projects:
  - Can the Fundamental Research Exemption (FRE) be claimed?
  - Do activities on the project indicate a potential export?
Administrators & Support Staff

Administrators and Support Staff are critical in all areas, particularly in the areas of non-sponsored projects and Michigan Tech IR&D projects.

- Support staff can assist the PI’s and get the Export Control Office involved, if needed.
- The PI may need to sign a Technology Control Plan (TCP), to confirm they understand the foreign national restrictions of the contract, and that they will comply.
WHAT DOES ALL THIS MEAN FOR YOU?

- Be familiar with the equipment and technology in your area
- Consider if it’s Fundamental Research or Public Information
- Be aware of planned travel and equipment/technology shipments
- Be familiar with any Export Control agreements applicable to your project (i.e., Technology Control Plan, Technical Assistance Agreement or licenses)
- Visual Compliance will be used to screen vendors and visiting scholars involved with research
- Know which data is controlled and how it is controlled
- BEFORE processing travel or shipment abroad: ask first and document the advice given
Risk for Violations

- Loss of export privileges
  - Order of Denial, Debarment, etc.

- Penalties – fines and imprisonment – over $1 million in fines and up to 20 years in prison
  - One mistake can comprise several violations
  - DDTC has increased the civil penalty from $500,000 to $1,094,010 (per violation)

- Fines and penalties levied against individuals, as well as the University

- Voluntary Self Disclosure Program (VSD):
  - VSD is an excellent indicator of a party’s intent to comply with export control requirements
CASE STUDIES

- University of Massachusetts at Lowell
  - EAR99 items exported to a prohibited country
  - University failed to screen company

- Georgia Institute of Technology
  - Allowed internet users to view sensitive information

- Professor Reece Roth / University of Tennessee
  - Guilty of 18 counts of conspiracy, fraud, and violating the Arms Export Control Act
  - University of Tennessee escaped fines due to their cooperation.
Eliminate Risk

- Assume that it is export controlled and check with the Export Control Official.

- Make sure that you have an export control determination before disclosing technology to foreign persons or processing travel or shipment abroad.

- Properly safeguard technical data and hardware in accordance with the regulations.

Due diligence is Key!
**MICHIGAN TECH RESOURCES**

- **Training (Regulatory Requirements):**
  [http://www.mtu.edu/research/references/training/](http://www.mtu.edu/research/references/training/)

- **Export Control Laws & Regulations:**
  [http://www.mtu.edu/research/administration/integrity-compliance/export-controls-foreign-nationals/export-control/](http://www.mtu.edu/research/administration/integrity-compliance/export-controls-foreign-nationals/export-control/)
ADDITIONAL RESOURCES

- US Department of State:  
  [http://www.state.gov/](http://www.state.gov/)

- Bureau of Industry and Security:  
  [http://www.bis.doc.gov/](http://www.bis.doc.gov/)

- US Department of Treasury (OFAC)  
  [https://www.treasury.gov/](https://www.treasury.gov/)
ADDITIONAL RESOURCES

• Updated Searchable ITAR & CCL located at:
  http://www.learnexportcompliance.com/ccl

• Updated Consolidated Screening List:
  http://2016.export.gov/ecr/eg_main_023148.asp

• Sanctioned Programs and Countries List:
  https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx
CONCLUSION

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  Thank you!!