Oklahoma State University

University Research Services

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EXPORT CONTROLS

EAR & ITAR: Fast Facts...

Exclusions...

Fundamental Research

As used in the export control regulations, **fundamental research** includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the U.S., where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from other types of research that results in information that is restricted for proprietary reasons or restricted pursuant to specific U.S. government access and dissemination controls. If the research falls under the Fundamental Research Exclusion, no further concern about the need for an export license would arise. (15 CFR Chapter VII §734.8)

IMPORTANT NOTE: Remember three key facts about the Fundamental Research Exclusion:
(1) it **applies only** to the dissemination of research data and information, not to the transmission of material goods [see "(3)" below];
(2) it **does not apply** to a sponsor's existing proprietary information when some or all of that information is required to be held confidential; and
(3) the following **NEVER** qualify for the Fundamental Research Exclusion:

- Physical goods
- Software
- Encryption
- Research when there is no intention to publish the results
- Research conducted out of the U.S.

In addition, the exclusion **may not apply** to information relating to export-controlled equipment used in research projects and classes. Universities have *assumed* that they could share such information with foreign nationals without a license, since the information is being used while conducting fundamental research. However, recent interpretations by the federal government suggest that an export control license may be required in a fundamental research project before information about the use of controlled technology can be shared with foreign nationals working on the project. As this is a currently developing issue, updates on this issue will be posted on the University Research Services website.

"**Side deals**" between an Investigator and a sponsor **destroy** the Fundamental Research Exclusion and may violate University policies. A "side deal" may occur when any Investigator has a private agreement with a sponsor whereby they will conduct their research project in a manner that will permit the sponsor the right to approve a publication and/or to restrict foreign nationals on a research project to comply with the sponsor's requirements. Such actions can invalidate the Fundamental Research Exclusion and can expose both the individual Investigator on the project and University to penalties.

Educational Instruction

Export control regulations do not apply to information released in academic catalog-listed courses or in teaching labs associated with those courses. This means that a faculty member teaching a University course may discuss what might otherwise be export-controlled technology in the classroom or lab without an export control license even if foreign national students are enrolled in the course. This exclusion is based on the recognition in ITAR that "information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain" should not be subject to export control restrictions. (15 CFR Chapter VII §734.9)

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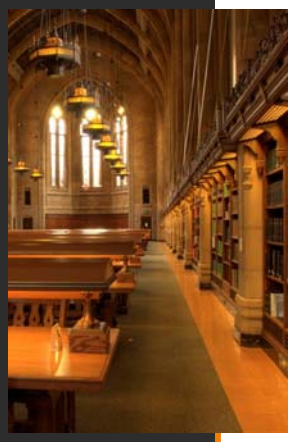
Exclusions...continued



Public Domain & Publicly Available

Information that is **published and generally available to the public**, as well as publicly available technology and software, is outside the scope of the export control regulations. This exclusion does not apply to encrypted software, to information where there is reason to believe it may be used for weapons of mass destruction, or where the U.S. government has imposed access or dissemination controls as a condition of funding. (15 CFR Chapter VII §734.7)

Public Domain (22 CFR 120.11) means information that is ALREADY published and that is generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions that 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, including OSU Libraries; (5) through published patents; (6) through unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the public, in the United States (ITAR) or anywhere (EAR); (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, including websites accessible to the public for free and without the host's knowledge of or control of who visits or downloads the software and/or information (clearly acceptable under EAR and likely acceptable under ITAR); and (8) through *fundamental research.*

"In today's global marketplace, more spies—not just traditional adversaries but also allies, hackers, and terrorists—are trying to steal more of our secrets from more places than ever before."

FBI CI Domain Program

Phishing Expeditions…

The U.S. government and private industry spend more funds on research and development than any other country in the world. Consequently, other countries WANT our technology and they are getting more creative in their efforts to obtain it. But, we are also handing them free information.

You need to be aware that you may be a target. If you receive a peer publication requests from unknown sources, you need to realize you may have been targeted for your expertise and not in a good way. If you are unfamiliar with the journal or publishing entity or location, you should ask questions.

If you are approached while traveling and questioned about your work, you should exercise caution and carefully consider the asker's real interests.

If you are offered unsolicited funds from unfamiliar sources to conduct research, you may want to ask questions and ponder what the actual intent may be.

If you receive any communications that seem unusual, you are encouraged to communicate those contacts.

OSU holds a non-possessing security clearance. This requires us to report suspicious contacts and behavior to the Defense Security Service (DSS). Contact **Shawna Goodwin, 744-2325, shawna.goodwin@okstate.edu**, to make a report or for more information.

Controlled Technology

Export-controlled technology/information means activities, items, and information related to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, modification, demilitarization, destruction, processing, or use of items with a capacity for military application. Typically, this does not include basic marketing information or function or purpose; general system description; or information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities or information in the public domain.

It is unlawful under ITAR and EAR to send or take controlled technology/information out of the U.S., disclose orally or visually, or transfer to a FOREIGN PERSON inside or outside the U.S. without proper authorization.

If technology/information has been deemed "controlled", then a Technology Control Plan (TCP) must be in place prior to work beginning.

Call x9995