

NCURA Neighborhoods Online Chat
Hot Topics in Export Compliance
September 23, 2009

Featured Guests: **David Brady**, Director, Office of Export and Secure Research Compliance, Virginia Tech; **Kay Ellis**, Associate Director, Export Controls Officer, The Office of Sponsored Projects, The University of Texas at Austin.

Moderator

Welcome to today's chat on *Hot Topics in Export Compliance*, sponsored by the International Neighborhood. Thanks for joining us. First a bit about our guest experts joining us today:

David Brady is the Director of the Office of Export and Secure Research Compliance at Virginia Polytechnic Institute and State University (Virginia Tech). David is a university Empowered Official and the Facility Security Officer, responsible for ensuring university-wide export and trade sanctions compliance in both classified and unclassified research at the university. David established the university-wide export and sanctions compliance program at Virginia Tech, where he previously served as a contracts and grants administrator and senior contracting officer. He is a graduate of the United States Naval Academy, a former Navy nuclear propulsion engineer and consultant to DARPA on advanced submarine technologies. David is the Vice President of the Association of University Export Control Officers.

Kay Ellis is Associate Director in the Office of Sponsored Projects and University Export Controls Officer at The University of Texas at Austin. Ms. Ellis was with the University of Oklahoma for ten years prior to joining Oklahoma State University in 2002. As Director of University Research Programs, she implemented OSU's export control compliance program. In March of 2008, she became the University Export Controls Officer and an empowered official for UT Austin and is the point of contact for export control issues. She provides training in this area and oversees the procedures put in place to ensure the University's compliance with federal export control regulations. Kay has been involved in NCURA for many years. She is currently Immediate Past Chair of NCURA Region V and Chair of the Awards Committee. She is a member of an NCURA export controls working group. She has been a workshop faculty member and a presenter on export controls at NCURA national and regional meetings, webinars, and online chats, and has also been an invited speaker at other professional meetings and conferences.

Moderator

Welcome **Kay** and **David**

David Brady

Hello!

Kay Ellis

Hi Everyone!

Moderator

Let's get started. What do you see are the major upcoming changes/shifts in the area of export compliance?

Kay Ellis

On August 13, 2009 President Obama ordered White House staff to conduct a review of U.S. export controls. Work on the review will begin in October and will be led jointly by the National Security Council (NSC) and the National Economic Council (NEC). Defense Secretary Gates briefed Obama on reports that say the current regulations are impeding U.S. scientific and technological competitiveness. The NEC will

look at the impact of the export control regulations and policies on the competitiveness of U.S. industries. There is no deadline set, but House Foreign Affairs Committee Chairman Berman hopes to introduce a new Export Administration Act (relative to dual-use items) next year. It will be interesting to see what happens because export control regulation reform has been attempted in the past but never completed.

Moderator

David--your thoughts?

David Brady

I would also add that there is a bill moving in Congress (HR 2410) that would authorize the State Department to remove satellites and their components from the Munitions List. If enacted, and if the State Department chooses to do so, this could lead to considerable relief to institutions of higher education involved in space-related research if some or all of category XV is removed from the USML.

Michele Chi-Purcell

How do you go about auditing for compliance to export control procedures? How would one check whether something has been properly exported or not?

David Brady

Michelle, we have a post-award monitoring program with annual compliance certification for export controlled research. It was established as a result of an internal.

Moderator

Kay: What in-print and/or on-line resources are available for research administrators to develop an Export Control Toolbox appropriate for their respective institutions and staff?

Kay Ellis

If you want to get a hard copy of the ITAR, you can order it from the Society for International Affairs (SIA) <http://www.siaed.org/> . The BIS has publications on its website as well as training modules <http://www.bis.doc.gov/> . I think the best way to look for online materials is to peruse other university websites. There are many good university websites with export control information and most are willing to share. UT Austin has an export control compliance manual, a technology control plan template, and forms relative to travel outside the U.S. that anyone can use. It might be useful if an export control toolbox could be developed as a resource for the NCURA membership.

I would also like to suggest that you subscribe to a newsletter put out by a Northrop Grumman attorney (BIS gave it a plug in a seminar I attended). It contains up-to-date information on the latest in the regulations, government actions, export violations, and export control seminars. Send a request to James.Bartlett@NGC.com Requests must come from your email address and should include your full professional contact information (name, title, company, address, and telephone), and mention how you heard about the Ex/Im Daily Update.

Moderator

David--your comments?

David Brady

There is a similar email newsletter (free but requires a request by email to subscribe) that Gary Stanley (an export consultant) provides every few days. It frequently draws from sources outside of Bartlett's, but between the two of them, you can stay on top of most relevant regulatory changes. If interested you can e-mail your name, title, company, and e-mail address to gstanley@glstrade.com.

Moderator

How do you find clear advice about how ITAR controls apply to universities, especially those based outside of the US?

David Brady

See Kay's earlier answer regarding sources available in the United States, also, Black and Senger (BSG) does several international conferences in Europe and Asia (Singapore) annually, which includes ITAR training. <http://learnexportcompliance.com/seminars/> However, I think unless there is a lot of demand for it, they will probably only address commercial export laws. Bear in mind though, their training is almost totally commercially oriented.

To get university-oriented training, the only organization offering such training is NCURA, and at this year's annual meeting, there are many ITAR-related offerings as well as export compliance from the basics, to select agents, to developing your own export compliance management program: http://www.ncura.edu/content/educational_programs/sites/51/program Kay will be teaching an ITAR licensing workshop there, and I'm sure she would be happy to further address any questions you have.

Michele Chi-Purcell

David- Thanks for your reply. Certification is a start, but how do you check if they are actually complying with what they certify to?

David Brady

Michelle, regarding restricted research projects, we also do spot checks physically at the labs, and we have only been able to that recently with the addition of an employee. These checks can be time consuming.

Jim Casey

Kay and David-what practical tips can you give to emerging research universities as they grow from being teaching-oriented to more balanced between research and teaching?

David Brady

Jim, get someone trained in export compliance, even if in a part time capacity. Even teaching institutions can run afoul of export and sanctions compliance problems.

Kay Ellis

Michele, we are auditing a project right now with the help of our Information Security Office to make sure the data being protected is secure the way the technology control plan has it set up.

Mary Kate De Marco

What do you see as the responsibility of the pre-award office in screening for export control issues?

Bill Ploog

Have universities come to a consensus on the core best practices and key interpretations of the regulations -- for example, how best to maintain the fundamental research exemption?

Kay Ellis

Mary Kate, at UT we screen every proposal and every award for export control issues using forms that I have created.

Michele Chi-Purcell

Can you explain the role of an export compliance officer? Is this specific role described as a requirement of regulations?

David Brady

Bill, there is no consensus on core best practices of the fundamental research exclusion, but we fall into two schools of thought- just say no to restricted or export controlled research, and "lock up and license", if

you accept restricted research, don't do it until you are prepared to handle the extra compliance issues that come with it.

Kay Ellis

Michele, the role of an export control officer is not required in the regulations. However, you need a "go-to" person or someone in charge to handle export control issues.

David Brady

Michele, I would amplify on Kay's comments, a compliance officer is not required, but compliance is required with the regulations if you are a US institution of higher ed. You can get into issues many ways, including shipping, restricted research, visiting scientists, much more. Your role of the export officer should map to your institutional risk.

Winnie Ennenga

Hi Kay, are those forms available on your website or can NCURA post them along with the text of this chat?

Kay Ellis

Winnie, the forms are available in our manual which is on our website or I would be happy to email them to you offline.

Moderator

KAY: Please explain how "deemed exports" come into play relative to biological materials (non-select agents) in Category 1 of the EAR, in particular 1C351-1C354. These materials are common in research labs in many universities.

Kay Ellis

Product groups D (software) and E (technology) of Category 1 are relative to deemed exports. In this case, only E (technology) is applicable to 1C351-1C354 if the technology associated with any material listed in 1C351-1C354 is being used for "development," "production," or "disposal" of those materials. If anyone is interested, I have a certification form I can send you where the PI certifies that the foreign national will not be using the material for production or development purposes, nor will the foreign national have access to technology related to the disposal of the material.

Moderator

Do security controls over export controlled information need to be more stringent than standard practices for keeping third-party proprietary information confidential? Have most universities created separate security guidelines for export controlled information?

Kay Ellis

I think both third-party and export controlled information needs to be secured, but third-party proprietary information may not be export controlled and need the same level of protection as something export controlled. A good export control compliance program should have a standard template for protecting export controlled information. I know there are many universities that now have a template and would be willing to share. Here is a link to UT Austin's template TCP:

http://www.utexas.edu/research/osp/export_control/documents/technology_control_plan_template_10_29_08.doc

David Brady

I think very few schools have dealt with the level of how much security is needed to protect export-controlled information. In my view, the level of controls should be consistent with the risk of national security damage that might occur if spillage of the controlled data occurred. You may be certain that the State Department will use this as criteria in the event there is an investigation a disclosure of an ITAR

violation. As there are no mandated control procedures, you are very much forced to make up your own rules if you accept controlled technology. At Virginia Tech, we generally follow the National Industry Security Policy Operating Manual (NISPOM- regulations for handling classified information) unless NISPOM measures are cost prohibitive.

Bill Ploog

It is quite common for DoD projects to require approval of foreign nationals prior to their participation in the research project and at same time permit open publication of all research results. Do you think that a clause requiring prior approval of foreign nationals alone undermines FRE?

Kay Ellis

Bill, In general, restrictions on foreign nationals should raise a red flag, and certainly, the FRE could be lost, but further review is needed. If you have a government sponsored contract that limits or requires approval for foreign nationals to work on the project, and you follow all of the contract requirements and dissemination controls, then you have not lost the FRE (see part 734.8 and 734.11 of the EAR). It is my understanding from talking to State and legal counsel that if you accept any type of restrictions on an ITAR project then the FRE has been lost. I should point out that not all universities agree with this view.

David Brady

The ITAR proscriptions that void fundamental research are quite specific (ITAR120.11(a)(8)), and as it relates to foreign national restrictions, include only the following guidance "The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable." However, this is an area of unsettled law, and you should consult with your legal counsel about how to proceed in the case you discuss. You also should be aware that there are a number of exemptions for foreign nationals that DoD can use to authorize release of technical data (e.g., ITAR125.4(b)1, 3, and 13), however, these exemptions are very narrowly tailored, and should be used with great care.

Sheryl Trexler

Regarding export controls of shipments to a foreign country for research related materials or items, is an invoice of some type required on the shipment?

David Brady

Sheryl, regarding export shipping, export regulations do not require an invoice if your shipment goes without needing an export license, what is probably needed is Electronic Export Information, which is in most cases filed with the Census when shipping items valued greater than \$2500.

Christina DeVries

David and Kay, how do you raise the awareness of Export Control Compliance issues with faculty so they recognize when there may be questions (especially with deemed exports) and bring them to the attention of the appropriate university personnel?

Kay Ellis

Christina, I think the best way to raise awareness is to speak to faculty at a faculty meeting, or to a meeting with the deans, or even at a departmental meeting. You are more likely to get a better response if you go to them. Of course, you can always schedule an open session, but in my experience, it's best to go to them.

Paul Mooney

At UT Austin I found a link to the Stanford University Export Decision Tree - http://export.stanford.edu/tree/tree_1.html What is the opinion on the self regulated user, to follow the recommendations the decision tree can offer? Can the responsibility completely fall back to the researcher/investigator?

Kay Ellis

Paul, the Stanford decision tree is just a tool and has nothing to do with responsibility.

David Brady

Sheryl, export of tangible items are very complex, in general you can get assistance from your freight forwarder, though less so in light of several prosecutions of freight forwarders.

Leesa Brown

Paul, I use the decision tree as a starting point for my faculty since it is easy to use.

Moderator

How do other institutions perform reviews of NDA's for potential export-controlled information to be provided to the institution by the Discloser (sponsor/company/organization)? If the exchange is limited to business and not technical information, and this is documented in the NDA, is any other export language even necessary?

David Brady

My institution processes so many NDAs annually that it is nearly impossible to review all of them for export compliance. We insert language requiring each party to disclose in advance if export controlled items or technology will be released to the other party, and that the receiving party can turn down the information if it so chooses. If the NDA co-signatory refuses to accept these terms, we require an internal faculty agreement be signed by our employees receiving proprietary information not to involve foreign nationals without coordinating through my office. At that point, we can evaluate if the information being received is subject to export compliance license restrictions. In this way, we reduce the administrative burden of performing an export commodity jurisdiction and classification for every NDA.

Kay Ellis

You don't clarify if this is the university's NDA or the company's. You have in effect done an export control review because you have determined the disclosure of information is business-related only. In this situation, if the company's NDA did not include an export controls clause, I think that would be acceptable - we are bound to follow the regulations whether or not there is language in an agreement or not. UT would still require the PI to sign an internal acknowledgment (this is true for every NDA) about UT's procedures for handling export controlled confidential information. UT's standard NDA includes a clause about export controls as well.

David Brady

Leesa, as Kay indicated, the online tools are only valuable if you have a good grasp of export regulations, and the Commerce Control List and Munitions List. At my school, using self classification by faculty usually results in erroneous export determinations- my office always assists faculty with these determinations.

Moderator

How are other universities conducting reviews of contracts which contain the 252.204-7000 clause where: i) the sponsor states that the information is not export-controlled, however, the clause is a flow-down or they are prevented from removing it; ii) there is a dispute concerning whether or not the information/research is export-controlled and under which set of regulations.

Kay Ellis

Typically we love to hear that a project is not export controlled, and in particular not ITAR controlled, but if you are convinced it is ITAR, you need to immediately treat it as such until a final determination has been made. You should look at the sponsor – is it a small business dealing in defense contracts, a government sponsor, etc. Some small businesses do not have much expertise in export controls and can

mislead you. My advice is stick to your guns – check with legal counsel if you really are not sure and/or get a jurisdiction ruling from State.

David Brady

I also have the same problem with small businesses regarding disagreement about whether or not a project is subject to ITAR jurisdiction. With the advent of the DFAR export clauses, I now make the sponsor go back to their government sponsors and get the DFAR 252.204-7008 or 70009 clause (whichever is applicable) inserted to their/ and or our contract by the contracting clause, pursuant to DFAR 204.7305. Another workaround for the DFAR 252.204-7000 clause is to get Contracting Officer's prior written approval for release of the information, and thus satisfy the clause requirement, and restore the research to fundamental research. Both of these approaches are very painful processes.

However, as a defense contract invariably raises ITAR issues, IMHO, if there is doubt, you are bound by 22CFR120.4(a) to treat the information as ITAR-controlled until the State Department takes or declines jurisdiction. This process, and dealing with the DFAR 252.204-7000 Disclosure of Information clause concurrently with the DFAR 252.204-7009 clause in defense contracts is the subject of a concurrent session Dave Erem (UK), Jahna Hartwig (JHU/APL) and I are teaching at the NCURA Annual Meeting next month in a class about handling troublesome clauses in defense contracts.

Mark Gallyoun

David, earlier you mentioned that there are no mandated control procedures. From a policy standpoint, would it be helpful if there were such mandates? Or are universities better off being able to approach the issue according to their particular circumstances?

David Brady

Mark, IMHO, universities are better mapping their compliance to their individualized risk. I am not a lawyer and cannot address legal sufficiency of the measures you propose under your state's indemnification law. However, I can suggest a solution that may be of use, at least on the Pre-Award end. Compliance with international tax laws has similar issues of ensuring compliance with complex laws in two countries, though the liability can differ considerably under export laws compared to tax laws. Generally, institutions of higher education set up a reciprocal agreement in which each partner ensures compliance measures for their country are correctly taken care of. Perhaps a similar arrangement can be made with regard to export compliance laws, putting the burden of compliance on the international partner.

Moderator

A few times when limited work is performed by overseas by the university, international sponsors have insisted the parties abide by the export laws of their home country as well as U.S. export laws. Since the institution is not familiar with such laws (the laws may not be available in English, may periodically be revised, or may be difficult/expensive to interpret, etc), it is proposed that the PI/department take personal responsibility for compliance with such laws, and indemnify University of Texas against any instances of noncompliance. Is this sufficient legal protection for the institution?

David Brady

I am not a lawyer and cannot address legal sufficiency of the measures you propose under Texas indemnification law. However, I can suggest a solution that may be of use, at least on the Pre-Award end. Compliance with international tax laws has similar issues of ensuring compliance with complex laws in two countries, though the liability can differ considerably under export laws compared to tax laws. Generally, institutions of higher education set up a reciprocal agreement in which each partner ensures compliance measures for their country are correctly taken care of. Perhaps a similar arrangement can be made with regard to export compliance laws, putting the burden of compliance on the international partner.

Kay Ellis

If you are unable to get that language removed from the contract, I would check with legal counsel to see what the implications and risks are for the university.

Moderator

It would be useful to know the practices are within the university community. Back in 2006 before the clarification of what constituted the "use" of equipment, there was talk that the university community had to determine the location and restrict access to all equipment subject to export controls. What is the current practice?

David Brady

Though I have heard of a few schools discuss these options (inventory all items), I am not familiar with any that have actually done so. The retention of "and" instead of "or" in the definition of use for the EAR (772.1) relieves institutions of higher education of considerable risk of inadvertently violating deemed export regulations when foreign nationals are merely "operating" the equipment by using it, calibrating it, or perhaps performing maintenance on it.

Marcia Williams

Does anyone have an opinion about the proper ECCN for TrueCrypt?

Michele Chi-Purcell

Can you address the Foreign Corrupt Practices Act and the affect, if any, in a university setting?

David Brady

Michele, the FCPA is a whole hour to itself with antiboycott laws. Remember, it deals with bribing foreign officials, and generally does not appear in an on campus setting as an issue. You want to watch out for these regulations for your foreign on-ground activities.

Moderator

How prevalent is the practice of creating an inventory of all equipment that would be subject to export controls whenever used by foreign nationals in the full sense of "use" as defined in 772.1? Or, is the key factor the use of confidential information in performing "use" in the 772.1 defined broad sense of all the relevant functions (operate, maintain, refurbish, etc.)?

Kay Ellis

Confidential information related to the equipment may or may not be export controlled, and David gave an excellent explanation in his answer. As far as the actual piece of equipment is concerned, you need to first determine if the equipment is controlled for development, production, or use. Since your question is about "use," all of the following would need to be applicable: operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing. I believe the risk for universities is minimal because a foreign national would have to be involved with all six aspects of "use." I would be more concerned about ITAR controlled equipment.

David Brady

Generally, a deemed export is a release of controlled information or source code necessary for the development, production, or "use" of an item subject to the EAR. Therefore, your risk of noncompliance is tied to the release of controlled or nonpublic information or source code (ignoring for the moment, encryption source code, over which there are additional controls). I am not aware of any school that inventories all confidential/proprietary information received. However, as relates to control of confidential information, my institution, and many others of which I am aware, contain the risk of release of controlled technology on campus or outside of the United States in the following way: they evaluate agreements in which proprietary information is to be provided or exchanged for export compliance.

This can be a pretty broad spectrum of agreements needing to be reviewed, and not just requiring participation of Sponsored Programs. For example, controlled technology can arise in sponsored research agreements, nondisclosure agreements, and material transfer agreements, but also software and technology licenses, purchase orders, visiting scientist agreements, and so forth. These reviews and controls may require the cooperation of organizations outside your immediate authority, and may include purchasing, legal counsel, Technology Transfer, Departmental Business Managers and more.

Jim Casey

David and Kay, what has your experience been in working with research administrators overseas in terms of export controls? I'm speaking in terms of their knowledge of the subject, the challenges they are facing, etc.

David Brady

Jim, I seldom deal directly with overseas RAs, so really cannot answer the question re: export compliance. There are always difficulties relating to compliance with foreign laws on both sides, which are often solved by going silent. You can see my earlier questions about dealing with foreign export laws, but there's not much more I can help you with here.

Kay Ellis

Jim, I don't have much experience either - sorry!

Moderator

Interesting that it appears our colleagues don't have exposure to foreign counterparts

Bill Ploog

What guidance to you provide faculty who travel to give presentations to audiences of foreign nationals? What is the relevance of the "open meeting" rule?

Kay Ellis

Bill, it depends on the country they are traveling to and what they are presenting. If its fundamental research they are discussing and the participants are free to take notes, there should be no concerns for most countries. Keep in mind there could be other issues if traveling to Cuba or Iran and other OFAC sanctioned countries.

Bill Ploog

Kay, but you can travel to Germany and end up speaking to Iranians?

Kay Ellis

Bill, if you are speaking IN Germany (not Iran), and it's fundamental research, no restrictions on conference note-taking or participants, then again, there should be no issues.

Tamara Hemingway

Hi Kay, Can you please provide a reference for determining if the equipment is controlled for development, production or use? Also, how would you address your concerns regarding foreign national access to ITAR controlled equipment? Is there a similar threshold as for EAR?

David Brady

Tami, State guidance (see their licensing guidelines for foreign employees) states that access to defense articles is a licensable activity. They don't make the distinction of whether or not controlled technology is conveyed at the same time. This is an area of unsettled law for ITAR (regulations do not require licensing for mere access in the US, State guidance does.

Kay Ellis

Tami, Under the EAR, Product groups D (software) and E (technology) will tell you if it's controlled for production, use, or development.

Jim Casey

I guess I can throw this question out there: *What else should NCURA be doing in this area in terms of professional development for export compliance?* I know a tool box was mentioned earlier but what else?

Moderator

GREAT question Jim! What would members like to see??

Mary Paye

I'd embrace a workshop style session devoted exclusively to export control and the many issues that surround this topic, similar in format to those currently conducted for Fundamentals and SPA II

Sheryl Trexler

I would suggest intermediate or advanced export topics (technology controls, encryption, deemed exports) addressed beyond the basics. Case studies of other universities would be a nice addition also.

Moderator

Sheryl--we are offering two workshops at the upcoming AM51: W12: Export Licenses (ITAR), W27: Dual Use: OFAC

Aurali Dade

I would like to see more information on best practices and regional seminars with a focus appropriate for administrators, administration, and legal counsel. The webinar concept works really well but sometimes bringing everyone together in one room sparks more action.

Bill Ploog

I'd like vetted best practices and rationales for the differences of interpretations.

David Brady

Jim, there is a very aggressive export training offering at the NCURA annual meeting this year, with everything from the basics to export laws and select agents, export compliance management systems, the role of an export officer, defense contracting and the export clauses, and more...hopefully these will flow to the regions. I'm not sure that we are ready for a tool box yet.

Moderator

Early in the chat David and Kay noted useful resources:

David Brady

There is an email newsletter (free but requires a request by email to subscribe) that Gary Stanley (an export consultant) provides every few days. It frequently draws from sources outside of Bartlett's, but between the two of them, you can stay on top of most relevant regulatory changes. If interested you can e-mail your name, title, company, and e-mail address to gstanley@glstrade.com

Kay Ellis

I think this is one of the best sources of information: I would also like to suggest that you subscribe to a newsletter put out by a Northrop Grumman attorney (BIS gave it a plug in a seminar I attended). It contains up-to-date information on the latest in the regulations, government actions, export violations, and export control seminars. Send a request to James.Bartlett@NGC.com Requests must come from your

email address and should include your full professional contact information (name, title, company, address, and telephone), and mention how you heard about the Ex/Im Daily Update.

Bill Ploog

My suggestion is a basis for a monograph, an NCURA publication.

Ty Lane

To Jim Casey's earlier question about counterparts, only on rare occasions have I negotiated directly with an RA counterpart overseas in terms of export control issues -- usually, it is an industrial or foreign government sponsor. My experience is that the university is far more familiar and concerned about the issues, than is the international sponsor/collaborator. They often have much concern about understanding U.S. export regs and any language that requires their compliance.

Moderator

If in our research, we are using equipment from our industry partner whom the industry partner will need an export license, how the ITAR provisions affect our project intellectual property. The industry partner says that potentially all projects IP is subject to ITAR controls, even that created not using the controlled equipment, and IP that is created before we used the equipment. Getting definitive advice on this is very difficult.

David Brady

Industry Partner is being conservative and therefore safe, because separating Intellectual Property (IP) from ITAR is a nearly impossible task, and the consequences of ITAR violations, even if done inadvertently, can be very severe for Industry Partner. The definition of what constitutes technical data (120.10) under ITAR is so broad, it is almost impossible to know if what you are doing will generate restricted technical data or not. Moreover, how can you be certain your Intellectual Property (IP) does not include the provision of "assistance" (knowhow, showhow) on that defense article? We call this ITAR-contamination, and teach our faculty to just say "no" to using defense articles in their research.

Retroactive claims to background IP seem absurd (unless background IP was somehow not a result of fundamental research). Such claims need to be formally addressed in any agreement you make with industry up front. But be warned, derivatives of the background IP made in a restricted project, or applied to a defense article could well be ITAR-restricted. You may need the advice of both outside export and patent counsel if your IP is derivative of the use or access to the defense article.

If you accept research using or generating defense articles, it may be that the only way that you can officially disentangle your IP from ITAR would be to obtain a commodity jurisdiction determination from the US State Department (120.3&4). You should be aware though, once you start down this road, you must treat the IP as ITAR-restricted until State releases the technology from jurisdiction.

Kay Ellis

I think we need more information to answer this question. You might need a DSP-5, TAA, or DSP-83, depending on what data, item, information or defense service is involved. As David mentioned in his reply, you may need to contact a patent and/or an export controls attorney.

Moderator

What are the top 5 or 10 tips you can give research administrators who do not work with export controls on a daily basis but need some working knowledge of the area?

Kay Ellis

• Watch out for restrictive clauses in contracts that require sponsor approval before publication or limit the dissemination of research results. If you accept those types of restrictions, the fundamental research exclusion will be lost and export control issues will be a consideration. • Check the RFP/solicitation (and of

course the contract) to see if there is an obvious military connotation to the project. Also check to see if there are security requirements or restrictions on the use of foreign nationals on the project and if publication approval is required. Any of these should raise a red flag for export control issues. • Other red flags include projects with foreign sponsors or collaborators, research or programs being conducted outside the U.S., travel to a foreign conference, and shipping or taking items outside the U.S. Keep in mind that although a project might be considered "fundamental research," shipping or taking items out of the U.S. could require a license or the use of a license exception. • Don't forget about visiting scientists to your university! An export control screening should be done to make sure the foreign visitor does not have access to any controlled technologies. • Payments to vendors, especially those outside the U.S. could be an issue, depending on the country and if the entity is on one of the denied lists. • If you work with NDAs and your tech transfer office, be aware that export control issues can exist if there is an exchange of export controlled information between a company and the PI. In fact, there could be a problem in the tech transfer office if there are foreign national employees or students and/or they intend to license export controlled technology to a foreign company. Don't re-invent the wheel! It helps to look at other university websites and see what information is provided. Typically, if you ask permission, a university is more than happy to let you use their material or answer questions you may have.

Jim Casey

David and Kay-On behalf of the International Neighborhood, thank you your expertise today.

David Brady

It's been a pleasure, thanks for all the great questions!

Kay Ellis

Thanks for the questions and please feel free to contact me or David offline!

Moderator

Thanks to Kay and David for sharing their expertise and time with us. We will post this transcript in the neighborhoods within a week. See you at AM51: *One World Connected Through Research*. Good Afternoon.