Deemed Export Compliance at SLAC National Accelerator Center

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Steve Eisner
Export Control Compliance Officer
Stanford University and the SLAC National Accelerator Center
steve.eisner@stanford.edu, 724-7072
Fundamental Research Exclusion (FRE)

- A regulatory export control “safe harbor”
- It’s SLAC/SU Research Policy – See RPH 2.6 and 10.2
  - States that the results of university-generated public domain basic and applied research (“fundamental research”) that are not subject to access or dissemination restrictions are EXCLUDED FROM EXPORT CONTROL REGULATION
  - Only applies to information and software code, NOT to tangible items (equipment, materials, components etc.) or software on media (disks, flash drives).
Fundamental Research Exclusion (2)

- What Are the Implications for SLAC Research?
  - No export license required to share FRE information or software code with foreign persons in the US
  - No export license required to send or transfer FRE information abroad
  - No export license required to transmit or transfer FRE software code overseas when software is made freely available on the web
  - SLAC-developed strong encryption code is the exception
    - See SU encryption page at export.stanford.edu/encryption1.html
When Does the FRE Not Apply i.e.
What is a Regulated* “Export”? 

- Tangible Items sent outside of the US are always regulated 
  - But may not require US government licensing 
- Equipment, components, materials, information or software code that are either proprietary/commercial (not the products of fundamental research) and/or subject to disclosure, dissemination or access restrictions. 
  - Beware NDAs, Commercial Licensing Agreements, Material Transfer Agreements, Purchasing Agreements!

* Means “subject to regulation” for purposes of this presentation
How Do Regulated Exports Take Place?

- Shipment or handcarry of tangible items or goods outside of the US
- Transmission (electronic or digital) or transfer of regulated software code or information outside of the US
- Use or application of regulated technology by, on behalf of, or for the benefit of, any foreign person or entity, either in US or abroad
What is a “Deemed Export”? 

- A transfer or “release” of regulated information or software code to a foreign person in the US
  - This release of information or code is known as a deemed export because the release is “deemed” to be an export to the home country of the foreign person
- Deemed exports can take place through an oral or written disclosure of information or source code, or through visual inspection
  - Examples: Email, telephone, fax, laboratory tours
  - Domestic receipt of commercial items via purchase or loan, whether by vendor or university/lab collaborator
What is a “Deemed Export”? (Cont.)

- To qualify as a deemed export, releases of regulated technology must be:
  - Specific information necessary for the development or production of equipment or software. Technology includes information subject regulation released in the form of technical assistance or technical data.

- Key concept for researchers: The use of regulated equipment or software does not in and of itself constitute a licensable export unless specific controlled development or production technology is released through use, access or observation.
  - EXCEPTION: foreign national use of and access to regulated ITAR defense articles is ALWAYS prohibited without an export license.
Who is a Foreign Person?

- A “foreign person” is anyone who is not a “U.S. person”

- A “U.S. person” is either:
  - A U.S. citizen, lawful permanent resident alien (“Green Card Holder”), refugee, protected political asylee or someone granted temporary residency under amnesty or Special Agricultural Worker provisions; or
  - Any juridical person (i.e. organizations under the laws of the United States or any jurisdiction within the U.S., including foreign branches)
Who is a Foreign Person? (Cont.)

Examples of foreign persons:

- Individuals in the U.S. in Non-Immigrant Status (H-1B, F-1, J-1)

- Any branch of a foreign government

- Any foreign corporation or group that is not incorporated or organized to do business in the U.S.
Summary: Deemed Export “Yellow Flags”

- Equipment, components, materials, information or software code that is either:
  a) Proprietary and not in public domain
  b) Marked/known to be “export controlled” or
  c) Disclosure/access/dissemination restricted

- Conundrum: Proprietary information and equipment may be needed in the conduct of cutting-edge science and engineering research!

- Interactive Tool: Stanford Export Control Decision Tree
  - http://export.stanford.edu/tree
Deemed Export Documentation Requirements

- Export Control Documentation = Foundation of SLAC/SU Export Control Program (export.stanford.edu/forms)
- Forms relevant to deemed export transfers are:
  - The “Bona Fide Employee” exemption certification
  - The “Handling and Use of Export Controlled Information” certification
  - The “University Information” exemption for spacecraft and/or satellite technical data
- Remember, exporting is a privilege that can be taken away!
Useful Links

- Stanford University Export Controls Home Page: http://export.stanford.edu
- Stanford University Export Controls Decision Tree: http://export.stanford.edu/tree/index.html
- Stanford University Export Control Forms: http://export.stanford.edu/forms.html
- Lists of Export Controlled Items, Information and Software: http://export.stanford.edu/lists.html