



Deemed Export Compliance at SLAC National Accelerator Center

Presentation to the SLAC Directorates

Summer 2010

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
 - Can be proprietary and in public domain (i.e. “shareware”)
 - 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>