



RAMP

Research Administrators Management Program



Export Controls – Richard Best

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What are Export Controls?

Federal laws restricting the export of goods and technology currently implemented by the U.S. Department of Commerce through its Export Administration Regulations (**EAR**), the U.S. Department of State through its International Traffic in Arms Regulations (**ITAR**), and the U.S. Department of Treasury through its Office of Foreign Assets Control (**OFAC**).



But We Don't Export!

Yes, we do. Every day.

Huh? What's an Export???

An Export is the shipment or transmission of items outside of the United States. An item is defined as commodities, software (source code), and technology (technical information).



So What's a Controlled Export?

- Transfers of controlled information, including technical information, to persons and entities outside the United States;
- Shipment of controlled physical items, such as scientific equipment, that require export licenses from the U.S. to a foreign country;
- Verbal, written, electronic, and/or visual disclosures of controlled scientific and technical information related to export controlled items to foreign national outside or inside the United States (“deemed exports”).



Wait! *Deemed* Export??

The transfer of technology or source code by any method to a foreign person in the U.S. or abroad is *deemed* to be an export to that individual's country of citizenship.

Methods of transfer include fax, telephone discussions, e-mail, computer data disclosure, face-to-face discussions, training sessions, or facility tours which involve visual inspections of controlled technology.

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Who is a “Foreign Person”?

- Any person who is not a US citizen or lawful permanent resident of the United States (green card holder).
- Any foreign corporation or other entity or group that is not incorporated or organized to do business in the United States
- Any foreign government.



What is controlled?

- EAR
 - **Hundreds of commercial items that may also be used for military or terrorist applications (dual use)...**
 - 0—Nuclear Materials, Facilities and Equipment, and Miscellaneous
 - 1—Materials, Chemicals, Microorganisms, and Toxins
 - 2—Materials Processing
 - 3—Electronics
 - 4—Computers
 - 5—Telecommunications and Information Security
 - 6—Lasers and Sensors
 - 7—Navigation and Avionics
 - 8—Marine
 - 9—Propulsion Systems, Space Vehicles, and Related Equipment



What is controlled?

- International Traffic in Arms Regulations (ITAR) deals with items specifically designed or modified for military applications or specifically designed or modified for use with a military system.
- Weapons systems, unmanned vehicles, detection systems, crypto systems
 - Defense Articles
 - Defense Services



What is controlled?

- **Office of Foreign Asset Control (OFAC)** administers and enforces programs based on U.S. foreign policy and national security goals that (1) Regulate the transfer of items or services to embargoed nations; (2) Impose trade sanctions and trade and travel embargoes aimed at controlling terrorism, drug trafficking, and other illegal activities; and (3) Restrict payments or providing anything of value to nationals of sanctioned countries and to specific foreign entities and individuals. The following countries/areas are currently on OFAC's sanctions list: Balkans, Belarus, Burma, Cote d'Ivoire (Ivory Coast), Cuba, Democratic Republic of Congo, Iran, Iraq, Liberia, North Korea, Sudan, Syria, and Zimbabwe.



What Situations Should Concern Us?

- Shipping controlled materials, supplies, or samples to other countries
- Sharing information disclosed under confidentiality agreements with foreign persons, including students, staff, and faculty
- Carrying a laptop computer containing controlled information or encryption software on foreign travel



What Situations Should Concern Us?

- Exchanging unpublished research results or data with foreign persons located overseas or in the US by any means, including e-mail, file transfers, etc.
- Training a foreign person in the design, development, use, or testing of controlled equipment
- Carrying controlled materials, samples, or GPS equipment in checked or carry-on luggage on foreign travel
- Conducting research under a grant or any contractual agreement that restricts the participation of foreign nationals or requires approval to publish results



Good News

- No license is required for export of:
 - (1) Information arising during or resulting from fundamental research.
 - (2) Data released orally or visually at open conferences, lectures, other media open to the public.
 - (3) Publications that may be purchased without restrictions at are readily available at public libraries.
 - (4) Patents available at any patent office.
 - (5) Dissemination of educational information by instruction and associated laboratories in academic institutions.



Fundamental Research

- Fundamental research is ...

(8) Through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific

U.S. Government access and dissemination controls. University research will not be considered fundamental research if:

(i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or

(ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

(b) [Reserved]



More Good News

- The Fundamental Research Exclusion might get us out of needing an export license...
- ..and the UNC System Publication Policy protects academic freedom AND the Fundamental Research Exclusion.
- ***BUT...*** A “Side Deal” made between faculty and sponsor destroys the exclusion!



More Good News

Overall, about 95% of what NCSU does every day is not impacted by the Export Control laws.

While the risk of a serious violation is minimal, the penalties are severe.



What should I do?

- Be aware. But don't go overboard!
- Review the university web site on Export Controls
- <http://www.ncsu.edu/sparcs/export>
- CALL and ask ... BEFORE you Export!
- All inquiries are documented to demonstrate a good faith effort to comply with the law.



Real Cases

In September, 2008, Dr. J. Reece Roth of UT-Knoxville was convicted on 18 counts of conspiracy, export control violations, and wire fraud. Roth utilized foreign nationals from Iran and the PRC to work on a controlled Air Force-sponsored SBIR research project without prior authorization or required licenses. He faces a maximum sentence of up to **150** years in prison and a **\$1.5 Million** fine.



His company has filed for bankruptcy.

Roth's business partner and former post-doc also pleaded guilty to conspiracy in April and has been cooperating with authorities. His sentencing was scheduled for July but has been delayed.

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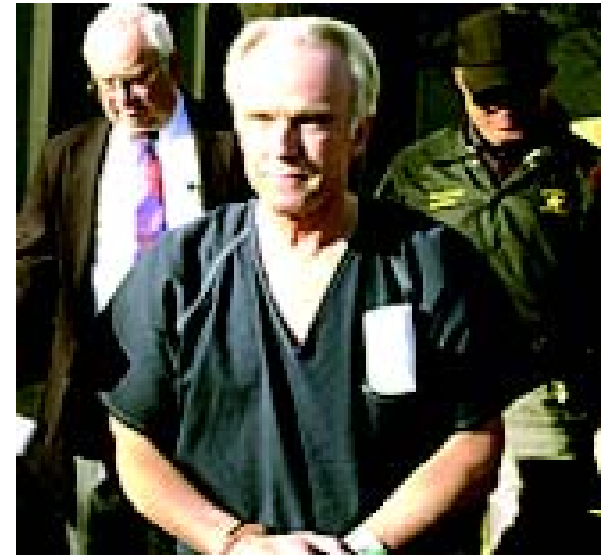


Real Cases

In March 2004, Dr. Tom Butler of Texas Tech University was sentenced to **2 years** imprisonment, 3 years supervised release, and a **\$50,000 fine**.

Shipped vials of bubonic plague bacteria to Tanzania.

Claimed the vials were either lost or stolen.



Real Cases

John H. Carrington, former NC State Senator (R-Wake) and SIRCHIE FINGERPRINTING LABS, INC., in Youngsville, North Carolina.

CARRINGTON paid an **\$850,000** fine for exporting crime control equipment to the People's Republic of China and his export privileges were suspended for five years.

SIRCHIE agreed to pay civil penalties of **\$400,000** for unauthorized exportation and submit to denial of their export privileges for a period of five years.



Real Cases

The U.S. subsidiary of Japan's Allied Telesis K.K., **Allied Telesis Labs Inc.**, based on NC State University's Centennial Campus, pleaded guilty in March, 2008 to conspiracy.

Employees at ATL conspired to obtain and execute a \$95 million contract with the Iranian Information Technology Company to rebuild and upgrade the telecommunications systems of approximately 20 Iranian cities, including Tehran. Preparation for the execution of the contract went as far as the manufacture of approximately \$2 million worth components at ATKK facilities in Singapore **developed from U.S.-origin technology**. The high-speed telecommunication equipment was to be shipped from Singapore to Iran via the United Arab Emirates.

ATL was sentenced to two years probation and a **\$500,000** fine in August, 2008.

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Avoid Trouble



Matt Ronning outside of Bangkok Hyatt Regency

