Export Control Overview

THE UNIVERSITY of NEW MEXICO

April 6, 2018
Export Control: Why?

• Why does the U.S. have Export Control laws?
  – Prevent the theft of our technologies.
• And....prevent the theft of U.S. information!
  – Publish or PERISH!
  – If a person’s information is stolen they cannot publish; they cannot benefit from their own work.
Export Controlled Information: What?

• What type of information is under export control restrictions by the U.S. government?
  – The U.S. government regulates information, technology, and software that are **STRATEGICALLY IMPORTANT**
  
    • The goal is to promote national security interests and foreign policy objectives
      – Export Control restrictions may be seen as POLITICAL.
        » Much heavier restrictions on Cuba than China
Export Control: What?

• Importantly to UNM the U.S. government also regulates the release of certain information to foreign nationals here in the U.S.
  • This is called a “Deemed Export”
  • This means a foreign national at UNM might not be able work on some contracts – even though they are here legally!
Most information is not controlled by the U.S. Government

UNCLASSIFIED
No Export Restrictions

UNCLASSIFIED: Dual Use
Export Administration Regulations (EAR)

UNCLASSIFIED: Military Use
International Traffic in Arms Regulations (ITAR)

Controlled Unclassified Information (CUI)

UNCLASSIFIED

CLASSIFIED
## Export Controlled Information vs. Classified Information

<table>
<thead>
<tr>
<th><strong>EXPORT CONTROLLED INFORMATION</strong></th>
<th><strong>CLASSIFIED INFORMATION</strong></th>
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<tbody>
<tr>
<td>Loosely regulated by many different laws and regulations (EAR, ITAR, OFAC)</td>
<td>Highly Controlled</td>
</tr>
<tr>
<td><strong>Strategically important</strong> to US interests.</td>
<td>Release will cause DAMAGE to <strong>National Security</strong></td>
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<tr>
<td><strong>U.S. Persons</strong> may access. This includes legal permanent residents.</td>
<td><strong>U.S. Citizens</strong> with a government granted security clearance <strong>ONLY</strong></td>
</tr>
<tr>
<td>Includes <strong>privately</strong> created and owned information</td>
<td>Classified information is always <strong>owned</strong> by the U.S. government</td>
</tr>
<tr>
<td><strong>Targeted</strong> by US adversaries</td>
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Controlled Technologies

- Technologies that are often controlled:
  - Semiconductors
  - Lasers, Sensors, & Optics
  - Robotics
  - UAV’s (Unmanned Aerial Vehicles)
  - Information Systems
  - Navigation Systems
  - Aeronautics
  - Marine and Space Systems
  - Cryptography/Encryption technology
  - Nuclear
How does UNM handle Export Controlled information?

• The Industrial Security Department (ISD) works closely with the Office of Sponsored Projects (OSP) and Purchasing to ensure compliance.

• If a contract is identified that requires export control restrictions the Export Control Officer (ECO) will work with the PI to implement a Technology Control Plan (TCP).
  – The policies and procedures in the TCP **must** be followed by the persons approved to work on the project.
What is in a TCP?

• The TCP outlines:
  – Who may work on the project
    • US Person status must be verified by the ECO
  – What information is being protected
    • The contractual information is provided
  – Where they may work on the project
    • Specific locations on campus must be identified
  – Why the information is being protected
    • The regulations will be listed
  – How the project’s information will be handled and protected
    • Restrictions on information technology are outlined (password protected, encryption, user access, etc.)
Technology Control Plans

• If the Export Control Officer (ECO) determines that the contract requires a Technology Control Plan (TCP) to prevent export of the item(s) or information they will generate a TCP with the PI.

• Monies may only be released for performance on the contract when the ECO notifies OSP the TCP has been fully executed.
Export Control: Terms to Watch For

– Export Control (generate/receive)
  • Export Control Warning Banner for technical documents
– DoD Distribution Statements (B, C, D, E, F) for technical documents
  • Distribution A = Public Release
– Controlled Unclassified Information (CUI)
– Safeguarding of Unclassified Controlled Technical Information-DFARS Clause 252.204-7012
– DD Form 2345: Military Critical Technical Data Agreement
– Technology Control Plan (TCP)
– International Travel
– Participation Restrictions
  • Publication “Approval”/Trade Secrets
  • Foreign nationals
  • NDAs

If you see any of these terms notify the ECO:
Krista Laybourne 7-2968
Classified Information: Terms to Watch For

• Terms that indicate project involves Classified Information:
  – DD Form 254: Contract Security Classification Specifications
  – Security Clearances
  – NISPOM
  – Cleared Defense Contractor (CDC)
  – FOUO or CUI
  – OPSEC Plan
  – COMSEC
  – International Travel

If you see any of these terms notify the FSO:
Deb Kuidis: 7-2058

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Exemptions to Export Control Regulations

• Universities have important **exemptions** to the U.S. export control regulations:
  – Fundamental Research
    • Information that is “ordinarily published”
  – Educational Instruction Exclusion
    • Information released “in academic catalog-listed courses”
  – Public Domain
    • Information that is “published and generally available to the public”

• Of course there are exceptions to these exemptions, such as sanctioned counties
  – Example – we cannot teach many STEM courses to Iranian graduate students.
  – Always ask for a review by the ECO!
Export Control: Violation Consequences

• The U.S. has several laws that govern the export of goods, and it can be complicated...

• If UNM violates any of these laws the punishments can be severe!
  – Up to $1 million per violation! 20 years in jail!
  – Maybe even more important:
    • Lose the ability to compete for Federal contracts over $25,000!
    • Or even have our Export Privileges removed!

UNM’s reputation can be severely damaged!
Academia Export Control Violations

THOMAS BUTLER [Export Control Violations]
- Texas Tech University; Professor, a leading researcher on plague
- Illegally transporting biohazards to Tanzania and not reporting the holdings to Texas Tech
- Transported plague samples from the Tanzania to the U.S.
- Charged with 69 felonies and faces more than 400 years in jail

REECE ROTH [Export Control Violations]
- Spied for China (2004-2007)
- University of Tennessee; Professor, Electrical Engineering and Computers
- Honorary professorship at Shenzhen Campus, Tsinghua University
- Provided export controlled data to two Chinese students
- 1 Jul 2009: sentenced to 48 months in prison, 2 years supervision

DANIEL SHERMAN [Export Control Violations]
- Co-conspirator with Reece Roth; spied for China (2004-2006)
- Linked to University of Tennessee’s Plasma Sciences Laboratory
- Conspired with Reece to illegally export data via two Chinese students
- 10 Aug 2009: Sentenced to 14 months in prison
Contact Information

Krista Laybourne
Export Control Officer (ECO)
Main Campus
email: export@unm.edu or klaybourne@unm.edu
phone: 505/277-2968

Deb Kuidis
Manager of Industrial Security
Facility Security Officer (FSO)
email: dkuidis@unm.edu
phone: 505/277-2058

Without the assistance of everyone at UNM the FSO and ECO cannot ensure UNM’s compliance with the complicated Export Control laws!

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Back-up Slides
Documents Needed for Export Control Review

- Completed Export Control Questions in CayuseSP
- Completed ECES Document
- Complete Award Document
- Full Proposal
- Budget
- Budget Justification
- Correspondence
- Statement of Work
- Any associated unfunded agreements

All documents should be uploaded into CayuseSP prior to the project being sent to for an export review.

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But wait there is more...

- Material Transfer Agreements (MTAs)
- Non-Disclosure Agreements (NDAs)

Note – with MTAs and NDAs you need to notify the PI of any special requirements they are agreeing to!