

Brad Graper

Edgewood Chemical Biological Center, Aberdeen Proving Ground, MD

WHY IS THIS IMPORTANT?

Export Control is essential to combat foreign targeting of the U.S. science and technology base. This targeting is driven by purposeful collection, tasking, and exploitation by foreign nations who employ the full reach of their intelligence capabilities to that end.

WHAT ARE THE THREATS?

- Dedicated “collaborative” S&T programs whose primary task is acquisition of US technology;
- Foreign target lists of technologies and specific strategies for acquisition;
- Arrangements to share technology that has been legally or illegally acquired with other countries’ intelligence and security services, even when the sharing of that technology is itself illegal;
- Programs that provide funding for students and businesspeople who assist in collecting intelligence information; and
- Establishment of front companies/US subsidiaries whose primary task is acquisition of US technology.

THE LAW SAYS....

No **defense articles** or **defense services** may be exported or imported without the corresponding license for export or import. Exception: no license is required for the US Government carrying out foreign assistance or sales program **authorized by law** and subject to the control of the President.

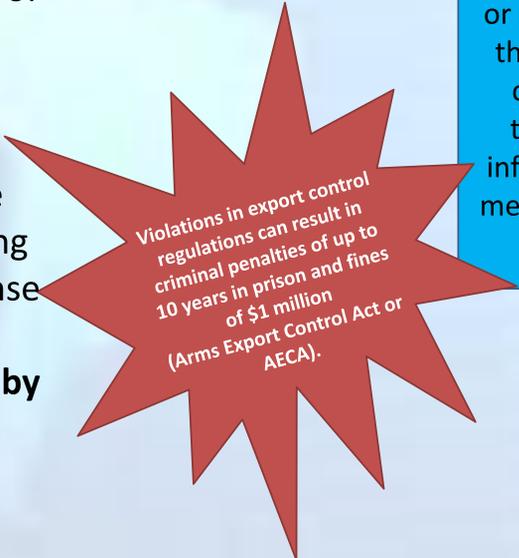
Approved for Public Release

To “Export” is...
 To disclose (verbally or visually) or transfer any **DEFENSE ARTICLE** or **TECHNICAL DATA** to a foreign person, or to perform a **DEFENSE SERVICE**, either within or outside the United States, on behalf of (or to benefit) a foreign person or organization

DEFENSE ARTICLES
 Items **specifically designed**, developed, configured, adapted, or modified **for military application** with significant military or intelligence applicability, that do not have predominant civil application; or
 Items without performance equivalent (defined by form, fit, and function) to those of an article or service used for civil application
End-use is not a factor in determining jurisdiction.

DEFENSE SERVICE
Furnishing of assistance (including training) to foreign persons, whether within or outside the United States, toward design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of **defense articles**; or
 Providing foreign persons with **technical data** controlled under this subchapter, either within or outside the United States; or
 Military training of foreign persons, units, or forces; regular and irregular; formal or informal, within or outside the United States, including correspondence courses, technical, educational, or information publications and media of all kinds and military advice.

TECHNICAL DATA
Information other than software that is **required for** the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of **defense articles**, including blueprints, drawings, photographs, plans, instructions or documentation; or
 Classified information relating to **defense articles** and **defense services**; or
 Information covered by an invention secrecy order; or
 Software directly related to **defense articles** (design, logic flow, algorithms, programs, operating systems, and support software for implementation, test, operation, diagnosis and repair)
 Does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.



WHAT ABOUT BASIC RESEARCH AND PUBLIC RELEASE?

Public availability is a **precondition** for determining whether technology is controlled. Public availability is **not** an encouragement to release technical data prematurely with the hope of qualifying for an exception after the fact.

Public disclosure of controlled technical data does not remove it from ITAR control, and would ordinarily constitute an export control violation. Also, the provision of **defense services** using exclusively public domain information **IS** controlled by the ITAR.

To Determine What Is Controlled, Ask Yourself:
“Am I designing or developing this project to answer a military need?”

IF THE ANSWER IS YES, PROTECT YOURSELF!

- **Don’t** structure, manage, or execute a basic research award on export controlled technology. Remember: If you fail to put in the contract-appropriate restrictions on export controlled technologies, you are responsible for the export violation.
- **Don’t** publish controlled technical data as publicly releasable.
- **Don’t** give controlled unclassified technical data to a foreign partner unless there is a valid DEA, and the FDO has approved the transfer.