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EXPORT CONTROL

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Guidance on Encryption and Export Control

Encryption software or systems that include encryption may be controlled under the Export Control regulations. This guidance is to assist you in determining whether encryption products that you are using or developing are affected by Export Controls. For further information, feel free to contact Bethany Nelson or Tom Demke in the Export Control Office.

What encryption products are not covered by export control regulations?

- Transfers of encryption hardware in the United States are not export controlled.
- Open source encryption software is, by itself, exempted from controls under public domain. However, if it is used in another program, the fact that it is open source no longer matters and classification may be required.
- If the primary function of an item is not computing, communications, networking, or information security it is not controlled as an encrypted item.
- Even controlled encryption products are eligible for TMP or BAG exceptions.
- Mass market encryption items can be used anywhere except Sudan, Syria, Iran and North Korea unless its key length exceeds 64 bits symmetric or 768 bits asymmetric.
- Mass market means it is being sold to the public without restriction, from stock at retail-selling points, the cryptographic function cannot be easily changed by the user, it's designed for installation by the user without further substantial support by the supplier, when necessary, details of the items are accessible and will be provided upon request to ascertain compliance.
- Medical end use devices that contain encryption products are not encryption items.
- Object code and source code are dealt with differently by the EAR. Please understand which one you are referring to.

When should I look at export controls when dealing with encryption products?

Any encryption product that falls under category 5, Part 2 of the Commerce Control List. This includes:

- Cross-domain security.
- Surreptitious intrusion.
- Encryption products based upon:
 - Algorithms like Advanced Encryption Standards(AES), Rivest, Shamir and Adleman(RSA), Data Encryption Standard(DES) and Elliptic Curve Cryptography
 - Protocols like IPsec, Security Socket Layer(SSL) and WiFi(IEEE802.11)/WiMAX(IEEE 802.16)
- Technology, software or anything that contributes to the development, production of encryption or cryptography.
- Any time the encryption product is going to be shipped to or from a person from Iran, Sudan, Syria or North Korea, or a person from one of those countries will have access to it.

- Whenever modifying the source code of an existing encryption product or developing a new encryption product.

Exceptions

There are several exceptions that can be used when utilizing encryption equipment and programs:

ENC

- If someone is working in the United States, they will be eligible for an ENC exception when dealing with most encryption products.
- Please note that even with this exception, a report may need to be filed with the Department of Commerce.

Tools of the trade (TMP)

- This is used when someone is taking UW equipment out of the country temporarily (i.e. a business trip). It must remain under the person's "effective control" at all times. Please note, a locked hotel room is not considered effective control, though a locked safe is.
- The item must return with the user.

BAG

- This exception allows you to take personal items out of the country temporarily.

References

15CFR 774, Supplement No. 1 – Commerce Control List:

- ECCN 5A002 – "Information security" systems, equipment and components
- ECCN 5B002 – "Information Security" test, inspection and "production" equipment
- ECCN 5D002 – "Software"
- ECCN 5E002 – "Technology"

License Exceptions:

- 15CFR 740.17 – Encryption Commodities, Software and Technology (ENC)
- 15CFR 740.9 – Temporary Imports, Exports and Reexports (TMP)
- 15CFR 740.14 – Baggage (BAG)

For any further questions please feel free to e-mail exportcontrol@grad.wisc.edu or call Bethany Nelson at 608 261-1128.