Export Controls
The U.S. government restricts the release of the following to foreign nationals in the U.S. and abroad through export regulation and embargoes:

- critical technologies,
- technical data/software code,
- equipment,
- chemicals/biological materials, and
- other materials, information and services
Export licenses are required prior to providing foreign nationals access to controlled technologies or materials.
TRENDS

Since 9/11, export controls are:

• Increasingly used as anti-terrorism tools;
• Increasingly focused on universities and on enforcement; and
• Increasingly focused on life sciences and biological materials.
REGULATIONS

1. State Dept - International Traffic in Arms Regulations (ITAR)
   - covers military- and space- related technologies

2. Commerce Dept - Export Administration Act (EAR)
   - covers commercial technologies
   - covers “dual use” technologies

3. Treasury Dept - Office of Assets Control (OFAC)
   - administers sanctions that apply to certain nations
   - regulates transfer of assets or services to those countries
   - may prohibit travel/other activities with sanctioned countries & persons even when exclusions to EAR/ITAR apply

4. Others – PATRIOT Act, Energy Dept
What is an “Export”?

- Shipment of controlled item or good
- Transmission (electronic or digital) of controlled item or information related to controlled item
- Release or disclosure (including verbal or visual) of any controlled technology, software or technical data, either in U.S. or abroad
- Use or application of controlled technology on behalf of, or for the benefit of, any foreign person or entity, either in U.S. or abroad
“Deemed export”

An export of technology or source code when released to a foreign national within the U.S.

- Release is making technology or software available to foreign nationals, either visually, orally or by practice or application under guidance of persons with knowledge of the technology or software.
- Includes “use technology” – information on the operation, installation, maintenance, repair, overhaul, and refurbishing of controlled equipment.
Foreign National/Entity

Foreign persons
- Not permanent lawful U.S. residents. Does not include:
  - Green Card
  - U.S. Citizenship
  - Political Asylum

Foreign Entity
- Business or other entity not incorporated in the U.S. and foreign governments
Licensing

- **Most** research and teaching on **campus in U.S.** can qualify for exclusions and/or exemptions (due to proprietary restrictions, sponsored research activities often require licenses).
Exclusions applicable to universities

- FUNDAMENTAL RESEARCH
- PUBLIC DOMAIN
- EDUCATIONAL INFORMATION
Fundamental Research Exclusion

You may not need a license if...

- **Information** (note: not items or materials) resulting from or arising during **basic and applied research** in science and engineering and
- Conducted at an **accredited institution** of “higher education” (EAR) or “higher learning” (ITAR) and
- Located in the **U.S.** (doesn’t apply abroad) and
- Where the resulting information is **ordinarily published** and shared broadly in the scientific community and
- Is **not subject to proprietary or U.S. government publication or access dissemination controls**
  - e.g. a restriction on foreign national participation

(22 C.F.R. 120.11(8); 15 C.F.R. 734.8(a) and (b))
Public Domain\textsuperscript{1} and Publicly Available\textsuperscript{2} Exclusions

You may not need a license if...

- Information is \textit{already published},
- through specific means found in:
  - libraries open to the public
  - unrestricted subscriptions, newsstands, bookstores
  - published patent information
  - conferences, meetings, seminars and trade shows open to the public
  - websites accessible to the public for free and without the host’s knowledge or control of who visits.

1. \textit{ITAR}
2. \textit{EAR}
Educational Information Exclusion

- ITAR (State) Educational Information Exclusion focuses on what is taught. For example,
  - general science, math and engineering commonly taught at U.S. schools and universities are excluded from ITAR controls.
- EAR (Commerce) Educational Information Exclusion focuses on where it’s taught. For example,
  - information conveyed in courses listed in course catalogues is excluded from EAR controls.
  - there is no exclusion for encrypted software
Licensing

You need a license if...

- Controlled research equipment, biological samples, or computers with research data or encrypted or proprietary software are hand-carried or shipped abroad.
  
  OR

- There is reason to believe the recipient/end-user is violating export laws.
  
  OR

- You intend to share sponsor’s controlled proprietary information with a foreign national or anyone abroad.¹
  
  OR

¹This information may be the subject of a NDA or an MTA or non-disclosure language may be included in a sponsored research agreement
Licensing

You need a license if...

- GTRI
  
  OR

- Defense, military, weapons, space or other dual-use technologies
  
  OR

- Attending conference with limited registration
  
  OR

- Exclusions don’t apply
  
  OR

- Providing anything of value to a sanctioned country/entity/individual from Cuba, Iran, Iraq, Libya, N.Korea, Burma, Liberia, Sudan, Syria, Zimbabwe
Licensing

When exceptions don’t apply … or dealing with sanctioned country/entity…

- a license must be obtained *BEFORE* any deemed export, export or re-export, and
- *PRIOR TO* undertaking the activity, including
- *BEFORE* transfer of information sufficient to develop research proposals.
- OLA coordinates licenses.
OFAC (Treasury Dept, Office of Foreign Assets Control)

Even when exclusions to EAR/ITAR apply…

- OFAC may prohibit travel and other activities with sanctioned countries and individuals

- Regulates the transfer of items, assets, and services of value to sanctioned nations, including:
  
  *Cuba, Iran, Iraq, Libya, N.Korea, Burma, Liberia, Sudan, Syria, Zimbabwe*

- Prohibits payments/providing value to nationals of sanctioned countries and specified entities/individuals
Export Control issues challenging universities

The U.S. government is considering changes that may further restrict activities at research universities.

- Reports (2003) to Congress focus on university compliance with deemed exports.

In 2003, the Department of Commerce IG found:

*While universities have assumed that use of controlled equipment for fundamental research is exempt under the EAR fundamental research exemption, Commerce believes that “technology relating to controlled equipment—regardless of how use is defined—is subject to the deemed export provisions (and the requirement to license foreign nationals having access to that equipment) even if the research being conducted with that equipment is fundamental.”*
Export Control issues challenging universities, con’t.

Examples of proposed changes:
- “Use technology” interpreted more broadly.
- “Publicly available” defined by actual publication rather than intended for publication.
- Deemed export policy to take into account:
  - all the nationalities a foreign national has ever maintained, and
  - require employers to obtain export licenses based on country of origin regardless of individual’s most recent citizenship/residency status.
- Unique badging for foreign persons
- Initial and periodic training on export compliance controls for those employees who have access to export-controlled information and technology
Far Reaching Impact of Export Controls on Universities – Beyond Research

University departments and export activities that warrant attention:

- Laboratories
- HR
- Security
- Library Sciences
Review Process at GT

For **sponsored** research:

- PI completes export questionnaire.
- Contracting Officer contacts OLA.
- OLA coordinates review and determines if license required. If license is required, OLA files application. Unit approval/concurrence required (School chair & dean/lab director, VP & GTRI Director)

For **other university activities**:

- Faculty/scientist/administrator initiates OLA review

Research Security assists with general access controls.
Review Process at GT, con’t

For foreign personnel and visitors:

- Faculty/scientist/administrator contacts OHR.
- OHR contacts OLA and Homeland Security regarding employment of foreign nationals or visitors.
- The hiring department completes export questionnaire.
Moving forward...

- Additional training will be available from OSP Fall 2005.

- Procedures are being reviewed to determine regulatory requirements relating to travel, access to specialized equipment and foreign campus issues.

- Continued efforts by OLA and OSP to address proposed rule changes.
Violations & Penalties

Failure to comply with U.S. export control rules can result in severe penalties both for the individual and the entity

- **Criminal Penalties**\(^1\)
  - Fines: \(< $1M\) or \(5X\) export value
  - Jail: 10 years in prison

- **Civil**
  - Fines: \($12K - $500K\) and forfeitures

- Loss of Export Privileges
- Negative publicity

---

1. ITAR, EAR and OFAC all impose criminal and civil penalties although the ranges of the penalties vary.