

UC Davis Export Controls: Do's and Don'ts

Shipping Items Out of the United States

- **Do NOT** ship any item outside the U. S. without first checking the ITAR (International Traffic in Arms Regulations, State Department) and EAR (Export Administration Regulations, Commerce Department) lists to determine if the item (including a commodity, software or technology) is controlled.
- **Do** contact the Office of Research for assistance in classifying items, securing an export license or to verify license exception prior to shipment. If a license is not required, maintain records of the determination process.
- **Do** train your research staff regarding the shipment of controlled commodities, software and technology.
- **Do** identify projects with "deliverables" to foreign countries at the proposal/award stage.
- **Do** determine licensing requirements early and assist the Office of Research in securing licenses - UC has never been denied a license, however, it can be a lengthy process.

Technical Data Exchange

- **Do NOT** enter into proprietary data agreements where the commercial entity includes an export control notice, or restricts dissemination to others on the basis of nationality or citizenship.
- **Do NOT** sign the DD2345, Militarily Critical Technical Data Agreement, as a condition of attending a conference or receiving materials from the government.
- **Do NOT** accept data from a commercial contractor that is marked "export controlled."
- **Do** make sure that technical data about export controlled commodities qualifies as "public domain" (ITAR term - International Traffic in Arms Regulations, State Department) or "publicly available" (EAR term - Export Administration Regulations, Commerce Department), by any of the following means:
 - Published information: in journals, books, open websites, or other media available to a community of persons interested in the subject; readily available at university libraries (See EAR 734, Supplement 1, Questions A (1) - A (6)).
 - Published through release at open conferences and meetings.
 - Educational information released by instruction in catalog courses and associated teaching laboratories of the University.
 - Fundamental research where the resulting information is ordinarily published and shared broadly within the scientific community and where no contractual controls have been accepted.
- **Do** review any Confidentiality/Non-Disclosure Agreements to insure that UC and you are not assuming the burden of restricting dissemination based on citizenship status or securing export licenses.

Software

- **Do NOT** agree to:
- software license restrictions on access to, or use of, the software by nationals of certain countries, particularly those from Country Group D ([See Supplement 1, Part 740](#)).
- restrictions on dissemination of the "direct product" of the software.
- **Do**, whenever possible, make University created software "publicly available."
- **Do** "publish" software and technical data, that is, make it available for general distribution either for free or at a price that does not exceed the cost of reproduction and distribution.
- If the source code of a software program is publicly available, then the machine readable code compiled from the source code is software that is publicly available and, therefore, not subject to the EAR ([See EAR 734, Supplement 1, Question G\(1\)](#)).
- The cost of reproduction and distribution may include variable and fixed allocations of overhead and normal profit for the reproduction and distribution functions but may not include recovery for development, design, or acquisition, such that the provider does not receive a fee for the inherent value of the software.
- **Do** ask the software provider to identify the ECCN number that controls the software, and research the applicability of control, given the possibility that the software provider is being overly cautious and the software is not, in fact, controlled.

Encryption Software: Special Rules

- **Do** note that encryption software controlled under ECCN 5D002 for Encryption Items (EI) reasons on the Commerce Control List and mass market encryption software with symmetric key length exceeding 64-bits controlled under ECCN 5D002 remain subject to EAR.
- **Do**, also, note that encryption software controlled under 5D002 can be exported under license exception TSU (Technology & Software Unrestricted) if it is made publicly available. The source code and corresponding object code resulting from compiling such source code may be posted on the internet where it may be downloaded by anyone, as long as the Department of Commerce is notified of the internet location or is provided a copy of the source code (See EAR, Part 740.13).

Accepting a Third Party's Controlled Items or Data

- **Do** perform a careful review of such data before accepting it. Even though the conduct, products, and results of fundamental research may proceed openly and be shared freely with foreign nationals in the United States without concern for deemed export restrictions, export-controlled information or materials provided by a third party may not be openly shared with foreign nationals, even though those individuals may be important contributors to the performance of the fundamental research. **For example**, a vendor or a research partner may have to disclose the heat and vibration tolerances on a piece of export-controlled hardware being provided for use in carrying out a fundamental research experiment. Information about export-controlled equipment is itself export-controlled. It carries with it export control requirements that must be honored by the researcher who agrees to be a recipient of such information.

Before a researcher decides to accept such information, he or she must review the conditions of the [University of California's policies on publication of research results](#) and [restrictions on citizenship](#), to ensure conformance with these policies.