University Export Controls and National Security

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Impact of Export Controls on Higher Education and Scientific Institutions
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History

- ITAR is created (1976-1984)
- NSDD 189 Policy (1985)
- Deemed Export Advisory Committee (2008)
- Executive Order 13556 Controlled Unclassified Information (2010)
Corson Report on Scientific Communication and National Security

- NAS government/academia panel generated the “Corson Report”

- Addressed higher education’s concerns regarding use of export control regimes to restrict scientific communication- with emphasis on ITAR and EAR

- Corson Report led to NSDD 189 and Fundamental Research exclusions
Corson Report on Scientific Communication and National Security

- Recommended no restrictions on access and communications in any area of university research unless all of the following are met:
  - Technology developing rapidly, time from basic science to application is short;
  - Technology has identifiable direct military applications, or is dual use and involves processes or production-related techniques;
  - Transfer of technology would give USSR significant near-term military benefit;
  - The US is the only source of information about the technology.

- The Panel recommended that if government-supported research demonstrably will lead to military products in a short time, classification should be considered.

- The provisions of EAR and ITAR should not be invoked to deal with gray areas in government-funded university research.
National Security Decision Directive 189

- Government/Higher Education accord, not a statute

- Defines fundamental research;

- And what controls should be used “where the national security requires control, the mechanism for control of information generated during federally-funded fundamental research in science, technology and engineering at colleges, universities and laboratories” - is classification.
Commerce and Defense Department Export Control Inspector General Reports

- Commerce: Deemed Export Controls May Not Stop Transfer of Sensitive Technology to Foreign Nationals in the U.S

- Defense: Export-Controlled Technology at Contractor, University, and Federally Funded Research and Development Center Facilities

- First reports to evaluate export compliance at universities.

- Commerce report raised questions about the scope of fundamental research and how it was being applied at universities
“If you guard your pencils as zealously as you guard your diamonds, you will end up with a lot fewer diamonds and a lot more pencils.”

- Secretary Gates, DEAC Chair

- “Replace the current Deemed Export compliance process with a simplified new system that will both enhance national/homeland security and strengthen America’s economic competitiveness.”

- “Extend the educational outreach program currently being conducted by BIS to assure that all parties potentially subject to compliance with the Deemed Export rules are familiar with those rules. The use of interactive, web-based, self-teaching programs could be particularly valuable in this regard.”
E.O. 12256 Classified National Security Information

(1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.
Export Administration Act

- Not renewed (1979)

- Enabled under IEEPA, renewed annually by Executive Order

NATIONAL SECURITY CONTROLS

- Section (3)(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—
  (A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

- Lots of references to adverse effects on the “national security interests” of the U.S.
Arms Export Control Act (1976 as amended)

- Refers to “national security interests” generally

- Refers to “national security” when classified information or materials are involved
E.O. 13556 Controlled Unclassified Information

- Justification for control is made on the basis in law, regulation, or Government-wide policy for safeguarding or dissemination controls.

- Makes no reference to “National Security“
Questions?