

Managing Export Compliance at U.S. Universities

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Many agencies regulate export controls in the U.S.

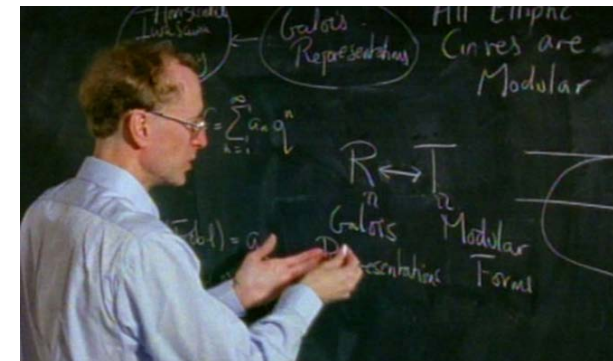


Federal Agencies and Regulations

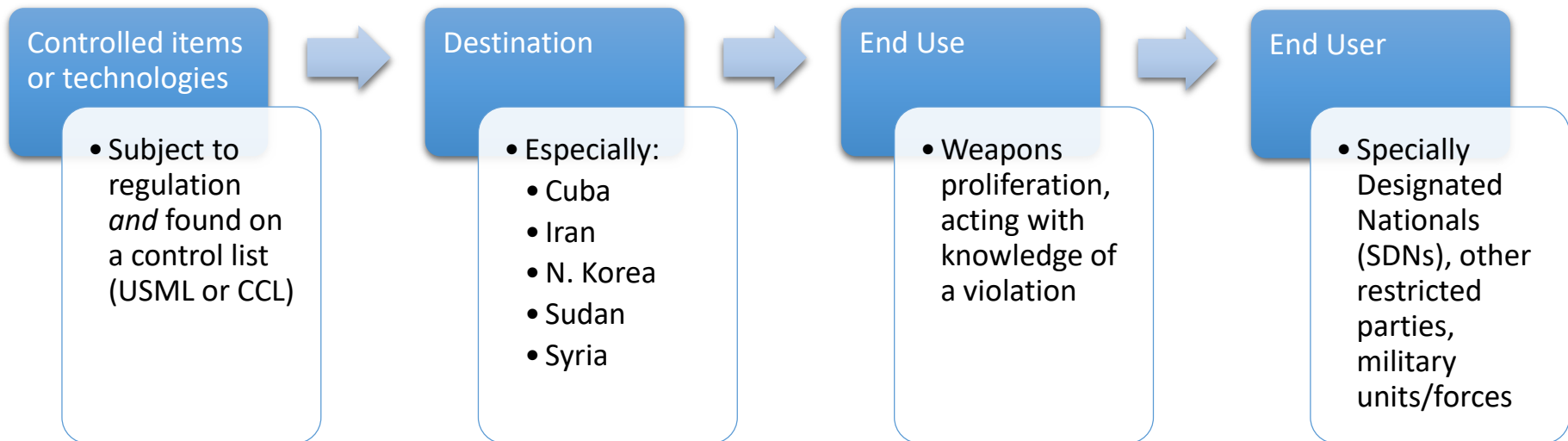
Federal Agency	Enforcing Authority	Regulation	Controlled Items and Activities	Area of Oversight
Department of State	Directorate of Defense Trade Controls (DDTC)	International Traffic in Arms Regulations (ITAR)	U.S. Munitions List (USML) 22 CFR §§ 120-130	Technologies with inherently military properties; defense articles and defense services
Department of Commerce	Bureau of Industry and Security (BIS)	Export Administration Regulations (EAR)	Commerce Control List (CCL) 15 CFR §§ 730-774	“Dual use” items; most commercial items, certain military items not controlled under the ITAR
Department of the Treasury	Office of Foreign Assets Control (OFAC)	OFAC regulations	Embargoes and sanctioned countries; restricted individuals and entities 31 CFR §§ 500-599	Prohibits transactions of value with, and/or providing services to, certain countries and individuals
Department of Energy	National Nuclear security Administration (NNSA)	DOE regulations	10 CFR § 810	Assistance to foreign nuclear activities

What is an Export ?

- Shipment of goods out of the United States
 - U.S. origin materials to another country
 - U.S. origin materials from one foreign country to another, or from a foreign country back to the U.S. (re-export)
- Electronic transmission out of the United States
 - Any media (phone, fax, email, chat programs, cloud)
- Release of technology to a foreign national in the United States (deemed export)
 - Lab tour, presentations and discussions at meetings, etc.



How does something become “export controlled”?



Fundamental Research

“**Fundamental Research** means basic and applied research in science and engineering, the **results** of which ordinarily are **published** and shared broadly within the scientific community, as distinguished from **proprietary** research . . . the results of which ordinarily are **restricted** for proprietary or national security reasons.”

-National Security Decision Directive 189

Research funding in the U.S.

- Most universities receive the majority of research funding via grants and contracts from the federal government.
 - National Institutes of Health
 - National Science Foundation
 - Department of Defense
 - DARPA
 - Office of Naval Research
 - Army Research Office
- The terms of the grant/contract help in determining if fundamental research applies.

Fundamental Research and Export Controls

- For most areas if:

- There are no restrictions on the publication of the results of the research
- There are no restrictions on participation based on nationality

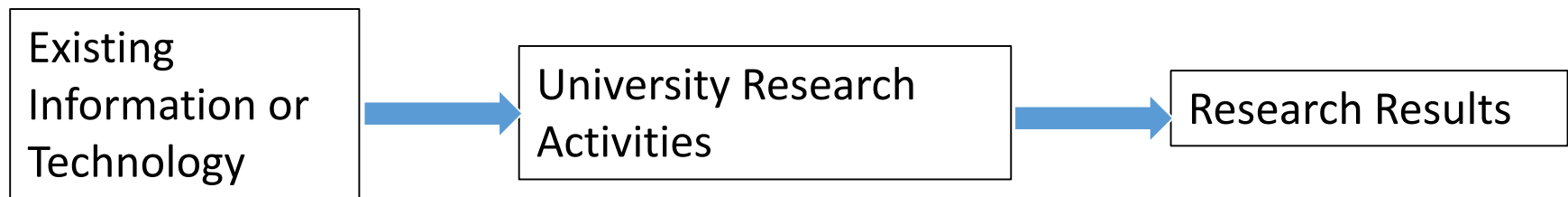
Then, the results of the research are not export controlled

- For Department of Defense funded if:

- The sponsor determines the research is fundamental in writing

Then, the results of the research are not export controlled

Not all research without publication restrictions is uncontrolled



If the pre-existing information is in the public domain, and there are no restrictions on who may participate, then the entire project is fundamental research.

If the pre-existing information is in the public domain but there are restrictions on who may participate, then the research activities are controlled, even though the results may be freely published.

If the pre-existing information is not in the public domain (proprietary), then it is controlled, and the activities using that information are controlled, even though the results may be freely published.

Export Compliance Programs at U.S. Universities

- Management commitment to compliance
- Professional staff with in-depth knowledge of regulations that apply to the institution
- Process to review and verify foreign partners, visitors, shipments, etc.
- Tools to identify when controls apply
- Training to different university stakeholders
- Use of Technology Control Plans for export controlled research

Technology Control Plans

- Describe:
 - Why the controls are needed
 - Where the controlled items/ activities will occur
 - How the controls will be implemented
 - Who will have access to the controlled information or items
 - When the controls will be removed
- Agreed upon by research team and compliance office
- Routine monitoring and review of adherence by export control compliance staff

Export Compliance at Penn

- Many web-based resources for the community including
 - Compliance manual
 - Decision trees
 - Training
- Systemized approaches for
 - Contract review
 - International shipping
 - Obtaining licenses when required
 - Recordkeeping

Export Compliance at Penn

- It takes a village
 - Committee with representatives from across the university
 - Many with the ability to screen visitors and visa applicants
 - Collaborative approach between school level information security and central export controls office
- Single point of contact when export control issues are identified

Concerns about Foreign Influence

– not just export controls

- U.S. government has identified several areas of emerging technology that are key for national security. Examples include:
 - Quantum computing, Artificial Intelligence,
- Tension between academic openness and national security concerns
- What is the role of universities in protecting research in these areas?
 - Disclose funding and collaborations with federal funders
 - Complying with restrictions when imposed

Penn resources

- Export compliance manual
- Decision trees