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Know *Before* You Go

Tips to ensure compliance with U.S. Export Regulations when traveling outside of and returning to the United States

The U.S. government regulates the transport of commodities to foreign countries, as well as the transfer of information, technology and software (aka "technical data") considered to be strategically important to the U.S. in the interest of national security, economic and/or foreign policy concerns. A network of federal agencies regulate these exports.

What Is Technical Data?

Under the EAR: data that is required for "production," "development," and/or "use" of the controlled item.

Under the ITAR: information required and unique for the development, production and use of defense articles not listed on the CCL; classified information related to defense articles and defense services; information covered by an invention secrecy order; software required for development, production and use of defense articles.

No License Is Required for Basic Laptop Hardware

However, certain types of high-tech equipment such as advanced GPS units, scientific equipment, proprietary software (software that includes encryption), unpublished data, and/or complex software may require an export license.

Tips to Remember if Traveling With Controlled Data on Your Laptop

- Take a minimal "wiped" device. It's best to back-up export controlled data on a secure system and remove from your laptop prior to travel. If necessary, access from the cloud. But beware: accessing data from the cloud while in a foreign country may constitute an export to the location of the download.
- Have a "Plan B" if there is data you will need when you reach your destination.
- Ensure that the laptop remains in reasonable control of the person(s) responsible for it at all times.
- Do not let the laptop be used by anyone else in the foreign country.
- Do not: a) leave the laptop abroad (when returning to the U.S.); b) give the laptop away; or c) keep the laptop outside of the U.S. for more than 1 year.
- Do not carry even non-controlled data that you do not want others to see, i.e., medical records, data files from your research, financial information, photos. Password-protect, encrypt (if allowed) or remove all personal information stored on your laptop.
- Ensure that your operating system has a strong password when it boots up.
- Turn off file-sharing and print-sharing.
- Ensure that anti-virus, anti-spyware, and personal firewall software is installed on your laptop. Make sure your system's security patches are up to date and your firewall is turned on. Beware: if you travel to certain locations (like China), you should assume that you have malware on your laptop when you return. Have your IT professionals check your laptop upon your return.
- Use secure VPN for secure remote access

Beware at the Border!

Customs and Border Patrol (CBP) in many countries (including the U.S.) may conduct warrantless searches of electronic devices of all travelers (even U.S. citizens at the U.S. border) at border crossings (including airports). You may be asked to unlock your phone or other device. While at the U.S. border, you cannot be forced to give up your password, but if you do not, your device may be copied and you may be detained for several hours. U.S. CBP may force you to use your fingerprint to unlock your phone. Lying to US CBP about remembering your password or whether you have fingerprint access is a federal crime.

Consider taking a prepaid phone or at least removing your email and social media apps from your phone and other devices before traveling if you are concerned about CBP accessing your data (especially important for those with privileged information on their devices). Access your non-controlled email and documents through web-based means when overseas.

ADDITIONAL INFORMATION

Some Things That May Be Considered to Be Exports

- Direct physical export of a controlled item
- Foreign national access/use of controlled item (deemed export)
- Foreign travel to a restricted country
- International and domestic collaborations
- International and domestic presentations at conferences
- Conversations involving controlled technology
- Marketing materials including controlled technology

Some Exports That May Require a License

- Controlled technology
- Controlled hardware
- Controlled data, technology, blueprints, schematics
- Under the International Traffic In Arms Regulations (ITAR), exports of items or deemed exports of technology listed on the US Munitions List (USML) always require a license unless subject to exception
- Under the Export Administration Regulations (EAR), items with an Export Control Classification Number (ECCN) and listed on the Commerce Control List (CCL) may require a license, depending upon the items (what), its destination (where) and to whom and for what purpose (who) it is being exported.
- The Office of Foreign Assets Control (OFAC) prohibits transactions with countries subject to boycotts trade sanctions, embargoes and/or restricted persons.

Exceptions to Licensing Requirements

1. Fundamental Research Exclusion (FRE): for basic or applied research in science and engineering at an accredited institution of higher learning in the U.S. and resulting information is ordinarily *published* and shared broadly in the scientific community. This is a tricky exception; check with counsel before using.
2. The "Tools of Trade" exemption covers temporary exports of "usual and reasonable kinds and quantities" (laptop, flash drive, smart phone, or other data, technology, or software) of items for use abroad by the exporter, provided that the items remain under the "effective control" of the exporter and return to the U.S. within twelve months.
3. BAG – covers export of certain personally owned software and technology as personal baggage with some limitations.
4. Information that is in the public domain and publicly available is excluded. Does not apply to encrypted software.
5. Additional exclusions may apply.

CONSULT COUNSEL BEFORE RELYING ON AN EXCEPTION/EXCLUSION TO THE EXPORT LAWS

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