Cornell University

Office of the Vice Provost
for Research
Robert A. Buhrman
Senior Vice Provost for Research
Vice President for Technology Transfer,
Intellectual Property and Research Policy
John Edson Sweet Professor
222 Day Hall
Ithaca, New York 14853-2801
t. 607.255.7200
f. 607.255.9030
rab8@cornell.edu

August 3, 2015

Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
By email to publiccomments@bis.doc.gov
Subject: RIN 0694-AG32 - Cornell University Comments

To Whom It May Concern:

Cornell University is committed to its mission of supporting fundamental research that fosters and encourages the free and open exchange of cutting edge ideas and advancements. We appreciate the opportunity to comment on the proposed revisions to the Export Administration Regulations, so that this mission, which is consistent across institutions of higher learning, can be maintained in a way that also protects our nation's interests in export control.

Cornell University offers the following comments:

Educational Information

Cornell University is particularly concerned with the proposed restatement of the "education exemption" in the current EAR 734.9, which is removed and reserved. The new statement in the proposed EAR 734.3(b)(3)(iii) merges current ITAR (120.10(b)) and EAR text to state "information and software that ...concern general scientific, mathematical, or engineering principles commonly taught in schools, and released by instruction in a catalog course or associated teaching laboratory of an academic institution."

A narrow interpretation of this proposed definition could limit this exemption to only "general principles" and ones that are "commonly taught." At Cornell University, we take pride in a curriculum that offers education in original, innovative and progressive fields.

We recommend removing the phrase "concern general scientific, mathematical, or engineering principles commonly taught in schools" and further recommend that the current "released by instruction in catalog courses and associated teaching laboratories of academic institutions" be retained for proposed EAR 734.3(b)(3)(iii). Alternatively, we suggest that the "and" be changed to "and/or" to avoid limiting this section completely.

Fundamental Research

Cornell University has only one concern with the proposed revision of Fundamental Research. Our concern centers on the vagueness in the term "non-proprietary" as it reads in the proposed new definition. We therefore propose the following: "'Fundamental research' means research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, and for which the researchers have not accepted restrictions for proprietary or national security reasons."

Cornell University is an equal opportunity affirmative action educator and employer.

Cornell University also recommends that the current presumption that university based research be considered fundamental research, be included in the final rule. The presumption has offered clarity to many universities and we have noted with concern that it has been eliminated from the proposed rule.

Technology and Software

Currently EAR (734.3(b)(3)), states that "publicly available technology and software...[that] arise during, or result from, fundamental research" are not subject to the EAR. Under the proposed revision, technology arising during or resulting from, fundamental research, with the intent to be published, is not subject to the EAR. However, the exclusion for software is removed. This change would significantly complicate and restrict university research.

Cornell University notes that the proposed definition would exclude natural-language documents written by a researcher; however a computer-language document (a program in source code) written for the same project, would be subject to export restrictions. "Software" resulting from university research is "published" as well as "technology", as recognized in the current EAR 734.7(b). The export definitions in 734.2(b) recognize the similarities between software and technology. We strongly recommend that software arising during, or resulting from, fundamental research should not be subject to the EAR.

Excluding the sending, taking or storing of technology or software that is secured using end-to-end encryption from control as exports is welcome to the academic research community.

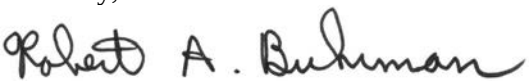
Final Rule Effective Date

The proposed changes could have a significant impact on research activities at Cornell University and could require substantial changes to our current practices. While the final content is a major factor, Cornell University encourages and supports a minimum six month delayed effective date. We believe this is consistent with the delay implemented when significant changes have been implemented in the past.

Other Comments

Cornell University has reviewed comments being submitted by the Council on Governmental Relations (COGR) and the Association of American Universities (AAU) regarding the proposed changes to the export regulations. The issues outlined above are of particular significance; however where we have not commented, Cornell University is likewise in agreement with the comments of COGR and AAU.

Sincerely,



Robert A. Buhrman
Vice President for Technology Transfer, Intellectual Property and Research Policy
Senior Vice Provost for Research