

TO: Faculty and Staff
FR: Nancy L. Bartlett, University Compliance Officer
RE: Compliance with Export Control Laws
DATE: March 22, 2012

Faculty and staff who intend to: 1) travel abroad; 2) physically export or “share” (broadly defined, including email communication) science or technology-based research with a non-U.S. citizen, whether on U.S. or foreign soil; or 3) enter into any contract (including a grant) with persons outside the U.S. in an area related to science or technology, should be aware that these activities may implicate (and in some cases may be restricted by) U.S. export control laws. These laws primarily focus on the sharing or export of technology that could have military, nuclear, or aerospace applications, but in some instances can apply to such seeming innocuous items as laptop computers, cell phones, PDAs, and GPS devices, even when they are being used on pleasure trips.

Export control regulations would most likely impact you under one of two scenarios: 1) traveling to any foreign country (but particularly one that is on a government watch list) with a laptop or other device that contains certain complex, but increasingly common technology, including encryption or GPS technology; 2) emailing or corroborating with a foreign scholar under a grant or otherwise about information that may have military, nuclear, or aerospace application, or physically taking such information or technology into a foreign country.

Export control laws have existed for decades, but there has been a significant recent trend towards enforcement in the higher education context. Violations of these laws can result in serious penalties for both the individual violator and the University, including: civil and criminal fines of up to one million dollars per violation; up to ten years in prison; and/or loss of all federal funding.

The vast majority of teaching, research, and travel conducted by UVU faculty and staff will come within one or more of the various exceptions to the export control laws. The University has developed Export Control Guidelines, a Q&A site, and links to other resources such as [<http://www.nacua.org/nacualert/docs/ITAR/ITAR.pdf>] which provide a summary of these exceptions (see www.uvu.edu/compliance). The Guidelines also contain a description of the roles played by various individuals during the faculty grant/research process. Note that each individual faculty and staff member has primary responsibility to consider and achieve compliance with export control laws before engaging in any activity that may be export controlled. If an exception does not apply, the Office of University Compliance Services in consultation with the Utah Attorney General’s office will assist you in obtaining an export license, but be aware that this process generally takes three to six months.

We send this memo along to give you a heads-up about these laws and to encourage you to consult the Guidelines while planning a trip abroad or before conducting research or collaborating with a non-US citizen on science or technology of the type noted above.

Questions regarding the applicability of export control laws should be directed to the University Compliance Services and/or the Utah Attorney General’s office.

UTAH VALLEY UNIVERSITY EXPORT CONTROL GUIDELINES

Background

Federal laws restrict the export of certain goods, information, and technology in ways that affect Utah Valley University. These laws primarily focus on technology that could have military, nuclear, or aerospace applications, but in some instances, can apply to such seeming innocuous items as laptop computers and cell phones. U.S. export control laws have existed for decades; their applicability to higher education has been of particular interest for at least the past twenty five years. Although the events of September 11, 2001 resulted in a significant increase in enforcement of export control laws, a trend toward greater enforcement had already been underway. As part of this enforcement trend, the various government agencies with responsibility for enforcing export control regulations have increasingly turned their attention to compliance in the higher education setting. Although the emphasis has largely been directed toward academic research institutions, all higher education institutions, including regional universities such as Utah Valley University, are affected by and must comply with these export control laws.

Federal Penalties

Export control laws are serious matters that carry serious penalties for both the individual violator and the University, including:

1. Civil fines of up to five-hundred thousand dollars (\$500,000) per violation; seizure/forfeiture of the goods, technology or research product; and/or loss of export privileges.
2. Criminal fines of up to one million dollars (\$1,000,000) per violation; and/or up to ten (10) years in prison.
3. Risk of losing federal funding.

Guidelines

Utah Valley University intends to fully comply with export control laws as they apply to the University's activities. Under no circumstances shall faculty members, employees, or other persons acting on behalf of the university engage in activities in contravention of U.S. export control regulations. Primary responsibility for compliance with export control laws lies with each individual faculty or staff member. Questions regarding the applicability of export control laws should be directed to University Compliance Services or the Utah Attorney General's office.

The vast majority of teaching, research, and travel conducted by UVU faculty and employees will come within one or more of the various exceptions to the export control laws. However, the regulations have the potential to limit certain research opportunities, affect publication rights, and prevent international collaboration in certain research areas. Export controls are most likely to affect UVU faculty and staff in the following potentially overlapping situations:

1. Traveling abroad;
2. "Sharing" (broadly defined and includes emails) science or technology-based research with a non-US citizen, whether on U.S. or foreign soil; or
3. Entering into a contract (including a grant) related to science or technology.

Compliance with export controls must be considered and achieved before traveling, engaging in science or technology-based research, or engaging in any other activity that may be export

controlled. In most cases, this will simply involve confirming that the travel/research falls within an exception to the export control laws. In the few cases where the activity does not fall within an exception, an export license will need to be obtained from the relevant governmental agency. This process can take up to six (6) months – therefore it is wise to plan ahead.

Travel to Certain Countries

If you are traveling abroad, the first thing to know is whether you are visiting a country that has been sanctioned by the U.S. Office of Foreign Asset Control (see list here: <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>). Travel to these countries is heavily regulated, and in some instances prohibited. Anyone seeking to travel to one of these countries on University-related business or research should consult with the Office of International Travel, University Compliance Services, and/or the Utah Attorney General's office.

Travel With Laptops, GPS, Cell Phones, and Other Common Items

Generally speaking, and provided that you are not traveling to an OFAC-sanctioned country, you may likely take laptops, GPS devices, cell phones, and other common, personal use technological items as long as:

- The device, including any software installed on it, does not contain encryption technology (be aware that encryption is becoming more and more common on certain devices and software programs);
- You own the device or are using a UVU-owned device;
- You will return to the U.S. with the device within one year;
- The device is for personal use or is a type of device that is usual and reasonably used within your profession;
- You will maintain control over the item at all times (e.g. by keeping in your possession or locking in a hotel safe)
- The device, its software, and underlying technology will not be put to military use, used in outer space, or used to develop weapons of mass destruction.

If any of the above conditions do not apply to you, or if you have any questions, contact the office of International Travel, University Compliance Services, and/or the Utah Attorney General's office for an individual assessment of your travel situation.

Research

Most research conducted at UVU will fall within an exception to the export control laws. Generally speaking, if the resulting research is published and generally accessible to the public (or shared broadly within the scientific community), the research is likely exempt from export control laws. However, be aware that these exceptions are lost if you accept certain contractual terms concerning:

- Foreign nationals;
- Publication restrictions or pre-publication review; or
- Access or dissemination controls.

Thus, it is imperative that you carefully review any contract – including a grant – you might sign in connection with your research. If you see terms addressing any of the above issues, you are advised to contact University Compliance Services and/or the Utah Attorney General's office.

In the context of research, the roles of each individual/office listed below are as follows:

1. *Faculty Member*

- a. Identify potential applicability of export control laws to the research/project; if it is determined that export control laws might be applicable:
 - i. Contact University Compliance Services and/or the Utah Attorney General's office ;
 - ii. Understand that acquiring any necessary license from the government may take up to six (6) months;
 - iii. Identify the names, country of origin, and country of citizenship of anyone who will be involved in the research/project;
 - iv. See that access to and distribution of technologies and information related to the project are restricted to those persons and destinations that are not export controlled; and
 - v. Report any suspected violations of export control laws to the department chair, the dean, the Associate Vice President of Academic Affairs - Research, University Compliance Services and/or the Utah Attorney General's office.
2. *Department Chair and Dean*
 - a. Read any contract – including a grant – carefully with an eye for references to:
 - i. Export control laws;
 - ii. Foreign nationals;
 - iii. Publication restrictions or pre-publication review; or
 - iv. Access or dissemination controls.
 - b. Inform the PI that s/he must contact University Compliance Services and/or the Utah Attorney General's office; and
 - c. Do not sign any contract until any applicable export control issues have been addressed by the University Compliance Services and/or the Utah Attorney General's office, and, if necessary, approved by the Vice President of Academic Affairs.
3. *“Empowered Official” – Associate Vice President of Academic Affairs - Research*
 - a. See that University faculty and staff are aware of and comply with export control laws;
 - b. Make the ultimate determination as to whether to abandon a contract/grant that, despite attempts at negotiation, includes provisions that create problems for the University under export control laws;
 - c. Make the ultimate determination as to whether to apply for a license or abandon the project due to the burden of export controls;
 - d. Investigate reported violations of export control laws; and
 - e. Report violations of export control laws to appropriate federal agencies.
4. *Office of Sponsored Programs*
 - a. Remind faculty – specifically those whose research involves science or technology – of the potential applicability of export control laws and encourage them to submit any grant applications, etc. with enough lead time for any necessary contract negotiations and/or license acquisition;
 - b. Review each contract/grant for potential applicability of export control laws; and
 - c. Contact the University Compliance Services and/or the Utah Attorney General's office if it appears that export control laws might apply.
5. *University Compliance Services and the Utah Attorney General's office*

- a. Provide interpretation of export control laws as they affect University activities;
- b. Negotiate with research sponsors or other third parties when contracts/grants include provisions that are problematic under export control laws;
- c. Apply for appropriate licenses as requested by the Associate Vice President of Academic Affairs - Research; and
- d. Engage outside counsel with expertise in export control laws as needed.

UTAH VALLEY UNIVERSITY
Export Controls Q and A*

- 1. I'm taking a group of students from my archaeology class on a one week trip to some newly-discovered ruins in Romania. I'm planning to take my UVU-provided laptop, and I'm sure some of my students will bring their international cell phones and iPods. What impact will export controls have on this trip?**

A: Your trip will not be greatly affected by export control issues. On the facts presented, your use of the laptop, as well as the students' use of their cell phones and iPods, is likely allowable under export control laws.

- 2. I'm travelling with a group of students to Sudan, to assist in the humanitarian relief efforts in Darfur during Spring Break. I'd like to take my personal laptop, and also a GPS device just in case we get lost. I'm also aware that one of my students, an art aficionado, is planning to spend ~ US\$200 on a painting from her favorite Sudanese artist while on the trip. Are there any export controls concerns raised by our humanitarian efforts?**

A: Yes. Sudan is on the list of OFAC-sanctioned countries, and even visitors with humanitarian intent must comply with heavy restrictions. Under U.S. law, the laptop and GPS device may not be taken to Sudan without a special license, obtained in advance, from the appropriate government agencies. Contact the University Compliance Services and/or the Utah Attorney General's office for assistance in obtaining this license. In addition, the sanctions limit the value of goods returned from Sudan to US\$100 total – thus, the student would not be allowed to buy the painting.

- 3. I've been presented with a document to sign in connection with a grant I was just awarded for a proposed study involving a new type of integrated circuit. This grant is very important to me, and I don't want it to be derailed by some technicality – can't I just sign the document?**

A: It is very likely that this research is export controlled, and you could lose certain protections under the law by signing a document that includes any of a number of key terms. As important as this grant may be, you probably don't want it if it would result in you inadvertently violating the law and subsequently facing fines, prison time, and loss of all future federal funding. Therefore, you should send the document to the University Compliance Services and/or the Utah Attorney General's office for review, and possible negotiation of these terms.

- 4. I'm giving a presentation on my development of a new algorithm (which is projected to have significant use in encryption technology) to an advanced mathematics class that includes an exchange student from China. What are the export control ramifications?**

A: Assuming that that the results are (or will be) published and generally accessible to the public (or shared broadly within the academic/scientific community), the dissemination of this information to a Chinese foreign exchange student likely falls under an exception to the export control laws.