

“Use” Technology

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ASSOCIATION OF UNIVERSITY EXPORT CONTROL OFFICERS

Under the Export Administration Regulations (EAR) a foreign person (i.e., a person who is not a US citizen, US permanent resident, or a protected individual) can have access to and manipulate/operate/ utilize EAR controlled items even if the item in question is controlled for export to the individual’s home country. However, under the precept of a “deemed export” a license or other US Government authorization is needed before one could release Technology (i.e., specific information about a commodity described on the Commerce Control List) to a foreign person in the US if a license or other authorization would be required to send the same Technology to the individual’s home country. In other words an export of controlled Technology can occur even if nothing ever leaves the research lab; the release can occur through, but is not limited to, a demonstration, oral briefing or provision of documents (examples only).

WHAT IS ‘TECHNOLOGY’?

‘Technology’ is specific information necessary for the ‘development’, ‘production’ or ‘use’ of a product subject to the EAR.

Technology can take the form of technical data (includes blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices) and/or technical assistance (includes instruction, skills training, working knowledge, consulting services or the transfer of technical data).

Publicly available information, technology and software (that which is published, will be published arises during or results from fundamental research, is educational information, or is included in certain patent applications) are not subject to EAR and as such generally may be shared with foreign persons without obtaining an export license or other authorization.

WHAT IS ‘USE’ TECHNOLOGY?

‘Use’ Technology is specific information necessary for the ‘Use’ of a product subject to a technology Export Control Classification Number (ECCN).

‘Use’ is defined in the EAR as ‘operation, installation (including on-site installation), maintenance (checking), repair, overhaul **and** refurbishing’. Commerce’s written guidance under the EAR is that one would need access to or to be provided ‘Technology’ pertaining to all 6 elements of ‘Use’ before an export license or other authorization would be required from Commerce.

LICENSING USE TECHNOLOGY

A license or other authorization is necessary for deemed exports of ‘Use’ Technology when:

1. All six elements of ‘Use’ subject to a technology ECCN will be released;
2. The Technology is not publicly available;
3. The individual to whom it will be released is a foreign person; **and**
4. A license is required to export the ‘Use’ Technology to the individual’s home country.

The Association of University Export Control Officers is a forum for members to share best practices related to university compliance with U.S. Export Control regulations. To find out more, please email your inquiry to contact@aueco.org



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“Use” Technology*

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‘Use’ Technology and the 600 Series

WHAT IS THE ‘600 SERIES’?

The 600 series includes items and information that were previously controlled under the International Traffic in Arms Regulations (ITAR) and listed on the US Munitions List (USML) or that are covered by the Wassenaar Arrangement Munitions List (WAML) but are now subject to the EAR. The term 600 series refers to the fact that all of the items and information moved from the ITAR to the EAR have been placed in ECCNs where the third from last digit is a six. *3E611 Technology “required” for military electronics, as follows (see List of Items Controlled)* is an example of a 600 series ECCN.

HOW IS ‘USE’ TECHNOLOGY DIFFERENT IN THE 600 SERIES?

As the 600 series items and information were previously controlled on the USML and/or the WAML, Commerce and State determined that the ‘Use’ technology controls needed to be more robust for these ECCNs. The solution devised was for Commerce to specifically identify the individual elements of ‘Use’ Technology that need to be controlled under each 600 Series Technology ECCN. Therefore in the 600 series ECCNs it is no longer necessary that all 6 elements of ‘Use’ be transferred in order for a license or other authorization to be required. In some cases transfer of a single element may necessitate a license. For example, ECCN 3E611 reads as follows:

3E611 Technology “required” for military electronics, as follows (see List of Items Controlled).

a. “Technology” (other than that described in 3E611.b or 3E611.y) “required” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishing of commodities or software controlled by ECCN 3A611, 3B611 or 3D611.

Under this ECCN the release of proprietary operation Technology would require a license or other authorization even if no installation, maintenance, repair, overhaul or refurbishing technology would be released.

LICENSING 600 SERIES USE TECHNOLOGY

A license or other authorization is necessary under the 600 series technology ECCNs for deemed exports of ‘Use’ Technology when the following conditions are met:

1. Technology pertaining to one or more of the elements of ‘Use’ listed in a 600 series ECCN will be released;
2. The Technology is not publicly available;
3. The individual to whom it will be released is a foreign person; **and**
4. A license is required to export the ‘Use’ Technology to the individual’s home country.

Note: *Based on published proposed rules, space-related items and information moving from the ITAR to the EAR are anticipated to be placed in a 500 series and will include ‘Use’ Technology controls similar to those in the 600 series.*

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