

SOFTWARE & EXPORT CONTROLS

WHAT YOU NEED TO KNOW

ITAR: Software (i.e., “technical data”) related to a defense article that is shared, transmitted, or transferred is export-controlled, and foreign nationals may not assist in the development, production, or use of such software. Most ITAR-controlled software is restricted due to its relationship to ITAR-controlled hardware.

EAR: Other software – and related technology – may be export-controlled (e.g., software developed for use with controlled items or research) and may require a license or license exception/exemption prior to exporting.

Software Not Subject to the EAR:

- “Published” – publicly disseminated and accessible without a password or fee and not a timed version. Most open source software is considered published, including software with published source code. Includes published patent applications and non-proprietary data.
- Arising during or resulting from fundamental research; this exclusion applies to both software and related technology.
- Used in academia – educational information released via instruction in a catalog course or campus teaching laboratory.

Encryption Software: Some encryption software or systems including encryption are subject to the EAR; however, “publicly available” mass market encryption object code software is not subject to the EAR. Further, you may export encryption object code if both the object code and the source code from which it is compiled would be considered publicly available.

Object Code v. Source Code: The use or release of export-controlled software (whether involving object code or source code) to a foreign national is considered an export under both the EAR and ITAR. This includes “deemed exports” for release to foreign nationals inside the United States.

Cloud Computing: If a cloud service provider ships or transmits “publicly available” software to enable use of the cloud computing, the software is not subject to the EAR. But, if a provider shares technology via technical data or assistance that is not publicly available in order to give the user knowledge on how to access and use the computational capacity provided by cloud computing, then that technology is subject to the EAR.

WHAT TO ASK:

- Is the software being shared, transmitted, transferred or exported directly related to defense articles (i.e., ITAR)? Is it on the Commerce Control List of the Export Administration Regulations (EAR)?
- Is the software:
 - a.) Publicly available?
 - b.) Fundamental research?
 - c.) Educational information?
- Is the software restricted from publication or regarded as proprietary?
- Are you sharing, transmitting, transferring or exporting VU-developed, non-commercial encryption software in source code or object code (including travel outside the United States with such software)?

Software and technology make up a nuanced part of US export controls, and if you export these items, you may need to contact Vanderbilt Export Compliance (VEC). Even basic software may be subject to US export controls, and many popular software tools and apps use encryption that may require authorization from the US Government to share with foreign collaborators.

Please contact VEC for support with this and other export control matters.

