

April 2, 2010

Dear Colleague:

Michigan State University prides itself on a tradition of accomplishment in international engagement. The MSU campus in Dubai, UAE, and your own upcoming participation there are welcome additions to that tradition.

At the same time that MSU is participating in programs that expand its international reach, various instances of global terrorism, human rights abuses, and both state-sponsored and commercial espionage have resulted in increased U.S. government attention to export control and trade sanction compliance and enforcement. Although you may have participated in discussions of those topics on campus in East Lansing, the purpose of this briefing material is to apprise you of special considerations applicable to MSU activity in Dubai. Simple reliance on “what we already know on the MSU campus” could lead to significant error, up to and including possible commission of a felony.

Four points are of key importance:

1. With regard to export control and trade sanctions, both MSU’s obligations as an organization and your obligations as an individual are undiminished – and in reality, are arguably increased -- by your travel to and academic employment in Dubai.
2. Information you create or receive that falls under the control provisions of the International Trafficking in Arms Regulations (ITAR) or Export Administration Regulations (EAR) **must** be protected from impermissible disclosure to “foreign nationals” -- individuals who are neither U.S. citizens nor permanent residents (i.e., holders of issued “green cards”).
 - a. Broadly speaking, ITAR governs research that is intended to address a military topic or technology. EAR governs other research, which – while intended to address a non-military topic or technology – can find “dual use” in military applications, or which could be exploited in terrorism or human rights abuse. Particularly with respect to EAR, applicable restrictions reflect both the nature of the technology and the nationality of the individual to whom disclosure is contemplated.
 - b. ITAR does **not** control “information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities”. Similarly, EAR does **not** control educational information released through “instruction in catalog

courses and associated teaching laboratories” with the *exception* of advanced encryption, which is controlled.

- Together, the exception and the prevalence of (largely invisible) advanced encryption in commonly used software compel careful attention to software license terms, as illustrated in the Appendix.

c. As described further in the Appendix, a “fundamental research exclusion” serves to exclude from export control most results of freely publishable fundamental research conducted *on our campus in the United States*. (Again, advanced encryption is not excluded from control under the EAR.) **PLEASE NOTE: THERE IS NO FUNDAMENTAL RESEARCH EXCLUSION FOR RESEARCH CONDUCTED IN DUBAI.** If Dubai-based research deals with topics or utilizes technologies governed by either ITAR or EAR, access by foreign nationals – including those who are our enrolled students there – is prohibited, absent a license from the U.S. government.

3. In domestic University business transactions, U.S. trade sanctions issues are encountered very infrequently. The situation in Dubai is more complicated, in that the pool of potential employees, service providers, and goods vendors is very international in its composition. Trade sanctions typically prohibit transactions with specific embargoed countries and their citizens, as well as specific corporations, plus other listed organizations (including some charities), and individuals. For example, here are some *general* provisions of the U.S. trade sanctions applicable to companies and individuals from Iran, at <http://www.treas.gov/offices/enforcement/ofac/programs/iran/iran.pdf> :

“Except as authorized by amendments to the I[ranian] T[rade] R[egulations] relating to foodstuffs and carpets, which were issued at the end of April 2000, U.S. persons, including foreign branches of U.S. depository institutions and trading companies, are prohibited from engaging in any transactions, including purchase, sale, transportation, swap, financing, or brokering transactions related to goods or services of Iranian origin or goods or services owned or controlled by the Government of Iran

“These prohibitions apply to transactions by United States persons in locations outside the United States with respect to goods or services which the United States person knows, or has reason to know, are of Iranian origin or are owned or controlled by the Government of Iran. U.S. persons may not import such goods or services into or export them from foreign locations. “

As a good example of the need for care in both institutional and personal transactions, on August 7, 2008 the U.S. Treasury web page cited above listed

two *specific* Iranian-owned banks operating in Dubai: Bank Melli (with 3 branches) and Bank Saderat (3 branches). *Separate* anti-terrorism sanctions contain scores of references to specific Dubai-based individuals or organizations with which transactions are prohibited, including firms in the financial, telecommunications, refreshments, and construction sectors. (See: www.treas.gov/offices/enforcement/ofac/programs/terror/terror.pdf)

A list of current U.S. trade sanctions programs may be found at the following web site: www.treas.gov/offices/enforcement/ofac/programs/ .

THE FIRST LINE OF DEFENSE AGAINST VIOLATING U.S. TRADE SANCTIONS IS TO FOLLOW MSU SIGNATURE AUTHORITY PROCEDURES. All MSU contracts and purchase orders, and other agreements executed in Dubai (as opposed to in normal channels in East Lansing) must be signed by Dean Brendan Mullan. This “single point of signature” policy will help ensure that vendor identity checking is a routine, reliable component of every MSU business transaction in Dubai. ALSO, PLEASE DO NOT MAKE TRIPS TO NEARBY EMBARGOED COUNTRIES (e.g., IRAN, SUDAN, AND SYRIA) WITHOUT CONSULTING MSU ABOUT APPLICABLE EMBARGO PROVISIONS.

4. The MSU administration is committed to providing every colleague traveling to Dubai with ready access to information in case of questions or difficulties. WHEN IN DOUBT, PLEASE ASK.

a. *Forward-looking* questions regarding (i) the applicability of ITAR and EAR to specific topics or technologies, (ii) contemplated disclosures of information governed by ITAR or EAR to a foreign national, (iii) travel to embargoed countries, and (iv) the permissibility of hiring, purchasing, or other sorts of transactions involving foreign nationals may be routed to the MSU Office of Export Controls and Trade Sanctions at either (517) 884-2300 or heming14@msu.edu .

b. If concern arises about a *past* disclosure of information or business transaction with a foreign national, please contact the MSU Office of the General Counsel at either (517) 353-3530 or kriser@msu.edu .

As always, MSU depends upon faculty and staff to help convey this sort of regulatory compliance information to students, both through direct teaching and leadership by example. MSU is grateful for your thoughtful attention to these important issues.

Best wishes for safe and rewarding scholarly activity abroad,

Office of Export Control & Trade Sanctions
Office of the Vice President for Research & Graduate Studies

APPENDIX Supplemental Information

A. Official Reference Sources Regarding Export Controls and Trade Sanctions

ITAR: <http://pmdtdc.state.gov>

EAR: http://www.access.gpo.gov/bis/ear/ear_data.html

Trade Sanctions: <http://www.treas.gov/offices/enforcement/ofac/>

B. ITAR Information on Instructional Information and the Fundamental Research Exclusion (Emphasis added below. Please see the EAR site listed above for substantially parallel provisions.)

Section 120.10 -- “Technical data means, for purposes of this subchapter:

.... (5) This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in § 120.11.

Section 120.11 – “Public domain means information which is published and which is generally accessible or available to the public: ... 8) Through fundamental research in science and engineering **at accredited institutions of higher learning in the U.S.** where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:

- (i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or
- (ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable....”

C. Sample License Provision Arising from Encryption in Common Software:

“SKYPE™” -- “This software is controlled under ECCN 5D992.b.1 of the Export Administration Regulations (“EAR”) per CCATS # G047973 and thus may not be exported or re-exported to or downloaded by any person in any countries controlled for anti terrorism reasons under the EAR, which include Iran, North Korea, Cuba, Syria and Sudan. EAR 742.15(a), Title 15 Code of Federal Regulations. Moreover, the software may not be exported or re-exported to or downloaded by any person or entity subject to US sanctions regardless of location.”