

Industrial Agreements and Export Control: The Struggle for Openness in Research

Steve Eisner

Stanford University Export Control Officer

Industry Contract Officers' Network Meeting

Stanford University

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University/Industry Partnerships and Export Control – Emerging Themes

- Shift in Focus of Export Controls from Hardware to Technology
 - Creates “Deemed Export” Issue for Universities
 - Corporate Misunderstanding of “Use Technology”
- Significant Increases in US Defense Budget =
 - Increased Funding to Industrial Primes
 - More Export Control “Flow-Downs” to Universities
 - Greater Emphasis on “Applied” Research
 - Pressures Fundamental Research Exclusion

University/Industry Partnerships and Export Control – Emerging Themes (2)

- Industrial “CYA” for Deemed Exports
 - Agreement terms that anticipate university fundamental research morphing into export controlled research
- Need for Universities to Invoke Termination Provisions if Policies Jeopardized
 - Possible Costs to Doctoral Dissertations
- It’s 3AM – Do You Know What’s On Your Laptop?
 - Greater Enforcement of Trade Sanctions and Embargoes Regulations (OFAC) – Iran, Cuba, Sudan
 - Proprietary Information is Subject to Export Controls

Industrial Contracts with Export Control Exposure

- Incoming NDAs/Confidentiality Agreements
 - Primary Export Control Compliance Risk for Universities
 - 2007 ICO Study: 75% of NDA's Reference Export Control
 - Confidential Info vs. Export Controlled Info
 - Case Study – Industrial Sponsor Agreement w/NDAs
 - Standard Industry Export Control Language for NDAs
 - Standard University Export Control Language for NDAs
- Commercial Licensing Agreements
 - Software/Hardware Export Control Clauses

Industrial Contracts with Export Control Exposure (2)

- Material Transfer Agreements
 - Export Control is Always Applicable
 - Outgoing Non-Disclosure Provisions: Intent is Driver
 - Quality Control vs. Proprietary Advantage (trade secret)
- Clinical Trial Agreements
 - Proprietary “Dual Use” Technologies/Materials