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

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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