



Technical Official Use Only (OUO) and Export Control:



It's not just fun and games anymore.

Export Control Coordinators Organization Annual Training Workshop

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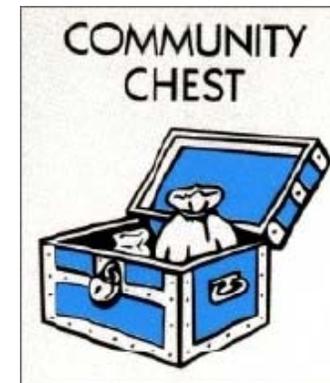


UNCLASSIFIED

Slide 1

What does this have to do with classification?

- DOE O 471.3, *Identifying and Protecting Official Use Only Information*, 4-9-03
 - Identify, mark, and protect documents containing information that has the potential to damage governmental, commercial, or private interests if disseminated to persons without a need to know.
- Classification Group mission
 - Protect information in the interest of national security.
 - Ensure scientific and technical work is disseminated
 - to the maximum extent possible.
- Derivative classifiers (DCs)
 - Protect against unauthorized disclosure.
 - Public dissemination.



What are the two types of OOU determinations?



- Mandatory OOU Determinations:
 - Made by DOE/NNSA program offices and documented in stand-alone documents or classification guides.

- Discretionary OOU Determinations:
 - Made by employees based on the application of criteria.



How do we identify OOU?

Information considered as OOU must adhere to *all* of the following criteria.

- Be unclassified, DOE-owned information
- Have potential to damage governmental, commercial, or private interests if disseminated to persons who do not need to know
- Fall under at least one of eight Freedom of Information Act (FOIA) exemptions (2-9)



What are the FOIA exemptions?

- OOU Information must fall under at least one of the following FOIA exemptions:
 - 2 – Circumvention of statute
 - 3 – Statutory exemption
 - **Export Control Information**
 - [Export Administration Regulations \(EAR\)](#)
 - [International Traffic in Arms Regulations \(ITAR\)](#)
 - [U.S. Department of Energy \(DOE\)](#)
 - [Nuclear Regulatory Commission \(NRC\)](#)
 - 4 – Commercial/Proprietary
 - 5 – Privileged information
 - 6 – Personal privacy
 - 7 – Law enforcement
 - 8 – Financial Institutions
 - 9 – Wells



Who can make a discretionary OOU determination?

- Line management
- Owner
- Author





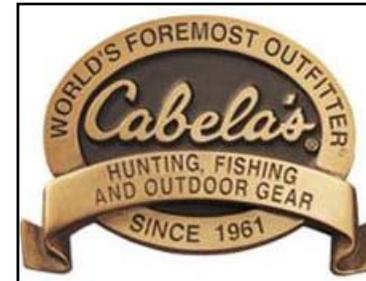
Why has export control become such a major issue?

- March 2004: Recommendation for fundamental changes to focus resources and coordinate investigations and prosecutions of export control violations.
- November 2004: FBI given concurrent jurisdiction for export control violations relating to counterintelligence.
- March 2006: National Security Division mandated as part of the USA PATRIOT ACT Improvement and Reorganization Act.
- October 16, 2007: Administrative penalties increased to \$250,000 and criminal penalties increased to \$1,000,000 and 20 years imprisonment *per violation*, plus denial of export privileges.
- June 19, 2008: Meeting in Albuquerque with Steven W. Pelak, National Coordinator, Export Enforcement, Counterespionage Section of the National Security Division of the U.S. Department of Justice.

Four Cases



Conch Republic Regatta

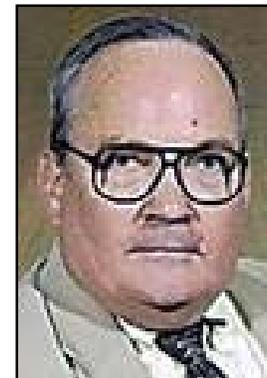


Cabela's



Siemens AG

(Siemens press picture)



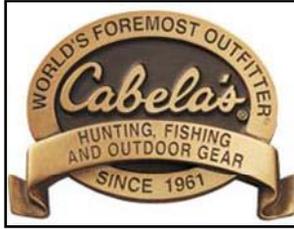
John Reece Roth

(Professor Emeritus, University of Tennessee)



What did the Conch Republic Regatta try?

- **In May of 2003, Michele Geslin and Peter Goldsmith organized the Conch Republic Regatta sailboat race between Key West and the Marina Hemingway outside Havana, Cuba.**
 - Third annual such race
 - Included 19 boats
 - Warned by Immigration and Customs Enforcement (ICE) not to go
 - After their return, dragged from their beds and arrested
- **Judge James Lawrence King dismissed the indictment**
 - No travel to or lodging in Cuba
 - No regatta fees spent in Cuba
 - No allegations of any expenditures or financial benefit to Cuba
- **In December 2007, Commerce charges aiding and abetting the unlicensed temporary export of two vessels to Cuba.**
 - Geslin and Goldsmith did not respond/participate.
 - Administrative Law Judge entered summary judgment
 - Each fined \$11,000 and conditional denial of export privileges
- **Captain Wayne LaFleur fined \$8,000 and designated as a denied person for three years.**



What did Cabela's learn?

- **Unlicensed exports of optical sighting devices**
 - From 1999 to 2000
 - 685 instances
 - Settled in 2005 for \$265,000
 - From 2004 to 2005
 - 76 exports
 - 76 failures to file Shipper's Export Declaration
 - November 7, 2008 agreed to pay civil penalty \$680,000



How did Siemens AG survive?

- **Violated the Foreign Corrupt Practices Act (FCPA)**
 - Extraordinary cooperation with investigation
 - Extensive leadership and compliance changes
 - Retain independent compliance monitor for four years
 - Fined \$1.6 billion
 - Largest monetary sanction to date
 - Preserved ability to contract with U.S. government



What did John Reece Roth do?

- Retired University of Tennessee (UT) Professor Emeritus
 - Hired as subcontractor/consultant for Atmospheric Glow Technologies (AGT)
 - Contract with U.S. Air Force to develop plasma actuator technology
 - Controlled under U.S. Department of State International Traffic in Arms Regulations (ITAR)
- Assigned several graduate students
 - Xin Dai from the PRC
 - Sirous Nourgostar from Iran
- UT notified U.S. Air Force of violations.
- Colleagues and officials from AGT plead guilty.
 - Testified against Roth
 - AGT faced a maximum penalty of \$10 million and 50 years of probation.

What happened to Professor Roth?

- Tried on 18 counts of conspiracy, *fraud*, and illegally exporting technical data and defense services
 - Arguments in his defense:
 - “Ignorance of the law*“
 - Discrimination/profiling
 - Only information was shared
 - Convicted on all charges
 - Faces maximum penalty of 160 years in prison and \$15 million



“Today’s guilty verdict should serve as a warning to anyone who knowingly discloses restricted US military data to foreign nationals. The illegal export of such sensitive data represents a very real threat to our national security, particularly when we know that foreign governments are actively seeking this information for their military development.”

-- Patrick Rowan, Acting Assistant Attorney General for National Security

How do keep our staff out of prison?

- Avoid OOU and export control entirely:
 - Only U.S. persons involved
 - Publicly available
 - Published or intended to be published
 - LA-URs
 - Fundamental research
 - Applies for EAR
 - Does not apply for ITAR
- Coordinate discretionary OOU determinations to ensure those decisions do not undermine the efforts of others.





What if it is legitimately OUO?

- Mark OUO documents in accordance with [DOE M 471.3-1](#):

OFFICIAL USE ONLY	
<u>May</u> be exempt from public release under the Freedom of Information Act (5 U.S.C. 552), exemption number and category: _____	
Department of Energy review required before public release	
Name/Org: _____	Date: _____
Guidance (if applicable) _____	

- Provide statements addressing the three factors:
 - Government information
 - Adverse effects
 - FOIA exemption(s)
- Ensure that the information is kept from foreign nationals until the question of an export license is resolved.

What if we need an export license?



NOTE:

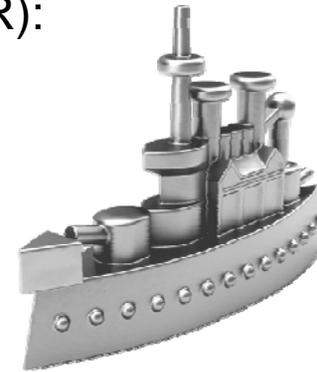
A license requirement ***ONLY*** mandates that a license be granted by the appropriate U.S. Agency *before* the transfer of technology/information/software occurs. It *does not* prohibit such exchanges from occurring at all.

- In 2007, companies and academics requested 1,056 deemed export licenses.
 - Only four applications were denied.

What should we take back to our Labs?



- Think about export control compliance.
 - OOU
 - Military applications (ITAR):
 - Designed
 - Developed
 - Configured
 - Adapted
 - Modified
- Penalties for violations can be severe.
- Some of the work at LANL *may* require a license.
 - Collaborations with foreign nationals are NOT prohibited.
 - Just obtain the proper license, first.
- Resources are already in place to help you comply.



Any questions?



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