UCB Export Evaluation Form

Determination of whether or not an export license may be applicable for items or technical data

Date: Lab/Dept./Program: PI:

Item[[1]](#footnote-1):

Classification (ECCN or ITAR Category):

Proposal/Award No.: Funding Source: Military Funding?:

Attach Statement of Work: Person(s) Receiving Export:

Organization Receiving Export: (full contact information):

List instruments/equipment used in this project (optics, lasers, biological samples, high speed computers, encryption software).

1. Are you sharing, shipping, transmitting or transferring UCB-developed, non-commercial **encryption software**(1) in source code or object code(2) (including travel outside the country with such software)? [ ]  Yes [ ]  No [ ]  Not sure

2. Do you know or have any reason to believe that the item, information or software to be shared, shipped, transmitted or transferred will support the design, development, production, stockpiling or use of a **nuclear explosive device, chemical or biological weapons, or missiles**(3)? [ ]  Yes [ ]  No [ ]  Not sure

3. Was the item, information or software to be shared, shipped, transmitted or transferred developed under a sponsored agreement imposing **publication restrictions**(4) beyond a brief review (up to 90 days) for patent protection and/or inadvertent release of confidential/proprietary information? [ ]  Yes [ ]  No [ ]  Not sure

4. Did an external sponsor, vendor, collaborator or other third party provide, under a **Non- Disclosure Agreement or a Confidentiality Agreement**(5), the item, information or software to be shared, shipped, transmitted or transferred?

 [ ]  Yes [ ]  No [ ]  Not sure

5. Is the item being shared, shipped, transmitted or transferred a **defense article**(6) other than information or software on the ITAR's [US Munitions List](http://www.pmddtc.state.gov/regulations_laws/documents/consolidated_itar/ITAR_Part121.pdf) (USML)?

 [ ]  Yes [ ]  No [ ]  Not sure

6. Is the information or software being shared, shipped, transmitted or transferred **technical data**(7) on the ITAR's [US Munitions List](http://www.pmddtc.state.gov/regulations_laws/documents/consolidated_itar/ITAR_Part121.pdf) (USML)? [ ]  Yes [ ]  No [ ]  Not sure

7. Are you shipping or transferring items on the [Commerce Control List](http://www.access.gpo.gov/bis/ear/ear_data.html) **(CCL)**(8) of the Export

Administration Regulations (EAR)? [ ]  Yes [ ]  No [ ]  Not sure

8. Are you sharing, transmitting or transferring **technology (information)(9) or software code**(10) on the [Commerce Control List](http://www.access.gpo.gov/bis/ear/ear_data.html) (CCL)? [ ]  Yes [ ]  No [ ]  Not sure

9. Is the disclosure(11), shipment, transmission, or transfer to an entity or person in a country subject to [US economic or trade sanctions](http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx) or identified by the US Department of State as a "[State Sponsor of Terrorism](http://www.state.gov/j/ct/list/c14151.htm)," Iran, Cuba, N. Korea, Sudan, or Syria?

 [ ]  Yes [ ]  No [ ]  Not sure

10. Are there foreign national collaborators (individuals, organizations, entities) involved in this research project? If yes, provide their name and country of citizenship.

 [ ]  Yes [ ]  No [ ]  Not sure

Name/Citizenship:

**Please send the completed document to** **exportcontrol@colorado.edu****.**

**Guidance Notes**

(1) The sharing, shipping, transmission or transfer of almost all encryption software in either source code or object code is subject to US export regulations.

Even most publicly available "dual-use" encryption code captured by the Export Administration Regulations (EAR) requires the availability of a License Exception.

A License Exception under the EAR is an authorization based on a set of criteria, which when met, allows the exporter to circumvent export licensing requirements. The release of publicly available encryption code under the EAR is generally authorized by License Exception TSU (Technology and Software - Unrestricted) whereby the exporter provides the US Government with a "one-time" notification of the location of the publicly available encryption code prior to or at the time the code is placed in the public domain. Notification **after** transmission of the code outside the US is an export control violation.

In addition, US persons are prohibited without prior authorization from providing technical assistance (i.e., instruction, skills training, working knowledge, consulting services) to a foreign person with the intent to assist in the **overseas** development or manufacture of encryption software that is subject to US Government notification or authorization. This prohibition does **NOT** limit UCB employees from teaching or discussing general information about cryptography or developing or sharing encryption code within the United States that arises during, or results from, fundamental research.

Two License Exceptions are available for the UCB employees when the tangible export of items and software containing encryption code is necessary for travel:

• License Exception TMP (Temporary Exports) allows those departing from the US on university business to take with them as "tools of the trade" UCB-owned or retail-level encryption items such as laptops, personal digital assistants (PDAs), and cell phones and encryption software in source or object code to most all countries except Sudan and Cuba, as long as the items and software will remain under their "effective control" overseas and are returned to the US within 12 months or are consumed or destroyed abroad;

• License Exception BAG (Baggage) allows individuals departing the US either temporarily (travel) or longer-term (relocation) to take with them as personal baggage family-owned retail-level encryption items including laptops, personal digital assistants (PDAs), and cell phones and encryption software in source or object code. The encryption items and software must be for their personal use in private or professional activities. Citizens and permanent resident aliens of all countries except Cuba, Syria, Sudan, North Korea and Iran may take with them as personal baggage non-retail "strong" encryption items and software to all locations except [embargoed](http://www.treas.gov/offices/enforcement/ofac/programs/) [or otherwise restricted locations.](http://www.treas.gov/offices/enforcement/ofac/programs/)

(2) Source code is generally understood to mean programming statements that are created by a programmer with a text editor or a visual programming tool and then saved in a file. Object code generally refers to the output, a compiled file, which is produced when the Source Code is compiled with a C compiler. The object code file contains a sequence of machine-readable instructions that is processed by the CPU in a computer. Operating system or application software is usually in the form of compiled object code.

(3) US persons are specifically prohibited from engaging in activities, either directly or indirectly, that support the proliferation of nuclear explosive devices and missiles to certain countries and their nationals without an export license. Furthermore, US persons are specifically prohibited from knowingly engaging in activities that support the proliferation of chemical or biological weapons to **any** country and its nationals without an export license. Prohibited activities include direct support (through sharing, shipping, transmission or transfer), or indirect support (through financing, contracting, servicing, transportation,

support or employment) that a US person knows will facilitate the proliferation of these weapons of mass destruction (WMD) in or by those countries. In addition, an individual or organization is prohibited from proceeding with a shipment, transmission or transfer of equipment or software, or from a disclosure of information, with the knowledge that an export control violation has, or is about to, occur.

Certain chemical and biological weapons agents and precursors are listed on the US Munitions List (USML) at Category XIV and on the Commerce Control List (CCL) in [Category 1](http://www.bis.doc.gov/policiesandregulations/ear/ccl1.pdf) at 1C350 through 1C360.

(4) Research carrying publication and dissemination restrictions may preclude characterization of the effort as "fundamental research." As a result, you may be facing prohibitions limiting the participation of foreign persons. "Fundamental research" is defined as basic or applied research in science or engineering, the results of which are intended to be shared with the interested scientific community or otherwise placed in the public domain. Fundamental research, by definition, is free of access, participation, or dissemination restrictions.

Fundamental research is granted special status by US export regulations, such that participation by foreign persons in such research does not require export licenses to be obtained.[[2]](#footnote-2) If the research is other than "fundamental," then the conduct and results of that research may be subject to the full array of export control restrictions.

(5) A reminder about NDAs and similar confidentiality agreements:

UCB PIs may be asked to accept confidential, proprietary, or export controlled data or material as part of a research project subject to a Non-Disclosure Agreement (NDA) signed by both the discloser and the recipient. NDAs may include licensing agreements which

limit or prohibit the disclosure or transfer of the licensed data or materials.

NDAs and similar confidentiality agreements are permissible, but the information must be entirely peripheral to the research project (sufficiently remote from the intellectually significant portions of the research) and the disclosure restriction must not affect the ability to publish the research results. In addition, if you accept confidential or proprietary information subject to a Confidentiality or Non-Disclosure Agreement, and the disclosure restrictions affect your ability to publish research results, the research itself will lose its characterization as "fundamental research" for export control purposes. Should the research entail information or software identified on US export control lists, and you wish to have foreign nationals participate in the research, you may be required to obtain an export license.

If you have any questions about this, or if you are asked to sign such an agreement, contact

OCG and ask for a review of the agreement. (6) A defense article:

• Is specifically designed, developed, configured, adapted, or modified for a military application, and

o does not have predominant civil applications, and

o does not have performance equivalent (defined by form, fit and function) to

those of an article or service used for civil applications;

• Is specifically designed, developed, configured, adapted, or modified for a military application, and has significant military or intelligence applicability (examples are satellites, spacecraft and their subsystems, fully field-deployable systems for military use, and space-qualified for radiation hardened microcircuits); or

• Is on the [US Munitions List](http://www.pmddtc.state.gov/regulations_laws/documents/consolidated_itar/ITAR_Part121.pdf) (USML, the US State Department ITAR list). (7) Technical data means:

• Information, other than software, which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation.

• Classified information relating to defense articles and defense services.

• Information covered by an invention secrecy order.

• Software directly related to defense articles.

"Technical data" does NOT include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities, information in the public domain, or information generated in the course of performing fundamental research.

It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

(8) The [Commerce Control List](http://www.access.gpo.gov/bis/ear/ear_data.html) (CCL) is maintained by the Bureau of Industry and Security (part of the US Department of Commerce) as part of the Export Administration Regulations (EAR). This list is sometimes called the "dual use" list, as the items on it may have either a military or commercial application.

(9) The EAR defines "technology" as:

• Specific information necessary for the "development", "production", or "use" of equipment or software. Technology includes information subject to the EAR released in the form of technical assistance or technical data.

o Technical assistance includes instruction, skills training, working knowledge, consulting services. Technical assistance may involve transfer of export controlled information.

o Technical data includes blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

Information that is, or will be, placed in the public domain, such as that generated by fundamental research, is not subject to the EAR and is exempt from export control regulations.

(10) The EAR defines software code as a collection of one or more programs or microprograms fixed in any tangible medium of expression. Software code is comprised of source code or object code:

Source Code: A convenient expression of one or more processes that may be turned by a programming system into equipment executable form ("object code" or object language).

Object Code: An equipment-executable form of a convenient expression of one or more processes ("source code" or source language) that has been converted by a programming system.

(11) Under US export control regulations, "disclosure" includes both oral and visual disclosure.

1. An item can be equipment, commodities, software, and technology. [↑](#footnote-ref-1)
2. [NSDD 189](https://www.fas.org/irp/doddir/dod/research.pdf) Policy on the Transfer of Scientific, Technical, and Engineering Information. [↑](#footnote-ref-2)