EXPORT CONTROLS
101
Basic Structure and Concepts of Export Control Laws
I. Lists (of controlled items).

ITAR - State Department

- United States Munitions List (8-9 pages)
- Some listings are very broad
- Basic concept--items developed specifically for military use
I. Lists (of controlled items).

EAR – Commerce Department

- Commerce Control List
- “Dual Use” Technologies
- 175 pages
- Some listings are very broad
II. Technical Information

ITAR

“technical data”

“information” “required for the design, development, manufacture … testing … or modification of a defense article.”

EAR

“technology”

“specific information necessary for the development, production or use of a product.”
III. Deemed Export Rule:
Transfer to a foreign national in the United States of technical information about a listed item.

**ITAR**
“Export: … disclosing … technical data to a foreign person, whether in the United States or abroad …”

**EAR**
“Release of technology … subject to the EAR to a foreign national in the United States … is deemed to be an export to the home country or countries of the foreign national.”
IV. Foreign “National” or “Person”

EAR and ITAR

- Not a U.S. citizen
- Not a permanent resident alien
- Has not actually been granted asylum status

In other words, virtually all our foreign students, and many of our visiting scientists.
V(1) Fundamental Research

**RULE:** Information in the public domain is not subject to export controls.

**ITAR**
- Definition of technical data does not include information in the public domain.
- Public domain includes information resulting from university fundamental research.

**EAR**
Technology that arises during or results from university fundamental research is “not subject to the EAR.”
V(2) Fundamental Research

Definition

**ITAR**
“Fundamental research is defined to mean …”

**EAR**
“The intent behind these rules is to identify as ‘fundamental research’ …”

**Both ITAR and EAR:**
“… basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community …”
VI. Recap

I. Lists
II. Technical information
III. Deemed Export Rule
IV. Foreign Nationals (read, students)
V. Fundamental Research Rule
   ➢ critical role of Right to Publish