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Export control awareness: the initial discussion & necessary considerations of engaging in export control practices at Eastern Washington University

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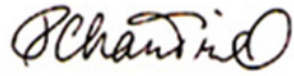
EXPORT CONTROL AWARENESS:
THE INITIAL DISCUSSION & NECESSARY CONSIDERATIONS OF ENGAGING
IN EXPORT CONTROL PRACTICES AT EASTERN WASHINGTON UNIVERSITY

A Research Project
Presented To
Eastern Washington University
Cheney, Washington

In Partial Fulfillment of the Requirements
for the Master of Science in Communication
and the Master of Public Administration
Degrees

By
Michael G. Watts
Fall 2018

RESEARCH PROJECT OF MICHAEL G. WATTS APPROVED BY



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Abstract

This research project examines export control policy in the United States, mainly the 1976 Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) as it relates to research practices in higher education. The goal of this project is to raise awareness of the current export control regulations, examine the importance of academic freedom in higher education, illustrate Eastern Washington University's (EWU) growing research potential, and offer guidance for if or when EWU engages in export control related practices. In support of these goals, EWU's 2018-2023 strategic plan, international student population, strength of STEM programming, the faculty values statement, and current export control policy were reviewed. The research concludes with the following recommendations for EWU: that the institution (1) strengthen its already-in-place reactionary stance (its current export control policy) for complying with current export control regulations, and (2) implement safeguards to protect and promote academic freedom, and question the ethicality of policies that provide access to knowledge for some groups of people while restricting that access to others.

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Chapter One

Introduction

In 2012, a former professor of electrical engineering at the University of Tennessee, Dr. John Roth, began his sentence of four years in prison for convictions of conspiracy and 15 counts of exporting defense articles and services without a proper U.S. export license. Roth had originally received a United States Air Force contract to develop plasma actuators for military drones. During his tenure, he also allowed this controlled data to be accessed by two engineering graduate students from China and Iran. Under the 1976 Arms Export Control Act (AECA) however, the export of defense-related technical data to a foreign national or foreign nation without a license is illegal. This case was the first of its kind in prosecuting a university professor for the transfer of controlled defense technical data, knowledge, and research to foreign students (Federal Bureau of Investigation, 2012).

The conviction of Dr. Roth is an important inflection point for academics and research institutions around the world. It illustrates not only the severity of violating United States export control laws—in this case the International Traffic in Arms Regulations (ITAR) of the AECA—but it also raises ethical and moral considerations relative to academic freedom in higher education. The military, law enforcement, and intelligence communities emphasize that export control laws advance United States foreign policy, achieve national security objectives, and prevent academic espionage, which to some extent they do. However, these policies have the potential to erode the concept of academic freedom for all and questions the overall ethicality of restricting knowledge to some groups of people and not others. With these conflicting views in

mind, the goal of this research project is to (1) raise awareness of export regulations in a general sense and in academia, (2) examine the importance of academic freedom in higher education, and (3) illustrate Eastern Washington University's (EWU) growing research potential and offer suggestions and the necessary considerations of engaging in export control related practices.

In order to raise awareness and understanding of current export control regulations, the second chapter of this project provides a policy cycle examination of export control and the implementing regulations in the United States. This policy cycle examination includes an analysis on issue emergence, agenda setting, alternative selection, enactment, implementation, and evaluation. The evaluation section covers a description on the importance and limitations of export regulation from a national security and foreign policy lens and is followed by an examination of the current controversies between export control and the ethics of academic freedom. Chapter Five illustrates EWU's growing research potential and the need for export control policy review. This section reviews the institution's continued successful growth in STEM programming, international student and faculty participation, the faculty values statement, the current strategic plan, and existing export control policy. Finally, the last chapter provides suggestions and considerations for Eastern Washington University to begin the communicative process of engaging in export control practices. This paper is organized by the following chapters:

Chapter One: Introduction

Methodologies

Export Control and Definition of Terms

Chapter Two: Policy Examination of Export Control Laws

Issue Emergence and Agenda Setting

Alternative Selection, Enactment, Implementation, and Evaluation

Chapter Three: The Importance and Limitations of Export Control

Chapter Four: Academic Freedom in U.S. Higher Education

Academic Research under Export Control

Chapter Five: EWU's Research Potential and Export Control Review

Chapter Six: Recommendations, Considerations, and Conclusion

Apart from providing export control awareness and a discussion on the ethical considerations of engaging in these practices, what is the larger significance of this project? What is the answer to the “*So what?*” question? From a foreign policy perspective, export control and the implementing regulations can be justified through national security objectives. But that is just one side. Globalization—the phenomenon driven by the technological movement of global ideas, cultures, languages, and goods—is a major influence as well. The philosophical stance behind this research assumes that exposure to diverse ideas, cultures, and people is fundamental to intellectual progress. Further, it assumes that academic freedom is the essential bedrock upon which knowledge-generating U.S. colleges and universities are built. But implementing more protectionist and nationalistic policies could threaten these principles. This project aims to discuss the considerations of engaging in export controlled related practices at Eastern Washington University; it also questions the ethicality of protectionist and nationalistic

policies that ultimately provide access to knowledge for some groups of people while restricting that access to others.

The interest for this research project is built on my coursework from the EWU Master of Science in Communications (MSC) and the Master of Public Administration (MPA) programs, as well as my first-hand, ethnographic experience working in the summer and fall of 2018 for the United States Department of State, Bureau of Political Military Affairs, Office of Defense Trade Controls Compliance (DDTC) and the Bureau of Education and Cultural Affairs (ECA). DDTC is the very agency that has been delegated authority from Congress to interpret and enforce the ITAR which implements parts of U.S. export control law. The Bureau of Education and Cultural Affairs is responsible for fostering understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges. During my tenure at the State Department, both agencies dealt with the growing tensions between academic freedom and United States national security and foreign policy objectives. My educational background and my time spent interning in Washington D.C. combined to serve as the driving factors in the design and pursuit of this culminating research project.

Methodologies

For this research project, a primary computerized literature search was conducted to investigate and collect the most relevant peer-reviewed articles and books using Google Scholar and databases like EBSCOhost: Academic Search Complete. The databases searched within EBSCOhost included *Communication & Mass Media Complete, Academic Search Complete, Business Source Complete, Education Research*

Complete, Military & Government Collection, Newspaper Search Complete, Primary Search, and PsycINFO. Published reports from government agencies and those that appeared in peer-reviewed journals and books were collected as the primary sources of data. Search items included *ITAR* and *academic freedom, ethics and knowledge, export control and history, and export control and research.* Primary news sources were also used to relate current and past events and practices to export control laws. Websites from Eastern Washington University and surrounding institutions were also used to examine EWU's accomplishments in higher education, strategic plan, and current export control policy. This literature search was intended to include the most relevant research on the identified topics and included the most recent research ranging from the early 1900s (the starting point of export control laws) to 2018. The literature searches were conducted in the fall of 2018.

Export Control and ITAR: Definition of Terms

Before conducting a policy cycles examination of export control and the governing laws, a brief definition of U.S. export terminology must be provided. Export control in the United States is complicated with many underlying policies, pieces of legislation, and government agencies that interpret and enforce the regulations. This project does not aim to go in depth on the specifics of each law, the regulations, and their evolution. Rather, it is designed to take a thirty-thousand-foot view of United States export control policy and relate it to the controversies surrounding academic freedom in higher education. This project ideally will serve to contextualize and inform early

discussions should Eastern Washington University engage in export control related practices. The definitions of important terms and concepts are listed below.

The Arms Export Control Act of 1976 (AECA): This act authorizes the President to control the commercial export of defense articles and defense services. “The President exercises this control through the Office of Munitions Control of the U.S. State Department. The Department of State designates those items which it considers to be defense articles and defense services, and therefore subject to export control, in the International Traffic in Arms Regulations (ITAR). The items designated as defense articles and services in the ITAR comprise the U.S. Munitions List (USML) (Monahan, 1983, p. 175). Note: technical data, research, and knowledge are included in the USML.

The Export Administration Act of 1979: Similar to the 1976 AECA, this act provides the President with authority to implement export controls on non-military goods, services, and technical data for reasons of national security and foreign policy objectives. This act evolved from the Export Control Act of 1949 (Monahan, 1983, p. 184).

Export Administration Regulations (EAR): The EAR is a set of rules under the Department of Commerce that governs the exportation of dual-use technologies. Under this, dual-use exports involve technology that has both commercial and military or proliferation applications. To constitute an export under the EAR, an actual shipment or transmission of items [including technology or software subject to the EAR] out of the United States must occur. The EAR contains a list of items called the Commerce Control

List (CCL) for which licenses are required for exports or re-exports to certain countries (as cited in Templin, 2009, p. 552).

International Traffic in Arms Regulations (ITAR): The ITAR is a set of regulations that governs exports of defense related articles and services. Under the ITAR, sending or taking a defense article or service out of the United States in any manner constitutes exporting. This includes disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad. Items and technology controlled by the ITAR are contained in United States Munitions List (USML), which the Office of Defense Trade Controls in the Department of State, maintains (as cited in Templin, 2009, pp. 553-554).

Technical Data under the ITAR: Technical data falls under three categories. “First, any unclassified information that can be used, or be adopted for use, in the design, production, manufacture, repair, overhaul, processing, engineering, development, operation, maintenance, or reconstruction of arms, ammunition, and implements of war on the USML. Second, any technology which advances the state-of-the-art or establishes a new art in an area of significant military applicability in the United States. And third, [any data that] includes classified information” (Monahan, 1983, p. 176).

Chapter Two

Policy Cycle Examination of Export Control Laws

For this section, I examined the implementation of export control laws using the stages model of the policy process described by political scientist Thomas Birkland, in his 2016 book *An Introduction to the Policy Process: Theories, Concepts, and Models of Public Policy Making*. The stages of analysis include: Issue Emergence, Agenda Setting, Alternative Selection, Enactment, Implementation, and Evaluation. This model divides the policy process into a series of stages from a notional starting point (the issue or problem to address), to the end point, or the evaluation of how successful the policy has been.

U.S. export law is complicated, and this project only scratches the surface of the underlying policies and their evolution. In general, the Arms Export Control Act of 1976 and the Export Administration Act of 1979 both grant authority to the President to control U.S. exports. These two Acts developed over time within the context of—and under the influence of—multiple domestic and foreign events. They are the most important pieces of legislation affecting both the control of exported defense goods and services and the control of technical data and sensitive research.

Finally, there are currently two main sets of regulations within the legislation that govern United States export law: (1) The Export Administration Regulations (EAR) administered under the Department of Commerce, and (2) the International Traffic in Arms Regulations (ITAR) under the Department of State. For the scope of this research project, I examined the ITAR and some parts of the EAR regarding research in higher education.

Issue Emergence and Agenda Setting

From the height of the cold war with the former Soviet Union, to current tensions with China, it's clear that the United States government will confront economic, military, political, and/or strategic aggression if any aspect of U.S. supremacy is threatened. Recently, Vice President Mike Pence condemned China for its alleged hacking and espionage attempts within the United States, its theft of U.S. technological secrets, and unfair trade practices (Tharoor, 2018). Within the United States Government, there currently exists a heightened sense of insecurity relative to valuable U.S. research and technology illegally exported to the labs of foreign adversaries. Take for instance the story of Chinese graduate student Ruopeng Liu. According to *NBC News* (2018), in 2006, Liu enrolled at Duke University and studied under Dr. David Smith, a leading researcher in technology and metamaterials. Dr. Smith is known for designing and creating a so-called "invisibility cloak." This research and development attracted the attention and the investment of millions of dollars from the U.S. military in hopes that one day this material could be used to protect U.S. troops. However, years later, Dr. Smith was surprised to see an exact copy of his technology built in China. Liu now has a PhD from Duke and a tech company valued at six billion dollars. This case was just one of many examples of an increase in academic espionage (McFadden, C., Nadi, A., & McGee, C., 2018).

Although the aggressive rhetoric from Vice President Pence and the intelligence community which characterizes other nations as an enemy or rival is belligerent and crass, it isn't a new phenomenon. During the cold war, tensions of uncertainty and fear of Russian control resonated with many Americans, politicians, and lawmakers. Joseph

McCarthy, a Republican senator from Wisconsin, gained national notoriety for his smear tactics against Communists and Soviet nationals. This eventually led to the concept of “McCarthyism,” or the practice of making accusations of treason without proper evidence. McCarthy demonstrated this unethical practice during a speech at the Women’s Republican Club in West Virginia in 1950:

While I cannot take the time to name all the men in the State Department who have been named as members of the Communist Party and members of a spy ring, I have here in my hand a list of 205 (Joseph McCarthy, as cited in Lindsay, 2014).

Here, McCarthy claimed to have a solid list of 205 insider threats (potential spies) within the United States Department of State. However, the senator did not provide evidence in this statement to back up his claims. Many of these accusations were later defined as baseless accusation, essentially just words.

Throughout his career, McCarthy and these tactics fueled fears of Communism throughout the United States, including U.S. legislators, members of Congress, and the general public. However, McCarthy’s distress over Communism did not originate with him. U.S. intelligence officials had already developed a rigid mindset about Soviet influence. George Kennan, a U.S. diplomat from 1926 – 1953 highlighted this in a 1946 formal cable to the U.S. Department of State from the U.S. embassy in Moscow. Being a lot more diplomatic and less provocative with his language than either McCarthy or Pence, Kennan wrote:

In summary, we have here [in the Soviet Union] a political force committed fanatically to the belief that with US there can be no permanent *modus*

vivendi that it is desirable and necessary that the internal harmony of our society be disrupted, our traditional way of life be destroyed, the international authority of our state be broken, if Soviet power is to be secure. This political force has complete power of disposition over energies of one of world's greatest peoples and resources of world's richest national territory and is borne along by deep and powerful currents of Russian nationalism (George Kennan, as cited in Lindsay, 2014).

Comparing the rhetoric of today to examples of decades ago reveals that they both ultimately create(ed) a separation of “us” and “them.” They paint the other as the enemy of the American people whose purpose is to spy, steal, and undermine the American way of life. While the accuracy of their claims is debatable, it's clear that this framing continues to exist as a powerful tool that influences policy debates. Today, this framing concerns mainly China. Back then, it was Russia, and before that, Germany and Japan. This fear of “the other” and losing standing in the “great world power” competition, requires a look through the historical and national security lens at the time.

Issue emergence and Agenda setting is an important part of the policy life cycle. Issue emergence identifies problems that require government attention and resources, even as it defines the nature of the problem or issue at hand. Agenda setting is defined by Birkland (2016) as the process by which problems and alternative solutions gain or lose public and elite attention. Groups must promote their issues' in the limited agenda space and especially when a crisis makes their issue more likely to gain attention (p. 200). That latter part of this definition—the crisis—is the key to understanding not only how early

U.S. export laws were imposed, but how tougher national security measures were adopted post-Cold War and after the 2001 September 11 terrorist attacks.

During the era of the Cold War, there was reason to believe that powerful, communist states could use knowledge and science for political and military gains against the United States. The U.S. had seen unimaginable destruction and carnage in World War II by Nazi Germany and Imperial Japan and was fearful that the Soviet Union could potentially do the same. Surprisingly, World War II and the Cold War were not the starting events in efforts to regulate U.S exports and control technical data. According to Elise Keppler (2001), the associate director of the International Justice Program at Human Rights Watch, export controls have been implemented throughout U.S. history to advance economic, national security, and foreign policy interests. It was not until after World War II, that such controls were imposed on an ongoing basis, instead of just for limited periods during wartime (p. 389). During the 1930s, the president was originally authorized through neutrality acts to control the export of arms to any nation during a time of war. Yet due to nature of these acts and their provisions, the executive branch was inefficient in responding to changes in political and military climates. Throughout the years and with the great impact of World War II and the beginning of the Cold War, these acts were eventually revised and amended to what we follow today as the 1976 Arms Export Control Act. Patrick J. Monahan (1983), now judge of the Superior Court of Justice in Toronto, Ontario, described the three broad policy aims that were created through this act:

The Arms Export Control Act of 1976 replaced the Mutual Security Act of 1954... This act advances three broadly-worded policy objectives. (1) encourage

regional arms control and disarmament agreements and to discourage arms races; (2) facilitate the common defense by entering into international arrangements with friendly countries; and (3) to encourage the world community to reduce international trade in weapons (p.174).

The Arms Export Control Act of 1976 was just one way the United States adapted some of its legislation to control the export of defense goods and services. World War II and its aftermath significantly influenced how legislators promoted issues of national security and their solutions. In addition, the tightening democracy-communism tension derived from the Cold War set the stage for the implementation of new and ongoing export control laws on defense goods, services, and technology. It transformed the issue of national security from a conflict-centered acute focus to an ongoing issue in a chronic state of crisis. From now on, the distinct separation of times of peace and war would forever be blurred. Maintaining and achieving “national security” would become an endless “battle.”

Apart from the Arms Export Control Act of 1976, The Export Administration Act of 1979 also provided the President with authority to control non-military exports:

The Export Control Act of 1949 was the first legislation designed specifically to regulate non-military exports. The 1949 Act was primarily an outgrowth of American concern over Soviet domination in Eastern Europe. This concern prompted the U.S. government to take measures to protect national security. Specifically, the U.S. government used this concern for national security as its basis for licensing controls on exports to the Soviet Union and the countries of Eastern Europe. The national security rationale became more compelling as the

"Cold War" consciousness took hold of Congress. American involvement in the Korean conflict provided additional justification for restricting U.S. exports to Communist nations. National security required closer scrutiny of exports to North Korea's communist allies and led to a complete embargo on exports to North Korea and the People's Republic of China. In general, the United States prohibited any exports which would assist the Communist nations militarily or economically (Monahan, 1983, p. 185).

The range of export control established by the Export Control Act of 1949 was broad due to the political relationship between the United States and the Communist world at the time. However, in the 1960s and the progressive era, the rationale for strict export control lost traction. Congress implemented the Export Administration Act (EAA) of 1969 for more liberal export control. This act narrowed the broad mandated controls to only strict control of exported goods to communist states with potential strategic value (Monahan, 1983, pp. 185-186).

These more liberal policy regulations would last only until the early to mid-1970s. In 1973, the United States experienced the OPEC oil embargo which severely restricted U.S. access to foreign supplies. Congress amended the 1969 EAA as a way to achieve U.S. economic goals by using export controls to remove foreign embargos. Export control once again expanded itself in scope from being mainly used for national security during times of conflict, to the current state of achieving any foreign policy objective whether for reasons of security, economic, political, or social value. In 1977, Congress amended the EAA once more to the following:

[This] amendment authorized the President to use export controls “to encourage other countries to make immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to international terrorists. [In addition], the emergence of the United States as a proponent of human rights widened the scope of foreign policy export controls. In 1976, Congress declared that a principal goal of the foreign policy of the United States was “to promote the increased observance of internationally recognized human rights by all countries.” This declaration explicitly expanded the purposes for which the United States could implement foreign policy controls (Monahan, 1983, pp. 186-187).

Both the Arms Export Control Act of 1976 and the Export Administration Act of 1979 are important for understanding the development of United States export control. Both contain broad and vague language that emphasize the need for stronger national security measures with a wider scope of foreign policy influence. Congress would also later make major innovations in these acts by focusing national security controls on technology and data rather than only on tangible goods (Monahan, 1983, p. 187).

The impact of World War II and the development of the Cold War ultimately created the versions of the export control legislation we follow today, the Arms Export Control Act and the Export Administration Act. Both acts restrict the flow of defense related articles, services, and technology with the sole mission of protecting national security and furthering U.S. foreign policy. However, the export control system has evolved at a much slower pace than the international arena it operates in. Samuel W. Evans, University of Science and Arts of Oklahoma scholar, and Walter D. Valdivia, a senior policy editor for the Mercatus Center at George Mason University (2012),

describe two key events that ultimately shifted the political order from a bipolar balance of powers during the cold war, to a multi-polar world beyond the sovereign state: the end of the Cold War itself, and the crisis that was the 2001 September 11 terrorist attacks (p. 177). Since then, export controls and related regulations have expanded. Both private enterprise and the academic community have long criticized U.S export laws stating that it interferes with international communication and undermines essential academic values (Monahan, 1983, p. 196). But what were the alternatives to these measures for protecting national security and advancing U.S. foreign policy? And how has the implementation of these policies impacted academic freedom? This next section attempts to answer these important questions.

Alternative Selection, Enactment, Implementation, and Evaluation

Alternative selection is a critical step in the public policy cycle and in the decision-making process itself. Rutgers University public policy scholars Frank Fischer, Gerald Miller, and Mara Sydney (2007) explain in their book *Handbook of Public Policy Analysis*, that “any decision-making should be based on a comprehensive analysis of problems and goals, followed by an inclusive collection and analysis of information and a search for the best alternative to achieve these goals” (p. 44). As we can see from the previous examination of issue emergence and agenda setting, the concept of export control has developed through the years within the context of political and military tension between global powers. Because it has evolved and expanded into an on-going tool used for foreign policy and maintaining national security, questions arise about the appropriateness of measures for export control in the current climate.

According to export control scholars Evans and Valdivia (2012), “when a state wishes to prevent knowledge, information, or goods from falling into an enemy’s hands, it has several mechanisms at its disposal. The most stringent of these are embargos, which cut off all flow of the item to a particular entity. Less stringent mechanisms include classifying the item (e.g. Secret, Top Secret) or requiring government approval through a system of export controls and/or visas before a transfer takes place” (p. 174). In terms of temporary controls, for example during times of war and crises, embargos made the most sense as they are provisional bans on certain commodities or to specific countries. The classification system and export controls however were more permanent and were used to achieve longer term foreign policy objectives and goals. The decision to use export controls as temporary mechanism in controlling the movement of goods, information, and technology may have made sense during severe crises, such as after the 2001 September 11 attacks when national security objectives became top priority. But taking these policy objectives too far in one direction also has its own consequences, including those described by Robert O’Neil, First Amendment law scholar from the University of Virginia in 2003:

Historically, the government’s domestic arsenal in times of crisis has included three weapons: secrecy, surveillance, and suppression. The need to maintain the secrecy of certain critical military information is indisputable, as is the imperative to gather information about an enemy’s actions and plans... Confined within proper bounds, such measures need not pose a threat to civil liberties in general or to academic freedom in particular. But we have learned from experience that in the passion of war, and in the hands of those who may be properly zealous for its

successful prosecution, the boundaries can blur. Information the body politic vitally needs to maintain oversight of public affairs has been made secret, and classification has sometimes been imposed solely to save the classifying entity from accountability and embarrassment. Surveillance has been extended to lawful activity. Political dissent has been suppressed and, at points, such suppression has threatened to chill the robustness of debate upon which democracy depends (p. 3).

Because these methods originated for temporary use during a time of crisis but have evolved into a lasting policy strategy, greater, more ethical concerns have arisen, especially when the control of knowledge and information is involved. The enactment and implementation of long-term export control legislation has been criticized and debated for these very reasons.

After alternative selection, enactment is the fourth stage described by Birkland in the stages model of the policy cycles. Simply put, enactment is the act of putting a decision, such as legislation or regulation, into effect (p. 202). Export controls in the United States in the last five decades have broadened in scope from regulating tangible goods for economic and some national security concerns, to now controlling knowledge and information for achieving national security and foreign policy objectives. As explained in the introduction, since this research project is only looking at a snapshot of export control policy in relation to academic freedom in the United States, only the enactment of the related ITAR regulations under the AECA and some parts of the EAR regulations were examined.

The ITAR is regulated and interpreted under the U.S. Department of State, Directorate of Defense Trade Controls (DDTC). Under these regulations, any person engaged in the business of manufacturing, brokering, or exporting of items on the United States Munitions List (USML) must register with DDTC. A license request must also be submitted whenever there are intentions to commercially export defense articles, services, or technical data. In addition, authorization from DDTC is required when releasing technical data to a foreign person in or outside of the United States. Finally, DDTC has the authority to “deny, revoke, suspend, or amend the export license without prior notice whenever the department believes such action would further ‘world peace’, the security of the United States, or the foreign policy of the United States” (Monahan, 1983, p. 183). The enactment of the ITAR, specifically the regulation requiring authorization of releasing technical data to a foreign person in or outside of the United States, has been criticized by the academic and business communities. With the increase in globalization—as described in the introduction—and a slow societal shift to globalism—the ideology that prioritizes global citizenship over national interests, collaboration and cooperating with foreign nationals and students has become rather common place in higher education and within business. This tension created through the current aims of export control and the common practices experienced in today’s higher education and business worlds has made for evaluation of export control policy highly complicated and controversial.

Evaluation, the final stage of the public policy cycle, is the process of investigating whether and to what extent a certain program or policy has its desired effect (Birkland, p. 60). Since the implementation of export control regulations, specifically the

ITAR under the AECA, these governing laws have received a lot of debate and criticism throughout the years. Critics claim they are either too restrictive or not restrictive enough. The evaluation stage is incorporated into this project's main examination of academic freedom in the context of export control. In this study, an exploration into the importance of export control and the regulations in furthering national security and foreign policy will precede the academic freedom discussion. It's clear though, these regulations still have their limitations and challenges.

Chapter Three

The Importance and Limitations of Export Control

As mentioned before, in the post-Cold War and post-911 world, the political order has shifted from a bipolar balance of powers to a multi-polar world beyond the sovereign state. In this new reality, contemporary conflicts are often fought by nonstate actors. And yet, the export control system itself, or rather the very fundamental concept of what export controls should accomplish, has not evolved to operate effectively in the present international, political, economic, and social system. “Current conflicts tend to be civil wars fought within one state resulting from tensions between various ethnic, political, religious, and cultural groups in that country” (Keppler, 2001, p. 385).

The 1994 Genocide in Rwanda is a perfect, if tragic, example. Here, the extremists in Rwanda’s ruling regime killed more than 500,000 Tutsis and Hutus. Although governmental legislation and regulation can’t change the demented minds of the extremist groups responsible for the slaughter, it could and should have done more to prevent—or at least mitigate—these catastrophes. Keppler (2001) described that between 1990 and 1994, more than \$26.9 million in small arms and light weapons were sold to the Rwandan government by governments and private brokers. And despite arms export controls that prohibit transfers to certain destinations, few, if any, of the actors involved are held accountable for their activities (p. 381-382). It is at this point that we should question whether we are learning from these humanitarian crises and terrorists’ acts, adapting our policies and regulations as they are intended? Fast forward to 2012. Even when there is a serious indictment of export control violations, specifically the ITAR and

AECA, and deaths mounting, limitations of prosecution, inadequate penalties, and incomplete investigations have and do occur.

On September 12, 2012, an Islamic militant group attacked two U.S. government facilities overseas: the U.S. Embassy in Benghazi and a nearby annex building. These attacks ultimately killed U.S. Ambassador to Libya Christopher Stevens, three other Americans, and wounded many others. The Benghazi case itself is extremely complicated by accusations of political coverups, wrongdoings, and illegal activity. However, the involvement of Marc Turi, an American arms dealer of Turi Defense Group LLC, cannot be contested. According to *Politico* (2016), Mr. Turi cooperated with the State Department's Directorate of Defense Trade Controls and based on a compliance review, DDTC alleged that Mr. Turi engaged in brokering activities for the proposed transfer of defense articles to Libya, despite the original license denial. Turi was indicted on four felony counts: two of arms dealing in violation of the Arms Export Control Act and two of lying to the State Department in official applications. The charges accused Turi of claiming that the weapons involved were destined for Qatar and the United Arab Emirates, when the arms were actually intended to reach Libya (Vogel & Gerstein). His only punishment was to pay a \$200,000 civil penalty and refrain from U.S.-regulated arms dealing for four years. If he complied, this civil penalty would be waived.

Finally, and more recently, current debates on the tension between export control under ITAR and first amendment rights have been in the headlines. Cody Wilson, founder of Defense Distributed made the argument that 3-D printing of guns and disseminating the blueprints were first amendment rights. This case prompted the fundamental question of whether the federal government can prevent someone from

distributing knowledge. It also raises the question of just what is considered a threat to national security. The answers to these questions are constantly debated by citizens and lawmakers alike and export control laws and ITAR are involved in the debates.

According to *The Washington Post*, this is the summary of that involvement:

In April 2013, Cody Wilson, founder of Defense Distributed, printed his first fully 3-D-printed pistol, including the receiver, springs and barrel. Then he open-sourced the files, posting them on an unregulated file-sharing website. At the time, exports within the International Traffic in Arms Regulations were under the State Department's purview. The Justice Department worked with the State Department throughout Wilson's case, according to Nauert. Ultimately, DOJ [Department of Justice] advised the federal government to settle, believing it was likely to lose in court on First Amendment grounds (Paul, 2018).

This most recent matter once again showcased the limitations of export control in the United States. For gun-control advocates, the idea of these 3-D printed guns—and in a more fundamental sense, the knowledge to create these weapons—raises concerns about the overall safety of communities domestic and abroad. For others, limiting the production and sales of these guns is a violation of First and Second Amendment rights.

The three cases cited above: Rwanda, Benghazi, and 3-D printed guns are only examples of many instances where the limitations of arms and export control threaten the safety of communities around the world. Export control and its understanding and practice ultimately needs to adapt to the demands of a multi-polar world beyond the traditional concept of competing states. Should export control see tougher regulations and restrictions? Based on the events above, one could arguably say “yes.” But what about

applying these same, tougher restrictions to research and institutions of higher education?

Although some may argue that not applying the same, stronger regulations is

hypocritical, this application would require a whole set of different considerations and

questions.

Chapter Four

The Concept of Academic Freedom in U.S. Higher Education

Since the early 1900s, academia in the United States has always, and will always pride itself on concepts of intellectual independence, the quest for truth, and academic freedom. To be honest, growing up in the United States and making my way through the public-school system, and later higher education, the concept of academic freedom was something I, and probably many others, never thought about. In the most naïve sense, it is something we have all probably taken for granted. Philosophically speaking, any discussion about academic freedom will involve considerations of morality and ethics. Rebecca Eisenberg (1988) from the University of Michigan Law School attempted a comprehensive definition of academic freedom:

The most obvious of these [values] are the related values of inquiry and dissemination of knowledge. Academic freedom promotes the advancement of knowledge by protecting scholarly investigation and reflection. It promotes dissemination of knowledge by protecting scholars who convey their learning through teaching, publication, and extramural utterances. Academic freedom also serves the value of critical objectivity by permitting scholars to challenge received wisdom and insulating them from pressure to adhere to a prescribed orthodoxy...Academic freedom ensures that the enterprise of scholarship will be left to professionals operating with minimal lay interference (p. 1367).

This concept of academic freedom and the attendant moral issues surrounding it is important to comprehend. Not only does it place importance on the freedom of a student to learn by promoting scholarly reflection and investigation, it also allows the professor,

teacher, lecturer, or instructor to research and create curriculum without outside pressure from administration, governments, or business organizations. Alexis Gibbs from the Department of Education Studies and Liberal Arts at the University of Winchester describes that in many developing countries (e.g. during the era of the Soviet Union), issues of censorship, religious orthodoxy, civil conflict and political repression all proved obstacles to an institution's ability to sustain academic freedom and protect the pursuit of knowledge (2016, p. 176). Controlling science and knowledge for financial, political, or social interests of others, whether it be governments, or even authority within the own academic institution, should ultimately be avoided. Additionally, Philip Altbach from the Center of International Higher Education at Boston College, argued that corporate- or government-sponsored research can also have negative implications on academic freedom, including instances when research findings being suppressed or exaggerated for benefits of the sponsor (2001, p. 216).

The American Association of University Professors (AAUP), was founded after World War I as a voice against the quests and questionable sacrifices for national security. AAUP recognized the ethics of academic freedom and established the 1915 Declaration of Principles:

Faculty members can best fulfill their social function of expanding and disseminating new knowledge if they are protected from lay interference. The lay trustees and administrators who run universities present a particularly acute threat because of their direct power over faculties and because their concern with the financial aspects of university governance may lead them to be co-opted by the interests of university patrons. Academic freedom and tenure protect faculty

members from these powerful figures who might otherwise distort the academic enterprise in favor of particular political or financial interests (Eisenberg, 1988, 1365-1366).

Even a couple years after the 2001 terrorist attacks and the implementation of the Patriot Act by the Bush administration, the AAUP maintained a strong stance for academic freedom. The statement below was published after a committee meeting on May 9, 2003:

As war in its second year becomes the accepted routine of American life, rather than a confused departure from the ways of peace, the decision of the American Association of University Professors to hold fast to its fundamental principles has been justified. The determination to save rather than to jettison what had been won through years of courage and effort was based upon the experience of the First World War and on the knowledge that freedoms lost are difficult to regain. . . . Academic freedom is one facet of intellectual freedom; other aspects of that larger concept—freedom of speech, freedom of the press, and freedom of religion—are among the avowed objects for which this war is being fought. It would be folly to draw a boundary line across the area of freedom (as cited in O’Neil, 2003, p. 3).

On the surface of it all, one might think national security should always be top priority and protecting university faculty from administrators in their own institution is a senseless or silly worry. But this protection is necessary for maintaining the validity and

ethics of science and knowledge for all. Without this protection and without academic freedom, students, the public, and the whole academic and scientific enterprise could not be certain that they are receiving the facts, informed opinions, and uncompromised knowledge from experts in the field. This quest for knowledge is essential for scientific investigation and for understanding and enhancing every facet of the world around us. When legislation and regulations such as the AECA and ITAR interfere in the practice of academic freedom, students and the public cannot benefit from the “marketplace of ideas” in the same way.

As described in the previous policy cycle examination, export control has evolved to more permanent control on intangible concepts like technical knowledge and data for accomplishing foreign policy and national security objectives. In addition to this policy, academia has also evolved. Concepts of globalization and globalism are embraced and scientific collaboration and exposure to differing global ideas, cultures, languages, and people is fundamental to academic progress and intellectual enlightenment. Thus, having a rich and diverse academic community with international student and scholar participation is a common goal found throughout many, if not all universities in the United States. Nevertheless, there seems to be a fundamental dissonance through the evolution of these two societal institutions being discussed: The shared common quest for national security, and the ethics of academic freedom enriched with international scholarly collaboration.

Academic Research under Export Control

As mentioned in the introduction, there are currently two sets of regulations in the United States that govern not only export law, but the control of technical knowledge, data, and sensitive research. These are the Export Administration Regulations (EAR) under the Department of Commerce, and the International Traffic in Arms Regulations (ITAR) under the Department of State. Although, this project mainly examines the ITAR, there are some parts of the EAR that also impact research done in an academic setting. Under both the ITAR and EAR, the export of technical data and knowledge is considered a “deemed export.” A deemed export is the release of controlled technology, data, knowledge, and information to a non-U.S. person irrespective of where the transaction took place. James D. Templin (2009), from the John Marshall Law School, explained that “deemed exports [can] occur quite frequently in academic research settings where foreign nationals are able to observe controlled equipment in use or discuss controlled equipment or technical data” (p. 554).

Due to the nature of these controversial regulations regarding the control of technical data and knowledge to foreign nationals in an academic setting, both the ITAR and EAR include exclusions that not only allows for research and scientific collaboration with foreign nationals, but for the dissemination of certain research all together. These are known as the fundamental research and the educational-information exclusions.

Templin described these exclusions:

Generally, the fundamental research exclusion applies for basic and applied research ordinarily published within the scientific community, so long as researchers openly conduct the research and without restrictions on publication or

access to or dissemination of the research results. The educational-information exclusion, or “teaching exemption,” authorizes the disclosure of educational information released by instruction in catalog courses or general scientific, mathematical, or engineering principles commonly taught in colleges and universities without a license (p. 556).

While the incorporation of these export control exclusions provides some flexibility for academic institutions to incorporate foreign nationals in research projects, understanding what’s considered “fundamental” or “general” knowledge is vague and complicated in answer. In addition, if a university were to engage in export-controlled research with collaboration of foreign students or faculty, the university would have to receive export licenses for every foreign national working on any part of the project. These requirements of first, understanding what’s deemed as fundamental research or knowledge, and second, going through the proper licensing procedures places barriers on efficient and ethical scholarly investigation and collaboration. Blaine Garfalo from Northwestern Polytechnic University, and Barbara L’Huillier and Soha Khan from Prince Mohammad Bin Fahd University (2017) described the very problems of export control vagueness and interpretation facing researchers in the United States:

Even the governmental bureaucracy responsible for classification, the US Department of State Directorate of Defense Trade Controls (DDTC), has acknowledged that the international Traffic in Arms Regulations (ITAR) law is often extremely ambiguous. In fact, the DDTC acknowledges that contacting multiple representatives of ITAR to dispute or get clarification of a classification

ruling would most likely result in multiple interpretations and as such, inconsistent answers. Herein lays the first part of the problem: the arbitrary (and inconsistent) classification of information and technology as a National Security concern (p. 410).

Additionally, the United States Munitions List (USML), which is regulated under the ITAR and provides a list of prohibited exports is complicated and dense. The USML is currently divided into twenty-one categories ranging from firearms and other weapons to vehicles, protective personnel equipment (PPE), and everything else in between. As David A. Broniatowski, Nicole C. Jordan, Andrew M. Long, Matthew G. Richards, and Roland E. Weibel (2005) from the Massachusetts Institute of Technology stated, “the breadth of the USML leaves room for individual interpretations by enforcement agents within the State Department and, hence, uncertainty in the minds of those who are conducting research that may be related to these technologies” (p. 4).

Both the ITAR and EAR are difficult to understand when deciding who needs an export license and what’s considered fundamental research in the context of these regulations. While the two exemptions discussed do help relieve some of the tension between academic freedom and national security, these regulations ultimately restrict the flow of information to some groups of people and not others.

Figure 1 [provided by Templin, (2009, p. 576)] describes seven steps for determining if foreign faculty and/or staff need licenses if they’re involved in controlled research. Note the very first step: “Is the individual’s loyalty tied to a country of

concern?” Under the ITAR § 126.1(1) and (2), licenses are denied purely on certain country affiliations. The regulations read:

(1) For defense articles [which includes technical data, research, and knowledge] and defense services, the following countries have a policy of denial: Belarus, Burma, China, Cuba, Iran, North Korea, Syria, Venezuela. (2) For defense articles and services, a policy of denial applies to the following countries except as specified in the associated paragraphs below: Afghanistan, Central African

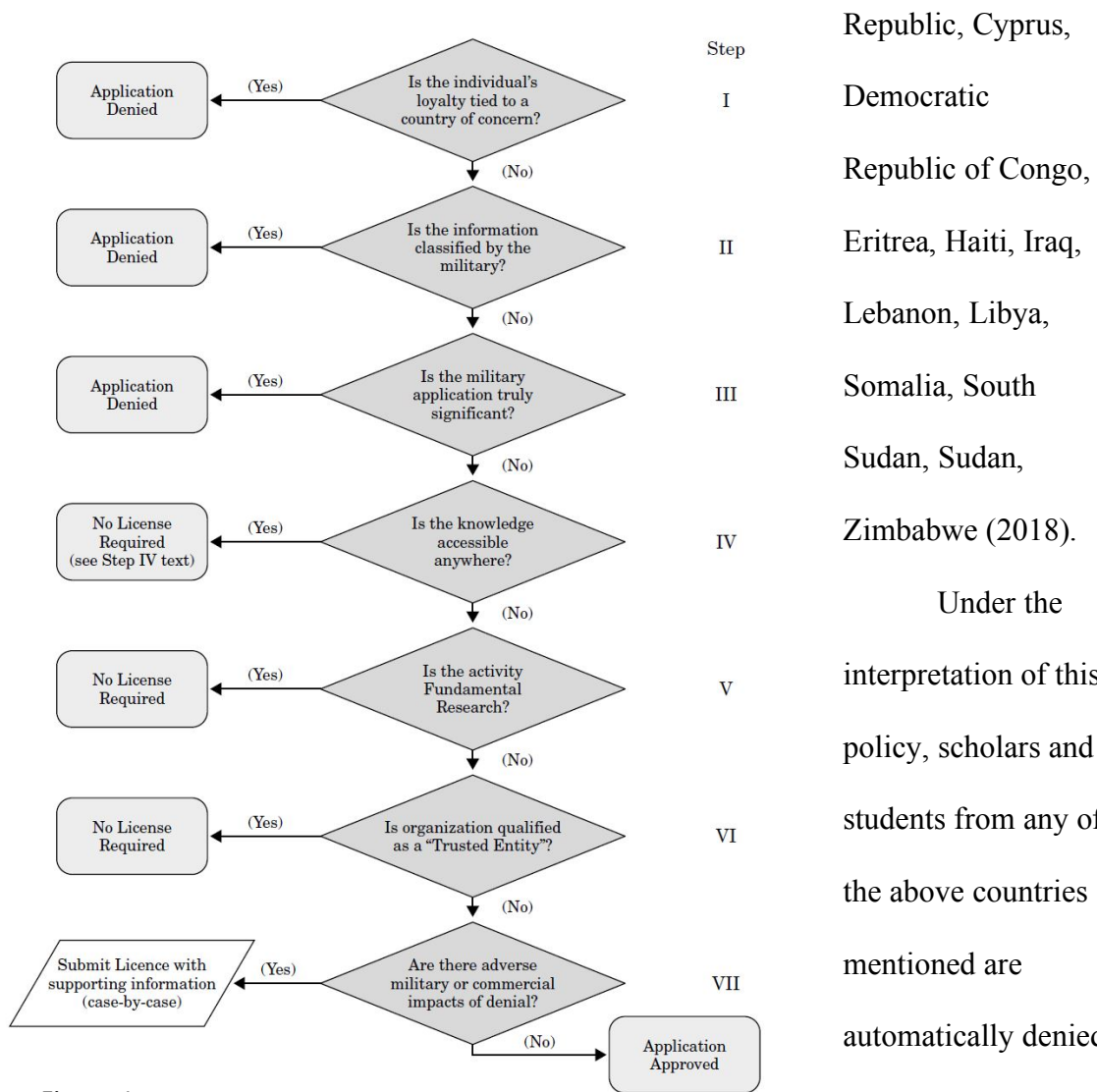


Figure 1

Republic, Cyprus, Democratic Republic of Congo, Eritrea, Haiti, Iraq, Lebanon, Libya, Somalia, South Sudan, Sudan, Zimbabwe (2018). Under the interpretation of this policy, scholars and students from any of the above countries mentioned are automatically denied access solely based

on their origin and citizenship, all of which are not controlled by the individual. This concept brings us back to our “*So what?*” question: what is the ethicality of these protectionist and nationalistic policies that restrict knowledge from some people and not others? Do they have greater rights to access knowledge? Some may say these measures are necessary for our national security and foreign policy objectives, while others understand academic freedom and scholarly investigation for all as fundamental for the pursuit of knowledge and truth. Nevertheless, government policies such as these deemed export controls against academic freedom are in constant debate and question the very concept of science and democracy altogether. “If science [and scholarly investigation] was indeed the support column of liberal democracy, the erosion of the first threatened the destruction of the second. If science yields fruit only when curiosity is given free reign, then academic freedom, in an absolute sense, is an ally of democracy even when [it] inadvertently poses threats to the integrity of the state” (Evans & Valdivia, 2012, p. 173-174).

Chapter Five

Eastern Washington University's Research Potential and Export Control Review

Eastern Washington University (EWU) is a regional public university located on the eastern side of Washington state in the United States. It has come a long way since its humble beginnings in 1882 as the Benjamin P. Cheney Academy, a small school of once about 200 students. Following World War II, the institution grew rapidly in response to the inland northwest's growing demand for professionals, and in turn added a wide range of undergraduate and graduate degrees (Eastern Washington University, About, n.d.). Today, EWU has over 12,000 students with almost 150 areas of study.

EWU would need to contemplate three primary criteria before engaging in export control related practices: (1) the international student, scholar, and faculty population (since export control applies mainly to non-U.S.-persons), (2) the strength in STEM programming (as these are common areas of study for controlled research under the USML), and finally (3) the overall strength of the institution's research capacity and the direction the institution is headed. Currently, EWU is experiencing growth in all three of these areas and is positioning itself for a change in direction.

Of the 12,000 students at EWU, about four-percent are international undergraduates, with Saudi Arabia, China, and Vietnam drawing the highest enrollments for academic year 2017-2018 (Eastern Washington University, 2017-2018). Although the international student population is considered somewhat low at only four-percent, EWU is continually seeking to expand its global outreach and increase its number of international students, scholars, and faculty. Just recently, EWU was the recipient of the 2018 Higher Education Excellence in Diversity (HEED) Award. This national award

recognizes colleges and universities that demonstrate an outstanding commitment to diversity and inclusion (Meany, 2018b). In addition, EWU has seen a steady increase of international undergraduate students from 230 in 2011 to 434 in 2016, with most of these students being from NEA (Near East Asia), and EAP (East Asia Pacific) (Eastern Washington University, Reports and demographics, n.d.). International graduate student numbers on the other hand, are experiencing a different trend. This is discussed in the next chapter.

EWU also continues to see its science, technology, engineering, and mathematics (STEM) programs increase in student demand and strength in the region. The Washington state legislature designated \$67 million dollars in 2018 to a long-awaited Interdisciplinary Science Building (ISC) on Eastern's campus, reflecting the state-, region-, and campus-wide commitment to STEM curriculum and research. According to EWU administrators, "the project calls for a state-of-the-art science building that will meet the modern day needs of growing STEM programs such as biology, chemistry/biochemistry, geology, and physics" (Meany, 2018a).

Eastern Washington University is concurrently on a STEM roll, even as it increases its focus and draw from international quarters. Even with these positive developments, the institution itself must have clear direction of where it is, where it is going, and how it will get there. For EWU, the 2018-2023 strategic plan includes four primary goals: ignite change, embrace equity and social justice, drive innovation, and transform the region. Although all different in their own respects, these four goals prioritize student success and excellence in teaching, scholarship, and research. In recognizing what could potentially lead to future export control related considerations

and engagement, I identified a few points described under the “indicators of success” within the strategic plan. Most of these were found under the tiers of igniting change, driving innovation, and transforming the region. The identified points are listed below:

Igniting change:

- Develop a Center for Applied Research and Economic Development that brings together faculty, students, and staff to assist businesses and organizations with high-impact research and consulting services to provide innovative solutions to tomorrow’s problems.

Driving Innovation:

- Invest in faculty and staff, providing tools and opportunities to promote collaboration and excellence in teaching, scholarship, research, and creative activity.

Transforming the Regions:

- Develop curricula directly tied to regional trends and needs, as we partner with employers.
- Ensure that every student develops an academic identity that connects to meaningful career-related experiences and professional development activities.
- Build partnerships with employers to provide paid student internships and other practical experiences.
- Foster opportunities for graduate and undergraduate research that respond to regional priorities (Eastern Washington University, Institutional Strategic Plan 2018-2023, n.d.).

Notice how all these points either address the importance of scholarship and research, student success, and/or building of partnerships with employers and communities. While Eastern Washington University is not currently involved in conducting sensitive, export-controlled related research, it has great potential to expand in that direction with its increasing strength in STEM programming, international student and faculty participation, a strategic plan that prioritizes research and excellence in learning, and the campus' close-proximity to Fairchild Airforce Base (less than 12 miles from the main Cheney Campus). In addition, many defense contractors such as Boeing, Raytheon, Hewlett-Packard, Lockheed Martin, and Northrop Grumman are major employers and where many students and university staff may find future employment. Students are tomorrow's leaders. Their ideas and innovations can help solve some of our societies' most challenging problems. Their academic and life work can include profound breakthroughs and inventions for the improvement and betterment of humanity. To propel Eastern Washington University to the forefront of all this, the institution needs to recognize and capitalize on the research potential and partnership opportunities it has. These conditions along with the institution's 2018-2023 strategic plan, requires not only great consideration, but caution if engaging in export-controlled practices is included in the design, directly or indirectly. If engagement does occur, it is extremely easy for export violations to arise out of institutional inexperience, lack of awareness, and lack of faculty and staff training. The moral and ethical values of academic freedom also risk being lost without appropriate preventative measures in place. Eastern Washington University published its "Faculty Values Statement" in 2004 after a challenge to academic freedom alerted faculty to the potential administrative overreach. Below are

five of the ten “values” listed that are relevant to this study, with “academic freedom” in the first position:

Academic freedom: Faculty members should enjoy the right to express views, teach, and conduct research without fear of retribution or censure.

Diversity of students, faculty, and administrators: A rich variety of experiences, perspectives, and talents is essential to our strength as a university community.

Scholarship and the arts: Eastern Washington University faculty should be supported in achieving excellence in their disciplines at the local, regional, and national levels and in publicizing those accomplishments; the university and its reputation benefit greatly from such achievements.

Community Service: Eastern Washington University should engage in activities to ameliorate social problems, provide assistance to K-12 teachers, and furnish other services contributing to the welfare of the region, the nation, and the world.

Ethical Conduct: Underlying each of the above values is a belief in fostering ethical behavior in our students and modeling it in our own speech and actions (Eastern Washington University, 2004).

As the listing of values indicates, faculty at EWU could be placed in a difficult position, where certain values are pitted against others, if they engage in export control related practices without appropriate training and deliberation.

Currently, EWU has a relatively rudimentary export control policy published on its website. The policy *EWUG 201-10: Export Control* states:

It is the policy of Eastern Washington University (EWU) to fully comply with all applicable federal statutes, executive orders, regulations, and contractual requirements for the safeguarding of controlled technical information in its possession. This includes full and total compliance with export controls and the transfer of controlled technology. Under no circumstances shall employees or other persons acting on behalf of EWU engage in activities in contravention of U.S. export control regulations. Questions regarding the applicability of export control laws should be directed to the President's Office. While the vast majority of teaching, research, and travel conducted by EWU faculty and employees will fall within one or more of the exceptions to the export control laws, export controls may affect EWU faculty and staff in the following situations:

- Traveling abroad
- Sharing science or technology-based research information with persons who are not citizens of the United States or permanent resident aliens, or
- Entering into a contract, including a grant, related to science or technology (Eastern Washington University, 2016, para 2)

Notice that EWU states that “under no circumstances shall employees or other persons acting on behalf of EWU engage in activities in contravention of U.S. export control regulations.” In addition, they also mention that although rare, export controls may affect EWU faculty in the above bulleted situations. Based on this stated policy, the university may not be involved in export-controlled practices directly, but it's clear that this opportunity may arise, and faculty are not necessarily restricted from participating. In this case, policy can easily become practice, and practice can introduce compliance risks.

Further down the policy document is a brief description of federal compliance. This section reads:

To comply with federal export control regulations, the University must obtain permission from the U.S. Department of State, the U.S. Department of Commerce, or the U.S. Department of the Treasury's Office of Foreign Assets Control before traveling or engaging in any other activity that may be export controlled (Eastern Washington University, 2016, para 3).

Finally, at the bottom of this policy, EWU states that they are “committed to educating its faculty and staff regarding the export control requirements” (Eastern Washington University, 2016, para 4). Yet, upon further investigation, there were no resources or trainings located, or at least easily accessible. Other universities in the surrounding area however, had more detailed export control policy websites with links to more information and trainings. These universities include the University of Washington, Western Washington University, Washington State University, University of Oregon, Oregon State, University of Idaho, University of Montana, and Montana State (see the reference pages for these websites). Without proper training and knowledge of export control regulations at EWU, violations can easily occur. These violations ultimately have the potential to lead to intellectual property theft and serious penalties such as hefty fines, imprisonment, and/or exclusion of from future export control activities.

Whether or not to engage in ITAR or export control related activities in an academic setting needs to be considered from a regulation standpoint, and from a moral and ethical perspective, one that upholds the values of academic freedom, the pursuit of knowledge and truth, and the critical questioning of policies that restrict information from

some groups of people and not others. Before this engagement can take place however, a larger, open discussion and consideration is needed by the university-community at large. At this moment, the regulations exist; engaging in export control related practices without being fully aware can lead to serious criminal penalties and greater ethical dilemmas in higher education. With all this in mind, the next chapter provides suggestions for Eastern Washington University to begin the initial discussion and necessary considerations of engaging in export-control related practices.

Chapter Six

Recommendations, Considerations, and Conclusion

Export control and the implementing regulations of the ITAR and EAR have evolved through domestic and international events and with the United States' everchanging security concern. Today, the national security and foreign policy concerns that were seminal to the implementation of export control laws are different and more complex than they once were. With this change and the phenomenon of globalization and globalism impacting all facets of life, the security risk associated with the control of sensitive information, research, and knowledge, is complicated, undefined, and morally and ethically challenging.

In an academic research setting, Broniatowski et al. (2005) describe that higher education institutions can react to export control regulations and the uncertainty of potential security risks in one of two ways:

A precautionary stance to national security is one in which a decision maker deems a potential, but as yet unrealized, risk as important and responds by using restrictions and controls to mitigate any chance of future risk...[and/or] a *reactionary stance*, or a "proof-before-action" policy. The basis of a reactionary stance is that present threats should be eliminated if they exist; however, there must be proof of the existence of future threats before regulations or restrictions are developed (p. 2).

The authors also state that in general, most academic institutions take on a more reactionary stance to export control whereas the United States government is more

precautionary in nature (p. 2). These differing approaches toward risk has not only led to a fundamental dissonance between the academic community and those in the military, enforcement, and intelligence sectors, but a strict governmental precautionary stance may have also impacted the overall foreign student enrollment in the United States.

[A decline in foreign student enrollment] may be associated with more stringent student visa restrictions and with regulatory restrictions, such as those given in ITAR, specifying on which projects foreign nationals can work once they do arrive. Rather than attending schools in the U.S., foreign nationals are opting to study in other foreign countries or in their home countries (Broniatowski et al., 2005, p. 6)

Although Eastern Washington University itself has seen a steady increase in foreign undergraduate students since 2011 (as stated in the last chapter), the foreign graduate student rate has been declining since 2013. At its highest, EWU had 79 international graduate students in 2013, and more recently, only 16 in 2016 (Eastern Washington University, Reports and demographics, n.d.). In deciding which stance Eastern Washington University should take regarding export-control related practices, the indirect and direct consequences of engaging in this type of research must be considered. A thorough review and discussion among the academic community of the institution's strategic plan, the international student participation, the strength of STEM programming, and the current export control policy must be conducted before engaging in these practices. Based on this research project and my initial findings and review, a few suggestions and considerations come to mind.

It's clear that EWU's strategic plan emphasizes student success, excellence in teaching and research, and building partnerships with employers and communities. This plan is very detailed with set goals and specific objectives to achieve those goals. However, I would also say that the current EWU export control policy lacks sufficient information regarding not only export control regulations, but also the ethical considerations of academic freedom in conducting controlled research. This can lead to serious criminal penalties and ethical dilemmas in higher education that will ultimately run against the university's strategic plan. Specifically, potential conflict exists between the points of (1) driving innovation that invests in faculty and staff while providing the tools to promote excellence in teaching, scholarship, and research, and (2) transforming the region by ensuring every student develops their own academic identity.

I recommend that EWU take both a reactionary and precautionary approach towards export control. To strengthen its already-in-place reactionary stance (the current EWU export control policy), EWU should consider providing better understanding and more comprehensive training to the staff and faculty regarding export control, the regulations, and national security threats. This will help in identifying and eliminating present threats and/or concerns with credible proof. In addition, EWU should take a more precautionary stance in maintaining and upholding the morals and ethics of knowledge and academic freedom in higher education. This will help mitigate the potential risks of losing the fundamental values of U.S. higher education that export control ultimately threatens. Both proposed reactionary and precautionary approaches can be achieved by implementing a comprehensive export control compliance program that not only focuses

on following the regulations but teaches faculty and staff the ethical considerations and consequences of engaging in export-control related practices.

In order to implement an effective export control compliance program within the university, the academic community and leadership may conduct a SWOT analysis to brainstorm ideas, organize information, decide on a system that is most effective, and reveal the possibilities and limitations for implementing a university compliance program. In addition, organizations such as the Society for International Affairs (SIA) and ASIS International can provide resources, information, and guidance on export control compliance. Finally, John McHale (2009) from *Military & Aerospace Electronics* cites Kay Georgi, an export compliance lawyer at Arent Fox LLP in Washington D.C. who suggests eleven important steps for how to construct an export compliance program. The steps are summarized as follows:

1. Have management or leadership issue a policy indicating the importance of export control compliance and the consequences of non-compliance.
2. Establish a human reporting structure (who will handle what aspects of compliance).
3. Register and maintain registration with the Department of State.
4. Establish a system to classify all known products, services, and practices.
5. Set up a system for ensuring practices subject to export control cannot be conducted without a license.
6. Establish a system for identifying export-controlled research, data, and knowledge and a plan for controlling hard copy information and soft copies on computers, LANs, e-mails, etc.

7. Involve the appropriate department (human resources, office of research and grants, office of global initiatives, etc.) to ensure licenses are obtained for foreign nationals.
8. Involve procurement to ensure export-controlled articles are not procured abroad without the appropriate licenses.
9. Establish record-keeping practices and reporting procedures.
10. Provide comprehensive training to all faculty and staff on all the above systems and export control compliance.
11. Audit all the above systems (p. 17)

Of course, all these steps can be tailored and adapted to fit the needs and processes of Eastern Washington University. Nevertheless, these steps show the significant amount of planning, development, and work required to implement a proper export compliance program. In addition—and for our case—I would add the faculty and staff training should be prioritized. Based on the findings of this research project, this training must include a full understanding on not only the importance of export control compliance, but a thorough review of the ethical considerations of engaging in these practices. In addition, many of the surrounding institutions' websites (previously listed above) include resources for faculty and staff training on export control regulations and rules. However, many are lacking in terms of teaching and communicating the ethical considerations of these practices.

With this in place, Eastern Washington University can establish a system that is both compliant with the current export control regulations of the ITAR and EAR, and

proactive relative to protecting their expressed faculty values. As technology and related knowledge evolves to become ever more powerful, and government regulations become increasingly stringent and entangled, we need to establish a civic and moral compass that will allow people to use this technology ethically while maintaining due regard for the educational wellbeing and development of others. Once these criteria are met, Eastern Washington University can truly help ignite change, drive innovation, and transform the region through innovative, significant, and global-relevant research.

References

- Altbach, P. G. (2001). Academic freedom: International realities and challenges. *Higher education, 41*(1-2), 205-219.
- Birkland, T. (2016). *An introduction to the policy process: Theories, concepts, and models of public policy making*. New York, New York: Routledge.
- Broniatowski, D., Jordan, N., Long, A., Richards, M., & Weibel, R. (2005). Balancing the Needs for Space Research and National Security in the ITAR. In *Space 2005* (p. 6800).
- Eastern Washington University. (n.d.) About. Retrieved from <https://www.ewu.edu/about/>
- Eastern Washington University. (2016). EWUG 201-10: Export control. Retrieved from <https://sites.ewu.edu/policies/policies-and-procedures/ewug-201-10-export-control/>
- Eastern Washington University. (2004). Faculty Values Statement. Retrieved from http://m.access.ewu.edu/Documents/Faculty%20Organization/Faculty_Values_Statement%20final.doc
- Eastern Washington University. (n.d.) Institutional Strategic Plan 2018-2023. Retrieved from <https://sites.ewu.edu/strategic-planning/institutional-strategic-plan-2018-2023/>
- Eastern Washington University. (n.d.) Reports and demographics. Retrieved from <http://global.ewu.edu/faculty-staff/reports-and-demographics/>

Eastern Washington University. (2017-2018) 2017-2018 Student facts at a glance.

Retrieved from <https://www.ewu.edu/about/fast-facts/>

Evans, S., & Valdivia, W. (2012). Export controls and the tensions between academic freedom and national security. *Minerva: A Review of Science, Learning & Policy*, 50(2), 169–190. <https://doi-org.ezproxy.library.ewu.edu/10.1007/s11024-012-9196-4>

Federal Bureau of Investigation (2012). *Former university of Tennessee professor John Reece Roth begins serving four-year prison sentence on convictions of illegally exporting military research data*. Eastern District of Tennessee: U.S. Attorney's Office.

Fischer, F., Miller, G., & Sidney, M. (2007). *Handbook of public policy analysis: Theory, politics, and methods*. Boca Raton, FL: CRC Press Taylor & Francis Group.

Garfalo, B. T., L'Huillier, B., & Khan, S. (2017). The slow erosion of academic freedom: United States government barriers to academic research and the sharing of information. *International Journal of Academic Research in Business and Social Sciences*, 7(9), 404-416.

Gibbs, A. (2016). Academic freedom in international higher education: right or responsibility?. *Ethics and Education*, 11(2), 175-185.

International Traffic in Arms Regulations (ITAR), 22 C.F.R. § 126.1(d)(1)(2) (2018).

Keppler, E. (2001). Preventing human rights abuses by regulating arms brokering: The US brokering amendment to the arms export control act. *Berkeley J. Int'l L.*, 19, 381.

- Lindsay, J. (2014). The history of the cold war in 40 quotes. *Council on Foreign Relations*. Retrieved from <https://www.cfr.org/blog/history-cold-war-40-quotes>
- McFadden, C., Nadi, A., McGee, C. (July 24, 2018). Education or espionage? A Chinese student takes his homework home to China. *NBC News*. Retrieved from <https://www.nbcnews.com/news/china/education-or-espionage-chinese-student-takes-his-homework-home-china-n893881>
- McHale, J. (2009). ITAR compliance: ignorance is no excuse. *Military & Aerospace Electronics*, 20(8), 16–20. Retrieved from <https://ezproxy.library.ewu.edu/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=43590610&site=ehost-live&scope=site>
- Meany, D. (2018a, July 24). *EWU breaks ground on science building*. Retrieved from <https://www.ewu.edu/stories/ewu-to-break-ground-on-science-building/>
- Meany, D. (2018b, September 14). *EWU named top college for diversity*. Retrieved from <https://www.ewu.edu/stories/ewu-named-top-college-for-diversity/>
- Monahan, P. J. (1983). The regulation of technical data under the arms export control act of 1976 and the export administration act of 1979: A matter of executive decision. *BC Int'l & Comp. L. Rev.*, 6, 169.
- Montana State University (n.d.) Export Control Overview. Retrieved from <http://www.montana.edu/orc/exportcontrol/overview.html>
- O'Neil, R. M. (2003). Academic freedom and national security in times of crisis. *Academe*, 89(3), 21.
- Oregon State University. (n.d.) Export Controls. Retrieved from <https://research.oregonstate.edu/osp/export-controls>

- Paul, D. (2018, August 1). Are they deadly? Are they free speech? Explaining 3-D printed guns. *The Washington Post*. Retrieved from https://www.washingtonpost.com/news/post-nation/wp/2018/08/01/are-they-deadly-are-they-free-speech-explaining-3-d-printed-guns/?utm_term=.733e9a20f71e
- Templin, J. (2009). University research under siege: How the war on terror has placed academic freedom under fire, 26 *J. Marshall J. Computer & Info. L.* 547 (2009). *The John Marshall Journal of Information Technology & Privacy Law*, 26(4), 5.
- Tharoor, I. (2018, October 11). Under Trump, U.S. enters a new ‘cold war’ with China. *The Washington Post*. Retrieved from https://www.washingtonpost.com/world/2018/10/11/under-trump-us-enters-new-cold-war-with-china/?noredirect=on&utm_term=.5c1e5d3c1bd7
- University of Idaho. (n.d.) Export Control. Retrieved from <https://www.uidaho.edu/research/faculty/export-control>
- University of Montana. (n.d.) Export Control. Retrieved from <https://www.umt.edu/research/compliance/exportcontrol/default.php>
- University of Oregon. (n.d.) Export Controls. Retrieved from <https://exportcontrols.uoregon.edu/>
- University of Washington. (n.d.) Export Control. Retrieved from <https://www.washington.edu/research/myresearch-lifecycle/manage/compliance-requirements-non-financial/export-control/>

Vogel, K., Gerstein, J. (2016, October 5). Obama DOJ drops charges against alleged broker of Libyan weapons. *Politico*. Retrieved from <https://www.politico.com/story/2016/10/marc-turi-libyan-rebels-hillary-clinton-229115>

Washington State University. (n.d.). Export Controls. Retrieved from <http://www.ora.wsu.edu/ExportControls/>

Western Washington University. (n.d.) Export Controls. Retrieved from <https://www.wvu.edu/compliance/exportcontrols.shtml>

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