



KPMG SMART PRACTICE

Intangible exports and license management

Export compliance teams are increasingly aware of the importance of managing controlled technology exports. Not only is technology the backbone of innovation but the US's increasingly stringent regulatory environment has prompted closer oversight of intangible exports. However, the complexities of managing intangible transfers create unique challenges that an export compliance team should be prepared to address. A long-term strategy to successful license administration should consider:

How is controlled technology identified?

Identifying the need for an export license is the crucial first step in proper license management. Controlled technology may be integral to supporting business activities, such as responding to proposals or project development with non-US colleagues. Therefore, clear parameters are needed to alert business functions when a license may be needed.

In establishing an effective identification process, export compliance personnel should team with the business to implement a process that does not unduly hinder operations. Ensuring efficient reviews requires a clear, working definition of controlled technology that

can be easily applied by individuals with limited knowledge of export regulations. Once that is in place, there should be guideposts to help individuals determine when the technology should be reviewed by Export Compliance. Similarly, there may be instances in which the business may "self-clear" certain technology as not export controlled.

Establishing a process for identifying controlled technology is highly contextual, based on the company's export profile, knowledge of the applicable regulations, and relationship with the export compliance team. Regardless, the result should be documented, auditable and transparent.

Who is responsible for license management?

The process for identifying controlled technology will likely result in licenses that then must be effectively managed to ensure compliant transfers. The first question is who will be responsible for managing licenses, including validating permissible exports. In most cases, the business will make the export so they should be briefed on the applicable license's scope. The export compliance team will also need to track ownership for each license, making sure to capture when personnel changes impacting the

license occur. Further, it may be necessary to define when the business should consult with Export Compliance prior to making an export. While it may be impractical for the export compliance team to review every export, individual discretion should be limited by providing specific guideposts about when the business must engage Export Compliance.

Additionally, the export compliance team may need to determine how the transmission occurs. For example, sending controlled technology through email may create unnecessary risks, particularly if the company has a more secure system in place. In the case of a verbal disclosure, Export Compliance should consider how attendee nationality will be verified, and the review process for the presentation and other materials.

Effective on-going license management requires clear operational guidance with defined responsibilities to enable export compliance visibility.

What is the audit process?

Once the export compliance team has determined how daily license management will occur, an audit process should be implemented to validate compliance. The frequency of the audits should be tailored to the risk levels associated with each license. Further, if there are personnel turn-overs or if the license is amended, it may be an appropriate time to assess compliance. In designing the audit the export compliance team should consider who will administer it, what it will include and the consequences of noncompliance. Additionally, the export compliance team should implement a corrective action tracking mechanism to monitor remedial action arising from the audit.

While the specifics of effective controlled technology license management programs vary, they include robust procedures around these three elements. Further, on-going training around controlled technology will keep awareness high as will informal touchpoints related to specific licenses. The key to successful management includes defined processes that correctly identify controlled technology, support compliant exports, and facilitate compliance reviews and tracking. ■

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