



Confidential Information and Your Research: Guidance on Export Controls for Harvard Investigators

Consistent with academic custom, it is expected that you must be free to disseminate the results of your Harvard research to the public, such as through books, theses, scholarly articles, public lectures and other media. University policy¹ protects the rights of Harvard researchers, including trainees, to publish their work.

Under some circumstances, a third party, which may or may not be a research sponsor, may wish to provide a Harvard faculty member, employee, student, or other trainee (*e.g.*, a postdoctoral fellow) with confidential, proprietary, or restricted information, software code, or technology under an agreement that restricts the further transfer of the information or the uses to which it may be put. In some instances, the intent of the agreement is obvious, as in the case of a “Confidential Disclosure Agreement” (“CDA”) or “Non-Disclosure Agreement” (“NDA”). In others, language around confidentiality is buried in an agreement directed at a broader purpose, such as collaboration, research sponsorship, visiting, or consulting.

To the extent that third-party confidential information relates to the intended recipient’s University research, steps must be taken to ensure that the agreement does not preclude publication of the results of that research. In addition to raising concerns over traditional academic freedoms, restrictions on disclosure of research information pose significant risk under federal export control laws: without having first obtained an appropriate export license from the federal government, it may be unlawful to share certain types of technical information as well as software with other countries or individuals from other countries. For purposes of these laws, the relevant information need not even leave the country: instead, export may be deemed to have occurred if it is shared with a citizen of a foreign country in the U.S., including at Harvard.

As host to researchers from around the globe, Harvard relies on the “fundamental research exclusion” from the export-control laws. This exclusion allows us to share our research freely with foreign nationals on campus as long as there are no access or dissemination controls, such as CDAs or NDAs, on the information. For these reasons, the University typically tries to avoid confidentiality restrictions in its agreements with third party providers of information or technology.

If your research depends on controlled information that is subject to a CDA or NDA, you may need to seek a license from the federal government to permit your foreign-national colleagues to work on the project. In the event your lab does not seek a license from the government, you may have to implement a technology-control plan that restricts access to the information whether in the lab, on a computer, or in your office space.

¹ See “Policy on Publications”, effective February 1, 2011 and amended November 4, 2011, at <http://vpr.harvard.edu/sites/vpr.harvard.edu/files/news/Publication%20Policy%20FINAL%201%2022%2011mb.pdf>

For additional information about the export-control laws, including how to obtain a license or implement a technology-control plan, please contact the export-control officer for your school.

Other helpful links:

Office of the Vice Provost for Research
<http://vpr.harvard.edu/content/export-controls>

Office of Technology Development
<http://otd.harvard.edu/resources/>

Office of Sponsored Programs
<http://osp.fad.harvard.edu/>