

Export Control Violations: Man on Trial for Taking His Laptop to China

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Back in September 2011, Sixing Liu, a Chinese national-U.S. permanent resident, was charged by the U.S. Government for U.S. export control law violations. Liu allegedly took export-controlled technical data on military technology (Controlled Data) from his U.S. employer in New Jersey back to his home country of China on his laptop without a U.S. export control license. The Controlled Data was comprised of military technology, covered by Category XII of the ITAR U.S. Munitions List. The Controlled Data is used for target locators and navigation systems. Opening arguments for this case recently began on September 12, 2012.

The indictment made no allegations that the Controlled Data was actually disclosed by Liu to anyone in China, but rather simply the fact that Liu took the Controlled Data to China without a U.S. export control license constituted an export that was a violation of ITAR, whether disclosed or not.

In pursuing criminal liability, prosecution for the U.S. Government will attempt to prove that Liu had the requisite criminal intent, that is, he knew that taking his laptop to China with the Controlled Data on it was a violation of law.

According to the indictment, a U.S. customs agent at Newark Liberty International Airport noticed a VIP badge in Liu's luggage from a Shanghai conference when Liu returned to the U.S. from China in November 2010. A secondary inspection revealed that his laptop had various documents on it comprising Controlled Data that belonged to the company where Liu worked as an engineer.

Further, according to the indictment

As part of his training at the Company, Liu received training concerning the safeguarding of sensitive proprietary and export-controlled information. In particular, on April 20, 2009, Liu attended a training program at the Company concerning provisions of the ITAR that prohibit the unlicensed export of items contained on the ITAR U.S. Munitions List and technical data relating to such items. Moreover, the Company regularly included prominent advisories on the pages of its work product warning that the contents may include technical data within the scope of ITAR. Due to the highly sensitive nature of the technology projects being developed where Liu worked, employees were forbidden from removing work product from the Company's corporate facility.

"It's not about taking work home," the prosecution stated. "This is not an environment where you can do that."

Mr. Liu's defense characterized him as a worker who was ill-informed about U.S. export control laws who merely downloaded the Controlled Data to work on outside the company office. It was noted that Mr. Liu's training in the U.S. export control compliance consisted of 15 minutes on his first day of work, between sessions on employee benefits and sexual harassment guidelines. This factual backdrop, though empathetic and of potential use for negating criminal intent, may not be sufficient to excuse Mr. Liu from civil liability and substantial fines under U.S. export control laws.

This factual backdrop about the seemingly insufficient amount of export control training may also serve as a basis for further investigation by export control enforcement authorities of the company itself.

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This case illustrates the need to properly train employees on U.S. export control compliance when the employee initially commences employment and thereafter on an annual or semiannual basis. Emphasis should be given to the fact that export-controlled information cannot be downloaded on a laptop and then transferred outside the U.S. or even accessed from outside the U.S. without a license or other U.S. export control authorization. Doing so will encourage employee compliance with U.S. export control laws and place your company in a defensible position when dealing with export control enforcement authorities.

We will keep you apprised as this case progresses.

For further information please contact Miller Canfield's Export Control Team. Visit our Export Controls webpage for prior articles and alerts, as well as subsequent updates on U.S. Export Control Reform and other export control articles.

Joseph D. Gustavus
+1.248.267.3317