



## Software Downloads are subject to U.S. Export Laws

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Distribution of software through the Internet is now commonplace. Is your company complying with the United States Export laws when transmitting information?

The U.S. Export laws regulate the electronic downloading of software. Companies that electronically distribute or allow the download of their software and technology to foreign countries via the Internet must observe the same export restrictions that would apply if a company's software was shipped conventionally.

The federal definition of an export does not only affect a company's digital distribution of software overseas, but also regulates a company's foreign employees working here in the United States under temporary visas.

Federal law defines an "export" as any shipment or transmission of items out of the United States, which includes the release of technology or software to a foreign national, even if the foreign national is located in the United States. An "export" may also include the oral or visual transfer of military related technical data (which includes software) to a foreign person inside the United States.

Transmissions of encrypted software are stringently regulated by U.S. Export laws. Encrypted software is software that is scrambled to protect its confidentiality. Companies that distribute encrypted software must take special precautionary measures and issue specific warnings, required by federal law, to export (allow the download) of their software. Many companies must first obtain export licenses or qualify for applicable exclusions based upon the type of software, its intended use and destination country the software is being sold or downloaded in. Compliance with the U.S. Export laws is cost effective and completed with relative ease. Failure to comply, however, can result in catastrophic consequences for a company.

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### **PRACTICE AREAS**

Information Technology Law



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Penalties for violating the export laws are quite severe and may be civil or criminal. A willful violation can result in a criminal fine up to \$1,000,000.00 or five times the value of the export, whichever is greater; or a fine up to \$250,000.00 or imprisonment up to 10 years. Civil penalties can include a fine up to \$11,000.00 for each violation and up to \$120,000.00 for violations involving national security reasons. Civil penalties may also include the denial of export privileges.

To avoid such costly penalties and potential imprisonment, make sure your company's digital distribution of technology and software are compliant with U.S. Export laws.

