



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Bureau of Industry and Security**  
Washington, D.C. 20230

October 24, 2013

Dear [REDACTED]:

This letter is in response to your email advisory opinion request dated March 27, 2013 asking for clarification of the requirements under the Export Administration Regulations (EAR), 15 C.F.R. Parts 730-774, for screening prohibited parties and embargoed destinations for the download of time-limited EAR99 software available on a public website. Your request stated that you have EAR99 software that you wish to make freely available for download on your website for a 30-day trial period. Following the trial period, the software will cease to function until the customer purchases an unlock code. You asked whether you may perform all screening for embargoed destinations and prohibited parties at the time that the user purchases the unlock code, rather than when the users download the software for the 30-day trial.

In general, the posting of software on a public website for free and anonymous download makes that software publicly available, and therefore not subject to the EAR (see Section 734.7 of the EAR). If, however, as in this situation, the software is time limited or otherwise restricted to a trial period, it is not publicly available under Section 734.7 of the EAR. Because the presence of the time restriction drastically limits the ability of the public to use the software for free, the software is not "generally accessible" as contemplated by Section 734.7(a). Consequently, the software would be subject to the EAR during the 30-day free trial as well as when it is downloaded after purchase of the unlock code.

Although the software is subject to the EAR, posting it to a public website would not itself result in a violation of the prohibition against knowingly entering into transactions with prohibited persons or individuals in embargoed destinations without the appropriate authorization from BIS. Consistent with the September 11, 2009 Advisory Opinion posted on the BIS website and the Note to Paragraph (e) of License Exception TSU, Section 740.13 of the EAR, publishing EAR99 software to a public website where it may be anonymously downloaded free of charge by anyone does not establish knowledge or raise any "red flags" (See Supplement No. 3 to Part 732 of the EAR) regarding downloads by prohibited persons or individuals in embargoed destinations. This safe harbor applies only if the download is free and anonymous, meaning, at a minimum, that no registration is required and that you do not engage in IP address tracking or other electronic tracking of the download recipients. Although the Advisory Opinion and Note to License



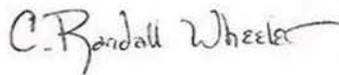
Exception TSU specifically address certain encryption software, the policy applies to EAR99 software as well.

If, however, you “know,” as defined in Part 772 of the EAR, that a prohibited party or individual in an embargoed destination will download the EAR99 software, you could be in violation of the EAR if the download subsequently occurs without the required license from BIS. You may also be in violation of the EAR if you sell the unlock code to a prohibited party or individual in an embargoed destination. Additionally, such activity may require approval from the Office of Foreign Assets Control at the U.S. Department of the Treasury.

In rendering this opinion, BIS has relied upon information and representations included in your request dated March 27, 2013 and phone conversations with Robert Monjay. Any deviation from the factual circumstances as stated in your request or those conversations or as reflected in this opinion may result in different regulatory obligations for you.

Please feel free to contact Robert Monjay at (202) 482-2440 or [Robert.Monjay@bis.doc.gov](mailto:Robert.Monjay@bis.doc.gov) if you need additional information.

Sincerely,

A handwritten signature in black ink that reads "C. Randall Wheeler". The signature is written in a cursive style with a long horizontal flourish at the end.

C. Randall Wheeler  
Director, Information technology Control Division  
Office of National Security and Technology Transfer Controls