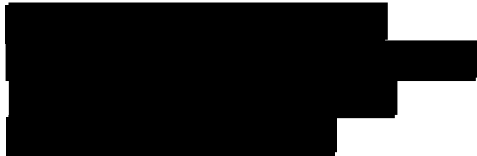




UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

October 14, 2008



Dear [REDACTED]

This responds to your May 1, 2008 request for an advisory opinion concerning the classification of a computer system described in Export Control Classification Number (ECCN) 4A994 on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) loaded with software described in ECCN 5D002, when such software has been made eligible for License Exception TSU under section 740.13(e) of the EAR. The classification of the computer system would remain ECCN 4A994.

Although the control status of "information security" software is generally determined in Category 5, part 2 of the CCL even if it is a component of other equipment (Note 1 to Category 5, part 2, CCL, 15 CFR 774, Supplement No. 1), when ECCN 5D002 software becomes eligible for License Exception TSU under paragraph (e) to section 740.13, it does not affect the classification of hardware, in this case, an ECCN 4A994 computer system, when loaded on that hardware.

License Exception TSU authorizes the export and reexport of source code controlled under ECCN 5D002 that, if not controlled under ECCN 5D002, would be considered publicly available under section 734.3(b)(3) of the EAR. Such ECCN 5D002 source code may be made eligible for License Exception TSU through notification by email to the Bureau of Industry and Security (BIS) and the ENC Encryption Request Coordinator at the National Security Agency, either providing a copy of the source code or the Internet location of the source code. License Exception TSU also authorizes corresponding object code if both the source code and the object code would be considered publicly available under section 734.3(b)(3) of the EAR if they were not controlled under ECCN 5D002. License Exception TSU does not authorize knowing exports or reexports to a country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR.

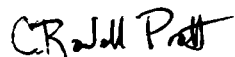
BIS generally would classify an ECCN 4A994 computer loaded with ECCN 5D002 software that is not eligible for License Exception TSU as an ECCN 5A002 item. When that ECCN 5D002 software is eligible for License Exception TSU, BIS would not classify the combined system under ECCN 5A992, because doing such would suggest that the software met the mass market



criteria in the Cryptography Note in Category 5, part 2 of the CCL. However, when the ECCN 5D002 software is eligible for License Exception TSU, BIS recognizes that it would not be reasonable to classify the system as an ECCN 5A002 item, as this would result in more restrictive licensing requirements for the combined system than for either component separately. Accordingly, when the eligibility requirements of section 740.13(e) of the EAR, including the notification requirements in that section, have been met for ECCN 5D002 software, BIS generally would retain an ECCN 4A994 classification for a computer system that loaded such software.

If you have any questions about this advisory opinion, I can be reached at (202) 482-5303.

Sincerely,



C. Randall Pratt
Director
Information Technology Division
Office of National Security and
Technology Transfer Controls