



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security

1401 Constitution Avenue, Suite 3896
Washington, DC 20230

September 2, 2021

21-07

Ms. Michelle Thompson
Co-Founder and CEO
Open Research Institute, Inc.
#1873
3525 Del Mar Heights Road
San Diego, CA 92130

Dear Ms. Thompson:

I am responding to your February 23, 2021 letter which requested an Advisory Opinion pursuant to 15 CFR § 748.3(c) of the Export Administration Regulations (EAR), 15 CFR Parts 730-774. Your letter requests confirmation from the Bureau of Industry and Security (BIS), Department of Commerce, that information and software made available to the public without restrictions on further dissemination by the Open Research Institute, Inc. (ORI) is not subject to the EAR pursuant to § 734.7 of the EAR.

Specifically, ORI asks for confirmation that the information and software for a digital microwave broadband communications system for space and terrestrial amateur radio use are not subject to the EAR pursuant to § 734.7(a)(4) of the EAR when it has been made available to the public without restrictions on further dissemination, including via publication on ORI's publicly accessible website.

According to your letter, ORI designs, documents, tests, and builds amateur radio software and hardware for space. According to a January 26, 2021 BIS Commodity Classification (CCATS G185407), the ORI Software (Binary) is classified under Export Control Classification Number (ECCN) 9D515.a, and the ORI Software Source Code is classified under ECCN 9D515.b.2. Additionally, the ORI Satellite and Ground Station Technology and the ORI Technology for the ORI Software (Binary) are classified under ECCN 9E515.a, and the ORI Technology for the ORI Software Source Code is classified under ECCN 9E515.b. Items classified under these ECCNs are controlled for national security, regional stability, and anti-terrorism reasons. We assume these classifications are correct for purposes of this advisory opinion.

According to your letter, ORI intends to make all of its online discussion and work public immediately by publishing online all work and related discussion pertaining to the technology and software specified above as soon as it is created, and by placing a written version of such work/discussion in the library at the University of California at Berkeley on a monthly basis. Additionally, online discussions by the designers and others will be placed in a public archive on the Internet in near real-time. ORI will publish its software in source code form, and if there is any cryptographic capability in the software, ORI will follow the reporting requirements described in § 734.7(b) and § 742.15(b) of the EAR. Additionally, ORI will publish descriptions of its hardware as documents, including but not limited to hardware descriptive language source code, drawings, videos, and photographs



“Published”

Pursuant to § 734.7(a) of the EAR, unclassified “technology” or “software” is “published” (and consequently not subject to the EAR) when it has been made available to the public without restriction upon its further dissemination such as through any of the following:

- (1) Subscriptions available without restriction to any individual who desires to obtain or purchase the published information;
- (2) Libraries or other public collections that are open and available to the public, and from which the public can obtain tangible or intangible documents;
- (3) Unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the interested public;
- (4) Public dissemination (i.e., unlimited distribution) in any form (e.g., not necessarily in published form), including posting on the Internet on sites available to the public; or
- (5) Submission of a written composition, manuscript, presentation, computer-readable dataset, formula, imagery, algorithms, or some other representation of knowledge with the intention that such information will be made publicly available if accepted for publication or presentation:
 - (i) To domestic or foreign co-authors, editors, or reviewers of journals, magazines, newspapers or trade publications;
 - (ii) To researchers conducting fundamental research; or
 - (iii) To organizers of open conferences or other open gatherings.

Based on these illustrative examples, when made available to the public without restrictions upon further dissemination, the “technology” or “software” is no longer subject to the EAR. Therefore, ORI’s technology and software are subject to the EAR until such time as they meet the criteria of § 734.7(a) of the EAR. The actions you have described (release in an unrestricted online forum, placement in a public archive on the Internet, or posting either in written or online form by a university) appear to fall within the scope of published information under § 734.7 (a) of the EAR. Once ORI’s technology and software meet the criteria of § 734.7(a), they would be no longer subject to the EAR.

In rendering this opinion, BIS has relied upon the information provided in your letter of February 23, 2021. Any change in the factual circumstances, as presented in your letter and restated in this advisory opinion, may impose different regulatory obligations including possible licensing requirements, under the EAR. Please note that this advisory has no binding application to any party that did not join in the request and can be relied upon by the requestor only to the extent that the disclosure of facts and circumstances in its request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.

Sincerely,

Hillary Hess

Hillary Hess, Director
Regulatory Policy Division

