

Executive Secretary
83-5207

The Deputy Director of Central Intelligence
Washington D.C. 20505

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The Honorable James M. Beggs
Administrator
National Aeronautics and Space Administration
400 Maryland Avenue, S.W.
Washington, D.C. 20546

Jim:

A belated thank you for taking time out to hear our briefing on technology loss to the Soviets.

I am very encouraged at your willingness to look into measures that could limit Soviet Bloc access to sensitive but unclassified NASA publications, software, and other data. We can be sure that the Soviets will be zeroing in with specific requirements on new major NASA technologies as they decide to copy or adapt U.S. systems and subsystems. Your beginning to restrict the sensitive NASA data going to U.S. Government agencies and their contractors will be a significant step toward hindering Soviet collection efforts.

I am sending along copies of two other encouraging steps being taken by DoD that might be of interest. One is a recent change in the U.S. Code giving the Secretary of Defense authority to withhold from the public certain technical data. While limited in scope, it is a useful start. The second is an interim DoD policy to improve their control of technical data and reduce the risk of loss to the Soviets.

As promised, our people are preparing a list of Soviet NASA-related requirements and we will get that to you shortly.

Sincerely,

[Redacted Signature]

John N. McMahon

Enclosures

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Ninety-eighth Congress of the United States of America

AT THE FIRST SESSION

SEP RECD

Begun and held at the City of Washington on Monday, the third day of January, one thousand nine hundred and eighty-three

An Act

To authorize appropriations for fiscal year 1984 for the Armed Forces for procurement, for research, development, test, and evaluation, and for operation and maintenance, to prescribe personnel strengths for such fiscal year for the Armed Forces and for civilian employees of the Department of Defense, to authorize appropriations for such fiscal year for civil defense, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. (a) This Act may be cited as the "Department of Defense Authorization Act, 1984".

(b) The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROCUREMENT

- Sec. 101. Authorization of appropriations, Army.
- Sec. 102. Authorization of appropriations, Navy and Marine Corps.
- Sec. 103. Authorization of appropriations, Air Force.
- Sec. 104. Authorization of appropriations, Defense agencies.
- Sec. 105. Extension of authority provided Secretary of Defense in connection with the NATO Airborne Warning and Control System (AWACS) program.
- Sec. 106. Secure communications equipment and a special classified program.
- Sec. 107. Limitation on Army procurement.
- Sec. 108. Limitations on Navy procurement.
- Sec. 109. Authorization of multiyear contracts for the B-1B aircraft; prohibition on multiyear contracts for certain equipment.
- Sec. 110. Limitations and requirements with respect to the procurement and deployment of the MX missile.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

- Sec. 201. Authorization of appropriations.
- Sec. 202. Limitations on funds for the Army.
- Sec. 203. Limitations on funds for the Navy.
- Sec. 204. Limitations on funds for the Air Force.
- Sec. 205. Limitations on funds for the Defense agencies.
- Sec. 206. Limitation on size of small mobile missile.
- Sec. 207. Report on the Joint Tactical Missile System and the Joint Surveillance and Target Attack System; restriction on use of funds.
- Sec. 208. Antibalistic missile defense system research.

TITLE III—OPERATION AND MAINTENANCE

- Sec. 301. Authorization of appropriations.
- Sec. 302. General authorization of appropriations for pay raises, fuel costs, and inflation adjustments.
- Sec. 303. Prohibition of use of vessels with foreign-built major components under certain leases or service contracts.
- Sec. 304. Authorization of appropriations for assistance for 1984 games of the XXIII Olympiad.
- Sec. 305. Shelter for the homeless at military installations.

S. 675-77

the Government data necessary to incorporate changes in design or technology.

(8) Before ordering any spare part, the contracting officer should review the acquisition history of that part.

AUTHORITY TO WITHHOLD FROM PUBLIC DISCLOSURE CERTAIN
TECHNICAL DATA

SEC. 1217. (a) Chapter 4 of title 10, United States Code, is amended by adding at the end thereof the following new section:

“§ 140c. Secretary of Defense: authority to withhold from public disclosure certain technical data

“(a) Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully outside the United States without an approval, authorization, or license under the Export Administration Act of 1979 (50 U.S.C. App. 2401-2420) or the Arms Export Control Act (22 U.S.C. 2751 et seq.). However, technical data may not be withheld under this section if regulations promulgated under either such Act authorize the export of such data pursuant to a general, unrestricted license or exemption in such regulations.

“(b)(1) Within 90 days after enactment of this section, the Secretary of Defense shall propose regulations to implement this section. Such regulations shall be published in the Federal Register for a period of no less than 30 days for public comment before promulgation. Such regulations shall address, where appropriate, releases of technical data to allies of the United States and to qualified United States contractors, including United States contractors that are small business concerns, for use in performing United States Government contracts.

“(2) In this section, ‘technical data with military or space application’ means any blueprints, drawings, plans, instructions, computer software and documentation, or other technical information that can be used, or be adapted for use, to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.”

(b) The table of sections at the beginning of chapter 4 of such title is amended by adding at the end thereof the following new item:

“140c. Secretary of Defense: authority to withhold from public disclosure certain technical data.”

USE OF POLYGRAPHS BY THE DEPARTMENT OF DEFENSE

SEC. 1218. (a) The Secretary of Defense may not, before April 15, 1984, use, enforce, issue, implement, or otherwise rely on any rule, regulation, directive, policy, decision, or order that would permit the use of polygraph examinations in the case of civilian employees of the Department of Defense or members of the Armed Forces in any manner or to any extent greater than was permitted under rules, regulations, directives, policies, decisions, or orders of the Department of Defense in effect on August 5, 1982.

(b) The restrictions prescribed in subsection (a) with respect to the use of polygraph examinations in the Department of Defense shall



THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA

18 OCT 1983

MEMORANDUM FOR SECRETARIES OF MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL
INSPECTOR GENERAL
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTORS OF DEFENSE AGENCIES

SUBJECT: Control of Unclassified Technology with Military Application

There has been a substantial transfer of US technology to the Soviet Union through a variety of mechanisms. These undesirable transfers, particularly technical data and information related to technologies with military applications, have contributed greatly to the Soviet's military capability, saved them millions of dollars in research and development costs, and have helped them to develop countermeasures to US weapon systems. Accordingly, it is necessary to provide an improved system of control of technical data that is produced by or for the Department of Defense that reduces the risk of undesired transfer of such technical data.

The objective of establishing a system of controls in the Department and defense industry is to protect Defense technology, without incurring substantial cost and minimizing the impact on scientific innovation and the capability of defense industry to compete successfully in domestic and international markets.

The process to establish such a system will identify the technologies to be controlled, to include the state of emergence at which controls should be initiated, and improve internal dissemination control policies and procedures. Efforts that are now underway to develop comprehensive policy, procedures, and technical guidance in these areas will continue, but additional steps must be taken to protect military technology until that process is complete. The OSD Steering Committee on National Security and Technology Transfer now is undertaking a process to (1) identify technologies that most urgently require uniform and consistent control throughout the Department and defense industry, to include the state of emergence at which controls should be initiated, and (2) to develop the necessary policy, procedures, and technical guidance for the control of these technologies.

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To update the procedures for marking and disseminating documents containing technical data and information, I am directing that the attached interim policy be implemented immediately by all DoD Components.

I ask the cooperation of all DoD Components in gaining better control over the loss of the Department's technology base, as well as in satisfying its obligations under the export control laws.

A handwritten signature in cursive script, appearing to read "Joseph C. ...". The signature is written in dark ink and is positioned to the right of the main text block.

Attachment

Interim Policy for Marking and Disseminating Defense Technical Documents

The policy and procedures outlined herein are effective immediately and all DoD Components will begin implementation as quickly as feasible to provide administrative control of initial and secondary distribution of Defense technical documents. Definition of terms is provided in attachment 1. Distribution statement markings identified in attachment 2 are mandatory for all newly generated documents that are controlled under the Scientific and Technical Information Program (DoDD 3200.12) or acquired under the Defense Technical Data Management Program (DoDD 5010.12). No requirement is imposed to mark or control dissemination of existing documents, but such marking and control is not precluded if dissemination of the existing document may be limited for any of the reasons given in attachment 2 and the document has not already been made generally available to the public.

Technical documents that are categorized as cryptographic and communications security, communications and electronic intelligence, and such other categories as may be designated by the Director, National Security Agency, whose distribution is limited through alternate methods, are exempt from these marking provisions.

Review of university research publications should be in accordance with USDRE policy memorandum, "University Research Publications and University Research Grants," of 21 September 1982.

Scientific and technical information managed under DoDD 3200.12 will continue to be disseminated in accordance with procedures for registration and certification established in DoDD 5200.21. A similar registration system will be established to control dissemination of technical documents acquired under DoDD 5010.12. Registration systems will be centralized or combined as quickly as possible to provide a single source of control over access to all DoD technical documents.

Within the Department of Defense, physical protection procedures established in DoD Regulation 5400,7-R, "DoD Freedom of Information Program," for handling "For Official Use Only" documents will also apply to technical documents bearing distribution limitation markings B, C, D, E, and F.

INTERIM PROCEDURES FOR ASSIGNING DISTRIBUTION
STATEMENTS ON DOD TECHNICAL DOCUMENTS

1. All DoD Components generating or responsible for technical documents shall determine their distribution availability and mark them appropriately before primary distribution.
 - a. All DoD technical documents must be assigned Distribution Statement A, B, C, D, E, or F.
 - b. Classified DoD technical documents may be assigned Distribution Statement B, C, D, E, or F. The distribution statement assigned to a classified document shall be retained on the document after its downgrading or declassification until specifically changed or removed by the controlling DoD office.
 - c. Technical documents resulting from DoD research and technical efforts and that are intended for public release should be protected until final determination is made by competent authority in accordance with DoDD 5230.9 and USDRE policy memorandum, "University Research Publications and University Research Grants," of 21 September 1982.
 - d. Scientific and Technical documents which include a contractor imposed limited rights' statement will be appropriately marked and controlled.
 - e. Controlling DoD offices are responsible for determining distribution limitation of each report, whether it is an in-house effort or contract/grant effort or whether the effort is classified or unclassified, based on technology criticality. The Militarily Critical Technologies List (MCTL) is one such reference that can be used in making this determination.
 - f. Documents in preliminary or working draft form shall be protected pending proper security classification review and assignment of a distribution statement authorized by this Directive.
2. Distribution statements shall remain in effect until changed or removed by the controlling DoD office. Each controlling office shall establish and maintain a procedure requiring review of technical documents for which it is responsible, with the objective of removing restrictions in distribution as soon as conditions permit. The controlling DoD offices shall process public release determinations in accordance with DoDD 5230.9. When public release clearance is obtained, Distribution Statement A shall be assigned and cognizant document handling facilities, including DTIC, shall be so notified by the DoD controlling office.

3. Limitation statements previously assigned to technical documents shall be converted as follows:

- a. Documents bearing Distribution Statement A or B need not be re-evaluated.
- b. Documents bearing Distribution Statement #2 of superseded DoDD 5200.20, March 29, 1965, and not reviewed and redesignated in accordance with DoDD 5200.20, September 24, 1970, shall be assigned Distribution Statement C.
- c. Documents bearing Distribution Statement #3 (USGO) of superseded 5200.20, March 29, 1965, and not reviewed and redesignated in accordance with DoDD 5200.20, September 24, 1970, shall be assigned Distribution Statement B.
- d. Documents bearing Distribution Statement #4 (DoD Only) of superseded 5200.20 of March 29, 1965, and not reviewed or redesignated in accordance with DoD 5200.20, September 24, 1970, shall be assigned Distribution Statement E.
- e. Documents bearing Distribution Statement #5 (controlled) of superseded 5200.20, March 29, 1965, and not reviewed or redesignated in accordance with DoDD 5200.20, September 24, 1970, shall be assigned Distribution Statement F.

DEFINITIONS

1. Contractor. An individual or organization outside the U.S. Government accepting any type of agreement or order to provide research, supplies or services to a U.S. Government agency. The term specifically includes both prime contractors and subcontractors.
2. Controlling DoD Office. The DoD activity which has responsibility for distribution of the document whether the work was done in-house or by contract or grant. In the case of joint sponsorship, the controlling office is determined by advance agreement and may be either party or a group or committee representing the interested activities or Services.
3. Critical Technology. Technologies which consist of (a) arrays of design and manufacturing know-how (including technical data); (b) keystone manufacturing, inspection, and test equipment; (c) keystone materials; and (d) goods accompanied by sophisticated operation, application, or maintenance know-how that could make a significant contribution to the military potential of any country or combination of countries that may prove detrimental to the security of the United States (also referred to as Militarily Critical Technology).
4. Distribution Statement. A statement used in marking a technical document to denote the conditions of its availability for distribution, release and disclosure. A distribution statement marking is distinct from a security classification marking assigned in accordance with DoD 5200.1-R.
5. Document. Any recorded information regardless of its medium, physical form, or characteristics.
 - a. Technical Information. Information, including scientific information, which relates to research, development, engineering, test, evaluation, production, operation, use, and maintenance of munitions and other military supplies and equipment. (JCS, Pub.1).
 - b. Technical Document. Any document that presents technical information.
6. Foreign Government Information. Information that is (a) provided to the United States by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of information, or both, are to be held in confidence; or (b) produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.
7. Grantee. An organization outside the U.S. Government to which grant funds have been awarded by a sponsoring U.S. Government agency.

8. Primary Distribution. The initial distribution of or access to documents authorized by the controlling DoD Components.
9. Public release. Release of technical documents to the general public, based on declaration of competent authority in accordance with DoD Directive 5230.9.
10. Secondary Distribution. Any distribution of documents provided after primary distribution. It includes the loan, reading, or the outright release of a document, in whole or in part.

DISTRIBUTION STATEMENTS

The following distribution statements are authorized for use on DoD technical documents:

1. DISTRIBUTION STATEMENT A: Approved for public release; distribution is unlimited.

a. This statement may be used only on unclassified documents that have been cleared for public release by competent authority in accordance with DoD 5230.9.

b. Documents with this statement may be made available or sold to the public including foreign nationals, companies, and governments, and may be exported without a license.

c. This statement may never be used on technical documents that formerly were classified, without a positive determination of such releasability by the DoD controlling office prior to release.

d. THIS STATEMENT SHALL NOT BE USED ON CLASSIFIED DOCUMENTS.

2. DISTRIBUTION STATEMENT B: Distribution limited to U.S. Government agencies only; (fill in reason) (date). Other requests for this document must be referred to (insert controlling DoD office).

a. This statement may be used on unclassified documents, or on classified documents if necessary to ensure distribution limitation in addition to need-to-know requirements imposed by DoD 5200.1-R, or in the event the document is declassified.

b. Reasons for imposing Distribution Statement B include:

Foreign Government
Information

To protect and limit distribution in accordance with the desires of the foreign government that furnished the technical information. Information of this type is normally classified at the CONFIDENTIAL level or higher in accordance with DoD 5200.1-R.

Proprietary Information

To protect information not owned by the U.S. Government and not protected by a contractor's "limited rights" statement, but received with the understanding that it may not be transmitted outside the U.S. Government.

- Test and Evaluation To protect results of test and evaluation of commercial products or military hardware, when such disclosure may cause unfair advantage or disadvantage to the manufacturer of the product.
- Contractor Performance Evaluation To protect information in management reviews, records of contract performance evaluation, or other advisory documents evaluating programs of contractors.
- Export Limitations Document contains information that may be released to foreign nationals by U.S. Government agencies only when approved by competent authority, or contains information that would require an export license if foreign release is intended.
- Administrative/Operational Use To protect technical or operations data or information from automatic dissemination under the International Exchange Program or by other means. This includes publications required solely for official use or strictly for administrative or operational purposes. This statement may be applied to manuals, pamphlets, technical orders, technical reports, and other publications containing valuable technical or operational data.
- Software Documentation Release only in accordance with the provisions of DoD Instruction 7930.2.
- Specific Authority To protect information not specifically included in the above reasons and discussions, but which requires protection pursuant to valid documented authority such as Executive Orders, classification guidelines, Export Administration Regulation (EAR), International Traffic in Arms Regulations (ITAR), DoD or DoD Component regulations or policy guidance. When filling in the reason, cite "Specific Authority (identification of valid documented authority)."
- 3. DISTRIBUTION STATEMENT C** Distribution limited to U.S. Government agencies and their contractors; (fill in reason) (date). Other requests for this document shall be referred to (insert controlling DoD office).

a. May be used on unclassified documents, or on classified documents if necessary to ensure distribution limitation in addition to need-to-know requirements imposed by DoD 5200.1-R, or in the event the document is declassified.

b. Reasons for imposing Distribution Statement C include:

Critical Technology To protect information and technical data which advance the state-of-the-art or describe new technology in an area of significant or potentially significant military application, or relates to a specific military deficiency of a potential adversary. This control on critical technology (as defined in attachment 1) will allow early dissemination to the U.S. Government and its domestic contractors in a manner that will ensure compliance with the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR).

Administrative/Operational Use Same as under Distribution Statement B.

Specific Authority Same as under Distribution Statement B.

4. DISTRIBUTION STATEMENT D Distribution limited to DoD and DoD contractors only; (fill in reason) (date). Other requests shall be referred to (insert controlling DoD office).

a. May be used on unclassified documents, or on classified documents if necessary to ensure distribution limitation in addition to need-to-know requirements imposed by DoD 5200.1-R, or in the event the document is declassified.

b. Reasons for imposing Distribution Statement D include:

Premature Dissemination To protect information on system or hardware in the developmental or concept stage, which must be protected to prevent premature dissemination.

Software Documentation Same as under Distribution Statement B.

Critical Technology Same as under Distribution Statement C.

Specific Authority Same as under Distribution Statement B.

5. DISTRIBUTION STATEMENT E Distribution limited to DoD Components only; (fill in reason) (date). Other requests must be referred to (insert controlling DoD office).

a. May be used on unclassified documents, or on classified documents if necessary to ensure DoD distribution limitation in addition to need-to-know requirements imposed by DoD 5200.1-R, or in the event the document is declassified.

b. Reasons for imposing Distribution Statement E include:

Foreign Government Information	Same as under Distribution Statement B.
Premature Dissemination	Same as under Distribution Statement D.
Software Documentation	Same as under Distribution Statement B.
Critical Technology	Same as under Distribution Statement C.
Specific Authority	Same as under Distribution Statement B.

6. DISTRIBUTION STATEMENT F Further dissemination only as directed by (insert controlling DoD office) (date) or higher DoD authority.

a. Normally used only on classified documents, but may be used on unclassified documents when specific authority exists.

b. Distribution Statement F is used when the DoD originator determines that information is subject to special dissemination limitation specified by paragraph 4-505, DoD 5200.1-R.

c. When a classified document assigned Distribution Statement F is declassified, the statement shall be retained until the controlling DoD office assigns the proper distribution statement from this interim policy.

7. In addition to the distribution statement, the following notice(s) may be used on all documents assigned Distribution Statement B, C, D, E, or F.

WARNING

INFORMATION SUBJECT TO EXPORT CONTROL LAWS

This document may contain information subject to the International Traffic in Arms Regulation (ITAR) or the Export Administration Regulation (EAR) of 1979 which may not be exported, released, or disclosed to foreign nationals inside or outside the United States without first obtaining an export license. A violation of the ITAR or EAR may be subject to a penalty of up to 10 years imprisonment and a fine of \$100,000 under 22 U.S.C. 2778 or Section 2410 of the Export Administration Act of 1979. Include this notice with any reproduced portion of this document.

DESTRUCTION NOTICE

For classified documents, follow the procedures in DoD 5200.1-R, Chapter IX or DoD 5220.22-M, "Industrial Security Manual," paragraph 19. For unclassified documents, destroy by any method which precludes reconstruction of the document.

CONTRACTOR-IMPOSED DISTRIBUTION STATEMENTS

1. Section IX of the Defense Acquisition Regulations (DAR) stipulates control procedures for contractor-controlled technical information in which the Government has limited rights. In this case the approved statement in the DAR must appear on all copies of each document. Unmarked or improperly marked technical documents supplied by a contractor will be handled pursuant to the DAR. Limited rights information will be assigned Distribution Statement B.
2. The limited rights statement shall remain in effect until changed or cancelled under contract terms or with the permission of the contractor, and until the controlling DoD office notifies recipients of the document that the statement may be changed or cancelled. Upon cancellation of the statement, the distribution, disclosure, or release of the technical document will then be controlled by its security classification, or, if unclassified, by the appropriate statement selected from those authorized for use on DoD technical documents.