

September 11, 2009



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

Dear Mr. ,

Thank you for your advisory opinion request dated August 10, 2009 in which you asked whether a company would be in violation of the Export Administration Regulations (EAR) if it allowed certain encrypted software, reviewed and classified by BIS as "mass market," to be downloaded free of charge to anyone from the company's website without restriction.

Publishing "mass market" encryption software to the Internet where it may be downloaded by anyone neither establishes "knowledge" of a prohibited export or reexport nor triggers any "red flags" necessitating the affirmative duty to inquire under the "Know Your Customer" guidance provided in the EAR (see 67 Fed. Reg. 38857, June 6, 2002). Therefore, a person or company would not be in violation of the EAR if it posts "mass market" encryption software on the Internet for free and anonymous download and then at a later time the software is downloaded by an anonymous person in Iran, Cuba, Syria, Sudan or North Korea.

You also asked whether the company or person posting the software may require registration – i.e., provision of a name and email address – before downloading may occur. In this case, the download of the software would not be considered anonymous and therefore allowing the download by a person in Iran, Cuba, Syria, Sudan or North Korea without the necessary licenses would constitute a violation of the EAR.

A violation would not occur if the IP address of the person downloading the software is collected by the software provider at the time of the download and stored as a "footprint" in the machine code of the software provider's data base, but is not tracked or used for any purpose by the software provider.

Please note that this advisory opinion is confined to interpretation of the EAR, and does not address the sanctions regulations implemented by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Randall Pratt".

C. Randall Pratt

Director

Information Technology Controls Division

Office of National Security and Technology Transfer Controls

