



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

November 13, 2014

[REDACTED]

Re: Advisory Opinion on Cloud-based Storefronts

Dear [REDACTED]:

This advisory opinion is in response to your email request dated September 25, 2014 regarding the application of the Export Administration Regulations (EAR) to cloud-based storefronts. In your email, you noted that in traditional on-line application stores, users purchase/obtain a software application through a download from the server; however, in the cloud-based storefront setting, users do not download a software application from the storefront but instead utilize the software application, including all its features and functions, in the cloud, without downloading the product.

You asked whether the Bureau of Industry and Security's (BIS's) January 13, 2009 Advisory Opinion, in which BIS determined that the service of providing computational capacity through grid or cloud computing is not subject to the EAR because the service provider is not shipping or transmitting any commodity, software or technology subject to the EAR to the user, would apply to the cloud-based storefront described above. You also asked whether a license would be required to allow government end-users of a country not listed in Supplement No. 3 to Part 740 of the EAR to utilize software classified as Export Control Classification Number (ECCN) 5D002 on the Commerce Control List that are eligible for export under 15 CFR 740.17(b)(2) ("ENC restricted" items).

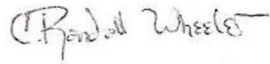
Consistent with the January 13, 2009 Advisory Opinion, there is no export of software in the cloud-based storefront fact pattern described above. Instead of downloading the software and processing data locally, the foreign user of a U.S. server sends its data to the cloud for processing, and causes its processed data to be transmitted back to it. Although there may be export of technology in this context, there is no export of software.

Because there is no export of software, there is no basis for a license requirement if government end users of a country not listed in Supplement No. 3 to Part 740 of the EAR utilize software described in section 740.17(b)(2) if it is located on a server in the United States. Please also note that software described in section 740.17(b)(2) that has been classified by BIS may be exported under License Exception ENC to a non-government end user in any destination other



than Sudan, Syria, Iran, Cuba or North Korea, for purposes of creating a cloud-based storefront. If the software is accessed and utilized by government end users, no reexport of the software would take place, consistent with the analysis above.

Sincerely,

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

C. Randall Wheeler
Director, Information Technology Controls Division
Office of National Security and Technology Transfer Controls
202-482-5303