

UNH FACULTY SENATE  
MOTION # XIII-M4 and MOTION # XIII-M5

Export Control and Classified Work

1. Motions presenter: Kevin Gardner
2. Date of Faculty Senate discussion: 12/1/08
3. Rationale:

“Export controls” refer to policies and regulations designed to limit the exporting of intellectual property, knowledge, classified information or material outside of U.S. borders. Export of technologies may be restricted because: (1) they have actual or potential military applications; (2) they raise trade/economic protection issues; (3) the government has concerns about the country, organization, individual, end-user or end-use of that technology; or (4) control serves to implement foreign policy. The control of the technology or knowledge is intended to protect national interests, specifically: (1) advancing U.S. foreign policy and economic goals; (2) preventing the proliferation of weapons of mass destruction; and (3) restricting the export of goods and technologies that could contribute to the military potential of U.S. adversaries.

Of greatest concern to UNH is that the definition of “export” includes transmitting information to an individual who is not a U.S. citizen or permanent resident. This is called “deemed export.” Export controls can limit presentation of unpublished research at a conference with foreign nationals in attendance, limit collaborations with foreign colleagues, and limit the ability to have foreign students participate in certain types of research projects. In response to the regulations and federal actions, UNH has developed two policies. The first is entitled “Openness, Access, and Participation in Research and Scholarly Activities” (codified in UNH.VIII.A); and the second is on the conduct of classified work (codified in UNH.VIII.B). In UNH.VIII.A, the university reaffirms a core value of openness, access and participation and states, in part, that “Research and scholarship will be accomplished openly for the exchange of ideas and information and without prohibitions on the dissemination of the results of these activities.”

UNH.VIII.A also states in part that, under circumstances where it is clear and demonstrable that the objectives of the University will be served (using the University's Academic Plan or, where applicable, a Unit's Academic or Strategic Plans as guides), rare exceptions to this Policy may be granted by the Vice President for Research. Researchers wanting an exception should forward a written request (endorsed by the relevant Dean or Unit Director) that describes: (1) how the request is consistent with the University's objectives (Academic Plan, Strategic Plan, or other); and (2) how the researcher and others in their lab/research group will comply with the specific requirements and limit the impact of the requirements to the particular sponsored project under consideration.

In UNH.VIII.B, the university articulates support for the open discovery process and the free exchange of knowledge through dissemination activities and prohibits the conduct of classified work at UNH. This policy applies to the entire UNH community but does not require disclosure of confidential human subjects' data or other confidential student, patient or employee records.

The Research and Public Service Committee considered whether there may be instances in which classified work may be important to do, for national security or other reasons; and the committee notes that the Massachusetts Institute of Technology apparently solves this problem by having such work done by centers which are not part of the institute. So UNH faculty members could do classified work off campus without using university resources or facilities. Policy UNH.VIII.A states in part that there can be no fundamental limitation on the freedom to disseminate the results of research and scholarship conducted on the part of the University and that therefore the University will enter into no agreement that bars any University researcher or scholar from publishing or otherwise disclosing his/her findings publicly. However, the University may agree to delay a publication or other form of disclosure for no more than 30 days to allow a sponsor to determine whether (a) sponsor proprietary information may be revealed or (b) the sponsor will exercise rights under patent clauses in agreements with the University. With the researcher's written consent, the University may extend such delay for a maximum of an additional 60 days to allow for the filing of appropriate patent protection. All publication or other disclosure delays agreed to by the University must be detailed in the written sponsored project agreement. The University may accept a sponsor's proprietary materials or information when the materials or information convey(s) important background information for a specific research project. Requirements regarding access, use, and protection of such materials or information must be agreed to in a written Non-Disclosure Agreement (NDA) or other confidentiality agreement and must not restrict the dissemination of research results. Sponsor requirements should not proscribe citation of the sponsor name in publications.

4. Motions M4 and M5:

**As motion M4, the Research and Public Service Committee recommends that the UNH Faculty Senate fully endorses the policy on Openness, Access and Participation in Research and Scholarly Activities (UNH.VIII.A). The senate appreciates the articulation that the open exchange of research and scholarly information is a core value of the university, and the senate endorses the letter of the policy that clearly spells out support for this central ideal.**

**As motion M5, the Research and Public Service Committee recommends that the UNH Faculty Senate endorses the Policy on Classified Work articulated in UNH.VIII.B.**

5. Senate action: The Faculty Senate approved motion M4, with thirty-three ayes, no nays, and one abstention. The Faculty Senate approved motion M5, with twenty-nine ayes, no nays, and three abstentions

6. Senate chair's signature: *Marco Dorfman*

Forwarded to: President Mark Huddleston, on January 15, 2008

Forwarded to: Provost Bruce Mallory, on January 15, 2008

Forwarded to: Taylor Eighmy, on January 15, 2008