
OFAC Issues New Rule on Personal Internet-Based Communications Services: Rule Intended to Foster and Support the Free Flow of Information

2010-03-10

The U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") has issued a new rule authorizing exports of certain personal Internet-based communications services, such as instant messaging, chat and email, and social networking to Iran, Cuba, and Sudan. The new rule, which became effective March 8, 2010, also permits exports of related software to Iran and Sudan.¹

OFAC's action comes in the midst of a broader effort by Congress and the Obama Administration to reform the current U.S. export control system, as previously discussed in WilmerHale's February 22, 2010 [alert](#). The new rule is intended to promote personal communication as a counterbalance to state-controlled media in sanctioned countries, as championed by the Secretary of State in a recent speech,² and it supplements recent congressional initiatives to advance Internet freedom.³ OFAC's action also ends the threat of regulatory action against distributors of popular free platforms that have become widely used by private citizens and groups within sanctioned countries to disseminate uncensored information.

U.S. Companies No Longer Prohibited from Providing Free Services to Individuals in Embargoed Countries

Social networking and media sharing applications have provided new forms

of communication that permit public discussion and the sharing of information among individuals, even within countries that otherwise restrict such communication or repress political opposition. In light of this development, the Obama Administration has declared the free flow of information to be a "basic human right" and noted the powerful "opening" effect that social media and sharing programs have had in places like Iran, Sudan, and Cuba. However, up until now, OFAC sanctions regulations have impeded access to information and the exercise of such rights by prohibiting U.S. companies from providing free communications services to individuals in those countries.⁴

Responding to a request by the U.S. Department of State, the new OFAC rule establishes a general license that permits exports of "services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, provided that such services are publicly available at no cost to the user," to persons in Iran and Sudan.⁵ The new rule further permits exports of related software to Iran and Sudan, if such software is (i) classified as "EAR99" under the U.S. Export Administration Regulations ("EAR"); (ii) not subject to the EAR; or (iii) classified by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") as mass market encryption software under Export Control Classification Number ("ECCN") 5D992.⁶ The new rule also establishes a specific license category that would permit, on a case-by-case basis, exports of Internet-related information sharing services and software not otherwise covered by the general license.⁷

For persons in Cuba, the new rule provides a similar general license for the "export of services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, is authorized, provided that such services are publicly available at no cost to the user."⁸ The new rule also establishes a new specific license category to permit exports of Internet-related information sharing services that are not otherwise covered by the general license, on a case-by-case basis.⁹ The new

rule, however, does not permit exports of related software to Cuba. U.S. companies and persons that seek to export such software to Cuba must still apply for a BIS license. This restriction reflects overlapping – and often inconsistent – regulatory compliance requirements that come into play and should be carefully reviewed with respect to transactions involving sanctioned countries.¹⁰

The new rule does not remove all Internet activities from U.S. sanctions. OFAC continues to prohibit most exports of (i) direct connectivity services; (ii) web-hosting services for purposes other than personal communications; (iii) goods or technology listed on the Commerce Control List, except for software necessary to enable personal communication services to Iran or Sudan that is classified by Commerce as mass market software under ECCN 5D992 of the EAR; and (iv) services or software with knowledge or reason to know that such services or software are intended for the governments of Iran, Cuba, or Sudan. Moreover, with regard to Iran, the Administration noted that it "will continue aggressively to enforce existing sanctions and to work with our international partners to increase the pressure on the Government of Iran to meet its international obligations," while strengthening its support for civil society.

Please contact [Ronald Meltzer](#) or [Barry Hurewitz](#) if you have any questions about the new OFAC rule or about U.S. economic sanctions and export controls. Please visit WilmerHale's [Export Control Group](#) for more information.

¹ For text of the final rule, see www.treas.gov/offices/enforcement/ofac/programs/iran/gls/soc_net.pdf.

² Hillary Rodham Clinton, U.S. Sec'y of State, Remarks on Internet Freedom, Address at the Newseum (Jan. 21, 2010), available at www.state.gov/secretary/rm/2010/01/135519.htm.

³ See, e.g., Global Online Freedom Act, H.R. 2271, 111th Cong. (2010).

⁴ See, e.g., *Global Internet Freedom and the Rule of Law, Part II, Hearing Before the Subcomm. on Human Rights and the Law of the S. Comm. on the Judiciary*, 111th Cong. (2010) (statement of Omid Memarian, Iranian blogger), available at judiciary.senate.gov/hearings/testimony.cfm?

[id=4437&wit_id=9153](#) (indicating that a U.S. domain and host provider had terminated his pro-Iranian democracy website because of U.S. law's restriction on transactions with persons in Iran).

⁵ 31 C.F.R. §§ 538.533(a)(Sudan), 560.540(a)(Iran).

⁶ 31 C.F.R. §§ 538.533(b)(Sudan), 560.540(b)(Iran).

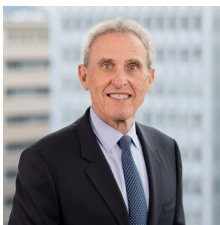
⁷ 31 C.F.R. §§ 538.533(c)(Sudan), 560.540(c)(Iran).

⁸ 31 C.F.R. § 515.578(a).

⁹ 31 C.F.R. § 515.578(c).

¹⁰ For example, the new rule also does not apply to exports of software to Syria and North Korea, which are subject to the same ECCN 5D992 license requirements as exports to Cuba. Thus, while such software exports are permitted under OFAC regulations with respect to Iran and Sudan, they are not permitted under the EAR with respect to Cuba, Syria, or North Korea.

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