



UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

06/23/2007
CCATS #: G056217
PAGE NO: 1

NETPRO COMPUTING, INC.
ATTN: JOHN F. MCKENZIE
C/O BAKER & MCKENZIE
2 EMCABARADERO CENTER, SUITE 1100
SAN FRANCISCO, CA 94111

The following information is in response to your inquiry of 05/29/2007 requesting licensing information for:

Item	Export Control Classification Number and Paragraph	License Exceptions Available	Country Chart Column (reason for control)	LVS Dollar Value Limit
1) CHANGEAUDITOR SOFTWARE WITH MD5 HASHING FOR AUTHENTICATION THAT OPERATES WITH MICROSOFT WINDOWS SSPI AND KERBEROS FACILITIES. MODEL NUMBER: CHANGEAUDITOR S/W COMMENTS FROM LICENSING OFFICER: ITEM #1: THIS ENCRYPTION ITEM IS AUTHORIZED FOR LICENSE EXCEPTION ENC UNDER SECTIONS 740.17 (A) AND (B) (3) OF THE EXPORT ADMINISTRATION REGULATIONS.	5D002 (C.1)	ENC	NS1 AT1	

See the other side of this form for information on determining which countries require a license for the above items. For Shipments to these destinations, an export license is required from the Bureau of Export Administration.

Items otherwise eligible for export or reexport under a License Exception or NLR (no license required) and used in the design, development, production or use of nuclear, chemical or biological weapons or missiles require a license for export or reexport as provided in part 744 of the Export Administration Regulations (EAR).

CATHERINE PRATT
DIVISION DIRECTOR

FOR INFORMATION CONCERNING
THIS CLASSIFICATION CONTACT
MICHAEL JOSEPH PENDER
PHONE #: (202) 482-2458
BIS/STC/IT

Destinations Requiring a License

See the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) to determine which countries require a license. Use the Country Chart Column information given on the front of this form in conjunction with the Country Chart to determine the licensing requirements for your particular items. For items classified EAR99, see part 746 of the EAR to determine the licensing requirements.

Applications for export must be submitted on Form BXA-748P Multipurpose Application. These forms may be obtained by calling (202) 482-3332. Assistance in filling out the form, or any aspect of exporting, is provided by the Export Counseling Division in Washington, D.C. at (202) 482-4811 or the Western Regional Office in Newport Beach California at (714) 660-0144.

License Exceptions

Be aware that the licensing requirements for some destinations may be overcome by any License Exception for which your items qualify. See part 740 of EAR for information on License Exceptions. The License Available column on the front of this form lists only those License Exceptions of the set GBS, CIV, CTP, TSR which are applicable to your items. Other License Exceptions may apply, depending upon the circumstances of your intended transaction.

Export Control Classification Numbering System (ECCN)

The ECCN numbering system is found in the Commerce Control List (CCL) part 774 of the EAR. The CCL is a comprehensive list that identifies all items controlled and licensed by Commerce. Within the CCL, entries are identified by an ECCN. Each entry specifies the license requirements for the item and the reason(s) for control. Please consult parts 738 and 774 of the EAR for specific information on ECCNs.

Shipper's Export Declaration (SED)

When an export is made, it is necessary for the exporter to show on the Shipper's Export Declaration (Form 7525-V) in block 21 either the license number, the applicable License Exception symbol or the symbol NLR. Form 7525-V is available from the Superintendent of Documents, U.S. Government Printing Office of Washington, D.C. 20402, and from Export Administration District Offices (U.S. Dept. of Commerce).



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

April 4, 2008

Mr. Tyler Hanson
Chief Financial Officer
NetPro Computing, Inc.
4747 N. 22nd Street, Suite 400
Phoenix, AZ 95016

Dear Mr. Hanson:

This is in response to your March 5, 2008 letter to the Office of Exporter Services (OExS), Bureau of Industry and Security (BIS), on behalf of NetPro Computing, Inc. (NetPro) in which you requested authorization to service and support items that are currently the subject of a voluntary self-disclosure made to the BIS's Office of Export Enforcement (OEE) on September 5, 2007.

Based on the information you have provided in your letter to OExS and in the voluntary self-disclosure to OEE, and after consulting with the Director of the OEE, in accordance with the provisions of Section 764.5(f) of the EAR, I authorize NetPro to service those items identified in your disclosure as having been exported without the required authorization as long as this servicing does not enhance or change the basic design characteristics of the items.

This letter constitutes authorization under Section 764.5(f) of the Export Administration Regulations (EAR) to engage only in the activities described above. Any additional activities would require authorization of a separate request submitted pursuant to Section 764.5(f) of the EAR. This letter does not constitute authorization under any regulatory provisions maintained by the Department of Treasury's Office of Foreign Asset Controls (OFAC). Depending on the destination, you may need to consult with OFAC to determine whether the item(s) included in your VSD require an OFAC license for export or reexport.

This authorization does not absolve NetPro or other parties involved in these transactions from any liability for any violation of the EAR in the export or reexport of the items disclosed to BIS's Office of Export Enforcement or any other violations stemming from these transactions.

For additional information regarding this authorization please contact Katherine Everhart on 202.482.2740.

Sincerely,

Eileen M. Albanese
Director
Office of Exporter Services





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

April 4, 2008

Mr. Tyler Hanson
Chief Financial Officer
NetPro Computing, Inc.
4747 N. 22nd Street, Suite 400
Phoenix, AZ 95016

Dear Mr. Hanson:

This is in response to your March 5, 2008 letter to the Office of Exporter Services (OExS), Bureau of Industry and Security (BIS), on behalf of NetPro Computing, Inc. (NetPro) in which you requested authorization to service and support items that are currently the subject of a voluntary self-disclosure made to the BIS's Office of Export Enforcement (OEE) on September 5, 2007.

Based on the information you have provided in your letter to OExS and in the voluntary self-disclosure to OEE, and after consulting with the Director of the OEE, in accordance with the provisions of Section 764.5(f) of the EAR, I authorize NetPro to service those items identified in your disclosure as having been exported without the required authorization as long as this servicing does not enhance or change the basic design characteristics of the items.

This letter constitutes authorization under Section 764.5(f) of the Export Administration Regulations (EAR) to engage only in the activities described above. Any additional activities would require authorization of a separate request submitted pursuant to Section 764.5(f) of the EAR. This letter does not constitute authorization under any regulatory provisions maintained by the Department of Treasury's Office of Foreign Asset Controls (OFAC). Depending on the destination, you may need to consult with OFAC to determine whether the item(s) included in your VSD require an OFAC license for export or reexport.

This authorization does not absolve NetPro or other parties involved in these transactions from any liability for any violation of the EAR in the export or reexport of the items disclosed to BIS's Office of Export Enforcement or any other violations stemming from these transactions.

For additional information regarding this authorization please contact Katherine Everhart on 202.482.2740.

Sincerely,

A handwritten signature in black ink, appearing to read "Eileen M. Albanese". The signature is fluid and cursive.

Eileen M. Albanese
Director
Office of Exporter Services



Asia Pacific
Bangkok
Beijing
Hanoi
Ho Chi Minh City
Hong Kong
Jakarta
Kuala Lumpur
Manila
Melbourne
Shanghai
Singapore
Sydney
Taipei
Tokyo

Europe & Middle East
Almaty
Amsterdam
Antwerp
Bahrain
Baku
Barcelona
Berlin
Bologna
Brussels
Budapest
Cairo
Dusseldorf
Frankfurt / Main
Geneva
Kyiv
London
Madrid
Milan
Moscow
Munich
Paris
Prague
Riyadh
Rome
St. Petersburg
Stockholm
Vienna
Warsaw
Zurich

North & South America
Bogota
Brasilia
Buenos Aires
Caracas
Chicago
Chihuahua
Dallas
Guadalajara
Houston
Lima
Mexico City
Miami
Montreay
New York
Sao Paulo
Porto Alegre
Rio de Janeiro
San Diego
San Francisco
Santiago
Sao Paulo
Tijuana
Toronto
Valencia
Washington, DC

September 5, 2007

Mr. John McKenna
Acting Director
Office of Export Enforcement
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue
Washington, DC 20230

Re: NetPro Computing, Inc.: Voluntary Self-Disclosure

Dear Mr. McKenna:

We represent NetPro Computing, Inc. ("NetPro"), a Phoenix, Arizona-based software developer and supplier in connection with certain export control and compliance matters. In that capacity, on behalf of NetPro, in accordance with section 764.5 of the Export Administration Regulations, 15 C.F.R. Parts 730-774 (the "Regulations"), we respectfully submit this voluntary self-disclosure of certain exports of NetPro's Change Auditor software product that were not handled in full conformance with the requirements of the Regulations.

Specifically, as discussed in detail in this letter, the Change Auditor software was classified by the Bureau of Industry and Security under ECCN 5D002.c.1 on the Commerce Control List on or about June 23, 2007. Before that date, NetPro erroneously assumed that the product was classified under ECCN 5D992, and was, therefore, eligible for export without export licenses. For that reason, during the period March, 2004 though June, 2007, NetPro made 110 exports of the Change Auditor software to destinations other than Canada without export licenses, before NetPro was authorized to do so under authority of section 740.17 of the Regulations.

Based on the foregoing, NetPro has instructed us to submit this voluntary self-disclosure of those unauthorized exports of the Change Auditor software. In support of this voluntary self-disclosure, attached to this letter as **Exhibit No. 1** is the certification of Mr. Tyler Hanson, NetPro's Chief Financial Officer, as required by section 764.5(c)(5) of the Regulations.

1. Background

NetPro develops and distributes infrastructure management software tools for Microsoft Windows-based information systems infrastructures. Among the NetPro product

SFODMS/6529427.1

suite is the Change Auditor software, which automatically audits, and provides real-time alerts with respect to, activities taking place on those information systems infrastructures.

The Change Auditor product is part of NetPro's family of security and compliance solutions. As such, the Change Auditor software includes certain limited information security functions, which are designed primarily to: (i) safeguard user and customer information by means of access control features; and (ii) prevent security breaches and network vulnerabilities. The Change Auditor software does, however, operate with the data encryption functionality furnished by the Win32 Simple Security Provider Interface and Kerberos facilities embodied in the Microsoft Windows operating system on which the Change Auditor runs. Data captured by the Change Auditor software can be encrypted for secure transmission by that Windows encryption functionality, although we emphasize that the data encryption is performed by the Windows operating system, and *not* by the Change Auditor software.

The technical note to ECCN 5A002.a.1, and ECCN 5D992.c, indicates that software products that include information security features solely for access control and/or to prevent malicious damage to computer systems are *excluded* from the encryption (EI) export controls embodied in ECCN 5D002, and are, instead, properly classified under ECCN 5D992 for export control purposes. Products classified under that ECCN 5D992 are eligible for export without export licenses to all foreign destinations (except embargoed and terrorist-supporting countries) under authority of NLR (no license required). On the basis of the foregoing, and the limited information security features of the Change Auditor product, NetPro concluded in good faith that the Change Auditor product was properly classified under ECCN 5D992, and could, therefore, be exported to almost all destinations without export licenses or other prior authorization from the Bureau of Industry and Security.

2. Export Compliance Problem

In May, 2007 NetPro entered into negotiations of a major corporate transaction. As part of the "due diligence" relating to that proposed transaction, NetPro undertook to confirm the classification of the Change Auditor product under ECCN 5D992 by seeking a commodity classification ruling from the Bureau of Industry and Security under section 748.3(b) of the Regulations. That commodity classification request was filed with the Bureau of Industry and Security on or about May 29, 2007.

The Bureau of Industry and Security responded to the NetPro request by issuing CCATS #G056217 for the Change Auditor product on or about June 23, 2007. A copy of CCATS #G056217 is attached to this letter as **Exhibit No. 2**. As you will note, pursuant to that CCATS #G056217, the Change Auditor has been classified under ECCN 5D002.c.1 on the Commerce Control List, and has been qualified as eligible for export, as an "unrestricted" encryption item, under license exception ENC, in accordance with section 740.17(b)(3) of the Regulations.

Upon receipt of the CCATS #G056217, NetPro undertook a review of its records of its exports over the past five (5) years in order to identify all exports of the Change Auditor product prior to May 29, 2007 (for Supplement No. 3 countries), and prior to June 23, 2007 (for non-Supplement No. 3 countries). The list of those export transactions is attached to this letter as **Exhibit No. 3**. Based on the export classification ruling in CCATS #G056217, NetPro understood that the export transactions listed in **Exhibit No. 3** had not been made in full conformance with the Regulations (*i.e.*, were not qualified under license exception ENC). For that reason, this voluntary self-disclosure is respectfully submitted to the Office of Export Enforcement on behalf of NetPro.

3. Remedial Action

We understand that a major concern for the Office of Export Enforcement where an exporter, such as NetPro, makes a voluntary self-disclosure of export compliance problems, is confirmation that the exporter has taken appropriate remedial action to prevent the recurrence of those problems. In that context, we note that NetPro has taken the following actions, which should assure that its products, including, but not limited to, the Change Auditor product, will not be exported without proper authorization in the future.

- As noted above, NetPro applied for, and obtained, the commodity classification ruling for the Change Auditor product set forth in CCATS #G056217 (**Exhibit No. 3** to this letter). That CCATS #G056217 specifically authorizes the export of the Change Auditor product without export licenses, under authority of license exception ENC. Accordingly, the Change Auditor product is now authorized for export without export licenses to all foreign destinations (except embargoed and terrorist-supporting countries). By definition, therefore, there will not be any unauthorized exports of that Change Auditor product in the future.
- NetPro has implemented an internal compliance procedure by which new products, and new releases and updates of existing products, will be subject to export compliance review before being released for commercial distribution (*i.e.*, general availability or "GA"). If, as part of that export compliance review, it is determined that the new product or new release, as the case may be, includes any information security features or data encryption functionality, NetPro will submit to the Bureau of Industry and Security a request for "one-time technical review" under section 740.17(d) of the Regulations, in order to qualify that new product or new release for eligibility under license exception ENC, before it is released for commercial distribution.

We respectfully submit that the foregoing remedial actions have been specifically designed to prevent the recurrence of the export compliance problems described in this voluntary self-disclosure letter.

4. Mitigating Circumstances

Supplement No. 1 to Part 766 of the Regulations sets forth the Office of Export Enforcement's "Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases" (the "OEE Guidelines"). Those OEE Guidelines identify a number of mitigating factors that will be taken into consideration by the Office of Export Enforcement in the disposition of export compliance problems voluntarily disclosed by the exporter. There are several of the mitigating factors identified in the OEE Guidelines that are directly applicable to the NetPro export transactions reported in this letter.

a. Voluntary Self-Disclosure: The OEE Guidelines provide that the fact that an exporter makes a voluntary self-disclosure of export compliance problems or violations is a mitigating factor that will be accorded "great weight" in the disposition of those problems or violations. As noted above, upon determining that the export transactions listed on **Exhibit No. 3** were made without proper authorization under the Regulations, NetPro directed us to file this voluntary self-disclosure letter with the Office of Export Enforcement, in furtherance of NetPro's commitment to full compliance with its legal obligations (including obligations established by the Regulations). As such, we respectfully submit that NetPro should be accorded the full benefit of this voluntary self-disclosure as a mitigating factor in this matter.

b. Inadvertent Violation: The export compliance problems described in this letter did *not* arise out of any lack of attention on the part of NetPro to its compliance obligations, but rather as the result of a good faith misinterpretation of the scope of ECCN 5D002 on the Commerce Control List. That good faith misinterpretation was based on the following points.

- The technical note to ECCN 5A002.a.1 indicates that products that use encryption for authentication, including password protection and access control, are excluded from the encryption (EI) export controls. Products with encryption functionality limited to authentication are properly classified, therefore, under ECCN 5A992 (hardware) or ECCN 5D992 (software).
- ECCN 5D992.c specifically provides that it covers information security software designed or modified to protect against malicious computer damage (*e.g.*, viruses).

- As noted in Section 1 of this letter, *supra*, the information security features of the Change Auditor software are designed primarily to: (i) safeguard user and customer information by means of access control features; and (ii) prevent security breaches and network vulnerabilities (*i.e.*, identification of attempts to infect information systems with viruses or intrusions by unauthorized “hackers”). On that basis, NetPro reasonably assumed that the Change Auditor software fell squarely within the scope of products covered by ECCN 5D992.c for export classification and control purposes.

The OEE Guidelines distinguish between inadvertent violations of the Regulations, on the one hand, and violations that involve some degree of intent, on the other hand. The fact that the compliance problems with the export transactions listed on **Exhibit No. 3** arose solely from a good faith, but erroneous, interpretation of the Commerce Control List, and *not* from any intent to violate the Regulations or any negligence with respect to NetPro’s export compliance obligations, should, therefore be treated as an important mitigating factor in the disposition of this matter.

We note that the OEE Guidelines indicate that the Office of Export Enforcement will consider as a mitigating factor the fact that multiple exports were attributable to a single error in classification or a single misinterpretation of the Regulations. Thus, the OEE Guidelines specifically enumerate among the mitigating factors to be considered by the Office of Export Enforcement:

The violation was an isolated occurrence or the result of a good faith misinterpretation.

As noted above, it was only NetPro’s single, good faith, misclassification of the Change Auditor product that led to the multiple export transactions listed on **Exhibit No. 3**.

c. Transactions Would Have Been Authorized: The OEE Guidelines also identify as a mitigating factor the fact that the export transactions in question would have been authorized if a timely request for such authorization had been filed with the Bureau of Industry and Security. As **Exhibit No. 2** (CCATS #G056217) shows, the Bureau of Industry and Security has now authorized the export of the Change Auditor software to all categories of end-users in almost all countries of the world, including all of the countries listed in the NetPro export report attached hereto as **Exhibit No. 3**. As such, we believe that all of the export transactions listed on that **Exhibit No. 3** would have been duly authorized if NetPro had not misinterpreted the relevant provisions of the Commerce Control List, and had, instead, filed its commodity classification request for the Change Auditor product before commencing exports of that product¹.

¹ We confirm that none of the NetPro customers listed on **Exhibit No. 3** is included on any of the United States Government’s lists of prohibited and restricted parties. In that context, attached to this letter as **Exhibit No. 4** is a screening report from MK-Denial, confirming that

d. Consistency with United States Export Control Objectives: The fact that all of the transactions listed on **Exhibit No. 3** would have been authorized under license exception ENC if NetPro had filed its commodity classification request for the Change Auditor software in 2004 shows that those transactions did not jeopardize the national security export control objectives to which the encryption (EI) controls embodied in Category 5, Part 2 of the Commerce Control List are directed. Indeed, we understand that the United States Government actively encourages the use of information systems management tools with security features, in order to protect the integrity and security of enterprise information systems and networks. The fact that unauthorized export transactions identified in a voluntary self-disclosure did not cause harm to United States export control objectives that the applicable controls are intended to protect is identified in the OEE Guidelines as a further mitigating factor in the disposition of those unauthorized export transactions. We respectfully submit that that further mitigating factor is directly applicable to the NetPro export transactions reported in this letter.

Of particular importance may be the fact that almost all of the transactions listed on **Exhibit No. 3** (*i.e.*, 85 out of 100) involved the export of the NetPro to end-users located in countries listed on Supplement No. 3 to Part 740 of the Regulations. In that context, we note that section 740.17(a) of the Regulations provides for special treatment for exports of encryption items classified under ECCN 5D002 to end-users located in Supplement No. 3 countries. We understand the special status of Supplement No. 3 countries for the export of encryption items is based on a policy determination by the Bureau of Industry and Security to the effect that the export of encryption items to those countries does *not* raise material national security or other export control concerns. The fact that almost all of the NetPro exports listed on **Exhibit No. 3** were made to customers located in Supplement No. 3 countries further supports the position that the exports disclosed in this letter were not inconsistent with applicable United States export control objectives.

5. Conclusion

Based on the discussion set forth in this letter, we respectfully request that the NetPro export compliance problems disclosed in this letter be disposed of with the issuance of a warning letter only, and that no monetary penalties or other sanctions be imposed on NetPro. As explained in this voluntary self-disclosure letter, those export compliance problems arose solely because of a good faith misinterpretation of the classification of the Change Auditor product, and, when NetPro discovered its error (*i.e.*, when it received CCATS #G056217), NetPro: (i) took the remedial actions outlined in Section 3 of this letter, *supra*; and (ii) directed that this voluntary self-disclosure letter be submitted on its behalf to the Office of Export Enforcement.

there are no "hits" against any of those lists of prohibited and restricted parties with respect to the NetPro customer list.

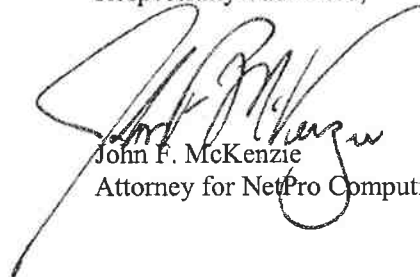
Under the circumstances, we believe that the issuance of a warning letter in this case would be consistent with the policies of the Office of Export Enforcement identified in the OEE Guidelines, as follows:

OEE often issues warning letters for an apparent violation of a technical nature, where good faith efforts to comply with the law and cooperate with the investigation are present, or where the investigation commenced as a result of a voluntary self-disclosure satisfying the requirements of section 764.5 of the EAR, provided that no aggravating factors exist.

Consistent with that provision of the OEE Guidelines, we confirm that NetPro is prepared to cooperate fully with any investigation initiated by the Office of Export Enforcement into the export transactions reported in this letter.

Thank you very much for your consideration of this voluntary self-disclosure letter. If you should have any questions about any of the points discussed herein, or if you require any additional information in order to complete your review and disposition of this matter, please do not hesitate to contact the undersigned (telephone 415 576-3033; E-mail address: john.f.mckenzie@bakernet.com).

Respectfully Submitted,



John F. McKenzie
Attorney for NetPro Computing, Inc.

Attachments

cc: Mr. Tyler Hanson
Jonathan Ariano, Esq.