

Before the
DIRECTORATE OF DEFENSE TRADE CONTROLS
U.S. Department of State
Washington, DC 20522-0112

In the Matter of

International Traffic in Arms)
Regulations: Defense Services) RIN 1400-AC80
Proposed Rule)

Comments of the Radio Amateur Satellite Corporation (AMSAT)

I. Introduction

The Radio Amateur Satellite Corporation (AMSAT) was founded in 1969 as a non-profit scientific and educational organization. AMSAT is chartered in the District of Columbia and is recognized by the Internal Revenue Service as a 501(c)(3) entity. AMSAT has 3,000 members and one paid employee (our office manager). Our primary focus is the design, construction, launch and operation of amateur radio satellites that are used by amateur radio operators around the world. These satellites are licensed by the Federal Communications Commission (FCC) and are subject to the rules and regulations of the Amateur Satellite Service. Of the 3,000 members, approximately 50 volunteers are involved with various amateur satellite engineering projects.

In its 42 years of existence, AMSAT has been directly involved in the construction, testing, launch and operation of 13 satellites intended for non-commercial use by licensed radio amateurs or for educational outreach. Our most recent project, ARISSat-1, is currently on the International Space Station awaiting deployment during an EVA currently scheduled for late July.

Because ALL satellites are currently subject to the US Munitions List (including amateur radio satellites), AMSAT is registered with the Directorate of Defense Trade Controls (DDTC) as a 'Manufacturer/Exporter' and this designation is renewed annually. AMSAT last exported an amateur radio satellite for shipment to a foreign launch facility in 2004. (NASA exported ARISSat-1 to Moscow in November 2010.) In 2009, AMSAT also exported antennas to the European Space Agency for subsequent installation on the Columbus Module of the International Space Station.

There are radio amateur satellite organizations in several other countries which are similar to AMSAT. AMSAT is not able to interact with members of these counterpart organizations on not-for-profit non-commercial amateur radio satellite engineering projects because of the limitations imposed by DoS/DDTC's policy on the definition of public domain.

II. AMSAT's Perspective on 'Public Domain'

1. AMSAT respectfully offers comments on the above-cited proposed changes to the International Traffic in Arms Regulations (ITAR).

AMSAT commends the Department of State (DoS) and the Administration for their recognition that some parts of ITAR contained in 22 CFR Parts 120, 121 and 125 may have unintended consequences and for offering proposed changes to rectify such unintended consequences with respect to defense services.

2. A key proposed revision is the recognition that materials considered to be in the public domain are exempt from ITAR and that clarification is needed to more explicitly state that materials solely in the public domain are NOT considered to be a defense services. As noted in the summary of proposed changes, "Consequently, services based solely upon the use of public domain data would not constitute defense services under this part of the definition and, therefore, would not require a license, technical assistance agreement, or manufacturing license agreement to provide to a foreign person."

Clearly then, the definition of what constitutes 'public domain' becomes of critical importance. AMSAT's policy has always been that ALL technical materials developed by our engineering team follow 'open source' protocols and principles, and are publicly available with the stated goal that we will freely make available all development work performed in the design, construction, and operation of technology developed for amateur radio satellites. This policy conforms to one of the FCC's defined purposes of the amateur radio service to 'advance the state of the radio art'. Amateur Radio by definition is non-pecuniary, and we freely share our development work as much as possible as allowed by law. It is an established and accepted tradition that technical information generated for AMSAT projects is NOT restricted or licensed for a proprietary purpose.

Historically, our technical data has been distributed through a variety of means, including publication in the AMSAT Journal (primarily provided to all AMSAT members), AMSAT Space Symposium Proceedings (primarily provided to all registered participants of our annual Space Symposium), and electronic distribution via the World Wide Web without limitations, i.e no subscription, registration, password or payment is required.

3. In December 2009, AMSAT submitted to the DDTC a request for an Advisory Opinion seeking clarification of what constitutes material to be 'public domain'. We specifically requested advice on the following specific points:

- Can AMSAT presume that AMSAT technical information (disseminated by the methods described above) is largely or exclusively in the public domain?
- Is information considered to be in the public domain if is distributed electronically to a wide and unrestricted audience?
- How would AMSAT identify exceptions, if any, to the public domain rule?

The importance of electronic distribution in today's environment cannot be overstated. The Internet has revolutionized not only the rapid and broad dissemination of information, but it has also increased the ability for collaborative relationships across broad geographic areas in the development of technical information along with the resulting sharing of the results of such collaboration in the public domain. In many instances, electronic distribution has replaced traditional 'paper publication' because of the ease, speed and lower cost of sharing such information.

For AMSAT, which has a very limited budget and is dependent upon a corps of volunteers to donate their time, talent, and energy for design and construction of our amateur radio satellites, electronic distribution is critical to our efforts. Further, given the international basis for Amateur Radio and the desire to share the development work of amateur radio satellites that benefit from such collaborative efforts, electronic distribution is an important means for sharing information that's intended to be placed in the public domain.

III. The Need to Expand What Constitutes Making Materials "Public Domain"

1. In February 2010, DDTC responded to our Advisory Opinion request, stating that the only means for making information 'public domain' was through the actual printing of such information in a publication. That is, *all* materials intended to be placed in the public domain and subject to electronic means of distribution, including the sharing of software that is intended to be public domain, must first be printed in physical form, such as a publication.

This interpretation clearly ignores the significant shift in how organizations and individuals are communicating in today's environment. These comments are being submitted to the DoS/DDTC electronically with the intent that they be made part of the public record.

Indeed, AMSAT finds it incongruous that the very means that DoS/DDTC has now chosen to permit interested parties to this proceeding to respond to their request for comments and placement in the public record is not similarly recognized by the DDTC as a way originators can also place information in the public domain thereby making it exempt from ITAR reporting requirements.

This trend towards electronic distribution will continue to accelerate, and AMSAT respectfully requests that the DoS/DDTC consider the significant changes taking place in the distribution of information, including educational materials such as training manuals, textbooks and other materials that are intended for wide distribution. Further, technical materials that are being developed under the 'open source' protocol or principles should also be considered public domain with the understanding that the originators have no intention of limiting the free distribution of their works.

2. Consequently, AMSAT respectfully requests that the DoS/DDTC take this opportunity to not only reiterate the fact that public domain materials are exempt from ITAR, but also to consider a broader definition of the recognized means of placing such materials in the public domain to also include electronic generation and distribution.

Rather than focus on the *method* for placement of materials in the public domain (e.g. paper publication), the critical criteria should be the *intent* of the originator to broadly and freely make such material available to anyone who has the ability to access it by any appropriate means.

It seems to AMSAT that electronic distribution, such as via a free and open website, constitutes placing material in the public domain more appropriately than does printing such material in a publication that requires fees to cover the costs of distribution.

Respectfully submitted,

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