

## 'In the Public Domain' Exemption Guidance

If dual use technology or software is “in the public domain”, controls are removed (it is considered “de-controlled”).

"In the public domain" means "technology" or "software" which has been made available without restrictions upon its further dissemination. This means it is already published. This decontrol does not apply to physical goods.

- i. The intention to publish a paper containing controlled research data DOES NOT mean it is in the public domain. Export of controlled technology before publication is potentially a breach of Export Control legislation.
- ii. The act of publishing a paper containing controlled technology in a format that is available to anyone without restriction (e.g. in a journal or preprint server) is not controlled. However, sharing of controlled technology as part of the publication process (such as with a reviewer overseas or peer review before publication) may require a licence. Equally sending controlled technology to a funder or collaborator before publication requires a licence. Publication must not be used as a means of sharing controlled technology and software with specific overseas collaborator(s) to bypass the Export regulations.
- iii. Controlled software/algorithms can be placed on an open-source platform (such as GitHub) to be made available for anyone to download without restriction. This de-control is not applicable to the intention of placing the controlled software/algorithm on an open-source platform as a means of sharing controlled software/algorithm with specific overseas collaborator(s) to bypass the Export regulations.
- iv. For technology to be in the public domain it has to be freely available with no restriction other than copyright placed on its further dissemination, such as in a book, on a website, at an exhibition. It may come in many forms including: general product information, brochures, photographs, diagrams, company presentations.

v. Technology is not in the public domain:

- if it needs to be obtained from a supplier who controls the supply
- where access is restricted to certain persons, like membership of an institute or requiring passwords
- where it is subject to the Official Secrets Act, or MOD or Government security classifications such as commercially confidential information
- if it has been placed in the public domain in contravention of a statutory prohibition, for example classified material, as it is unlikely to be available without further restriction upon its dissemination

**NOTE that these decontrols cannot be applied when there are end-use, end-user or destination concerns.**

**Additional links:**

[GOV.UK - Export Control Exemptions](#)

[GOV.UK - Export Controls on Academic Research \(Case Studies\)](#)

[GOV.UK - Export Controls Applying to Academic Research \(Guidance\)](#)

**Disclaimer:**

This document has been developed by HEECA as guidance for universities on the 'Public domain' exemption in the context of UK export controls. The content is for information purposes only and does not constitute legal advice by HEECA or any member institution. We are not liable for any errors, omissions, or actions taken based on this information. Universities are expected to review and form their own view on compliance.