



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

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FAC No. IA-209747-a

Nelson G. Dong, Esq.
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Dear Mr. Dong:

This responds to the letter of October 6, 2003 (Re: IA-209747 – Supplemental Submission No. 4), providing additional information in response to the request made in our letter of September 30, 2003, your letters of January 9, 2004 (Re: IA-209747 – Supplemental Submission No.5) and March 24, 2004 (Re: IA-209747 – Supplemental Submission No. 6), as well as the letter from Dr. Lightner dated February 20, 2004, regarding the peer review and scholarly publication by your client, The Institute of Electrical and Electronic Engineers, Incorporated (“IEEE”), of papers submitted by authors located in countries subject to economic sanctions administered by the Office of Foreign Assets Control (“OFAC”). In your October 6, 2003 letter, you expanded the scope of your inquiry with regard to such activity beyond the Iran program to include other OFAC sanctions programs, specifically Cuba, Libya and Sudan (collectively with Iran, the “Sanctioned Countries”).

We very much appreciate the approach taken by you and your client to comply with federal law in this matter, and to work with us in good faith to arrive at a resolution of these issues. Our meeting with you and representatives of your client in our offices on March 18, 2004, was very informative and useful in achieving a greater understanding of how the regulatory standards we administer apply in the context of the peer review and scholarly publication process. These standards, which have been communicated to you previously, pertain primarily to the implementation of section 1702(b)(3) of the International Emergency Economic Powers Act and section 5(b)(4) of the Trading With the Enemy Act, which read in pertinent part as follows:

The authority granted to the President . . . does not include the authority to regulate or prohibit, directly or indirectly . . . the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD-ROMs, artworks, and news wire feeds. . . . (hereinafter referred to as the “Berman Amendment”)

As stated in our letter of September 30, 2003, the Berman Amendment does not apply to transactions (including the exportation of services) with respect to "informational materials not fully created and in existence at the date of the transactions," or to the "substantive or artistic alteration or enhancement of the information or informational materials." See: Cuban Assets Control Regulations, 31 CFR §§ 515.206(a), 515.332 and 515.545 (for purposes of this letter, the term *persons subject to the jurisdiction of the United States* as set forth in § 515.313 and applicable in the Cuba program is hereinafter incorporated in the term *U.S. persons*); the Sudanese Sanctions Regulations, 31 CFR §§ 538.211(c) and 538.306; and the Iranian Transactions Regulations, 31 CFR §§ 560.210(c), 560.315 and 560.523. The Berman Amendment also does not pertain to transactions with respect to information and informational materials restricted under regulations administered by other federal agencies, as further discussed below.

We will convey our conclusions to you first with respect to the editorial process entailed in the peer review of articles submitted to IEEE for publication, and second with respect to the style and copy editorial process conducted after the article has been accepted by IEEE for publication. We understand that the ultimate objective of this process with respect to papers submitted and accepted for publication is to ensure that they are credible, understandable and contribute to the literature of the subject matter area. We also understand that IEEE publishes not only in printed hard copy but also in digital media and in other formats.

Peer Review: As we understand your description of the peer review process generally, the central purpose of "peer review" by an academic, scholarly or professional journal is to determine whether a given paper merits publication in accordance with a specific publication's editorial standards. Peer review questions and comments are the usual and customary scholarly questions and comments about a paper's clarity, logic, language, context or content in relation to a given publication's editorial standards and criteria. With respect to IEEE specifically, we understand that a manuscript submitted for publication is sent to up to three IEEE volunteers, both in the United States and in third countries, who review it for technical and scientific value. The volunteers are generally persons who practice in the same technical field.

Comments from IEEE peer reviewers are collected on a standard form on which the reviewer indicates a recommendation as to whether to publish as is, accept for publication with revisions, or reject. The form also has space where the reviewer can place comments or questions for the author and additionally can pass on private comments to the Editor. You further state that while this is IEEE's practice, the mode of delivering questions or comments from peer reviewers to authors may vary considerably from journal to journal, in some cases involving a web-based form, e-mail, or the manual mark-up of a manuscript and shipment of that mark-up via photocopy, fax or pdf file.

Comments from the IEEE peer reviewers are relayed back to the editorial team, which consists of an Editor-in-Chief and Associate Editors, who make the final decision based upon peer comments whether the manuscript should be accepted for publication, rejected or needs further work from the author in order to be published. You state that it is

common practice in almost all scholarly journals for peer comments to be addressed in the first instance solely to the editorial staff of the journal and not to the author. If the editorial staff decides that an article is publishable with revisions recommended by the peer reviewers, such recommendations are forwarded to the author, who is usually unaware of the identities of the peer reviewers.

You characterize the peer review process as one primarily intended to secure a worthwhile paper for publication, not to assist any given author. Typical comments may refer an author to existing literature to show an author how a paper is supposed to be written so that it can conform to the editorial standards and criteria of that specific journal or other similar journals in the field. Other types of revisions proposed in this process might suggest further elaboration or clarification of certain points, or an observation that a paper is too lengthy or contains flaws. They might also include the need to gather more data to support conclusions, make minor corrections in the scientific theory or mathematics to equations and references (including the completion or correction of citations), modify the analysis, and improve the style or "expression of the work" (grammar and spelling). The authors may be advised to expand their approach, delete sections of the manuscript, or otherwise generally improve it. If the revisions made by the author so warrant, the article may be sent out for a second peer review.

As we stated to you in our letter of September 30, 2003, no license from OFAC is required for IEEE to conduct the kind of editorial activity engaged in during the peer review process, provided such activity does not result in the reviewers' substantive or artistic alterations or enhancements of the manuscript. For purposes of clarifying the application of that regulatory standard in this context, we would consider a prohibited exportation of services to occur when a collaborative interaction takes place between an author in a Sanctioned Country and one or more U.S. scholars resulting in co-authorship or the equivalent thereof.

Based upon our understanding of the peer review process as set forth above, we conclude that IEEE's publication of articles or studies does not entail the prohibited exportation of services to Iran or another Sanctioned Country resulting in substantive alterations or enhancements of informational material by U.S. persons prior to its final importation into the United States for publication. In the peer review process as described, peer reviewers may spot problems in a submitted paper and may advise the paper's author of the nature and extent of those problems, but neither the publisher nor its reviewers substantively re-write or revise the manuscript for the author to remedy those problems. The choice of whether to act on any given question or comment from a reviewer remains up to the author, who may then alter or enhance his or her manuscript – substantively or not - as he or she sees fit prior to its final importation for publication. Such activity is based upon general guidance and suggestions provided by the peer reviewers and endorsed by the editorial staff, neither of which is substituting their own work product for that of the author. This conclusion applies to the format used by IEEE to convey comments, as well as to the alternative means of conveying comments – such as e-mail, manual mark-ups, or pdf file – discussed above.

Please note, however, the Berman amendment does not pertain to exportations of information, including software and technical data, subject to licensing requirements under the Export Administration Regulations (EAR). These licensing requirements cover not just the exportation of information controlled on Commerce Control List, 15 C.F.R. part 744, but also the exportation of any information subject to the EAR where a U.S. person knows or has reason to know that the information will be used directly or indirectly with respect to certain nuclear, missile, chemical and biological weapons, and nuclear-maritime end-uses. In addition, U.S. persons are precluded from exporting any information subject to the EAR to certain restricted end-users. The Commerce Department's end-user and end-use based controls are set forth at 15 C.F.R. 744. In addition, you should also consult the International Traffic in Arms Regulations, 22 C.F.R. 120-130, to determine whether any of the information to be exchanged may be controlled under the Arms Export Control Act. Finally, certain exchanges of information may also be governed by the Department of Energy and other government agencies.

Style and Copy Editing: In our letter of September 30, 2003, we stated that the collaboration on and editing of manuscripts submitted by person in Iran, including activities properly described as style and copy editing, may result in the reviewers' substantive or artistic alterations or enhancements of the manuscript (emphasis added). In your January 9, 2004 letter, you characterized such style/copy editing as:

- Labeling units of measurements with standard abbreviations;
- Correcting grammar and spelling to conform to standard American English;
- Changing the size of type or the weight of lines in illustrations so that the diagrams remain legible when reduced in size for publication;
- Labeling illustration captions and formatting references to conform to the IEEE style manual;
- Sizing and positioning illustrations to fit on the page appropriately and in proper proximity to references in the text;
- Formatting mathematical equations to fit on the page appropriately and to avoid breakage between two lines in a way that is unclear;
- Ensuring that the author has supplied a biography and photo; and
- Adding page folios with publication titles and page numbers.

In your January 9 and March 24, 2004 letters, you provided additional information in support of IEEE's position that any editing of a paper after its copyright has been assigned to IEEE should be considered "exempt" activity under the Berman Amendment. We conclude that style and copy editing, as described in your submissions and set forth above, falls within the scope of the Berman Amendment – regardless of whether the copyright has transferred – because such activity as described does not constitute substantive or artistic alteration or enhancement of the informational material and is intrinsically related to and necessary for its dissemination through publication.

Style and copy editing would thus fall within the same category of exempt transactions that includes transactions relating to informational materials that are reproduced,

subtitled, translated (including both literal and idiomatic translation) or dubbed by U.S. persons for dissemination within the United States. Where copyright is retained by an author, royalties may be paid to the author with regard to informational material modified in the United States through these activities.

In conclusion, IEEE is therefore not constrained by OFAC's regulatory programs pertaining to the Sanctioned Countries from conducting its peer review process, including the facilitation of review by peers located in third countries, and from making any of the style and copy editorial changes described above for purposes of publishing articles imported from a Sanctioned Country or from an author with whom transactions are otherwise prohibited.

Sincerely,

A handwritten signature in black ink that reads "Richard Newcomb". The signature is written in a cursive style with a large, prominent initial "R".

R. Richard Newcomb

Director

Office of Foreign Assets Control