

Obama Administration Relaxes Access to U.S. “Social Networking” Technology – Exports to Iran, Sudan and Cuba Authorized

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The dramatic events surrounding the Iranian Presidential election last summer vividly demonstrated the power of Internet communications and social networking media such as Twitter® and Facebook® to serve as instruments of political organization and change. In an effort to support and foster access to these services, the Obama Administration began easing restrictions last December on exports to Iran of mass-market software and technology essential for the exchange of personal communications and sharing of information over the Internet, which otherwise are prohibited under the United States’ long-standing trade sanctions against Iran.

Expanded Authorizations Issued

This week, the Administration took another big step, not only lifting restrictions on access to the technology, but also explicitly authorizing U.S. companies to provide communication and networking services to customers in Iran, Sudan and Cuba. Specifically, on March 8, 2010, the U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”) – the executive agency responsible for maintaining and enforcing the trade sanctions and embargo programs maintained by the United States -- issued a notice amending the Iranian Transactions Regulations,¹ Sudanese Sanctions Regulations,² and Cuban Assets Control Regulations³ to grant “general licenses” (or blanket authorizations) permitting the exportation to Iran, Sudan and Cuba of personal Internet-based communications services (e.g., instant messaging, chat and email, social networking, sharing of photographs and videos, web browsing and blogging).⁴ The OFAC regulations also authorize exports of software and technology to Iran and Sudan for these purposes. (Cuba technology export licensing is administered by a different agency – the Commerce Department Bureau of Industry and Security (“BIS”) – so deregulation of exports of the pertinent software and technology to that destination will have to be undertaken separately).

Exports of Services or Technology (Including Software) to Iran and Sudan Permitted

OFAC’s authorizations cover exports of services and technology (including software) to Iran and Sudan for Internet communications and social networking technology. For exports to the Iran and Sudan to qualify for general licenses, the services or technology at issue must be publicly available at no cost to the user. In addition, any software exports must involve technology that is (1) classified as “EAR99”

under the Export Administration Regulations (“EAR”) administered by the Department of Commerce; (2) not subject to the EAR at all; or (3) formally classified by the Department of Commerce as mass market encryption software under export control classification number (“ECCN”) 5D992. Finally, no direct or indirect exports of services or technology (including software) can be undertaken with knowledge or reason to know that such services or software are intended for the Government of Sudan or the Government of Iran.⁵

Beyond the general licenses, for which no specific approvals are required, OFAC is also changing its licensing policy to indicate that specific licenses may be issued on a case-by-case basis for exports of services or technology to Sudan or Iran not otherwise eligible for a general license, but which are incident to the sharing of information over the Internet. Any software exports, to be eligible for this consideration, must again be classified as “EAR99,” not subject to the EAR, or classified by Commerce as mass market encryption software under CCN 5D992 of the EAR.⁶

Exports of Services to Cuba Authorized

OFAC’s Cuba embargo regulations have now been amended to add a similar general license authorizing the exportation to Cuba of “certain services incident to Internet-based communications.”⁷ To qualify, as in the case of the Iran and Sudan authorizations, the services must be publicly available at no cost to the user. In addition, OFAC policy is modified to indicate that specific licenses may be issued on a case-by-case basis for the exportation of services not covered by the general license that are incident to the sharing of information over the Internet. The amendments do not authorize the direct or indirect exportation of services “with knowledge or reason to know” that such services are intended for a prohibited official of the Government of Cuba or a prohibited member of the Cuban Communist Party.⁸ And unlike Iran and Sudan, OFAC’s general license for Cuba does not include an authorization for the exportation of technology, which is subject to BIS jurisdiction.

With these amendments, the Obama Administration is signaling a willingness to shape and tailor its embargo and sanctions programs to target bad actors and governments while trying to find a way to engage directly with civilian populations, especially where doing so could lead to democratic reforms. Companies in the telecommunications space – and particularly those providing services or equipment at the backbone of Internet-based communications and networking tools -- should find much to cheer in the new OFAC amendments and the opportunities to reach markets previously blocked by foreign policy measures.



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¹ 31 C.F.R. Part 560.

² 31 C.F.R. Part 538.

³ 31 C.F.R. Part 515.

⁴ The Notice was published today in the *Federal Register* at 75 Fed. Reg. 10997 (Mar. 10, 2010).

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

⁶ 31 C.F.R. § 538.533(c) (Sudan); 31 C.F.R. § 560.540(c) (Iran).

⁷ 31 C.F.R. § 515.578.

⁸ 31 C.F.R. § 515.578(b)(1). Other provisions, previously enacted by the Obama Administration, authorize establishment of telecommunications services linking the U.S. or third countries and Cuba, or provision of telecommunications services or contracts to persons in Cuba. See 31 C.F.R. § 515.542.