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The Value of Understanding International Encryption Regulation

Overview

Encryption technology offers both substantial benefits (by protecting the confidentiality, integrity, and availability of business and personal information) and substantial risks (by making it easier for criminals and terrorists to conceal communications regarding illegal behavior). While most countries recognize the benefits of encryption, the associated risks have led many governments to impose controls on the import, sale, use, and/or export of encryption software, hardware and technical information. Companies that operate in a multinational environment can pay a significant price if they are not familiar with these controls.

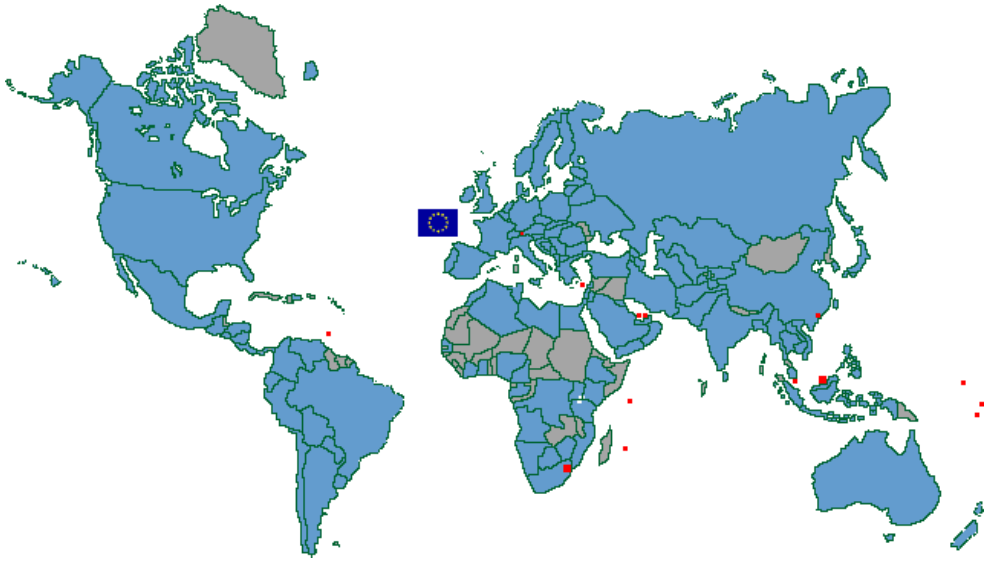
For instance, in the United States encryption controls cover export, but not import, domestic sale, or use, of encryption products. A violation of regulations related to the export of encryption may be punishable by civil monetary penalties, denial of export privileges, and criminal fines. US law may be violated not only if a US-origin product is exported from the United States without authorization, but also if it is "re-exported" from another country to a third country.

Outside the United States, numerous governments restrict the import, use, sale, and/or export of encryption. Some countries impose severe sanctions for a violation of their restrictions. Others use informal sanctions to address perceived misuse of encryption technology. In other instances, governments have blocked communications or confiscated encryption hardware or software. Finally, many companies have encountered substantial delays or the inability to deploy or sell encryption products in countries with established control regimes–typically because of a lack of familiarity with recent changes in local regulations and procedures.

An accurate understanding of international encryption regulations is critical for both manufacturers and multinational users of encryption products, helping such companies avoid costs and delays and ensure compliance with local laws. In addition, an appreciation of the application and approval processes can allow companies to plan ahead on a global basis.

Steptoe's subsidiary, InternatLaw L.L.C., offers a comprehensive, online guide to worldwide encryption regulations, the "Country-by-Country Guide to Encryption Regulations," colloquially known as the "Cryptoguide." This unique resource contains detailed reports on the encryption regulations of over 130 countries. Each report discusses applicable laws and regulations regarding the import, use, and export of encryption, including rules on "internal" corporate use, "intangible" imports and exports (i.e., Internet downloads or uploads), and temporary imports of encryption by business travelers on laptops or other mobile devices. Each report also covers applicable penalties and provides local points of contact for additional information. A list of countries currently covered by the guide follows. The Cryptoguide is available on an annual subscription basis, which entitles subscribing companies to unlimited access to the guide by its employees and one hour of free consultation per month with Steptoe personnel regarding the contents of the guide.

Scope of Country-by-Country Guide to Encryption Regulation



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Bolivia
Bosnia and Herzegovina
Botswana
Brazil
Brunei
Bulgaria
Cambodia
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China
Colombia
Congo (Dem. Rep.)
Costa Rica
Côte d'Ivoire
Croatia
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Dominican Republic
Ecuador
Egypt
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Estonia
Ethiopia
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Ghana
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Hungary
Iceland
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For more information on the Guide, or to set up a demonstration, contact Michael Vatis / +1 212 506 3927, or Sally Albertazzie / +1 202 429 3062.

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Encryption Practice

Overview

Encryption regulatory issues have been, and will continue to be, a hazardous area for companies attempting to comply with varying regulations around the world. In addition to offering access to the Cryptoguide through its subsidiary, InternatLaw L.L.C, on an annual subscription basis, Steptoe & Johnson LLP's encryption practice group provides counsel to clients seeking to navigate worldwide cryptography regulations. We have an international team of lawyers based in the United States, Europe, and Asia, whose combined experience spans decades.

As well as being leaders in encryption regulatory issues, Steptoe has also developed a broad network of information sources around the world, including government agencies, multilateral organizations such as the OECD, local embassies, commercial networks and organizations, and local counsel. These contacts give us the unique ability to send quick inquiries to numerous countries and to obtain formal or informal guidance about encryption regulations. Our contacts are particularly useful in countries that do not publish the details of their encryption policies. With the help of our extended network, we provide both counseling on country-by-country requirements and assistance in obtaining import, export, sale, and/or use licenses around the world.

Steptoe also represents leading financial institutions, information and telecommunications services, hardware and software manufacturers, and other multinational organizations on a wide array of issues concerning privacy, data security, telecommunications regulation, and electronic commerce. This includes litigation, dealings with law enforcement or security agencies, regulatory compliance, internal investigations, and strategic planning.

Michael Vatis is a partner in Steptoe's New York office and the Chair of Steptoe's Privacy and Cybersecurity Practice Group. His practice focuses on privacy, security, e-commerce, Internet regulation, and technology matters. He has extensive experience advising clients on US export controls on encryption as well as on foreign countries' laws governing the importation, sale, use, and export of encryption. He was the founder of the FBI's cybercrime program and the founding Director of the National Infrastructure Protection Center at the FBI, the first government organization responsible for detecting, warning of, and responding to cyberattacks, including computer crimes, cyber terrorism, cyber espionage, and information warfare. He was also Associate Deputy Attorney General at the Department of Justice, where he helped oversee the Department's activities and policies in the areas of national security, counterterrorism, intelligence and counterintelligence, cybercrime, and encryption. Mr. Vatis has frequently testified before congressional committees on cybercrime, data security, privacy, counterterrorism, and intelligence. He is also regularly interviewed on television, radio, and in print media, and has been a guest lecturer at law schools and universities and a frequent speaker at industry conferences worldwide.

Stewart Baker rejoined the firm as a partner in Steptoe's Washington, DC office following over 3 years at the Department of Homeland Security as its first Assistant Secretary for Policy. Once described by The Washington Post as "one of the most techno-literate lawyers around," Mr. Baker's practice covers national security, electronic surveillance, law enforcement, export control, and related technology issues. He has been a key advisor on US export controls and on foreign import controls on technology. He has also advised companies on the requirements imposed by the Committee on Foreign Investment in the United States. In addition, he was responsible for spearheading the government-private sector coalition that permitted major telecommunications equipment manufacturers and carriers to break the decade-long deadlock with law enforcement on wiretapping of modern technology, permitting successful implementation of the Communications Assistance for Law Enforcement Act (CALEA).

Alexandra Baj is of counsel in Steptoe's Washington office. Her practice focuses on export controls and economic sanctions laws and regulations, anti-corruption investigations and compliance, international trade, and security clearance issues. She is a key lawyer in Steptoe's encryption practice, advising companies on encryption import, export, and use laws and regulations under US rules and in jurisdictions around the world. Her encryption practice also includes encryption and product classifications.

Maury Shenk is a Technology, Media & Telecommunications consultant and adviser to the London office of Steptoe & Johnson and is a dual-qualified US/UK lawyer. He has extensive experience on regulatory, commercial, transactional and policy matters involving electronic commerce, representing many leading technology companies from the United States and Europe. He advises clients on the legal aspects of business on the Internet, including online agreements, data protection, information security, intellectual property and competition. Maury frequently handles technology transactions, including M&A and outsourcing agreements. He works with Steptoe & Johnson's leading encryption export/import team, and is experienced in encryption licensing proceedings in the US, UK, France, Russia, China and other jurisdictions.

Sally Albertazzie is a specialist in Steptoe's encryption practice group. She has managed the Country-by-Country Guide to Encryption Regulations since its inception in 1999 and has worked with Steptoe's "eTeam" on a wide range of high-tech issues, including encryption, data privacy, data security, and lawful intercepts. Ms. Albertazzie is a graduate of Georgetown University's Paralegal Institute.

Our clients include some of the world's most prominent companies in a variety of business endeavors:

- Internet service providers
- Communications providers
- Voice over Internet Protocol providers
- Numerous software and hardware companies
- Global investment and commercial banks
- Energy companies
- Other technology companies