Publishing and sanctions laws: OFAC provides new guidance
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Some of you will be aware that Elsevier has been attempting to clarify the “publishing exception” issued by the US government agency OFAC (Office of Foreign Assets Control) in 2007 related to trade sanctions laws. See our prior “Elsevier Connect” note here. We have now received OFAC’s response to our request, and while we believe the US government could have been clearer and more forthright in supporting international publishing activities, we think the communication makes clear that the vast majority of publishing activities are consistent with OFAC regulations.

Elsevier had asked OFAC to explain how we are supposed to understand the general ability to publish the works of authors in sanction countries, but with the exception that this did not necessarily apply to “government employee” authors. We pointed out that in most countries, universities and research institutions are almost always government institutions.

It is clear in the October 2015 response from OFAC, that publishing activities conducted by sanction country authors in their personal (professional) capacity, even if they are working at a government institution, is not problematic. Even if the author was preparing the paper or contribution on behalf of their government institution, if that institution was primarily involved in education or research, then this is also permitted. Issues would only arise where the author was preparing a work on behalf of their government agency, where that agency was not primarily an educational or research institution. It is hard to imagine that this latter scenario would be applicable for the vast majority of research papers or medically research-oriented book contributions, but even in such an unlikely scenario there are publishing solutions that would enable us to publish (for example we could publish but provide less in the way of editing). The only country/region where the US regulations are currently unclear is the Crimean region, and both the US and EU governmental authorities still reserve the right to take actions against individuals or organizations that they specifically identify as terrorist-related.

Elsevier is modifying our publishing agreements to take into account this guidance, but we are pleased that we are able to bring this matter to a close in a way that is consistent with our fundamental freedom of expression view that publishing is a global international method of communication, and that censorship plays no part in such an environment.

To be clear, we summarize our views of the OFAC guidance (having to do with Iran, Cuba, Sudan, Burma and Syria):

1. There are no publishing limitations with respect to authors or co-authors in these sanctioned countries who are engaged in preparing an article, chapter or book in their “personal capacity” (in other words, “not as an official representative or otherwise on behalf of a sanctioned government”);

2. Even if the author or co-author is acting on behalf of the government or government agency in his or her publishing activities (which would be highly unusual in our field), there is no problem with the editing and publication of the work if the co-author is employed at an academic or research institution where research or education is the primary function of the entity; and finally

3. Even if an author or co-author is preparing a publication on behalf of a government agency, and even if that agency is not primarily involved in research or education, the content prepared by
the author or co-author can be published provided that no substantive editing (i.e., substantive or artistic alteration or enhancement of the work) is provided by the editor, reviewers or publisher (for US nationals), essentially, pre-existing “camera ready” articles (or pre-prints) for which Elsevier provides only minimal style and copy-editing.

If you have any questions about this guidance or its application, please let us know!

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