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NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.
)	
Plaintiff,	)	<u>VIOLATIONS</u> : 3:22-cr-00372 SI
)	
v.	)	50 U.S.C. §§ 1702, 1705(a) and 15 C.F.R. §§ 730-774
	)	– Violation of the International Emergency Economic
JONATHAN SOONG,	)	Powers Act (IEEPA) with regard to exports to the
	)	People’s Republic of China;
Defendant.	)	18 U.S.C. § 2 - Aiding and Abetting;
	)	18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) –
	)	Forfeiture Allegations.
)	
	)	SAN FRANCISCO VENUE
)	

INFORMATION

The United States Attorney charges:

Introductory Allegations

At all times relevant to this Information, in the Northern District of California and elsewhere:

The International Emergency Economic Powers Act

1. Under the International Emergency Economic Powers Act (“IEEPA”), 50 U.S.C. §§ 1701-1707, the President of the United States is granted authority to deal with unusual and extraordinary threats to the national security and foreign policy of the United States.

INFORMATION

2. On August 17, 2001, under the authority of IEEPA, the President issued Executive Order 13222, which declared a national emergency with respect to the unrestricted access of foreign parties to U.S. goods and technologies and continued in effect the Export Administration Regulations (“EAR”), 15 C.F.R. §§ 730-774. The President has issued annual Executive Notices extending the national emergency declared in Executive Order 13222 from the period covered by that Executive Order through August 17, 2019.

3. The Export Administration Regulations (“EAR”), 15 C.F.R. §§ 730-774, control, among other things, the export and re-export to foreign countries of commercial items that also have a military application. The EAR places limits on the export of those goods and technology that the Secretary of Commerce deems could make a significant contribution to the military potential of other countries, could prove detrimental to the national security of the United States, or are contrary to the foreign policy of the United States.

4. The Department of Commerce also maintains the Entity List, which identifies parties “reasonably believed to be involved, or to pose a significant risk of being or becoming involved in activities contrary to the national security and foreign policy interests of the United States.” 15 C.F.R. § 744.16. The EAR imposes license requirements on, and limits the availability of most license exceptions for, exports, re-exports, and transfers (in-country) to listed entities. 15 C.F.R. § 744.11(a).

5. Beihang University has appeared on the Department of Commerce’s Entity List since 2001 and is prohibited from receiving items subject to the EAR, including items designated as EAR99, without a license.

Universities Space Research Association’s Contract With NASA

6. The Universities Space Research Association (“USRA”) is a non-profit research corporation focused on advancing space science and technology that works closely with the National Aeronautical and Space Administration (“NASA”) and the university research community.

7. In April 2016, NASA awarded USRA the NASA Academic Mission Services (“NAMS”) contract at the NASA Ames Research Center (“Ames”) in Mountain View, California. NAMS provides Ames with capabilities ranging from fundamental research and development to field-test deployments and operational science missions.

1 8. Under a section of the NAMS contract commonly referred to as the “STA program”
2 (Software Transfer Agreement), USRA collaborated with U.S. Army Combat Capabilities Development
3 Command, Aviation and Missile Center (“AvMC”) to license and distribute aeronautics-related Army
4 flight control software for a fee. The contract includes language for periodic software updates and,
5 when requested, software modifications needed to meet the licensees’ needs. The licensees were mostly
6 U.S. companies (including major defense contractors like Lockheed Martin Corporation and The Boeing
7 Company) and universities. Additionally, some licensees were foreign companies and universities,
8 including some located in China.

9 9. The AvMC developed multiple software packages that were marketed for Unmanned
10 Aerial or Aircraft Vehicles (“UAV”) development. One package was CIPHER (Comprehensive
11 Identification from Frequency Responses), a tool that allows a user to develop a dynamic model of an
12 aircraft, based on collective flight test data, using system identification techniques. The second package
13 was CONDUIT (Control Designer’s Unified Interface), a software application that was developed for
14 designing and evaluating the flight control system of an aircraft.

15 10. USRA distributed CIPHER and CONDUIT domestically and internationally through the
16 STA program, with USRA employees managing and administering the program.

17 11. CIPHER and CONDUIT software packages were designated as Export Control
18 Classification Number (ECCN) EAR99. A BIS license was required for the export of CIPHER and
19 CONDUIT to Beihang University because Beihang University was on the Entity List in 2001 due to its
20 involvement in rocket systems and unmanned air vehicle activities.

21 12. Although USRA administered the STA program pursuant to the terms of the NAMS
22 contract, the U.S. Government, through a U.S. Army civilian lead researcher, exercised supervision and
23 control of the funds and their ultimate use. As such, the funds obtained by USRA from software
24 purchases belong to the U.S. Government even though they were received by USRA.

25 13. Under the NAMS contract, payments for the sale of the software and software license
26 fees could be made by either (1) a check made payable to USRA; or (2) a via wire transfer to USRA’s
27 bank account.

14. As of approximately April of 2016, Jonathan Soong was USRA's STA program administrator responsible for conducting business with both potential and current software licensees. Soong's duties included conducting and servicing STA software license sales; conducting export compliance screening of customers; generating software licenses; and exporting software, either physically (by shipping disks containing the software to customers) or via electronic download, pursuant to purchased licenses. As part of his duties as the program administrator, Soong took online training on export control annually from USRA and NASA.

The Sale of CIPHER Software to Beihang University

15. On April 18, 2017, Soong received a communication from a Beihang University representative inquiring about the purchase of the CIPHER software. On April 26, 2017, Soong informed the representative that USRA had previously "run into some export control issues with Beihang University and our legal department" and that Soong was "looking into ways to see if we're able to continue selling CIPHER to your university as it came up with some red flags when we screened it." Soong further asked the representative whether the representative is "affiliated with a different organization or university" and raised the possibility of using such an organization as an intermediary for the purchase. On May 1, 2017, the Beihang University representative expressed an interest in exploring an arrangement in which rather than use Beihang University as the purchaser, the purchase would be made through and in the name of a third-party small company.

16. On May 5, 2017, Soong emailed a USRA colleague, attaching two printouts: (1) a printout from the U.S. International Trade Administration's Consolidated Screening List website showing Beihang University's inclusion on the Entity List, and (2) a copy of the Federal Register entry showing Beihang University's inclusion on the Entity List.

17. On August 4, 2017, a Beihang University official signed an agreement with USRA for the CIPHER software and provided Soong his Beihang University email and physical addresses as contact information for the Agreement. A USRA invoice for contract number RBTD-170666LY, dated August 4, 2017, for the purchase of CIPHER software by Beihang University. Consistent with the March 1, 2017, email, "Beijing Rainbow" was listed as the "Ship To" and "Bill To" contact for the invoice, rather than the Beihang University.

1 18. Over the next three months, Soong and the Beihang University representative exchanged
2 multiple email communications. Soong also exchanged emails with a representative from Beijing
3 Rainbow Technical Development Ltd., identified as being the third-party intermediary for the sale of the
4 CIFER software to Beihang University.

5 19. On January 2, 2018, USRA received a payment via wire transfer to SunTrust account
6 ending in x4385, for the sale of CIFER to Beihang University from Beijing Rainbow, under contract
7 number RBTD-170666LY, for \$2,182.00.

8 20. On January 4, 2018, the Beihang University representative requested that Soong change
9 the authorized computer for the license key to a computer named as “DESKTOP-U790341.”

10 21. On January 5, 2018, Soong notified the Beihang University representative by email that
11 payment has been received.

12 22. Also on January 5, 2018, Soong sent the Beihang University representative a software
13 key for CONDUIT in error.

14 23. On July 23, 2018, the Beihang University representative informed Soong that the
15 University did not have the appropriate software key.

16 24. On July 25, 2018, Soong confirmed that Beihang University had in fact purchased CIFER
17 and sent the Beihang University representative the CIFER software license key.

18 25. On July 25, 2018, the Beihang University representative replied via email stating, “Hello
19 Jonathan Soong...Thanks for your help and I have install the CIFER successfully!”

20 26. The BIS licensing database has no evidence that USRA or Soong either applied for or
21 received a BIS license for the export of AvMC-developed software, including CIFER and CONDUIT, or
22 any other item to Beihang University.
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1 COUNT ONE: (50 U.S.C. § 1705(a) - Violation of the International Emergency Economic Powers Act)

2 27. All of the preceding paragraphs of this Information are re-alleged and incorporated as if
3 fully set forth here.

4 28. Beginning on April 18, 2017, and continuing through in or about July 25, 2018, in the
5 Northern District of California and elsewhere, the defendant,

6 JONATHAN SOONG,

7 knowingly and willfully exported goods and items controlled subject to the Export Administration
8 Regulations from the United States to Beihang University, an entity on the Department of Commerce's
9 Entity List, in Beijing, China, specifically, CIPHER (Comprehensive Identification from Frequency
10 Responses) software, a tool that allows a user to develop a dynamic model of an aircraft using system
11 identification techniques, without having first obtained the required authorization from the Department
12 of Commerce, in violation of 50 U.S.C. §§ 1702 and 1705(a), and its implementing regulations, 15
13 C.F.R. §§ 730-774, and Title 18, United States Code, Section 2.

14 FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c))

15 29. The allegations contained in this Information are re-alleged and incorporated by reference
16 for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), and
17 Title 28, United States Code, Section 2461(c).

18 30. Upon conviction for the offense set forth in this Information, the defendant,

19 JONATHAN SOONG

20 shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and
21 Title 28, United States Code, Section 2461(c), all property, real or personal, constituting, or derived
22 from, proceeds the defendant obtained directly and indirectly as a result of the offense described in
23 Count One of this Indictment.

24 32. If any of the property as a result of any act or omission of the defendant:

- 25 a. cannot be located upon exercise of due diligence;
- 26 b. has been transferred or sold to, or deposited with, a third party;
- 27 c. has been placed beyond the jurisdiction of the court;
- 28 d. has been substantially diminished in value; or

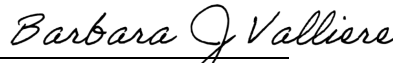
e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States Code, Section 2461(c), and Federal Rule of Criminal Procedure 32.2.

DATED: September 26, 2022

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