

The Right to Communicate with Non-Human Intelligence, and the Government's Power to Restrict It

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Key points

- The First Amendment protects speaking to and receiving information from willing speakers, including foreign ones (*Lamont*; *Kleindienst v. Mandel*); a ban on communicating with NHI would be content based and subject to strict scrutiny.
 - Narrow rules would likely survive: export controls on specified technical data, content-neutral transmitter rules, and bans on coordinated services to a designated hostile group (*Holder v. HLP*; *Mehanna*).
 - The Logan Act is a poor fit and probably unconstitutional; FARA and 18 U.S.C. §951 are more realistic exposures for a human intermediary who takes direction.
 - Transmissions need FCC authorization; amateur operators should not encode messages to obscure their meaning.
 - Received technical content may be export-controlled or Restricted Data whatever its source; review before sharing with foreign persons ([Form F3-2](#)).
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1. Summary

If NHI exist and some seek contact, people in the United States will try to communicate with them: by radio or optical transmission, by direct encounter, or through intermediaries. The government may wish to restrict that communication to prevent transfer of dangerous technology to “bad actors,” to manage diplomacy, or to control disclosure. The constitutional framework strongly protects communication and receipt of information, but leaves room for narrowly drawn restrictions on the export of technical data, on coordination with designated hostile entities, and on the physical means of transmission.

- **Speaking and receiving.** The First Amendment protects the right to speak to and receive information from willing speakers, including foreign speakers. *Lamont v. Postmaster General*, 381 U.S. 301 (1965) (struck down a requirement that recipients request delivery of

foreign “communist political propaganda”); *Kleindienst v. Mandel*, 408 U.S. 753 (1972) (recognizing a First Amendment interest in receiving information from a foreign speaker, though deferring to the government’s exclusion of the speaker himself); *Stanley v. Georgia*, 394 U.S. 557 (1969). Restrictions on the content of communication with NHI would be content-based and subject to strict scrutiny (*Reed v. Town of Gilbert*, 576 U.S. 155 (2015)).

- **Dangerous technology.** The government may regulate the export of technical data, including to foreign persons in the United States, through ITAR and EAR ([Issue A5](#)). Courts have treated some technical expression (source code) as protected speech (*Junger v. Daley*, 209 F.3d 481 (6th Cir. 2000)), and licensing schemes for publication raise prior-restraint concerns (*Bernstein v. U.S. Dep’t of Justice*, 176 F.3d 1132 (9th Cir. 1999), withdrawn on reh’g en banc). Regulation of transfers of functional technical data to identified recipients has generally been sustained. A rule barring individuals from conveying controlled technical data to NHI, or receiving it from NHI and passing it to prohibited parties, would likely be upheld if narrowly drawn; a rule barring all communication with NHI would not.
- **Material support and coordination.** *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), upheld a ban on “material support” in the form of expert advice and training coordinated with designated foreign terrorist organizations, applying strict scrutiny but deferring to the government’s national security judgment. If the government designated a hostile NHI group under an analogous statute, coordinated services could be restricted. Independent advocacy and speech would remain protected. The line has held in later cases: translating and posting extremist materials became criminal “material support” only if done “in coordination with or at the direction of” the designated organization, and independent advocacy for the group or its goals was protected. *United States v. Mehanna*, 735 F.3d 32, 48-50 (1st Cir. 2013) (approving jury instructions drawing that line). A person who publishes or translates messages attributed to NHI on their own initiative is on the protected side of *Mehanna*; one who relays technical content at the request of a designated group would not be.
- **Logan Act**, 18 U.S.C. §953, bars unauthorized correspondence with “any foreign government” to influence its conduct in disputes with the United States. It has never produced a conviction in modern times and its application to a non-human polity is doubtful (is it a “foreign government”?). Constitutional vagueness and First Amendment concerns would be serious. The only reported judicial comment on its validity that we found noted “a doubtful question with regard to the constitutionality of that statute” because “defeat” and “measures” are “vague and indefinite terms,” without deciding it. *Waldron v. British Petroleum Co.*, 231 F. Supp. 72, 89 (S.D.N.Y. 1964).
- **Physical means.** Radio transmission requires FCC licensing (47 U.S.C. §301); high-power transmissions aimed at space (active SETI / METI) would need licenses and could be regulated under content-neutral rules on power, frequency, and interference. Content-based licensing restrictions would face strict scrutiny.
- **IEEPA informational materials exemption.** IEEPA does not authorize regulation of the import or export of “informational materials” (50 U.S.C. §1702(b)(3)) (the Berman

Amendment). If the government used sanctions authorities against an NHI group, communication of informational materials would remain protected.

1A. Exposures more realistic than the Logan Act

- **Foreign agents.** The Foreign Agents Registration Act defines “foreign principal” to include not only foreign governments and parties but “a person outside of the United States” and organizations organized abroad (22 U.S.C. §611(b)). A person in the United States who acts at the direction of an NHI group outside the United States in political activities or public relations aimed at U.S. audiences or officials would face the question whether the group is a “person outside of the United States.” Separately, 18 U.S.C. §951 makes it a crime to act in the United States as an agent of a foreign government without notice to the Attorney General; it applies only if the group is treated as a “foreign government.” Neither statute has been applied to a non-human principal, but both are better fits than the Logan Act for a human intermediary who takes direction.
- **Amateur radio.** Licensed amateur stations may not transmit “messages encoded for the purpose of obscuring their meaning” (47 C.F.R. §97.113(a)(4)). A message to NHI in a constructed code is not encoded to obscure meaning, but operators should publish the key and the content to stay clearly within the rule. Experimental and other licenses have their own conditions.
- **Religious practice.** Some groups treat contact attempts as spiritual practice. A federal rule that substantially burdened that practice would need to satisfy the Religious Freedom Restoration Act (42 U.S.C. §2000bb-1), which requires a compelling interest and the least restrictive means.
- **Fraud.** People who sell purported technical information “received” from NHI, or sell investments in devices built from it, are subject to the mail and wire fraud statutes and to securities law ([Issue E4](#)) like anyone else; the source claim is not a defense, and an honest belief in the source is relevant only to intent.

2. The right to obtain energy and medical information

A right to communicate does not create a right to compel anyone to provide information. Persons who receive beneficial technical information from NHI could share it, subject to export controls, Restricted Data rules (if nuclear), FDA and other safety regulation of products, and patent law. Government suppression of information received lawfully from a non-governmental source would face *New York Times Co. v. United States* and *Bartnicki* principles ([Issue B4](#)). [Issue D6](#) addresses withheld government information.

3. Government interests and narrow tailoring

Government interest	Likely permissible measure	Likely impermissible measure
Preventing transfer of weapons-relevant technology to hostile actors	Export controls on specified technical data; deemed-export rules; licensing of transfers to	Ban on all communication with NHI

Government interest	Likely permissible measure	Likely impermissible measure
	designated parties	
Preventing provocation or diplomatic harm	Regulation of transmitter power and frequency; coordination requirements for government-funded transmissions	Content-based ban on private messages
Protecting public safety	Rules for physical contact zones, quarantine, and hazardous materials	Criminalizing reporting of contact
Managing official diplomacy	Executive conduct of official relations; Logan Act (doubtful)	Prior restraint on public discussion of contact

3A. Three scenarios

1. **A radio observatory detects a structured signal.** Verification and announcement follow the IAA post-detection principles ([Issue F6](#)). There is no legal duty to report to the government, but if the signal carries technical content, export controls apply to sharing that content with foreign persons before it is published ([Form F3-2](#)). Publication itself is protected speech.
2. **A contactee reports receiving technical data.** The data are not classified, because the government did not produce them. They may still be controlled technical data if they describe defense articles, and the Atomic Energy Act's "born secret" rule could reach nuclear weapons design information regardless of source ([Issue A5](#)). Counsel should review before the contactee shares anything with foreign persons, and should advise against patent filings claiming the data as the contactee's own invention ([Issue E6](#)).
3. **A group plans a high-power transmission aimed at an object near Earth.** It needs an FCC authorization covering the station, frequency, and power. A government order forbidding the transmission because of its content would be a prior restraint subject to strict scrutiny ([Form F3-1](#)); a content-neutral rule limiting power or requiring coordination with the FAA or DoD to avoid interference would likely stand.

4. Practice points

- Researchers planning transmissions: obtain FCC authorization; follow IAA post-detection and transmission protocols; avoid transmitting controlled technical data.
- Persons claiming contact: document communications; avoid conveying controlled technical data; consult counsel before sharing purported technical information with foreign persons.

- Challengers to restrictions: frame as content-based burdens on speaking and receiving; insist on narrow tailoring; distinguish *Holder* (coordination with designated groups) from independent speech.
- Hosts of in-person meetings: see [Issue F7](#) for a protected meeting site, the Logan Act and FARA questions such a site raises, and the host's declaration, code of conduct, and notice letters (Forms F7-3, F7-4).