

HIDDEN RISK ABROAD

Reviewing Programs That Cross Borders

By Joseph Levy

In 2019, one month after returning home from Italy, I received an unwelcome email. It was the car rental agency, dutifully passing on a speeding ticket: 57 km/h in a 50 km/h zone. Of course, I knew that Italy had speed limits. But I didn't see drivers pulled over, so I thought they weren't enforced.

My mind started spinning—if one speed sensor caught me, on the first day of my trip, how many other tickets were on the way?

I had made two classic misjudgments. First, I assumed that US-centric mitigation—driving only a few mph over the limit—would work in a foreign country. Second, and more insidiously, I calculated my risk based on visible enforcement. (No cops, no ticket.)

How Risks Are Hidden

We typically assess risk based on what we know and what we can see. In global research, some impacts do occur visibly in real time: the person detained at the border for lack of a visa, the merchant who won't accept your corporate card, currency fluctuations that put you over budget.

But most risks to global programs are not readily apparent. They rear up on a delayed schedule, like my Italian traffic ticket. These “hidden” risks have four causes.

1. Structural limbo. Unless your university is registered in the host country, its overseas presence falls into a liminal state. The routine compliance rhythms of host-country authorities (tax filings, annual reports, etc.) will pass you by. But host-country laws still apply to most on-the-ground activities, and authorities have better tools and stronger incentives to enforce laws against foreign organizations than they did twenty years ago.

Thus, non-compliance may be discovered only after a program has spent years accumulating back taxes or other “compliance debt”. The trigger for enforcement may be a news article, a dispute with employees or partners, improved communication among host-country authorities (e.g., immigration and tax), or a political shift toward protectionism or suspicion of foreigners.

2. Protected rights. Though the US protects individual rights against government intrusion, other countries have much stronger protections for individuals against their employers and other private organizations. The US (except Montana) allows at-will employment, but 80% of 77 countries surveyed by TMF Group (2021) require showing good cause for termination; every OECD country except the US requires a minimum amount of paid vacation and paid maternity leave (OECD 2021a; OECD

2021b). Some countries require specific assignment of copyright (no “work for hire”) and most give authors special “moral rights” that the US does not have. And by 2023, 65% of the world will be covered by comprehensive, GDPR-like privacy laws (Moore 2020). (These are just a few examples of statutory rights.)

The impacts of these protections are not apparent at first. For example, employees often complain to labor authorities only when the program ends, and authors and subjects may not raise objections until the research is published. Mitigating these impacts requires upfront work on policies and contracts.

3. System accountability. A number of US regulations specifically target overseas activities: e.g., sanctions, export controls, foreign influence, and foreign corrupt practices. These laws tend to share two attributes: strict enforcement of highly technical rules, and more severe penalties for systemic failures. With any suspected violation, authorities will ask not only whether the violation occurred, but also whether the institution had appropriate controls to prevent a violation (see, for example, Kramer Levin, 2021; Andres, et al., 2022). If those controls are not in place proactively, just one “traffic ticket” may draw severe penalties.

4. Reputational profile. An overseas program is a small outpost of a large institution, yet it alone will define the host-country community’s impressions. If the program does not exemplify the institution’s mission and values, over time that can have an outsize impact on the university’s reputation as a whole.

risk. An effective overseas-program review procedure can consider these tradeoffs holistically to limit overall risks and costs.

Types of Review

No one review procedure is best for all institutions or all programs, and yours may evolve over time. But to begin, you need to determine the review type, the review scope, and the decision-makers.

I find that review processes fall into three types: Inform, Justify, and Shape. All three types of review involve host-country research, and typically require some funding for expert resources or advisers.

An “Inform” review is the most laissez-faire. It merely requires that potential country- and activity-specific risks are surfaced before the program begins, through consultation with in-country partners and other research. Program leaders are trusted to address those risks, though the university may intercede in extreme cases.

A “Justify” review is appropriate for policy exceptions, and some universities apply it to any large overseas program. Program leadership must make the case for the program to proceed, including a plan to mitigate significant risks. A “Justify” review also provides an opportunity for the committee to weigh in on country-specific risk tradeoffs (e.g., between host-country registration or “helicopter” oversight by US-based staff).

A “Shape” review anticipates that programs may need help with host-country compliance. It pairs program leaders and global operations staff to identify and address key risks, and provides the opportunity to steer programs towards lower-risk frameworks such as host-country partnerships. The review committee’s role is limited to assuring this partnership occurs and adjudicating differences of opinion between program and administration.

Scope of Review

The review scope will depend on the nature of your overseas activities and your risk priorities. It will determine which programs are subject to review and which risks are considered during the review.

For most universities, risks to mission and values, safety, employment, tax, privacy, and sanctions, form the core of the review scope. Some universities may place other risks in scope, including partner organization quality, export controls, banking, clinical care, human subjects (especially children and vulnerable adults), cultural heritage, intellectual property, and others. Some risks may have existing review processes (often travel safety, human subjects, data transfer, or material transfer), so be mindful to avoid duplication.

Once you’ve set your scope, determine your thresholds for review. Set thresholds that are clear and restrained. Most universities are unable to review every overseas program; instead, focus on programs that are larger or have unusual risks. However, some universities cast a broader net for “Inform” reviews, and then triage riskier programs into “Justify” or “Shape” reviews.

Here are some common thresholds for review:

- Size and scale: Programs over a dollar or scale threshold, because they have greater risk impacts.
- Geography: Particular countries that the institution considers higher risk, e.g., those with a larger university profile, aggressive enforcement, or associated with institutional risk priorities, such as sanctioned countries or elevated cybersecurity threats.
- Employment: Programs with local hires or travel longer than 30-180 days.
- Property: Programs owning or controlling facilities or vehicles or using specialized equipment.
- Revenue: Direct revenue for goods or services provided overseas (including remotely).

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Globally Aware Review Procedures

To address these hidden risks, universities need a thorough, proactive, due diligence procedure. This review may look quite different than a campus-focused review, because it has to accomplish more. At home, you know the rules and expectations; in any other country, they must be researched. Moreover, university leadership has already decided on tradeoffs between different US risks, and baked those tradeoffs into business processes. Overseas, there may be new, unfamiliar tradeoffs, which must be raised to the appropriate decision-maker.

For example, most campuses have set procedures for vetting independent contractor classifications, based on the IRS’s “20 questions”. The rules in other countries, though similar, are not the same, and the tradeoffs can be radically different—in some countries, employment may create unmanageable obligations, whereas independent contractors present only minor

- Banking: In-country bank accounts.
- Data: Collecting or processing personal information outside the US, or from overseas data subjects, especially in certain countries.
- Other features: Programs whose features implicate risk priorities, e.g., material transfer, work with children, valuable IP, etc.

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Decision-Makers

Most universities create a review committee to evaluate overseas program proposals. The membership of this committee will be dictated by the scope of review. I generally recommend a committee balanced between academics and administrators. The committee must have the expertise to surface compliance risks and also the perspective to consider when academic objectives outweigh those risks.

Global review procedures will evolve over time. As the review committee becomes familiar with unusual (to US eyes) rules and with the novel tradeoffs that overseas programs require, host-country risks will become less hidden and more actionable. You may even spot that speed camera without it being attached to a police car.

Nevertheless, flexibility is key. Rules and risks keep changing across 200 countries, and a review procedure carries the critical burden of ensuring they are uncovered upfront, before the program runs into trouble. ■

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WORK SMART

Doing the Right Thing, Even When No One is Looking

The Importance of Ethics in Research Administration



In the world of broad federal regulations and overarching rules, knowing how to make difficult decisions can seem insurmountable when the answer to almost any question is “it depends.” Having a strong personal code of ethics enables us, as research administrators, to make those tough decisions the right ones.

We all encounter points in research administration where taking shortcuts and cutting corners create more problems in the long run. When faced with constraints, we must be creative and innovative, while still maintaining the highest level of integrity.

In order to create an integrous professional reputation, it is imperative to build trust and maintain strong professional networks. To do so, give your colleagues credit for their ideas and work. Always show your gratitude. Your colleagues will know that you appreciate their contributions.

Have an open mind and give your colleagues the benefit of the doubt. You may think they are wrong, but more than likely you’ve missed something, and if you look hard enough you’ll find your mistake. Research administration is a collaborative effort: The more oversight the better the outcome.

Never abuse your power. Own your mistakes. Apologize and fix it right away. Your colleagues will appreciate it, and you will grow in your knowledge and expertise each and every time.

Make each experience with your colleagues more pleasant than the last. Building relationships is hard, and sometimes we like to take the easy way out. These relationships will not only keep you accountable, but they will also bolster you in solid decision-making.

Use your personal code of ethics as a compass to make high-quality decisions through integrative thinking. Learn from your mistakes and create systems each time you find yourself having difficulty maneuvering through difficult or unfamiliar territory. ■



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