



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

**Enforcement Release: September 9, 2021**

**OFAC Settles with NewTek, Inc. for Its Potential Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations**

NewTek, Inc. (“NewTek”), a company headquartered in San Antonio, Texas that develops and supplies live production and 3D animation hardware and software systems, has agreed to pay \$189,483 to settle its potential civil liability for 52 apparent violations of the Iranian Transactions and Sanctions Regulations. The apparent violations occurred when NewTek exported goods, technology, and services from the United States to third-country distributors that it knew or had reason to know were specifically intended for companies and individuals in Iran. The settlement amount reflects OFAC’s determination that NewTek’s conduct was non-egregious and voluntarily self-disclosed, and accounts for NewTek’s remedial response and cooperation with OFAC during the course of the investigation.

**Description of the Conduct Leading to the Apparent Violations**

From approximately December 2013 through May 2018 (the “relevant time period”), NewTek exported 49 products from the United States to two third-country distributors with knowledge or reason to know its products were intended specifically for a reseller located in Iran (the “Iranian Reseller”). The Iranian Reseller sold three of the exported products to Islamic Republic of Iran Broadcasting (IRIB), an entity on OFAC’s List of Specially Designated Nationals and Blocked Persons (the “SDN List”) at the time of the relevant exports.<sup>1</sup> On at least three occasions, NewTek provided support, software updates, reseller training, or other services in support of sales to customers located in Iran.

NewTek authorized the distribution of its products to the Iranian Reseller under two successive distributor agreements. The first agreement, with a company located in France (“Distributor 1”), was in force until approximately October 2014. Pursuant to the agreement, NewTek authorized distribution and support of NewTek’s products in the “Middle East” region, which NewTek was informed specifically included Iran. As was evident through NewTek’s and the distributor’s communications, including provision of monthly sales forecasts for Iran, NewTek knew that Distributor 1 intended to supply NewTek’s products to the Iranian Reseller prior to NewTek exporting goods to the distributor. NewTek also provided credits to Distributor 1 for the sale of products to the Iranian Reseller.

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<sup>1</sup> IRIB was originally added to the SDN List on February 6, 2013 pursuant to the Iran Threat Reduction and Syria Human Rights Act of 2012 (“TRA”), as implemented pursuant to E.O. 13628, “Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions With Respect to Iran.” IRIB remains on the SDN List pursuant to the TRA, as implemented pursuant to E.O. 13846 of August 6, 2018, “Reimposing Certain Sanctions With Respect to Iran.”

Beginning in 2013 and going into 2014, NewTek's Chief Operating Officer (COO) was responsible for, and led the negotiations to transfer, the Middle East sales territory from Distributor 1 to a company located in Dubai, United Arab Emirates ("Distributor 2"). Around October 2014, NewTek and Distributor 2 entered into an agreement that remained in place throughout the relevant time period. As part of the negotiations, the Iranian Reseller was transferred from the reseller network of Distributor 1 to the reseller network of Distributor 2. The distributor agreement with Distributor 2, moreover, specifically authorized the distribution of NewTek products in a list of countries comprising the Middle East sales territory, which explicitly included Iran. Pursuant to the distributor agreement, NewTek exported goods and services to Distributor 2 intended specifically for the Iranian Reseller.

Accordingly, NewTek's conduct constituted apparent violations of §§ 560.204 and 560.206 of the Iranian Transactions and Sanctions Regulations (ITSR) as well as apparent violations of Executive Order (E.O.) 13628 of October 9, 2012 with respect to the three products provided to IRIB (the "Apparent Violations"). The total value of the transactions constituting the Apparent Violations is \$583,024. The profits associated with the sales of the products that constituted the violations amounted to approximately \$61,070.

NewTek did not have export control or sanctions compliance policies or procedures in place during the relevant time period and did not provide training to personnel regarding export control or sanctions compliance. NewTek incorrectly believed that its product sales through third-party distributors to the Iranian Reseller were in accordance with applicable sanctions regulations in part because NewTek did not deal directly with Iran, but rather through a third-country intermediary.

### **Penalty Calculations and General Factors Analysis**

The statutory maximum civil monetary penalty applicable in this matter is \$15,031,546. OFAC determined, however, that NewTek voluntarily self-disclosed the Apparent Violations and that the Apparent Violations constitute a non-egregious case. Accordingly, under OFAC's Economic Sanctions Enforcement Guidelines ("Enforcement Guidelines"), the base civil monetary penalty amount applicable in this matter is \$291,512.

The settlement amount of \$189,483 reflects OFAC's consideration of the General Factors under the Enforcement Guidelines.

OFAC determined the following to be **aggravating factors**:

- (1) NewTek demonstrated reckless disregard for U.S. sanctions requirements by specifically authorizing distribution and support of its goods in Iran pursuant to its arrangements with two third party distributors, knowing that relevant sanctions regulations generally barred dealings with Iran and relying on a mistaken understanding that its indirect dealings were permissible;
- (2) NewTek possessed actual knowledge of the conduct leading to the Apparent Violations. NewTek employees at all levels within the company, including managers and certain members of NewTek's four-member executive board, possessed direct knowledge and/or

reason to know that NewTek products were exported to distributors intended specifically for sale to an Iranian Reseller and to end users located in Iran; and

(3) The sales of NewTek products to resellers and customers located in Iran caused harm to U.S. sanctions objectives by facilitating access to NewTek products and support services by resellers and users in Iran, including an Iranian electronics company that was part of NewTek's reseller network, and to an entity on the SDN List.

OFAC determined the following to be **mitigating factors**:

(1) The volume and total amount of payments underlying the Apparent Violations was not significant compared to NewTek's overall revenue. NewTek is a relatively small company that has not received a Penalty Notice or Finding of Violation from OFAC in the five years preceding the earliest date of the transactions giving rise to the Apparent Violations;

(2) NewTek has taken the following remedial actions:

- Established export controls and sanctions compliance policies and procedures;
- Hired a Director of Compliance;
- Provided compliance training to employees in sales, marketing, shipping, service, and compliance personnel;
- Obtained formal export classifications from the U.S. Department of Commerce confirming that NewTek's products are properly designated EAR99 for export control purposes;
- Implemented bulk name screening of its product registrants and current and pending distributors against the SDN List;
- Implemented geo-IP blocking measures to prevent individuals located in Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine from downloading or registering NewTek products;

(3) NewTek substantially cooperated with OFAC during the course of the investigation

### **Compliance Considerations**

This enforcement action serves as a reminder that sales to third country distributors with knowledge or reason to know that such goods are intended specifically for Iran can give rise to apparent violations of the ITSR. Moreover, reliance on the understanding of an individual in a managerial or supervisory role, or reliance on informal sanctions compliance measures, may not be sufficient to mitigate sanctions compliance risks. Companies should also make certain to have an accurate understanding of relevant U.S. sanctions regulations, especially when selling to global markets using sales models where potentially violative conduct may be more likely.

Commensurate with their risks, companies may consider sanctions compliance measures such as written policies and processes that address applicable sanctions concerns and clear guidance for employees. Employee trainings and education that ensure accurate understanding of relevant sanctions regulations are essential to an effective sanctions compliance program.

## **OFAC Enforcement and Compliance Resources**

On May 2, 2019, OFAC published [A Framework for OFAC Compliance Commitments](#) in order to provide organizations subject to U.S. jurisdiction, as well as foreign entities that conduct business in or with the United States or U.S. persons, or that source goods or services from the United States, with OFAC's perspective on the essential components of a sanctions compliance program. The *Framework* also outlines how OFAC may incorporate these components into its evaluation of apparent violations and resolution of investigations resulting in settlements. The *Framework* includes an appendix that offers a brief analysis of some of the root causes of apparent violations of U.S. economic and trade sanctions programs OFAC has identified during its investigative process.

Information concerning the civil penalties process can be found in the OFAC regulations governing each sanctions program; the Reporting, Procedures, and Penalties Regulations, 31 C.F.R. part 501; and the Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app. A. These references, as well as recent final civil penalties and enforcement information, can be found on OFAC's website at <https://home.treasury.gov/policy-issues/financial-sanctions/civil-penalties-and-enforcement-information>.

For more information regarding OFAC regulations, please go to: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>.