

RSSSA Ad-Hoc Review Advisory Committee Meeting – 15 January 2020 Notes

Chatham House Rules Version

Participants:

Michel Doyon, Gov Canada – GAC, IGN Deputy Director and co-chair
Kuan-Wei (David) Chen, McGill and co-chair
LCol Catherine Marchetti, Gov Canada – DND
Sébastien Carrière, Gov Canada – GAC, IGN Director
Chad English, Gov Canada – NRC
Meghan Gagnon, Gov Canada – NRCan
Tom Zubko, New North Networks
Mina Mitry, Kepler Communications
Michelle Mendes, SatCan
Gord Rigby, MDA Corporation
Joanne Gabrynowicz, University of Mississippi
Wade Larson, Urthecast

Absent:

Isaac Holliss, Gov New-Zealand – MBIE (regrets)
Shari Scott, Gov Canada – ISED
Wolfgang Schneider, Gov Germany – DLR

Observers:

Estelle Chou, Gov Canada – GAC
Gordon Deecker, Gov Canada – GAC
Maj Daniel Denis, Gov Canada – GAC
Bruce Mann, Gov Canada – GAC
Tom Gillon, Gov Canada – NRCan (alternate)
Shane Laverty, Kepler Communications (alternate)

Summary: The Ad Hoc Committee Advisory Meeting of 15 January 2020 was the second in a series. The focus of the meeting was for GAC to obtain stakeholder input and feedback regarding possible class exemptions from portions of the Regulations and Act (RSSSR and RSSSA, respectively).

Agenda – 15 Jan 2020:

1. Welcoming
2. Administration items
3. Class exemptions
4. RSSSA renewal document
5. Other Business
6. Next Meeting and Adjournment

1. Welcoming

Members and observers were welcomed to the meeting.

2. Administration items

Notes from the November 13, 2019 meeting were approved for distribution. It was agreed that the list of Committee members would be included, but comments in the body of the note would not be credited to a member. The agenda for the meeting was approved with one request under other business: Outreach of the Committee.

The Space Advisory Board (SAB) has asked for a copy of the note. As agreed the anonymized notes may be circulated to the SAB once they are approved at this meeting.

The text regarding a (modified) Chatham Rule was accepted. Anonymous notes from the meeting may be circulated together with the list of Committee members present.

3. Class Exemptions

The Committee discussed the note regarding what a “Class exemption” is under the Act and how it is constructed, then the input received from members was reviewed.

Under subsection 4(3) of the *Remote Sensing Space Systems Act*, the Minister of Foreign Affairs may make orders exempting:

- Any person or remote sensing space system, or
- Any class of persons, system or data

from the application of any provisions of the Act or the Regulations.

The authority to make exemption orders can be exercised only by the Minister of Foreign Affairs or a successor or acting Minister as designated by Cabinet. The Minister’s authority cannot be exercised by the Deputy Minister or other public servants. (See *Interpretation Act* subsection 2(1) definition of “regulation” and subsections 24(2) and (3).) This restriction means that licences containing exemption orders cannot be issued by public servants on behalf of the Minister, as would otherwise be the case. Such licences, or at least the exemption orders therein, can be issued only by the Minister.

Experience under the Act has shown that certain exemption orders in various licences are very similar, and such exemption orders could be drafted on a class basis. When the Minister makes a class exemption order, it applies in respect of all persons, remote sensing space systems and data that fall within its scope in respect of licence applications, existing licenses and future licences. While the class exemption order itself must be published, the record in a licence of a determination that it applies to a specific person, system or data does not have to be published. Class exemptions are the only orders in the RSSSA that goes through this publication process.

Adding class exemptions should help to speed-up the licence approval process as well as create transparency and demonstrate equal treatment.

Discussion then focussed on specific concerns where class exemptions could play a role.

Questions: Weather Satellites:

- Q: Are weather satellites completely exempted from the RSSSA Act?
A: Generally speaking, yes, but exempt from specific conditions or provisions from the Act, not the Act in its entirety
- Q: When satellites are completely exempted, how are Canada's national interests protected regarding its obligations under the Outer Space Treaty (OST) and the Liability Convention?
A: This is something to keep in mind for all cases. However, it should be noted that the RSSSA and the Liability Convention are not directly linked. The Liability Convention applies to all launched satellites, whereas only a subset of such satellites are covered by the RSSSA. Yes, but this subset of launched satellites are also covered by the Outer Space Treaty and the Liability Convention. A launched satellite is a "space object...". Liability Convention Art. I (d) Under the OST, "States Parties to the Treaty shall bear international responsibility for...the space activities of governmental agencies or non-governmental entities..." Art. VI. Is there a Canadian law that otherwise addresses Canada's legal responsibility under the OST and Liability Convention?
Perhaps the question to be raised is, will Canada be the "launching state" for an exempted satellite? If so, the OST and LC apply. If not, then perhaps the OST and LC might not apply.
- Q: Why are weather satellites not licenced?
A: There are currently no Canadian weather satellites or foreign weather satellites operating in Canada.
- Q: Will the class exemptions go under a security review?
A; Yes as well consultations with other government departments.

Questions: Satellite Technology:

- Q: With satellite technology updated and improved with constellation renewal, will class exemptions applied to the constellation be reviewed?
A: Yes, there will need to be a mechanism to review the exemptions as satellites of a constellation are rolled out.
- Q: If satellite circumstances (technology) change, how is GAC to follow through?
A: It depends on what changes. We are not ready to discuss penalties at this point. However changes should be caught during subsequent inspections if they are not notified when the change occurs.
Comment: A "sunset clause" could be implemented to highlight a moment of change or review to catch the different technological improvements of a space system. Also the expiry date of the licence could play such a role.

Questions: Other:

- Q: Should GAC change the approach to determining if a system falls under a "concerned" category, and if not, the system is exempt?

A: That is an interesting approach and will be discussed internally. Realize, however, that the system may not be completely exempt as all satellites that meet the definition must be licenced. Rather the exemptions would refer to the documentation requirements related to the licence.

- Q: Will the Ad-Hoc committee review the class exemptions when they are under consideration?
A: Yes, the intention is to have this group, as long as it is active, to review class exemptions that are under consideration. GAC will prepare for circulation a document discussing exemptions in greater detail.

Possible Academia Exemptions:

- Q: What can be implemented for academia involvement in remote sensing?
A: Rather than a complete exemption, steps can be taken to lighten the RSSSA review process through exemptions of specific RSSSA points. Resolution can be a guide, but as “low resolution” improves, eventually it will become a security concern.

Other topics that arose:

- Q: As more earth observations is taking place, and access to imagery is becoming more common, what is the need for Canada’s “restricted area” download prohibitions?
A: GAC does not set the restricted area zone, but rather enforces prohibitions that are defined in other laws.
- Q: Can “revisit time” be used to reduce national security concerns?
A: we need to also consider Canada’s international obligations. Note also Canada’s attempts to harmonize efforts with other regulators to create a more stable (international) regulatory environment.
Comment: Regarding national security, other aspects are considered in addition to resolution, such as: Where the data is going; types of sensors and the origin of the technology; who is involved (business, personnel, and clients).
- Q: Should “Bent Pipe” operations be regulated? Can there be a class exemption for “like minded” countries and/or countries with similar data regulation.
A: Bent pipe transmissions to like-minded countries can be considered.
- Q: The RSSSA covers two segments: (1) a space portion; (2) a data portion. Should the Act be split into two acts with different regulators overseeing each portion?
A: A first step might be to clarify which sections of the Act can be identified with each portion. Increasing the number of regulators does not seem like an efficient next step.
- Members were to consider how the following should be regulated:
 - Cloud storage
 - Foreign operated satellite system

Finally, the intent is to consolidate the feedback on Class Exemptions and circulate the sheet among the Ah Hoc Review Committee members.

4. RSSSA Renewal

Recommendations 3 and 4 from the RSSSA Renewal document were discussed. Recommendation 3: look to better define operate, both hands on and indirect control. Recommendation 4: Look at the duration of licences.

Recommendation 3:

- Current practice in the regulatory group is to have individuals named in the operating license that perform controlled activities. Thus, they don't need individual licences.
- Members requested added clarity in the text so that system operation equals execution of control activities.
- Persons who exert indirect control over operations must always be considered.

Recommendation 4:

- The length of time for a licence is not explicit in the Act. A suggestion was made to have the duration of the license to last the lifetime of the system. Since the Act specifies how amendments to the system, and therefore the licence, can be accomplished such a timeline should be doable.
- Initially a licence was typically for one satellite and thus a "life of the satellite" licence timeline was appropriate. More recently we see the growth of "antenna farms" and mega-constellations. In such cases it is more appropriate to have a licence set to a period of three to five years to enable regular review for technological change.
For antenna farms, GAC is looking to licence the antenna farm owner and cover each client operator with a SPA between the owner and the operator.

5. Other Business

One member added the topic of outreach under this item. The concern is that we are not doing enough to publicize the excellent work of the Committee and the team. Methods of increased public awareness mentioned included: distribution of the notes on a GAC or other public website; news articles; distribution of the notes to other colleagues by committee members; attendance at conferences and other events making presentations. SAB could possibly perform a role by consulting with the public and reporting back.

One member thought that when problems arise the regulatory team could be more accommodating within the context of the current law.

6. Next Meeting and Adjournment

The next meeting is scheduled for February 19, 2020 at 1:00PM Ottawa time. The main topic for discussion will be the first draft of the Client Procedural Circular (CPC), which will be circulated a week before the meeting.