

## RSSSA Ad-Hoc Review Advisory Committee Meeting – 19 February 2020 Notes

### Chatham House Rules Version

#### **Participants:**

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

#### **Absent:**

Isaac Holliss, Gov New-Zealand – MBIE (regrets)  
Wolfgang Schneider, Gov Germany – DLR  
Sébastien Carrière, Gov Canada – GAC, IGN Director

#### **Observers:**

Estelle Chou, Gov Canada – GAC  
Gordon Deecker, Gov Canada – GAC  
Maj Daniel Denis, Gov Canada – GAC  
Isolda Guevara, Gov Canada – GAC  
Shane Laverty, Kepler Communications (alternate)

**Summary:** The Ad Hoc Committee Advisory Meeting of 19 February 2020 was the third in the series. The focus of the meeting was for GAC to obtain stakeholder input and feedback regarding the draft Client Procedural Circular describing the Regulations and Act (RSSSR and RSSSA, respectively), as well as licence applications and their review.

#### **Agenda – 19 Feb 20:**

1. Welcome
2. Administration items
3. Client Procedural Circular
4. RSSSA renewal document
5. Other Business
6. Next Meeting and Adjournment

## **1. Welcome**

Members and observers were welcomed to the meeting by the co-chairs.

## **2. Administration items**

Notes from the November 13, 2019 meeting were circulated as final. Notes from the January 15, 2020 meeting were approved for distribution. The agenda for the meeting was approved with no other business.

As agreed with Kepler, the notes on class exemptions they submitted to the previous meeting were recirculated with their name attached.

GAC (Michel Doyon) added that serious considerations were made in context of “RSSSA Review Outreach.” GAG-IGN is looking at initiating an e-mail to be shared and circulated, as well as contacting SpaceQ for a potential article.

## **3. Client Procedural Circular**

There was general agreement that the document was an excellent first start at describing the Act, Regulations and application process to the general public. The description of how the Act is related to the various UN conventions was appreciated as well as the explanation/elaboration of some of the definitions. The review of an application was also seen as beneficial, the additional detailed guidance will “reduce pain later on”. Cybersecurity is also an important aspect of the document.

As for additions or improvements, suggestions included:

- Addition of an FAQs section;
- More discussion and explanation of application timelines and response time;
- Elaborate on “reporting” requirements as to what they might be;
- Common mistakes in applications;
- Lessons learned from past submissions;
- Disclaimer – this is not legal advice but as a guide;
- Caveat – to be read in conjunction with the Act and Regulations;
- How to build in compliance with the Act and Regulations;
- Language utilised to be more user friendly and with additional visuals;
- Perhaps a fabricated example to illustrate an application;
- Add explanation/context behind the Act’s Section 14 – “shutter control”; and
- Provide contact info of a person who can provide guidance.

It is proposed to have an updated version of the document for discussion at the April 29, 2020 meeting.

## **4. RSSSA Renewal**

Recommendations 5 and 6 from the RSSSA Renewal document were discussed. These are: Recommendation 5 - timeline for licence review, and recommendation 6 - S14 restrictions.

**Recommendation 5:**

*Consider implementing a deadline by which the Minister must provide a decision on an application for licence. Additionally, applicants seeking a remote sensing space system licence should begin to involve the regulator as early as possible in the design and development stages of their operation.*

The discussion of timelines for a decision by the Minister generated a discussion regarding a comparison with the Radio Frequency (RF) licensing process. That process has a limit of 90 business days (about 125 calendar days). The rules were changed in 2014 to make the process more objective, and all applications failed at the start. The applications are processed on a first come first served basis, due to the competitive nature in obtaining frequency usage. Applications, even those that are only partially filled in, are accepted as is, with no request for additional information, and a decision is rendered based on the material submitted. Note that during the application review, there are no interactions between the applicant and the reviewer, as the application is treated with minimal to no subjectivity. When an application is rejected, a rejection letter and a follow-up call are routine. At that point, the application may be resubmitted and the clock reset to zero. Early discussion is welcomed. A fee is charged for the licence but not for the review of the application.

By comparison, members noted that the RSSSA subject matter is more complex. The RSSSA states the Minister has 180 days to respond. There was concern that criteria for rejection or extending the timeline were not spelled out in the Act, thus perhaps allowing the Minister to act in a capricious manner. While regulators oversee the functional part of the process and provide the Minister with comfort on the decision, the questions of what is provided to the applicant is the main concern. The criteria, listed in Section 8(1) of the Act, were provided as the stated criteria, namely: national security, defence of Canada, the safety of Canadian Forces, Canada's conduct of international relations, Canada's international obligations and prescribed factor including the support of Canadian industry. One confusion was how the 180 days are applied as incomplete applications are accepted and applicants are asked for the missing information. Like RF applications, the Minister must respond with the rationale if an application is rejected. The Act provides for the applicant to make representation when this happens. Unlike the RF applications, the complexity of the Act brings about a constant need to exchange between the applicant and the reviewer; thus, the process is dynamic and interactive.

The interactive nature of the review process was seen as a valuable part of any review but it leads to confusion as to whether the "clock is ticking or not" at the time. The discussion ended with a request that the timeline for a review be clearly evident to both the applicant and the regulator. The CPC could be a good tool to alleviate some confusion by having a required document list to reduce exchanges between the reviewer and applicant, defining the timelines, and future class exemptions would help.

**Recommendation 6:**

*Engage with licensees affected by an S14 restriction order (interruption of service) to determine whether alternative courses of action may reach the same objective without hindering commercial operations or whether there are ways to mitigate the harm caused to the commercial operator (such as compensation for loss of business).*

Recommendation six deals with the use of "shutter control" by the Minister or the Minister of National Defence. The opinion was expressed that loss of images for a period of time could lead to business

losses and even contract breach. The fact that such an order is possible weighs into investors' considerations. Some were concerned that the Act does not specify reasonable grounds for such action nor does it say how long the operations can be affected.

Shutter control is built into the US as well as other foreign law. It was noted that it has never been pursued in the twelve years the Act has been in force. As well, in situations where there is an ongoing requirement, licensees are advised with a period of time allowed to implement the restrictions. Discussion regarding financial compensation included the fact that the Act specifies that no compensation is permitted, but the licensee can discuss the shutter control request with the Minister after the fact. Discussion may be difficult to do if the reasons for the s14 is classified. GAC clarified that such an order does not always mean shutting down the entire system; however, it could be just prohibition of imaging a certain area. To note that Schedule 4 of a RSSSA Licence deals with Restricted/Sensitive Areas, to which areas can be added or removed.

The discussion moved on the priority requests (S15 of the Act) where the Minister can ask for priority to obtain specified images. In this situation the Minister must compensate the licensee at a reasonable cost. A comparison to the US was provided, where images were purchased on an exclusive basis for a six-month period prior to being made available for sale.

## **5. Other Business**

There was no other business requested at the start of the meeting.

The January 15 notes included: Members were to consider how the following should be regulated:

- Cloud storage
- Foreign operated satellite system

Although not discussed at this meeting, one written reply was received and is reproduced below.

### *Cloud Compliance*

- Adherence to sector regulations (Health, financial, etc.)
- Location of the servers
- Vetting of the entity/individuals in control (shareholders/board/management)
- Adjacent regulations – alignment with other 5 eyes countries

### *Foreign operated Satellites*

- Security clearances
- Vetting of the entity/individuals in control (shareholders/board/management)
- What kind of data? Is there any security risks?
- Adjacent regulations – alignment with other 5 Eyes countries

## **6. Next Meeting and Adjournment**

The next meeting is scheduled for March 25, 2020 at 1:00PM Ottawa time. The main topic for discussion will be changes that can be implemented without changing the Act or Regulations and an update on class exemptions. The timeframe for the next five meetings was presented along with the main topic of discussion for each meeting.