

Ad-Hoc Advisory Meeting – 13 Nov 2019 Record of Discussion

Chatham House Rules Version

Participants:

Michel Doyon, Gov Canada – GAC, IGN Deputy Director and **co-chair**
Kuan-Wei (David) Chen, McGill and **co-chair**

Maj Brian Statham, Gov Canada – DND (alternate)
Sébastien Carrière, Gov Canada – GAC, IGN Director
Shari Scott, Gov Canada – ISED
Chad English, Gov Canada – NRC
Meghan Gagnon, Gov Canada – NRCan
Wolfgang Schneider, Gov Germany – DLR (part)
Shane Laverty, Kepler Communications (alternate)
Mina Mitry, Kepler Communications (part)
Gord Rigby, MDA Corporation
Tom Zubko, New North Networks
Michelle Mendes, SatCan
Joanne Gabrynowicz, University of Mississippi
Wade Larson, Urthecast

Absent:

LCol Catherine Marchetti, Gov Canada – DND
Isaac Holliss, Gov New-Zealand - MBIE

Observers:

Estelle Chou, Gov Canada – GAC
Gordon Deecker, Gov Canada – GAC
Maj Daniel Denis, Gov Canada – GAC
Subbaraman Ramachandran, Gov Canada – GAC

Summary: The Ad Hoc Committee Advisory Meeting of 13 Nov 2019 was the first in a series. The intent is for GAC-IGN to obtain stakeholder feedback regarding remote sensing licensing and the related Regulations and Act (RSSSR and RSSSA, respectively).

Agenda – 13 Nov 19:

1. Welcoming
2. Roundtable Introduction
3. Administration Items
4. Comments to “What Can Be Done” document
5. Comments to “RSSSA Renewal” document
6. Adjournment

2. Roundtable Intro:

Each Committee member was asked to provide a comment regarding what would be the most important improvement to the RSSSA. Below is a summary of the expressed comments.

- To ensure Canada is compliant with obligations vis-à-vis other States and United Nations obligations.
- enabling Canadian industry.
- clarifying some of the language, such as raw-data, roles and responsibilities (Licensee and System Participants).
- National security while allowing the space industry to do business.
- The Act should maintain the competitiveness of the Canadian industry.
- Interest in clarity and predictability (both domestically and internationally) of the regulatory framework.
- Agility; that the Act keeps pace with the rapid development of industry.
- Proper implementation of the regulatory framework.
- licensing within a reasonable timeline
- Impression that the current RSSSA encourages business to go elsewhere than Canada.
- It is unclear what the Act intends to achieve;
- Interests in having an Act that attracts investment in Canada.
- Concerns about overlapping regulations
- More resources for the office of the regulator
- Proper principle of proportionality
- Timing; industry has challenges with current duration of 180 days for a license.
- Clarity on the application of the regulations, such as for resolution (high vs low), and proper earth imaging vs imaging of satellite (satellite selfie).
- Interested in modernising the Act.
- Interested in categorising the licence/Act (compartmentalising), such as an approval specifically for the ground station.
- Ensure sure the Act remains relevant

3. Administrative Items:

- Meetings to be conducted in English;
- Chatham House Rules

4. Comments to “What Can Be Done When” document:

Document Context: Three forms of change can be considered before an omnibus “Space Law” is enacted by Canada:

1. What can be accomplished without changes to the Act or Regulations,
2. What can be accomplished by changing the Regulations,
3. What can be accomplished by changing the Act.

The document describes an initial view of what may be considered under each of these three forms of change. Below is a summary of the expressed comments regarding the ***What Can Be Done When*** document grouped into the following five subjects:

- Class Exemptions
- Approval Approach
- Delegation
- Raw Data & Handling of Data
- Publicize RSSSA Review Work.

Subject – Class Exemptions:

Should there be an exemption that can be applied automatically to preferred companies from five eyes' countries? The 2012 Review touched upon the exemption point. The class exemption is a good approach.

The class exemptions should be implemented as quickly as possible, as they could solve 60-80% of the day-to-day implementation of the Act. The Act's Section 4(3) is a powerful tool. Exemptions could be applied for satellites with cameras intended to look/observe the satellite itself even if the Earth happens to be in its field of view or exemptions for launch vehicle cameras. (*Note: Cameras on launch vehicles are not considered under the Act.*) The US regulations were referenced as being updated. It was pointed out that whatever changes have been proposed to the US regulations should not be considered as done or accepted. It is still an ongoing process that has not even been fully reviewed. It is still considered to be a "draft" version.

Members were requested to think about criteria for class exemptions and how they could be applied. A sub-committee specifically to discuss the criteria for class exemption was suggested. Members are to submit comments on paper prior to the next meeting regarding this suggestion. Alternatively, the committee as a whole can discuss suggestions for class exemptions. Send all written proposals to Gordon Deecker. (**Action Item #1; Target Date: to be submitted prior to the next meeting in order to be discussed at the next meeting**).

Subject – Approval Approach:

Sections on interpretations of the Act should tend towards "approval." The regulators should lean towards the approval of an application as the default, and proof be required if a denial is necessary.

Subject – Delegation:

Recommendation to modify the Act in order to authorize the Minister to delegate more power, including up to exemption power to its respective employees.

Subject – Raw Data & Handling of Data:

Strict rules may be applied to the operation of the mission but data handling should have less rules.

Subject – Publicize RSSSA Review Work:

We need to undo the misunderstanding of the RSSSA worldwide. The members of the Committee should promote and let people know what Canada has been doing regarding the review of the RSSSA, working within what is allowed under the Committee's TOR.

5. Comments to “RSSSA Renewal” document

Document Context: The document lists 18 recommendations from the two independent reports on the RSSSA, a short analysis and a suggested approach. Due to time constraints, the meeting only discussed the first two recommendations.

Recommendation #1: *Make the language of the Act clearer in regards to remote sensing, Earth Observation and whether the latter falls within its purview. Alternatively, issue a Client Procedural Circular, in “layman’s terms”, to outline the intended interpretation of the Act’s various phrases.*

GAC is developing a Client Procedural Circular (CPC) to simplify the process for the clients. Members believe a CPC is a great way to address a lot of the issues raised in the reviews. By comparison, the Radiocommunication Act has a whole array of documents similar to CPCs, revised twice in the past 8 years. Their CPC is their bible. With the delegation of power down to officer level the CPC provides consistency and predictability as to how ISED review applications under the Act.

In Germany, a process in analysing current experiences is implemented (their own internal space law review). They are seeing many similar points to those being discussed in Canada. There is no requirement in German law to stipulate how often the law needs to be reviewed.

The US is undergoing a massive review of the remote sensing regulation system. It was noted that no calendar date pushes for a review. It all depends on the situation, the changes of the industry, the nature of the change, and even if there's political will. The last time space regulations were reviewed was in 2006.

A question arose regarding cross regulations in the US and Germany. In the US, they have the mechanism of inter-agency review though different parts of the mission may fall under different departments' responsibilities. Though NOAA is the lead agency for the licensing process, the application needs to go to different departments for their parts (such as Department of Transport, SCC, etc.). In addition to that, the application also needs to go through national defence and intelligence review. This process could take a long time, and is the subject of criticism and triggered the latest review. US companies are also encouraged to engage NOAA for pre-application consultations. MOUs are used to set out the roles and responsibilities of the inter-agency consultation. Someone noted that the US's 120-180 day time limit is given to the regulator to respond to an application, however, in reality, it takes much longer. It was suggested that slides on the US process be made available for the next meeting

Recommendation #2: *Investigate whether there are more appropriate ways of addressing the seeming difficulties associated with the definition of “transform”. Similarly, utilize the authority granted under section 20(1)(a) to denote specific activities as either transforming or not transforming raw data.*

The current implementation is confusing for the applicant. Defining a company's data handling is burdensome. The Act does not take into consideration current approaches, such as "the cloud." A review of the definition of transformed data and raw data is required. The Act overemphasizes on SAR data due to the RadarSat-2 legacy, which causes issues for optical missions (lower data sensitivity when compared to SAR data). It was mentioned that the CPC could present examples to help with clarifications and, additionally, define a transformation.

Germany tries to avoid using the term "raw data." They try to evaluate the data based on its information content (such as Radar Data) to avoid the confusion of defining raw data. This approach gives the regulator more flexibility; however, it is less clear for the applicants.

Adjournment

Next meeting to be held at 13h00 (Ottawa Local Time), on 15 Jan 2020.

Author Gordon Deecker/IGN

Review Estelle Chou/IGN

Daniel Denis/IGN

Approval Michel Doyon/IGN