

# Current Issues in Space Law



Presented by  
**Prof. Joanne Irene Gabrynowicz**  
to

**Aerospace Corporation**  
**Reston, Va.**

**14 April 2005**

**National Remote Sensing and Space Law Center**  
**University of Mississippi School of Law**

**[www.spacelaw.olemiss.edu](http://www.spacelaw.olemiss.edu)**

© Gabrynowicz 2005  
Reproduced with  
Permission



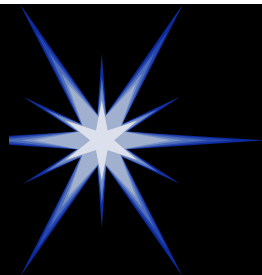


# Current Issues in Space Law



- **The Space Exploration Initiative**
- **Evolving legal environment for commercial remote sensing**
  - **Pending Canadian legislation**
  - **Implementation of the Commercial Remote Sensing Space Policy**
  - **FOIA exemption**
  - **National Satellite Land Remote Sensing Data Archive**
- **Legal Subcommittee of UN COPUOS**
  - **Attempted agenda items**
    - **Comprehensive Treaty**
    - **Remote Sensing Treaty**
  - **Unidroit**



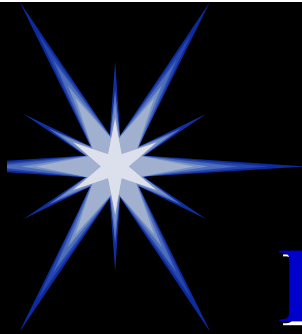


# Space Exploration Initiative



- **Earth**
  - USA contract for Shuttle operations
- **Low Earth orbit**
  - Intergovernmental Agreement (IGA) and MOUs
  - Outer Space Treaty Article 9
  - Liability Convention
- **Moon and Mars**
  - Governance
  - Facility access
  - Property rights
  - Planetary protection

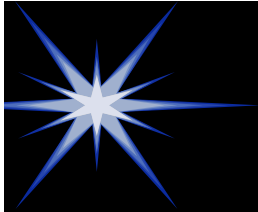




# **Evolving Legal Environment for Commercial Remote Sensing**

- **Pending Canadian legislation**
- **Implementation of Commercial Remote Sensing Space Policy**
- **FOIA Exemption**
- **National Satellite Land Remote Sensing Data Archive**





# **Bill: An Act governing the operation of remote sensing space systems**

- **Establishes**
  - **Licensing regime for remote sensing space systems**
- **Provides**
  - **Restrictions on distribution of data**
- **Gives**
  - **Special Government powers concerning priority access**



# Current Status



- **In Parliamentary House Committee review**
  - Clause by clause review resumed week of 4 April 2005
  - After House goes to Senate for same process
- **Royal Assent and Proclamation**
  - Difficult to determine when it will happen
- **Involves a coordinating amendment**
- **Regulations may be made**
  - Process(es) to be considered or not regarding transformation of raw data
  - Classes of persons having a substantial connection to Canada related to remote sensing space systems
  - Details of licensing process





# Bill Definitions



- **“controlled activity”**
  - Formulating or giving command to satellite
  - Receiving raw data from satellite
  - Storing, processing or raw data from system
  - Establishing or using cryptography or information assurance measures
- **“remote sensing system”**
  - Satellite(s); mission control centre; facilities used to operate satellites
  - Facilities used to receive, store, process or distribute raw data



# Bill Definitions



- **“raw data”**
  - **Satellite sensor data**
  - **auxiliary data required to produce remote sensing products from sensor data**
    - **which have not been transformed into a remote sensing product**
- **“remote sensing product”**
  - **Image or data produced from raw data in any way that transforms the raw data**
- **“transform”**
  - **Having regard to the regulations, to so process data that it is substantially impossible to reconstitute them from the resulting remote sensing product**



# Bill License Conditions



- **Data access by Sensed States**
  - Raw data and remote sensing products
  - May be available to the government of sensed state
  - Reasonable time, on reasonable terms
  - So long as the data or products have not been disposed of
  - Not value added products
- **Keep control of**
  - Licensed system
  - Raw data and remote sensing products until they are disposed of according to Act





# **Bill Interruptions of Service or Priority Access**



- **Minister of Foreign Affairs may order if**
  - **Reasonable grounds that continued operations**
    - **Would be injurious to international relations**
    - **Inconsistent with international obligations**
- **Minister of Defence may order if**
  - **Reasonable grounds that continued operation**
    - **Would be injurious to defence of Canada or safety of Canadian Forces**
- **Solicitor General may order any service to**
  - **Royal Canadian Mounted Police**
  - **Canadian Security Intelligence**
  - **Government for critical infrastructure protection or emergency preparedness**
  - **Reasonable grounds service is desirable to fulfill respective responsibilities**





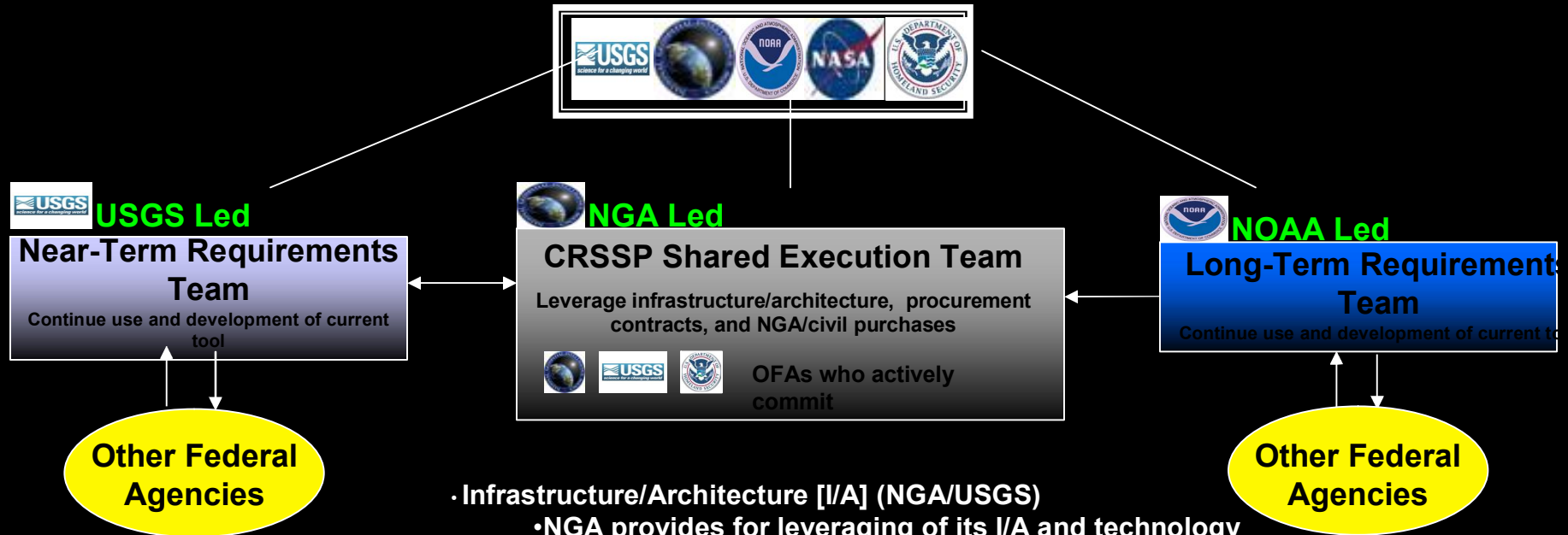
# Implementation of Commercial Remote Sensing Space Policy



- **Purpose**
  - facilitate acquisition of commercial data
  - manage storage and distribution of licensed data
  - promote federal civil agency use of commercial data by facilitating interagency requirements
- **Revised implementation and organizational structure**
  - Prior structure was heavily USGS led
  - New structure will be more balanced and attempt to achieve shared execution
    - Senior Steering Committee, Implementation Working Group, and 4 of 5 subteams
- **Requirements gathering process**
- **Commercial archive**



# Senior Management Oversight Committee (SMOC)\*



- Infrastructure/Architecture [I/A] (NGA/USGS)
  - NGA provides for leveraging of its I/A and technology
  - USGS provides for leveraging of its I/A and technology
- Contracts (NGA/USGS)
  - Coordinate procurement vehicles
  - Ensure broad data distribution options for civil needs
  - Bonus off NGA contracts
- Purchases (NGA/civil agencies)\*\*
  - Leverage NGA/civil purchases in areas of common interest
  - Upgrade licenses when additional needs can be met

## \*SMOC Membership

- USGS -- Barbara Ryan
- NGA -- Doug McGovern
- NOAA -- Richard Barazotto
- NASA -- Ron Birk
- DHS – Ryan Cast

\*The SMOC will report status and plans at the NGA-hosted CEO Sessions

\*\* Budget – Each agency is responsible for seeking its own resources



# **Evolving Legal Environment for Commercial Remote Sensing**



- **Exempt from FOIA requests**
  - **Upper tiered license**
    - **Licensee to operate its system at one level, available to all users**
    - **Full operational capability reserved for USG or USG-approved customers**
    - **Raises numerous issues**
- **Regulations currently under review**
  - **Federal register announcement**



# **Evolving Legal Environment for Commercial Remote Sensing**



- **National Satellite Land Remote Sensing Data Archive**
  - Licensees required to give NSLRSDA right of first refusal
  - Ingested data “shall be in the public domain”
  - Restrictions, if any
    - As limited as possible
    - Definite, irreversible sunset clause on each and every restriction
  - SpaceImaging Archive on the market



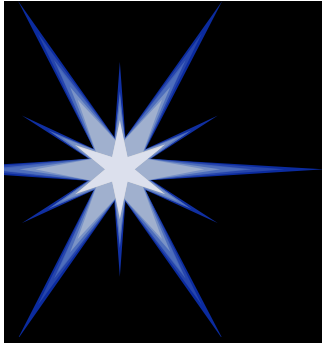


# Legal Subcommittee of UNCOPUOS



- **Agenda item attempts**
  - **Proposed Comprehensive Treaty**
    - Championed by Russia
    - Slowly growing support among smaller nations
  - **Proposed Remote Sensing Treaty**
    - Loosing support, traction
    - Shifting focus: state practice
    - Small, persistent group of advocates, can re-emerge
      - Led by Brazil and Colombia
- **Unidroit Protocol**
  - Secured transaction law applied to satellite financing
  - Space law or not?
- **Rotating Chair: Western to Central and South America**





# Questions, Comments?

**National Remote Sensing and Space Law Center  
University of Mississippi School of Law**

**[www.spacelaw.olemiss.edu](http://www.spacelaw.olemiss.edu)**

