

The 1986 U.N. Principles and Current State Practice in North America



Presented by

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to

**International Institute of Space Law/European Centre for Space
Law**

SPACE LAW SYMPOSIUM 2005

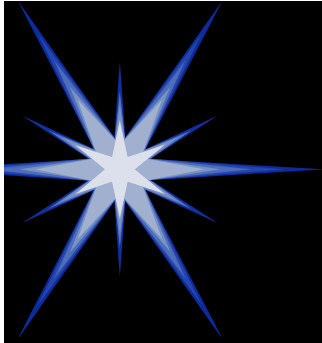
44th Session of the

Legal Subcommittee of the UNCOPUOS

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



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North America



North America



• **Canada**

– **Bill, in process of becoming law**

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

• **United States**

– **Statute**

- **The 1992 Land Remote Sensing Policy Act**

– **Regulations**

- **Licensing of Private Land Remote-Sensing Space Systems; Interim Final Rule and Interagency MOU (Appendix 2)**

– **Policy NSPD 27**



North America



- **Bilateral**

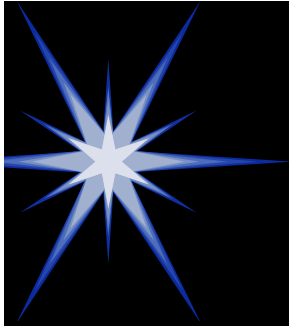
- **US-Canada Agreement on Commercial Remote Sensing Satellite Systems**

- 16 June 2000
 - Promote development of industry
 - Ensure satellites won't harm the nations

- **Common statement**

- “an agreement that fosters broad private uses of commercial remote sensing satellite systems while protecting common national security and foreign policy interests”





North America

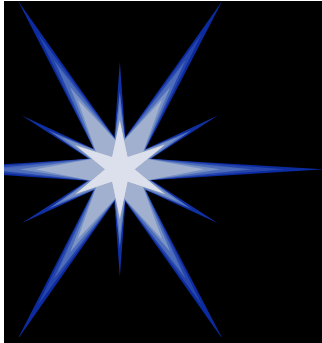


- **Bilateral**

- **Common statement, continued**

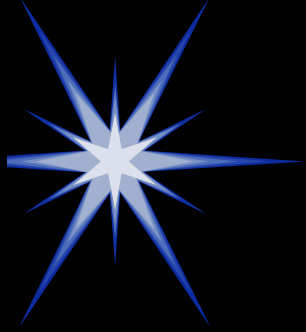
- **Establish controls on satellites**
- **Advance opportunities for greater access to remote sensing data for diverse users**
- **Basis for future cooperative efforts in this expanding field**





Canada





Canada



- ***Radarsat - 2***
 - **Mostly funded by Canadian Space Agency**
 - **First satellite owned by a company**
 - **Radarsat International**
 - **Not owned by the government**
 - **Primary client is the government**
 - **Scheduled for launch in 2005**

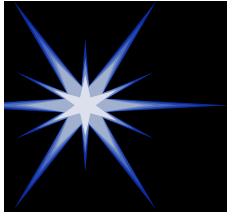




Bill: An Act governing the operation of remote sensing space systems

- **Work in progress: currently becoming law**
 - **Bill subject to change in law-making process**
 - Policy, which is basis of Bill, was introduced in 1999
- **In Parliamentary House Committee review**
 - Clause by clause
 - Resumes week of 4 April 2005
- **After House goes to Senate for same process**
- **Royal Assent and Proclamation**
 - Difficult to determine when it will happen
- **Coordinating amendment: *Department of Public Safety and Preparedness Act***





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

- **Critical fact**
 - No regulations yet
 - Will provide specifics for important aspects
- **Regulations may be made**
 - Process(es) to be considered or not to be considered 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: An Act governing the operation of remote sensing space systems

- **Summary**
 - **Establishes**
 - **Licensing regime for remote sensing space systems**
 - **Provides**
 - **Restrictions on distribution of data gathered by them**
 - **Gives**
 - **Special powers to the Government of Canada concerning priority access**





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”**
 - Sensor data from a satellite and any auxiliary data required to produce remote sensing products from sensor data and 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



- **“raw data and remote sensing products from the system about the territory of any country—but not including data or products that have been enhanced or to which some value has been added—be made available to the government of that country within a reasonable time, on reasonable terms and for so long as the data or products have not been disposed of”**
 - **Keep control of**
 - **Licensed system**
 - **Raw data and remote sensing products until they are disposed of according to Act**
- 
- A horizontal strip at the bottom of the slide shows a view of the Earth from space, with the blue atmosphere and white clouds of the planet curving over a dark background.



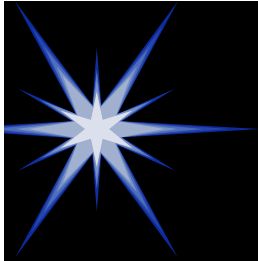
Bill

Interruptions of Service or Requiring 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**



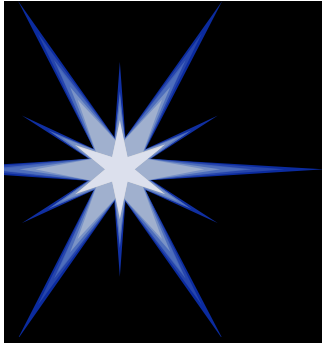


Bill Priority Access

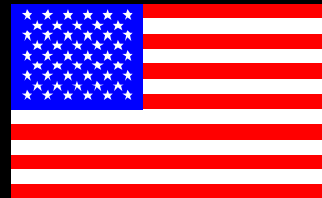


- **Solicitor General may order any service to**
 - **Royal Canadian Mounted Police**
 - **Canadian Security Intelligence**
 - **Government for critical infrastructure protection or emergency preparedness**
- **Reasonable grounds service is desirable to fulfill respective responsibilities**





The United States



The United States



- **Public non-commercial**

- *Landsat*

- Tax-funded, minimum data fees by law
 - Cost of fulfilling a user request
 - Operational Landsat Imager on NPOESS

- **Weather satellites**

- Tax-funded, some data fees
 - Commercialization is prohibited by Congress
 - Operated by National Oceanic and Atmospheric Administration

- **Private commercial**

- **DigitalGlobe, Orbimage**

- **SpaceImaging (failing; assets for sale)**

- **Not owned by the government**

- **Primary client is the government**





1992 Land Remote Sensing Policy Act

Nondiscriminatory Access



- **Tax funded systems**
 - “unenanced data...shall be made available to **all users** without preference, bias, or any other special arrangement (except on the basis of national security concerns pursuant to section 5656 of this title) regarding delivery, format, pricing, or technical considerations which would favor one customer or class of customers over another.”
- **Private commercial licensees shall**
 - “make available to the **government of any country...** unenanced data ... **concerning the territory under the jurisdiction of such government** as soon as such data are available and on reasonable terms and conditions”
 - » 15 USC 5622 (a) and (b)



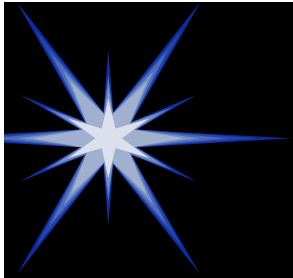
Licensing of Private Land Remote-Sensing Space Systems; Interim Final Rule



- UN Principles and private systems
 - Nondiscriminatory access to sensed states
 - **“Congress was careful to ensure that access to unenhanced data would remain consistent with the UN’s Principles...the 1992 Act requires that all licenses include the condition that the licensee shall make available upon request to the government of any country unenhanced data...concerning the territory under the jurisdiction of such government on reasonable commercial terms and conditions as soon as such data are available...”**
 - Consistent with the national security concerns, foreign policy and international obligations of the US

» 15 CFR Part 960





The Public-Private Spectrum

Hybrid



**All Tax
funded**

**Public and Private
Funded**

**All Private
Funded**

**Full
Nondiscriminatory
Access**

**Case-by-case
determination**

**Access to sensed
states only**

15 CFR Part 960





Licensing of Private Land Remote-Sensing Space Systems; Interim Final Rule

- **Reasonable terms**
 - **Normal commercial transaction** where the government of a sensed state is a regular customer
 - “Price of data, if measured in terms of their value to a particular commercial customer, may be prohibitive to a small government that simply wishes to monitor its own natural resources or to use the data, for example, for purposes of land use planning or to mitigate the effects of a recent natural disaster. On the other hand, the same price may be reasonable if the sensed state intends to use the data for competitive purposes. The reasonable commercial terms and conditions will have to be considered on a **case-by-case basis.**”
 - Sensed state has **opportunity to demonstrate terms result in undue hardship**
 - If unable to acquire unenhanced data directly from the licensee **can make request to NOAA Assistant Administrator** including the specific information (i.e., geographic location, date) on the unenhanced data it desires

» 15 CFR Part 960



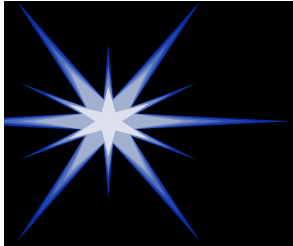
Licensing of Private Land Remote-Sensing Space Systems; Interim Final Rule



- **System control**
 - **Implements US obligations under Outer Space Treaty**
 - U.S. Government, as a State party, will be held strictly liable for any U.S. private or governmental entity's actions in space
 - **Licensees must maintain ultimate control**
 - Minimize liability risks
 - Assures US national security concerns, foreign policy and international obligations
 - **Foreign entities may be involved in the operations of the system with approval based on**
 - review conducted by NOAA in consultation with other USG agencies.
 - significant and substantial foreign agreement are subject to review

» 15 CFR Part 960





Licensing of Private Land Remote-Sensing Space Systems; Interim Final Rule

- **Interruption of service**
 - Smallest area and shortest time
 - Alternatives “shall be considered”
 - Delay data transmission or distribution
 - Restrict field of view
 - Data encryption
 - Other means
- **Licensee to provide data on a commercial basis exclusively to the U.S. Government**

» 15 CFR Part 960



Consultation Regarding Interruption of Normal Commercial Operations

15CFR 960 Appendix 2

President

6



5 Commerce Sec objects to State and/or Defense Sec, Pres Assts; Assts “initiate ASAP Principals-level” process to achieve interagency consensus

4 Pres Assts for National Security and S&T “promptly” given determination

3 State or Defense Sec make conditions; can’t delegate below acting sec; determination to Commerce Sec

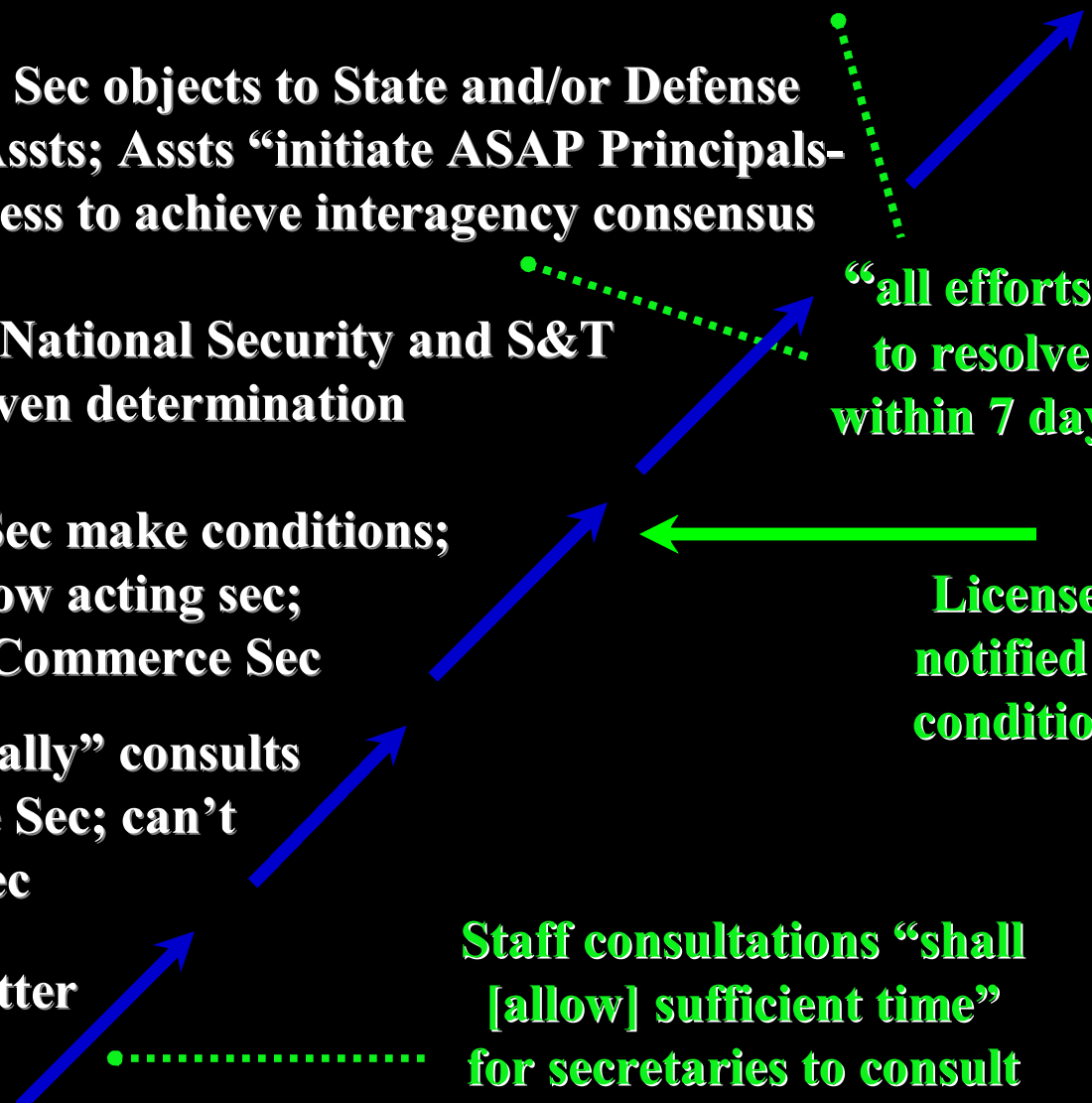
2 Commerce Sec “personally” consults w/ State and/or Defense Sec; can’t delegate below acting sec

1 DoS and/or DoD want shutter control, DoC disagrees

“all efforts” to resolve within 7 days

Licensee notified of conditions

Staff consultations “shall [allow] sufficient time” for secretaries to consult personally



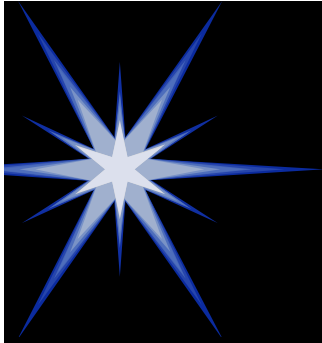


Licensing of Private Land Remote-Sensing Space Systems; Interim Final Rule

- **New and advanced technologies not previously licensed**
 - **May have two tiered license**
 - **Licensee to operate its system at one level, available to all users**
 - **Full operational capability reserved for USG or USG-approved customers**
- » 15 CFR Part 960
- **Exempt from FOIA requests**

» FY05 Defense Authorization Act





The 1986 UN Principles and Current State Practice in North America

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