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Appendix F: Clinton Administration Policy on Remote Sensing Licensing and Exports

On March 10, 1994, the White House released a statement of policy on two issues: the licensing of commercial remote sensing systems and the export of remote sensing technologies. This statement follows verbatim:

■ U.S. Policy on Licensing and Operation of Private Remote Sensing Systems

License requests by US firms to operate private remote sensing space systems will be reviewed on a case-by-case basis in accordance with the Land Remote Sensing Policy Act of 1992 (the Act). There is a presumption that remote sensing space systems whose performance capabilities and imagery quality characteristics are available or are planned for availability in the world marketplace (e.g., SPOT, Landsat, etc.) will be favorably considered, and that the following conditions will apply to any US entity that receives an operating license under the Act.

1. The licensee will be required to maintain a record of all satellite tasking for the previous year and to allow the USC access to this record.
2. The licensee will not change the operational characteristics of the satellite system from the application as submitted without formal notification and approval of the Department of Commerce, which would coordinate with other interested agencies.
3. The license being granted does not relieve the licensee of the obligation to obtain export license(s) pursuant to applicable statutes.
4. The license is valid only for a finite period, and is neither transferable nor subject to foreign ownership, above a specified threshold, without the explicit permission of the Secretary of Commerce.
5. All encryption devices must be approved by the US Government for the purpose of denying unauthorized access to others during periods when national security, international obligations and/or foreign policies may be compromised as provided for in the Act.
6. A licensee must use a data downlink format that allows the US Government access and use of the data during periods when national security, international obligations and/or foreign policies may be compromised as provided for in the Act.

7. During periods when national security or international obligations and/or foreign policies may be compromised, as defined by the Secretary of Defense or the Secretary of State, respectively, the Secretary of Commerce may, after consultation with the appropriate agency (ies), require the licensee to limit data collection and/or distribution by the system to the extent necessitated by the given situation. Decisions to impose such limits only will be made by the Secretary of Commerce in consultation with the Secretary of Defense or the Secretary of State, as appropriate. Disagreements between Cabinet Secretaries may be appealed to the President. The Secretaries of State, Defense and Commerce shall develop their own internal mechanisms to enable them to carry out their statutory responsibilities.
8. Pursuant to the Act, the US Government requires US companies that have been issued operating licenses under the Act to notify the US Government of its intent to enter into significant or substantial agreements with new foreign customers. Interested agencies shall be given advance notice of such agreements to allow them the opportunity to review the proposed agreement in light of the national security, international obligations and foreign policy concerns of the US Government. The definition of a significant or substantial agreement, as well as the time frames and other details of this process, will be defined in later Commerce regulations in consultation with appropriate agencies.

■ U.S. Policy on the Transfer of Advanced Remote Sensing Capabilities

Advanced Remote Sensing System Exports

The United States will consider requests to export advanced remote sensing systems whose performance capabilities and imagery quality characteristics are available or are planned for availability in the world marketplace on a case-by-case basis.

The details of these potential sales should take into account the following:

- the proposed foreign recipient's willingness and ability to accept commitments to the US Government concerning sharing, protection, and denial of products and data; and
- constraints on resolution, geographic coverage, timeliness, spectral coverage, data processing and exploitation techniques, tasking capabilities, and ground architectures.

Approval of requests for exports of systems would also require certain diplomatic steps be taken, such as informing other close friends in the region of the request, and the conditions we would likely attach to any sale; and informing the recipient of our decision and the conditions we would require as part of the sale.

Any system made available to a foreign government or other foreign entity may be subject to a formal government-to-government agreement.

Transfer of Sensitive Technology

The United States will consider applications to export remote sensing space capabilities on a restricted basis. Sensitive technology in this situation consists of items of technology on the US Munitions List necessary to develop or to support advanced remote sensing space capabilities and which are uniquely available in the United States. Such sensitive technology shall be made available to foreign entities only on the basis of a government-to-government agreement. This agreement may be in the form of end-use and retransfer assurances which can be tailored to ensure the protection of US technology.

I Government-to-Government Intelligence and Defense Partnerships

Proposals for intelligence or defense partnerships with foreign countries regarding remote sensing that would raise questions about US Government competition with the private sector or would change the US Government use of funds generated pursuant to a US-foreign government partnership arrangement shall be submitted for interagency review.

SOURCE: White House Press Office, March 10, 1994.