



William J. Clinton Presidential Library

1200 President Clinton Avenue
Little Rock, Arkansas 72201
(501) 244-2877
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February 4, 2010

In reply refer to:
NLWJC 2008-1017-M
[Gabrynowicz, Joanne]

Prof. Joanna Irene Gabrynowicz, Director
National Center for Remote Sensing, Air, and Space Law
Res Communis Aerospace Law Blog
The University of Mississippi School of Law
P.O. Box 1848
University, MS 38677-1848

Dear Dr. Gabrynowicz:

This letter is in further reference to your request dated April 25, 2008, for release of information from the Clinton Library under the provisions of Section 3.5 of Executive Order 13526. These Clinton Presidential records were processed in accordance with the Presidential Records Act (PRA), 44 U.S.C. §§2201-2207 and the Freedom of Information Act, 5 U.S.C. §§552, as amended, related to Presidential Decision Directive 23 (PDD-23). We have completed the coordination and processing, according to provisions of the PRA, FOIA and E.O. 13526, of the national security classified Presidential records that are responsive to your Mandatory Review request. The following determinations have been made regarding Mandatory Review Case 2008-1017-M.

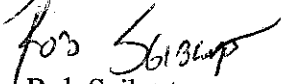
Documents # 1.01, 1.02, 1.03, and 1.04 have been released in full.

Total pages released: 9 pages.

We will be happy to provide you copies of those records that have been declassified in full or in part upon receipt of the reproduction fee of \$.75 per page. We accept checks or MasterCard, Visa, Discover, and American Express credit cards. Checks should be made out to the National Archives Trust Fund. Or you may view the documents in our research room where a self-service copier is available for the price \$.20 per page.

If you have further questions regarding your Mandatory Review request please contact me, by email: rob.seibert@nara.gov or phone 501.244.2814. If you wish to order copies or need further assistance, please contact the archivist on reference duty: clinton.library@nara.gov or 501.244.2877. Your Mandatory Review case log number is 2008-1017-M. Please have this number accessible for reference during any future contact concerning this case.

Sincerely,

A handwritten signature in black ink that reads "Rob Seibert". The signature is written in a cursive style with a large initial "R" and "S".

Rob Seibert

Mandatory Review Archivist

RDS:dms

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THE WHITE HOUSE

WASHINGTON

March 9, 1994

PRESIDENTIAL DECISION DIRECTIVE/NSC-23

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF COMMERCE
DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
U.S. REPRESENTATIVE TO THE UNITED NATIONS
CHIEF OF STAFF TO THE PRESIDENT
ASSISTANT TO THE PRESIDENT FOR NATIONAL
SECURITY AFFAIRS
DIRECTOR OF CENTRAL INTELLIGENCE
ASSISTANT TO THE PRESIDENT FOR ECONOMIC POLICY
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
DIRECTOR OF THE ARMS CONTROL AND
DISARMAMENT AGENCY
DIRECTOR OF THE OFFICE OF SCIENCE AND
TECHNOLOGY POLICY
ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION

SUBJECT: US Policy on Foreign Access to Remote Sensing
Space Capabilities (U)

This Presidential Decision Directive (PDD) establishes and directs the implementation of US policy on foreign access to remote sensing space capabilities.¹ (U)

Background

Remote sensing² from space provides scientific, industrial, civil governmental, military and individual users with the capacity to gather data for a variety of useful purposes. The US Government operates very high resolution space-based

¹"Remote sensing space capabilities" refers to all remote sensing space systems, technology, products, and data, other than those used for signals intelligence. In this context, "space system" consists of the spacecraft, the mission package(s), ground stations, data links, and associated command and control facilities and may include data processing and exploitation hardware and software. (S)

²Throughout this policy, "remote sensing" refers in a general sense to observation or information gathering, which can support a wide variety of purposes. (U)

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reconnaissance³ systems for intelligence and military purposes. These systems are among the most valuable US national security assets because of their high quality data collection, timeliness, and coverage and the capability they provide to monitor events around the world on a near real-time basis. More nations have discovered the value of these satellites and are developing their own indigenous capabilities, or are seeking the purchase of data or systems. (U)

Policy Goal

The fundamental goal of our policy is to support and to enhance US industrial competitiveness in the field of remote sensing space capabilities while at the same time protecting US national security and foreign policy interests. Success in this endeavor will contribute to maintaining our critical industrial base, advancing US technology, creating economic opportunities, strengthening the US balance of payments, enhancing national influence, and promoting regional stability. (U)

Scope of Policy

The policy covers foreign access to remote sensing space systems, technology, products, and data, other than those used for signals intelligence. With respect to commercial licenses, this would include operating licenses granted under the Land Remote Sensing Policy Act of 1992 and export licenses for certain items controlled on the US Munitions List (USML). While the policy will define certain restrictions for export of items on the USML, export of items on either the USML or the Commerce Control List (CCL) would continue to be licensed in accord with existing law and regulations. (S)

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. (U)

1. The licensee will be required to maintain a record of all satellite tasking for the previous year and to allow the USG access to this record. (U)

³"Reconnaissance" refers to remote sensing to support military or intelligence purposes. (U)

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. (U)
3. The license being granted does not relieve the licensee of the obligation to obtain export license(s) pursuant to applicable statutes. (U)
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. (U)
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. (U)
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. (U)
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. (U)
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

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Commerce regulations in consultation with appropriate agencies. (U)

Transfer of Advanced Remote Sensing Capabilities

1. 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. (U)

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; (U)
- constraints on resolution, geographic coverage, timeliness, spectral coverage, data processing and exploitation techniques, tasking capabilities, and ground architectures; and (U)
- the ability of the United States to counter or defeat foreign use of such capabilities, if national security conditions warrant. (S)

The following conditions will apply to any license for a turn-key system export:

- Any system which is approved for export shall ensure positive control over the system and prevent reception by entities other than the foreign recipient to whom the system is sold. (S)
- Any system with significant military or intelligence utility which is approved for export must have characteristics that guarantee US access and use of the data and enable the United States to deny its data to an adversary in the event of crisis or conflict. (S)
- 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. (U)
- Any system made available to a foreign government or other foreign entity may be subject to a formal government-to-government agreement. (U)

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Transfer of Sensitive Technology

The United States will consider applications to export sensitive components, subsystems, and information concerning remote sensing space capabilities on a restricted basis because it is not in the national security interests of the United States to assist foreign nations or entities to attain autonomous capabilities. 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.

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's use of funds generated pursuant to a US-foreign government partnership arrangement shall be submitted for interagency review. (U)

Implementing Actions

- The State Department, with the participation of the Secretaries of Defense and Commerce, the Director of Central Intelligence, the Chairman of the Joint Chiefs of Staff, and other members of the Executive Branch as appropriate, shall develop an approach to use with potential foreign suppliers of remote sensing space capabilities to discuss possible mutual constraints on foreign access for review by the Deputies Committee. (U)
- The State Department, with the participation of the Secretaries of Defense and Commerce and the Director of Central Intelligence and other members of the Executive Branch as appropriate, shall prepare a list of those remote sensing space technologies deemed to be sensitive. They shall ensure the list is updated on an annual basis. (U)

William Clinton

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THE WHITE HOUSE THE PRESIDENT HAS SEEN
WASHINGTON 3.9.94

March 9, 1994

MR. PRESIDENT:

Enclosed is a decision memo from Sandy Berger recommending that you sign the attached Presidential Decision Directive allowing for the expanded sale of images taken from space. Under the PDD, U.S. companies licensed by the Commerce Department could sell such images to foreign and domestic customers. In addition, the State Department could license the export of the satellite systems. National security concerns would be protected by specific conditions in the licenses.

This PDD would allow the U.S. to compete more effectively in a fast-growing international market and would consequently be very popular with business.

This memo was initially cleared through on March 3, but then pulled back when first State and then DOD raised objections. Their problems have now been resolved and all relevant agencies have cleared the PDD, as have all relevant White House offices.

If you approve, please sign the attached PDD.


Todd Stern

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THE PRESIDENT HAS SEEN
3.9.94

THE WHITE HOUSE
WASHINGTON

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March 3, 1994

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ACTION

MEMORANDUM FOR THE PRESIDENT

SIGNED

FROM: SAMUEL R. BERGER 

SUBJECT: US Policy on Foreign Access to Remote Sensing
Space Capabilities

Purpose

To approve a Presidential Decision Directive on US policy on foreign access to remote sensing space capabilities.

Background

The attached PDD represents a significant change in current policy by allowing for the expansion of the commercial sale of images taken from space and the export of the systems themselves. This policy is intended to open the way for US firms to compete aggressively in a growing international market, which Commerce estimates could be a \$5 to \$15 billion industry by the turn of the century.

This new policy should aid the defense industry in its efforts to find new commercial applications for defense technologies and enhance US global competitiveness in the international remote sensing marketplace. The policy also represents an example of an emerging commercial information technology being used as a catalyst to create a new 21st century industry and long-term jobs for Americans.

Under the terms of the policy, US companies will be licensed by the Secretary of Commerce to operate private remote sensing systems and sell those images to domestic and foreign customers. The export of entire satellite systems and technology--licensed by the State Department--will also be considered under this policy. National security will be protected through specific conditions in the license. For US owned and operated systems, the Secretary of Defense or the Secretary of State, for national security or foreign policy reasons, can seek an interruption in service or restrictions on the dissemination of data. For exported systems, the United States will ensure that it retains the ability to counter or defeat foreign use of such capabilities, if national security conditions warrant.

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Agencies disagree about whether the Land Remote Sensing Policy Act of 1992 grants the Secretary of Commerce discretion to issue a license or permit exercise of a license after the Secretary of Defense and/or State have determined conditions necessary to meet US national security, international obligations and/or foreign policies. The statute is subject to different interpretations on this point. The PDD is not intended to resolve this issue.

It has been US Government practice both to deny the export of remote sensing space systems and the technology which could lead to the development of highly capable "spy-like" systems by other countries, and to not encourage the operation of private US systems that would sell high-quality imagery data and products commercially. A number of factors has forced the US Government to undertake a review of its policy in this area.

- Space-based images and imaging systems are increasingly being recognized by commercial entities as a means of significantly improving their productivity and business operations. Farmers, city planners, environmentalists, news organizations, map makers, surveyors, geologists, mining companies, oil companies, timber harvesters, taxing authorities, as well as foreign governments have all recognized the utility of high-quality space-based images for purely commercial purposes.
- Satellite collection capabilities that once were the monopoly of a few countries are spreading to many countries and the US lead is eroding. In addition to the United States, Russia, France, China, Japan and the European Space Agency already have an indigenous space industry. Several others--Israel, India, South Africa, Canada and South Korea--are on their way to developing such a capability.
- As the technology has spread, fewer intelligence sources and methods remain truly sensitive, making it harder to justify withholding exports on traditional national security grounds.

As the Executive Branch has struggled with developing a policy that would balance economic and national security concerns, the market has made commercial ventures more economically feasible and a backlog of license applications has been generated. This policy will allow agencies to make expeditious decisions on these pending licenses.

RECOMMENDATION

That you sign the Presidential Decision Directive at Tab A.

Attachment
Tab A PDD on Remote Sensing

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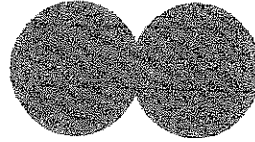
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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

March 9, 1994



ACTION

MEMORANDUM FOR SAMUEL R. BERGER
THROUGH: GEORGE J. TENET *GT*
FROM: REGINA A. GENTON *RAG*
SUBJECT: PDD on Remote Sensing

SIGNED

Attached are a revised memo to the President and a revised PDD on remote sensing which reflect the agreement you reached with John Deutch last night. Specifically, the following changes have been made:

1. Page 2 of the Memo to the President has been revised to reflect that the PDD is not intended to resolve the outstanding legal dispute concerning the authorities of the Secretary of Commerce to permit exercise of a license after the Secretary of Defense and/or State have determined that national security or foreign policy interests of the United States may be compromised.
2. A sentence has been added to condition seven on page 3 of the PDD to state explicitly that in the event of a disagreement between Cabinet secretaries concerning whether a commercial satellite system should be turned off or interrupted, an appeal may be made to the President.

If you agree with these changes, we recommend that you send the memo forward to the President. We need to have approval today so that we can make the public announcement and brief the Hill and industry tomorrow.

RECOMMENDATION

That you send the memo forward to the President.

Attachments:

Tab I Memo for the President
Tab A PDD on Remote Sensing

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