



Guideline for Ethical Use of Geophysical Data

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The Association of Professional Engineers,
Geologists and Geophysicists of Alberta

FOREWORD

APEGGA publishes practice standards and guidelines for the purpose of educating its members and the public about matters of professional practice. Practice standards and guidelines are not intended to be short courses in engineering or geoscience. In general, guidelines are produced to meet the following objectives:

- To assist APEGGA members in performing their professional role in accordance with the *Engineering, Geological and Geophysical Professions Act* and the *General Regulation* under the act.
- To help the public understand the role of APEGGA members and the responsibilities members have when performing their professional services.

This guideline is a new document, developed in response to issues concerning the business use of licensed geophysical data in the oil and gas industry. In this context, licensed geophysical data is data that one party obtains from another party under an agreement to use, but not own, the data. The issues centre mainly on what parties can or cannot do with the licensed data, e.g., share the data with partners; show the data to third parties, demand data transfer payments, etc.

It is not APEGGA's intention to specify the rights of data owners or licensees or to prescribe the terms of business arrangements controlling access to or use of the data. However, it does want to be clear about the professional responsibilities that APEGGA members have when dealing with such issues. This guideline occasionally refers to what is common practice in the oil and gas industry. Such references are not intended to be endorsements of those practices as a means of settling disputes. Ultimately, disputes that the parties themselves cannot resolve will need to be settled by someone with the authority to do so: the courts.

A subcommittee of APEGGA's Practice Standards Committee prepared this guideline. At the time the document was completed, the subcommittee had the following membership:

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1 OVERVIEW

Geophysical data plays an important role in the discovery of resources in the oil and gas industry. To its owners, the data is a major investment and a valuable asset. To realize the full potential of the data, owners may choose to make the data available to others under certain terms and conditions that are spelled out in written agreements or licenses. Generally, the rule of thumb governing the use of such licensed data is, "Whatever is not granted by a license or agreement is prohibited."

Complex business arrangements such as farm-ins, joint ventures, mergers, divestitures, acquisitions, formation of income trusts, etc. are common in the oil and gas industry. These transactions can lead to uncertainty regarding the allowable use of geophysical data. This is particularly true where licenses and contracts are not clear, or do not address such transactions.

APEGGA members who fail to consider, or who disregard, the rights and obligations of data owners or licensees could place themselves in a position where their actions might constitute unprofessional conduct or could result in legal liability.

1.1 Scope

This guideline addresses professional members' responsibilities related to the ethical aspects of using geophysical data. It deals with various classifications of data including proprietary, partnered, licensed and publicly accessible data. Although the guideline primarily addresses data used in the oil and gas industry, the basic principles of copyright, ownership, confidentiality and license agreements apply to geophysical data used in other industries as well. This document does not address complex business issues, and it is not intended to take primacy over actual contractual terms governing the use of specific geophysical data.

1.2 Purpose

This guideline is meant to assist APEGGA members to understand their responsibilities regarding the rights, limitations and obligations pertaining to the business use of geophysical data. The guideline suggests practices to avoid situations that could lead to improper use of such data.

It is not the intent of this guideline to bestow any rights concerning the use of geophysical data that are not granted by a license. In other words, there is no intent to provide "default" clauses where data licenses or agreements do not address a particular aspect of using geophysical data.

1.3 Definitions

For the purposes of this guideline, the following terms and definitions apply:

Confidentiality agreement

A written agreement of the terms and conditions whereby a party may disclose confidential data to a third party who would not otherwise be entitled to view the data.

Direct control

The ability to prevent copying or other unauthorized use of a licensor's data.

Data (or geophysical data)

Geophysical and geological information, regardless of the form or medium on which it is displayed or stored, including, but not limited to, the following types: seismic, electrical, electromagnetic, magnetic, gravity, microseismic, vertical seismic profiles (VSP's), and image logs. A licensor may choose to license its data derived products and its interpretations by explicitly stating that in the license agreement.

Field data

The original recorded geophysical data, sometimes referred to as basic or raw data, together with the description of the complete recording parameters. For seismic data in particular, this means geophysical shot records, survey information and observers' reports.

Geophysical data derived product

Any product derived, generated, or created from the data, including, but not limited to, any and all processed and reprocessed data, interpretations, maps or analyses, regardless of the form or medium on which it is displayed or stored.

Interpretation

The process of deriving a geological model or concept from geophysical data. Includes the creation of data derived products by measurements made on processed data and the maps and other displays made from the data. Also includes conclusions or inferences made by the interpreter, such as geologic edges or fluid contacts.

License

The non-transferable, non-proprietary rights with respect to specific uses of the data granted to the licensee by the licensor.

Licensee

A party that acquires, or is in the process of acquiring, a license.

Licensor

A party that grants, or is in the process of granting, a license.

Partner proprietary data

Partner proprietary data is geophysical data that is owned by two or more companies or entities.

Permit holder

A partnership or other association of persons or a corporation that holds a permit under the *Engineering, Geological and Geophysical Professions Act*.

Processed geophysical data

Data that is manipulated into a useable and interpretable form.

Professional member (or member)

A person who is registered as a professional member or a member of a class or category of membership established under the *Engineering, Geological and Geophysical Professions Act* including individuals and permit holders.

Property

A geographical area in which the licensee has the right, license or privilege to explore for resources.

Proprietary data

Proprietary data is geophysical data owned by a single company or entity and is often referred to as “exclusive” data.

Prospect

A geographical area designated by the licensee for exploration or development.

Quality inspection

The examination by a prospective licensee of the data, or portion of the data, which the licensor authorizes be shown to the licensee solely for the purpose of determining the quality of the data and whether there are any errors and/or omissions in the data.

Review

A general assessment of an interpretation, as presented, without active manipulation of geophysical data.

Speculative (spec) data

Trade data owned by geophysical companies not primarily in the business of exploring for resources.

Sketch

A free-hand drawing that is not a direct representation or tracing of the data or information displayed.

Third party

Any entity (individual, corporation, limited liability company, partnership, etc.) that is not a party to a license (i.e., not a licensor or a licensee).

Trade data

Data owned by a licensor that may be licensed to a licensee.

1.4 References

This guideline is intended to be read in conjunction with the following documents or their most recent versions (URLs valid at time of publication):

Guideline for Ethical Practice v2.1, June 2005, APEGGA,
<http://www.apegga.org/pdf/Guidelines/02.pdf>

Guideline for Professional Practice v1.1, January 2006, APEGGA,
<http://www.apegga.org/pdf/Guidelines/16.pdf>

Practice Standard for Quality Inspection of Geophysical Data v1.0, April 2002, APEGGA,
<http://www.apegga.org/pdf/Guidelines/27.pdf>

2 CLASSIFICATIONS OF DATA

The rights and obligations of parties with respect to geophysical data are dependent on the ownership classification of the data. The following classifications are commonly used.

2.1 Proprietary Data

Proprietary data is considered to be the confidential information of the owner, who holds all rights to the data. These rights include, without limitation, the right to view, use, interpret, process and reprocess the data. As the exclusive owner, the owner can grant a license to other parties for use of the data and can sell all or part of its proprietary interest in the data. The owner has the right to enter into business arrangements such as farm-outs, geophysical review options or other types of agreements whereby other parties are provided varying degrees of access to the data.

Simply put, an owner can do whatever it wishes with data that belongs to the owner.

2.2 Partner Proprietary Data

Partner proprietary data is geophysical data that is owned by two or more companies. The rights pertaining to partner proprietary data are identical to the rights pertaining to proprietary data except the rights are owned more than one company.

The rights and obligations of the owners (partners) may or may not be outlined in the agreements that establish their relationship. Often there is no written agreement in place other than an authority for expenditure (AFE) or equivalent document. While verbal agreements are common industry practice and do have contractual effect, it is prudent for owners to ensure that a written agreement is in place, clearly detailing their respective rights, obligations and liabilities.

It appears that there may be an industry practice which provides that partnered proprietary data may not be further subdivided or licensed without the consent of all the partners. If this is important to the parties, they should ensure that the details of subdividing or licensing interests are properly reflected in the agreement.

2.3 Licensed Data

The source of licensed data can either be a geophysical company or an oil and gas company. In neither instance can licensees assume rights that are not granted in the licenses, nor can they disregard, willfully or through ignorance, the limitations or requirements contained in the licenses.

The following provisions concerning use of licensed data generally apply:

- Licensed data is the property of the geophysical data owner. The owner's copyright in the data survives any reprocessing, merging, or enhancement of the data.
- Terms of data use are bound by a license agreement and licenses are not usually transferable.
- Licensed data may only be shown to third parties under the terms of the license agreement.

- Partner companies should each hold licenses for data used jointly or acquired in multi-company projects.
- Quality inspections (QIs) of data are not for obtaining geological or exploration insights without licensing the data. See APEGGA's *Practice Standard for Quality Inspection of Geophysical Data*.
- It is the responsibility of the licensee to ensure that any consultants or third parties working with licensed data are bound by the same terms and conditions as licensees.
- Licensed data may not be published in any form without the written permission of the data owner.

2.3.1 Non-exclusive, Multi-client, Trade or Spec Data

Non-exclusive or multi-client geophysical data (also called spec data) is licensed by data owners (typically, geophysical companies which conduct projects on their own initiative) to oil and gas companies under the terms of a license agreement.

This class of data gives rise to the majority of issues within the industry. In part, some of the problems are historical and can be traced back to contracts in which the obligations of each party were not clearly addressed or where the parties did not anticipate the complexities of the current business environment. For the other part, problems arise from the licensee not making itself aware of the legal obligations of its license and proceeding with data disposition or use that the license does not allow.

Trade or spec data will commonly fall into one of the three following general categories:

- Data licensed under a specific single license agreement for each discrete data purchase. Although these are often older forms of agreements, the terms must still be adhered to, and any variations must be negotiated with the data owner.
- Data held under a detailed and comprehensive master license agreement (MLA).
- Data for which no license or other agreement governing its use can be found. As a general rule, all geophysical data is owned by someone and where ownership is unclear, reasonable efforts must be made to ascertain ownership. Once ownership is ascertained, the parties will need to enter into negotiations to determine the terms of use. Courts generally will not accept "I found the data and there wasn't anyone's name on it" as an excuse for disregarding ownership rights.

2.3.2 Oil and Gas Company Proprietary or Partner Proprietary Data

Licensed data can also be proprietary data for which an oil and gas company might choose to grant a license. Such data thus becomes licensed data in the hands of a licensee, although still owned by the oil and gas company.

2.4 Publicly Accessible Data

Federal or provincial government regulations may require operators of seismic programs to submit final plans which include images or digital images of processed seismic profiles. This information remains confidential for a specified time, after which copies of the reports and final plans may be released. These regulations apply primarily to federal and offshore lands although there are instances where provincial regulators will release geophysical data, such as Alberta incentive data in the 1980s.

For data that is made accessible to the public by a regulator or government agency, current practice is to release image copies that may or may not be accompanied by documentation covering restrictions on the use or redistribution of the data. These restrictions may be comparable to those attached to licensed data from an oil and gas company. Professional members must understand and follow all such restrictions. In the absence of documentation on the restrictions, Professional members are advised to, at the very least, consider that the author may retain the copyright.

Where publicly accessible data has been scanned then offered for sale as licensed copies, professional members should be diligent in assuring that any vendor or licensor of such data has been granted the right or license to sell this information.

Companies that obtain publicly accessible copies of the processed or scanned data have no rights, title or interest in these data. The owner of these data may retain the copyright.

2.5 Data of Unconfirmed Origin

Data of unconfirmed origin is geophysical data that has no documentation proving its origin and/or ownership. The lack of financial documentation or supporting metafile information does not enable the status of the data to be determined, i.e., whether the data is proprietary, partner proprietary or licensed.

Such data should be treated as confidential information. The data should not be sold, traded or even shown to anyone outside the company. Even if a party was willing to sign a confidentiality agreement, the data should not be shared externally in any manner since the company cannot confirm that it is entitled to share it.

Efforts should be made to continue seeking information that might establish ownership status and rights of use. Some corporations elect to remove such data from their corporate archives after a diligent but unsuccessful effort to obtain information regarding data ownership. Care must be taken with some datasets as provincial or federal regulations may prevent destruction of such data, requiring operators to maintain a copy of the data in Canada.

3 PROFESSIONAL RESPONSIBILITIES

Professional members may find themselves, at different times, in any of three roles during the course of business transactions that affect how someone's geophysical data is used: licensor, licensee or third party. In any of these roles, professional members are expected to conduct themselves in an ethical and professional manner and with fairness to all parties. They must respect the integrity, confidentiality and value of the data, as well as the information and knowledge derived from the data.

In general terms, APEGGA's *Guideline for Professional Practice* describes the responsibilities of professional members as follows. "APEGGA members are responsible for practicing in a professional manner -- ethically, competently and in compliance with the *Engineering, Geological and Geophysical Professions Act*,

Regulations and By-Laws. Permit holders are further obligated to provide an environment which ensures that appropriate standards of professional conduct and technical competency are maintained and which supports professional employees in discharging their legal and ethical duties under the Act”.

With respect to geophysical data, the responsibilities of professional members can be summarized as follows:

- As licensees, they should inquire of the licensor about the ownership status of the data under consideration in order to guide their own conduct.
- When they are considering conducting a review or interpretation of geophysical data owned or licensed by another company, they must inquire about the ownership status of the data in order to guide their own conduct.
- When geophysical data, information and knowledge derived from the data is being disclosed, all professional members must be aware of their professional responsibilities. Professional members must be aware of and honor any restrictions associated with the disclosure of the data or of the intellectual property derived from the data.
- When acting on behalf of a company disclosing geophysical data, a professional member is obliged to advise attending representatives of the company viewing the data about their requirement to comply with applicable licenses. It is advised that the professional member obtain written signed agreement from the viewing company that the viewing company will comply with these restrictions.
- Before knowingly interpreting third party trade data or partner proprietary data licensed to another company, professional members should have the data owner's consent or know that such activity is specifically provided for in the license agreement.
- When vectorized, scanned data or paper copies are encountered, the professional member should attempt to verify the owner of the data and ensure that the data is properly licensed from that owner.
- When publicly accessible data is suspected or encountered, the professional member should attempt to verify the owner of the data and ensure that the data is properly licensed from that owner.

4 LICENSES

A license is a contract that sets out the specific rights and obligations of the licensor and the licensee. A licensee only has a limited contractual right to use the data as specified in the license.

There is some general industry consensus about the appropriate use of licensed data. The following is a summary of some of normally accepted rights and restrictions. However, it should be used only as a guide because any particular license may include

restrictions or rules quite different from those summarized here. Licenses for spec data are usually most restrictive.

It is industry standard practice that geophysical entitlement follows corporate hierarchical ownership and is not attached to a property or project.

Data licenses should clearly address whether the license is intended for single company (licensee) use and the terms, if any, under which the data can be disclosed to or used by third parties, including consultants, agents and prospective partners.

4.1 Activities Most Licenses Allow

Companies can invite a third party to review their geophysical data and resultant interpretation, which may include licensed data, to help evaluate a farm-out or another type of business arrangement. It is normal for such third parties to sign confidentiality agreements prior to any such review. If licensed data is included, the licensee maintains direct control and is obligated to restrict the types of data copied or that can be removed, normally to only notes or sketches. The licensee usually reserves the right to inspect the notes, sketches or other provided information and ask for its return if the business arrangement is not completed.

Reprocessing of licensed data may be allowed, but the reprocessed data carries all of the restrictions and obligations of the original data.

Declaring a partner may be allowed within a specified time.

In the event of a corporate merger or takeover, a transfer fee is sometimes prescribed in the license agreement. Transfers between divisions and affiliates may not give rise to the payment of a transfer fee, but each license must be reviewed in light of the proposed transaction.

4.2 Activities Some Licenses Prohibit and Some Licenses Allow

Allowing a third party to review or interpret licensed data may have more restrictions than a review presented by the licensee. This more extensive review or interpretation could take place in a data room, in the licensor's premises or in the licensee's premises. It could be part of a seismic review option and could involve a mix of proprietary, partner proprietary and licensed data. Permission may be required to include licensed data in a data room and a license may prohibit interpretation or evaluation of the data by anyone other than the licensee's employees or consultants. The licensee must ensure that this activity is allowed and may be required to remove some or all of the licensed data from the data room.

Transfers to partners in a joint venture may be allowed. However, each license should be reviewed as sometimes discounts to the original license fee will apply.

4.3 Activities Most Licenses Prohibit

No entity can be given a copy of the licensed data or geophysical data derived products unless permission is granted by the licensor. Exceptions are sometimes granted for affiliated companies provided that such affiliate undertakes to be bound by the terms of the license. Transfer of licensed data as part of an asset sale is prohibited without the

licensor's approval. Providing a copy of the licensed data to a joint venture partner of the licensee is prohibited until a new license is granted to that partner. Keeping a copy of licensed data after an approved transfer of the data to a subsidiary or related company is prohibited unless permission is granted by the licensor.

Most licenses prohibit the loss of direct control in a data room or review and would prohibit copies of data or geophysical derived products from leaving the data room.

Partner proprietary data is subject to similar restrictions. A copy may not be conveyed or transferred without approval of all partners and the access of third parties to interpret the data may also require partner approval. It is industry convention that unanimous partner approval is required to sell a geophysical license.

The right to sell, sublicense or otherwise disclose the data to third parties is generally not granted to licensees.

4.4 Situations Where the License May be Unclear

If a license is silent with respect to a specific right, the professional member should not assume that such a right and/or privilege is granted under that license. It is prudent that the professional member seek clarification from the licensor or legal counsel.

5 RECOMMENDED PRACTICES

The practices suggested in the guideline are general, based on certain assumptions. Actual agreements addressing the use of geophysical data may contain restrictions. Accordingly, each situation must be reviewed in the context of the agreements that govern such data. If such agreements are unclear, advice should be obtained to determine the proper course of action.

Where a license is silent, the rights and obligations of the parties might be implied through custom or industry practice (especially for trade data). Professional members should exercise due diligence in determining the specific rights and obligations under all applicable licenses or other agreements. For illustrative purposes, the following examples provide general features often encountered.

Data owners should utilize a comprehensive agreement or license whenever they permit their data to be used by someone else. The license should address how the licensee may use the data and what access, if any, the licensee may offer to third parties.

5.1 Copyright and Confidentiality

Geophysical data is considered by industry as being confidential information used for competitive advantage in addition to being an asset which is bought and sold. Both concepts must be considered to protect the data on behalf of the interests of all stakeholders.

Recommended Practice

The concepts associated with copyright law and the law of confidential information must be considered when dealing with geophysical data. Copyright law is not open for interpretation and should be taken as the standard to govern anyone's actions.

5.2 Physical Data Room

Data rooms are commonly used to farm out, divest selected properties or divest all of a company's assets. Data may reside within the premises and control of a third party, and the third party must be apprised of the license or partner proprietary data restrictions in order to maintain direct control of licensed data. Typically larger divestitures are located on third party premises and these companies are assigned the responsibility of protecting the integrity of the data. This does not absolve the licensee from the responsibility to maintain direct control. Prospective purchasers, after signing a Confidentiality Agreement, are usually assigned a certain time period to review the data and resultant interpretation without representatives of the selling company being present.

Typically, a data room contains geophysical data as well as other exploration and production data. Often there is a mixture of proprietary, partner proprietary and licensed data, although some companies may choose not to include licensed data or partner proprietary data. Geophysical data or geophysical data derived products based on licensed data cannot usually be copied. The prospective purchaser is allowed to make notes and sketches and may be allowed to sketch the interpretation of the data on a map. Sketches would not include precise copies of contour maps or detailed survey information.

Discussions between the licensee/divesting company, the third party and the prospective purchaser are required to clarify the amount and type of information that can be requested to be copied from a data room. The licensee has the responsibility to approve the copying and release of data and information and to ask for its return unless the prospective purchaser completes a transaction.

Uninterpreted partner proprietary or uninterpreted licensed data should not be provided in a data room unless expressly permitted by all working interest owners as this would essentially constitute an unauthorized quality inspection (QI). Practices for conducting data QIs are described in APEGGA's *Practice Standard for Quality Inspection of Geophysical Data*.

Recommended Practice

A physical data room can be set up in one of two ways: as a review option or as an interpretation option. It should be made clear from the onset which option is being provided.

5.2.1 Review Option

Professional members who help to organize data rooms for the divesting company must be aware of the ownership of the data being considered for inclusion in the data room and maintain direct control. If licensed or partnered data are to be included, the member should ascertain that agreements or licenses do allow such use and whether or not copies are allowed to be removed from the data room.

For a data room located on third party premises, it is important to ensure that third party employees know the restrictions that apply to any licensed geophysical data, enforce the restrictions and maintain direct control of the data..

A professional member, representing a prospective purchaser, who is viewing data in the data room should ask for details of data ownership and restrictions if ownership is not clearly indicated. The professional member must not remove copies of any data or documents without appropriate permission.

5.2.2 Interpretation Option

This option can be used domestically but is more commonly used in an international setting where interpretation of the data in the physical data room is permitted, subject to partner approval(s), government approval and the approval(s) of the licensor(s). Where approvals are not secured these data should be removed from the physical data room by the divesting party. Proprietary or partner proprietary data could be included subject to appropriate approvals having been obtained.

Interpreting versus Reviewing Other Companies' Licensed Data

Geophysical data is often a key element in a farm-out proposal for a particular well location or an option to participate in a larger area. Licensed data is often included. The process usually starts with an interpreted presentation from the company offering the prospect and can be followed by a review of the data by the prospective partner. If the review is limited to examination of data and data derived products in a reasonable amount of time, most companies would include their licensed data, unless the license agreement prohibits such a review. Complications arise when the prospective partner comes back for a second, more detailed, look.

If the review expands into a full scale interpretation, the license or any other applicable agreement must be reviewed to ensure that making detailed maps and reports is allowed without further approvals.

Recommended Practice

Professional members from both parties need to be aware of the types of data being reviewed, any restrictions attached thereto and the nature of the review being conducted, especially if it evolves into interpretation. Licensed data that is not permitted to be reviewed or interpreted, should be removed from the database.

5.2.3 Geophysical Review Option

The intent of a geophysical review option is typically to interpret the data. A geophysical review option generally involves the interpretation of data of differing ownership classifications. Should the geophysical review option involve the interpretation of partner proprietary data, partner approvals are required. Licensed data cannot be included in a geophysical review option unless specific permission is obtained from the licensor or the license specifically permits it.

Recommended Practice

The professional member, representing the reviewer, should seek clarification of data ownership status and any restrictions that may apply to the use or copying of the data.

5.3 Virtual Data Room

Virtual data rooms are designed to present data in electronic form. They are often set up by divesting companies, investment bankers or companies specializing in divestitures or corporate sales that attract interest from companies from other locations. Rules that apply to physical data rooms apply to virtual data rooms as well.

Prospective purchasers are given passwords and permission to review the data for a specified time. Direct control is no longer possible. Prospective purchasers do not have the ability to measure and manipulate the data, as is possible on a work station in a data room. They can, however, make screen captures that could compromise licensed or partnered data.

Recommended Practice

There is a greater need for data protection in a virtual data room because direct control is no longer possible. Partner or licensed data should not be included in a virtual data room unless specific permission for its use has been granted by the partner or licensor.

The professional member, representing the prospective purchaser, should seek clarification, either verbally or through the terms of the virtual data room agreement, of any restrictions that apply to the data and whether the disclosing party has the right to include the data in the data room.

5.4 Backing-up Data Involved in Evaluation Purposes

A company receiving data being used temporarily for evaluation purposes has an obligation to return it and not keep a copy. It must therefore ensure that routine computer backups do not result in a copy of the data residing permanently on its computer system. If this has occurred, the duplicate data set must be deleted in accordance with data license restrictions and confidentiality agreements. As an alternative, an exception to the return or destroy obligation should be incorporated into the license and the confidentiality agreement to address the presence of such data in computer archives.

Recommended Practice

Evaluation data should be kept separate from the corporate archive data. Protocols for data back-up of evaluation data should be established.

5.5 Reviewing Farm-outs

This is an extension of the cases involving the interpretation or review of another company's licensed data wherein a longer term or ongoing arrangement evolves between the farmor and the farmee. Subsequent multiple reviews of the same data may not preserve the integrity of the data.

Recommended Practice

The farmee may not be entitled to interpret the farmor's licensed data and should license the data in order to have continued access.

5.6 Property Disposition

Licensed data is typically used to support an asset sale unless the license agreements forbid it. If the asset sale is completed; the purchaser is not entitled to the data and is not allowed "viewing rights". Partnered data can generally be included unless

disallowed by another agreement, such as a joint operating agreement, and as long as the seller does not retain a copy of the data and destroys all occurrences of the data.

Recommended Practice

Professional members should ensure that the rights of all the data owners are recognized and respected. Ownership rights cannot be subdivided to create a sale as this creates an unauthorized new license.

6 TYPICAL SCENARIOS AND IMPLICATIONS

The following scenarios are provided to illustrate the concepts and recommendations presented in this guideline.

Actual allowable use of geophysical data may be governed by agreements such as Joint Operating Agreements, Confidentiality Agreements and Area of Mutual Interest Agreements.

6.1 Asset Sale

An oil and gas company president informs a professional member, who is an employee of the firm, of negotiations for the sale of the company's lands and production facilities in a certain area. All of the company's seismic data relative to these assets is to be included in the sale. The seismic data includes proprietary data, partner proprietary data, as well as licensed spec or trade data, including a 3D survey which has been a key element in both exploratory and development wells. This survey was licensed from a company that was subsequently taken over by another company that refuses to license data in this general area.

How should the professional member proceed?

The professional member must explain to the president that the company cannot include the licensed data and any derivative products in the sale unless its license agreements allow it to do so. The company's interest in the partner proprietary data could be sold if the agreement between/among the partners allowed that and if all instances of the data are removed from the company's records. Seismic data ownership working interest percentages cannot be subdivided, as this creates a new license.

Since the company owning the 3D survey refuses to further license the data, the purchaser of the assets will have to consider acquiring a proprietary 3D survey if that is necessary to further develop the assets.

6.2 Farm-in Evaluation

Professional members working for a prospective farmee are looking at an opportunity to farm-in to a well. The prospect has been presented and they are given permission to stay and review the data, unsupervised, on the farmor's work station. The prospect is largely based on one key map. The professional members have been given permission to take a screen capture image of the map so that it can be shown to their senior management. One of the professional members reviews the EBDCIC (Extended Binary

Coded Decimal Interchange Code) headers and discovers that, although a few key lines are the farmor's proprietary data, licensed data is involved as well.

How should the professional member proceed?

In order to determine whether he or she can rightfully take the screen capture image, the professional member should seek clarification of data ownership status and any restrictions that may apply to the use or copying of the licensed data. While some licenses allow removal of sketches, permission must be obtained from the licensor of the licensed data before any data derived product (e.g., screen image) can be removed from the data room.

In order to maintain direct control, the farmor must ensure that the workstation is 'read-only', or ensure that the farmee is supervised in the data room, assuming the farmor's license allows the farmor to show licensed data or screen image to third parties. Since licensed data is involved in the prospect definition, rather than allowing a screen capture, a second presentation could be arranged with the farmee's senior management.

6.3 Data Room – Interpretation Option

Company A plans to divest some of its properties and retains an agent to manage the process and set up a data room. Company A believes that including all available geophysical data and the corresponding interpretations will achieve maximum value for the properties. The data includes proprietary, partner proprietary and licensed data. All of the data is on a work station in the data room. No one at Company A does a search of licenses or partner agreements.

A professional member employed by Company A instructs the agent's data room manager to prohibit the printing of maps or seismic data by any of the visitors to the data room. All visitors to the data room are required to sign a confidentiality agreement. The visitors are allowed to write notes and sketch their interpretation on maps that they bring into the data room. The number or length of visits is not restricted.

Professional members from Company B interpret the data over five sessions. They ask no questions about data types, licenses or any restrictions. They create their own horizon picks and map. Their map consists of a precise traced copy of part of a map taken from the computer screen that they had produced, including contour labels. The map that they brought into the data room included only public information such as well locations and land boundaries.

Did the parties conduct themselves appropriately?

Company A

Although confidentiality agreements were required, Company A should have checked, or instructed its agent to check, the licenses and agreements pertaining to the partner proprietary data and licensed data to ensure that interpretation by a third party (Company B, in this instance) was permitted. Lacking such permission from the data owners, Company A and its professional members would need to ensure that these data are removed from the data room.

The professional member of reviewing Company B should have enquired about the mix of licensed, partner proprietary and proprietary data and what activities were permitted by any relevant data license agreements. Even if hand sketch maps were permitted, that would not have included a precise traced copy of the computer screen map. Removing such a data derived product is not permitted under most licenses.

6.4 Data Room – Review Option

Prior to opening a data room, Company A undertakes a search of license and partner agreements and determines that a review of the licensed and partner proprietary data by third parties is allowed. A professional member of Company A instructs its agent to provide ‘read-only’ access on the computer workstation. The professional member also instructs the agent to limit workstation time to a single two hour session and to require confidentiality agreements to be signed by visitors to the data room. Since licensed trade data and partner proprietary data are present, the professional member instructs the agent to advise visitors that data copying is not allowed.

Professional members and representatives from Company C visit the data room and sign the confidentiality agreement. They create a sketch map depicting a geologic interpretation based on the maps already displayed on the workstation. Using a digital camera, a representative from Company C takes a photograph of the licensed seismic line displayed on the workstation. The representative then leaves, telling no one of the picture taking activity.

Did the parties conduct themselves appropriately?

Company A properly determined that a review was an allowed activity under the license and partner data agreements. The professional member made diligent efforts to limit the use of the data to that of a review. Confidentiality agreements were required and reviewing companies were to be notified of any data restrictions. Company A should also have instructed its agent to ensure that no digital images of the data and information were taken or transmitted.

By allowing their representative to take a copy (photo) of the licensed data, the professional members of Company C violated the confidentiality agreement that they signed for the privilege of attending the data room.