

The Ethics of Licensed Geophysical Data: The Data Owner's Investment, Rationale and Code of Practice

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Presentation Outline

- Introduction
- The geophysical industry
- Non-exclusive data ownership and licensing
- IAGC Model Geophysical Data Use Licenses – 2009
- Elements of the typical data use license agreement
- Examples of common areas of misunderstanding
- IAGC Industry Code of Practice



Introduction

- IAGC –The Voice of the Geophysical Industry
- The international trade association representing the geophysical industry
 - Government issues / engagement
 - Access issues, marine environment, data licensing
 - Standards and best practices
 - HSE, Safety manuals and alerts, guidelines and standards
 - Commercial health
 - Model contracts
 - Statements of Principles



The geophysical industry – primary business lines

- Geophysical data acquisition
 - Proprietary
 - Non-exclusive
- Geophysical data processing
 - Original processing
 - Advanced/specialized processing
 - Geological interpretation & studies
- Geophysical data ownership & licensing
 - Non-exclusive, multi-client or “spec” data
 - Acquired and owned by the geophysical company (data owner)
 - Intellectual property – like software, music, movies, etc.
 - Data owner licenses data to E&P companies at a fraction of the cost of proprietary acquisition



The geophysical industry – types of data and its uses

- Seismic surveys
 - 2-D, 3-D, 4-D, Wide/multi-azimuth
- Near surface, shallow hazard
- Gravity and magnetic
- Vertical seismic profiling (VSP)
- Electro-magnetic (EM)
- Other down hole surveys

The geophysical industry – Many Challenges

- Access to prospective acreage
- Supportive economic climate
- Fair and equitable contracting environment
- Recruiting and retaining skilled workforce
- Environmental limitations / restrictions
- Protection of intellectual property
- Etcetera...



Non-exclusive data ownership and licensing

Business Model

Contract (proprietary)

- Provide vessels or crews to acquire data for oil companies
- E&P Co. pays full cost of project (no risk to seismic company)
- **E&P Co. is data owner**
- Higher cost, cost not shared, pricing dependent on supply/demand of vessels/crews
- Primary model internationally

Non-Exclusive

- Seismic company bears all risk, pays cost of project (financial risk can be mitigated by pre-financing from customers)
- **Seismic company is data owner**
- Lower cost: E&P Co. purchase licenses to use the data at a fraction of project cost
- Seismic company promotes



Non-exclusive data ownership and licensing

- Common terms
 - Non-exclusive data
 - Multi-client data
 - “Spec” (speculative) data
- Which data?
 - Seismic surveys
 - Gravity and magnetic
 - Electro-magnetic (emerging)
- Data owner initiates and conducts survey – of common interest to the E&P industry
- Data made available to E&P industry for use
 - E&P company receives a restricted, non-transferrable license
 - License is granted pursuant to data license agreement
 - Intellectual property – ownership retained by data owner
- Risk is taken by the data owner
 - Even when E&P companies underwrite costs of surveys



Non-Exclusive Data – the benefits to E&P Industry

- Access to high quality data at a fraction of the cost
- Facilitates cost effective trend or regional prospecting with this high quality data
- Facilitates quick entry into areas
- Lowers economic hurdles for E&P companies
- Brings additional risk capital into E&P effort
 - Risk taken by data owners with their own capital
- Very favorable for resource manager (government)
 - Facilitates evaluation and promotes activity



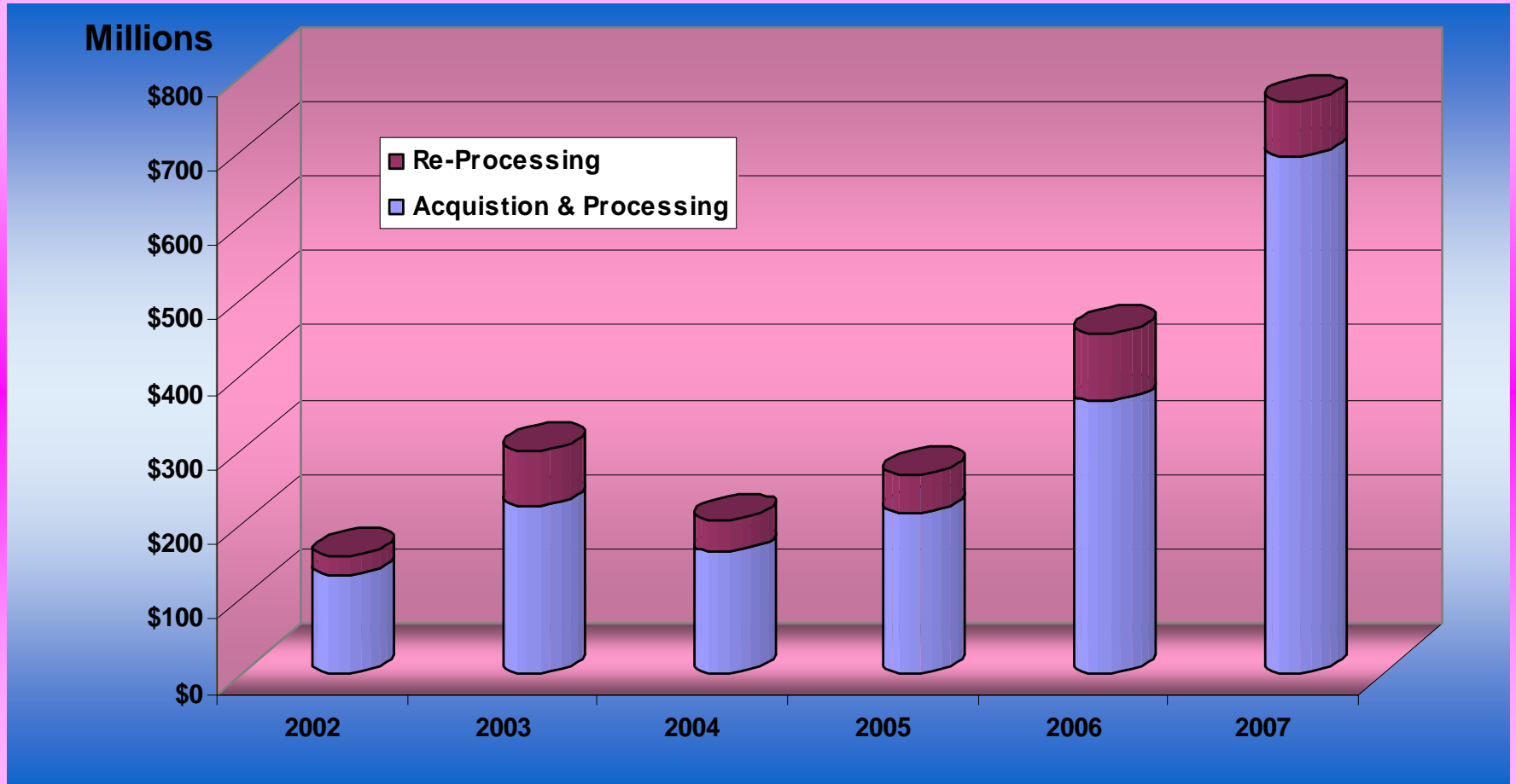
Non-Exclusive Data Licensing – History

- Small investment in non-exclusive (N/E) data until mid-1980s
- In mid-80s pioneers started pursuing this – US GOM, Gulf coast, North Sea
- E&P companies found prices attractive and survey design and data quality good – started asking for more
- Business model was developed and perfected over time
 - Estimates cost and prospective market over time
 - Risk weighted
 - Time value of money
 - Designed to ensure adequate shareholder return
- Scale of the investment is significant - \$764 million in US OCS in 2007. (Capacity limited more investment.)



Non-Exclusive Seismic Investment – 2002 thru 2007

US - GOM



Non-Exclusive Data Licensing: Threats to the Business Model

- Over investment or poor investment by data owners
- Excessive leveraging of E&P Co. purchasing power
- Geophysical companies in multiple business lines
- Retroactive changes by governments of data confidentiality periods
- Abuse of data ownership by licensees and data users
 - Theft of data
 - Violation of license terms
 - Assumption by licensee of rights not granted
 - Ignorance of ownership and license terms



Master Geophysical Data-Use License (Multiple Transactions)

aka – Model Data License Agreement (MLA)
Revised September 2003 /Updated January 2009



MLA – Drafting principles

- Keep language as simple as possible considering the complexity of the subject
- Protect data owner's interest
- Err on the side of the data owner
- Follow industry custom, where possible
- Address new products
- Written for use in licensing US OCS data
- Give licensee benefit of using licensed data by setting clear limits



MLA – 2009 versus 2003 version

- Added language to existing definitions as well as new definitions to clarify and strengthen Licensor's position
- Added language to protect Licensor from numerous Licensee Related Entities using the same data to explore without individual licenses
- Added new clause to ensure the Licensee ultimately responsible to Licensor for any use or disclosure of Data/Derivatives by its Related Entities or Service providers
- Added standard provisions for legal documents which were not included in 2003 version
- Developed and added Form of Confidentiality Agreements – Third Parties, Consultants, and Processors/Storage Contractors.



MLA – Licensor's Ownership / Duties

- Owns or has the right to license the Data
- Data and Derivatives are valuable intellectual property and are the sole property and proprietary information of Licensor
 - Licensee is only obtaining the right to utilize the data/derivatives
- Will retain the “original data” for agreed time
 - Licensee may obtain access subject to separate access or license fee
- May destroy “original data” after notice to Licensee



MLA – Licensee's Rights / Duties

- Has the non-exclusive right to use Data and Derivatives for internal use only
- Will keep Data and Derivatives strictly confidential
- Related Entities have same rights of usage so long as Related Entity does not competitively bid against Licensee.
- Must label Data and Derivatives on containers



MLA – Licensee's Rights / Duties

- Will not Show, Transfer or Dispose of or Allow access to Data or Derivatives except as specifically allowed
- May not Show Data or Derivatives via internet, without Licensor consent
- Third Parties, Consultants and Processors/Storage Contractors must sign Confidentiality Agreements and provide to Licensor
 - Licensee may show the data or derivatives to prospective acquirers or partners so long as what is shown is limited to the prospect under negotiation.



MLA – Terms Most Often Misunderstood

Data

Geophysical and geological information (regardless of the form or medium which it is displayed or stored), including interpretations prepared by or for Licensor, which is / are subject to a Supplement.

Derivative

All processed and reprocessed Data, whether produced by Licensee or by 3rd Party for Licensee



MLA – Terms Most Often Misunderstood

Related Entity – Any entity which is

- Wholly owned by Licensee (Licensee's subsidiary), or
- Wholly owns Licensee (Licensee's parent), or
- Is a result of an internal reorganization provided such reorganization shall not include entities formed after the Effective Date of the MLA to accomplish a statutory merger, consolidation, asset sale or purchase, stock sale or purchase or any other transaction with an entity that is not defined as a Related Entity as of effective date of MLA

Related Entities are to be listed on attachment to MLA and updated promptly



MLA – Terms Most Often Misunderstood

Show – To display or otherwise allow passive viewing by a permitted 3rd party

- For short periods of time
- Under supervision of by Licensee
- In secure environment

Secure Environment – Where a 3rd party may not

- Operate computer workstation
- Make copies or interpretations
- Remove copies or summaries
- Otherwise impair the intellectual property value of the Data



MLA – Terms Most Often Misunderstood

Third Party – any person or entity, other than Related Entities:

- Prospective Partners or Acquirers
- Consultant, Processor, Storage Company
- Other

Prospective Partner – Licensee may show data or derivatives if:

- Data relates to prospect under negotiation
- A confidentiality agreement is signed



MLA – Terms Most Often Misunderstood

Partner

A 3rd party contractually related to Licensee in a 3rd party business transaction

Third Party Business Transaction

Farm-in, farm-out, operating agreement, AMI, joint bidding agreement for the joint exploration/development of an area covered by Data



Elements of MLA Most Often Misunderstood – Examples

Licensed data is non-transferrable absent a transfer fee.

Example from a recent Federal Appeal court ruling:

Case involved 26,000 miles of seismic data developed by Data Owner. The data fell into 3 categories:

Category 1 Data – 15,745 miles of data that Data Owner licensed to O&G A before it merged into O&G B;

Category 2 Data – 775 miles of data that Data Owner licensed to O&G B and that its subsidiary had used;

Category 3 Data – 3,175 miles of Data owner's data – found in O&G B's possession during the discovery phase of the lawsuit, but for which O&G B had no license.

Aware of the pending merger, the Data Owner informed O&G A that O&G B would need to pay a transfer fee to have benefit of license agreements previously executed between O&G A and Data Owner. O&G A and O&G B took the position that as surviving corporation in their statutory merger, O&G B had the right to retain and use the data licensed by O&G A without paying a transfer fee.



Elements of MLA Most Often Misunderstood – Examples

Licensed data is non-transferrable absent a transfer fee.

Example from a recent Federal Appeal court ruling: (continued)

The federal district court found liability as to each category of data:

Category 1 Data – O&G A breached its license agreements with Data Owner by transferring the data to O&G B without prior approval and O&G B committed misappropriation by wrongfully transferring the data to its subsidiary after the merger.

Category 2 Data – O&G B had breached its license agreements with the Data Owner by transferring them to their subsidiary. Although O&G B did not engage in any oil and gas exploration, it believed that seismic data information could be shared with its subsidiary since that was where the data would be used.

Category 3 Data – O&G B “gained access to and possessed Data Owner data through improper means.” the jury was instructed that “improper means” include theft, bribery, misrepresentation, or breach or inducement of a breach of a duty to maintain secrecy or not to disclose a trade secret.

The 10th Circuit Court of Appeals affirmed the lower court ruling.



Elements of MLA Most Often Misunderstood – Examples

Licensed data is the property of the licensing geophysical data owner which survives any reprocessing, merging or enhancement of data.

Example:

O&G A bought O&G B. O&G B had licensed and reprocessed a certain dataset in a certain area. O&G A were not currently interested in that certain area, so they did not transfer the underlying licenses and made no comments as to the existence of the reprocessed dataset.

At a later date, O&G A decided to work that same certain area and wanted to license the area of the reprocessed dataset they had in their files.

The MLA between O&G B and Data Owner stated that once data licenses are terminated, all data and any reprocessed or derivative products must be destroyed.



Elements of MLA Most Often Misunderstood – Examples

Partner companies must each hold licenses for data used jointly in multi-company projects.

Example:

O&G A licensed a certain dataset from Data Owner and requested copies of the un-processed dataset. O&G A reprocessed the data and then provided it to Partner A.

Partner A was in the process of providing this reprocessed dataset to (potential) Partner B when Partner B – following their MLA guidelines – contacted the Data Owner to get clarification of underlying licensing requirements. It was determined that O&G A had not been granted permission to provide or Partner A to receive the dataset. Furthermore, Partner A did not have a license to all of the underlying data for the reprocessed data.

O&G A and Partner A were in breach of contract.



Elements of MLA Most Often Misunderstood – Examples

Data reviews are for QC and general data assessment, not for obtaining geological or exploration insights without licensing data.

Example:

O&G A asked for a QC review of a dataset. They brought Exploration VP to QC review and spent several hours reviewing the data. When it was noticed that they were taking notes on the location of amplitudes, the data review was terminated and the notes were confiscated. O&G A did 'place a bid' on the area for which they had QC'd the data. They did not license the data. The dataset reviewed was the only dataset for that area.

This was clearly an unacceptable act and was a 'theft' of the intellectual property.



Elements of MLA Most Often Misunderstood – Examples

Any consultants or third parties working with licensed data are bound by the same terms and conditions as licensees.

Example:

As more and more companies need to hire consultants and as consultants request work from a location other than the Licensee's premises, it is hard to assure the protection of the data information.

O&G A hired Consultant B to provide prospect generation services. O&G A and Consultant B asked to allow Consultant B to participate in a well, once a prospect was defined, Consultant B therefore would derive information with which to make informed financial decisions without obtaining a license to the data.

While this situation was expressly prohibited in the MLA and permission was denied in writing, it happened.



Elements of MLA Most Often Misunderstood – Examples

Licensed data may not be published in any form without the written permission of the data owner.

Example:

Data owner designed an ad for a publication. As part of the ad, there were several maps that compared pay and non-pay amplitudes. The O&G company recognized the maps as being their prospect and was able to drill from that ad without licensing the data – they even mentioned this in an article.

In this case the O&G company did nothing wrong – as it was published information by the Data owner. However, it does illustrate why the Data owner must protect their property.



Elements of MLA Most Often Misunderstood – Examples

Licensee of data has the right to use Data and Derivatives for internal use only and must keep data and derivatives strictly confidential.

Example:

An employee of O&G A quit the company several months ago and later got a job with O&G B. Recently, O&G A was notified by O&G B that an internal audit revealed that the employee had brought coherency cube volumes over two GOM prospects with him to O&G B. O&G A retrieved the two volumes and have destroyed the information. They claim that they could not confirm whose original data was involved since the data was in coherency cube form. However, they assume that it was multi-client 3D data (there are multiple MC volumes over the two prospect areas).

O&G A and B have discussed the matter with the employee. He has been threatened with legal action from O&G A if he does this again. The individual claimed he did not realize that the coherency cubes (which he derived from MC 3D data) was protected. The individual clearly should have known that the derivative product belonged to O&G A, at a minimum, and likely knew that it was protected by a license agreement as well. To try and prevent this from occurring in the future, O&G A is investigating technology solutions (watermarking, password protected downloads).

An example that license violations can and are happening within the industry today.



Industry Code of Practice For the Use of Licensed Geophysical Data

- Licensed data is the property of the licensing geophysical data owner. This ownership transcends and survives any reprocessing, merging, or enhancement of the data.
- Terms of data use are bound by a Data License Agreement and Data Licenses are not transferable.
- Data may only be shown to third parties under the terms of the Data License Agreement.
- Partner companies must each hold licenses for data used jointly in multi-company projects.
- Data reviews are for QC and general data assessment, not for obtaining geological or exploration insights without licensing data.
- 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.



Summary

- Know your ownership: proprietary or licensed?
 - Companies should ensure ownership transparency
 - If neither, call the data owner
- If licensed data
 - Review your license agreement
 - They generally vary somewhat from model agreements
 - Provisions of your license agreement prevail
 - If a right was not explicitly granted in your license agreement, don't assume you have it. It is reserved by the data owner.
 - Be cautious about data owners' rights and your obligations
 - Third party viewing (farm-outs, exploration agreements, data rooms)
 - Consultants working your data
 - Derivative products – especially sharing among partners
 - Property sales
 - Mergers and acquisition companies
 - If license agreement is silent about something you want to do, call the data owner.



International Association of Geophysical Contractors

