



8 October 2020

Andy Samuel
Oil and Gas Authority
AB1 Building
48 Huntly Street
Aberdeen
AB10 1SH

CC: Scott Robertson, Nick Richardson

RE: Reporting and Disclosure of Information and Samples: Supplemental Guidance on the disclosure of certain Geophysical Survey Data (created or acquired under an Exploration Licence pre-2018)

Dear Dr Samuel,

We write to you in relation to the recent release of the consultation response and final supplemental guidance on the disclosure of certain Geophysical Survey Data created or acquired under Exploration Licence pre-2018.

Given the detailed representations we have made and which the OGA has largely ignored, it will come as no surprise to you that we, and our members, are deeply concerned by the guidance which has been issued and its possible infringement of our members' legal rights. The purpose of this letter is to set out the concerns of our members and seek urgent clarification from you in relation to certain matters which our members consider are unclear and/or ambiguous. Subject to such clarification, we wish to make it clear that we expressly reserve all of our rights.

The 2003 Agreement

As you know, we have fundamentally disagreed with the OGA's assertion that the 2003 Agreement between the IAGC and, what was at that time, the Department for Trade and Industry (DTI) was not legally binding, and further disagree with your characterization of that agreement as a 'voluntary arrangement', as per the consultation response. For the avoidance of doubt, we maintain our position as previously articulated. We wish to reiterate that significant investment decisions were taken by our members for many years, and up to the present day, in reliance upon the clear terms of the 2003 Agreement.

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The changes proposed and now finalized have, as anticipated, had a material impact on the level of interest in commercial data access, and are likely to impact the acquisition of new surveys, as operators and interested parties spend time on reviewing what is to be made freely available. The most likely consequence of this action is a drop in the value of exploration and for acquired data volumes to fall. Such consequences are exacerbated by the unprecedented times the industry is now working within, due to the global COVID-19 pandemic and drop in oil price, which has reduced exploration budgets and investment significantly.

Final guidance

The IAGC understands that data may be requested by third parties via the OGA, with data then being supplied to the OGA upon request to data owners for release via the National Data Repository (NDR).

Clause 32 of the guidance identifies that data within confidentiality periods may be subject to existing contractual arrangements. However, it is also the case that data outside of those confidentiality periods may be subject to existing contractual arrangements, and Members are concerned regarding the impact upon any arrangements where the data may otherwise be technically available through the National Data Repository (NDR).

It is the IAGC's understanding that the OGA does not have the ability to request that released data be provided to requestees directly; in addition, the OGA does not have the ability to impose commercial or contractual terms on the agreements between Multiclient companies and third parties for data licensing in or out of the confidentiality period. Please confirm that this is also your understanding. As per our initial consultation response relating to pre-2018 data disclosure guidance¹, the IAGC opposes any restriction on uplift fees for "released data" and consider this to be outside the remit of the OGA.

We would also highlight, that the post-2017 guidance does not contain a number of elements which we are concerned about within the pre-2018 guidance, i.e. it does not impose commercial or contractual restrictions on how we license the data in or out of the confidentiality period. We would therefore like to highlight that the published post-2017 guidance matches our understanding of the reporting and disclosure regulations with no restrictions on how geophysical companies and data owners license the data in or out of the confidentiality period. Similarly, we request the OGA clarify that the pre-2018 guidance will not impose restrictions on the commercial or contractual licensing of data in or out of the confidentiality period.

¹ IAGC consultation response - Reporting and Disclosure of Information and Samples: Supplemental Guidance on the Disclosure of Certain Geophysical Survey Data (Created or Acquired under an Exploration Licence Pre-2018), 27th April 2019

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Clarity and Transparency

There are a number of areas within the guidance where IAGC Members have concerns over a lack of clarity regarding the wording, and particularly where a need for greater definition is evident.

"Internal purposes"

The primary area of concern is that there is no definition of 'internal purposes', noted within Appendix 2, paragraph 5 of the guidance² in relation to the potential use of data being released. This leaves a great deal of uncertainty which is compounded by the NDR User Agreement. Although that agreement is stated to set out "the OGA's terms and conditions for fair and proper use of the NDR system and for use of such published data obtained from the NDR", it makes no reference to the term 'internal purposes', and the "Use of Public Information" sections of the NDR Agreement provide insufficient clarity and protection to our members in this regard. Indeed, we consider that section 17 of the NDR User Agreement serves only to confuse matters further.

The NDR User Agreement needs to clearly define what the data can and cannot be used for - any ambiguity or uncertainty could easily result in the misuse of the data, to the detriment of our members. We can see no good reason why a clear definition of "internal purposes" cannot be inserted - this would be of benefit to all parties. We are concerned that, without a clear definition, even apparent 'internal purposes' have commercial aspects to them in terms of guiding development and investment decisions. Our primary concern remains that companies would access the data for the purposes of reprocessing and making commercial gain from that Value-Added Data. We remind you that the IAGC had previously raised this issue with you at our meeting with you on 26th November 2019.

Members have already started to receive requests from companies, who by all accounts have variable interpretations of the guidance. It is also clear that some are interpreting the guidance in such a way that allows them to make commercial gain out of accessing legacy data. Accordingly, urgent clarification is required.

Value-Added Data

The final guidance states that "[t]he OGA does not propose that *Value Added Data* derived from *Pre-2018 Survey Data* will generally be subject to publication." Members require greater clarity regarding 'Value Added Data'. For example, if the data set subject to the expiry of a confidentiality term is one element of a 4D Processing, then is that data set exempt from release now that it forms part of Value-Added Data? Could the OGA clarify the circumstances under which

² '... should be no charges for anything additional (e.g. copyright charges) if the data is to be used or reprocessed by that other party for their **internal purposes** such as considering whether to apply for an OGA Licence or as an analogue for their existing prospects; this will be different if the intent of reprocessing is to create new products for sale.'

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that may change, noting that the term ‘generally’ implies there will be circumstances under which data may be published, and that the OGA indicates it also may request Value-Added Data for ‘evaluation’ purposes.

GDPR and other issues

A further general concern of IAGC Members relates to the need for greater transparency regarding who may be accessing the data and to what end. As mentioned above, we have real concerns over what may constitute ‘internal purposes’, and the need to participate fully in any potential data access that leads to what are more clearly ‘commercial’ uses, such as the sale of Value-Added Data.

Our understanding of the provisions of the General Data Protection Regulation (GDPR), is that they relate to the personal data of *individuals*, who in the case of accessing data, are likely doing so on behalf of organizations with varied interests, including commercial interests. As highlighted in our letter to the OGA on 7th February 2020, the use of a consent statement allowing the user to be contacted by the data owner would enable greater control of what uses are being made of the data, as the OGA has highlighted that it will not be taking an active role in monitoring usage³. Further, the ability to share details about a requesting *organisation* should be considered. The IAGC would also like to query the extent to which any Freedom of Information (FoI) request could provide information about the organizations requesting data. We also wish to query the extent to which there may be security issues to consider relating to other States accessing the data.

The National Data Repository (NDR) User Agreement states that ‘the OGA is not responsible for any losses arising from any Entitlement, including any unauthorised use of Information.’ Without information about the organisations accessing the data, there is a lack of remedy should data owners feel that data is being used for commercial purposes.

GDPR issues are likely to arise in the release of reports that are now required to accompany data, including survey QC reports and final processing reports which may contain the names, job titles and potentially other personal details of third-party personnel. The use of any personal information within reports will not have been discussed in relation to any potential publication of those reports.

Practicality

According to the guidance, data owners have 4 weeks from receipt of a request for the release of data to provide such. The ability of Member companies to respond within four weeks to data requests is severely limited, depending largely on the number of requests, and the size of the relevant dataset(s) being requested. There are limitations on the resources

³ OGA letter to IAGC, dated 29th May 2020.

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that can be allocated to data collation, formatting and copying per the requirements of Appendix 1 to the guidance, and those resources have associated costs which extend beyond the simple provision of media on which to supply data. It is therefore unclear what 'industry standard Copy Charges' are and are not in this context.

Further, in relation to the data formats listed in Appendix 1, it is unclear whether the data formats listed are applicable to legacy data. Formats such as SEG-D 3.1 and SEG-Y rev 2 have only existed since 2015 and 2017 respectively. Members would not anticipate having to reformat data to the latest formats, as this also entails additional effort which would be considered chargeable.

Summary

The IAGC has, in good faith, continued to engage with the OGA during all stages of the data disclosure consultation in order to discuss the developing guidance and highlight areas of concern to our Members, and that we believe do not necessarily have the potential to result in the intended outcomes in pursuit of the MER goal. In preparing this statement, we have liaised closely with our Members to understand and present outstanding concerns, now that the data disclosure guidance has been issued in its final form.

We very much hope that you will engage with us as soon as possible in constructive exchange to address the legitimate concerns raised in this letter and the IAGC and representatives of the Member companies would welcome any chance to meet with the OGA in order to discuss the points fully.

In the meantime, Member companies are clearly at liberty to act as they choose, based on any internal or external counsel they may receive. This may include refraining from releasing any datasets until such time the OGA is able to provide a response that suitably clarifies the points raised herein.

We look forward to hearing from you at your earliest convenience.

Sincerely,

A handwritten signature in blue ink that reads "Nikki C. Martin".

Nikki Martin
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