



Treatment of Geophysical Data as a result of M&A, CCAA or Bankruptcy

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You are in a “Process” Now What?

Types of Processes

- Sale of Company (Outright Sale or Merger) “Change of Control”
- Sale of Company with a “Spin-Out”
- Sale of Assets
- Farm-Out
- CCAA
- Receivership/Bankruptcy

Data Types

Type of Data Determines how it is affected in the “process”

Types of Data

- Proprietary 100%
- Proprietary Partner Operated
- Proprietary Non Operated
- “Trade” or Licensed Data
- Non Documented Data

Data Types

- For the purpose of the Process you are in what is seismic data being deemed to be?
 - An asset which can be bought and sold
 - A liability
 - Property
 - Intellectual Property
 - Confidential Information subject to copyright law
 - Trade secret / competitive asset
 - A hybrid of the above
- For the purpose of the Process you are in what is seismic data being used for?
 - Reserve estimates; Canadian Oil and Gas Evaluation Handbook (COGEH) SPEE
 - Data rooms for M&A processes
 - Revenue generation; licensing
 - Leverage in negotiations
- **Derivative products of seismic data must also be treated as seismic data and are subject to the same terms, conditions, restrictions and privileges as the seismic data they are derived from**

Process Types

Regardless of “process” contracts are king

Outright Sale of Company

- Proprietary 100% - Data is freely transferrable
- Partner Operated – Their data/interest is transferrable (assuming no other copies)
- Proprietary Non Operated – data/interest is transferrable
- “Trade” or Licensed Data – Data licenses are transferrable but may have “Transfer Fee” or be subject to specific data contracts
- Non Documented Data – Without clear lineage data should be destroyed

APEGA Practice Standards “Guideline for Ethical Use of Geophysical Data” May 2010 dictates that in all instances data contracts are the determining factor in deciding how data is to be addressed. “What is not expressly permitted is prohibited”

Process Types

Outright Sale with a “Spin-Out”

- Proprietary 100% - Data is free to assign licenses/ownership or divide interest
- Proprietary Operated – The interest must be assigned to one of the entities (assuming no other copies remain)
- Proprietary Non Operated – Interest must be assigned
- “Trade” or Licensed Data – Data licenses are not transferrable
- Non Documented Data – Without clear lineage data should be destroyed

Process Types

Regardless of “process” contracts are king

Sale of Assets

- Proprietary 100% - Data or License can be transferred
- Partner Operated – Their data/interest can transferred but partner must be compensated (assuming no other copies)
- Proprietary Non Operated – same as above
- “Trade” or Licensed Data – No Data licenses are transferrable
- Non Documented Data – Without clear lineage data should be destroyed

○ At no time does licensed data accompany a transfer of assets unless approval is granted by all stakeholders

Process Types

Regardless of “process” contracts are king

Farm Out

- Proprietary 100% - Data or License can be transferred
- Partner Operated – Data license can be granted but requires partner approval and partner must be compensated.
- Proprietary Non Operated – Approvals must be granted and all partners must be compensated
- “Trade” or Licensed Data – No Data licenses can be granted
- Non Documented Data – Without clear lineage data should be destroyed

Process Types

Regardless of “process” contracts are king

CCAA

Definition: CCAA is a remedy available whereby companies are granted a “Stay” and given the opportunity to restructure their affairs through a “Plan of Arrangement” in the hopes of avoiding receivership and bankruptcy

In practice it means that a company’s debts are put on hold for a period of time so that the company can attempt to restructure the entity/debts/obligations and continue on.

During this period all rights are protected.

Process Types

Regardless of “process” contracts are king

CCAA

- If the company held valid data licenses before their data licenses are protected during this process
- “Business as usual”

Disputes can arise where contract law and property rights clash with the Bankruptcy and Insolvency Act but to date this has not been litigated

Process Types

Regardless of “process” contracts are king

Receivership/Bankruptcy

Definition: A remedy available to secured creditors to recover amounts outstanding in the event a company defaults on loan obligations

In practice it means that a company can no longer pay its bills and the creditors have the right to sell assets in order to recover monies owed.

During this period data may become an asset and subject to sale

Data Types

Type of Data Determines how it is affected in the “process”

Receivership/Bankruptcy

- Proprietary 100% - May be given/sold by the court appointed receiver
- Proprietary Partner Operated – Their interest can be sold
- Proprietary Non Operated -
- “Trade” or Licensed Data – Can not be transferred unless approved by data owner
- Non Documented Data – must be destroyed

If You Go into a Process What Do You Do?

Step 1 – Protect the Data

Data is a valuable asset and is often misunderstood, given away or destroyed

Step 2 – Read the Contracts

Review license agreements, JOA's, JV Agreements, Unitization Agreements

Step 3 – Protect the Partners

If there are partners on the data their interests must be taken into account

Step 4 – Acquire Approvals

Get the approval of the data owner before putting data into a data room, transferring licenses or

Pitfalls

- Common pitfalls
 - Transferring Licensed data in an partial / asset sale
 - Transferring Joint Proprietary Data in the form of a license without partner approval
 - Transferring Licensed data, especially that subject to a transfer fee without understanding if prohibitions exist within the contract
 - In the case of multiple transactions transferring data in the “wrong order”
- Due to lack of knowledge of the classes of seismic data potential revenue is often lost and problems are caused in the receivership process
 - Transferring proprietary rights when a license would suffice for a sale of an asset(s); specific to 100% proprietary seismic
 - Transferring all data when only some would be required; seismic data not essential to an asset sale could licensed until be sold as a separate asset
 - Refusing to license data owned by a company in receivership



Thank You

Any Questions?