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NEW GUIDELINES ON LIBERALISATION OF ACQUISITION AND PRODUCTION OF GEOSPATIAL DATA

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Introduction

On 15 February 2021, the Department of Science and Technology (DST) issued the 'Guidelines for acquiring and producing Geospatial Data and Geo-spatial Data services including Maps' (Guidelines). Acknowledging the benefits of availability of geospatial data and modern mapping technologies, the Guidelines seek to do away with the prior approvals, licenses and other restrictions on the collection, generation, preparation, dissemination, storage, publication, updating and/or digitization of geospatial data and maps in India.

Background

The extant legal framework relating to digital maps and geospatial data is fragmented across the following policies / guidelines:

- 'National Map Policy, 2005' (NMP) and the 'Guidelines for Implementing National Map Policy' (NMP Guidelines) issued by the Survey of India (SoI), which is the National Survey and Mapping Organization under the DST. In terms of the NMP Guidelines, the distribution of digital data for mapping was made subject to the following licenses issued through the Map Transaction Registry (MTR): (a) digital licence; (b) publishing licence; (c) internet licence; (d) media licence; and (e) value addition licence.
- 'National Data Sharing and Accessibility Policy, 2012' (NDSAP) issued by the DST on 17 March 2012. Though the NDSAP is primarily aimed at promoting the accessibility of data to the public, it defines the term 'geospatial data' as "all data which is geographically referenced". Geospatial data is further described under the NDSAP as data that "consists primarily of satellite data, maps, etc."

Key Features of the Guidelines

The Guidelines are aimed at liberalisation of acquisition and production of geospatial data and geospatial data services including maps in India. The key features of the Guidelines are as below:

1. **Applicability:** The Guidelines are applicable to geospatial data, maps, products, solutions and services offered by government agencies, autonomous bodies,

academic and research institutions, private organizations, non-governmental organizations and individuals.

2. Definition of 'Geospatial Data': The Guidelines provide a restrictive and narrow definition of 'geospatial data' (in contrast to the erstwhile definition under the NDSAP). Geospatial data has been defined to mean positional data which could be in the form of images, videos, vectors, etc. in digitized or non-digitized form or web-services. Similarly, the Guidelines further define 'maps' and 'geospatial technology' in specific terms. Additionally, the Guidelines set out certain threshold values for spatial accuracy, gravity anomaly, and vertical accuracy for the maps / geospatial data.
3. Exemption from prior approvals, licences, etc.: In contrast to the NMP Guidelines, the present Guidelines provide that there shall be no requirement for prior approval, security clearance, license or any other restrictions on the collection, generation, preparation, dissemination, storage, publication, updating and/or digitization of geospatial data and maps within India (subject to the 'negative lists' as described below). The Guidelines also envisage a self-certification requirement.
4. Negative Lists: The Guidelines authorize the DST to notify a list of 'sensitive attributes' in the 'negative lists'. Acquisition and/or use of such attributes in the negative list would be subject to the regulations of the DST, as may be passed. Such negative lists may include certain attributes which are prohibited from being marked on any map. Any issues arising out of such lists shall be decided by Geospatial Data Promotion and Development Committee, which is to be constituted by the DST.
5. Options for 'Indian Entities':
 - An 'Indian Entity' has been defined under the Guidelines as '*any Indian citizen, Government entities, Societies registered under applicable statutes, statutory bodies, Autonomous Institutions of the Government, or any Indian company or Indian LLP owned by resident Indian citizens or any Indian company or Indian LLP controlled by resident Indian citizens (as defined in the Explanation to Rule 23 of the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019)*'.
 - Indian Entities are permitted to acquire, collect, generate, prepare, disseminate, store, share, publish, distribute, update, digitize and/or create geospatial data, including maps, of any spatial accuracy within the territory of India by using any geospatial technology, subject to the negative lists.
 - Only Indian Entities would have access to Indian ground stations, their data and augmentation services for real time positioning and ground truthing/verification without any restrictions.
 - Only Indian Entities are permitted to conduct terrestrial mobile mapping survey, street view survey and surveying in Indian territorial waters.
 - Only Indian Entities are permitted to create and/or own maps / geospatial data of spatial accuracy / value finer than the threshold value. The same must be stored and processed only in India.

6. Options for foreign companies: Foreign companies and foreign owned / controlled Indian companies can license the digital maps / geospatial data of spatial accuracy / value finer than the threshold value from Indian Entities only for the purpose of serving their customers in India. Such access can be made available by the Indian Entities only through Application Programming Interfaces (APIs) which do not allow maps / geospatial data to pass through the foreign company or its servers.

Comment

While the Guidelines do not expressly supersede the earlier NMP Guidelines, they evidently bring about significant changes in the acquisition and/or use of geospatial data. In terms of the Guidelines, the DST has directed the SoI and other governmental agencies to take immediate measures to simplify procedures, do away with the various forms/licenses and use modern techniques such as cloud, open APIs, etc. to make the data accessible.

There are, however, restrictions on cross-border transfer of geospatial data under the Guidelines. Such data must be stored and processed only in India, even if the same is licensed to a foreign company by an authorized Indian Entity. Other relevant laws pertaining to cross-border data transfers are captured under the Information Technology Act, 2000 (IT Act) and the rules framed thereunder which require that sensitive personal data or information may be transferred to an entity outside India if such entity ensures the same level of data protection under the IT Act. It is, however, pertinent to note that geospatial data is not included in the definition of 'sensitive personal data or information' under the IT Act, and the interplay between the two frameworks will have to be seen.

These changes could certainly facilitate the ease of doing business and promote innovation with respect to geospatial data and technologies / services utilising the same as the use cases for digital mapping have increased manifold in the recent years. On the other hand, it will be interesting to see how the operations of foreign service providers will be impacted by the Guidelines.

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