

Regulatory taking without compensation is not justified!

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By Greg Bohnert, Freelance Writer

and

Paul Einarsson, COO and Chairman, GSI

The head of a Calgary based seismic company is questioning the motivation behind regulations of offshore agencies which require the submission of seismic data in order to conduct surveys offshore Canada.

COO and Chairman of [Geophysical Service Incorporated](#) Paul Einarsson's position centers on the company's intellectual property being used by governments and government agencies in Newfoundland and Labrador and Nova Scotia to promote exploration without paying for it. The data is normally licensed to GSI customers.

But GSI maintains the release and disclosure of the data violates its intellectual property rights and is interfering with its contractual relations with clients.

Geophysical Service Incorporated is the largest owner and largest creator of marine seismic data in Canada.

In Nova Scotia seismic data has been submitted to the provincial regulator during three decades of work offshore.

In simple terms the government rationalizes the collection of the data necessary for safety and environmental concerns, as well as the management of offshore oil and gas resources.

But questions should be raised about regulatory taking of intellectual property which means that governments can exercise the right to use and disclose the data for free.

Einarsson in fact believes this is the underlying purpose of the regulations.

Government can sidestep paying for the intellectual property that is normally licensed to customers. This is what is happening in Nova Scotia and Newfoundland and Labrador.

GSI has launched legal action against the CNSOPB and the Attorney General of Nova Scotia, and the Attorney General of Canada.

Geophysical Service Incorporated has applied for a Nova Scotia Supreme Court order declaring that the board's demands that the company provide it with all the records of non-exclusive seismic survey work it has done off Nova Scotia are unlawful and not authorized. The application questions whether the CNOSPB has the statutory authority to demand the seismic data in the first place.

[The case went before the Nova Scotia Supreme court on November 26th 2013.](#)

Paul Einarsson is challenging the validity of the regulations which in reality have destroyed the value of the intellectual property GSI has created.

Meantime, The Canada Nova Scotia Offshore Petroleum Board argues that the data is collected under the regulations as part of the conditions and requirements to obtain work permits. And that the collection of this data is valid.

This is something that oil and gas companies are required to do but Einarsson questions the need for a seismic company to be treated in the same fashion. GSI has created its own intellectual property, much like computer software or a painting.

There is a difference in the regulations concerning work permits that do not apply to GSI but rather to oil and gas companies, which do entitle the board to work products like seismic data.

This is often the case when work commitment bids by oil companies, as opposed to a cash bid, entitle the boards to the "work products" created by oil companies like seismic data.

But in the case of GSI it makes no work commitment, gets no lease, and therefore receives nothing in return for the use of its data by the government.

This convenient confusion between oil company work commitment data and GSI's data amounts to expropriation without compensation.

Einarsson's opinion is that the board adds nothing to the safety or environmental concerns that are not already covered in other laws and by other federal agencies. He further argues this kind of expropriation is not authorized nor was it contemplated as a purpose under the legislation, making the regulations invalid.

He frames the question this way....in order for Microsoft to register its copyright, or Coke to patent its formula does the government take its software or produced coke products and use them freely without paying for them, or release it to other companies for them to use all because the government has a desire to promote?

But this is basically what the regulations apparently enable the governments of Nova Scotia and of Newfoundland and Labrador to do.

The Canada and Newfoundland Offshore Petroleum Board requires that seismic data obtained offshore has to be submitted as part of expensive geophysical permits to do the work. The board argues that under the terms of these agreements the data would be protected for a period of confidentiality of ten years.

After that the data can be freely distributed into the public domain, according to the offshore regulators.

Einarsson contends they again conveniently overlook that they are in Canada and that federal laws and other laws apply such as Copyright, expropriation, and common laws of property ownership.

It is a different but similar situation however the result is the same.

The government is using GSI's intellectual property first without a license and without paying fees, and second to promote the offshore for free and for economic gain in the form of taxes, royalties and investment by oil and gas companies. For GSI there is no benefit or compensation paid for the use of this seismic data and the only purpose GSI had in investing in this data was to license it. The actions of the boards are totally contrary to the purpose the data was created for.

For that reason Paul Einarsson believes this regulatory taking by government is simply wrong, using someone's creation for free, without paying for it, something any honest hard working Canadian can understand.

The question is why can't governments?