

**14<sup>th</sup> CHRIS Meeting, Shanghai, China, 15-17 August 2002****PRO 15 – IHO MULTINATIONAL AGREEMENT FOR USE OF SMALL-SCALE DATA**

Submitted by : USA (WORK PROGRAMME 3)

Reference: IHO Publication M-3-Resolutions of the International Hydrographic Organization

**PROPOSAL** (see IHB comments on following page)

The Conference is requested to agree that the International Hydrographic Organization (IHO) enhance the use of data at small-scales by implementing a centralized multinational agreement. This agreement would be held at the International Hydrographic Bureau in Monaco and be an alternative to the often complex bilateral negotiations required for use of data under IHO Technical Resolution A 3.4. Signatories to this multinational agreement would retain their intellectual property rights for their data and information but agree through the granting of a “free license” to the gratis use of their geo-spatial data at small scales (defined as 1:500,000 scale or smaller). Through this document, signatory Hydrographic Offices would benefit from agreement to a “free license” which would allow each of the signatory Hydrographic Offices to recompile the data of any other signatory Hydrographic Office into small-scale products without need for formal bilateral negotiations.

**EXPLANATORY NOTE**

At the XV<sup>th</sup> International Hydrographic Conference of IHO Member States, the IHO Technical Resolution A 3.4 was revised to redefine provisions for exchange and reproduction of nautical products. Resolution A-3.4 now recognizes that “Member States have rights to the products of their Hydrographic Offices under national and international law.” It was further agreed that negotiation of bilateral arrangements should guide future cooperation amongst IHO Member States, however for small-scale products such negotiations can involve many nations, are complex and can involve a significant drain on resources.

Small scale maps and charts are essential for global scientific research and for general presentation of the geography of earth for a wide variety of important purposes, e.g., education of children or indexing of large-scale nautical charts. Studies such as those associated with global warming, tidal modeling, hazardous spill projection, coral reef studies, etc. are of extreme importance to humanity and require the availability of small-scale chart products. These are not typically high volume sale items and may not warrant the cost of widespread bilateral negotiations between IHO Member States.

It is therefore proposed that IHO develop an international agreement as an alternative to bilateral negotiations between Member States. Under the agreement, signatory parties would grant a free license for publicly available, nationally produced chart products at small-scales (1:500,000 scale or smaller). Signatory parties would avoid the need for widespread bilateral negotiations for release of intellectual property rights.

It should be noted that there is no obligation for any Member State to agree to such a license. This proposal is only to provide an option to simplify the issuance of small-scale IHO Member State products. It is suggested that a Member of the Directing Committee should lead the development of such an agreement with support from the IHO Legal Advisory Committee.

It is noteworthy that the IHO East Asia Hydrographic Commission has recognized the need for a better approach to provide for small-scale charts and has already implemented a regional arrangement. The EAHC arrangement does not provide for electronic charts but it is proposed that this agreement include electronic chart data for which a standard display as defined in the ECDIS performance standard comprises data compiled for display at 1:500,000 scale or smaller. Although a user may scale up or down from the basic scale of 1:500,000, the compilation scale for the standard display must not be larger than 1:500,000 scale. The decision to participate or not in the proposed central agreement would remain with the individual Hydrographic Offices that hold the relevant intellectual property rights.

In order to publish an appropriate document that implements this proposal, the IHB proposes to task the LAC to draft an appropriate "IHO Member States Agreement" to be deposited at the IHB.

### **IHB COMMENTS**

The spirit of the proposal is clearly aimed at drastically reducing the bureaucracy related to licensing the use of hydrographic data contained in small-scale charts.

### **MEMBER STATES' COMMENTS**

#### **AUSTRALIA**

Australia notes in particular that an underlying principle of this PRO 15 is that small scale data will be effectively free of charge and will be the subject of a "common licence" that provides standard terms of use. It is Australia's experience that such "common licence" arrangements cannot take into account the diverse concerns and safeguards required by individual governments regarding appropriate control over the use and the users of their data. This means that relatively few, if any, Member States would actually make use of such a licence.

Unless a Member State intends that all its data will be made available free and with little or no restriction, then it will be necessary at some stage to engage in bi-lateral arrangements in accordance with TR A3.4 (copyright), and TR B5.3 and M-4 (INT chart scheme) in order to address the use of larger scale data. When this occurs, any universal arrangements for small-scale data may well conflict with national requirements for the treatment of larger scale data.

It is Australia's view that licensing the use of data should be considered holistically from the outset, regardless of scale, and be guided by the extant IHO guidance (TR A3.4 and TR B5.3 and M-4). Separate "universal" agreements will only lead to subsequent confusion, disputation and disharmony.

If this proposal is however agreed by the Conference, it is Australia's view that it is inappropriate to task the LAC with drawing up a suitable "standard" agreement. To do so will incur considerable expense on those Member States who participate in the LAC because the members of the LAC are funded directly by their respective governments. If work is to proceed, it should be funded either by those Member States supporting the proposal (and presumably prepared to use the standard agreement) or centrally by the IHO.

#### **BRAZIL**

Brazil agrees with the proposal submitted by USA.

#### **CANADA**

Canada does not support this proposal.

**CHILE**

Chile is giving careful consideration to this proposal as it might have some legal national implications due to the fact that paragraph five of the Explanatory Note clearly state that: “ it is proposed that this agreement include electronic chart data for which a standard display as defined in the ECDIS performance standard comprises data compiled for display at 1:500,000 scale or smaller.”

**CROATIA**

Croatia fully supports this proposal

**FINLAND**

NOTE: Finland believes that the issues contained in some of the proposals do not need to be decided at the Conference. These are PROs 12, 13, 14 and 15. They would be processed more efficiently by an appropriate Technical Committee or by the IHB by Circular Letter.

Supported.

Please notice that this proposal also covers medium-scale charts, because the IHO Publication M-4 specifies the small-scale charts to be at scales 1:2 Million or smaller.

Refer also to the proposed additional WEND rules discussed at the 6<sup>th</sup> WEND Committee and at the 13<sup>th</sup> CHRIS Committee (*Documents: WEND-6-8A, CHRIS-13-4B*).

(See Note above).

**FRANCE**

Not in favour.

France would not, in principle, be opposed to the proposal insofar as the data concerned, for the most part, has already been paid royalties at larger scales. However, such a measure should include a supplementary payment to take into account the compilation and cartographic work carried out by the chart producer country.

In order to simplify the negotiation work (difficulty in listing small scale data and also the fact that the data is old and even of poor quality) and to take into account the fact that royalties are paid for the largest scales, a chart producer could be paid only for the cartographic and compilation work undertaken in an international framework, thus recognized by the IHO. This is what France applies in the bilateral agreements that it has entered into, as part of the implementation of Technical Resolution A3.4.

**GREECE**

HNHS supports this proposal.

**INDIA**

The proposal is supported by India.

## ITALY

Italy rejects the proposal because no advantages can derive to the HOs versus its burdensome implications.

## JAPAN

Japan thinks that this proposal has possibility to encourage developing small scale ENC's and has possibility to reduce complicated formalities of bilateral agreement. This proposal includes following matters should be resolved.

### 1) Clear definition of "free license"

The word "free license" needs to be defined clearly. In especially, targeted data, copyright, intellectual property right, reproduction by third party should be specified.

### 2) IHO coordination of small scale ENC coverage and its producing country

In case each HO which agrees "free license" develops small scale ENC's by its own way, the ENC's may overlap in an area. IHO needs to coordinate small scale ENC coverage and its producing country and each HO which agrees free license must develop its small scale ENC's in accordance with the coordination.

### 3) Treatment of data of third countries

In case a chart includes area of third countries which do not agree free license, it needs to be decided how to treat the data of the third countries.

### 4) Compilation scale

Free license of geo-spatial data at smaller than 1:3,500,000 is supportive for worldwide common profit and for international chart cooperation and coordination. US proposal defines that small scale is equal to or smaller than 1:500,000, but Japanese definition of chart at scale of 1:500,000 is for coastal navigation and it is middle scale, not small scale. Compilation, publication and update of middle and large scale chart is under responsibility of coastal country.

The scale of free license should be set between 1:500,000 to 1:3,500,000 considering both right of coastal country and worldwide common profit.

### 5) Conflict with other agreements

In the view of possibility of conflict between this multilateral agreement and actual condition of bilateral agreements according to IHO TR A3.4, it needs to be discussed what kind of relation of this agreement and other agreements should be, substitution, coexist or other.

### 6) Circumstances in each country

Circumstances in each country also need to be considered deeply. Japan has difficulty to establish an agreement related to copyright revenue.

## NETHERLANDS

The principle of the proposal is much supported.

However,

1. The limiting scale of 500 000 seems rather large;
2. It is not clear whether the intended agreement will also permit "the general public" to make use of these data. That would not be preferred.

**NEW ZEALAND**

New Zealand supports the concept of open access, through a "free licence", to all small scale charting.

Standards need to be established to ensure that the latest version of charts is used.

Source hydro authorities must be acknowledged. The country who owns the data should be protected, through appropriate instruments, from litigation arising from errors and omissions resulting from recompilation of the charts or data by other countries.

**PERU**

Peru agrees with this proposal as far as the Member States retain their intellectual property over the data handed, and is properly recognized as such.

**PORTUGAL**

If it is approved does not imply any obligation to the Member States, but involves copyright problems. Disagree.

**SWEDEN**

Sweden supports this proposal per se. However there has already been some problems where navigators have used such charts in digital form outside the producer's area and over zoomed them as there were no larger scale charts available in digital form. When no bilateral agreements or information is given an HO influenced may not be able to meet the demands of larger scale charts in especially digital form.

**TURKEY**

Bilateral negotiations and the agreements are vital in order to increase the cooperation between the Hydrographic Offices and it is believed that the requirements for 1:500 000 and smaller scale charts can create a good starting point to improve these relations, therefore Turkey supports the continuation of the present status about the licensing procedures.

**UK**

The UK supports the general principle of this proposal but tenders the following comments.

We note that GEBCO and other products currently support the academic and educational requirements for small scale data mentioned in this proposal.

There are already arrangements in place for the gratis exchange of data at a scale of 1 : 1,500,000 and smaller e.g. NSHC custodianship arrangement. In order to avoid confusion and further complexity it is therefore considered that a scale of 1: 1,500,000 would be more appropriate for this proposal.

Consideration needs to be given to the exact ownership of the data contained in a publication. In a large number of cases not all the data is the property of the publishing HO and therefore they would only be able to give permission to reproduce that part to which they own the rights. If a portion of the data belongs to a MS which is not a signatory to the proposed arrangement, then their permission will have to be sought separately. In addition it would have to be made clear whether any permission granted would only apply to the signatory or whether it would allow them the freedom to sub-license the data to a third party.

Where it is the case that other agreements-arrangements of a similar nature already exist (such as bilateral arrangements), it would have to be decided which agreement-arrangement would take priority.

There would need to be a mechanism in place to allow Member States to join, leave or amend the system as required. To avoid the need to decide jurisdiction and power of enforcement, it would be better to make any arrangement non legally binding. It may be more appropriate to use this proposal as a discussion leading to a Technical Resolution.

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