

April 13, 2018

The Honorable Senator Hatch
104 Hart Senate Office Building
Washington, DC 20510

Dear Senator Hatch,

We very much appreciate and support your leadership in addressing the pressing need to provide timely access to needed geospatial data. These data are critical during emergencies as well as on a daily basis to improve the work of governments be they federal, state, local or tribal. They are also an important resource for the private sector. We are writing to express concern that language under active consideration we view as detrimental to public access. Specifically, this provision:

In General.—The Committee and each covered agency shall, to the maximum extent practical, rely upon and use the private sector in the United States for the provision of geospatial data and services. Any data acquired through commercial contracts will be made available to the public through the GeoPlatform subject to the requirements, limitations and exclusions in Section 8 of this Act.

We have two serious concerns with this proposed language. First, there is no basis in law that calls for the government to rely on and use of the private sector in the provision of geospatial data to the maximum extent practical. Other law, federal guidance, policy and practice, such as the Paperwork Reduction Act and the 2016 revision of Circular A-130, do not reflect this very limited and outdated perspective. Instead, in Circular A-130, federal data is seen as a national asset and agencies are required to avoid, “establishing, or permitting others to establish on their behalf, exclusive, restricted, or other distributions arrangements that interfere with the agency’s ability to disseminate its public information on a timely and equitable basis.”¹

As you well know, the widespread use of the Internet has sparked innovative uses of federal data in all sectors. The proposed language above could inhibit such uses and, in fact, limit the timely access and sharing of geospatial data in times of emergencies among other uses as private sector entities could prohibit use of the data by claiming ownership of the data via their contracts with the government.

¹ OMB Circular No. A-130, “Managing Information as a Strategic Resource.”

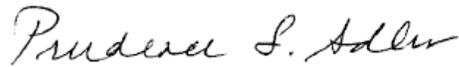
Second, while we appreciate that the proposed amendment states: “*Any data acquired through commercial contracts will be made available to the public,*” this language also presents serious concerns regarding access to federally contracted data. By entering into a contract with an external party, federal agencies are potentially allowing these parties the ability to assert ownership of such data. One exemption of the Geospatial Act of 2017 states that propriety data acquired under license by the Federal Government shall not be included in the Geoplatform. A license is a form of a contract so any data resulting from commercial contracts entered into by a federal agency with a private entity, could, in effect, be excluded from the GeoPlatform and, thus, not be publicly available. Moreover, the broad reach of the definition of geospatial information in the bill could further significantly limit the access of and the ability to share needed geospatial information due to the limitations and restrictions of contracts as well as the current licensing exemption in the legislation.

We understand why certain specific licensing arrangements with the private sector will result in some government data not being publicly accessible. We do not, however, agree with the draft language that could negate access to a broad range of federal data. The OSTP memorandum of 2013 regarding access to federally funded research and data, the OMB memorandum M 1313 on open data, and widespread congressional support for the OPEN Government Data Act— which you voted for— require a very different approach to ensuring access to open federal data. The proposed MAPPs language included above clearly does not reflect current law and policy, indeed seeks to overturn long-settled law and policy.

Our communities and members of the public and private sectors rely on access to open, public government information on a daily basis in support of health information to crime statistics to the development of open, innovative marketplaces solutions and more. Advances in technology have greatly increased the utility of government data to both scientific research and public health protection. Thus, we cannot support returning to long outdated policies that could limit access to government data.

Thank you for considering these concerns and we would welcome the opportunity to continue to work with your staff on addressing these concerns in order for the legislation to move to the floor. If there is additional information that we can provide, please contact Alex Howard of the Sunlight Foundation (ahoward@sunlightfoundation.org) and/or Prue Adler of the Association of Research Libraries (prue@arl.org).

Sincerely,



Prudence S. Adler
Associate Executive Director
Association of Research Libraries



Alexander B. Howard
Deputy Director
Sunlight Foundation

On behalf of:

American-Arab Anti-Discrimination Committee
American Association of Law Libraries
American Library Association
American Meteorological Society
Association of College & Research Libraries
Association of Southeastern Research Libraries
Chief Officers of State Library Agencies
Creative Commons
Defenders of Wildlife
Defending Rights & Dissent
Demand Progress Action
Data Coalition
Environmental Integrity Project
Electronic Frontier Foundation
Government Accountability Project
Government Information Watch
National Security Archive
Open The Government
Penn Program in Environmental Humanities
Project on Government Oversight
SPARC
Sunlight Foundation
US Union of Concerned Scientists

Cc: Romel Nicholas