

CIS's Comments on the Draft Geospatial Information Regulation Bill, 2016

Centre for Internet and Society | 2016-06-05

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The Centre for Internet and Society is alarmed by the Draft Geospatial Information Regulation Bill, 2016, and has recommended that the proposed law be withdrawn in its entirety. It offered the following detailed comments as its submission.

by the *Centre for Internet and Society*

1. Preliminary

1.1. This submission presents comments and recommendations by the Centre for Internet and Society (“CIS”) on the draft Geospatial Information Regulation Bill, 2016 (“the draft bill” / “the proposed bill” / “the bill”).

2. Centre for Internet and Society

2.1. The Centre for Internet and Society is a non-profit organisation that undertakes interdisciplinary research on internet and digital technologies from the perspectives of policy and academic research. The areas of focus include accessibility for persons with disabilities, access to knowledge, intellectual property rights, openness (including open data, free and open source software, open standards, open access, open educational resources, and open video), internet governance, telecommunication reform, digital privacy, and cyber-security. The academic research at CIS seeks to understand the reconfiguration of social processes and structures through the internet and digital media technologies, and vice versa.

2.2. This submission is consistent with CIS’ commitment to safeguarding the public interest, and particularly the representing the interests of ordinary citizens and consumers. The comments in this submission aim to further the principles of people’s *right to information* regarding their own country, *openness-by-default* in governmental activities, *freedom of speech and expression*, and the various forms of *public good* that can emerge from greater availability of *open (geospatial) data* created by both public and private agencies, and the *innovations* made possible as a result.

3. Comments

3.1. General Remarks

3.1.1. While CIS welcomes the intentions of the government to prevent use of geospatial information to undermine national security, the proposed bill completely fails to do so, infringes upon Constitutional rights, harms innovation, undermines the national initiatives of Digital India and Startup India, is completely impractical and unworkable, and it will lead to a range of substantial harms if the government actually seeks to enforce it.

3.1.2. There are already laws in place that prevent the use of geospatial information to undermine national security. For instance, the Official Secrets Act, 1923 (“OSA”) already contains provisions — sections 3(2)(a), (b), and (c) — all of which would prevent a person from creating maps that undermine national security and would penalise their doing so. Section 5 of the OSA contains multiple provisions that penalise the possession and communication of maps that undermine “national security.” The penalties under the OSA range from imprisonment of up to 3 years all the way to imprisonment up to 14 years. Given this, there is absolutely no need to create yet another law to deal with maps that undermine “national security.” Indeed, it is the government’s stated policy to reduce the number of laws in India, whereas the proposed bill introduces a redundant new law that adds multiple layers of bureaucracy.

3.1.3. The National Mapping Policy, 2005, already puts in place restrictions on wrongful depictions of India’s international boundaries, and as we explain below in section 3.4 of this document, even the National Mapping Policy is over-broad. Even if the government wishes to provide statutory backing to the policy, it should be a very different law that is far more limited in scope, and restricts itself to criminalising those who misrepresent India’s international boundary with an intention to mislead people into thinking that that is the official boundary of India as recognised by the Survey of India. CIS would support a law of such limited scope and mandate, provided it has an appropriate penalty.

3.1.4. There would be much utility in a law that creates a duty on the Survey of India to make available, in the form of an open standard, an official electronic version of the maps that it creates, and expressly allows and encourages citizens and startups to reuse such official maps, however the Ministry of Home Affairs would not be the nodal ministry for such a law.

3.1.5. We recommend that the proposed law be scrapped in its entirety.

3.1.6. We additionally provide an alternative manner of reducing the harms caused by this bill, in our comments below. By no means should these further comments be seen as a repudiation of our above position, since we do not feel the proposed bill, even with the inclusion of all of our recommendations, would

truly further its stated aims. All our below recommendations would do is to reduce the bill's harmful, and often unintended, consequences.

3.2. Definition of “Geospatial Information” is over-broad, all- encompassing

3.2.1. The second part of the definition of “geospatial information” refers to all “graphic or digital data depicting natural or man-made physical features, phenomenon or boundaries of the earth or any information related thereto” that are “referenced to a co-ordinate system and having attributes.” (Section 2(1)(e)) As per the definition, this will include all geo-referenced information, and data, that is produced by everyday users as an integral part of various everyday uses of digital technologies. This will also include geo-referenced tweets and messages, location of public and private vehicles shared in the real-time with agencies tracking their location (from public transport authorities, to insurance agencies, etc.), location data of mobile phones collected and used by telecommunication service providers, location of mobile phones shared by the user with various kinds of service providers (from taxi companies to delivery agencies), etc.

3.2.2. We recommend that instead of regulating all kinds of geospatial information, and giving rise to a range of possible harms, the draft bill be revised to specifically address “sensitive geospatial information,” defined as geospatial information related to the “Prohibited Places” as defined in the Official Secrets Act 1923 (section 2(8)) which will allow the bill to effectively respond to its key stated concerns of ensuring “security, sovereignty and integrity of India.” Since the National Map Policy defines “Vulnerable Points” and “Vulnerable Areas” (para 3(b)) as the two main types of geospatial units associated with “Prohibited Places”, these terms should also be referred to in the revised version of the draft bill.

3.3. Unreasonable regulation of acquiring and end-use of geospatial information

3.3.1. Section 3 of the draft bill states that “[s]ave as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Security Vetting Authority, no person shall acquire geospatial imagery or data including value addition” and “[e]very person who has already acquired any geospatial imagery or data ... including value addition prior to coming of this Act into effect, shall within one year from the commencement of this Act, make an application alongwith requisite fees to the Security Vetting Authority.” This effectively makes it illegal to acquire and maintain ownership of geospatial information that has not been subjected to security vetting.

3.3.2. This draft bill doesn't apply just to geospatial information that may undermine national security but covers all manners of geospatial information and modern geospatial technologies embedded in everyday digital devices and intimately connected to various electronic products and services, from cars to

mobile phones, result in the creation and acquiring of various kinds of geo-referenced information, ranging from the geo-referenced photographs to locations shared with friends. Even ordinary users who are unknowingly looking at maps that contain sensitive geospatial information, which are illegal under the Official Secrets Act, are committing an illegal act under the draft bill, because the users temporarily acquires such sensitive geospatial information in her/his digital device, as part of the very act of browsing the map concerned. This clearly cannot be the intention of the bill. Thus we recommend deletion of the word “acquire.”

3.3.3. Further, the insertion of the phrase “including value addition” in both Section 3(1) and 3(2) appears to suggest that all users who have created derivative products using geospatial information that includes sensitive data (that is data related to Prohibited Places) may be held liable under this draft bill, even if these users have not themselves collected or created such sensitive geospatial information, which was part of the original geospatial information published by the source map agency. This too cannot be the intention of the bill. Thus, we recommend deletion of the phrase “including value addition.”

3.3.4. In the definition of the “Security Vetting of Geospatial Information” itself, it is mentioned that the process will include “screening of the credentials of the end-users and end-use applications, with the sole objective of protecting national security, sovereignty, safety and integrity.” (Section 2(1)(o)) This appears to indicate that all end-users of all electronic and analog services and products using geospatial information will have to be individually vetted before such services and products are used, which would cover a large proportion of the Indian population. This imposes an enormous and impractical burden on the Indian digital economy in particular, and the entire national economy in general, without improving national security. This too cannot be the intention of the draft bill. Thus, we recommend deletion of this phrase, and ensure that end users are not covered by the law.

3.3.5. Given these specific characteristics of how modern geospatial technologies work, and how they provide a basis for various kinds of everyday use of electronic products and services, we would like to submit that the regulatory focus should be on large-scale and/or commercial dissemination, publication, or distribution of geospatial information, and not on the acts of acquiring, possessing, sharing, and using geospatial information. Further, the regulation in general should be aimed at the party owning the geospatial information in question, and not at the parties involved in its dissemination (say, Internet Service Providers) or in its generation or use (say, end-users).

3.4. Removal of journalistic, political, artistic, creative, and speculative depictions of India from the scope of Section 6

3.4.1. Section 6 of the draft bill states that “[n]o person shall depict, disseminate, publish or distribute any wrong or false topographic information of India including international boundaries through internet platforms or online services or in any electronic or physical form.” Section 15 imposes a penalty for such wrong depiction of maps of India.

3.4.2. Depictions of India, which do not purport to accurately represent the international boundaries as recognised by the Indian government should not be penalised. For instance, a map published in a newspaper article about India’s border disputes that shows the incorrect claims that the Chinese government has made over Indian territory would also be penalised as “wrong or false topographic information of India”, since there is a clear intention to depict the boundary as claimed by China. Criminalising such journalism cannot be the legitimate intent of such a provision.

3.4.3. There are numerous instances which have been willfully depicting inaccurate and inauthentic maps of India with international borders for political ends. For instance, there are often depictions of India which show territories within present day Pakistan, Bangladesh, Bhutan, Nepal and Sri Lanka as part of an “Akhand Bharat.” Depictions of this sort should not be penalised. In doing so, would contradict the freedom of expression guaranteed under Article 19(1) (a) without being a reasonable restriction under Article 19(2).

3.4.4. Even depictions of India for purposes of speculative fiction would be penalised under this proposed bill unless they depict the official borders. This is clearly undesirable and would not be allowed as a reasonable restriction under Article 19(2).

3.4.5. Even geography students in schools and colleges who mis-draw the official map of India would be liable to penalties under the draft bill. This plainly, cannot be the intention of the drafters of this bill. The creator of a rough and inaccurate tourist map of an Indian city can also be identified as committing a criminal act under the proposed bill as she would be depicting “... wrong or false topographic information of India ...”

3.4.6. In brief: Merely depicting, disseminating, publishing or distributing any “wrong or false topographic information of India” should not be penalised. unless a person publishes and widely circulates an incorrect map of India while claiming that that represents the official international boundaries of India, such should not be penalised.

3.4.7. CIS recommends that the bill should instead state: “No person shall depict, disseminate, publish, or distribute any topographic information purporting to accurately depict the international boundaries of India as recognised by the

Survey of India unless he is authorised to do so by the Surveyor General of India; provided that usage by any person of the international boundaries as is electronically and in print made available by the Survey of India shall deemed to be usage that is authorised by the Surveyor General of India.”

3.5. Absence of Publicly Available and Openly Reusable Standardised National Boundary of India

3.5.1. Given the lack of an reusable versions of maps of India, including of India’s official boundary as recognised by the Survey of India, it becomes impossible for people to accurately depict the boundary of India. We recommend that the bill requires the Survey of India to publish all “Open Series Maps,” as defined in the National Mapping Policy, 2005, including maps depicting the official international and subnational political and administrative boundaries of India, using open geospatial standards and under an open licence allowing such geospatial data to be used by citizens and all companies.

3.6. Remove Requirement for Prior License for Acquire, Dissemination, Publication, or Distribution of Geospatial Information

3.6.1. Section 9 of the draft bill refers to “any person who wants to acquire, disseminate, publish, or distribute any geospatial information of India” (emphasis added), which can be interpreted as the need for a prior license before any person decides to acquire (including creation, collection, generation, and buying) geospatial information. This creates at least two problems:

- modern digital geospatial technologies have enabled everyday digital devices (like smartphones) to instantaneously acquire, disseminate, publish, and distribute geospatial information all the time when the person holding that device is looking at online digital maps, say Google Maps, or sharing location with their friends, online platforms and services and service providers (both local and foreign); and
- the requirement of prior license involves payment of a “requisite fees” to the Security Vetting Authority, which may act as an arbitrary (since the fee might be based upon the volume of geospatial information to be acquired that one may not know fully determine before acquiring) and effective barrier to acquiring, dissemination, publication, or distribution of geospatial information even if it does not violate the concerns of “security, sovereignty, and integrity” in any manner. This requirement also impedes competition in the market, because new entrants to the geospatial industry may not have enough upfront capital to procure licenses.

3.6.2. Further, the requirement of necessary prior license for acquiring geospatial information does not seem to be a crucial component of the security vetting process, since the geospatial information, once acquired by the agency concerned, is in any case directed to be shared with the Security Vetting

Authority for undertaking necessary expunging of sensitive or incorrect information.

3.6.3. We recommend revision of this section so that no prior license and/or permission is required for collection, acquiring, distribution, and/or use of geospatial information; instead, a framework may be established for monitoring of published geospatial information for purposes of ensuring geospatial information pertaining to “Prohibited Places,” as defined under the Official Secrets Act, is not made available to the general public by any person or entity under Indian jurisdiction, including, for instance, Indian subsidiaries and branches of foreign corporations.. Such a framework must not address the end-user of such geospatial information, but its publishers.

3.7. Unenforceable jurisdictional scope

3.7.1. Section 5 of the draft bill states “[s]ave as otherwise provided in any international convention, treaty or agreement of which India is signatory or as provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Security Vetting Authority, no person shall, in any manner, make use of, disseminate, publish or distribute any geospatial information of India, outside India, without prior permission from the Security Vetting Authority.”

3.7.2. In compliance with this section, domestic and foreign companies and platforms will be required to obtain permission from the Security Vetting Authority of India prior to publishing, distributing etc. geospatial information. Similarly in the preliminary, the draft bill holds in person who commits an offence beyond India under the scope of the bill. The bill is thus proposing extraterritorial applicability of its provisions, yet the extent and method of enforcement of the same on other jurisdictions are kept unclear.

3.8. Negative implications for rights of citizens

3.8.1. There are a number of sections in the draft bill which have negative implications for the rights of all users and potentially impinge on the constitutional rights of Indian citizens. These include:

- a. Section 18(2) which empowers the Enforcement Authority to conduct a search without a judicial search order;
- b. Section 17(3) which empowers the Enforcement Authority to conduct undefined surveillance and monitoring to enforce the Act;
- c. Chapter (V) which penalises individuals with Rs. 1-100 Crores and/or seven years in prison for an offence under the act;
- d. Section 22 which allows the government to take ownership of a person’s land if a financial penalty has not been paid;

e. Section 30(1) which holds, in the case of the offense being committed by a company, every person in charge of and responsible for the conduct of business of the company, guilty and liable.

3.9. Overly broad powers and responsibilities of the Apex Committee and Enforcement Authority, and lack of adequate oversight

3.9.1. Section 7(2) states that “[t]he Apex Committee shall do all such acts and deeds that may be necessary or otherwise desirable to achieve the objectives of the Act, including the following functions:...” The wording in this section is broad and open ended, and allows for the responsibilities of the Apex Committee to be expanded without clear oversight of such expansion.

3.9.2. Similarly, section 17 established an “Enforcement Authority” for the purpose of carrying out surveillance and monitoring for enforcement of the draft bill. The Authority has been given a number of powers including the power of inquiry, the power to adjudicate, and the power to give directions. These powers have direct implications on the rights of individuals, yet the Authority is not subject to oversight or accountability requirements.

3.9.3. We recommend that the powers and responsibilities of the Apex Committee and Enforcement Authority are narrowly defined in the draft bill itself, limited by the principle of necessity, and subject to independent oversight and accountability requirements.

3.10. Remove the Security Vetting Authority’s power of delegation

3.10.1. Section 8(3) allows the Security Vetting Authority to delegate to any constituent member of the Authority, other subordinate committee, or officer powers and functions as it may deem necessary except the power to grant a licence. In practice, this will allow security vetting to be done by another institution and risks potential involvement of private agencies and/or quasi-governmental bodies.

3.10.2. We recommend that the power of delegation should not be granted to the Security Vetting Authority.

3.11. Negative implications for innovation and India’s digital economy

3.11.1. Section 3 of the draft bill states “[s]ave as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Security Vetting Authority, no person shall acquire geospatial imagery or data including value addition of any part of India either through any space or aerial platforms such as satellite, aircrafts, airships, balloons, unmanned aerial vehicles or terrestrial vehicles, or any other means whatsoever”. This effectively ensures that each and every user of geospatial data, products, services, and

solutions — since all of these either include or are derivatives of geospatial information — would require prior permission from the Security Vetting Authority. This will substantially affect the existing and emerging digital economy in particular, and the entire economy in general.

3.11.2. Further, Section 9 of the draft bill mandates that any person submitting an application for geospatial information to be vetted must pay a fee. As the provisions of the bill mandate that users approach the Security Vetting Authority for license to use geospatial information, this will impose an immense burden on all users of digital devices in and outside of India. CIS submits that imposition of this fee for security vetting be removed.

3.12. Disproportionate penalty for acquisition of geospatial information

3.12.1. Section 12 states that “[p]enalty for illegal acquisition of geospatial information of India.- Whoever acquires any geospatial information of India in contravention of section 3, shall be punished with a fine ranging from Rupees one crore to Rupees one hundred crore and/or imprisonment for a period upto seven years.” Seven years in prison is disproportionate to the offense of acquiring geospatial information without vetting by the authority concerned. This is particularly true given the broad and all-encompassing definition of “geospatial information” in the draft bill, and the fact that the bill applies to individuals and companies both within and outside of India.

3.13. Improper and inconsistent usage of terms in the draft bill

3.13.1. Section 4 of the draft bill regulates the visualization, publication, dissemination and distribution of geospatial information of India, while section 5 regulates use, dissemination, publication, and distribution of geospatial information outside of India. The definition of “visualization” remains unclear, and the act is only regulated in section 4. The section 6 of the draft bill uses the term ‘depict’, which is undefined as well. We submit that in this context terms are interchangeable, and the draft bill should either define them expressly to avoid ambiguity in interpretations, or consistently use only one throughout the draft bill.

3.13.2. Section 11 (3) of the draft bill requires licensees to “[d]isplay the insignia of the clearance of the Security Vetting Authority on the security-vetted geospatial information by appropriate means such as water-marking or licence as relevant, while disseminating or distributing of such geospatial information.” We observe that geospatial information includes graphical representation, location coordinates, inter alia. While the former may be represented visually on an “as is” basis after the completion of the vetting, the latter may be used to perform other complex functions at the “back-end” (i.e., vendor-facing side) in various

technologies. Water-marking and/or displaying of insignia would place undue burden on the licensee, depending on the kind of platform, service, or individual.

3.14. Lack of reference to technical implementation guidance

3.14.1. The regulation, harmonisation, and standardisation of the collection, generation, dissemination etc. of geospatial information is a complex process that goes beyond a process of security vetting and that will require extensive technical implementation guidance from the government. At a minimum this could include quality assurance considerations and standard operating procedures, yet the draft bill makes no reference to the need for technical standards or guidance.

Comments prepared by Sumandro Chattapadhyay, Adya Garg, Pranesh Prakash, Anubha Sinha, and Elonnai Hickok. Submitted by the Centre for Internet and Society, on June 3, 2016.