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THE DIRECT RECEPTION AND DISTRIBUTION OF CBERS-3 SATELLITE DATA TO SOUTH AFRICA

Abstract

On December 9th 2010, China Centre for Resources Satellite Data and Application (CRESDA), a scientific research and operational institution under the supervision of the China National Space Agency (CNSA) of the People's Republic of China; the Brazilian National Institute for Space Research (INPE), an institution of the Ministry of Science and Technology of the Government of the Federative Republic of Brazil; and the South African National Space Agency (SANSA) of the Republic of South Africa; signed a Memorandum of Understanding (MOU) for the direct reception and distribution of CBERS-3 Satellite data. The Memorandum of Understanding establishes the terms and conditions under which CRESDA and INPE will grant SANSA free access to receive, process, archive, and distribute data from CBERS-3 Satellite, whose launching is scheduled for the end of 2011. According to the Memorandum, SANSA shall distribute free-of-charge processed images of CBERS-3 to all African countries under the footprint of the SANSA ground station, namely, Angola, Botswana, Lesotho, Mozambique, Swaziland, Namibia, Zambia, and Zimbabwe. The Memorandum is one of the results of the China and Brazil's initiative called "CBERS for Africa", presented during the 2007 Summit of the Group on Earth Observation (GEO), held in Cape Town, whose purpose is to distribute images from CBERS satellites to all African countries. The Section II, item C.4 of the Memorandum states that the activities under that MOU "will be conducted in accordance with the laws and regulations of Brazil, China, and South Africa"; and the item C.6 emphasizes that "the parties will not make any claim or bring legal action against each other for any damage or injury brought about by the use of CBERS-3 systems". Taking into account only these two items, it is possible to imagine many legal implications that may arise from the Memorandum. For instance: in the case of damages supposedly caused by the use of CBERS-3 images, could a South African citizen, user of those images, sue INPE or CRESDA? Other example: since the MOU states that SANSA shall share CBERS-3 images with other African countries, which law would be applicable in the case of a claim presented by a citizen of a neighbor country? Therefore, the Memorandum deserves an accurate legal analysis. In this context, the purpose of this paper is to present the legal aspects of the Memorandum as well as to bring some practical questions in order to start further discussions.