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September 3, 2004

Hon. Duncan Hunter
Chairman, House Armed Services Committee
2265 Rayburn House Office Bldg.
Washington, D.C. 20515

Re: FOIA Exemption in Senate's National Defense Authorization Act
for Fiscal Year 2005

Dear Chairman Hunter:

In anticipation of the House and Senate conference on the National Defense Authorization Act for Fiscal Year 2005, the Radio-Television News Directors Association (RTNDA) wishes to express its serious concerns with Section 1034, "Nondisclosure of Certain Products of Commercial Satellite Operations," as included in the Senate version of the legislation. RTNDA is the world's largest professional organization devoted exclusively to electronic journalism. RTNDA represents local and network news executives in broadcasting, cable and other electronic media in more than 30 countries.

Section 1034 would exempt from the Freedom of Information Act "data that are collected by land remote sensing and are prohibited from sale to customers other than the United States and its affiliated users under the Land Remote Sensing Policy Act of 1992." The exemption would also include any "imagery and other product that is derived from such data." Further, the legislation would preempt state and local laws mandating disclosure by a state or local government. This overbroad and unnecessary provision would severely compromise government accountability and the public's right to know. Congress should reject this provision, as it is ripe for misuse and abuse.

As RTNDA has indicated in numerous proceedings pertaining to the licensing of civilian satellites, the use of remote sensing imagery has become a routine and important part of newsgathering, facilitating more compelling news coverage. Commercial satellite imagery is routinely used in network and local news broadcasts in addition to print and web-based media. Recent uses include coverage of the Iraq and Afghanistan conflicts; nuclear and other WMD sites in Iran, Pakistan, India, Libya, North Korea, China, and other countries; flooding in Bangladesh and Eastern India; deforestation in Brazil; wildfires and tornadoes in the United States; and refugee crises in the Sudan, Rwanda, and other countries. The usefulness of such imagery in covering wars, refugees, disasters, genocides, illicit weapons, etc. is readily apparent. While advocating access to such imagery, however, RTNDA has expressly acknowledged that threats to the national

security that are serious, direct and immediate would justify discrete government action to prevent particular imagery from being disseminated.

Under the bill's terms, however, important non-confidential commercial satellite imagery, as well as products derived from such imagery, which the government has purchased, would be exempt from disclosure to the public. Indeed, the bill's provisions may actually preclude the government from releasing unclassified information it may wish to reveal. In essence, this new FOIA exemption would result in taxpayer dollars being used to preclude the media from adequately informing the public about matters of critical importance that in no way implicate the national security. For example, imagery of genocide or disaster sites, which the government may have obtained, may be denied to journalists investigating how the government responded to these calamities.

Section 1034 is unnecessary. While the Senate suggests that "compelled release of such data and imagery by the United States under FOIA . . . may damage the national security," Exemption 1 of the FOIA already protects from disclosure properly classified records, release of which would cause some "damage" to the national security. Exemption 1 covers records that are: (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national security or foreign policy and (B) are in fact properly classified pursuant to such Executive order.

Section 1034, however, would circumvent the well-established checks and balances that have been created under Exemption 1, and grant the Executive Branch astonishing leeway to prevent public release of unclassified material without appropriate oversight.

The FOIA is a powerful ally of the public interest and those citizens who are interested in maintaining the accountability of our government and its officials, and the creation of a new exemption cannot be taken lightly. Congress should not undermine the public's interest in knowing what its government is up to in its quest to protect the nation. We urge the conferees to drop Section 1034.

Sincerely,



Barbara S. Cochran
President

cc: Hugh Brady
Peter Levine.