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International and European Legal Framework for Geospatial Data and Services

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Introduction

- Legal and policy issues need to be addressed in order to maximise the benefits of geospatial data and services and to provide a clear and stable framework for industry
- Legal and Policy issues become more complex as new geospatial data and services develop and convergence with other sectors and technologies rapidly increases (Cloud Computing, UAS/UAV, Big Data, Location Based Services ...)
- Exponential growth in geospatial markets (Geospatial World, 17 September 2013)
  - size of global geospatial industry is very close to $100 billion
  - growing at an annual growth rate of 10-15%
- Policy and legal communities have largely failed to keep up with developments:
  - Policy development faced with high complexity, even on national level
  - Legal always running behind technology and innovation
  - Lawyers and policy-makers struggle to understand the specificities of the sector

Legal & Policy Challenges

- The main legal and policy challenges in relation to geospatial data and services include:
- Open Data Policies
  - linked to E-Government initiatives
- Licensing
  - including license fees and IPR
- Data Quality and Services Performance
  - standards, certification, warranty, and liability
- Personal data protection
  - correlating geospatial data with personal information

Status of International Law

- Relatively developed legal framework on remote sensing activities from outer space, as laid down in the
  - UN Outer Space Treaty (1967)
  - UN Remote Sensing Principles (1986)
  - International Disaster Charter (2000)
  - UN Spider (UN GA Res 61/110 of 14 December 2006)
- However, these instruments
  - mainly apply to the relation of States and the exchange of data among them
  - do not apply to all types of geospatial data and services (only where remote sensing is concerned)
  - do not specifically address the legal challenges in relation to geospatial data and services and do not intend to foster the markets

Status of International Law

- No binding international law instruments that specifically address geospatial data and services
- However, a number of initiatives on the international level to develop non-binding recommendations and best practices on geospatial services such as
  - United Nations Initiative on Global Geospatial Information Management (UN-GGIM)
  - Group on Earth Observation (GEO)
- Initiative by the International Bar Association (IBA) on a Convention on Geoinformation aims at allowing the geospatial industry to develop by
  - rationalising the many conflicting and overlapping existing rules and regulations
  - addressing the reliability of geospatial information
  - granting producers a property right in the fruits of their work
  - setting limits on the collection, use, storage and transfer of geospatial information

European Legal Framework

- INSPIRE Directive (2007/2/EC) and implementing measures
  - establishes an infrastructure for spatial information in Europe to support the EU's environmental policies
- Public Sector Information Directive (2013/37/EU)
  - provides a common legal framework for a European market for government-held data (public sector information)
- Environmental Information Directive (2003/4/EC)
  - aims to ensure that environmental information is systematically available and distributed to the public
- Database Directive (96/9/EC)
  - creates a new exclusive *sui generis* right for database producers to protect their investment of time, money and effort

European Legal Framework - Copernicus

- Regulation (911/2010) on GMES and its initial operations (2011 to 2013)
  - established the European Earth monitoring programme called GMES (now Copernicus)
  - lays down the rules for the implementation of its initial operations during the period 2011-2013
- Regulation (377/2014) establishing the Copernicus Programme
  - repeals Regulation (911/2010)
  - lays down the rules for the implementation of the Copernicus programme
- Delegated Regulation (1159/2013) on access to data and information
  - establishes registration and licensing conditions and
  - defines criteria for restricting access to GMES data and services

Open Data Policies and Geospatial Industry

- The logic of full, free, and open access to public (geospatial) data is that:
  - revenues to a public sector body from sales of these data are generally small
  - the benefits to society of open access are potentially very large
  - generation of public data and information has already been paid from public funds
- A number of legal and policy documents reflect a clear international trend towards free, full, and open access to public (geospatial) data, including
  - GEOSS data sharing principles
  - International Disaster Charter
  - US Earth Observations Strategy
  - NOAA NESDIS data policy
  - Landsat data policy
  - Copernicus data policy
  - ESA data policy
  - EUMETSAT data policy
  - G8 Open Data Charter
  - WMO Resolution 40
  - Panton Principles
  - OECD Guidelines on Research Data ...

Open Data Policies and Geospatial Industry

- The terms full, free and open are not always used in a consistent manner:
  - Full – access to all the data, unless restrictions are explicitly stated
  - Free – free of charge
  - Open – freely available
- Many policies or legal instruments allow for exceptions to the general principle of open data. The reasons cited for the exceptions include (among others):
  - International law
  - International relations and foreign policy
  - National security
  - Defence
  - National legislation
  - Intellectual Property Rights
  - Personal data protection
  - Commercial confidentiality
  - The Course of Justice
  - Contractual obligations
  - Protection of sites, species etc.
  - Availability of resources

Licensing and Licence Fees

- Basically, two different approaches on licensing of public (geospatial) data:
  - the US position is to have no licences for federally produced data
  - the European position is to have some form of licence
- Licenses seem to become more popular as a means of defining the conditions of access to and use of geospatial data
- Many widely recognized licenses are, however, not intended for, and are not appropriate for data or collections of data (namely Creative Commons)
- Licensing conditions on both the national and international level vary widely
  - differences may cause legal uncertainty and may discourage commercial use
- Need to develop simplified and unified conditions
  - German authorities recently initiated a model project with the aim to provide a simplified and standardized procedure in licensing public geospatial data

Data Quality and Services Performance

- Many public data policies or licensing conditions exclude any warranty or liability of the data owner (cf. Section 9 Digital Globe End User License Agreement; Art. 9 Copernicus Data Policy) regarding:
  - quality
  - accuracy
  - fitness for purpose
- Such general exclusion is apparently still widely accepted by all stakeholders
- It will, however, become under increasing pressure the more commercial services are developed and offered on the basis of open public data, namely
  - for mass consumer markets (e.g. location based services) or
  - for safety-critical applications.
- Provision of services free of charge is not per se a justification for broad warranty and liability exclusions under several jurisdictions

Data Quality and Services Performance

- Industry raises concerns in relation to the exclusion of any warranty or liability of public data owners, namely that
  - Public data may not be used by commercial industry, unless they are of assured and appropriate quality
  - Commercial EO industry has to deliver its service to clients at competitive conditions, and has to commit for services quality and performance
  - Geospatial services should have clear product specifications and transparent information on data quality etc. should be provided
- Service Level Agreements (SLA) are already employed in the commercial EO sector defining guaranteed levels of data and services performance
- Lack of commitment towards data quality may hamper the wider use of the data by commercial industry and may reduce their potential benefits.

Personal Data Protection

- Geospatial data and services have until recently not been perceived as raising specific concerns regarding the protection of personal data
- During the last 2-5 years, however, geospatial data and services have come on the screen of data protection authorities and meet increasing concerns of the general public
- Google Street View and Google Earth were the key drivers, numerous national authorities restricted or even denied the collection of data and imposed fines on Google
- Reasons for increasing awareness are
  - advances in technology (digitalization, internet distribution, higher resolution etc.)
  - Convergence (Location Based Services, tracking technologies etc.)
  - Commercialization and new services (geo-marketing, geo-scoring, geo-profiling etc.)
  - Other recent developments (NSA, Facebook etc.)

Personal Data Protection – Legal Framework

- No global approach or instrument addressing personal data protection in relation to geospatial data and services
- On the European level:
  - EU Data Protection Directive (95/46/EC) – currently under review
  - Directive does not contain specific provisions on geospatial data and services, Art. 29 Working Party has provided some relevant opinions
- On the national level:
  - some national authorities have issued guidelines, namely on Google Street View
  - commercial actors develop Codes of Conduct in order to prevent binding rules
- Jurisprudence
  - in the context of Google Street View, the Federal Supreme Court of Switzerland held that Google is under the obligation to render personal data unrecognizable (1C_230/2012)

Qualification of Geospatial Data as Personal Data

- Most geospatial data are mere factual data which as such not include direct information about persons
- However, they can provide information about persons indirectly, namely when combined with other types of data and information
- Under the criterion of "indirectly identifiable", more or less all geospatial data could become personal data
- Difficult to determine when the interests in the publication and use of the data overrule the legitimate interests of person in data protection
- Technical criteria (e.g. resolution, scale, number of households etc.) are subject to rapid changes and tend to be arbitrary
- This, together with unspecific legal framework, results in a high degree of uncertainty for industry whether or not data protection laws apply and how they should be observed

Conclusion

- No comprehensive international legal framework for Geospatial data and services
- Evolving legal framework on European level, but not consistent
- International cooperation mainly limited to events of disasters
- General global trend of open data policies, however many access limitations in practice
- Chaotic situation with regard to public licenses, more than 5.000 different types only in Germany
- Broad warranty and liability exclusions for data quality and availability still the rule, however increasingly put in question
- Personal Data Protection is the hot topic, no clear legal framework in view
- Convergence and rapid market developments further complicate the situation

Geospatial Law is yet to come!!

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