



Workshop on legal aspects of geographic data
Second edition
Friday 18 March 2011 – ICRI, K.U.Leuven

Report

The Spatialist project and the Interdisciplinary Centre for Law and ICT organised the second workshop on legal aspects of geographic data, at the Department of Law of the Katholieke Universiteit Leuven on Friday 18 March 2011.

This workshop intended to bring together in an annual meeting the members of the GI&SDI community whose work and activities are aimed to progress the research, policy and practice with regard to the legal aspects of geographic data, either as a lawyer or as a researcher or professional in other fields closely related with law or policy. The objective of the workshop was to have an annual meeting where one can get an overview of existing research and discuss newly emerging legal issues. As the objective was to stimulate discussion on the different topics of the agenda, the number of participants was deliberately kept small, in order to facilitate interaction and debate. The workshop was attended by 26 people.

For the second edition, three main themes were on the agenda. The morning session was dedicated to licensing policies and the possibilities for harmonization. In the first session of the afternoon the discussion addressed location privacy, and the second afternoon session dealt with the new calls for a “right to data”. For each theme, there were one or two short presentations followed by a discussion.

This report tries to give an overview of the most important elements that came up in the presentations and discussions throughout the day. For more information on the day, please contact Katleen Janssen (katleen.janssen@law.kuleuven.be). The report and the presentations of the day are also accessible from the Spatialist website (www.spatialist.be) and the ICRI website (www.law.kuleuven.be/icri).

Agenda

9:00 – 9:30 **Coffee**

9:30 – 9:45 **Welcome and planning of the day**

9:45 – 11:15 **Licensing policies (I)**

- **Presentation M. Dulong-Rosnay (Centre national de la recherche scientifique, France), Harmonization of licences for geographic data**
- **Presentation P. Uhlir (The National Academies, United States), GEOSS Data Sharing Activities**
- **Discussion**

11:15 – 11:30 **Coffee break**

11:30 – 12:45 **Licensing policies (II)**

- **Presentation Bastiaan van Loenen (T.U. Delft, The Netherlands), Towards a framework of standard licences for geo-information?!**
- **Discussion**

12:45 – 13:45 **Lunch**

13:45 – 15:15 **Location privacy**

- **Presentation Eleni Kosta (K.U.Leuven, Belgium), Location data – in the quest for protecting the citizen**
- **Presentation Ed Parsons (Google, United Kingdom), Private Parts, Google's Adventures in Geospatial Privacy**
- **Discussion**

15:15 – 15:30 **Coffee**

15:30 – 16:45 **The right to data**

- **Presentation Helen Darbishire (Access Info, Spain), The right to access and the right to re-use data**
- **Discussion**

16:45 – 17:00 **Wrap-up and close of the meeting**

First session – Licensing policies

The morning session started with a presentation of Melanie Dulong de Rosnay of the Centre National de Recherche Scientifique (France), who gave a presentation on harmonizing licences for geographic data. She gave an overview of a number of licence models used in organizations dealing with geodata, such as Geoscience Australia, data.gov.uk, OpenStreetMap, and IGN. She warned that the Creative Commons attribution licence is more complicated than it looks at first sight, because the attribution clause include many requirements that are complicated to carry out completely. Therefore, a more simple attribution clause such as the clause mentioned in the UK Open Government Licence is much more clear. Next, she addressed the Open Database Licence, a licence specifically developed for data and databases to provide an alternative to Creative Commons licences in situations where using these licences would not be appropriate. She also addressed the problems with share alike-licences, such as the question what exactly constitutes a compatible licence. Ms Dulong de Rosnay stated that in the end the choice of a licence is a political statement on the value that is attached to the geographic data and the benefits that are seen for society in making the data available.

In the second presentation Paul Uhlir from the National Academy of Sciences in Washington presented the data sharing activities developed for the Global Earth Observation System of Systems (GEOSS). He first discussed the background of the Group on Earth Observation and GEOSS. Next, he gave an overview of the remit of the Data Sharing Task Team and the Data Sharing Task Force. In 2010, the GEOSS Data Sharing Action Plan for the implementation of the GEOSS Data Sharing Principles was adopted. The Action Plan builds on the concept of full and open exchange of data, but also recognizes that these data may be governed by pre-existing laws, policies and practices that at this time may not be compatible with this concept of full and open exchange. In the Task Force, three main data categories are distinguished: GeossDataCore, GeossNonCommercial, and GeossOther. For these types of data, other types of conditions and/or licences will be needed. It is foreseen that user registration may be required by data providers. Next, attribution is not considered a restriction, but the data provider will be responsible for putting any attribution requests or requirements in the metadata. To further the process, two Legal Sub-Groups have been established to advise the DSTF on IPR and licensing issues on the one hand, and liability issues on the other hand. The former will give an overview of options and give recommendations for interoperability of licences. Issues they are confronted with include the validity of licences across jurisdictions, monitoring compliance and enforcement, and incentives for adoption of the least restrictive options for licensing.

The third speaker, Katleen Janssen, replaced Bastiaan van Loenen, who was unable to attend the workshop. She gave an overview of the GSDI Legal and Socio-Economic Working Group's initiative on the harmonization of licences. A need for the development of standard licences to ensure smooth cross-border exchange of data has been recognized widely, and some initiatives have e.g. been taken to harmonise licensing policies in Australia, Netherlands, INSPIRE, and many others. The GSDI initiative for a licensing framework attempts to build a licensing model that could be used on a EU-wide or even global scale, based on licensing models and policies that already exist. The initiative started with the categorisation of licence types, based mainly on the type of use. Five main categories were found among the different licence models that were examined: public domain; no use restrictions with some conditions (e.g. attribution), only internal use or personal use allowed; only non-commercial use allowed; and only the use for a particular purpose or particular activity allowed. While this categorization encompassed all main types of licences, a number of issues still remained, e.g. how to define non-commercial, how to deal with services and delivery requirements, the need for provisions on confidentiality, privacy or security, and the details of payment and pricing.

The discussion following the three presentations dealt with a number of topics:

- Mindshift: in the last few decades there has been a move towards more openness, particularly in the science commons. However, there has not been a mapping of the current situation to show the state of play or the progress in openness of spatial data.
- Soft law: what is the power of recommendations or guidelines if they cannot be enforced? Many countries are willing to share, there is a change of culture and recommendations can help. However, getting agreements is much easier when the scope is defined and limited. For example, sharing data for disaster management will be accepted much easier than sharing data for broader purposes.
- Harmonising licensing: licences are becoming increasingly fragmented, because there are so many initiatives trying to make their own licences. There should be more similarity and more attention for harmonization. However, a problem with legal operability is the combination of different data leading to the lowest common denominator in the conditions. It is important to have good stories to show that not all situations or types of use are so different that they require a new licence and that making such a new licence should be based on legitimate reasons rather than 'vanity'. The focus should be on a limited number of licences that suit most possibilities. While a distinction between the conditions for commercial and non-commercial use is impossible to make in practice, some data providers will still want it. Also in such cases, a dialogue should be set up between the providers and users that tries to find out where the need for different conditions comes from. It should be made clear to the public bodies that they cannot be 100% sure that all conditions are complied with all the time, and that trying to reach such security leads to inefficiency and lack of available data.
- User needs: often, licensing is looked at from the wrong perspective. It is important to look at what the user needs. The user wants simplicity, particularly considering the increasing move towards services. As there is no universal 'user', a number of types of users need to be defined, by choosing and developing use cases. However, this again creates the risk that each organization will try to develop their own use cases and types of users.
- Spatial data is not that different: the problem of finding appropriate licences is not only present in the spatial data sector, but also in other communities. A dialogue should be set up with these communities (e.g. cultural sector, scientific data) to see if an ontology could be developed for licensing. This dialogue should also include private data providers.

Second session – Location Privacy

In the first presentation, Ed Parsons, Google's Geospatial Technologist gave an overview of the ways in which Google is confronted with issues relating to location privacy. In general, Google is often confronted with the question whether it is a platform or a publisher, and how its responsibilities in either role should be defined. Particularly with regard to Street View, Google has had to deal with many privacy issues. In 2007, it released Street View in the United States without any blurring. In 2008, the French, Spanish and Italian version followed, this time with face and number plate blurring to meet the concerns for the protection of privacy in the European Union. In 2010, news coverage reached an all-time high with the launch of Street View in Germany and Switzerland and the accidental capture of unnecessary personal data in the registration of wifi networks by the Street View cars. Street View has raised a lot of concerns in the different countries of the EU, but one of the main problems that came up for Google is the difference in interpretation and approach to privacy and the protection of personal data in the different Member States of the EU, for instance on the concept of personal data. This has led to

differences in obligations in e.g. Germany, where citizens could ask to have their house blurred before the images were disseminated, rather than complain afterwards. While Google has a role to play in the protection of privacy, Mr Parsons questioned if Google is not being treated unequally and has to deal with more questions, complaints and requirements than many other companies. In any case, some lessons need to be learned from Google's dealings with personal data, e.g. the need for taking an ethical approach, the use of appropriate technology to protect privacy; the recognition that universal approaches may not be possible; but also the need to recognize that privacy is a part of the activities of data driven businesses such as Google.

The second speaker Eleni Kosta, a phd researcher at ICRI, presented some issues relating to the current EU legal framework on location data and traffic data. Her presentation started with the concept of location data under the directive on privacy in the electronic communications sector. She then addressed the results of a case study undertaken in the course of the EU FIDIS project, tracking four people in three EU member States for six weeks using mobile handsets. The GPS locations were mined to reveal places of interest and to create simple profiles. Results showed clearly which travels had been undertaken by the persons involved and at which points of interests they had spent their time, showing significant risks for the privacy of the persons involved. Next, Ms Kosta described traffic data, to then explain the requirements for the processing of location and traffic data. One of the main challenges that occur here is determining which of the new technologies offering location based services would be covered by the ePrivacy directive and therefore require consent or anonymisation of the data, e.g. GMS, UMTS, GPS, Wifi, Bluetooth, RFID, etc.

The following discussion addressed several matters:

- National interpretations and practices: there are many different views on privacy, particularly with regard to the government, e.g. between the European Union and the United States. In addition, people have very different opinions about privacy, and in many cases they are not concerned about privacy, unless their own privacy is at stake.
- Awareness: the privacy legislation should also be used as an educational instrument, it should be used to make people aware of the issues.
- Need to rethink the concepts: the privacy legislation was designed in an era where the concern was about centralization of data. This centralization has been replaced with decentralization and dissemination. This requires a new way of looking at privacy. People don't know how they feel about privacy, and are often not aware about what happens with their data, e.g. they are very concerned about Google Street View, but they hardly know what information the government has on them. New concepts may need to be introduced, such as practical obscurity. In some cases, the effect of the legislation is even too strict, e.g. in the Lindquist case.
- Transparency: a lot more attention should be given to transparency, to make the users aware of what happens with their data. They should have easier access to the data that is collected of them, or at least have the knowledge that such data is being collected.

Third session - The right to data

In the final session, Helen Darbshire, executive director of Access Info, discussed the right of access to government information and the re-use of PSI, and how these may be linked to freedom of expression. She gave an overview on the status of Freedom of Information legislation in the European Union, and of the main principles of this legislation including the scope and the exceptions. Next, she indicated a number of challenges to the possibilities to re-

use the information that is obtained. Freedom of information was often created with paper documents in mind. What about electronic access? Linked to this, is the access to databases. This is not recognized in all FOI legislation, and sometimes even excluded. Obtaining data in machine-readable format is an even bigger problem. Other significant limits on the re-use of information are the charges on information and the use of copyright by the public bodies to limit the use of their data. How should these challenges be dealt with, particularly in a time where the use and re-use of government information has become much more important, both from a transparency and economic viewpoint?

The following discussion addressed several matters:

- Abuse of copyright to restrict access: often, the problem is not necessarily that copyright is claimed, but that it is abused to limit access. While some data need some safeguarding, copyright is not necessarily the best mechanism to do this. In many cases, copyright is only used as an argument if the public body wants to make money from the data.
- Personal data and access: the same problem can be found with regard to personal data. Obviously personal data need to be protected, but this argument should not be used to restrict access to data which are most likely not be considered as personal data or which would not harm privacy.
- Impeding effect of law: sometimes the law might make things even more difficult, and the problem lies more with the attitude of the public sector. For instance, in the Norwegian FOI law, all information was made available for free, unless there was an exception. However, under these exceptions it became possible to charge much more for geodata than before.

Closing remarks

The meeting was closed by Katleen Janssen, who thanked the speakers and participants for their contributions. The second edition of the workshop showed that there were still many issues to be discussed, but that this should not be done by the spatial data community in isolation, but rather in dialogue and cooperation with other sectors. The need for a forum to discuss these items is still clear, so a next edition of the workshop will be organized on **16 March 2012**.