Spatial Data Infrastructures - More Than Directives

Sunday, November 14th 2010

1 Comment and 5 Reactions

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Summary: Due in large part to the success of the OGC and its members in developing standards and promoting interoperability, it is now much easier from a technology standpoint to share spatial data across and between government entities. But what about the legal aspects of this sharing? Attorney Kevin Pomfret and OGC staffer Steven Ramage examine some of these questions as they relate to successfully implementing national or regional spatial data infrastructures.

Due in large part to the success of the Open Geospatial Consortium (OGC) and its members in developing standards and promoting interoperability, it is now much easier from a technology standpoint to share spatial data across and between government entities. However, the lack of a consistent and transparent legal and policy framework for sharing spatial data continues to be an additional roadblock in successfully implementing national or regional spatial data infrastructures (SDIs), such as the Infrastructure for Spatial Information in the European Community (INSPIRE). Undoubtedly, there is more work to do to ensure technical compliance with the INSPIRE directive and the associated implementing rules. However, technological improvements do not take place in a legal and policy vacuum. The legal and technical communities also must work together to help lawyers representing government agencies better understand spatial technology and how existing national laws, policies and regulations related to intellectual property rights, privacy, data quality and liability, as well as national security, impact spatial data sharing (or licensing) agreements.

These legal and policy issues arise whenever any organization enters into a license agreement, but they become much more complex in any spatial data sharing arrangement. For example, spatially enabled datasets can be used in a variety of applications. However, just because a dataset can be used in a particular application, it does not mean that the data are suited for that exact use. The data may not have the necessary temporal or spatial accuracy for the application, or the application may require additional metadata. Understanding what is required from an accuracy or metadata standpoint can require a user to possess a great deal of knowledge and experience. Improper use can increase the risk that a government agency, as data provider, may be involved in litigation due to any injuries or damage that arises. As a result, it is important for the lawyers representing all parties to understand how the data may be used. In addition, it is important for them to understand whether the law protects government agencies from such damage claims. According to the INSPIRE Data Policy and Legal Working Group Issues Paper:

*There are currently no rules set out in European legislation prescribing the extent to which a public authority should be liable in connection with the supply of environmental information. There is a variety of general
consumer legislation, some common across Europe, but no clear indication of the extent to which consumer protection applies to the provision of information by public authorities.  

Similarly with respect to privacy matters, societies across the globe are struggling with what defines a "reasonable expectation of privacy" from a location standpoint. Almost daily, consumers (and constituents) in Europe read and hear media reports on how their location privacy is challenged by technologies such as Google Street View, commercial satellite imagery, Facebook Places, location-based services, CCTV cameras and RFID technology. In such a sensitive environment, legal counsel may believe it is too great a risk to share or use potentially sensitive datasets, particularly when the privacy law is outdated, confusing or nonexistent. For example, in the United States, a town decided to stop using high quality imagery to regulate unlicensed swimming pools in backyards because media reports had generated such vocal privacy concerns. Government officials however acknowledged that such use did not violate any known laws or regulations.

Determining and retaining intellectual property rights in spatial datasets can also be a complex issue. For example, it is not always clear whether a spatial dataset can be protected by copyright law. The Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases has helped, but different interpretations of what can be protected still exist. Understanding and protecting intellectual property rights will become more complex as both proprietary datasets and crowdsourced or community data are integrated into INSPIRE and other spatial data infrastructures. Each of these sources of data is subject to its own set of restrictions and requirements.

There is a large open data community that argues that government data should be made available to the public without restrictions. However, even this becomes complicated due to the various licensing regimes that can be associated with "free and open" data. This uncertainty in determining the limitations and ownership rights in products that combine data from different sources is a challenge for legal counsel. Often the simplest and easiest solution is to limit such sharing. For instance, local government agencies in the UK are reportedly barred from putting data on Google Earth due to concerns over the ownership rights Google will subsequently retain in such data.

None of these issues are insurmountable. However, the legal community is unable to keep up with the rapid developments of geospatial technology, particularly the rapid sharing of numerous types of spatial datasets across local, regional and national borders. As a result, the legal community is unlikely to identify solutions to these issues on its own in a timeframe suitable to meet the technological and policy milestones of INSPIRE.

As a result, the OGC and the Centre for Spatial Law and Policy are working together to create opportunities for dialogue between the legal and technical communities working with geospatial technology. One of the primary objectives is for the technical community to help educate its legal counterparts on geospatial technology and its use in a variety of applications. Too often lawyers, particularly within agencies or organizations in which geospatial is not a core function, simply do not understand the technology or its potential. The OGC has created the Spatial Law and Policy Committee (SLPC) to begin to provide a forum for such dialogue. It is also working to integrate the work of the SLPC into other OGC working groups, such as the Business Value Domain Working Group. For its part, the Centre is working with legal counsel to better understand the impact that standards and interoperability have on such issues as privacy and geospatial digital rights management (Geo DRM).

More established industries benefit from a legal community that understands the technology and the business purpose it serves and is actively engaged through seminars and publications in remaining current on each. For example, there are legal associations that focus on telecommunications, energy, transportation and pharmaceuticals. These associations
share knowledge as well as identify future trends and issues. They also help identify solutions to the practical legal and policy concerns that arise within their respective industries. The OGC and the Centre for Spatial Law and Policy hope to develop a cadre of government and private lawyers in Europe with an understanding of both geospatial technology and INSPIRE so that they will be in a better position to address the practical legal and policy issues that impact the sharing of spatial data, to ensure business continuity and deliver business benefit to all stakeholders.


2 See e.g. UK Row Over Publishing Public Mapping Data