

UNIQUE DATA PROTECTION/PRIVACY CONCERNS ASSOCIATED WITH GOVERNMENT GEOINFORMATION

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INTRODUCTION

- Geoinformation is a double edged sword:
 - capable of providing instant access to huge or vast amounts of data;
 - opportunity to abuse, to misinform and to invade the privacy of individuals on a greater scale than ever before.

- *"...establishment of a coordinated National Spatial Data Infrastructure (NSDI) to support public and private sector applications of geospatial data in such areas as transportation, community development, agriculture, emergency response, environmental management and information technology"*

President Bill Clinton, 42nd President of The United States of America

MALAYSIAN LITIGATION PERPESPECTIVE

- In Malaysia so far there are no court cases or known litigation on injury or damages caused by inaccurate geospatial data.

LEGISLATION SUPPORTING ICT DEVELOPMENT

- Malaysian Communications and Multimedia Act 1998 (Act 589): provides for vast powers to supervise, regulate, enforce communication and multimedia activities;
- Computer Crimes Act 1997 (Act 563): provides offences on misuse of computers;
- Copyright Act 1987 (Act 332): laws relating to copyright works;
- Personal Data Protection Act 2010 (Act 709): regulate the processing of personal data in commercial transactions.

SOME ISSUES

- Capturing of imagery from space-borne and airborne platforms for application to national interest and security.
- Airborne – fixed wing, UAV and drone –
 - Already available guideline through *Arahan Keselamatan* where any flight involving capturing of imagery would require special security vetting and permit from Department of Survey and Mapping Malaysia (JUPEM).
 - Permission from DCA.
- Satellite-borne – there is no space policy concerning the capturing and satellite imagery. Satellites borne activities is being govern by an international body? – how would this impact privacy

EXAMPLE OF UAV IMAGERY



LEGISLATION SUPPORTING SPACE BORNE ISSUES

- Civil Aviation Act 1969 to establish the planning and reviewing of policies relating to air services from time to time;
- Civil Aviation Regulations 2016;
- Unmanned Aircraft System - Chicago Convention on International Civil Aviation.

MYGDI



LEGAL FRAMEWORK

- MyGDI is an initiative by the government to enhance the awareness about data availability and improve access to geospatial information by facilitating data sharing among participating agencies.
- MyGDI provides a basis for spatial data exploration, evaluation and application for users and data providers, within all levels of government, commercial, and non-profit sectors, academia and the public.
- The legal framework of MyGDI consists of two kinds of information policies: those that promote and those that hinder the availability of the spatial data.
 - Policies to promote spatial data availability with a different purpose, access, reuse and sharing.
 - The policies that hinder the availability of spatial data are those dealing with privacy, liability and intellectual property.

“RIGHTS”

- Article 19 Universal Declaration of Human Rights 1948 states : “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;
- Article 10 Federal Constitution acknowledge “the right to freedom of speech and expression” but silent on the second limb of Article 19 of the Universal Declaration i.e. “Right to receive and impart information and ideas. Moreover, the right to freedom of speech is subject to restrictions (security, and public order);

“LIABILITIES AND RESTRICTIONS”

- We have the Official Secrets Act 1972:
- “Cabinet documents, records of decisions and deliberations including those of Cabinet committees; State Executive Council documents, documents concerning national security, defence and international relations” are “official secret”.
- The Act classifies official secrets into 4 categories:
 - Top Secret, Secret, Confidential and Restricted.

HOW DOES THE LAW REGULATE THAT THE DATA PROVIDED IS ACCURATE AND RELIABLE?

- **Public sector data producers** - Malaysian National Spatial Data Committee formed to coordinate the data acquisition and production of government data to ensure data quality.
- Enforced by government circulars, it is not legislation - not legally binding.
- **Private geospatial data producers** - uncoordinated, uncontrolled except for the conduct of cadastral surveys and production of cadastral survey data.
- Vetting of geospatial data by The Department of Survey and Mapping Malaysia (JUPEM) limited to filtering security sensitive information not quality/accuracy inspection.



Cadastral Surveying is the sub-field of **surveying** that specialises in the establishment and re-establishment of real property boundaries.

LIABILITY OF PARTIES INVOLVED IN THE HANDLING OF GEOGRAPHIC INFORMATION DATA

- Ascertaining liability of parties in the data information chain
 - original data providers, software producers, secondary data producers, finally the users
- JUPEM and private data providers provide disclaimers exempting them from liability on both their printed and digital maps and products.
- Left to the general law of torts and contract to determine whether those in the information chain have exercised appropriate standard of duty to prevent the occurrence of breach or losses.
- This traditional legal theory is limited in its application due to the wide array of current as well as potential application of geographic information technology.
- Data providers are subject to code of conduct imposed by their respective professions – such as Licensed Land Surveyors Act 1958 and the Consumer Protection Legislation.

USERS RIGHT TO KNOW AND ABLE TO ASSESS DATA QUALITY

- Legal issues that have to be addressed by JUPEM and other data providers should include identifying duties which are mandatory as data providers regarding the quality of data and duties that every professional is expected to do.
- Responsibilities of informing users about the data, that not only provide users with information pertaining to the content of the data but the limitation or defect or potential risk in the data utilization. The data producers need also consider users' intended usage of the data and warn them accordingly.

NEED FOR LEGISLATION ON GEOSPATIAL DATA ACCURACY IN MALAYSIA?

- No specific law on data quality/accuracy.
- Depends on the traditional law of contract and law of torts.
- No statutory mandate to ensure compliance.
- No consistent legal framework on GIS or geospatial data management and policy.
- What exist is merely a patchwork of self regulation in the form of government circulars, standards which are not legally binding.
- Rapid growth of GIS users in Malaysia raises the need for data accuracy and the appropriate management of these data and hence the need for a codified legislation on managing geospatial data as the country moves towards a spatially enabled government.

SOME ISSUES

- Intrusion or Incursion of UAV on private or government installation for acquisition of imagery – For large scale imagery where detail spatial information can be captured
- National Mapping Agency (JUPEM) can digitize detail 2D or 3D spatial information. With being a government agency through mandate given by the cabinet suffice to carry out these activities for the purpose of national interest.
 - how would this impact privacy concerns?
 - would this infringe even if this is for national interest?

GOOGLE MAP

- Google map which include satellite imagery:
 - Can it be considered intrusion of privacy?
 - Can action be taken against the producer?
 - Snap photos or shoot videos without permission – infringement of personal liberties and right to privacy

- How about Google street view where is the limit to capturing of information?
 - Aerial drone work – military bases – government facilities
 - threaten public safety
 - offences against the state –Penal Code
 - tried under Security Offences – SOSMA
- Do they need permit to carry out their activities?
 - Violate provision of Civil Aviation Regulations 2016 – effective 2016
 - Pekeliling Am Bil 1 Tahun 2007 Arahan Keselamatan Terhadap Dokumen Geospasial Terperingkat Malaysia
 - Geospasial imaging & GIS Mapping in Malaysia, GPS Photo-Link – must get approval / permit from Director General of JUPEM;
 - Comply to Garis Panduan Prosedur Penggunaan Unmanned Aircraft System (UAS) Bagi Aktiviti Citraan .

PROTECTION OF GEOSPATIAL INFORMATION

- Geospatial information can be in the form of maps either digital form or hardcopy
- Is such geospatial information protected?
 - geospatial data may fall within artistic works and therefore copyright protected under Copyright Act 1987;
 - Protection of 50 years from first publication.
 - Would this be perpetual if there is new version which keep on changing every 3 years.
 - Can the existing Act protect such works?
- Rights of data producers
 - To produce data
 - To perform or show to public
 - Distribute
 - licensing

DATA PRIVACY LAWS

- Existing Data Privacy Law - Personal Data Protection Act 2010 (Act 709):
 - Does this Act covers the government geospatial information whether in favour of either the public or the government?

INTRUSIONS

- Enforcement in case of breach by hackers:
- Do we have laws to protect such intrusion?
 - Computer Crimes Act 1997 (Act 563)
- Penalty for unauthorized access of geoinformation data from government facilities.
 - Penal Code offence
 - Security offence - SOSMA

CONCLUSION

- Do we require new legislation?

CONCLUSION

- The need for a knowledge-based society for the development of Malaysia is surely a MUST because we believe that perfection come with freedom of expression and surely freedom of information.
- The imbalances between the rights and liabilities in our information law needs to be addressed.
- Perhaps the National Geospatial Data Act will address issues on the right of information and obligation to disclose information.