

Licensing of Geoinformation Information

International Workshop
on Legal and Policy Frameworks
for Geospatial Information

Nuku'alofa, Kingdom of Tonga
10-13 April

Objectives

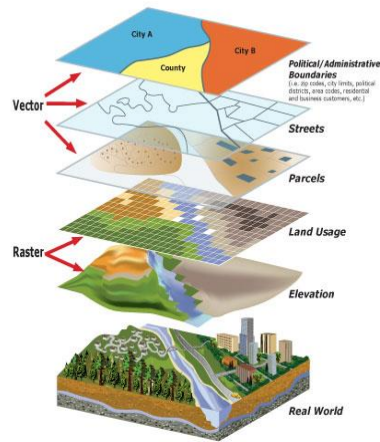
- The Structure and Purpose of Geospatial Information License Agreements.

Why Issue is Important?

Geospatial products and services are increasingly be developed using data from a variety of sources

- Government
- Industry
- Crowd

Each are subject to their own licenses/data sharing agreements with varying terms/restrictions



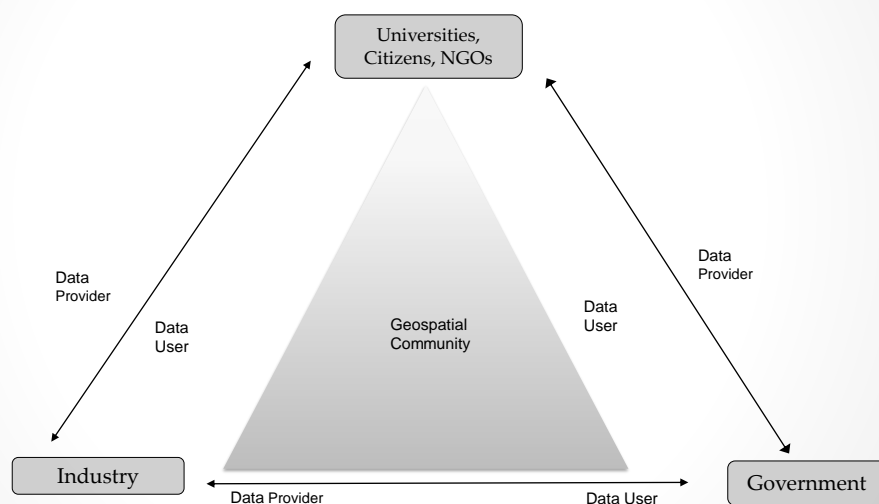
Geospatial Community

- An international ecosystem that collects/uses/stores/distributes geoinformation.
 - Cuts across technology platforms, industry groups and user communities.
- All segments of community are contributing to the ecosystem's growth
- Products and services increasingly being developed based upon aggregation of all types of data collected from diverse sources.

Geospatial Information Can Be Licensed In Various Types of Agreements

- Geospatial Information Licenses
- Data Sharing Agreements
- Website Terms of Service
- Software as a Service (SaaS) Agreements
- Cloud Storage Agreements

And Creating A New Geospatial Ecosystem



Licensing Increases Complexity

- A number of legal issues arise around the licensing of geospatial information, including:
 - Privacy
 - Intellectual Property
 - National Security
 - Open Data
 - Liability
- Issues may change depending upon type of data, how it is used and who uses it, but each of the issues must be considered.
- Becomes even more complex in international transactions.

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Theory of Geospatial Information Aggregation

$$X = (A*B)C^2$$

Where:

X= complexity of aggregation

A = number of data sets

B = number of different legal systems involved

C = number of parties removed from original data source

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Uncertainty Causes Friction

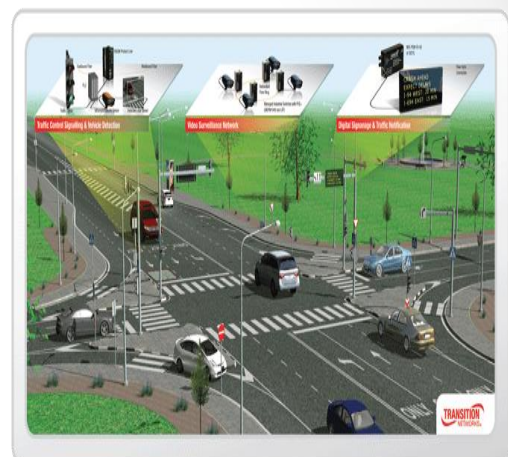
- Policy/legal communities don't understand geospatial technology, geoinformation, and/or the geospatial community.
- When lawyers don't understand the technology or the use and the law is unclear, it is easier to say no than yes.

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Challenge Will Grow As New Technologies and Applications Develop

Laws/policies being developed concerning nontraditional geospatial technologies and applications that will impact geocommunity:

- Uber
- Crowdsourcing
- Autonomous Vehicles/Smart Grids/Smart Cities
- Wearable Technology
- Internet of Things



Geospatial Community Will Need to “Share” Geoinformation with New Communities

- Developing around Big Data
 - ☐ Smart Cities
 - ☐ Smart Grid
 - ☐ Autonomous Vehicles
 - ☐ Internet of Things
 - ☐ Open Data Communities
 - ☐ Internet of Things
- Each have their own language, own concerns, motivations, etc.
- Subject to their own regulation, legal framework

Considerations In Negotiating License Agreement

- Types of Data
- Copyright Issues
 - Data
 - Maps
- Data Quality
- Liability Risks
- Privacy
- Open Records/Freedom of Information

Licenses

- 1. **Describe What is Being Licensed**
- 2. Define Rights in Intellectual Property
- 3. Define Use Rights
- 4. Set Forth Payment Terms
- 5. Allocate Risks
 - Representations and Warranties;
 - Covenants
 - Indemnification
 - Data quality, compliance with laws, injuries to third parties
- 6. Identify Applicable Law and Other Technical Legal Issues

What Is Being Licensed?

- It is important to accurately describe what geospatial information is being licensed:
 - Imagery (raw or processed)
 - Data – GPS, addresses, lat/longs, database, etc.
 - Metadata
- Pay attention to defined terms (capitalized)
- Helpful to also describe what is NOT being licensed

Other Considerations: MetaData

- A set of data that describes and gives information about other data
 - Sensor type, location
 - Time of collection, duration of collection
 - Quality
 - Use restrictions
- Great importance to geospatial information.
 - Fitness of Use
- What is geospatial information metadata from a legal standpoint?
 - Part of product/service?
 - Documentation?
- How is it accounted for in legal documents?
 - In description of what is being licensed?
 - In representations and warranties?
 - In indemnification language?

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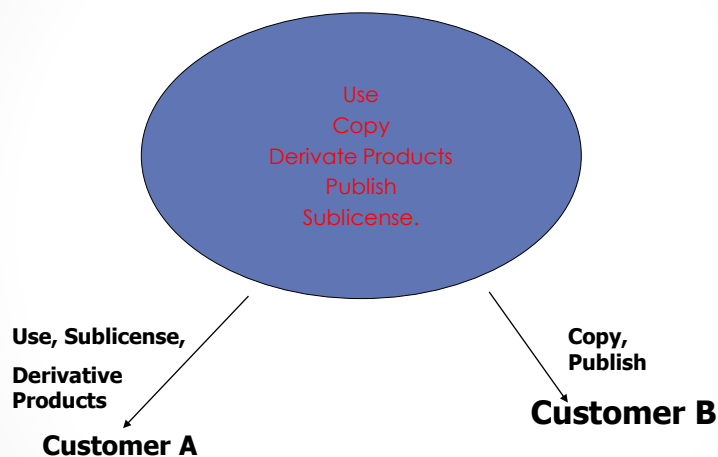
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Step 2: What Rights are Being Licensed?

- What rights are being granted?
 - Copy
 - Use
 - Publish
 - Create Derivative Works
 - Other
- What rights are being retained?
 - Recommend including these in license to avoid confusion

Bundle of Ownership Rights



Other Considerations: Derivative Products

- What constitutes a derivative geospatial information product?
- If important, consider defining in license agreement.
- Make sure rights to create derivative products conforms with supplier agreements (if any).

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Intellectual Property Rights: Copyright

Grants Copyright Holder Exclusive Right to:

- Reproduce
- Create Derivative Works
- Distribute
- Perform
- Display

How do these apply to today's
geospatial information products
and services?

Facts not copyrightable.

*" A compilation of facts,
however may be copyrightable
if the author made choices as
to 'which facts to include, in
what order to place them and
how to arrange the collected
data so that they may be used
effectively by readers'"*

Mason v. Montgomery, quoting
Feist Court

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Use Rights

- Duration of Grant
- Exclusivity
- Commercial vs. Non-commercial
- Territory
- Form (hard copy, digital vector data, etc.)

Any Restrictions on Rights?

- Prohibition on certain customers.
- Prohibitions on certain uses:
 - Navigation
 - Measurement
 - Not valid after certain period of time
 - Other foreseeable uses



Never Know How Data Will Be Used



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Failure to Address Increases Risks

Risk Goes Two Ways:

1. Risk of Harm to other party or to third party
Liability
2. Risk of Harm to You
Damages



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Payment

- Cash
 - Immediate
 - Over-time
 - Royalty
- Currency?
- In-kind
 - Services
 - Data

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Representations and Warranties

- Standard Contractual
 - Organization
 - Ownership
- Other Contractual
 - Accuracy
 - Timeliness
 - Completeness
- Uniform Commercial Code
 - Merchantability
 - Fitness For Use

Representations and Warranties

- Confirm what they apply to:
 - Imagery
 - Data
 - Metadata
 - Other?

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Termination Rights

- Breach of Agreement
 - Payment
 - Representations and warranties
 - Covenants
 - Use of data
- Cure Period?
- Bankruptcy
- Change in Ownership
- Duties upon termination

Other Terms To Consider

- Right to audit customers
 - Minimize risk, maximize value
- Compliance with laws
 - Export
 - Privacy
 - Licenses and regulations
- Insurance/Cyberinsurance
- Prohibitions on certain uses
 - Navigation
 - Measurement
 - Consumer products
 - Other foreseeable uses

Miscellaneous Provisions

Law Is Still Tied to Territory

**Which jurisdiction's laws
apply?**

**Where will proceedings take
place?**

Arbitration? Mediation?

Force Majeure

Assignment



Discussion Items

- What type of geospatial information license agreements does your organization enter into?
- Is your organization a licensee of geospatial information?
 - What types of geospatial information does your organization license?
 - From whom?
- Is your organization a licensor of geospatial information?
 - What types of geospatial information does your organization license?
 - To whom?
- What challenges does your organization face in licensing geospatial information (as licensor and as licensee)?