

Licenses and Licensing

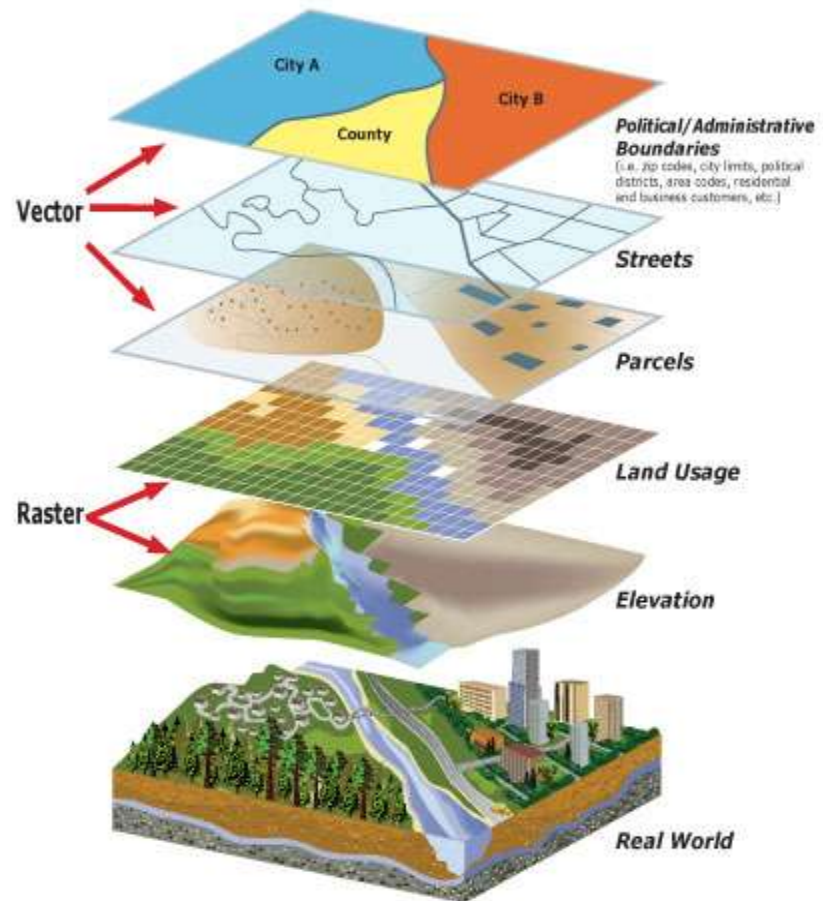
Geospatial World Forum 2015
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Why Understanding Licensing Is Important

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



Licenses

- ▶ Benefits of licensing – can be structured to allow for almost any business relationship
- ▶ Challenges of licensing – *see above*
- ▶ Licenses do more than transfer rights in intellectual property (data) . . . they also allocate risks between the Licensor and Licensee
 - Representations and Warranties; Covenants, Indemnification
 - Data quality, compliance with laws, injuries to third parties

Issues Impact Every Party That Touches Data

- Data Providers
- Aggregators
- End Users
- Software Companies
- Cloud Providers



Licenses

- ▶ 1. **Define rights in Intellectual Property**
 - ▶ 2. Define use rights
 - ▶ 3. Set forth payment terms
 - ▶ 4. Allocate risks
 - Representations and Warranties; Covenants, Indemnification
 - Data quality, compliance with laws, injuries to third parties
 - ▶ 5. Identify applicable law and other technical legal issues
- 

Intellectual Property Rights: Copyright

Grants Copyright Holder
Exclusive Right to:

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

How do these rights apply to
today's geospatial data
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*

“Back to Back” Licenses

- ▶ Geospatial products and services are increasingly constructed using data from a variety of sources:
 - Government
 - Crowd
 - Industry
- ▶ Raises issue of “back-to-back” licenses
 - Vendor → You → Customer
 - Difficult to:
 - conform licensing restrictions
 - protect proprietary information

Theory of Geospatial Data 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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Never Know How Data Will Be Used

- ▶ i.e. Twitter Maps



Failure to Address Proper Use Increases Risks

Two Types of Risk:

1. Risk of Harm to
other party or to
third party

Liability

2. Risk of Harm to
You

Damages



Important To Define In License

- ▶ Important to define uses (both permitted and prohibited) in license:
- ▶ Legal community is not familiar with many of the terms used by geospatial community.
 - Geocoding
 - Reverse geocoding
 - Raster v. vector data
 - Metadata
- ▶ Little case law on key terms used in community:
 - Data
 - Digital rights
 - “Open”

And Limits Revenue Opportunities


- ▶ Define market(s)
- ▶ Define product(s)
- ▶ Define permitted derived product(s)
- ▶ Define permitted region(s) of use



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Payment

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

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Who is Responsible When Someone/Something is Injured?



I Thought I Could Make It.

As data is used in more real time critical decision making by non-sophisticated users the risk of mistakes increases.

Do you want judges, lawyers and juries to decide liability?

Privacy

“The settlement also requires the defendants to provide a just-in-time disclosure that fully informs consumers when, how, and why their geolocation information is being collected, used and shared, and requires defendants to obtain consumers’ affirmative express consent before doing so.”

*Federal Trade Commission
3/14*



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Miscellaneous Provisions

Laws Are Still Tied to Territory

Which jurisdiction's laws apply?

Where will proceedings take place?

Arbitration? Mediation?

Force Majeure

Assignment

Compliance with Laws

Insurance



Questions

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