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Legal Implications of Evolving Remote Sensing Technologies (3)

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REMOTE SENSING DATA ACCESS POLICY, DATA PRODUCTS REGULATORY FRAMEWORK AND INTELLECTUAL PROPERTY RIGHT CONCERNS IN AN ERA OF ENVIRONMENT PROTECTION URGENCY.

Abstract

Earth Observation (EO) data products are the outcome of complex activities operated by a plethora of actors that follow different interests: mitigate the degradation of the terrestrial environment, track the evolution of natural and manmade disaster, assess the disaster impact at the regional and global level, as well as generate data exploitable as legal evidence. Furthermore, they are the result of significant financial investments, resources and time. The high "cost factor" of establishing and maintaining a space remote sensing system has led satellite operators to distribute data on a commercial basis, becoming a profitable industry (estimated to reach USD 21.62 Billion by 2022). Private data owners aim to safeguard their profit interests implementing different kinds of "protection" on data products by putting higher burden of cost on the users. Primary areas of investigation regarding the protection of generated data are data access policy, the articulate terms and condition as well as restrictions of supply and use of data under which the operator is licensed, and the applicable Intellectual Property (IP) law regime. While access and pricing policies can be exercised largely at the discretion of data generators on a contractual basis, the safeguard of EO data and information through copyright rights depends on whether the IP legal regime applicable to a specific data generator of a particular country permits it or not. In the European context of copyright law, a step further is accomplished through the sui generis right for database under the Database Directive 96/9/EC. The inconsistencies among the different practices of EO data generators concerning access policy and the applicable legal frameworks of IP rights leads to a broad lack of uniformity, creating uncertainties and confusion. Their examination demonstrates that there is a gap between the grade of protection data generators demand and the one available under the present law. The nature of EO and the diversified applicable laws, regulations and policies to EO data place a high level of vagueness and affect the legal interoperability of data. As a result of the fast-moving changes in the circumstances surrounding EO data supply, a precise and comprehensive legal framework is highly requested. This paper will address the priorities which should be undertaken in its delineation. Among those, the rationalization of data access and the choice of open data access for applications beneficial to the society, such as climate change researches, will be used as guiding principles.