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INTELLECTUAL PROPERTY PROTECTION FOR REMOTE SENSING (AI-GENERATED) DATA: CHALLENGES, SOLUTIONS THROUGH MAP-BASED ANALOGIES, AND THE OVERARCHING OUTER SPACE TREATY'S SHARING DILEMMA.

Abstract

Observing Earth via remote sensing produces an enormous amount of valuable data in a digital form. This type of data is regarded as a vital resource for understanding and enhancing Earth's capabilities and overall sustainability goals, as it allows environmental monitoring, resource management, and general security. Since the launch of U.S. Landsat 1, satellite remote sensing for Earth observation has grown massively, as has the related industry of on-ground remote sensing data analysis. However, with the absence of a coherent and updated legal framework, governing such operations, as well as the ownership and protection of space-generated data, is necessary to ensure their fair and sustainable use, compliant with International Space law. Through a comparative analysis of International law, European law and the extensive review of selected national Intellectual Property laws and Space legislations, this paper's main goal is to fill this gap by addressing the issue of the protectability of remote sensing activities and remote sensing-generated space data through Intellectual Property law, exploring different ways of protection and navigating potential challenges that might occur. Its primary focus is on identifying suitable IP frameworks for protecting remote sensing data throughout different stages of the remote sensing process, with particular attention to the impact of AI use in later stages. While considering all types of applicable IP Protection for different types of data – notably unenhanced and enhanced data – this paper mainly focuses on the issue of the copyrightability of enhanced data, typically presented as visual representations of scientific information. Drawing an analogy with the copyright protection of geographic maps, it highlights the potentialities and limits of such IP Protection and explores possible alternative and most suitable solutions for the protection of such kind of space data, ranging from their explicit ascription within the scope of application of the Berne Convention to the need to establish specific sui generis right Finally, the paper tries to solve the inherent conflict between the exclusiveness granted by IP Law and the benefit-sharing obligations by applying existing exceptions and limitations to IP rights as well as to propose new solutions, such as time-bound exclusivity, tiered access models, and the management of space data as a knowledge commons.