

Agnieszka Besiekierska¹

LIMITATIONS OF THE ACCESS TO SPATIAL DATA AND SERVICES DUE TO INTELLECTUAL PROPERTY RIGHTS. POLISH PERSPECTIVE

Abstract: The Inspire Directive introduces a conceptual framework related to spatial data infrastructure, unifying the issues related to the access to spatial data within the European Union. The Directive was implemented into Polish law in the Act of 4 March 2010 on spatial information infrastructure. Both the Directive and the Act provide for the possibility of introducing limitations to access to spatial data and services in connection if access would adversely affect, among others, intellectual property rights. The carried out study shows that most poviats subject to the study have not acquired the required scope of intellectual property which may potentially result in the access limitations.

Keywords: Inspire Directive, spatial data, spatial data sets, intellectual property rights

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¹ Cardinal Stefan Wyszyński University, Faculty of Law and Administration, Warsaw, Poland, ORCID ID: <https://orcid.org/0000-0002-1223-1442>, email: a.besiekierska@uksw.edu.pl

Introduction

Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an infrastructure for spatial information in the European Community (INSPIRE Directive) imposed on the Member States of the European Union, including Poland, the obligation to collect and make available their own spatial data (in the form of services network services, e.g. data browsing or data downloading services) (Ganczar, 2020). Sharing spatial data is subject to the limitations indicated in Art. 13 (1) of the Directive which provides that accessibility can be excluded due to intellectual property rights. This paper presents the basic conceptual framework for spatial data and intellectual property law and points out the limitations related to copyright protection. In further parts, it contains the results of the carried out study based on the contracts concerning spatial data or services entered into by selected local government units (poviats). The analysis of the contracts provides the answer to the question whether the intellectual property rights have been acquired in the sufficient scope or if there are some shortcomings which may lead to the limitations due to intellectual property rights.

Conceptual framework and general principles of using spatial data

The Inspire Directive introduces a basic conceptual framework for spatial data, defining key concepts from the point of view of the analyzed topic, such as "spatial data", "spatial data set", "spatial data services", or "INSPIRE Geoportal". "Spatial data" means any data relating directly or indirectly to a specific location or geographical area (Article 3(2)). For example, spatial data included in the Polish state owned service called Geoportal include among others photogrammetric aerial photos, basic geodetic networks, State Register of Borders (PRG), Maps, State Register of Geographic Names, Database of General Geographic Objects, Terrain Utilities (GESUT), Orthophotomap (ORTO), Digital Terrain Model (DTM), Digital land cover model (NMPT), LIDAR measurement data, Database of topographic objects (BDOT10k), Register of land and buildings (EGiB), Database of topographic objects (BDOT500), Database of detailed geodetic networks (BDSOG). The collections of spatial data form databases which the Inspire Directive calls "spatial data sets" and defines as recognizable sets of spatial data (Article 3(3)).

Access to spatial data takes place through spatial data services, which mean operations that can be performed by a computer application on spatial data contained in spatial data sets or on the metadata associated with them (Article 3 (4)). The Inspire Directive specifies which spatial data services should be established and operated by Member States (Article 11(1)). These are (Article 11(1)): search services, browsing services, download services, transformation services and services enabling the launch of spatial data services. The directive, when listing individual services, briefly characterizes them, indicating their basic features, e.g. in the case of search, indicating that it is to be based on the corresponding metadata. Additionally, the Directive specifies that services offered in accordance with the Directive should take into account relevant user

requirements and should be easy to use, publicly available and accessible via the Internet or other appropriate means of telecommunication (Szpor, 2016).

Limitations on the access to spatial data sets and services

The Inspire Directive specifies possible limitations on the access to spatial data services. Art. 13 (1) introduces a general clause allowing Member States to limit public access to spatial data sets and services due to issues that are key to the existence of the state, i.e. where such access would have an adverse impact on international relations, public security or national defense. However, the grounds for limitations may be of a minor less nature. Member States may also limit public access to spatial data sets and services through services if access would adversely affect one of the areas identified in Article 13 (2) areas, including intellectual property rights (in addition to the confidentiality of the activities of public authorities, the activities of the administration of justice, the confidentiality of commercial or industrial information, the confidentiality of personal data or files relating to a natural person, the interests or protection of any person who has voluntarily provided the information that is the subject of the request, or the protection of the environment). Member States may not, invoking intellectual property rights, restrict access to information on emissions into the environment. The implemented provisions regarding limitations on the use of collections and services are included in Article 11 (1) and (2), and the provision regarding the possibility of limiting access on the basis of the provisions on intellectual property in Art. 11 (2) point 6 of the Act, according to which limitations may occur if access to these data is subject to restrictions on the basis of separate provisions regarding, in particular, intellectual property rights (Felchner & Jankowska, 2013).

Both in the case of the INSPIRE Directive and the Polish Act, the concept of protection of intellectual property rights appears not only in the context of limitations on the use of spatial data sets and services, but also takes the form of a general clause according to which the Directive and the Act do not infringe the rights of based on the provisions on the protection of intellectual property rights (Article 2(2) of the Directive and Article 2 of the Act). In the case of the Act, this principle is strengthened pursuant to Art. 4 (3), according to which, in the case of files maintained by a third party that has been allowed to be included in the infrastructure, the administrative body may take action under the Act only with the consent of the entity that has intellectual property rights to these data.

Protection of intellectual property rights in the context of spatial data

Intellectual property rights can be divided into four categories in Polish law, depending on the legal source of protection: (i) copyright and related rights provided for in the Act of 4 February 1994 on copyright and related rights, (ii) industrial property rights, which protection follows from the Act of 30 June 2000 on Industrial Property Law, (iii) database protection law in accordance with the Act of 27 July 2001 on the

protection of databases and (iv) protection of know-how as a trade secret within the meaning of the Act of 16 April 1993 on combating unfair competition.

In the context of protection of spatial data sets or services, the first and third category are important, i.e. copyright and database protection rights. Industrial property rights concern a closed catalog of rights, i.e. inventions, utility models, industrial designs, trademarks, geographical indications and topography of integrated circuits (Article 1 (1) of the Industrial Property Law). Taking into account the definitions of those rights, access to spatial data sets and services will not fall within this scope. In particular, unlike in some legal systems, Polish industrial property law does not grant patent protection to software, including software related to the provision of spatial data access services (Sztobryn, 2015). Similarly, spatial data sets and sharing services will also not be protected as know-how under the Act on Combating Unfair Competition as they will not fulfill the requirements of a definition of a business secret (Nowińska & Szczepanowska-Kozłowska, 2022).

As far as copyright and related rights are concerned, in accordance with the Act on copyright and related Rights, the subject of protection is a work understood as any manifestation of creative activity of an individual nature, established in any form, regardless of its value, purpose and method of expression (Article 1(1) of the Copyright Act). The Act then provides examples of works that are subject to copyright protection, including cartographic works (Article 1(2)(1) of the Copyright Act). However, over the years, there has been a noticeable tendency to procedurally enforce protection in relation to even the smallest manifestations of human creative activity such as railway timetables or user manuals (Markiewicz, 2020). Additionally, even if the whole set will not be copyright protected, single parts may be subject to copyright protection (Jankowska, 2017).

In addition, protection covers a collection that meets the characteristics of a work, even if it contains unprotected materials, provided that the selection, arrangement or combination adopted therein is of a creative nature, without prejudice to the rights to the works used (Article 3). At the same time, official documents are excluded from the scope of protection, materials, signs and symbols (Article 4(2) of the Copyright Act). Protection provided for in the Copyright Act is granted primarily to the creator, but in the event of secondary acquisition, either by way of an agreement on the transfer of copyright or an employment contract, where the purchaser is will be the employer, the buyer is entitled to copyright protection. Copyright protection under Polish law applies regardless of the fulfillment of any formalities, which means that no additional activities confirming the existence of copyrights, such as entry in the register, are required (Article 1(4)).

Spatial data sets protection results from the Act on database protection, which implemented Directive 96/9/EC of 11 March 1996 on the legal protection of databases (OJ EC L 77 of March 27, 1996). "Database" is a set of data or any other materials and elements collected according to a specific taxonomy or method, individually available in any way, including electronic means, requiring a significant investment in terms of quality or quantity in order to prepare, verify or present it. content (Article 2(1)). The

definition implies that only databases for which investment expenditure has been made may be subject to protection. A significant investment is, in accordance with the recitals of the preamble to the directive is understood broadly, i.e. "The investment related to the preparation of a database may consist in the involvement of human resources, technical and financial resources, but this investment should be significant from a quantitative or qualitative point of view. Quantitative assessment refers to resources that can be expressed numerically, and qualitative assessment refers to expenditures whose amount cannot be determined, such as the contribution of intellectual work or energy expenditure". And "a relevant investment in preparing (creating) a database is an investment in obtaining data for the database" (Markiewicz, 2021). Database protection is granted to the database maker (...) In the case of spatial data, a question may be asked to whether and to what extent a third party's investment in creation of the database may be seen as significant if the scope and structure of the database has been specified in legal provisions (e.g. in the Regulation on spatial data sets and metadata in the field of spatial development). The answer to this question will probably depend on the specific case. Database protection is independent of protection under the Copyright Act, i.e. a data set may be protected under copyright law and the Act on database protection.

As mentioned, copyright protection is enjoyed by the creator or holder of economic copyrights, and in the case of a database – by the maker. The work or database may be subject to an exclusive or non-exclusive licence. In the case of spatial data and services related to them, a number of activities related to the development and maintenance of access to data are performed by third parties other than a public entity, legal entities or natural persons who are not employees of the public entity. In such a situation, it is important that the State Treasury or a local government unit acquires the full scope of intellectual property rights. Failure to acquire or incomplete acquisition will lead to limitations on the use of spatial data resulting from intellectual property rights. This is particularly important in the context of the above-mentioned broad interpretation of the concept of a work, i.e. the subject of copyright protection.

Results and discussion

The provisions of copyright law precisely specify the form of the contract transferring copyrights (written), as well as its content, primarily the field of exploitation, regulate the issue of personal copyrights (possibility of modification and use of derivative works) and remuneration. Over the years, practice has developed regarding the content of copyright clauses, which in practice are extremely extensive. Similarly, the rights to the database can be transferred from the maker to another entity, as well as they may be subject of a license.

Within the study contracts concerning spatial data that appeared in public procurement documents published in 2020–2023 by the Central Office of Geodesy and Cartography and by ten largest poviats have been analysed. Within that period, three procedures for the award of public contracts were announced by the Headquarters of the Geodesy Office (GUGIK, <http://www.gugik.gov.pl/bip/zamowienia-publiczne>). As

part of the tender documentation, template contracts were made publicly accessible for view. All of the templates included extensive copyright clauses transferring economic copyrights to GUGIK. There were no provisions regarding databases in the contracts, which in two cases was due to the nature of the proceedings – the subject was the preparation of a map (BDG-ZP.2610.13.2023.GI, GI-TOPO.2611.4.2022). In the case of the third one concerning development of tools for automatic generalization and cartographic editing of the Topographic Objects Database – it cannot be ruled out that such records may have been necessary or should have been introduced preventively (GI-TOPO.2611.3.2022).

The ten biggest poviats terms of the number of inhabitants were chosen on the basis of Statistics Poland from 2015 (http://www.gminy.pl/Rank/PZ/Rank_PZ_L.html). The analysis covered tender documentation published on the website ezamowienia.gov.pl, whereas “geodetic”, “cartographic”, “map” as key search words (Table 1).

Table 1. The biggest poviats terms of the number of inhabitants

Powiat (powiat)	IP clause	Database protection clause
Poznań	N/A	N/A
Kraków	None	None
Wołomin	Extended clause	None
Nowy Sącz	None	None
Wejherowo	N/A	N/A
Kielce	Extended clause	None
Tarnów	N/A	N/A
Nowy Targ	Short, insufficient clause	None
Cieszyn	None	None
Piaseczno	None	None

Source: own elaboration

Analyzing the contracts, it can be observed that there is no uniform approach to the acquisition of intellectual property rights, and the exemplary approach of the GUGIK is not a source of inspiration for poviats which did not attach importance to that topic.

Moreover, poviats use contract templates which do not differ from each other in terms of copyright clauses. Basically, if a powiat has decided not to regulate copyright issues in the contract, this approach is uniform in all contract templates. Individual counties approach the issue of copyright to spatial data in different ways – ignoring it or

taking it into account. In all cases examined, no contractual clauses relating to databases were found. Such approach may ultimately lead to the limitations with regard to the access, resulting from the incomplete scope of the public entity's rights to the spatial data sets or services.

The above-mentioned approach in the field of intellectual property rights differs significantly from the approach practiced in the private sector, where the issue of copyrights as well as rights to databases is approached very scrupulously, in particular often out of caution with the assumption that the subject of an assignment is the work within the meaning of the act on copyright and derivative rights and that the contractor is copyright-entitled (Okoń, 2022).

Conclusions

Member States may limit public access to spatial data sets and services through services if access would adversely affect one of the areas identified in Article 13 section 2, including: intellectual property rights. The performed study shows that in many cases there has been no acquisition of copyrights to works containing spatial data, and in all the cases the issue of ownership of spatial databases is completely omitted. Such approach may ultimately lead to the limitations with regard to the access to spatial data or services, resulting from the insufficient scope of the public entity's rights to ensure an unlimited access.

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