8. Different PSI Access Policies and Their Impact

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I work for the GeoPortal Network Project in the Netherlands. In the Netherlands, there is a large research program called Runte voor Geo-Informatie (RG), or the Space for Geo Information Program, and the government has spent about 20 million on it over a five-year period. The GeoPortal Network (GPN) Project is one of the activities under the RG Project. The objective of the project is to set up a one-stop shop for all geo information. The GPN Project is run by a consortium of 14 partners from both the public and private sectors. My research is to identify the current legal and financial barriers to access and to develop a model for transparent access. The goal of this model, called the Baakx model, is to develop a system in which different data can be combined without running into various types of barriers. This can be a problem because quite often one organization will comply but not the other. The model should be suitable for all types of users, whether from the private sector, the public sector, or the end users themselves.

There are three levels of accessibility in the Baakx model. First, information has to be known. If no one knows about the information, if they cannot find it, if they cannot recognize it, then it is of no use at all. Second, once someone knows it is there, they have to be allowed to get it. It has to be affordable. Third—and this is the responsibility of whoever creates the data—the quality of the data has to be good enough. The data must be clear, manageable, and usable. The GeoPortal Network Project is not going to examine the quality of the data, but instead it will focus on where the data can be found and how they can be used.

What is geo information (GI)? It is all information that refers to a specific location on Earth. We are concerned with GI in the public sector domain. In the Netherlands, public-sector geo information is available for reuse under certain conditions. There are two regimes used for dissemination: the marginal-costs regime and the cost-recovery regime. The type of regime used depends on the type of government agency and what its financial base is.

How is geo information different from other types of information? It is not based on text. It is not like digitizing legislation and making it available through a PDF file. While that takes time, it is relatively easy. Geo information typically is based on very specific data sets, which can be very expensive to collect and maintain. They are also subject to intellectual property rights as well as to national security and privacy laws, so before GI is made available for use or reuse, the data sets may have to be prepared for public dissemination. That is one of the reasons why reuse is often covered by licenses. The licenses are not only to protect intellectual property rights but also to comply with security and privacy laws. The licenses also allow cost recovery. Nonetheless, geo information has unlimited potential applications for the private sector.

1Based on a presentation found at http://www.oecd.org/dataoecd/12/36/44064090.pdf
European Union directives related to GI include the PSI directive on the re-use of public sector information and the INSPIRE directive.\(^2\) What is the difference? They overlap to a certain extent, but the PSI directive focuses on reuse of public sector information, while the INSPIRE directive focuses on sharing GI with the public sector. INSPIRE stipulates which standards to use for exchanging and sharing data, but neither of these directives regulates market activities. Although both stipulate a preference for a marginal-costs pricing regime, EU member states are still allowed to use the cost-recovery regime.

The Dutch legislation governing the use and reuse of geo information is the Wet openbaarheid van bestuur, which is generally equivalent to the American Freedom of Information Act. There is also contract law that comes into play in some situations. In the Netherlands public sector organizations are excluded from fair trade legislation, but that is currently under review. There is protection of privacy legislation as well, which states that if there is any information that can be traced directly back to a person, then it is not allowed for reuse. Finally, there is specific legislation such as the Cadastre Act, discussed in more detail below.

Up until the mid-1990s, public sector organizations could set their own conditions and prices for marketing PSI. They could market it themselves, or they could give it away, but the latter was not a common approach. The private sector complained vociferously about unfair pricing practices. This resulted in a report\(^3\) that made a number of sweeping recommendations. One recommendation was that public sector organizations should not engage in market activity in competition with the private sector. The Cohen report listed a number of exceptions having to do with core tasks, however. One exception was that while public sector organizations should not be allowed to add value to their own information with the goal of making the information more attractive for reselling it; they should be permitted to add value if this is required in order to fulfill their essential mission.

Another recommendation in the report was that the marketing activities of several public sector organizations should be reviewed. For example, the National Meteorology Office and the Cadastre were reviewed. The result was that a number of these organizations were privatized outright, while others, like the Met Office, had to give up their commercial arms. If they were going to sell their data for reuse, they had to do it through an intermediary, in order to create a level playing field with a full-cost recovery regime.

The report also published guidelines for national public sector bodies that are not covered by their own specific legislation. The guidelines state that if a public sector organization were to engage in economic activities because the private sector would not, or could not, then all costs must be passed on in the charges. Basically, a public sector body was not allowed to give its data away free, because if it did, it would be competing unfairly with the private sector. So, if there were to be competition, it would be on a level

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playing field, and the public sector body was not allowed to use cross-subsidies or tax
advantages.

Unfortunately, these guidelines do not apply to lower levels of government, such as
municipalities, provinces, or water boards. They only apply to the national public
sector, even though most of the original complaints from the private sector did not apply
to the national public sector, but rather to the lower levels because they were the ones
setting their own charges and license conditions.

So what is happening now? The public sector is not supposed to be producing
value-added products, except those entities specifically mandated to do so. This is a very
dastic concept, however, and there are no clear boundaries. The national Cadastre, which
is covered by its own legislation, is an exception, as it is producing value-added products
in direct competition with the private sector. Otherwise, more and more public sector data
sets are becoming available for reuse thanks to the PSI directive, although there is still
great variety in licensing conditions. I did a quick overview about two years ago, and the
licences of the 20 or so public sector bodies that I looked at ranged from a licence that
was just one or two paragraphs to a licence that was extremely complex. Also, to
negotiate a licence can demand anything from a click-through licence to actually having
to go through many weeks of negotiations. The resulting situation is not transparent, and
it can be very time consuming.

Among the more attractive data sets are the Authentic Registries. The private
sector really would like to have these data because they can be used for value adding. The
Authentic Registries are still restricted for reuse, and they are not made public. The
concept behind the Authentic Registries is that governments should acquire information
only once and should reuse it many times, which implies that there should be only one
registry for the entire population. There is only one registry for cars, for example, and
only one Cadastral registry. All other public sector bodies are to reuse that same registry.
If they see any mistakes they are supposed to report them to the responsible body so they
can be fixed. The goal is for the registries to be of very high quality. The registries are
very valuable for the private sector. Private companies would especially like to have the
property value register, which allows one to see how much houses are worth. But the
Authentic Registries are not available for use, let alone reuse.  

Prices of PSI are coming down. It is a major trend. Some of them are coming
down because the organizations have decided to make their PSI available for only the
cost of dissemination, but many of them are coming down because the prices were too

4 An authentic register is defined in the Netherlands’ Streamlining Key Data Programme as ‘a high quality database accompanied by explicit guarantees ensuring for its quality assurance that, in view of the entirety of statutory duties, contains essential and/or frequently-used data pertaining to persons, institutions, issues, activities or occurrences and which is designated by law as the sole officially recognised register of the relevant data to be used by all government agencies and, if possible, by private organisations throughout the entire country, unless important reasons such as the protection of privacy explicitly preclude the use of the register’. Duvenhodge, H. van & M de Vries. 2003, Upstream! A chronicle of the Streamlining Key Data Programme. The Hague.

5 At the time of the presentation, legislation related to the Authentic Registries was not finalised. Since then the legislation process has moved forward. It now looks as though reuse of the Authentic Registries will be allowed (i.e., not restricted due to proprietary concerns, or security or privacy legislation). The pricing regime has not been finalised yet, however.
high and the organizations did not sell any data sets. For example, there is a data set which records all the geographic heights in the Netherlands. You may laugh because our highest mountain is only 100 meters, but it is actually quite important for the lower-lying areas to see how much below sea level they are, or for use in the three-dimensional imaging of buildings. The price used to be €1 million for a set covering the entire country. I think they sold one. Now the price has been reduced to €200,000, and about 20 have been sold. This shows that lowering prices actually can increase revenue.

The problem now is that if you are giving free data away to the public sector, this may be deemed to be economic activity. The positive side is we get the stimulation of the knowledge economy and more value-added products, which also means more taxes flowing back to the government, because if we are going to get more companies producing value-added products there is going to be more revenue flowing back to the government in the form of sales taxes, value added taxes, company taxes, and income taxes from the new employees. Ultimately, the government will get a better return on investment, but it is a long-term strategy and most governments only look ahead as far as the next election and don’t look beyond that point.

Another positive effect of this activity is the encouragement of citizen involvement. Citizens now have better access to information and are better informed. This gets us back to the issue of how much it is worth: How much does it cost if you do not have the information? There is no such thing as a free lunch. If you do not expend the resources, the ability to sustain the quality of data is threatened. The Dutch Cadastre is an example. It used to be funded out of general revenue, but during the 1990s the budget was cut many times. It almost ceased to exist because it was not getting enough money to maintain a Cadastre register.

As part of the Cohen report the Dutch Cadastre was reviewed, reorganized, and turned into what the English would call a Trading Fund. It is doing very well now, and it does not want to go back to the former situation in which it was depending on an annual budget and hoping that it would have enough money to survive.

Another downside of making the PSI available at low cost or no cost is the threat to the private sector companies that may have already set up similar data sets. If the public sector is going to make these data sets available free of charge, then it will be seen as an unfair trading practice, and the private sector will have unrecoverable costs.

I have to make some mention of the Creative Commons. Creative Commons is a nonprofit organization founded in the United States using a “some-rights-reserved” approach, in contrast to the “all-rights-reserved” approach of the copyright law. Creative Commons has developed a number of standard licenses and simplified mechanisms for using them. If you want to select a license, you do it online and answer a few questions.

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One case study is the New Map of the Netherlands, which is managed by an organization called the Department of Housing and Special Planning. The data set contains all planning information as a GIS file. It used to be available through an intermediary, and the intermediary sold 20 sets in 26 months’ time. For that data set this is not cost effective. Instead, the department decided to make the set downloadable with the Creative Commons “attribution only” license and to see what would happen. The result is there are now about 200 downloads per month. However, the department still has to pay license fees to the Cadastre for the use of the topographic map as an underground layer. This is a case of one agency paying money to another government agency, which is very inefficient.

The other case study is of the National Roads Dataset managed by the Department of Public Works. This consists of information that is collected in collaboration with other public bodies, and it contains a great deal of other data having to do with roads, such as maintenance data. It has many attributes, but it is not the data concerning the roads that people want. What they usually want is the collection of various attributes, such as street numbering, that would cost a lot of money if they were to be purchased as a separate file from another organization. The private sector sets up similar data sets, and Dr. Fomé/e/d already mentioned Tele Atlas and Navteq. The Department of Public Works wants to make the National Roads Dataset available, and it is already available to use freely now. The department intends to make it available for reuse beginning next year. This has resulted in questions in parliament and threats of litigation. It is a mess.

But what is happening in the meantime? We have organizations like Google Earth getting the data from whoever has it, in the private sector or the public sector. Google Earth provides free reference data and allows mash-ups. Even public sector organizations in the Netherlands are considering using Google Earth rather than the data from the Cadastre because the Cadastre charges for the data, while Google Earth does not, or at

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3Since then, the National Roads Dataset has been withdrawn from viewing by the Department of Public Works. The complaints by organizations selling the street numbering file attributes in question were not upheld. However, the complaints by Falkplan Andes, a cartography company, about unfair trading practices were upheld. Falkplan Andes claimed that making the National Roads Dataset available for free would spoil the market for commercial cartographers. Because these private firms had already invested in similar datasets, their investments could not be recouped any longer. It is not known if the Department of Public Works will make the dataset available in the next couple of years or what will happen to the copies supplied under the Freedom of Information Act before the dataset was withdrawn.
least the price is negotiable. The public just wants free services. If the members of the public cannot get free information from the government, they will try to get it from somewhere else.

In conclusion, the accessibility is improving, but the municipalities also need to comply with the Freedom of Information Act. There is still too much emphasis on protecting intellectual property rights. There are still no consistent and transparent licenses, although the government agencies are trying to work on that. Transparency of cost is needed too, as is some legal clarification about what is an economic activity under the law. There are some court cases pending, and until they are resolved, there will be no clarity.

Here are my recommendations: Simplify current licenses and guarantee the funding. If an agency is going to make GI available free of charge, it should be funded from the current budget. At this time such information cannot be funded from sales alone so, yes, perhaps we should involve the private sector.

Within the GeoPortal Consortium we are working with both the public and private sectors, and the private sector really enjoys it. If they can get something out of it like free data, they will help you develop services. For the Authentic Registries, the current legislation is insufficient. The public sector activity will be overtaken by services such as Google Earth’s, and in five years’ time the opportunity will be lost.