IBBT

D5.2.1: Legal Overview

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IBBT vzw, Interdisciplinair Instituut voor Breedbandtechnologie
Gaston Crommenlaan 8 (bus 102), 9050 Gent, België • E info@ibbt.be • T +32 9 331 48 00 • F +32 9 331 48 05 • www.ibbt.be



1. Legal Overview

1.1. Introduction

The aim of this deliverable is to identify the legal framework for further analysis within the framework of the URBAN project.
URBAN aims at improving the efficiency of the creation of 3D data for urban environments by expanding the automated processes and reducing the need for manual processing of the data. One method will be the use of advanced object recognition software and structure modelling software. But also the displaying of the actual result will extend beyond what is available at the present day.
The final aim is to create the "Grootschalig Referentie Bestand Vlaanderen" (GRBV) by 2014, which will contain large scale digital cartography of Flanders.
Three topics will be outlined: privacy, intellectual property rights and the INSPIRE directive.
For each topic we will specify the relevant legislation that will be investigated further in coming deliverables.

1.2. Privacy

1.2.1. Legislative Body

The relevant legislation is of both European and Belgian origin. The main body is formed by the Directive 95/46/EC[1] and the Law of 8 September 1992 with its K.B. of 12 February 2001[2], dealing with protection of personal information and the processing thereof. Other legislation often refer to these two documents with regard to issues concerning personal data.
Two of which are also of importance to this project, namely the Directive 2002/58/EC[3] and the Law of 13 June 2005 [4], that deals with privacy in electronic communications.

We will also have to consider the jurisprudence, which is responsible for the ever enlarging definition of personal data, since none of the regulations holds an exhaustive definition of the concept. This

[1] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *OJ* 23.11.1995, L 281, p. 31–50
[2] Wet 12 december 1992 tot bescherming van de persoonlijke levenssfeer ten opzichte van de verwerking van persoonsgegevens, *B.S.* 18 maart 1993; Koninklijk besluit 13 februari 2001 ter uitvoering van de wet van 8 december 1992 tot bescherming van de persoonlijke levenssfeer ten opzichte van de verwerking van persoonsgegevens, *B.S.* 13/03/2001
[3] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), *OJ* 21/07/2002, L 201/37
[4] Wet 3 juni 2005 betreffende de elektronische communicatie, *B.S.* 20/06/2005

jurisprudence can provide a more precise overview of the actual scope and field of application of the legislation regarding the protection of personal data. Both European and Belgian jurisprudence will be considered.

1.2.2. Subjects

There are a number of questions to be answered. The first question is whether the images used to make the maps, can be filmed or photographed in the first place. Can you shoot video-images of people walking down the street without their prior or posterior consent? It is widely acknowledged that for instance celebrities and politicians have to accept this to a certain extent. For private persons however, in Europe it is accepted that they have a certain expectation of privacy, even in the public space, contrary to the US opinion[5]. For this matter it will help to closely monitor the legal developments concerning the launch of Google Street View in Europe. The idea is currently in a test phase in France and in its planning stages elsewhere and generates wide controversy because people are photographed on the streets without their consent. These images are then put on the internet for everyone to see. Although this does not fully correspond to URBAN, because the pictures are published as they where taken, it will provide an interesting starting point with regard to the imagery gathered for use in URBAN.

Next question will be whether the mere collection of personal data, if permitted, imposes certain obligations or restrictions on the gathering of the information. Despite the aim of URBAN imagery, the collection of geographical information, personal data will be part of the imagery. Is there a prior "cleaning" of the imagery required or can the imagery be used as it has been collected?

A following question will then be if the processing of the geographical information contained in the imagery must be considered as the processing of personal information or not? Through the imagery, people can be linked to a certain place at a certain time. But any personal data contained in the imagery will not be transferred to the 3D imagery created through the processing of the video imagery. Here the focus is on the creation of the 3D imagery based on the video data acquired, the personal data will be lost in translation from video to 3D. Is this fact of any importance or is this irrelevant, that is the third question.

A final privacy question will deal with the fact that the imagery might be preserved for other projects or further use. For the answer we will relate in part back to the second question where we will have discussed whether the imagery must be cleaned first. But here is the added difficulty of storage of personal information. Can it be stored in its original state? This is the last question but not the least. The answer on this question might lead to a greater cost or legal objections, and could thus be an impediment to URBAN.

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[5] ECHR, *Von Hannover vs. Germany*, 2004; ECHR, *Peck vs. United Kingdom*, 2003

1.3. Intellectual Property

1.3.1. Legislative Body

A second topic are the intellectual property rights (IPR). There is one main body of importance to this topic. The directive 2001/29/EC[6] and the Law of 30 June 1994[7] are the two most relevant factors here. The law is the basic text regarding IPR in Belgium. The Directive concerns itself with harmonisation issues in a European context. It is intended tot create an as uniform body as possible with regards to IPR.

1.3.2. Subjects

Structures can also be subject to IPR and the reproduction of structures, whatever the carrier[8], is prone to the limitations as are the more classic works of art and literature. This means that structures can't be reproduced without consent of the author or the owner of the IPR. This is, to put it lightly, a possibly serious showstopper. It is only a possible showstopper because the IPR also contain certain exceptions where permission is not required.

The first question will be to find out what type or types of IPR are applicable on structures. Is it protected under copyright, patent or trademark? It might well be that a combination of the aforementioned is applicable.

The second step will be to determine when IPR is applicable on structures. This means establishing the conditions of application and how they are to be applied on structures. A clear view must be established when what is applicable. The consequences of an eventual applicability will also be discussed including the obligations that are imposed upon reproductions of any kind.

Thirdly there has to be determined if and what exceptions can be used to put IPR aside and what the conditions for application are. The research will then focus on whether URBAN meets these conditions or not and provide adequate explanation.

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[6] DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *O.J.* 22/06/2001, L 167/10

[7] Wet van 30 juni 1994 betreffende het auteursrecht en de naburige rechten, *B.S.* 27/06/1994

[8] including 3D visualisation

1.4. INSPIRE Directive

1.4.1. Legislative Body

A final legal topic will be the 2007/2/EC INSPIRE directive[9]. This directive is about establishing an Infrastructure for Spatial Information in the European Community.

1.4.2. Subjects

The main focus of this Directive is the interoperability of the different databases. The interest for this project comes from the fact that GRBV will probably be subject to this directive and the obligations held within. For the Directive to be effective, a few sets of implementation rules must be drafted. At the moment the draft process is running. The first set of rules on metadata has already been approved and has entered the adoption process. A second one has just been the subject of public consultation and the final draft is being made before it is submitted for approval. These implementation rules will for the time being not be treated because they are met with heavy resistance in certain parts of Europe[10]. The reason is that some people fear that information that is now public will become private. But the actual form of the implementation rules will only be known after the adoption of the rules. Hence caution is required when discussing these rules.

They are mainly focused on increasing interoperability of the different databases that already exist in the different member states. In enhancing the interoperability, it is hoped that it would become easier to obtain environmental information. At the present day, this information has to be obtained from different databases and must be merged by the person looking for the information.

This might have an influence on URBAN and it is worthwhile to look into.
Although it is not part of the initial proposal, it isn't unwise to consider the directive since the directive might provide an extra argument in the discussion about privacy or IPR. A legal obligation to process data is often a valid reason for an exemption to a rule.

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[9] 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, *O.J.* 25/04/2007, L 108/1

[10] publicgeodata.org

1.5. Concluding Remarks

Above three topics have been indicated for research in the coming deliverables. The research will be presented in a two-stage format. First the general rule will be presented. In a second stage this general rule will be applied on the specifications of URBAN as they present themselves at that time.

The first part will deal with privacy. Does the imagery collected conflict with privacy regulations and what are the solutions to an eventual conflict? That will form the first topic.

Then we will deal with intellectual property rights regarding constructions. That constructions can be subject to intellectual property is already certain. Now we must establish to what extend URBAN is limited by IPR and what can be done to lift these limitations.

The third and final topic will deal with the INSPIRE directive. Although this might not be of importance to the research, GRBV will most likely be subject to this directive. Does this have any consequences for URBAN?

The final goal is to establish a code of practice for URBAN and more general the creation of ‘virtual cities”. Thereto privacy, IPR and the INSPIRE Directive will be further looked upon with regard to the questions already formulated.

1.6. Bibliography

-DIRECTIVE 95/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *OJ* 23.11.1995, L 281, p. 31–50

- DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *O.J.* 22/06/2001, L 167/10

- DIRECTIVE 2002/58/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), *OJ* 21/07/2002, L 201/37

-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, *O.J*. 25/04/2007, L 108/1

-Wet 12 december 1992 tot bescherming van de persoonlijke levenssfeer ten opzichte van de verwerking van persoonsgegevens, *B.S.* 18 maart 1993

- Wet van 30 juni 1994 betreffende het auteursrecht en de naburige rechten, *B.S.* 27/06/1994

-Koninklijk besluit 13 februari 2001 ter uitvoering van de wet van 8 december 1992 tot bescherming van de persoonlijke levenssfeer ten opzichte van de verwerking van persoonsgegevens, *B.S.* 13/03/2001

-Wet 3 juni 2005 betreffende de elektronische communicatie, *B.S.* 20/06/2005; Bijlage 13 juni 2005 bij de wet betreffende de elektronische communicatie, *B.S.* 20/06/2005

- ECHR, *Peck vs. United Kingdom*, 2003

- ECHR, *Von Hannover vs. Germany*, 2004