

“Implied License and Waiver for Downstream Uses of Copyrighted Information on the Geoweb”

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One complication for increasing public participation in the Geoweb is the possibility that copyright rights may apply to material that individuals submit to government-operated or government-endorsed websites. Authors of copyrightable works are the first owners of copyright and have a bundle of exclusive rights, including the right to prevent others from copying and publishing their works. Copyright arises automatically, and authors need not actively affirm or register their copyright to obtain protection. Moreover, individuals do not waive their copyright by a failure to exercise their rights. However, certain actions by copyright owners may constitute an implied license or waiver of copyright, permitting others to do activities that would otherwise be copyright infringing. The Geoweb promises to connect individuals seamlessly, to allow individuals to communicate with government, and for governments to use these inputs to fashion policy responses. But copyright is potentially an obstacle to realizing the potential of Geoweb-based public participation, as it may be difficult to determine what information is protected by copyright, when copyright subsists, and what uses the government and the public may make of information posted online by others. This paper will examine the application of copyright to information that individuals contribute to the Geoweb and suggest best licensing practices to facilitate public participation in a copyright-compliant manner. The paper focuses, however, on legal mechanisms that are available where best practices with regard to licensing have not been followed and there are no applicable contractual terms governing the copyright. Implied license and waiver are two common law doctrines that courts may apply to fill a contracting gap by retroactively interpreting what the parties intended, although did not make explicit. The paper will detail the two doctrines, discuss their application in past copyright cases, and outline how they may be applied to facilitate access to copyrighted information on the Geoweb.