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Transferring Rights of Satellite Imagery and Data: Current Contract Practice and New Challenges

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Abstract

The present work refers to the challenge of understanding the emerging contractual paradigm referred to satellite imagery and data online commerce. Issues like the role of consent in new online contract forms will be analyzed. In this regard, the formation of online contracts requires the existence of consent given by the parties to the contract. The formation of contracts known as "click-wrap", "browse-wrap" and "shrink-wrap" agreements constitute a new paradigm in the tradition of online commerce related to satellite imagery and data. The author highlights other legal challenges encountered during his research and practice such as the Intellectual Property Paradigm regarding Geospatial imagery and data commercial transactions. Moreover, Value Added Data and the Exhaustion of Rights Principle of the rights deserve also some close attention and must be added to the present study.

Keywords: geospatial, remote sensing, Incoterms, intellectual property

Acronyms/Abbreviations

United Nations Principles of Remote Sensing (UNPRS), Geospatial Data (GD), Geospatial Imagery (GI), Remote Sensing (RS), Satellite Data Infrastructure (SDI), Outer Space (OS), Open Geospatial Consortium (OGC), Maritime Spatial Planning (MSP), Marine Strategy Framework Directive (MSFD), Good Environmental Status (GES), United Nations (UN), Geographic Information System (GIS), End User License Agreement (EULA), General Agreement on Trade in Services (GATS), General Agreement on Tariffs and Trade (GATT).

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1. Introduction

One may wonder how different is a picture taken from OS than a picture taken on Earth. Indeed, many things happened from traditional film photography to current satellite remote sensing. Technical particularities oblige legislators to take the most appropriated measures to secure OS activities and transactions of GD and GI obtained using earth observation satellites. The present work intends to introduce the reader to the current status of geospatial data and imagery market from the perspective of the existing contracts available online, and to describe the legal issues that have attracted the attention of the author of the present document[1]. Apart from his view as a legal practitioner, the author has written the present article from the study of the following literature: Condon Jr, William J., in *Electronic assent to online contracts: do courts consistently enforce clickwrap agreements?*, Perales Viscasillas, Maria del Pilar, in *The Formation of Contracts & the Principles of European Contract Law,* Cormier Anderson, Rachel, in *Enforcement of Contractual Terms in Clickwrap Agreements,* Gupta, Indranath, in *Are websites adequately communicating terms and conditions link in a browse-wrap agreement?,* Robertson M, in *Is assent still a pre-requisite for contract formation in today's E-conomy?,* Hayes, David L., in *The Enforceability of Shrinkwrap License Agreements On-Line and Off-Line,* Xue, Jiao, in *A Comparative Study of Shrink-Wrap License, Journal of Politics and Law,* Doldirina, Catherine, in *Open Data and Earth Observations. The Case of Opening Up Access to and Use of Earth Observation Data Through the Global Earth Observation System of Systems*, and Von der Dunk, Frans, *United Nations Principles on Remote Sensing and the User, Earth Observation Data Policy and Europe.*

2. Understanding geospatial online commerce

Many years have gone by since film photographers used to take pictures by fixing the light spectrum throughout a pinhole camera. The first transparent roll film appeared at the end of the XIX Century[2]. Technology has evolved so much since then. It is actually hard for practitioners to find accurate legal instruments capable to provide for concrete answers to the existing legal issues as far as online geospatial data commerce or, even dissemination. In

1 Some references of the present article based on the work by the same author Jordi Sandalinas, "Working Towards a New Set of Global Rules for Certain Satellite-Related Commercial Transactions in the Tradition of the Incoterms® Rules", International Journal of Spatial Data Infrastructures Research, 2018, Vol.13, 286-301

2 About Kodak, see https://web.archive.org/web/20150823030506/http://www.kodak.com/ek/US/en/Our_Company/History_of_Kodak/Milestones_-_chronology/1878-1929.htm, (accessed 17.09.18).

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this regard, the Proposal for a Directive of the European Parliament and of the Council on the dissemination of Earth observation satellite data for commercial purposes, of 17 June 2014 was withdrawn by the European Commission on 1 July 2015 before the European Parliament "could adopt a position on the file"[3] .

Geospatial imagery and data online commerce require a deeper study due to the immense number of online transactions performed on a daily basis. The United Nations Initiative on Global Geospatial Information Management (UN-GGIM), stated that "2.5 quintillion bytes of data is being generated every day"[4]. Therefore, legislators and law practitioners shall develop coordinated strategies in order to assure that geospatial data and imagery transactions are carried safely from a legal perspective. According to the author, film and digital photographic works are an "expression" of the "will behind the device". In this regard, Article 2 (1) of the Berne Convention states that the expression "literary and artistic works" shall include photographic works to which are assimilated works expressed by a process analogous to photography[5]. The question that one may ask is whether automated procedures of image and data capture deserve the same protection of photographic imagery.

Adopted on 3 December 1986, the UNPRS[6] constitute a legal instrument serve as an starting point to define what are we obtaining by sensing the Earth from Outer Space. Unfortunately, the UNPRS are not binding due to their category of Resolution. Therefore, the UNPRS have been qualified by doctrine as *soft law*[7]. Principle I of the Annex embrace the notions of "primary data" (captured raw data), "processed data" (the products resulting therefrom) and "analyzed information" (the interpretation of such

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3 Date of the end of validity: August 6, 2015; source http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52015XC0806(02), documents IP/2015/5286 and JO C/2015/257/12. History path http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52014PC0344. (accessed 12.12, 2016). Also in http://www.europarl.europa.eu/legislative-train/theme-deeper-and-fairer-internal-market-with-a-strengthened-industrial-base-services-including-transport/file-dissemination-of-satellite-observation-data-for-commercial-use. (accessed 17.09.18).

4 J. Lee, M. Kang, Big Data Research Geospatial Big Data: Challenges and Opportunities, Big Data Research 2 (2015), 74–81 Elsevier www.cs.helsinki.fi/u/jilu/paper/bigdataapplication03.pdf. (accessed 17.09.18).

5 Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979) www.wipo.int/wipolex/en/treaties/text.jsp?file_id=283698, WIPO Lex No.: TRT/BERNE/001 UNTS Volume Number 828, (accessed 17.09.18).

6 Principles Relating to Remote Sensing of the Earth from Outer Space, United Nations, Treaties and Principles on Outer Space, adopted on 3 December 1986 (Resolution 41/65), Sales No. E.02.I.20, ISBN 92-1-100900-6.

7 Von der Dunk, Frans, *United Nations Principles on Remote Sensing and the User, Earth Observation Data Policy and Europe*, edited by Ray Harris (Lisse: A. A. Balkema, 2002), 29–40.

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products). For the purposes of the present article, it is important to highlight that the terms

3. The role of the consent in the formation of online transactions

Traditionally, the consent given *(verbally or by hand writing*) by the parties to a contract entailed that such agreement was perfectly binding and parties had their own chances to discuss about the terms and conditions of the contract. At the end, both parties had their "originally autographed" copies for their own uses. Nowadays, the online commercial practice seem to have changed things a bit.

As far as geospatial data online transactions things may seem complicated because, due to the enormous number of transactions perfected regularly, it is hard to negotiate an online EULA contract, especially before its signature. In this regard, it is recommendable that online contract practice is filtered in order to avoid unfair treatment to end-users, customers, individuals acting alone or representing a company, due to their lack of contractual legal skills.

The study of the so-called "assent" in contract formation is also important. Assent could be defined as the agreement to something according to the behavior of the user. The "tacit behavior" of the "end user" is also taken into account. This matter entails that some contracts could become binding if the end user keeps on browsing the web. However, geospatial online data commerce lacks of "assent" or "tacit behavioral" contract formation, except for those websites that refer to some website terms and conditions that are accepted by the visitor if "he/she" continues visiting such website. Theoretically, offer and acceptance should be understood if consent is "peacefully given by users" from both sides. However, when online contracts are unilaterally given by one of the parties and the other party to the contract does not have the possibility to discuss its terms and conditions, then some legal issues may arise.

New forms of online contracts have appeared, namely "click-wrap", "browse-wrap" and "shrink-wrap" agreements. These contracts established unilaterally could be compared to the "adhesion contracts", as known in contract tradition. In such contracts, users are not allowed to change any line of the terms and conditions of the contract, and in case of not agreeing with the content announced by the website then users will not acquire the rights of the satellite image. Other options would consist of contacting the consumer department of the image provider and negotiate a new set of terms.

3.1 Click-wrap agreements

The term "click-wrap" refers to "the way consent is shown" by the consumer (or the user) before performing an online transaction. Such transaction is normally made in the "webstore" of the satellite company offering satellite imagery and data to the visitors. Therefore, by clicking to the pop-up screen

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showing the word "accept", the user agrees to a general set of rules and conditions. Even though this procedure seems simple and brief, there is a compendium of obligations and rights that are agreed upon, and the user must be aware of it (and be capable to negotiate) beforehand.

According to Cormier[8], click-wrap agreements come together with consumer references, issue that seems unavoidable. Cormier refers to "clickwrap" as contracts celebrated online entailing a wrapping a set of rules and conditions by clicking on a concrete button or by performing certain actions on the webpage of the company or supplier offering its services. One would like to stress that the moment of acceptance usually lies before the purchase is completed, due to the fact that the user must be aware beforehand of the terms and conditions he is getting involved in, otherwise this practice would cause a lack of protection towards the client or the user. For some practitioners, click wrap agreements may seem unfair to users, therefore, consumer laws may conflict in these cases, if the country where the user is domiciled is concerned about consumer rights. However, mandatory norms cannot be changed or altered by any mean, otherwise end users could seize the competent court according to the perspective of the consumer and demand the nullity of such agreement. Cormier refers to the case named Dix v. ICT Group Inc[9] to give an example of the profound possibilities to enforce certain click-wrap agreements. It obviously depends on the internal laws (court rules, contract rules and jurisdictional rules) applied to the case. In the before mentioned judgment, the tribunal found that the US Consumer Protection Act had to be respected and the forum selection clause was declared invalid. Also, Cormier states that in Case i.LAN Systems, Inc. v. Netscout Service Legal Corp[10], the Court rendered a judgment stating that *"by clicking on the button referenced as "I agree" and the fact that i.LAN had observably agreed to the terms and rules of the website, thus the assent performed by the party did not void the commercial operation consisting of an online purchase"*.

The European Court of Justice (ECJ) does not question click wrap agreements, but on the contrary. In this regard, in Case Jaouad El Majdoub

8 Cormier Anderson, Rachel, *Enforcement of Contractual Terms in Clickwrap Agreements*, 3 Shidler J. L. Com. & Tech. 11 (Feb. 14, 2007), https://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/395/vol3_no3_art11.pdf?sequence=1, (accessed 4.9.2015)

9 Dix v. ICT Group, Inc., 125 Wash. App. 929 (Wash. App. Div. 3, 2005), petition for cert. granted, Dix v. ICT Group, Inc., 155 Wash.2d 1024 (Wash. Nov, 30, 2005) (No. 77101-4). http://caselaw.findlaw.com/wa-supreme-court/1181220.html, (accessed 17.1.2017)

10 i.LAN Systems, Inc. v. NetScout Service Level Corp., 183 F. Supp. 2d 328 (D. Mass. 2002).

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v. CarsOnTheWeb[11], the ECJ applied article 23 (2) of Council Regulation 44/2001 to click-wrap contracts by stating that "Article 23(2) …. must be interpreted as meaning that the method of accepting the general terms and conditions of a contract for sale by 'click-wrapping', such as that at issue in the main proceedings, concluded by electronic means, which contains an agreement conferring jurisdiction, constitutes a communication by electronic means which provides a durable record of the agreement…"

3.2 Browse-wrap agreements

Some online contracts known as "browse wrap contracts" do not require the action of "clicking". Thus, web visitors are deemed to accept the terms and conditions of a website by just "browsing" or "moving around" the page. Then, some agreements can be closed if user clicks on the "accept" button or by acting in a tacit manner, that is to say, "just checking the website". Therefore, when the so-called click-wrap agreements depend upon "the action of accepting" made by the web user (while pressing a button appearing on the screen of the computer), the so-called browse-wrap agreement becomes real just by the mere fact of using and operating the website and by accessing to its different pages, for example. This is a type of electronic contract where "tacit", "quiet" or "non-invasive behavior" of the web user may create consumer-related controversial issues. Indeed, such practice may be considered abusive from the point of view of certain laws more concerned with consumer protection. Thus, it would be important to analyze these newcomers in the field of electronic commerce transactions that may be included and founded expressly or tacitly when reading the terms or conditions of a satellite imagery supplier contract or the terms of use of a website.

Authors such as Gupta[12] have analyzed from a legal perspective browse-wraps and shrink-wraps agreements. Gupta recalls the case known as Century 21 Canada Limited Partnership v. Rogers Communications Inc[13] rendered by the Supreme Court of British Columbia in Canada. Recital 92 of the Judgment of Case Century 21 states that *"A browse wrap agreement does not require that the purchaser indicate their agreement by clicking on an "I Agree" button. All that is required is that they use the product after being*

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11 Judgment of the Court (Third Chamber) of 21 May 2015. Jaouad El Majdoub v CarsOnTheWeb.Deutschland GmbH, Case number = C-322/14, Jaouad El Majdoub v. CarsOnTheWeb, http://curia.europa.eu/juris/liste.jsf?&num=C-322/14. (accessed 5.9.2015).

12 Gupta, Indranath, *Are websites adequately communicating terms and conditions link in a browse-wrap agreement?*, European Journal for Law and Technology, Vol. 3, No. 2, 201,

13 Century 21 Canada Limited Partnership v. Rogers Communications Inc., 2011 BCSC 1196 (CanLII), www.canlii.org/en/bc/bcsc/doc/2011/2011bcsc1196/2011bcsc1196.html, (accessed on 17.1. 2017).

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made aware of the product's Terms of Use". Therefore "using the product" should be enough, according to such case.
The author of the present article believes that browse-wrap contracts go a bit beyond the criteria used by the Canadian Court in Case Century 21. In this regard, some website terms and conditions, refer to the fact that users shall accept the cookie policy by clicking a pop add. Hence, the simple act of using the website entails the acceptance of all the terms and conditions. As far as browse-wrap agreements, there is a tacit behavior performed by the user, since there is no need to click on a button appearing on the screen of the computer. Just moving or browsing around the website implicate, not only the toleration of the website terms and conditions but also the consent to these terms. Therefore, it is only a matter of how the website transmits or notifies the user about the link to the webpage providing such conditions. Gupta refers to "browse warning" by stating that, the more evident the better, due to the fact that, a lack of effective communication casts doubt as far as the enforcement of an hypothetical judgment is concerned.

3.3 Shrink-wrap agreements

It is well known that "shrink-wrap" is understood as an action according to which customers perform certain actions such as "unfolding or removing the seal of a package where the software is contained or makes use of the software acquired"[14], that moment is when the so-called shrink-wrap agreement becomes the consequence of the terms and conditions agreed when "rights related to the intangible are acquired online". The author of the present article understands that PECL Article 2:101 (ex art. 5.101)[15] could operate, due to the fact that there has been a previous online agreement and, therefore, consumers should have been warned beforehand of the terms and conditions of "the sale". However, a "set of instructions" should be included in the physical package or in the same source code of the installing protocol contained in the software. In this regard, one could deduct that consumers or users accept the quality by the continuous use of the acquired product. Therefore, one understands that there is a clear intention to become bound by the conditions to the agreement if parties perform such actions. PECL Article 2:101 (ex art. 5.101) refers indirectly to the unnecessary requirement of concreting such an agreement in writing nor any witnessing. The Principles of European Contract Law would be considered as soft-law, therefore, contracts signed under such realm should be admitted as evidence before

14 Hayes, David L.,Esq. Fenwick & West LLP, March 1997, The Enforceability of Shrinkwrap License Agreements On-Line and Off-Line, Institute for eCommerce, Carnegie Mellon University, http://euro.ecom.cmu.edu/program/law/08-732/Transactions/ShrinkwrapFenwick.pdf. (accessed 11.9.2015).

15 Principles Of European Contract Law 2002 (Parts I, II, and III) European Union Lex Mercatoria. https://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/ (accessed 17.9.2018).

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local courts unless such evidence is not acceptable according to the internal procedure court rules or, moreover, it constitutes a public policy exceptions (if it is considered a threat to the public order of the country where the contract which compliance is being enforced). In this regard, the author of the present article could regard such principles as a solid base for contract drafting.

3.4 Adhesion contracts

Adhesion contracts may be regarded as agreements where consumers lose an opportunity to negotiate important clauses such as the ones related to "jurisdiction" or "applicable law". Hence, it would be desirable to give room for consumers to choose which clauses should apply, therefore, clauses like "jurisdiction" or "arbitration submission" would not refrain users or customers to start a proceeding in its competent court, according to its domicile bearing in mind that the notion of consumer shall be regulated by the 44/2001 Council regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[16].
Recitals (13) and (14) of the Council Regulation 44/2001 refer to consumer contracts, where the consumer is considered as the "weak party" and, therefore, deserves the protection of the most favorable framework "to his interests than the general rules provide for". Hence, the so-called "autonomy of the parties to a contract" shall be respected unless its nature consists of a consumer, insurance or labor contract. Some satellite contracts contain the reference that users acquiring rights to the image intervene as professionals in order to avoid the application of some "consumer orientated" rules. Article 15 of the Council Regulation 44/2001 related to the jurisdiction over consumer contracts shall be applied, if the person acts "outside his trade or profession". PECL Article 2:104 (ex art. 5.103 A) distinguishes between two possible scenarios as far as the "terms not individually negotiated". The first scenario refers to the possibility "to invoke" non-negotiated terms, if the "invoking party" made "reasonable steps" for the defendant to get acquainted with such terms. In such case, paragraph 1 of Article 2:104 narrates the possibility to enforce such a clause if a reasonable effort was made by the invoking party to avoid any obscurity. Moreover, according to paragraph 2, even if the user or consumer fulfills the commercial operation, and, therefore, signs the contract, in case such terms are not brought before "the party's attention", its "mere reference" could not prevail.

16 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Official Journal L 012 , 16/01/2001 P. 0001 – 002, Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001R0044:en:HTML. (accessed 3.9.2015).

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So far, *de lege lata*, there are not enough law instruments embracing such contract figures, however, *de lege ferenda*, a deeper regulatory effort would be grateful, as far as preventing contractual situations where one of the parties cannot negotiate the terms and conditions of the prospective agreement. Therefore, a set of contractual terms applicable within a global satellite private system of systems would be advisable to achieve in the form of a binding law instrument embracing as many topics as possible. Indeed, an International Convention regulating remote sensing data trade aspects would be, not only desirable, but the ultimate solution found to regulate a global commercial satellite data transaction. Council Regulation 44/2001 addresses draws the line in order to distinguish between consumer and professional the same way by creating an unnecessary border affecting professional entities acquiring imagery that have no expertise in the technical aspects of satellite imagery. The author's latter statement stresses the task of local courts to solve the inconsistencies and contradictions created by trade practices in this regard. Nevertheless, jurisdiction or arbitration clauses indicating which court shall be seized or which arbitration chamber shall be seized are the constant tendency nowadays

Indeed, satellite image and data online commerce can take, basically, the shape of click-wrap, shrink-wrap and browse-wrap agreements. However, these contracts should be regarded as "service contracts" due to the fact that they are not supplied embedded in a hardware device with the exception of the shrink-wrap agreement. In the latter, the user must "unfold" a package and break a seal containing the hardware with the imagery or data saved and ready to use according to the expectations of the user. This latter agreement could be also regarded as a supply of goods. As one has previously referred to, these contracts and the way the product is delivered to the user might have a correlation between GATS and GATT if satellite imagery or data is delivered online or in case it is provided or traded as a physical good.

4. Legal issues related to intellectual property and geospatial data from a commercial perspective

Principle I of the UNPRS renders some valuable definitions related to the result obtained by the use of remote sensing activities. Earth observation from Outer Space entails sensing using electromagnetic waves, therefore, the information we obtained has to be stored somehow. Such information can be object of commerce, no doubt, in the three forms that the UNPRS understands: primary or raw data, processed data and analysed information. From a copyright perspective, there are some issues that shall be addressed. First who is the author of the result obtained using remote sensors. Second, once we have identified the author, we either can transfer the ownership of the intangible or license the copyright of the information obtained. The question resides where and when copyright arise, and, before the rise of

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copyright, what are we staring at. The author will follow the structure provided by Principle I of the UNPRS and also the valuable doctrine that Professor Doldirina[17] stated in Open Data and Earth Observations: The Case of Opening Up Access to and Use of Earth Observation Data Through the Global Earth Observation System of Systems.

4.1 Primary and Processed Data

Principle I b) of the UNPRS defines primary data as *"the raw data that are acquired by remote sensors borne by a space object and that are transmitted or delivered to the ground from space by telemetry in the form of electromagnetic signals, by photographic film, magnetic tape or any other means"*. Also, letter c) of Principle I defines "primary data" means the raw data that are acquired by remote sensors borne by a space object and that are transmitted or delivered to the ground from space by telemetry in the form of electromagnetic signals, by photographic film, magnetic tape or any other means. According to Catherine Doldirina, raw data or primary data are facts, information, therefore, as facts are not object of copyright since information and facts cannot be protected due to the lack of originality and a creative intention behind the technical device. However, data can be stored and therefore deserve a certain type of protection in a form of *sui generis* framework. In this regard, primary or processed data could be considered as databases and, therefore, have two rights stemmed out of this conception: the extraction right and the right to re-use information. Doldirina states that *(a) 'extraction' shall mean the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form; (b) 're-utilization' shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission.*

Primary and processed data would be understood as a movable or intangible property with the particularity that it can be transferred many times to different acquirers. In fact, according to Lockridge[18], "*Ownership of an intangible right in an expression or embodiment of geospatial data, as long as the legal protection provided does not preclude legal independent creation by others, does not offend the cooperation and non-discriminatory access principles of space law because such intangible rights are non-rivalrous"*.

17 Catherine Doldirina, Open Data and Earth Observations: The Case of Opening Up Access to and Use of Earth Observation Data Through the Global Earth Observation System of Systems, 6 (2015) JIPITEC 73, para 1.

18 Lockridge, Lee Ann W. Comment: Intellectual Property In Outer Space: International Law, National Jurisdiction, And Exclusive Rights In Geospatial Data And Databases. Journal Of Space Law. University Of Mississippi School Of Law A Journal Devoted To Space Law And The Legal Problems Arising Out Of Human Activities In Outer Space. Volume 32. Winter 2006 Number 2.

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Primary and processed data have some particularities from a cooperation perspective. In this regard, Principle XII of the UNPRS states that as soon as the primary data and the processed data concerning the territory under its jurisdiction are produced, the sensed State shall have access to them on a non-discriminatory basis and on the reasonable cost terms meaning by, that the State which is observed by the satellite has the right to obtain under reasonable costs to both, the primary data and the processed data.

4.2 Analyzed information

The result of human activity or the creative procedure applied to processed data would give a value added and, as an object of creation, it would be protected by the laws of copyright. The UNPRS state that *"the term "analysed information" means the information resulting from the interpretation of processed data, inputs of data and knowledge from other sources"*. Geospatial data and imagery as a result of human intervention demands originality in order to grant the protection of copyright laws. Therefore, its economical rights (from an European perspective) can be transferred to third parties using licensing forms. As far as moral rights related to geospatial imagery, one could consider that the author of a geospatial image can demand the protection of his moral rights if the use of the image would contravene certain moral values.

4.3 The Exhaustion of Intellectual Property Rights

Due to the governing principle known as the "autonomy of the contracting parties", different "contractual combinations" are possible, as long as do not interfere with the applicable laws of the contract. Therefore, intangible assets can be transferred as many times as the party transferring such assets wishes to if agreed beforehand. In this regard, please note the difference between tangible movable property in general, and intangible movable property. Movable property can only be transferred once because after the deliverance of its possession, the owner is not capable to transfer it again until the contract expires (unless there is a resolutory clause in the contract). However, intangibles can perfectly be transferred many times at once without altering its nature. One might wonder whether the intangible assets could constitute a *tertium genus*, aside from movable and immovable assets. The ability to perform "infinite supplies" related to intangibles, under a non exclusive basis at the same time, constitutes an "ability" that satellite images and data have. Consequently, transferring certain rights related to the image or data does not entail that the rights of asset transferred, impede an ulterior sub-license once.

From a theoretical perspective, the nature of a tangible asset entails that, once it has been either purchased, acquired or transferred, the seller loses any right to the asset in benefit of the new holder, whom had to pay a sum of money in exchange for that good. However, in case of rent it, is unlikely that the owner

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of the asset can rent it again at the same time as it happens with intangible assets, such as imagery and data whose rights are transferred under a non-exclusive basis.
The exhaustion of rights is a limit over the commercial capacity and scope of protection over the Intellectual Property ownership of the copyright original owner. In order to understand how satellite earth observation imagery and data might be affected by the exhaustion of rights, one should start referring to patents since it is the clearest example of expression. On Case 15/74 Centrafarm BV v. Sterling Drug Inc.[19], the claim sought to compensate the creativity of the patent holder by doing so himself, or granting to third parties the exclusive use of such invention, by manufacturing and putting into circulation the products derived from such patent. Indeed, the patent holder has the right to bring opposition to any infringement to his right. Therefore, the Case Centrafarm 15/74 referred to the lack of exhaustion of the patentee if the product was commercialized in another Member State, hence, the patentee could indeed oppose the import of such product into his own State if marketed in another State of the EU. However the ECJ invoked the lack of exhaustion of such right (and thus, the possibility for the patentee to claim for damages) in two cases only: the first was if the goods were coming from a State where goods are not patentable and have been manufactured without the consent of the patent holder or the patentee, or in case the "original patentees were independent from each other". Hence, the patentee could invoke an impediment of free movement of such product from another Member State,"in which it is not patentable and had been manufactured by third parties without the consent of the patentee". Nevertheless, such claim could not be invoked if the product was put on the market with the consent of the patentee or by the patentee himself in that Member State, where the product is coming from or in case of parallel patents. In this regard, paragraph 11 of Case Centrafarm 15/74 states so.

5. Concluding remarks

Legislators and stakeholders must propound the creation of certain uniform standards to prevent unfair treatment in geospatial imagery and data online transactions. In this regard, stakeholders and international organizations should form appropriate working groups. It is therefore, important to verify whether connected or other related technologies or proceedings should be

19 Judgment of the Court of 31 October 1974. - Centrafarm BV et Adriaan de Peijper v Sterling Drug Inc. - Reference for a preliminary ruling: Hoge Raad - Netherlands. - Parallel patents. - Case 15-74, European Court Reports 1974 -01147, ECLI identifier:ECLI:EU:C:1974:114, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61974CJ0015, accessed on January 11, 2016. Hereinafter "Case Centrafarm 15/74".

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affected. One could think of SDI Standards as an object of Intellectual Property. The OGC has served many institutions and international organizations to harmonize the same parameters for software purposes in the field of navigation, for example. Nowadays, the current concern about environment is an obligation for thinkers and OGC drafters. The Use of SDI in implementing Maritime Spatial Planing[20] and a solid Maritime Strategy Framework[21] shall constitute a new paradigm to understand geospatial data as an "open copyright status" if we would like to see happening that Member States will reach by 2020 a good environmental status. Also, the legislative process regarding dissemination of high-resolution satellite data could be considered as a failure. However, a more coordinated effort shall be granted in this regard. Last but not least, sensitive satellite data shall still be protected by adapting new technological trends, such as remotely piloted aircrafts, to its applicable framework.

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God bless you all. Jordi

20 Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning OJ L 257, 28.8.2014, p. 135–145

21 Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (Text with EEA relevance) OJ L 164, 25.6.2008, p. 19–40