A Comparative Study of Copyright Licensing Practices for Large-Scale Geospatial Datasets

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Abstract

The convergence of scientific disciplines of biology, physics, chemistry, engineering, and computer science can create unique legal and policy challenges. The integration and synthesis of scientific datasets is an example. Similarly, the global nature of web – based technologies and public-private partnerships, strengthen the call for interoperable licensing terms for geospatial and genomic datasets. The integration of such datasets can generate insights into complex disease with a view to achieving social and economic benefit in Canada. This comparative research reviews several challenges with cross – border licensing including the disparate copyright protections that apply to genomic and geospatial datasets produced by federal governments in Canada (Crown copyright) and the United States (public domain).

Background and Relevance

Given that there are legitimate legal barriers to collaboration and innovation when integrating government datasets, this study informs potential policy shifts to facilitate interoperability of datasets between jurisdictions. A review of open government strategies in both jurisdictions indicates that there are similar objectives from federal governments when releasing datasets, including the furthering of innovative potential. The U.S. government's Open Government initiative started in 2009.[1] It incorporates milestones of transparency, participation and collaboration in government.[2] Part of this commitment included the release of data sets from numerous regulatory domains.[3] The progress on this front is illustrated by the "400000 datasets" that federal agencies had posted on the government website by the fall of 2012, including geospatial data collections.[4] The Canadian government is taking its own steps to move into the open age including the management of large amounts of data and information. The Open Government Strategy (OGS) was launched in March 2011 and structured along three streams, open information, open data and open dialogue.[5] Recently, a revamped portal data.gc.ca was released as part of the initiative and the Canadian Prime Minister committed to a set of common standards for publicly accessible data with leaders of the

[1] US Open Government Initative, Online :<http://www.whitehouse.gov/open>
[2] US Open Government Initative, *Supra* note 1.
[3] Jennifer Shkabatur, "Transparency With(out) Accountability: Open Government in the United States", (2012) 31 Yale L. & Pol'y Rev. 79
[4] Jennifer Shkabatur, *Supra* note 3.
[5] Open Government Strategy, Online :<http://open.gc.ca/open-ouvert/ap-pa02-eng.asp#toc3>.

other G8 nations.[6] One of the principles for the G8 agreement was "releasing data for innovation." [7]

In examining the similarities and the differences of each legal system (in this case, Federal Canadian Crown Copyright versus Federal U.S. government Public Domain), the common point of departure, *tertium comparationis* are provisions related to IP applicable to federally created works.[8] In reviewing federal jurisdictions it is apparent that s.12 of Canadian Copyright legislation provides for "Crown owned copyright" meaning that copyright in work prepared or published under the direction or control of the crown vests in the Crown subject to an agreement to the contrary.[9] Generally, US federal government works are not covered by copyright but are released to the public domain, meaning "When a work is in the public domain, it is free for use by anyone for any purpose without restriction under copyright law."[10] As such, while the US federal government has no equivalent legislative provision, according to *U.S.C. 105*, the U.S. government can benefit from "copyrights transferred to it by assignment, bequest, or otherwise."[11] The proposed development of measures that facilitate interoperability is illustrated by (Judge, 2010) who proposes a special Crown Commons license to be utilized in Canada. This signals a shift in traditional thinking about licensing practices associated with Crown copyright.

Methods and Data

The Comparative law methodology draws an "explicit comparison of aspects of two or more legal systems", in this case Canada and the United States.[12] This research utilizes the "dominant approach to comparative studies" known as functionalism,[13] more specifically, the concept of "equivalence functionalism."[14] A comparative study rooted in the functionalist tradition complements this research in that the legislative and policy provisions that are deemed equivalent in respective jurisdictions influence the future drafting of licensing models for geospatial and genomic datasets. The proposed direction of the analysis is influenced by (Calboli, 2013) in her recent paper, when she asks, "Do we just compare legal systems or … seek a greater understanding of public policy issues within national legal systems." [15]

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[6] Janet Davison, How open is Ottawa's new 'Open data' website? Online CBC : < http://www.cbc.ca/news/technology/how-open-is-ottawa-s-new-open-data-website-1.1373680>

[7] Online CBC : < http://www.cbc.ca/news/world/story/2013/06/18/g8-harper-cameron-putin-obama.html>

[8] John C. Reitz, "How to do Comparative Law,"(1998) 46 *American Journal of Comparative Law* at 622.

[9] *Copyright Act*, R.S.C. 1985, c.42

[10] Creative Commons, Online: <http://wiki.creativecommons.org/Public_domain>

[11] *U.S. Copyright Act*, 17 *United States Code,* ss. 105 (1983) [*U.S. Copyright Act]*.

[12] John C. Reitz, *Supra* note 8 at 618.

[13] Oliver Brand, "Conceptual Comparisons: Towards a Coherent Methodology of Comparative Legal Studies," (2007) 32 *Brooklyn Journal of International Law* at 408.

[14] Ralf Michaels, "The Functional Method of Comparative Law," ch. 10 in Mathias Reimann and Reinhard Zimmerman, eds., The Oxford Handbook of Comparative Law (Oxford University Press, 2006) at 345.

[15] Irene Calboli," The Role of Comparative Legal Analysis in Intellectual Property Law: From Good to Great?" in Edward Elgar, (Graeme B. Dinwoodie ed.) *Methods and Perspectives in Intellectual Property Law*, (2013, Forthcoming) Available online at SSRN: http://ssrn.com/abstract=2221919 .

Results

The comparative nature of this research uncovered a number of challenges to streamlining licensing procedures. For example, it was found that different institutional models, data-sharing policies and procedures, approaches to the public private relationships, data sharing policies and intellectual property rights can complicate cross border collaborations. More specifically, the differing philosophical perspectives on open versus proprietary models strengthen the call for a more open approach to data licensing in Canada, and potentially a more permissive form of Crown copyright licensing.

Conclusions

An assessment of the federal copyright licensing practices between jurisdictions illustrated significant gaps between the copyright protections that apply to government datasets in Canada and the U.S. It follows that a status quo approach to public sector copyright licensing of scientific datasets in Canada will prolong the existing interoperability challenges uncovered by the comparative study. Any shifts to current practices will play a key role in Canada's proposed future federal licensing models as well as future collaborative relationships. This initial review of copyright licensing practices is the first step in uncovering the challenges to cross – border integration of scientific data sets between the U.S. and Canada and will aid future efforts to integrate datasets (Ginsburg & Willard 2013) that may garner insights into complex disease.

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U.S. Copyright Act, 17 *United States Code,* ss. 105 (1983) [U.S. Copyright Act].