

A legal approach to assessing SDIs

Katleen Janssen
ICRI, K.U.Leuven, Belgium
katleen.janssen@law.kuleuven.be

In the debate on SDI assessment, increasing attention is being given to the ‘human’ factors of success or failure, including the legal conditions (see e.g. Onsrud et al 2004, Masser 2006). Legal aspects are often linked with organizational, institutional or policy indicators for SDI assessment. This has the benefit that law is not treated as an isolated event, but addressed in combination with political or socio-economic influences. However, there is also a drawback: the specific characteristics of a legal approach to SDI assessment remain non-explicit or unfamiliar, holding the danger of the SDI community either over- or underestimating their importance.

This presentation will look at the different levels of assessment of an SDI from a legal point of view. At least three levels come to mind, showing at once the possibilities but also the limits of the law for determining the ‘quality’ of an SDI.

On a first level, one will determine whether an existing situation, practice or cooperation corresponds with the applicable legislation, i.e. whether it is legal or not. We could describe this level as *compliance*.

On a second level, one regards not just one law or regulation, but an entire legal framework. The question is then whether this legal framework consists of complementary or contradicting laws and whether there are gaps or overlaps. This is the level of *coherence*.

The third level of assessment brings us to the limits between law and policy. If a practice is *compliant* with a *coherent* framework, this does not automatically entail that it is a good framework, i.e. that it endorses the right priorities and that the wanted effects exceed the unwanted. This is the level of *quality*, of determining whether an SDI is working well or not. As this entails setting these priorities and measuring these effects, we are moving beyond purely legal assessment into the domain of policy. However, law still has a part to play. For example, key elements in determining the priorities for a well-functioning SDI are the rights that are considered most important under rule of law: fundamental or human rights, such as the right to privacy or freedom of information.

Hence, key indicators for the assessment of an SDI from a legal point of view depend on the level of assessment. On the first two levels, key indicators are e.g. whether there is legislation specifically addressing an SDI, whether the legal framework is coherent and not contradictory, and whether the legal framework is clear enough for all the stakeholders to understand and apply. Key indicators on the third level, on the edge of law and policy, are whether legislation allows for easy access, use and sharing of spatial data, whether it requires the availability of spatial data with only limited restrictions and charges, and whether it imposes a standardized approach to the exchange of data. This includes the use of standard licences, questions of funding, etc..

The translation of this legal assessment into recommendations that are of practical use to the stakeholders remains a challenge, especially since the target group will differ. The target group for the first level are the stakeholders themselves, while the second and third level will mainly address the legislator or policy makers. On the *compliance* level, and to a certain extent also on the *coherence* level, it is mostly a matter of enforcement via administrative or judicial review. On the third level, the priorities will have to be communicated to the legislator and the stakeholder in a clear and convincing matter. This will be one of the biggest challenges for the implementation of a well-functioning SDI.

References

- Masser, Ian. 2006. What's Special about SDI Related Research?. *International Journal of Spatial Data Infrastructures Research*, Vol. 1, 14-23
- Onsrud, Harlan, Barbara Poore, Robert Rugg, Richard Taupier, and Lyna Wiggins. 2004. The future of the Spatial Information Infrastructure. In *A Research Agenda for Geographic Information Science*, ed. Robert B. McMaster and E. Lynn Usery, 225-255. Boca Raton: CRC Press.