

***The use of Ordnance Survey data by commercial publishers  
– and some implications of the present situation***

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My initial reaction on seeing Karen McGrath's officially approved article on this subject<sup>1</sup> was one of delight. Yet when I actually read her text I felt rather disappointed. Somehow, despite the platitudinous quotes from various official documents, there still seemed something missing. I had to read it several times and to rummage around for some time on the internet before I could appreciate what this was. The results seem worth sharing more widely.

Her two introductory paragraphs are simple enough, while the third one, describing the operation of the OS as a 'Government Trading Fund', appears at first sight clear, despite including several opaque phrases like 'funding investments in data quality and currency improvements', and 'financial obligations to government' (already one feels an urge to abandon reading and move on to the next article). Nevertheless the idea that the OS is required to fund from sales and licensing not only all its expenditure, but also a subvention to the Treasury, is quite straightforward.

The next paragraph mentions the political and regulatory environment in which the OS operates and briefly describes the report on the Commercial Use of Public Information Study. This was published by the Office of Fair Trading in 2006.<sup>2</sup> This very wide ranging report of 186 pages (plus eleven substantial annexes) cannot adequately be summarised in a paragraph, but has affected all public bodies supplying official information to the public. The report was sharply critical of the OS in particular, and insisted that it, as the largest supplier by value of public information, must make its 'unrefined' data available for reuse by private sector organisations at cost price. Ms McGrath mentions 'assertions that the pricing and licensing arrangements ... were having a detrimental impact on the potential for economic benefit for such re-use'. The aim of the Office of Fair Trading was, of course, to ensure that private sector organisations could compete with public sector ones in the production of 'refined' products, as required by the EC Directive on the Commercial Use of Public Sector Information (2003/98/EC), as implemented in the UK by the Re-use of Public Sector Information Regulations 2005.<sup>3</sup> Its aim was most certainly not to protect the commercial interests of the OS.

Since the OS was (and is) a Government Trading Fund entirely dependent on income from sales and licensing, and very much reliant on adding value to its 'unrefined' data by producing 'refined' electronic and paper products, it is hardly surprising that a 'complex dialogue' soon followed in order to 'quantify the issues' and 'respond to the challenges'.

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<sup>1</sup> Karen McGrath, 'Use of OS data by commercial publishers', *Sheetlines* 95, 3-5.

<sup>2</sup> <http://www.offt.gov.uk/OFTwork/publications/publication-categories/reports/consumer-protection/ofit861>

<sup>3</sup> S.I. No 1515/2005. The legal framework is set out in Annex H (itself of 86 pages) to the 2006 report.

The article goes on to describe the resultant new business strategy for the OS eventually published in Spring 2009. Although the OS website still provides press releases dated 23 April 2009 and 13 May 2009 announcing the publication of this strategy, the links from these to the document itself do not currently work.<sup>4</sup> The quotations given simply reproduce the texts of the press-releases without additional information (or even correction of their distinctly odd syntax and punctuation). In particular she does not provide concrete definitions for the woolly but aspirational terms used. It should be noted that this business strategy was heavily criticised by the Advisory Panel on Public Sector Information at the end of May 2009 for (amongst a number of other things) its lack of definitions and lack of provisions to ensure regulatory compliance.<sup>5</sup> The panel euphemistically described the document as ‘a work in progress’, which perhaps indicates why it is no longer readily accessible. It should also be noted that the APPSI does have some knowledge of the OS and its functions; the chairman of APPSI was then (and still is) Professor David Rhind, formerly Director-General of the OS.

The article next jumps to the announcement on 17 November 2009 by Gordon Brown, then Prime Minister, that he intended ‘to make Ordnance Survey maps free for use online by any organisation including commercial ones ... from April next year’.<sup>6</sup> Gordon Brown obviously felt this move was a way of boosting his chances in the rapidly approaching general election. The announcement was apparently made to Sir Tim Berners-Lee and Professor Nigel Shadbolt (who had been acting as ‘government information advisors’) at a meeting with them and was then revealed to the public by those two in an article in *The Times* the following day.<sup>7</sup> The article set out a very simplistic, un-costed and strongly partisan set of views which had presumably been accepted by the Prime Minister. The episode was presented by the *Guardian* as a victory for their ‘Free our Data’ campaign, but to me it seemed quite as much to be a demonstration of Gordon Brown’s failing ability to present (or perhaps even grasp) complex issues.

That the views of Berners-Lee and Shadbolt were controversial, and that the OS had been fighting to avoid having to comply with the EC Directive, had already been made clear by the *Guardian* itself in a succession of articles. In particular, in September 2009 it published a critique of some alarmist costings prepared by the OS for a confidential ministerial briefing during early 2009.<sup>8</sup> The costings, related to existing proposals to move to a free data model, had subsequently been posted on the Wikileaks website. The *Guardian* had also

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<sup>4</sup> <http://strategy.ordnancesurvey.co.uk/> Access attempted 3 January 2013.

<sup>5</sup> <http://www.nationalarchives.gov.uk/documents/09-07-09-APPSI-briefing-to-MW.pdf>

<sup>6</sup> Charles Arthur, ‘OS mapping data: a new landscape unfolds’, *Guardian* (19 November 2009). This, and all other *Guardian* material quoted here, was accessed on 4 January 2013 via the newspaper’s website: <http://www.guardian.co.uk>

<sup>7</sup> Tim Berners-Lee & Nigel Shadbolt, ‘Put in your postcode, out comes the data’, *The Times* (18 November 2009), 30.

<sup>8</sup> Charles Arthur, ‘Ordnance Survey business model costs appear in leaked presentation’, *Guardian* (2 September 2009).

published a devastating analysis of an OS study comparing the funding models used by supposedly similar foreign government survey and mapping organisations.<sup>9</sup>

Nevertheless the OS (and perhaps also the Department for Communities and Local Government whose responsibility the OS then was) was stuck with the prime-ministerial decision. A very hurried public consultation was carried out from 23 December 2009 to 17 March 2010. The government's response to this was then published on 31 March (perhaps implying that it must have been written before the consultation closed), and the 'OS OpenData' portfolio was duly launched on the internet on 1 April 2010.<sup>10</sup> Ms McGrath notes that this was 'under an agreement funded by government', before jumping ahead to say that the Public Sector Mapping Agreement (PSMA) for England and Wales was signed later that year and came into force on 1 April 2011. The proposal for such an agreement, with its implementation date, formed part of the government 'response' to the consultation, but clearly did not directly concern commercial publishers. It principally addressed concerns of the Department of Communities and Local Government. However the 'response' also included a more nebulous statement that 'Ordnance Survey will also be proposing changes to the derived data policy for the commercial sector ... as part of its work on revised pricing and licensing'. More fundamentally, it also stated that the government had asked OS to provide 'technical delivery' of Britain's obligations under the EU INSPIRE Directive (to introduce 'wider access to public sector electronic spatial information across Europe'). Thus the poacher was appointed gamekeeper.

The article omits to mention that a month after this, on 6 May 2010, Labour lost the general election and the present coalition government came into office. However this did not seem to check the administrative momentum. In August 2010 the Department of Communities and Local Government published the 'Public Sector Mapping Agreement for England and Wales Transition Plan'. This provided the 'nuts and bolts' of how the new system for providing OS geographic information to public-sector bodies would work and confirmed its implementation date as 1 April 2011. Importantly it stated that 'CLG [the Department] has entered into a commercial agreement with Ordnance Survey to pay for the PSMA centrally on behalf of the rest of the public sector'. Equally importantly, there was no mention of the commercial sector.

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<sup>9</sup> Charles Arthur, 'Ordnance Survey redacts public data in controversial report', *Guardian* (1 July 2009). Charles Arthur, 'Don't write it down: Ordnance Survey kept no notes of talks with "expert"', *Guardian* (10 September 2009). The MICUS Report commissioned by the EC in 2007 and published in 2008 provides an interesting contrast to the OS study: [http://www.nationalarchives.gov.uk/documents/micus\\_report\\_december2008.pdf](http://www.nationalarchives.gov.uk/documents/micus_report_december2008.pdf)

<sup>10</sup> The original consultation document is no longer available on-line but I still have a copy. See <http://www.nationalarchives.gov.uk/documents/government-response-os-consultation.pdf> for the response. The then chairman of CCS made a submission to the consultation on the Society's behalf which was not listed in the government's response document. This is a further indication that the copy-deadline for the government's response was before the end of the public consultation.

Thus far in Ms McGrath's article it has been possible to identify her sources precisely, and to critique her use of those sources. In contrast, her final three paragraphs are very different and, as a result, extremely interesting. They are full of information on the commercial re-use of OS data that has not (as far as I can tell) previously been made public elsewhere. I certainly cannot find any of this on the public areas of the OS website (where it ought to be), nor can I find any reference to it on any other official website. The information provided is therefore uncorroborated and uncheckable, but presumably true as far as it goes. It is possible, indeed likely, that some or all of it may be available on those non-public areas of the OS website only accessible to 'licensed partners', but I am simply a tax-paying member of the public and not a 'licensed partner'. And in any case, while the details she reveals are fascinating, they still provide an incomplete picture.

Accordingly these three paragraphs highlight that OS continues to conceal the terms of its licensing of data. This is exactly the sort of restrictive commercial practice that the various EU directives should have outlawed, that the Office of Fair Trading so heavily criticised in 2006, and that the APPSI has also repeatedly criticised.<sup>11</sup> And indeed, while I am not a lawyer, to me it also seem contrary to Section 14 of The Re-use of Public Sector Information Regulations 2005.<sup>12</sup> Perhaps I am old-fashioned, but I still feel it important that government bodies should not only act at all times in accordance with the law, but also be seen to do so.

Principles apart, does all this matter in a practical sense? We should remember that underlying all the manoeuvrings described above are a number of linked questions that remain highly controversial despite having being ducked in the 2009-10 consultation. The first group of these concern the basic purpose of the OS, and in particular the extent of its activities beyond the basic surveying of the country. Should it simply provide 'unrefined' survey data for others to use, or should it produce its own paper and electronic maps and other 'refined' products in competition with the commercial sector? EC law, the Office of Fair Trading and the APPSI have all insisted that these activities should be precisely defined and clearly separated with visibly different funding arrangements. In contrast the OS has consistently avoided making such a distinction and has worked to keep the definition of its function as broad and woolly as possible. For example, the OS's present definition of its 'Public Task for the purposes of the Re-Use of Public Sector Information Regulations 2005' (a definition expected by APPSI to provide a legally workable distinction between the monopoly, public-service activities of the OS and its competitive, commercial ones) is very careful to obfuscate any distinction between what it does as a public service and what else it may do. Very

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<sup>11</sup> See for example

<http://www.nationalarchives.gov.uk/documents/APPSI-response-to-GI-Consultation12.pdf>

<sup>12</sup> I understand that Ms McGrath's article was written with the knowledge and support of her employers as part of her official role. OS are thus to be congratulated for a small, if still limited, step in a proper direction.

significantly, however, this definition itself mentions the possibility of a future revision if the EC eventually takes notice.<sup>13</sup>

Intimately linked with the first set of questions is the perennial question of how the OS should be funded. The current funding structure conceives the OS as a unified commercial concern with segregated categories of customers. Under the Public Sector Mapping Agreement all public bodies have substantially unrestricted access to OS data in return for a single large sum of central government money initially agreed by the Department of Communities and Local Government, but since March 2012 the responsibility of the new Data Strategy Board of HM Treasury. The precise text of the PSMA seems not to have been publicised (despite much ballyhoo about it) and nor has that of the equivalent agreement for Scotland signed the following year. The exact financial terms of the PSMA are thus unclear, however the OS Annual Report for 2011-12 states that it has a ten-year term and generated income of £55m for that year. However even less is known about the terms of some of the OS licensing contracts with the commercial sector. There is a unclassified 'Business portfolio price list' for firms simply wishing to use OS electronic mapping internally, and a price list for publishing individual map-extracts in books or on CDs appears on the 'Publishing licensing information' leaflet.<sup>14</sup> However a firm wishing to republish or to modify OS data for any purpose has to become an OS 'partner', which involves the signature of an 18-page detailed 'framework' contract full of legal jargon and limitations (the text of which is headed 'unclassified' and is available on the OS website), before one or more additional contracts relating to the specific activity proposed can be signed. Whether or not these additional contracts have standard terms, or are individually negotiated, is unspecified on the OS website, but the implication of Ms McGrath's final three paragraphs is that there are at least some standard elements. Whether individual 'partners' have been able to use the Re-use of Public Sector Information Regulations 2005 to their advantage in negotiating the prices of such contracts is unknown, but I would guess that lawyers for Phillips, which is a subsidiary of the French company Lagardère and which in turn is part-owned by the French state, have been fully conscious of the relevant EC directives.<sup>15</sup> It certainly seems unlikely that any firm would enter any of these contracts without good legal advice, but nevertheless an increasing number have felt it commercially worthwhile to republish OS mapping at various scales.

Superficially, the current OS business model appears to have been spectacularly successful. The accounts presented in the OS Annual Reports give quite limited information about income, and the way it has been sub-classified has also changed between years. However over the last three reported years (2009-10, 2010-11, 2011-12) there has been a more than 10% overall fall in private-sector revenue to £53m (from about £60m in 2009-10 and rather more in

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<sup>13</sup> <http://www.ordnancesurvey.co.uk/oswebsite/about-us/public-task/index.html>

<sup>14</sup> Both available on the OS website.

<sup>15</sup> For some comments on the publication by Phillips of OS 1:250,000 mapping see: JL Cruickshank, 'The Ordnance Survey Motoring Atlas of Great Britain', *Sheetlines* 91, 6-19.

previous years), which is said to reflect some growth in unspecified new markets despite a continuing drop in income due to ‘product substitution’ following the 2010 launch of OS OpenData. By contrast total public-sector revenue has shot up from somewhere about £55m in 2009-10 to somewhere about £85m in 2011-12.<sup>16</sup> Overall revenue has thus risen from £114m to £141m over the last three years. This must be considered a remarkable achievement at a time of recession and public-sector spending cuts. But while private-sector revenue had consistently been greater than public-sector revenue until 2009-10, it is now dwarfed by public-sector revenue.

Such growth in public-sector revenue cannot possibly be sustainable in the present fiscal climate. During the 2011-12 reporting year departmental responsibility for the OS was shifted from the Department for Communities and Local Government to the Department for Business, Innovation and Skills. The establishment of the new Data Strategy Board of HM Treasury in March 2012 has been noted above. The financial effects of these changes on the OS will not be seen until the 2012-13 Report is published, but they are quite likely to be profound.

The conclusion must be that the funding of the OS cannot yet be considered either secure or stable. And consequently both the ‘public task’ and the commercial strategy of the OS are likely to need yet further review. Ms McGrath (and through her the Ordnance Survey) should be thanked for drawing our attention to this.



*John Cruickshank, author of this article and of the book review on page 42 is well known to Sheetlines readers as a prolific contributor on topics as diverse as Ordnance Survey politics and products, pre-war German mapping, military maps of Warsaw Pact countries and Leeds local history. His latest publication is Headingley-cum-Burley c1540-c1784, the most detailed study yet published of any Leeds township. This comprises volume 22 of the Publications of the Thoresby Society, Second Series (ISBN 978 0 900741 72 2). It is now available at £15 plus p&p from The Thoresby Society, Claremont, 23 Clarendon Road, Leeds LS2 9NZ. For more information see [www.thoresby.org.uk](http://www.thoresby.org.uk) or call 0113 247 0704.*

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<sup>16</sup> The figures quoted for each sector are derived from the very small histograms given in the Director of Finance and Corporate Services reports within the OS Annual Reports, and are therefore necessarily inexact.