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The Plan to Hijack Mapping

I would like to bring to your attention an issue of great import to geographers, geography programs, and the future of our discipline. Immediately following this column is a concise two-page legal analysis of a pending lawsuit recently initiated by the "Management Association for Private Photogrammetric Surveyors" ("MAPPS"), et.al., against the US Government in federal District Court.

That Legal Briefing notes:

"The case of *MAPPS v. United States*...could have dramatic consequences for the entire mapping community, including the GIS industry. Simply put, an adverse outcome would effectively exclude everyone but licensed architects, engineers, and surveyors from federal government contracts for 'mapping' services of every sort and description – not just those mapping services traditionally provided by surveyors."

This Legal Briefing was prepared by Pillsbury Winthrop Shaw Pittman LLP, a highly-respected national law firm, at the request of the Association of American Geographers, to provide accurate, clear and legally-informed information regarding the Claims asserted by the MAPPS plaintiffs in their lawsuit—and the potential consequences of these Claims—to our members and to the broader geography, GIS, and mapping communities.

The AAG and its attorneys believe this lawsuit is a serious threat to geography, the GIS field and to the larger mapping community. Together with several other associations (URISA, GISCI, GITA, and UCGIS), the AAG has developed and filed an Amicus Brief and other legal documents in opposition to the litigation initiated by MAPPS. Additional information on this pending lawsuit, including legal documents filed by MAPPS, the AAG, and others, is available at www.aag.org. I encourage you to consult these documents so as to understand this issue as fully as possible.

In a recent *Directions* magazine editorial, Adena Schutzberg raised the question of whether this lawsuit filed by MAPPS—and their similar legislative and lobbying efforts—illustrates the need to develop a new educational and lobbying organization to represent

the great majority of those in the GIS and mapping community who are not represented by the narrow special interests of MAPPS.

Before exploring this question further, however, I would like to emphasize that we at the AAG and all other groups I have spoken to on this issue have great respect for our many friends and colleagues who are surveyors and engineers. We like surveyors and engineers, have nothing against them personally, and welcome their participation, together with so

many others, as valued colleagues and collaborators in the GIS and mapping community. In fact, openness, sharing, innovation, and a sense of collegiality have long characterized both the traditional mapping community and the dynamic new GIS world.

In part, it is this very real sense of "community betrayed" that explains why, when an organization such as MAPPS

undertakes audaciously greedy actions against the great majority of the rest of the GIS and mapping community, as demonstrated by this lawsuit (see *Amicus Brief*, www.aag.org), that many of those in the larger mapping world are understandably concerned, saddened, and angered.

Fortunately, we also know that a great number of engineers and surveyors, many of whom we have worked with collaboratively and happily for years, are personally appalled and embarrassed by the over-reaching claims and actions of these organizations that purport to act in their name, and we thank them for their collegial support.

The MAPPS lawsuit, however, makes it perfectly clear that this organization's intentions are not "collegial" (read their lawsuit claims, www.aag.org).

If MAPPS and related special interests continue to seek to abuse the protections they already have in the Brooks Act, which governs federal procurement of standard architectural and engineering services, then perhaps Adena Schutzberg's suggestion of a lobbying organization to represent the interests of the larger mapping and GIS community is indeed warranted and worth considering. At a minimum, there appears to be a compelling and



Richardson

Continued on page 5

The Plan to Hijack Mapping from page 2

immediate need for a coordinated effort among many concerned organizations and individuals to help educate and inform state agencies, federal agencies, and legislators about the real nature of the broader geospatial and mapping world, and about MAPPs' real agenda, which their lawsuit now makes clear for all to see.

To understand more about what this issue means for geographers and to so many of our other colleagues, please read the short *Mapp v. United States* Legal Briefing, prepared by the AAG's law firm, Pillsbury Winthrop Shaw Pittman LLP, which follows below.

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MAPPs v. United States: The Stakes for the GIS and Mapping Communities

The case of *MAPPs v. United States* (E.D. Va. No. 1:06cv378), currently pending in federal court in Alexandria, Virginia, could have dramatic consequences for the entire mapping community, including the GIS industry. Simply put, an adverse outcome would effectively exclude everyone but licensed architects, engineers and surveyors from federal government contracts for "mapping" services of every sort and description – not just those mapping services traditionally performed by surveyors.

The MAPPs Plaintiffs' Claims

In the *MAPPs* case, four trade associations of engineers and surveyors are suing the U.S. Government, alleging that the government is awarding mapping and GIS contracts in violation of a federal law known as the Brooks Architect-Engineers Act. (See 40 U.S.C. §§ 1101 – 1104). This law requires the federal government to use certain restrictive procedures when it awards contracts for various types of "architectural and engineering" (A&E) services, including "surveying and mapping" pertaining to the design, construction and repair of buildings, facilities and other real property – the traditional preserve of surveyors.

The *MAPPs* trade association plaintiffs are claiming, however, that this law is not limited to "surveying and mapping" services of the types traditionally performed by surveyors. Instead, relying on a tortured reading of the law and its history, they claim that it covers literally all mapping activity – including the great majority of mapping and GIS activity

that cartographers, geographers, GIS specialists, computer science and IT professionals, planners, academics, GIScientists, technicians, and many others in the "nonA&E firm" mapping community and GIS industry have historically performed and are continuing to perform for the federal government.

The *MAPPs* plaintiffs have attempted, so far unsuccessfully, to lobby Congress to amend the Brooks Act to accommodate their special interests. They have now initiated a lawsuit against the U.S. Government seeking to require the Federal Acquisition Regulatory (FAR) Council to change the regulations implementing the Brooks Act so as to:

"define 'surveying and mapping' so as to include contracts and subcontracts for services for Federal agencies for *collecting, storing, retrieving, or disseminating graphical or digital data depicting natural or man made physical features, phenomena and boundaries of the earth and any information relating thereto*, including but not limited to surveys, maps, charts, remote sensing data and images and aerial photographic services."

MAPPs' Amended Complaint, ¶¶ 17, 2229 (June 9, 2006) (emphasis added).

The Stakes for the GIS and Mapping Communities

In a recent court filing, the *MAPPs* plaintiffs attempted to play down the consequences for the broader mapping community and GIS industry if the court were to accept this definition and rule in *MAPPs'* favor. (See *Pltfs' Mem.* at 23 (Feb. 1, 2007)). But those consequences would be both real and dramatic. If the court were to rule for the plaintiffs, the broader mapping community and much of the GIS industry would find itself shut out of federal mapping contracts. This is because the Brooks Act restricts the award of federal contracts for "architectural and engineering" services to "firms," which the Act defines as entities "permitted by law to practice the profession of architecture or engineering." (See 40 U.S.C. §§ 1102(3) & 1103(d).) With a court victory in this case, the plaintiffs could prevent the government from ever awarding another contract for "mapping" to anyone but a licensed architect, engineer or surveyor.

The evidence indicates that such an outcome would have far-reaching effects on the GIS industry and the broader mapping community. As outlined in affidavits filed with the court on behalf of the Association of

American Geographers and four other sponsors* of an amicus brief opposing the *MAPPs* lawsuit, a court victory by the plaintiffs could negatively affect not only those individuals and companies involved in GIS but also those involved in many other types of mapping activity, including GPS field data collection, internet mapping, geospatial analysis, location based services, remote sensing, academic research involving maps, and map creation or cartographic production of almost any type. The effects would be felt in many industries and applications, ranging from electric utilities to city planning, from environmental protection to national defense, and from agriculture to homeland security.

In short, the evidence shows that limiting federal procurement of all mapping and GIS services to licensed engineers and surveyors – as the *MAPPs* plaintiffs are attempting to do – could cripple the GIS industry; damage U.S. geographic science, research capacity, and competitiveness; and shackle government agencies, all of which depend upon the productivity, talent, scientific and technical skills, and the creativity and innovation that characterize the vast majority of the existing GIS and mapping workforce, which is not represented by *MAPPs*.

* * *

Post Script:

If you as an AAG member, whether as an individual, a company, or an institution believe that you may be negatively affected by the *MAPPs* litigation, or are merely outraged at the nature of the Claims made by *MAPPs*, et.al., please consider supporting the legal and educational efforts to oppose this litigation and related activities, with a donation to the Mapping and GIS Community Defense Fund, at www.aag.org/help. ■

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*The amicus brief was submitted to the court on January 24, 2007, by the Association of American Geographers (AAG), the GIS Certification Institute (GISCI), the Geospatial Information & Technology Association (GITA), the University Consortium for Geographic Information Science (UCGIS), and the Urban and Regional Information Systems Association (URISA). The court issued an order accepting the brief on January 29, 2007, making it part of the record in the case.