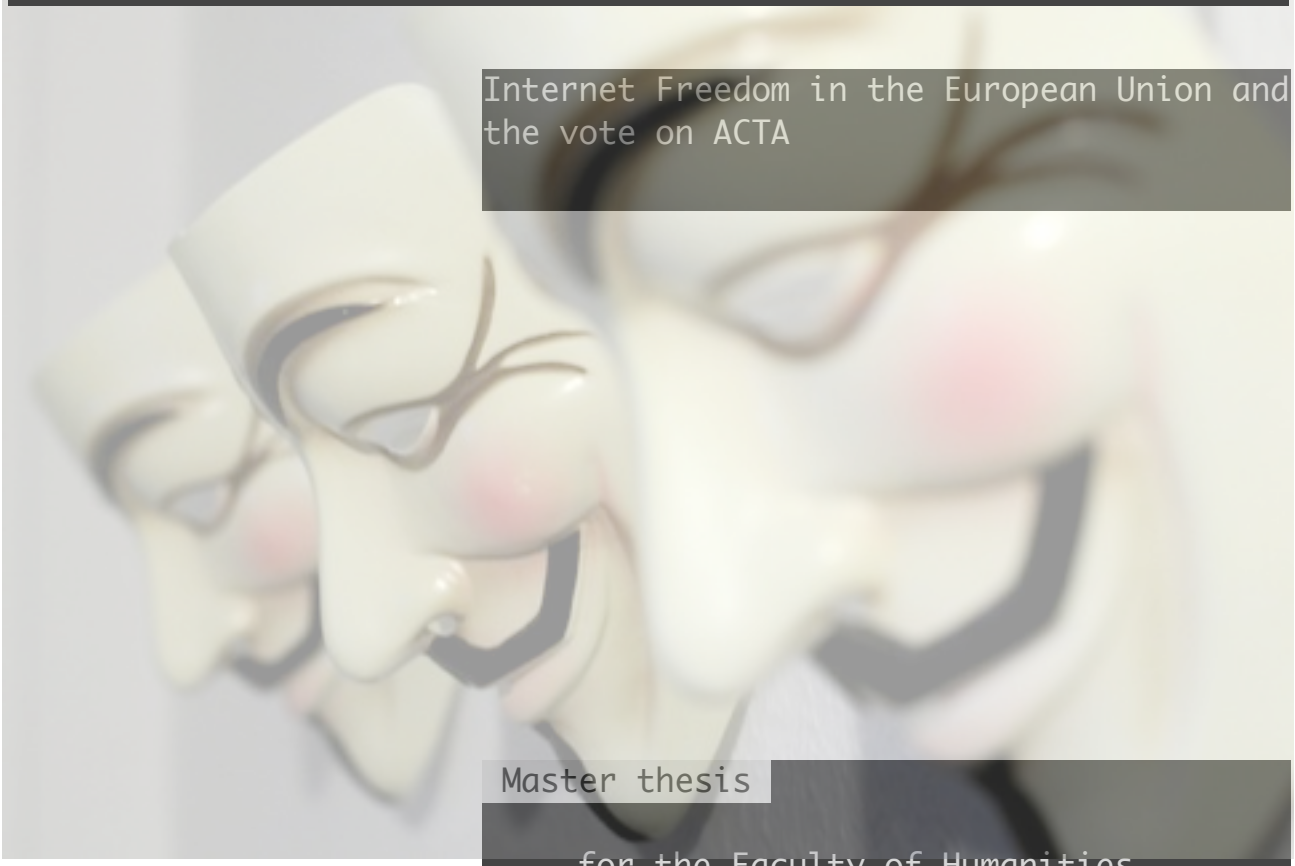
Remember remember, the 4th of July



Internet Freedom in the European Union and the vote on ACTA

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To my grandfather. My hero, my inspiration.

Mies †2012

Foreword

"Remember, remember, the Fifth of November, the Gunpowder Treason and Plot. I know of no reason why the Gunpowder Treason should ever be forgot... But what of the man? I know his name was Guy Fawkes and I know, in 1605, he attempted to blow up the Houses of Parliament. But who was he really? What was he like? We are told to remember the idea, not the man, because a man can fail. He can be caught, he can be killed and forgotten, but 400 years later, an idea can still change the world."

"...fairness, justice, and freedom are more than words, they are perspectives."

(From the movie V for Vendetta 2005)

I would like to express my gratitude to a few persons who have given me the support and inspiration for writing this thesis and have made a valuable contribution.

First of all, dr. Imar de Vries and Mirko-Tobias Schäfer for the instructions, feedback and evaluation of this thesis.

Secondly, all the Bits of Freedom members for giving me the opportunity of being part of a team that fights for our online liberties and rights, and for giving me the unique chance of meeting other inspiring Internet freedom fighters, including a look inside the European Parliament.

Thirdly, the members of the Foundation for a Free Information Infrastructure for spending wonderful days in Brussels and letting me experience the European Parliament's atmosphere.

Fourthly, Transforming Freedom for providing me a valuable and solid basis to develop my interest in the interdisciplinary waves of digital culture and to continue doing research in the context of Internet freedom. Moreover, I am very pleased to be a member of such an inspirational and striving organization.

Furthermore, the persons who are very close to me. My parents, family and dearest friends. Thank you all for your smile and extra helping hand.

Finally, I would like to shed some special thoughts to all the students of New Media and Digital Culture. Fulfill your unique interest in the field of new media. Be active, and become part of our digital culture. Ideas should not be wandering around: they should be captured.

Let us all be an actor in the network of Internet freedom. Share perspectives, ideas and plans. Be active in debates, discussions, projects and other activities relating to Internet freedom. And let us find a balance in the digital climate of society where freedom is guarded, new technology can blossom and innovative companies can grow.

Lindsy Szilvasi

“Enough bits make total freedom”
(Greyman 2012[1])

[1] Dutch civil liberties group Bits of Freedom has chosen Greyman’s slogan “Enough bits make total freedom” as the winning slogan on Twitter.

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Introduction

"ACTA is one more offensive against the sharing of culture on the Internet. The European Parliament now has an ultimate opportunity to reject ACTA" (La Quadrature du Net 2012a).

"The controversial trade agreement ACTA threatens fundamental liberties online, net neutrality, innovation, access to free technology and essential medicines" (Toornvliet 2012).

"The vote today was really an important victory for the European Union's democracy. Never before have citizens spoken out. It is important to know what this means" (Schaake 2012a).

Brussels, 4 July 2012. The European Parliament addressed one of the most important challenges of the information society. An important vote was casted, which has received an enormous amount of attention in the last couple of months by citizens, civil liberties groups, copyright holders, industries and politicians. All concerned about what implications the vote will bring. All share diverse opinions about the vote's outcome. All fight for the sake of their own beliefs: the belief of intellectual property (IP) protection or the belief of protecting fundamental liberties.

On 4 July 2012, the European Parliament voted against the Anti-Counterfeiting Trade Agreement (ACTA): a multinational trade agreement enforcing intellectual property rights (IPR) for the purpose of combating counterfeiting and piracy. According to civil liberties groups, this agreement would seriously violate our fundamental rights and freedoms on the Internet. Our Internet freedom.

Internet Freedom is an umbrella concept that describes the rights of the Internet user to freedom of expression, to have access to any information and free technology, to share and communicate with others in privacy, and to have control over the data used on a neutral and unsurveillanced Internet. These rights are heavily promoted by Internet freedom fighters[2] who are giving their own contribution to an open Internet.

2012, a tumultuous year summarizing the debates, presentations, votes and negotiations on ACTA in the Belgium capital Brussels, the main center for international politics. The developments on ACTA have shown us that many individuals are involved with the regulation of Internet. The Internet has grown into a decentralized environment in which the form of regulation is determined by the participation of multiple actors. A "bottom-up and consensus-driven approach in which governments, industry, engineers, and civil society have the opportunity to participate in standards and policy development".[3]

During my three months traineeship at Transforming Freedom, a civil liberties group in Vienna supporting Internet freedom protection, I have reflected upon how several actors[4] are involved with regulating the Internet. In the context of Internet freedom, I have particularly focussed on the

[2] The Guardian has listed the "20 fighters for Internet Freedom", including politicians, professors and computer scientists. For the full list, see: http://www.guardian.co.uk/technology/2012/apr/20/twenty-fighters-open-internet.

[3] Center for Democracy & Technology (CDT) reflects upon who is the regulatory body of the Internet, which has to be open and decentralized, and that regulation does not fall under one's purview (CDT 2012).

[4] The following actors were analyzed: the European Parliament, national governments, telecommunication companies, Internet Service Providers, citizens, open source and free software, and citizens. Additionally, net neutrality was perceived as an actor itself.

developments of net neutrality in the European Union (EU) at the end of 2011.[5] For the research for Transforming Freedom, I have used the Actor-Network Theory (ANT) by Bruno Latour, Michel Callon, and John Law. ANT is a conceptual framework to explore the movements of actors in a certain network and the stabilization process of this network.

As Bruno Latour explains, to understand a network is to go through a "network-like ontology" (Latour 1996, 2), to "record the movement" of each actor that "outlines, traces, delineates, describes, files, lists, records, marks or tags a trajectory that is called a network" (ibid., 378). Additionally, as explained by Bruno Latour, an actor is "something that acts or to which activity is granted by others" and can be either human or non-human (ibid., 5).

Furthermore, ANT describes the existence of quasi-objects. Quasi-objects are actors in the making because they are passed between other actors existing in the same network (Latour 2003, 51-54). A quasi-object is being made when it is negotiated by the transformations of the relations it has with other actors. In other words, "the quasi-object becomes the sum of all other actors" (Szilvasi 2012, 18). Functioning as an operator, a quasi-object draws actors together, creates particular relations and configures these relations (Callon 1991).

The stabilization of a network depends on the passing of the quasi-object between the actors. When actors pass the quasi-object equally, the quasi-object becomes more stabilized and punctualized[6] (Latour 2003). If the passing of the quasi-object decreases or an actor fails to pass it, the establishment of the network fails (Law 1992). The motivations for passing the quasi-object can be explained in terms of sociology of translation (Callon 1986; Law 1992). Translation occurs through the interaction between actors involved (Warzynski and Krupenikava 2010, 322). In the interaction actors communicate about each others interests, needs, values and efforts (ibid.).

When the interests, needs, values and efforts of all actors are equal, the interests, needs, values and efforts will be translated into the establishment of the quasi-object. However, when one of the actor's interests, needs, values and efforts have changed in opposition of the other actors, interests, needs, values and efforts of all actors are no longer equal, and the quasi-object will fall apart. In other words, when all actors agree it is worth building and defending a certain network in which they are involved, their interaction will be equal, and this will be translated into the establishment of the quasi-object.

In my previous research for Transforming Freedom I have analyzed the actors' movements and relations in the context of net neutrality. I have perceived net neutrality as a quasi-object because it engages actors for the purpose of building and defending a neutral Internet. Due to unbalanced relations between the actors involved, net neutrality as a quasi-object was not passed equally. I have concluded that the establishment of a neutral Internet has failed.

Net neutrality is one of the topics on Internet regulation and Internet freedom. ACTA is another hot topic of 2012, which led to enduring debates about the way ACTA would regulate the Internet. If net neutrality is perceived as the sum of all other actors involved, and functions as an operator

[5] Net neutrality is defined by several scholars as a principle that secures and respects the open, non-discriminatory and participatory character of the Internet (Meinrath and Pickard 2007), including access to all kinds of content (Gilroy 2008) and the use of different Internet services or applications. Additionally, net neutrality respects the end-to-end principle of the Internet, thereby prohibiting network operators to discriminate between customers' offered services (Weiss 2006).

[6] Punctualization is the engagement of many actors (Warzynski and Krupenikava 2010, 322).

to create and configure their relations for the purpose of establishing a neutral network, both Internet freedom and ACTA can be perceived as quasi-objects.

Internet freedom is a hybrid of different elements, which will be discussed in chapter 1. Latour refers to hybrids as quasi-objects (Latour 1993, 51). When Internet freedom is passed between the actors involved, an Internet holding the principles of Internet freedom will be stabilized. The same goes for ACTA as a quasi-object. ACTA is the materialization of the belief that copyright protection needs to be enforced, and nominates the relations of the actors who belief in ACTA. To clarify this, Marila explains that:

> One central quality is the quasi-object's ability to bring together, to combine. It is their relation to each other and to them as whole that gives them their significance. We can not discard division altogether but use it more precisely to better understand the complexity of materiality (Marila 2012, 10)

To record the movements and the relations of the actors involved in Internet freedom and/or ACTA, and how these are translated into the stabilization of Internet freedom, I will use discourse analyses. Discourse analyses filter the current text and dialogues on Internet freedom and ACTA in the EU. Furthermore, these analyses reflect upon what engages each actor to build and defend Internet freedom or ACTA.

In the context of theoretical interest, the relevancy of this thesis is to put the developments of Internet freedom in an academic context. Internet freedom is an interdisciplinary and contemporary phenomenon that needs to be embraced by scholars from different fields and backgrounds who are concerned about the Internet's future. "We need to support universities that are moving towards the issues of the net", says law professor Eben Moglen (Moglen 2012). Students and researchers should become an important actor involved in the Internet freedom debate to help policy makers, companies and citizens to better understand the current developments of Internet freedom.

By being part of the debate means being part in the activism scene of Internet freedom discourses, which results in better insight into the developments of Internet freedom. My participation at the European Parliament in Brussels has given me a better understanding of how decisions on Internet freedom are made and that political reality in the digital context, coherence of beliefs and transparency are essential drivers of Europe's information society agenda. As my former supervisor Andreas Leo Findeisen of Transforming Freedom told me one day: "We need to explain how and why laws have to be adapted to the fast digital layer for co-constructing political reality" (Findeisen 2011).

MacKinnon states that "the Internet is a political contested space, featuring new and unstable power relations among governments, citizens, and companies" (MacKinnon 2012, 5). "We understand how power works in the physical world, but we do not yet have a clear understanding of how power works in the digital realm" (ibid., 13). Therefore, we need to have a better understanding of the realities of the Internet and to make the rights decisions for balancing power in the digital EU.

Taking all this into account, this thesis will analyze the following question:

By recording the movements and the relations of actors involved in ACTA and Internet freedom in the EU, which translations stabilize or destabilize the establishment of Internet freedom?

Chapter 1: Internet freedom

"Internet is freedom of speech". Picture taken from BEE FREE - PGrandicelli [the social bee]. Licensed under Creative Commons: http://www.flickr.com/photos/aliestelle/3724030360/.

Chapter 1: Internet freedom

The Internet is a network of networks. A global economy center functioning as an internal digital market. A place for citizens to communicate, to share, and to find information. An important medium for politicians to set out their agenda and to communicate with potential voters. All of these Internet users have the liberty to use the Internet according to their needs, but is this liberty self-evident? To understand what it means to have the liberty to use the Internet, we have to focus on the meaning of Internet freedom.

1.1 What is Internet freedom

A Tunisian blogger called Yassine Ayari has marked the 13th of March as the International Day of Internet freedom. This particular day commemorates the death of Zouhair Yahyaoui, an online activist and advocate for freedom of expression.[7] The International Day of Internet Freedom refers to one of the meanings of Internet freedom: freedom of expression. Other references to Internet freedom are, for example, "freedom on the net" (Freedom House 2011a, 1) or "network freedom" (Sandvig 2007, 144).

To describe Internet freedom is to refer to several meanings. Rebecca MacKinnon, *Consent of the Networked,* has nicely described and summed up the several meanings of Internet freedom in her book:

1. It can mean freedom through the Internet: The use of the Internet by citizens to achieve freedom from political oppression;
2. It can mean freedom for the Internet: No interferences in the Internet's networks and platforms by governments or other entities;
3. It can mean freedom within the Internet: Individuals speaking and interacting in this virtual space have the same right to virtual free expression and assembly as they have to the physical pre-Internet equivalents;
4. It can mean freedom to connect to the Internet: Any attempt to prevent citizens from accessing it is a violation of their right to free expression and assembly;
5. Or it can mean freedom of the Internet: An Internet with a free and open architecture and governance. Individuals and organizations who use computer code to determine its technical standards, as well as those who use legal code to regulate what can and cannot be done within and through the Internet, all share the common goal of keeping the Internet open, free, and globally interconnected so that all netizens are free not only to use it, but also to participate in shaping it themselves (MacKinnon 2012, 188).

The first meaning refers to citizens using social media tools, blogs and other services that facilitate communication with others and the possibility to express thoughts and opinions.[8] The second meaning refers to the notion of net neutrality. Net neutrality implies that the 'pipes of the Internet' are equal and neutral to secure access to all kinds of content without discrimination or

[7] Yahyaoui has criticized the Tunisian censorship, which violates human rights. In 2011 he created a Tunisian discussion forum called Tunezine to reflect his disapproval of Tunisian's political, economic and social issues (Samti 2012).

[8] For example, the April 6 Youth Movement, an Egyptian movement to support the workers in El-Mahalla El-Kubra and to raise concerns about free speech, nepotism in government and the stagnating economy, is proclaimed by the New York Times as the political Facebook group in Egypt with the most dynamic debates (Shapiro 2009). An example of how the social networking site Facebook is used to set up political groups for debates and coordination of demonstrations. A more recent example of online demonstrations is the Stop ACTA Facebook group.

influencing the traffic in the pipes. Net neutrality supports the end-to-end principle[9] of the Internet.[10]

The third and fourth meaning describe the protection of fundamental rights in the digital world. The fundamental rights of European citizens are described in the Charter of Fundamental Rights, which is proclaimed in 2000.[11] The Charter consists of 7 chapters dealing with dignity, freedoms, equality, solidarity, citizen's rights, justice and general provisions. The Charter is embedded in EU policy-making to ensure free movement of persons, goods, services and capital, and the freedom of establishment. Additionally, the Charter contains 'third generation' fundamental rights, such as data protection (European Commission 2012b).

The last meaning refers to the Internet's architecture, which should be designed by citizens and companies to set the technical standards and by governments in terms of legal code.

To conclude, Internet freedom has several meanings, which contain the principle of net neutrality, an open and free architecture designed by code, the use of social media and the creation of social networks, and the practice of fundamental rights. Internet freedom is achieved by the input of citizens, companies and governments. Especially when Internet freedom has reached the political discourse, the focus on governments' participation is up for discussion. The next paragraph describes how EU governments formulate Internet freedom in their policy-making by taking the principles of Internet freedom into account.

1.2 Internet Governance Principles

The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights – ETS No. 5) and other Council of Europe standards apply to the Internet and, more generally, to the information society as a whole in the same way as they apply to offline activities. All Council of Europe member states have undertaken to secure to everyone within their jurisdiction the rights and freedoms protected by the European Convention on Human Rights and Fundamental Freedoms in application of article 1 of this Convention (Council of Europe 2011a, 2).

The European Convention of Human Rights was signed in 1950 by 47 member states of the Council of Europe. The Convention entered into force on 3 September 1953 with the aim of having a stronger unity between member states, and to reinforce the maintenance and security of human

[9] The end-to-end principle (Saltzer, Reed, and Clark 1984) is the transmission of data packets from point A to point B. The Internet's underlying architecture is constructed by a set of protocols (together named as Transmission Control Protocol and Internet Protocol: TCP/IP), which only purpose is to deliver data packets. These protocols do not know the content of data packets, safe from the actual sender and receiver. Only the user's IP address is known to the protocols for the purpose of delivering the data packets at the right computer's address.

[10] In May 2012, The Netherlands became the second country in the world which made net neutrality into law (Van Daalen 2012a). Chile, on the contrary, is the first country in the world which made net neutrality into law (Freedom House 2011b).

[11] For the EU Charter of Fundamental Rights (2000/C 364/01), see: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0001:0016:EN:PDF.

rights and fundamental freedoms on a universal scale.[12] The European Convention is perceived as "the only international human rights agreement providing such a high degree of individual protection" (Kjaerum 2009, 2).

The Convention contributes to the clarification of fundamental rights in the digital world. Like in the real world, fundamental rights need to be protected on the Internet. The protection has been discussed by the state, the private sector and civil society actors for the purpose of shaping a common view on Internet policies. As a result, a draft on Internet Governance Principles was proposed by the Council of Europe in April 2011 during a conference in Strasbourg.[13] The draft reflects the Internet as a participatory and open place where ideas, technologies, resources and policies come together to develop freedom. The Internet can enhance the exercise of fundamental rights and freedoms, therefore the interest for Internet-related policy-making is important to consider.

Internet Governance is the input of several parties. The definition of Internet Governance describes that it "is the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the Internet (WGIG 2005, 4).[14]

On 21 September 2011, the Committee of Ministers approved the draft[15] as they were inspired by the shared vision of involved parties on Internet governance: "An Internet that provides a space of freedom, facilitating the exercise and enjoyment of fundamental rights, participatory and democratic processes, and social and commercial activities" (Council of Europe 2011b). The vision is summarized in the following Internet Governance principles:[16]

1. Human rights, democracy and the rule of law: Internet Governance arrangements, including operations, activities, applications and technology designs, have to ensure that all fundamental rights and freedoms are protected, and that democracy and the rule of law are respected. In addition, special attention is needed in technology developments requiring new rights.

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[12] The Convention consists of three parts: Section I deals with the main rights and freedoms, which are described in Article 2 to 18; Section II describes the Court's rules of operation, which are found in Article 19 to 51; and Section III contains the various provisions, which are Article 52 to 59. Furthermore, the Convention includes a set of protocols to extend the list of rights already protected under the Convention, and to amend the framework of the convention system. Official document of the European Convention on Human Rights, retrieved at: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf.

[13] See the draft by the Council of Europe, retrieved at: http://www.umic.pt/images/stories/publicacoes5/Internet%20Governance%20Principles.pdf.

[14] The definition was given by Working Group on Internet Governance (WGIG). A group set up by the Secretary-General Kofi Annan of the United Nations, amended during the Tunis Agenda for the Information Society at the World Summit on the Information Society in November 2005, and later taken up by the European Commission. Extra note, the word 'governance' should not be equated with 'government' or that a single entity controls the Internet, but governance should be referred to as the "rules and procedures that states and other involved parties agree to use to order and regularize their treatment of a common issue" (WGIG 2005; Mueller, Mathiason and McKnight 2004).

[15] See the document of the declaration by the Committee of Ministers on Internet Governance Principles, retrieved at: https://wcd.coe.int/ViewDoc.jsp?id=1835773.

[16] See footnote 31. The description of each principle is summarized from the original document. Some parts are literally adopted.

2. Multi-stakeholder governance: Internet Governance has to take into account the full participation of governments, the private sector, civil society groups, technical communities, and users to ensure an open, transparent and accountable Internet.
3. Responsibilities of States: States should refrain from any harm to persons and any national decision that restricts fundamental rights. The States' responsibility should comply with international obligations and be based on law for the necessity of democracy.
4. Empowerment of Internet users: Users are important participants in Internet Governance and should be free to exercise their fundamental rights on the Internet.
5. Universality of the Internet: The nature of the Internet is universal and access to it should not be affected.
6. Integrity of the Internet: Users have to trust the Internet, therefore Internet Governance has to preserve the security, stability, robustness, resilience and integrity of the Internet infrastructure.
7. Decentralized management: The actors responsible for the technical and management aspects of the Internet, including the private sector, have to retain from their leading roles to ensure transparency and accountability in public.
8. Architectural principles: No unreasonable burdens or barriers should be made in the open Internet. Its end-to-end principle has to be preserved.
9. Open network: Users should have access to any content, application, and service of their choice. Any traffic management should meet the requirements of international law on the protection of freedom of expression, access to information, and the right to respect private life.
10. Cultural and linguistic diversity: Fostering development of local content regardless which culture or language.

The principles are legal directions for how the Internet has to be regulated in order to establish Internet freedom. These principles have to be used by national governments on an international level, and applied to all actors involved, including national and international corporations, national and international governments, NGOs, civil liberties groups, and citizens.

Governing the Internet with principles that reflect the meaning of Internet freedom induces the capability to change the behavior and movements of actors involved. If all actors move to the direction according to the Internet Governances Principles, Internet freedom is being created. As Internet freedom exists within the movement of actors involved, it becomes an actor itself.

1.3 Resumé

Fundamental rights and freedoms on the Internet can be protected through Internet Governance. The principles of Internet governance reflect the meaning of Internet freedom: open, neutral, accountable, trusted, secure and decentralized Internet, in which citizens' freedom of expression, access to information and the right to respect for privacy are protected. Unfortunately, current developments, including the process of ACTA, are interfering with the establishment of Internet freedom. Proponents of ACTA belief in the enforcement of IPR and copyright protection, while opponents argue that ACTA violates the very meaning of Internet freedom. To understand the process of ACTA and which actors are involved, the next chapter will focus on the meaning of ACTA.

Chapter 2: Anti-Counterfeiting Trade Agreement

Picture taken from BBC News 2012: http://www.bbc.com/news/technology-16976459.

Chapter 2: Anti-Counterfeiting Trade Agreement

This chapter will focus on what ACTA entails. Before the agreement was made to a final text, several negotiations have preceded to discuss the enforcement of IPR and copyright protection. Citizens, civil liberties groups, certain organizations and political actors have criticized how ACTA's way of regulating the Internet violates fundamental rights and liberties. After the negotiations, the Members States of the EU had the possibility to sign the agreement, and several EU Committee's and the European Parliament had to vote about its ratification.

2.1 What is the Anti-Counterfeiting Trade Agreement

ACTA is an international trade agreement to enforce IPR protection, including protection of patents, avoiding counterfeit products, and prevention of illegal copies of software, music, games, movies, and other related digital products. In other words, ACTA focusses on piracy and counterfeiting[17] of copyrighted goods in the digital environment.[18] Its aim is to enforce IPR protection by developing a legal framework, which improves existing policies,[19] creates international cooperation and simultaneously improves exchange of information, and supports emerging companies.

The European Commission believes it is necessary to have an international legal framework for the reason that the European competitive position and economic growth is depending on the protection of intellectual property (IP) (European Commission 2012e). IP is property created by the mind and used for commercial end goals,[20] including immaterial assets and information. As IP is perceived as intangible (meaning that it cannot be defined by physical parameters), IP can be reproduced and copied. Therefore, rights are needed to protect the IP's wealth of ownership, control, and trade.

The rights are established and suggested as law worldwide by the World Intellectual Property Organization (WIPO). IPR, divided between copyright and industrial property,[21] control the way

[17] Piracy means the infringment of copyrights and counterfeiting deals with the infringement of trademarks.

[18] In *Cyberspace Law For Non-Lawyers*, Lawrence Lessig, David Post and Eugene Volokh state that "copying something in cyberspace can be just as much an infringement - assuming the copyright owner doesn't allow you to do it - as copying something on paper" (Lessig, Post and Volkoh 1996).

[19] For an overview of existing global policies on copyright enforcement, see: Taylor, Michael D. 2010. "The Global System Of Copyright Enforcement: Regulations, Policies and Politics." In *Copyright Enforcement And The Internet*, edited by Irini A. Stamatoudi, 65-116. Alphen aan den Rijn: Kluwer Law International.

[20] Defined by WIPO (World Intellectual Property Organization), an international institution dealing with the protection and promotion of IP, IP refers to creations of the mind, including inventions, literary and artistic works, symbols, names, images, and designs used in commerce. For more information, see: http://www.wipo.int/about-ip/en/.

[21] According to WIPO, industrial property includes inventions (patents), trademarks, industrial designs, and geographic indications of source, and copyright includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs (WIPO n.a(a)). Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs (ibid.).

how IP is used, accessed or distributed (Raman 2004, 1) and protects creative work relating to intellectual activity against unfair competition and unauthorized use or sale.[22]

IPR are additionally described in the TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement, which is signed in Marrakesh, Morocco on 15 April 1994.[23] The TRIPS agreement is an international agreement administered by the World Trade Organization (WTO) for setting IP regulation standards used by nationals and other WTO parties, including protection and enforcement of IPR (WTO 2012a).

ACTA as an enforcement treaty will build upon the WTO's TRIPs agreement, introducing new international standards to address the procedures for ensuring that IPR protection fits in the digital context. The standards include border measures regarding monitoring of import and export, and provisions on civil and criminal enforcement:

- Articles 7 - 12 of ACTA describe the provisions on civil enforcement, including injunctions, damages, other remedies and provisional measures. According to the civil enforcement, judicial authorities are empowered to issue an injunction against copyright infringers and to destruct infringing goods (Sanders, Shabalala, Moerland, Pugatch and Vergano 2011, 25-27).
- Articles 13 - 22 of ACTA cover the provisions on border measures. Under the IPRs Customs Regulation, border measures are only focussed on a limited type of counterfeit goods. ACTA extends the scope to all (ibid., 28). The provisions of criminal enforcement are described in articles 23 -26 , which cover the implementation of criminal procedures and penalties (Ilias 2010, 10).
- Article 27 of ACTA covers the provisions on enforcement in the digital environment, thereby challenging the new technologies for IPR enforcement (ibid.).

Albeit WIPO and WTO work together for the purpose of providing technical assistance and managing legal texts relating to IP enforcement,[24] both organizations have limited participation in the ACTA negotiations. Only elected members of WTO have a role in the negotiations. Although, ACTA exists outside WTO and WIPO[25], European Commissioner Karel de Gucht assures that ACTA should be "very closely modeled on the European system":

> ACTA is nothing more and nothing less than an agreement creating international standards for 13 parties to enforce intellectual property rights in ways that today are already enshrined in European law. Over the years we have built up a comprehensive system to protect intellectual property in Europe [...] ACTA is a means to extend the benefits of this system beyond our borders. It represents a small but significant step towards stamping out the global counterfeiting and piracy industry (De Gucht 2012a).

The first steps towards ACTA began to shape in 2006 when Japan and the United States (US) jointly reached out to other countries for developing an agreement that would enhance international

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[22] On 14 July 1967, WIPO concluded that the IP rights relates to creative works, including artistic and scientific work, trademarks, service marks and commercial names, and performances and broadcasts (WIPO n.a.(b)).

[23] For the official text of the TRIPs agreement, see: http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm.

[24] The WTO-WIPO Cooperation Agreement, signed in Geneva on 22 December 1995. For more information, see: http://www.wto.org/english/tratop_e/trips_e/wtowip_e.htm.

[25] In a letter to the European Parliament, dated 4 May 2010, Director General of the WTO, Pascal Lamy explains that WTO does not participate in the ACTA negotiations. For a copy of the letter, see: http://keionline.org/sites/default/files/WTO-Lamy_Answer-to-MEP-letter.pdf.

cooperation and international standards of IPRs.[26] Later in 2007, the EU and its Member States, and Switzerland joined, followed by Australia, Canada, Mexico, Morocco, New Zealand, Republic of Korea, and Singapore in 2008. The negotiations were concluded in June 2010, and on 3 December 2010 the ACTA agreement was finalized, which is now in process of being ratified by the mentioned countries. According to Article 39 of the agreement, involved countries and elected members of WTO can sign until 1 May 2013 (European Commission 2012g, 22-23).

2.2 Anti-Counterfeiting Trade Agreement: A timeline

ACTA came first to public attention after a text was uploaded by Wikileaks in May 2008. The text said that it "reveals a proposal for a multi-lateral trade agreement of strict enforcement of IPRs related to Internet activity and trade in information-based goods hiding behind the issue of false trademarks" (WikiLeaks 2008). A text that would follow up eleven rounds of ACTA negotiations, debates, more leaks of ACTA documents, and proposals for enforcing IPR and copyright protection.

2008

1. The first round of negotiations was held in Geneva, Switzerland on 3-4 June 2008 (European Commission 2008a).
2. The second round was held in Washington, US on 29-31 July 2008, and the focus of the discussions were on customs and civil enforcement (European Commission 2008b).
3. The discussion was continued in the third negotiation in Tokyo, Japan on 8-9 October 2008, with an additional focus on criminal enforcement of IPRs (European Commission 2008c).
4. The final negotiation of 2008 was in Paris, France on 15-18 December and continues with the previous discussions and focused on international cooperation, enforcement practices and institutional issues (European Commission 2008d).

2009

5. In 2009, the negotiations continued, marking the 5th round on 16-17 July in Rabat, Morocco. The discussions focused on International Cooperation, Enforcement Practices and Institutional Issues (European Commission 2009a).
6. And the 6th round was held on 4-6 November in Seoul, South-Korea. The sixth round was focused on the enforcement of IPRs in the digital context and criminal enforcement, and the importance of transparency, including the opportunity for citizens and other stakeholders to provide input (European Commission 2009b).

2010

7. The 7th round was held in Guadalajara, Mexico on 26-29 January 2010, and was focused on civil enforcement, border enforcement and enforcement of rights in the digital environment (European Commission 2010a).

[26] For the press Statement of the Anti-Counterfeiting Trade Agreement Negotiating Parties, see, for example: http://www.ustr.gov/about-us/press-office/press-releases/2011/october/joint-press-statement-anti-counterfeiting-trade-ag.

Leak

In March 2010, a draft of the entire "18 January 2010 consolidated text" was leaked.[27] This leak included sections 2.1 ("Civil Enforcement") and 2.4 ("Special Measures Related To Technological Enforcement Means And The Internet"), which describes Internet Service Providers (ISPs) forced to hand over Internet users' data in case of suspected infringement of copyright without injunction. Additionally, the text in the leaked document created the impression of future customs employees having to control travelers' laptops and MP3-players on illegal downloads.

Motion

The European Parliament carried a motion from the European Commission in which it requested to make all ACTA documents public. The Parliament has been fiercely against the lack of adequate information, and the search of illegal downloads in citizens' laptops, MP3-players and mobile phones.

Report

Before the 8th round of ACTA negotiations, the European Parliament asked WIPO and WTO to report their own assessment and analysis of ACTA's provisions,[28] albeit WIPO and WTO do not participate in the negotiations. Director General of WIPO, Francis Gurry has responded to the European Parliament's letter. In his letter, Francis Gurry reiterates that WIPO has not participated in the ACTA negotiations nor did they have consultation with ACTA negotiating parties, and therefore cannot provide the European Parliament with objective information.[29]

8. The 8th round was held in New Zealand on 12-16 April 2010 (European Commission 2010b). The negotiating countries decided that a consolidated draft of ACTA will be made public on 20 April 2010 (European Commission 2010c) as a response to civil liberties groups and the European Parliament's pressure for transparency.[30]
9. The 9th round of ACTA negotiations was held in Lucerne, Switzerland on 28 June- 1 July 2010 (European Commission 2010d).
10. The 10th round was held on 16-20 August 2010 in Washington and focussed on previous discussions (European Commission 2010e).

Leak

On 25 August 2010, another text was leaked. The document is a consolidated text of ACTA, which reflects the changes made during the 10th round of ACTA negotiations. When compared to the

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[27] For the leaked document, see: http://en.swpat.org/wiki/ACTA-6437-10.pdf_as_text. In addition, La Quadrature du Net has released the consolidated version under: http://www.laquadrature.net/files/201001_acta.pdf. As La Quadrature du Net mentions: "the document may not reflect the current state of the negotiations but it provides the public with an interesting overview of the whole agreement [and] background on the positions of the different parties" (La Quadrature du Net 2010a).

[28] For the letters from the European Parliaments to WIPO, dated 15 April 2010, see: www.erikjosefsson.eu/sites/default/files/WIPO-letter-from-Greens-EFA.html; and to WTO, dated 15 April 2010, see: www.erikjosefsson.eu/sites/default/files/WTO-letter-from-Greens-EFA.html.

[29] For Francis Gurry's letter to the European Parliament, dated 6 May 2010, see: http://en.act-on-acta.eu/Greens_EFA_MEPs_letter_to_WIPO_and_WTO/Answer_from_WIPO.

[30] On 10 March 2010, the European Parliament voted 633 to 13 to make ACTA public (Love 2010).

consolidated draft of 20 August 2010, one of the chances made is the cooperation of Internet intermediaries,[31] including ISPs, to disclose information of citizens to right holders:

Article 2.18, section 4.
Each Party may provide, in accordance with its laws and regulations, that its competent authorities have the authority to order an online service provider to disclose expeditiously the information of the relevant subscriber to the right holders, who have given legally sufficient claim with valid reasons to be infringing their {US: copyright or related rights} {J/EU: intellectual property rights} (KEI 2010, 20).

11. The last round of ACTA negotiations was held in Tokyo on 23 September- 2 October 2010, finalizing the text of the proposed agreement (European Commission 2010f).

Debate

On 24 November, the European Parliament debated over the agreement. In its resolution, the European Parliament welcomed the promotion of IPR protection, but underlined that any decision made by the European Commission must lie within the scope of the *acquis*[32] and must have no impact on fundamental rights and data protection (European Parliament 2010).

Final text

The final text of ACTA was published on 3 December 2010 (European Commission 2010g).

2011

Proposal

However on 24 June 2011, in the proposal put forward by the European Commission for a Council Decision, it stated that ACTA does not modify EU *acquis*. The European Commission continued by explaining that ACTA will introduce a new international standard providing benefits for EU exporting right holders operating in the global market and is a balanced agreement respecting citizens' rights (European Commission 2011).

Signing

The EU attended the signing ceremony hosted by Japan in October, but did not sign the agreement. Australia, Canada, Japan, Republic of Korea, Morocco, New Zealand, Singapore and the US did however sign the agreement.

2012

Signing

On 26 January 2012, ACTA was signed by the European Commission and 22 of its Member States, including Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom (excluding Germany, the Netherlands, Cyprus, Estonia, and Slovakia).

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[31] According to OECD (Organization for Economic Co-operation and Development), Internet intermediaries are those who "give access to, host, transmit and index content originated by third parties or provide Internet-based services to third parties." Most Internet intermediaries are from the business sector and span a wide range of activities including "ISPs, data processing and web hosting providers, Internet search engines and portals, e-commerce intermediaries, Internet payment systems, and participative networked platforms" (OECD 2010, 9).

[32] The EU *acquis* is the common foundation of rights and obligations, which binds together the Member States of the EU.

Legal submission

On 4 April 2012, the European Commission announced a legal submission of ACTA is put before the European Court of Justice (European Commission 2012c) to examine whether ACTA is in line with European fundamental rights and to clarify the legality of ACTA, after multiple concerns and criticism expressed by European citizens.[33]

The same press release describes that the possible adoption of ACTA would benefit Europe's competitive economy in "innovation, creativity, quality, and brand exclusivity", which is protected by IPRs (ibid.). The Commission supports ACTA as it considers it to be "an effective enforcement of IPRs", which are "critical for sustaining growth across all industries and an economic basis for the exercise of fundamental rights (European Commission 2012d, 1).

Legal opinion

On 11 May 2012, the Commission officially referred ACTA to the European Court of Justice for a legal opinion on the following question after European citizens expressed concern of the threat to fundamental rights:

Is the envisaged Anti-Counterfeiting Trade Agreement (ACTA) compatible with the Treaties [34] and in particular with the Charter of Fundamental Rights of the European Union? (European Commission 2012e).

In the overview of the referral, the Commission explains that ACTA would be compatible with the Treaties and the Charter of Fundamental Rights because ACTA "provides flexibility" and "preserves fundamental principles such as freedom of expression, fair process, and privacy" (European Commission 2012d, 2).

Furthermore, Commissioner Karel De Gucht is glad that the European Commission has referred ACTA to the European Court of Justice because "this debate (concerns over Internet freedom) must be based upon facts and not upon the misinformation or rumor that has dominated social media sites and blogs" (European Commission 2012b). However, the facts never came.

2.3 Criticism and protests

The ACTA negotiations, Member States signing the agreement, and the European Commission's opinion on ACTA has caused serious criticism and major protests by EU citizens. The criticism reflects the violations of fundamental rights and negotiations lacking transparency. Interesting to mention is that not only citizens have criticized ACTA. Additionally, EU political actors have shared the same criticism and even have participated in the protests.

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[33] The European Court of Justice interprets EU law to make sure it is applied in all EU countries in the same way. For more information, see the EU's webpage on Court of Justice: http://europa.eu/about-eu/institutions-bodies/court-justice/index_en.htm. To ask the Court of Justice for an opinion is a procedure described in Article 218(11) of the Treaty on the Functioning of the European Union (TFEU). According to Article 218(11), TFEU provides that "a Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised." For the consolidated version of the Treaty on the Functioning of the European Union, see: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF.

[34] The European Treaties are binding agreements that have been approved by all EU Member States to set out objectives, rules for EU institutions, decisions, and establishes cooperation between the EU countries.

2.3.1 Impact on human rights, economy and democracy

According to a study by Alberto Cerda Silva, ACTA's provisions to combat counterfeiting and privacy do not safeguard the right to privacy (Silva 2010). Additionally, Amnesty International believes that "the protection of IP should never come at the expense of basic human rights" (Amnesty International 2012).

Furthermore, the European Data Protection Supervisor (EDPS) has warned that ACTA indeed violates basic human rights, including citizens privacy, protection of personal data, and right to communication (Buttarelli 2012). ACTA's measures would strengthen IP enforcement in terms of monitoring citizens' online behavior and activities (ibid.). These measures reflect ACTA's call for cooperation between right holders and ISPs, and accepting a 'three-strikes system',[35] which is heavily criticized by, for example La Quadrature du Net:

> The very same mechanisms are called by the European Commission as "extra-judicial measures" and "alternative to courts". It means that police (surveillance and collection of evidences) and justice missions (penalties) could be handed out to private actors, bypassing judicial authority and the right to a fair trial to block and take down allegedly infringing content (written in article 27.3). In article 27.4, ACTA will allow rights-holders to obtain private data regarding the users of Internet service providers, without a decision of a judge. This is a dangerous breach to privacy (La Quadrature du Net 2010b).

ACTA's provisions allowing rights-holders to obtain personal data from ISPs violates the principles of Europe's Declaration on Freedom of Communication on the Internet. Adopted on 28 May 2003, the Declaration recalls the fundamental rights freedom of expression and freedom to information,[36] by taking into account the necessity to remove barriers to individual access to the Internet and to limit liability of ISPs as they just act as mere transmitters.

ISPs have criticized the liability they will have of providing access to websites or parts of a website. For example, in a recent case between Dutch anti-piracy foundation BREIN[37] and two Dutch ISPs Ziggo and XS4ALL, the court ruled that both ISPs had to block access to The Pirate Bay's website because The Pirate Bay is infringing copyright by allowing the downloading and uploading of copyrighted material (TorrentFreak 2012). XS4ALL, together with Ziggo (Ziggo 2012), decided to appeal against the blockade (XS4ALL 2012). According to the director of XS4ALL, Theo de Vries, is the blockade a failure to Internet freedom in which "commercial interests are considered to be more important than fundamental rights" and "by blocking an entire website, you will inevitably block information which is absolutely nothing wrong with" (XS4ALL 2012). Ziggo states that "an ISP should not be forced into the role of a police officer" (Ziggo 2012).

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[35] For example, La Quadrature du Net refers to it when explaining why ACTA is dangerous. See their Wiki page "Portal about ACTA": http://www.laquadrature.net/wiki/Portal:ACTA. The three-strikes system is additionally known as the graduate response or HADOPI law, and it requires ISPs to block Internet access after two warnings of accused repeating copyright infringement (Bridy 2011, 559; Yu 2010, 1374).

[36] These freedoms are guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 10 of the Convention describes: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises." Retrieved from the European Convention on Human Rights' official website: http://www.echr.coe.int/nr/rdonlyres/d5cc24a7-dc13-4318-b457-5c9014916d7a/0/englishanglais.pdf.

[37] Dutch anti-piracy foundation BREIN stands for the protection of rights entertainment industry in the Netherlands, being a central contact for rights holders, government, law enforcement, trade, and media. BREIN's official website: http://www.anti-piracy.nl/.

Furthermore, ACTA would jeopardize the economy of European industries. According to a study by the Foundation for a Free Information Infrastructure (FFII), ACTA would damage retail price that go beyond current EU law (FFII 2012). Furthermore, ACTA holds risks for startup companies and innovation as ACTA contains civil measures against patent infringement.[38] The Hungarian Industry Association IVSZ (Informatikai, Távközlési És Elektronikai Vállalkozások Szövetsége) shares the same opinion: "ACTA's provisions risk great damages to startup companies, research and development projects" (IVSZ 2012).

Additionally, ACTA jeopardizes the industry of electronic communications, including ISPs and telecom operators. Four organizations of the electronic communications industry ECTA, ETNO, EuroISPA and GSMA stress the fact that, in times of the economic crisis, ACTA "does not bring the legal certainty needed by the European Internet industry to develop and compete internationally" (EuroISPA 2011).

Albeit both WIPO and WTO do not have a role in the ACTA negotiations, both WIPO and WTO did raise concerns about ACTA, and have stated that its provisions would go beyond the standards of the TRIPS agreement and other WTO agreements.[39] In June 2010, Gurry called ACTA "a bad development" for WIPO (Saez 2010). According to Bannerman, ACTA is a bad development for WIPO as ACTA is a multi-national trade agreement between several countries, meaning that the international IP system "could fracture" (Bannerman 2010, 14) and that "WIPO's overall stature in the international IP system" will be threatened (ibid., 15).

During a WTO TRIPs Council on 28 February 2012, the representative of India stated that ACTA does not only affect developing countries but additionally "the core aspirations of the developing world: knowledge and information" (KEI 2012).

2.3.2 Lack of transparency

According to civil liberties parties and several politicians, the negotiations were mostly held behind closed doors, which has created a certain opaqueness with regard to the plans of ACTA. According to Member of European Parliament (MEP), David Martin, "the lack of transparency in the ACTA negotiations has undermined the confidence of European citizens and has left them and many in the Parliament uncomfortable" (The Parliament 2012). French Social & Democrats (S&D) deputy, Kader Arif, even resigned as ACTA rapporteur because of the lacked transparency (Hinton-Beales 2012). Despite the disquieted opinions expressed by these politicians, the European Commission still disagrees by stating that "ACTA is not a secret agreement":

> The text of ACTA is publicly available to all since November 2010, and has already been made public during negotiations, in April 2010. The European Commission regularly consulted the European Parliament and also replied to several dozens of written and oral questions by MEPs. Furthermore, EU negotiators were invited, met and extensively debriefed NGOs, academia and representatives from political parties during the last four rounds of negotiations in Wellington, Luzern, Washington and Tokyo (European Commission 2012g).

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[38] See footnote 39. Footnote 2 of ACTA's final draft (page 5) states that "a Party may exclude patents and protection of undisclosed information from the scope of this Section." The "may exclude" suggest that "such exclusion should be the exception rather than the rule. This language may thus encourage countries to apply the ACTA civil enforcement provisions to patents and data exclusivity, and could be used by trading partners for this purpose", says FFII (FFII 2012).

[39] According to Article 1.1 of the TRIPS agreement, "Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement" (WTO 2012b).

Former CEO and Chairman of the Motion Picture Association of America (MPAA), Dan Glickman addressed ACTA's lack of transparency in a letter to US Chairman Patrick Leahy by arguing that those public concerns are a "distraction" from ACTA's substance and ambition to combat piracy and counterfeiting" and that ACTA's opponents are "indifferent to the situation, or actively hostile towards efforts to improve copyright enforcement worldwide".[40]

Despite the arguments on the unnecessary concerns on ACTA's lack of transparency by the European Commission and certain politicians, Senior Policy Analyst at Access, Raegan MacDonald, has claimed that the leaked documents of ACTA meetings in Paris in 2008, Rabat and Seoul in 2009, and Guadalajara in 2010[41] demonstrate that nothing has been done to improve the lacked transparency: "The documents give us further proof that the negotiations of this dangerous agreement was, despite continued assertions by the Commission to the contrary, not transparent" (Rispoli 2012). An additional argument was provided by European Digital Rights (EDRi) when the reported the "unsuccessful efforts to have a transparent process" (EDRi 2012c).

2.3.3 Opposition by European political actors and citizens

ACTA's impact on human rights and economy, the lack of transparency, and the actual signature by Member States has caused enormous protests by EU citizens who went out on the streets in several European capitals (EDRi 2012b). The protests against ACTA spread rapidly in East Europe and were remarkably strong. Eastern European protesters compared the agreement with "Big Brother-style surveillance used by former Communist regimes" (Kirschbaum and Ivanova 2012). The hacktivist group Anonymous has attacked American, Polish, and Croatian governmental institutions' websites to keep them from ratifying ACTA (Satter and Gera 2012; The Huffington Post 2012; The Sofia Echo 2012).

In addition, there has been a certain rise of Pirate Parties in Europe putting Internet freedom into political discourse. The Swedish Pirate Party took more than seven percent of the votes in the European elections of 2009 (The Local 2009), and in the Berlin state elections of 2011, Germany's Pirate Party took almost nine percent percent (Spiegel Online 2011). The party leader Anna Troberg, MEPs Christian Engström and Amelia Andersdotter have been involved in protests, including a protest on 4 February 2012 (Aftonbladet 2012).

The Bulgarian government has signed ACTA because the Minister of Economy, Energy and Tourism Tralcho Tralkov was convinced of its "benefits for Bulgaria" (Novonite 2012a). However, like the Czech Republic, Bulgaria will freeze its ratification of ACTA until the stance of other EU Member States is made clear (Novonite 2012b). In Poland, lawmakers from the Paliko Movement have covered their faces with Guy Fawkes masks to protest against Polish government signing the agreement (Stone 2012). Slovenia's ambassador to Japan, Helena Drnovsek Zorko, has publicly apologized for signing ACTA, which she did out of "civic negligence" (Slovenska Tiskovna Agencija 2012). Several Austrian political parties, including SPÖ (Socialdemokratische Partei Österreich) and BZÖ (Bündis Zukunft Österreich) have shown resistance against ACTA and regard the agreement as "the beginning of the end of the Internet" (Wiener Zeitung 2012). On 29 May 2012, the Dutch parliament voted against the ratification of ACTA.[42]

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[40] For MPAA's former CEO and Chairman Dan Glickman's letter to Chairman Patrick Leahy, dated 19 November 2009, see: http://www.scribd.com/doc/22785108/MPAA-letter-re-ACTA.

[41] For meeting notes, see: EDRi. 2012b. "ACTA: European Commission Negotiation Failures." Published May 29. Accessed July 1, 2012. http://www.edri.org/ACTAfailures.

[42] The House of Representatives votes over motions on Competitiveness. For the official voting results, see: http://www.tweedekamer.nl/images/29-05-2012_tcm118-228307.pdf (Dutch only).

After almost 2.5 million citizens worldwide have signed ACTA petitions on 28 February 2012, the following days were focused on a formal recommendation to the Parliament and debates with academics, civil society groups, and EU officials on the pros and cons of ACTA (European Parliament 2012a). The opinions that have followed out of the debates were assigned to European Parliament's Committees and the European Parliament for making the right decision.

2.4 The vote

ACTA can only enter into force as EU law when the agreement is ratified[43] by the EU. This means that the European Parliament, via the consent procedures for international commercial agreements, has to approve the agreement after which it should be ratified by Member States under their constitutional procedures.[44] In other words, ACTA will only enter into force in the EU when all 27 national parliaments have ratified the agreement and is approved by the European Parliament.

Four Committees of the European Parliament, including the Development Committee (DEVE), Industry, Research and Energy Committee (ITRE), Legal Affairs Committee (JURI) and the Civil Liberties, Justice and Home Affairs Committee (LIBE), voted against the implementation of ACTA (European Parliament 2012b).

In an Opinion drafted by S&D MEP, Dimitrios Droutsas, the LIBE Committee has acknowledged the importance of IPRs as they are "important tools for the Union in the 'knowledge economy'" but stressed that it is crucial to find "an appropriate balance between enforcement of IPRs and fundamental rights such as freedom of expression, the right to privacy and protection of personal data, and the right to due process" (Droutsas 2012, 3).

ITRE's rapporteur Amelia Andersdotter drafted an Opinion on ACTA noting that the agreement is a "one-size-fits-all instrument" that cannot be implemented for each sector and that a "fair balance" is needed "between the right to IP and the freedom to conduct business, the right to protection of personal data and the freedom to receive or impart information" (Andersdotter 2012a, 3).

However, Committees on DEVE and JURI were positive about ACTA. JURI's rapporteur Marielle Gallo refers to the point that ACTA does not create new IPRs and is compatible with existing European legislation. The agreement "cannot have the effect of prejudicing the constitutional principles of the EU", including fundamental rights, therefore "the Parliament should give consent to the agreement" (Gallo 2012, 1-5). DEVE's rapporteur Jan Zahradil recommends approving ACTA as the agreement will not hinder access to medicines, and includes developing countries and emerging countries who may join (Zahradil 2012, 3). However, after JURI's vote on ACTA was postponed (La Quadrature du Net 2012a), the Committee on DEVE eventually voted against Gallo's draft opinion. Additionally, on 31 May 2012, together with DEVE, ITRE, and LIBE, Committee on JURI voted against ACTA (European Parliament 2012b).

[43] An example of the difference between signing and ratifying, explained by D66 party member Kees Verhoeven during a meeting of the Dutch House of Representatives on 29 May 2012: "The Netherlands has never signed ACTA. The Netherlands has neither ratified ACTA. We want that ACTA will not be ratified, so it does not effect Dutch Internet users. That is the difference" (Tweede Kamer der Staten-Generaal 2012).

[44] See footnote 39. Article 40 of ACTA states that ACTA will enter into force "thirty days after the date of deposit of the six instrument of ratification, acceptance, or approval."

On 21 June 2012, before the Committee on International Trade (INTA) could vote on ACTA, European Commissioner, Karel de Gucht, gave his final opinion on ACTA: "There is nothing to fear in this agreement [..] bear that in mind as you vote" (De Gucht 2012c). Nonetheless de Gucht's attempt to convince the Committee for a positive vote, INTA members voted against ACTA. At the press conference, rapporteur David Martin stated that the vote was a "political decision", proving that "the voice of citizens was heard and that the Parliament has to improve its engagement with citizens" (Martin 2012).

The plenary vote on ACTA by the European Parliament was on 4 July 2012. The European Parliament rejected ACTA by 478 votes to 39, with 165 abstentions, meaning that neither the EU nor its Member States can join the agreement (European Parliament 2012a). The rejection is, according to Karel de Gucht, not the end of finding solutions to improve IP protection:

> Today's rejection does not change the fact that the European Commission has committed itself to seeking answers to the questions raised by the European public [..] The European Commission will take on-board the opinion of the European Court of Justice and the issues raised across the European political spectrum. We will then consult with our international partners on how to move forward on the issue of IP protection (De Gucht 2012c).

Solutions are found but the question is whether it is the right way of doing. Less than a week after the plenary vote, leaked documents[45] showed that the European Commission is negotiating with Canada about another trade agreement: Canada-EU Trade Agreement (CETA)[46]. In this agreement there is a chapter called 'Intellectual Property' and this chapter has copied certain ACTA provisions[47]. Michael Geist argues that the Commission's strategy appears "to use CETA as the new ACTA" (Geist 2012). CETA is already labeled as "ACTA II" (Van der Kolk 2012). Karel de Gucht has already mentioned in his speech given prior to INTA's vote:

> If you decide for a negative vote before the European Court rules, let me tell you that the Commission will nonetheless continue to pursue the current procedure before the Court, as we are entitled to do. A negative vote will not stop the proceedings before the Court of Justice (De Gucht 2012c).

However, the spokesperson of La Quadrature du Net, Jérémie Zimmermann argues that another attempt cannot be accepted:

> What has been refused once cannot be made acceptable just because it has been wrapped in a different paper. The European Parliament must assume its responsibilities and remind the Commission that its vote against ACTA's controversial provisions and process applies to every other trade agreement being negotiated on behalf of the EU (La Quadrature du Net 2012b).

Next to the notion of an ACTA II, Neelie Kroes has warned about the review of the IPR Enforcement Directive. This Directive is a directive for all Member States in which they have to use the same

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[45] For the leaked document of CETA Draft IPR chapter, see: https://www.bof.nl/live/wp-content/uploads/CETA-IPR-Chapter-Feb-2012.pdf.

[46] Foreign Affairs and International Trade Canada's official webpage on CETA: http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/eu-ue/can-eu.aspx?view=d.

[47] For an overview of ACTA's final version next to CETA IP Draft, see: Geist, Michael. 2012. "ACTA Lives: How the EU & Canada Are Using CETA as Backdoor Mechanism To Revive ACTA." Published July 9. Accessed July 17, 2012. http://www.michaelgeist.ca/content/view/6580/135/. Or La Quadrature du Net's Wiki about the comparison between ACTA and CETA: http://www.laquadrature.net/wiki/Comparison_ACTA_CETA.

measures, procedures and remedies for rights-holders to defend IPR.[48] Adopted in April 2004, the main objective of the review is to adjust it to the challenges posed by the Internet: "a new dimension to enforcement of intellectual property rights" (European Commission 2012a, 1). According to EDRi, "much of what is proposed in the IPR Enforcement Directive is proposed in ACTA", which means another "disproportionate measures against citizens in civil law" (EDRi 2012a).

2.5 Resumé

ACTA is an international framework developed by the negotiating countries to enforce copyright protection by including border measures, civil and criminal procedures. ACTA makes ISPs liable for the information flow on the Internet and gives rights-holder the means to control and stop this.

ACTA's provisions have caused serious criticism and protests by various actors, including citizens, ISPs, civil liberties groups, political actors, and companies who believe that ACTA violates human rights, jeopardizes the business and market sphere, and endangers Internet freedom in general. Furthermore, the European Parliament and civil liberties groups were excluded from the negotiations on ACTA, and have criticized that these negotiations lacked transparency. Moreover, actors involved in the process of finalizing the agreement did not adequately inform the public.

For these reasons, and the reason that ACTA is not the right way to regulate the Internet in order to protect IPR and copyright, European Parliament's Committees and the European Parliament rejected ACTA. However, the European Commission is trying, via a new agreement called CETA with similar provisions as ACTA, to push for copyright enforcement.

[48] For the Directive on the enforcement of IPR, see: http://ec.europa.eu/internal_market/iprenforcement/directive/index_en.htm.

Chapter 3: Actors in debate

"Speak up, make your voice heard". Picture taken from HowardLake. Licensed under Creative Commons. http://www.flickr.com/photos/howardlake/5540463792/in/photostream/.

Chapter 3: Actors in debate

ACTA has caught severe attention and unprecedented public interest. As the purpose of this thesis is to explore the actors involved in such debates on ACTA, this chapter will focus on them. It will highlight thoughts and opinions on ACTA and generally Internet freedom in the EU. I have decided to make a selection of actors from different backgrounds, such as political actors, actors from the entertainment industries, actors from civil liberties groups and Internet freedom projects.

3.1 Overview actors and discussed topics

3.1.1 Actors

First, I will present an overview of the actors that have been part of INTA's vote on ACTA in Brussels (see table 1). These political actors have influenced further the process of ACTA and had the option to reject or pass the implementation of ACTA.

Actor	Profile
Amelia Andersdotter	- Member of Swedish Pirate Party - MEP of ITRE - Substitute member of INTA - Member of Group of the Greens/European Free Alliance.
Martin David	- Member of United Kingdom's Labour Party - MEP of INTA - Member of the Committee on Human Rights - Substitute member of the Constitutional Affairs Committee.
Daniel Caspary	- Member of German political party Christlich Demokratische Union Deutschlands - MEP of INTA - Substitute member of ITRE - Member of the European People's Party (Christian Democrats).
Helmut Scholz	- Member of German political party Die Linke - MEP of INTA - Substitute member of Committee on Foreign Affairs and Committee on Constitutional Affairs.
Marietje Schaake	- Member of European Parliament for D66 - Committee Member of International Trade (INTA), Foreign Affairs (AFET), and Culture, Media and Education (CULT) - Rapporteur of EU strategy on digital freedom in foreign policy.

Table 1. Political actors of INTA and involved in the process of ACTA.

Secondly, I will present members of political parties who belief in the importance of Internet freedom, and have made this part of their political agenda (see table 2).

Thirdly, I will present actors of civil liberties groups who support Internet freedom advocators, raise awareness about current developments on Internet freedom, lobby for international action to defend Internet freedom, and engage in debates with political and economic actors (see table 3).

Fourthly, I will present actors involved in Internet freedom projects and have knowledge in ICT-law (see table 4).

Finally, I have addressed economic actors involved in Internet freedom, including rights-holders of the music industry. These actors have been affected by ACTA for different reasons, including copyright protection and commercial interest.

Actor	Profile
Sophie in 't Veld	Delegation of Dutch political party D66 in the European Parliament.
Neelie Kroes	Member of Dutch political party People's Party for Freedom and Democracy (VVD), Vice-President and European Commissioner for Digital Agenda.
Arnoud Engelfriet	ICT lawyer and a blogger about Internet law on a daily basis.

Table 2. Political party members involved in Internet freedom.

Actor	Profile
Jérémie Zimmermann	Co-founder of French civil liberties group La Quadrature du Net and advocator for Internet freedom.
Ot van Daalen	Director of Dutch civil liberties group Bits of Freedom.

Table 3. Civil liberties group actors involved in Internet freedom.

Actor	Profile
Arnoud Engelfriet	ICT-lawyer and blogging about Internet law on a daily basis.
André Rebentisch	General Secretary of Foundation for a Free Information Infrastructure (FFII).
Eben Moglen	American lawyer, historian and computer programmer, law professor at Columbia University, counselor of the Free Software Foundation (FSF) and co-founder of FreedomBox.
Lawrence Lessig	Academic and political activist and writer of *Free Culture* and *Code: Version 2*.

Table 4. Actors involved in Internet freedom projects, law and ICT.

3.1.2 Topics

In order to describe the results of the discourse analyses, I have divided the rest of this chapter in different themes related to ACTA and Internet freedom in general. The following topics emerged from the discourse analyses: Copyright, technology, and participation.

Overall, all actors have mentioned that ACTA has directed the attention towards copyright protection and that it is important to reform copyright or to look for alternative business models for artists, in which copyright is protected while Internet freedom is preserved. Furthermore, all actors mention that transparency and public involvement are crucial for creating a future democratic policy on internet freedom and for preventing more agreements like ACTA.

3.2 War on sharing

On 21 June 2012, at the press and journalist conference in Brussels after INTA voted against ACTA, one of the main points was that IPR protection is a problem that needs to be addressed. However, a solution to distinguish between the kind of goods needs to be found.

"We are focused on how to have better IPRs on the global level", says Daniel Caspary (Caspary 2012). Amelia Andersdotter agrees with Caspary in the sense that "IPRs in all fields are so fragmented, and therefore, we have to address this problem"(Andersdotter 2012b).

During an S&D open debate on "ACTA: Whose Rights Does It Protect?", the problem of ACTA was discussed by several MEPs. The problem with ACTA is that it "mixes counterfeited goods with online IP rights", says Spanish MEP, Maria Badia, "We need to protect our companies but it would be better to discuss things separately" (S&D 2012). German MEP, Petra Kammerevert, agrees with Badia by saying that ACTA "is not fit for the purpose of fighting counterfeiting [...] we cannot put two different things together. We do not see a modernization of IPRs but (IPRs) being more coercive" (ibid.).

To address IPRs is to distinguish between tangible and intangible goods, argues Anders Jessen: "The problem with ACTA is that it was putting tangible goods on the same level with piracy" (Jessen 2012). Both Marietje Schaake and Helmut Scholz agree that goods should not be put on an equal level (Schaake 2012; Scholz 2012). This is a mixture that is often made by entertainment industries and right holders in the war on sharing.

The "war on sharing" (Stallman 2009) is a constant debate on unauthorized exchange of copyrighted material via Peer-2-Peer (P2P) sharing and its negative effect on entertainment industry. For the purpose of protecting IP and overcoming copyright infringement, entertainment industry and rights-holders are trying to control both commercial and non-commercial exchange of information. And this is where the problem lies: controlling non-commercial exchange of information.

Copyright protection "fails to distinguish between commercial and non-commercial work" (Goss 2007, 971), a topic Lessig discusses in his book *Free Culture*: "commercial" and "non-commercial cultures"[49] are both under the regulation of law, which will create a "less and less free culture" in general (Lessig 2004, 8).

ACTA has enforced the war on sharing, but Amelia Andersdotter has stated that no enforcement is necessary (Andersdotter 2012b). She believes that a free culture is about access to knowledge, and this should not be hindered by more enforcement (ibid.). In the context of the war on sharing, more enforcement would mean a violation of one of Internet freedom principles: freedom to information.

The before mentioned actors agree that ACTA has demonstrated that its provisions do not set the right way for IP protection and that more enforcement is unnecessary. ACTA does not distinguish between tangible and intangible goods, and between commercial and non-commercial cultures. However, the before mentioned actors agree that IP protection and copyright is important. To find a balance between IP protection and copyright, and preserving the principles of Internet freedom, the next chapter will focus on the thoughts on copyright and alternative solutions.

[49] Commercial culture is described by Lessig as "that part of our culture that is produced and sold or produced to be sold" (Lessig 2004, 7), while non-commercial culture includes, for example, telling stories to the next generation (ibid., 8).

3.3 Thoughts on copyright

Many believe that with ACTA the legislation on copyright has gone too far by protecting only commercial markets and private copyright holders at the expense of citizens' fundamental rights and liberties on the Internet, which is a conflict of power used by corporations to preserve their monopolist position and go beyond own commercial interest[50].

3.3.1 Copyright: A conflict

A class conflict in information society, described by Eben Moglen in his dotCommunist Manifesto paper. A class conflict between "the power of globalism and multinational capitalism" demanding ownership of creative work "through law of patent, copyright, trade secret and other forms of IP", and creative citizens losing the righteous right of their creative work and the right of sharing (Moglen 2003).

Additionally, in the Telekommunist Manifesto, a publication that explores the class conflict and property in the age of information economy, copyright is perceived as censorship, and IP "robs us of our cultural memory, censors our words and chains our imagination to the law" (Kleiner 2010, 31). According to Joost Smiers, Professor Emeritus of Political Science at the Utrecht School of the Arts, copyright should be abolished as it "centralizes media ownership" (ibid.). Instead, artists should be provided with "a level playing field consisting of a larger number of publishers competing for their services" (ibid.). In other words, copyright is perceived as a "monopoly" (Levine and Boldrin 2005, 8) and a "form of access control" (Strowel 2010, 158).

However, Lawrence Lessig argues that copyright is most important for creativity as long as large media corporations do not take complete control.[51] Lessig's approach, described in *Free Culture*, considers the concentration of power, which is caused by a change in copyright legislation, to find balance between anarchy and control (Lessig 2004). As Lessig explains: a "free culture is not a culture without property; it is not a culture in which artists don't get paid. A culture without property, or in which creators cannot get paid, is anarchy, not freedom" (ibid., xvi). In other words, a culture with property and IPRs is a culture that supports the freedom to use creative work.

An example of the aforementioned balance is found in Creative Commons. The Commons deny producer-control, but work alongside copyright. Creative Commons proposes to modify copyright terms that suit the creator's needs by providing several licenses[52]. For example, the license to let others use and build upon creative work commercially, but with credit to the original work. Another example is the license that permits downloading but not using or changing creative work.[53]

"Creative Commons seeks to cure a symbolic failure of the present copyright regime": copyright should not be perceived as a hindrance to creativity and artistic culture, but as an essential part of it (Dusollier 2006, 272). Therefore, Creative Commons promotes the free sharing of creative work in public (ibid., 273). Creative Commons believes that this control should be more flexible, in which the "allocation of power granted by copyright shifts from the author alone to the future creators who will build upon the primary work". A shift from copyright to "copyleft", in which everyone has

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[50] Goss calls this "commercial lobbying": protection of financial gain, and further development and production of creative work, including exercising control over creative work and create restrictions to others who do not have permission to access, use, modify or distribute creative work (Goss 2007, 971).

[51] In The Telekommunist Manifesto mentioned as "producer-control" (Kleiner 2010, 33).

[52] Creative Commons' official website: http://creativecommons.org/.

[53] For other licenses of Creative Commons, see: http://creativecommons.org/licenses/.

the freedom to use, copy, modify and distribute creative work under certain licenses (Mustonen 2003, 99; Kleiner 2010, 36; GNU Project 2012).

Unfortunately, entertainment industries want to take full control and ownership on information that is shared over the Internet, including creative work. To overcome copyright infringement and piracy activities, entertainment industries cooperate with ISPs. By using filtering technology, they can inspect the Internet's information flow, and by throttling Internet traffic, they can control the flow. However, this way of thinking leads to censoring and monitoring the Internet, which results in limiting the access to information and creative works.

"I believe piracy is wrong", says Lessig, "but to get rid of piracy is also getting rid of our culture of values" (Lessig 2004, 10). One of these values is sharing. Sharing contributes to cooperation and interactivity (Elkin-Koren 2005), diffusion of knowledge and scientific progress (Wojick, Warnick, Carroll, and Crowe 2006), education (Boulos, Maramba, and Wheeler 2006), and reflects democratic ideologies and avoids privatization (Goss 2007, 964). As Lessig continues: "The question we should ask about file sharing is how to preserve its benefits while minimizing the wrongful (economic) harm it causes artists" (Lessig 2004, 73).

How the benefits of sharing are balanced with copyright is best illustrated in the music industry. Music labels question the unauthorized sharing of music files, but some artists perceive it as a new challenge they embrace.

3.3.2 The music industry: Embracing piracy

"Music itself is going to become like running water or electricity. Copyright will no longer exist in 10 years", says music artist David Bowie (Kain 2012). In the last years, bands have experienced with the war on sharing by using Creative Commons (Try 2010), promoting music in an alternative way or by giving music away for free.

For example, the American rock band Nine Inch Nails promoted their new album by spreading USB-sticks at concerts and selling T-shirts with illuminated letters that formed the sentence "I Am Trying To Believe" as part of an internet scavenger game (Szilvasi 2012b). Other bands, including American indie band Sick of Sarah and American rock band Counting Crows have made use of P2P platform BitTorrent to promote new albums and to stimulate fans to buy the music and visit concerts (ibid.). According to Chris Keating, band singer of Yeasayer, piracy is an "unavoidable reality", and he believes that sharing music online is "a good thing" (The Sydney Morning Herald 2011).

One way of sharing music online is through Spotify, a music streaming service founded in Sweden, which gives users instant and legal access to millions of tracks. With Spotify, each user can make a personal playlist by adding music from a selection of music tracks without actually downloading the music file to the user's personal computer. The service of Spotify can be used in two ways: a

free service and a paid service. These two services are divided in three different user accounts:"Spotify Free", "Spotify Unlimited" and "Spotify Premium".[54]

The benefits of Spotify are economic gain. As Spotify has several agreements with record labels, including Warner Music Group, Sony, and Universal (Ringborg 2008), music streaming rewards artists financially. Like Spotify, TuneCore uses cloud computing technology to provide artists a digital marketplace for selling music. With TuneCore, artists can upload music to stores such as Amazon MP3, iTunes, MySpace and XBox Live, and collect the revenue generated from sales. "In 2009, TuneCore artists sold 65 million units and earned over $35 million in gross revenue", says Jeff Price, founder of TuneCore (Widran 2010).

Research has shown that music streaming services open a way to discover new music and turn pirates into buyers. According to an annual study of the US' consumer music market by The NPD Group, a market research company, Spotify creates the "ability to learn about music prior to purchase", which contributes to the rise of music buyers[55] (The NPD Group 2012).

To summarize, Spotify provides a new business model for artists to be financially supported and recognized. Furthermore, it stimulates pirates to become music buyers. Because of digitalization, artists nowadays have the opportunity to bring their music directly to the public without the need of an intermediary. The main question is: does it cut down on piracy?

3.3.3 Reducing piracy

Unlike illegal downloading, streaming services provide users with access to music without actually downloading it on the hard drive. Streaming services and illegal downloading are completely two different ways of obtaining data, whereas only the latter deals with piracy. Jeff Price does not believe music streaming services will reduce piracy: "I think the behavior patterns of pirating will be what they are regardless of the existence of something like a Spotify" (ibid.). Director of BREIN, Tim Kuik, believes that the distribution of illegal material will keep on existing, and that "it is about persuading people" to use alternatives that offer authorized material (Groot 2012).

To persuade people to use alternatives like Spotify, and to educate people about the importance of copyright and its protection is the task of ISPs, according to Kuik. He believes that ISPs have a significant role in the development of online services offering authorized material. For example, KPN, a Dutch telecommunications company, offers a free Spotify Premium account when consumers choose one of KPN's subscriptions.[56]

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[54] Spotify Free is a free version account providing access to music tracks, but is supported by advertising. For example, when a user is listening to a couple of music tracks in a row, the tracks will be intermittent with short advertisements. This kind of advertising is very similar to the concept of radio advertising: audio advertisements between the radio station's broadcasting. Next to the appearance of advertising, the free version restricts access to some music tracks, and has per month a limit on the number of times listening to the same track. Each track can be played for free up to a total of five times and the total listening time per month is limited to ten hours. The second account, which costs approximately €5, is Spotify Unlimited. This account omits advertising, and gives users limitless access to all music tracks. The third account, Spotify Premium, omits advertisements, provides limitless access to all music tracks, more attractive features, such as an offline modus for playlists, and Spotify on your mobile. For more information on Spotify's various accounts for music streaming, see: https://www.spotify.com/uk/get-spotify/overview/.

[55] The popularity of Spotify can be found in the amount of paying subscribers. On 23 november 2011, Spotify announced having 2.5 million paying subscribers (Spotify 2011), and comes in total close to 10 million subscribers (Epstein 2011).

[56] KPN offers an 'Alles-in-één Standaard' subscription with a free Spotify Premium account. For more information, see: http://www.kpn.com/prive/pakketten/spotify-premium.htm (Dutch only).

Spotify chief content officer, Ken Parks, believes it is important to “vindicate the value of music and help artists vindicate the value of their work" (Patel 2012). In this way, streaming services (in cooperation with ISPs) can decline piracy.

Streaming services are alternative business models for artists to distribute and promote music online while copyright is being protected. Indeed, “music was about ownership, but now it is about access”, says David Martin, “but how do you achieve the objective of free access and right holders getting their reward?” (Martin 2012).

According to Ot van Daalen, models with a streaming license are one of the options for compensating the access of copyrighted material while safeguarding artists’ income (Van Daalen 2012c). “Other options need to be taken into consideration”, says van Daalen, “and it is up to policy makers to determine the pros and cons of each option, and to decide which option is the most suitable for implementation regarding the balance between protecting copyright and human rights” (ibid.).

3.3.4 Alternative approach towards copyright protection

Policy makers are indeed involved in the search for alternative business models for the purpose of protecting both human rights and copyright. When the Dutch parliament rejected ACTA, it adopted the motion of Dutch political party D66 in which party member Kees Verhoeven requested the government “to focus on the economic growth that the Internet provides, including new business models for legal offers” and to vote against “new similar treaties” when it comes to copyright policy.[57] According to Bits of Freedom, the third motion offers space to modernize copyright policy and to examine new business models for legal offers, addressing effectively the current problems with copyright enforcement (Halink 2012).

Vice-President of the European Commission responsible for the Digital Agenda, Neelie Kroes, believes the debate on current problems with unauthorized online exchange of copyrighted material is too much focused on enforcing the current copyright system:

> Legally, we want a well-understood and enforceable framework. Morally, we want dignity, recognition and a stimulating environment for creators. Economically, we want financial reward so that artists can benefit from their hard work and be incentivized to create more. I am an unconditional supporter of these objectives. But let's ask ourselves, is the current copyright system the right and only tool to achieve our objectives? Not really, I'm afraid. We need to keep on fighting against piracy, but legal enforceability is becoming increasingly difficult; the millions of dollars invested trying to enforce copyright have not stemmed piracy. Meanwhile citizens increasingly hear the word copyright and hate what is behind it. Sadly, many see the current system as a tool to punish and withhold, not a tool to recognize and reward [...] We need to go back to basics and put the artist at the centre, not only of copyright law, but of our whole policy on culture and growth (Kroes 2011).

Neelie Kroes puts the artists in the centre of policy, culture and growth for the reasons of establishing a framework that deals with copyright in the Internet realm. Additionally, David Martin perceives the Internet as “a domain of freedom we have to encourage” and a domain in which copyright is protected (Martin 2012). “We have to accept that we have to reward artists and creative writers. We have to find a balance between freedom and a rewarding system, which is not an easy balance to find (ibid.).

If legal enforceability is becoming an increasingly difficult way to fight piracy, what are the other options? According to Neelie Kroes, “ICT can help here” (Kroes 2011). ICT technologies can directly

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[57] For the official document of motion 21 501-30, nr. 288, see: https://www.bof.nl/live/wp-content/uploads/21501-30-288-1.pdf (Uploaded by Bits of Freedom and in Dutch only).

connect artists with audience and can digitize artwork, which induces a more transparent process in supply and demand, and provides new ways of distribution and purchase options. Neelie Kroes refers to cloud computing as an example of ICT technology containing the aforementioned provisions. Cloud computing is a way to create alternative business environment for artists and their audience.

Especially in the music industry cloud computing has been a push towards public acceptance (Greenwood 2010). For example, Spotify has brought the cloud computing technology to the public. Making citizens more comfortable with new technologies will lead to "consumerization of information technology", says Dave Goebel, president and CEO of the Goebel Group, "because people expect to see the acquainted flexibility of their iPhone and social media tools return in new technologies" (ibid.).

Cloud computing services provide users to download, store and access personal files, but the use of it can be terminated due to IPR infringement (Stevens 2012, 62). "Because of the global nature of clouds it is hard to make a workable arrangement with privacy. Each country and region has its own concept of privacy", says Arnout Engelfriet (Engelfriet 2012).

Lawmaking can constrain what citizens do with technology, but can additionally open up new possibilities. Technology has an important role in "mediating the relationships between citizens and governments" (MacKinnon 2012, 25) and how it mediates with law, including copyright protection.

3.4 Technology for Internet freedom

The Internet itself is a unique communication technology, in which the architecture is built on the end-to-end principle. A principle that is made by code, but even so it is fragile for influences trying to gain control over that code. As Lawrence Lessig states, "law is code" (Lessig 2006, 1). Law is code means that the way the Internet is being regulated depends on who regulates the code (Lessig 1999). In other words, the Internet's architectural design determines how the Internet is being regulated. Depending on how code [58] is made, its design can promote values of freedom, but additionally the values of IP and copyright protection.

3.4.1 Copyright, open source and free software

The freedom to access or modify technology is a respected value of the open source and free software movement. The possibility to have access to code is, according to the founder of the Free Software Foundation, Richard Stallman, a moral obligation to others (Stallman 1992). According to Weber, Stallman's argument holds a "left-libertarian Lockean style", which means that "an exclusive right of disposal on software [...] will bring harm to all other people" (Weber 2004, 2). Therefore, codes need to be shared in public.

The thoughts on open source and free software are found in the ideals of Creative Commons and the principle of copyleft: the free sharing of software and the freedom to use, adjust and improve software. However, Lawrence Lessig mentions that "to support open source and free software is not to oppose copyright" (Lessig 2004, 264). Copyleft is, according to the Free Software Foundation (FSF), "software that is copyrighted, but instead of using those rights to restrict users like proprietary software does, we use them to ensure that every user has freedom" (Smith 2007, 2).

[58] Lessig refers to code as: "The instructions or control built into the software and hardware that constitutes the net. I include within that category both the code of the internet protocols (embraced within TCP/IP) and also the code constituting the application space that interacts with TCP/IP" (Lessig 1999, 4).

The FSF uses a license to protect the right to have access to the software's code for the purpose of using, copying or adjusting the code. Each change that is made to the software has to be licensed under the General Public License (GPL) (ibid.). The GPL requires the user to make the copied or modified code available and to include the license terms and acknowledgment towards the original maker.

As open source and free software have become an important part of information technology, some organizations and companies have embraced the movement's ideals. According to a study by Lerner and Schankerman, more than twenty-five percent of the companies use both open source and proprietary software in their business models (Lerner and Schankerman 2010). For example, software company Red Hat and vendors Dell and IBM have used free software in their business model (Perens 2001, 96). However, there are companies opposing the open source and free software movement. Microsoft has canceled a WIPO meeting devoted to open source in the context of IP protection (Krim 2003), and even Microsoft's CEO, Steve Ballmer, calls open source operator Linux "a cancer that attaches itself in an intellectual property sense to everything it touches" (Newbart 2001). Co-founder of Apple, Steve Jobs, has mentioned the following: "Unfortunately, just because something is open source, it doesn't mean or guarantee that it doesn't infringe on others' patents. An open standard is different from being royalty free or open source" (Metz 2010).

However, Lerner and Schankerman argue that governments should ensure that open source and free software can co-exist efficiently. By promoting open standards, the proprietary form cannot take a dominant position (Lerner and Schankerman 2010) or can enact into current copyright regulation (Goss 2007, 965).

In opposition of copyright, open source and free software have certain license agreements to protect Internet freedom's values, including freedom to share and freedom to information. "Open source is essential to Internet freedom because it is controlled by no one and the fundamental infrastructure is supposed to be free" (Rebentisch 2012), while it recognizes the important role of law (Godwin 1998, 9). As described before, this is a balance of a culture with property and protection, but supporting the freedom to use it. Both code and law are being used to implement freedom in the Internet's architectural design. Some actors have indeed put "code is law" into practice.

3.4.2 Alternative nets

If a full surveillance world prevents us from speaking, then we need to make another platform on which we can speak freely (Pearson 2012).

A reaction to ACTA's provisions limiting Internet freedom has developed itself into the construction of a so-called "alternative net" opposed to the mainstream net, the Internet (Szilvasi 2012, 15). By using open source and free software "a self-defined environment without political and economic interferences" is constructed, in which "the citizen is the righteous owner and controller of personal data", whereby the Internet freedom's values of sharing and protection of privacy and personal data are secured (ibid., 47).

Alternative net is an umbrella concept for "shadow Internet" (Meinrath 2011) or "shadow nets" (Dibbel 2012, 62), "darknets" (Lasica 2005), "jewelry nets" and "sponge nets".[59] Examples of such an alternative net are Diaspora*, Tor, Anybeat, FunkFeuer, FreedomBox and the Pirate Box.

[59] A jewelry net is a short-range communication between two devices A and B (Pearson 2012), while a sponge net creates a a lot of different paths between A and B (Pearson 2011).

The FreedomBox is a project by Eben Moglen and James Vasile. The FreedomBox creates a personal server to protect private communications. According to Vasile, the FreedomBox "is about trusting the person who is providing you the network" (Vasile 2012).

The technology of the FreedomBox is related to wireless mesh networking. Wireless mesh networks consist of several nodes, which are routers and clients. Each node is "forwarding packets on behalf of other nodes that may not be within direct wireless transmission range of their destinations. In this way, mesh networks are "dynamic, self-organized and self-configured, with the nodes in the network automatically establishing and maintaining mesh connectivity among themselves" (Akyildiz, Wang and Wang 2005, 446). Once an alternative net is established, citizens who have access to the software can connect to the network.

The ultimate goal of certain Internet activists is to connect all these independent mesh networks, a project they call The Darknet Project (TDP).[60] Another example is Project Meshnet, a project that is aimed at creating a "versatile, decentralized network built on secure protocols for routing traffic over private mesh or public internetworks independent of a central supporting infrastructure".[61] If all these mesh networks projects are linked together, will the Internet be a secure and free environment?

Arnout Engelfriet certainly believes that "whoever is worried about his privacy is wise to move to technical solutions to guarantee better security" (Engelfriet 2012). In addition, Sophie in 't Veld believes that alternative nets can be a solution for protecting personal data and privacy: "If there would be enough options to choose from, it would be a great solution. But these networks are small niche products" (in 't Veld 2012). Furthermore, citizens' opinions and behavior to technology can affect the switch from the Internet to an alternative net. According to a key player in the mesh-networking scene, Sasha Meinrath, the switch from the Internet to an alternative net might be complicated, too new or uninteresting (Dibbel 2012, 64).

Therefore, an alternative net has to consider user-friendly interface designs or the repurpose of existing devices. Sasha Meinrath refers to, for example, an app on your iPhone that gives you the possibility of pushing a button saying 'yes, join this network' (ibid.). It is "deploying freedom features in smart phones", says André Rebentisch (Rebentisch 2012).

To limit the mentioned complications, alternative net projects need to have a "good brand and design to get public attention", says André Rebentisch (Rebentisch 2012). "Look for example at how Eben Moglen presents his generic stories about the FreedomBox. These stories are very appealing to people, therefore the importance is to create awareness about these projects by creating appealing dialogues" (ibid.). Furthermore, awareness of markets to take in these projects is important. According to Ramon Roca, founder of Guifi.net, these mesh-networking projects need more than 15 percent of the market (Dibbel 2012, 65). Therefore, "hardcore techies should present their projects as products to receive investment and push it into the markets" (Rebentisch 2012). If market forces cannot push them into the markets, the other place to look for is support from the government (Dibbel 2012, 65).

3.4.3 Techno-activism

Some political parties are focused on open source. An example is the Swedisch Pirate Party that has set up a Tor server for anonymous communication and a Etherpad for real-time collaboration

[60] Reddit's page of The Darknet Plan: http://www.reddit.com/r/darknetplan.

[61] Project Meshnet official website: https://projectmeshnet.org/.

on texts (Piratpartiet n.a.). The purpose of setting up those open source tools was to support political activism, says Rickard Olsson, Pirate Party IT manager (ibid.).

If political actors participate in open source projects, they will be forced to use democratic principles, including citizens in decision-making processes (Rushkoff 2003). In addition, Marietje Schaake believes that adequate policies that have sufficient understanding of technological developments, will include that these technologies entail democracy and contribute to Internet freedom:

> New technology impacts our daily lives. It breaks monopolies. It is about human rights. New technology becomes an important element for access to information, freedom of expression, freedom of assembly and press freedom (Schaake 2012b).

At Re:Publica 2012, a German conference on social media and digital culture, Marietje Schaake was called the "most wired politician" because of her interest in the importance of ICT technology in policy-making, and her ambition to enhance people's understanding of technology. Eben Moglen would have agreed in the sense that citizens need a push towards technology and adopting new technology, especially when citizens become aware of their online vulnerability (Dibbel 2012, 65). Furthermore, the emphasis of Eben Moglen's speech during Re:Publica 2012 was on the technological tools for creating Internet freedom: "free software, free hardware and free bandwidth" (Moglen 2012).

Geert Lovink, founding director of the Institute of Network Cultures and writer of *Dark Fiber: Tracking Critical Internet Culture*, believes that there is a new political consciousness facilitated by social media: a consciousness about how the tools of the Internet can be used to preserve Internet freedom (Lovink 2002). However, Dibbel questions if this so-called "reinvention of the Internet" by technology is just a "collective change of awareness" or if it will need a "political movement" (Dibbel 2012, 65).

It certainly needs to become an important topic in the EU, according to Marietje Schaake. Technology can provide many options for preserving the principles of Internet freedom, including mesh-networking projects such as alternative nets. According to Jonathan Zittrain, writer of *How To Stop The Internet*, governments should play a role in the construction of mesh-networking for its citizens (ibid.). Furthermore, thinking like the open source movement would open up a democratic debate for others to participate.

3.5 Multi-stakeholder participation

> The Internet has a hierarchical structure in which the principles are governed. Open source projects form an example of the initiatives that contribute to more citizen participation, and have a democratic and hierarchical character (Van Daalen 2012c).

Initiatives that have a democratic and hierarchical character suggest citizen participation. Van Daalen argues that contemporary citizen participation is divided between "being involved with the problem" and "being involved with the solution" (ibid.). Being involved with the problem can be seen in discontent times when people unite, for example during the economic crisis or when human rights are under threat. "It is therefore important to emphasize Internet freedom as the catalyst of financial growth and the unity of EU citizens", says Van Daalen.

With ACTA, citizens' involvement with the problem did matter and has demonstrated that when citizens engage they can change things. According to Amelia Andersdotter, INTA's decision to vote

against ACTA was “an important signal demonstrating that the voice of citizens prevailed.” Marietje Schaake agrees: “The vote today was really important for EU’s democracy. Never before have citizens spoken out. It is important to know what this means” (Schaake 2012).

However, the latter kind of participation is “more difficult to realize” (ibid.), because “we as ordinary citizens can have more power, but we are not mandated to vote or to have access to documents” (Rebentisch 2012). In line with van Ot van Daalen’s remark, participation in the Internet freedom debate is about balancing power:

> An Internet that is compatible with democracy should be governed in publicly accountable ways. This approach will in turn require an equitable balance of power between government, corporations, and citizens (MacKinnon 2012, 198).

The problem with ACTA was no balance in participation. Greek MEP and member of LIBE, Dimitrious Droutsas, points out that ACTA has demonstrated a “democratic deficit in the EU”, which means “too many important decisions have been taken without engaging citizens” (Socialists & Democrats 2012). Belgian MEP, Marc Tarabella, argues that the power is given to judges for deciding on counterfeiting and piracy activities instead of letting politicians decide (ibid.).

Daniel Caspary states that “the whole Internet’s ecosystem” should be part in the Internet freedom debate: “Not just ISPs play a role but companies like Facebook as well” (Caspary 2012). According to the Dutch Ministry of Foreign Affairs, the responsibility to respect human rights in the context of Internet freedom requires active behavior and social expectations of both governments and companies:

> The baseline responsibility of companies is to respect human rights. Whereas governments define the scope of legal compliance, the broader scope of the responsibility to respect human rights is also defined by social expectations. This may entail the need for positive steps, rather than just a passive responsibility not to do harm (Ministry of Foreign Affairs of the Netherlands 2011, 11).

However, in a report by the UN’s Special Representative of the Secretary-General on the issue of human rights and transnational corporations, the Ministry states that “while corporations may be considered ‘organs of society’, they are specialized economic organs, not democratic public interest institutions” (Ruggie 2008, 16).

Companies struggle with or do not recognize the balance between shaping their business for commercial interest while conforming to human rights. According to in ‘t Veld, there is a difference between companies that are required to pass on citizens’ personal data to government and secret services,[62] and companies using citizens’ personal data for own commercial interest[63] (in ‘t Veld 2012).

Because policy-making can increase the difficulty to manage a business model that both respects human rights and abides the law, civil liberties groups are getting more involved to find solutions

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[62] Bits of Freedom calls it “social spying”: retrieval of personal data from social media by security services. On 30 May 2012, the Dutch parliament discussed the expansion of power to intercept Internet traffic, which would mean that security services can intercept unfocused all communications that goes over the Internet (van Daalen 2012b).

[63] For example, many services build upon the use and enhancement of personal data for many reasons, including ad revenues that pay content and servers online with personal data, personal data as asset valued by investors, and personal data as the foundation for network effects (Spiekermann 2012). Internet economists can make use of personal data because of “tricked consent of their costumers” (ibid.).

for alternative business models to protect copyright. According to Amelia Andersdotter, economic actors can be very aggressive against any attempt to facilitate new business models (Andersdotter 2012b). However, there are companies that are interested in an Internet freedom-friendly copyright reform. For example, Ericsson recognizes the positive effects of online file sharing and argues for a balanced reform, which is focused on end user demand, respects the right to privacy and freedom of communication and copyright (Corner 2011; Summer, Suzor and Fair 2011).

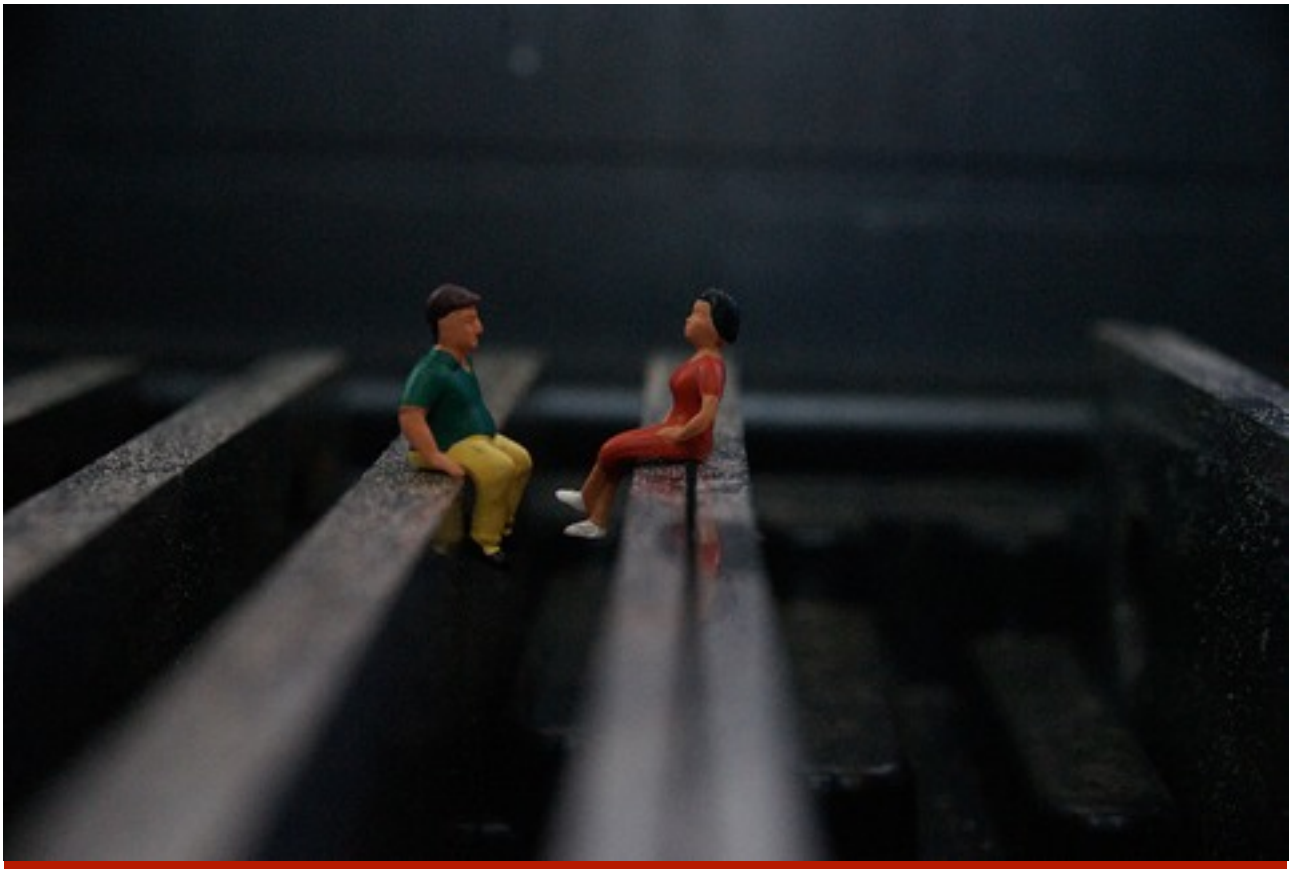
Noticing the diverse perspectives on copyright, it is important to open up a political debate on possible solutions. An open debate includes a diverse array of perspectives of multi-stakeholder participants. Companies will be more transparent,[64] citizens are empowered to participate and work together with companies to shape business and services (Von Hippel 2005), and citizens can work together with political actors to contribute in the decision-making on Internet freedom. For example, the Free Culture Forum (FCForum) in Barcelona is focused on cooperation between academics, policy makers, civil liberties groups, and representatives from organizations to talk about Internet freedom issues.[65]

Solutions have to include legal guarantee. “The points of ACTA have made clear that legal guarantee is needed. We need to clarify in legal terms”, says David Martin (Martin 2012). Furthermore legal certainty can be found in clear legislation. “We do not need to make new laws but we need to know how to implement these laws in different fields”, says Helmut Scholz (Scholz 2012).

As Helmut Scholz continues: “We have to find a solution together. Not against each other and not some countries that decide how Internet freedom functions, but a vision that has to be socially equally for all the continents in society” (ibid.). “A vision that goes forward in a modern way and represents the future”, says Rebentisch, “and something is indeed moving. That is good. But there are many choices that are highly political and people are not aware of them. Or the choices are too technical. This is where the role of academia comes in” (Rebentisch 2012).

[64] For example, Google has launched a Transparency Report, a website that gives information on the flow of information by Google and requests by government agencies or copyright owners to obtain users’ data or to remove content. For the Transparency Report website, see: http://www.google.com/transparencyreport/.

[65] FCForum official website: http://2010.fcforum.net/en.



Chapter 4: Discussion & Conclusion

“Discussion”. Picture taken from lisbokt. Licensed under Creative Commons. http://www.flickr.com/photos/lisbokt/4306721292/in/photostream/.

Chapter 4: Discussion & Conclusion

For this thesis, I have used ANT to analyze the movements and the relations of the actors involved in Internet freedom and ACTA, and how these movements and relations are translated into the stabilization of Internet freedom. In this chapter, I will describe which translations discussed in the previous chapters have affected or supported the establishment of Internet freedom.

4.1 Discussion

4.1.1 Actors involved in Internet freedom and ACTA

Bruno Latour explains that an actor is "something that acts or to which activity is granted by others" and can be either human or non-human (Latour 1996, 5). In this thesis, I have recorded the movements of several human actors, including politicians (MEPs, party members, European Commission, European Parliament, European Commissioner for Digital Agenda, rapporteurs, European Court of Justice, and Committees members of the European Parliament), civil liberties group members (co-founder of La Quadrature du Net, and director of Bits of Freedom), actors involved in Internet freedom projects, law and ICT (ICT-lawyers, law professors, secretary of FFII, and co-founder of FreedomBox), actors of the entertainment industries (artists, people from music streaming services and record labels), and actors providing Internet services (ISPs).

Next to the human actors, this thesis has additionally recorded a non-human actor: technology. Open source and free software are constructive actors, which make it possible to establish an Internet according to code. Whoever makes the code, decides how the Internet is regulated.

Furthermore, I have described ACTA and Internet freedom as quasi-objects because when ACTA and Internet freedom are negotiated by other actors, and these actors share the same interests, needs, values and efforts equally, relations between the actors are made, which translates into the stabilization of ACTA or Internet freedom.

Both ACTA and Internet freedom are ideologies tying certain actors together, shaping the relations between the actors involved, nominating a shared belief and objective that is worth building and defending. To understand what makes actors involved in ACTA and Internet freedom, I have made an overview (see table 5) of the beliefs, needs, values and interests, which are the translations of the establishment of ACTA and Internet freedom.

	ACTA	Internet freedom
belief and need	The belief and need to enforce IPR protection by establishing an international framework for the purpose of cooperation and setting provisions that would include civil and criminal enforcement.	The belief and need to protect and preserve the principles of Internet freedom.
value	IPR valued by rights-holders and entertainment industries.	The value of fundamental rights and liberties in an open and free Internet.
interest	The commercial interest to enforce IPR protection.	The democratic interest to protect and preserve the principles of Internet freedom.

As the main question of this thesis is:

By recording the movements and the relations of actors involved in ACTA and Internet freedom in the EU, which translations have stabilized or destabilized the establishment of ACTA and Internet freedom?

The purpose of this thesis was to record the movements and relations of actors involved in Internet freedom and ACTA, and to analyze how these movements and relations have translated into the establishment of ACTA or Internet freedom.

Before providing an answer to the main question, the main question will be divided as followed:

1. Which translations have stabilized ACTA?
2. Which translations have destabilized ACTA?
3. Which translations have stabilized Internet freedom?
4. Which translations have destabilized Internet freedom?

The following paragraphs will describe these translations in order to understand how the establishment of ACTA and Internet freedom was accomplished or failed.

4.1.2 Translations stabilizing ACTA

Since 2006, the international cooperation of negotiating countries has contributed to the establishment of an agreement for fighting counterfeiting and piracy, called ACTA. The negotiating countries are Australia, Canada, the EU and its 22 of its Member States (Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom), Japan, Mexico, Morocco, New Zealand, Republic of Korea, Singapore, and the US. The establishment of ACTA was further stabilized because the mentioned negotiating countries have signed the agreement.

In the context of the EU, the European Commission has acted as a strong advocate of the adoption of ACTA in the EU. The Commission has been pushing its agenda by requesting a legal opinion of the European Court of Justice to prove that ACTA would be compatible with the Treaties and the Charter of Fundamental Rights. Together with the European Commission's belief of adopting ACTA as an effective enforcement of IPR, which would benefit Europe's competitive economy, these have been evident translations for the establishment of ACTA.

Furthermore, Commissioner Karel De Gucht has supported the European Commission's actions, and has stated that "there is nothing to fear in this agreement" (De Gucht 2012c) because the agreement is "very closely modeled on the European system" (De Gucht 2012a).

However, ACTA can only enter into force as EU law when the agreement is ratified by at least 6 Member States, and the European Parliament. Despite the attempts of the European Commission and Karel de Gucht, the Committees of the European Parliament voted against the implementation of ACTA, and the European Parliament did not ratify the agreement.

4.1.3 Translations destabilizing ACTA

After the Committees of the European Parliament (DEVE, ITRE, LIBE, JURI, and INTA) voted against ACTA, ACTA began its first steps of destabilization. When the plenary vote by the European Parliament was made on 4 July 2012, the establishment of ACTA in the EU was failed.

The reasons for the Committees of the European Parliament to vote against ACTA were the lack of balance between the enforcement of IPR and fundamental rights, and the fact that the agreement cannot be implemented in each sector. Although Committees DEVE and JURI were positive about ACTA because of its compatibility with existing European legislation, both Committees eventually voted against.

Furthermore, the reasons of the Committees to vote against ACTA were influenced by criticism and protests by EU citizens, several politicians, civil liberties groups, and certain companies and organizations. In the first place, despite the fact that negotiating countries have published a consolidated text of ACTA, the negotiations have been criticized because of its lack of transparency. The content of the publicly made text did not match with the finalized text. In the latter, the liability of ISPs to provide right holders with citizens' personal information was described, which was missing in the publicly made text.

Furthermore, despite the fact that European Commission has stated ACTA is not a secret agreement, ACTA has been accused for lacking transparency, which has caused, according to David Martin, a certain opaqueness, and has harmed the confidence of EU citizens and MEPs. According to Reagan MacDonald and EDRi, no effort was made to have a more transparent process. Furthermore, both WIPO and WTO that are concerned with copyright, had limited participation in the negotiations. This demonstrates that ACTA did not only lacked transparency, but has excluded important stakeholders in the negotiations.

Secondly, despite the fact that the European Commission has stated that ACTA is compatible with the Treaties and Charter of Fundamental Rights, studies have shown ACTA's provisions do not safeguard the right to privacy. According to the EDPS human rights are being violated, including the protection of personal data and access to information.

Thirdly, despite the fact that that European Commission has stated that ACTA would benefit EU's competitive economy, ACTA would jeopardize the economy of European industries, including the start up of companies, research and development projects, and electronic communications. Furthermore, ACTA would be modeled on the existing European system of copyright legislation, both organizations WIPO and WTO, which are concerned with copyright, have said that ACTA would fracture and threaten the international IP system.

Fourthly, ACTA has been put in the political discourse and on the agenda. Political parties like the Swedish Pirate Party have been involved in the protests, and Austrian political parties have shown resistance against ACTA. Even the Dutch parliament voted against ACTA's ratification.

Lastly, the voice of EU citizens have influenced the decision-making. According to MEPs Dimitrious Droutsas and Marc Tarabella, ACTA created a democratic deficit in the EU. But after having received almost 2.5 million signatures, the further stabilization of the establishment of ACTA has certainly been influenced. The plenary vote has become a political decision, which has proven that the opinions of EU citizens were heard.

However, in the scattered network of ACTA, certain actors, including the European Commission and Commissioner Karel de Gucht, are still believe in a second ACTA, and are trying to establish new relations for putting together ACTA II. However, Jérémie Zimmerman from La Quadrature du Net has argued that ACTA II cannot be established if the European Parliament will continue convincing the European Commission, on behalf of the EU, that similar agreements are not acceptable.

To protect the future establishment of Internet freedom, it is important to understand which translations have been important to destabilize ACTA, and which translations have been important to stabilize Internet freedom.

4.1.4 Translations stabilizing Internet freedom

In chapter 1, the Internet Governance Principles are described, which form the meaning of Internet freedom. The principles form the standards for the establishment of a neutral, open, trustworthy, transparent, accountable and free Internet without limited access, and unreasonable burdens and traffic management.

To establish Internet Governance, shared principles, norms, and rules have to be followed by everyone who is participating in the decision-making procedures. All participants should refrain from decisions that restrict fundamental rights and liberties. These decisions should be based on EU law and democracy. Furthermore, all participants should refrain from having leading roles for the purpose of ensuring transparency and accountability.

The participation should consist of multi-stakeholders, including politicians, citizens, companies and organizations, civil liberties groups, academics, and technology. According to Daniel Caspary and the Dutch Ministry of Foreign Affairs, the whole eco-system of the Internet should be part of the Internet freedom debate so that power in participation is balanced, according to Ot van Daalen and Rebecca MacKinnon. When power is balanced, a vision on how Internet freedom should function will be equally for the EU (Rebentisch 2012).

A multi-stakeholder participation can be accomplished when all participants are engaged with Internet freedom. To be engaged is to have the opportunity to express opinions and to have an understanding of current and future development of Internet freedom. Therefore, according to André Rebentisch and Eben Moglen, it is important that academics have a role in making information understandable for everyone, which can lead to more awareness of current situations important to EU citizens.

Amelia Andersdotter and Marietje Schaake have emphasized the importance of citizens' opinion on the decision-making on ACTA as part of EU democracy. According to Ot van Daalen, Internet freedom can be the catalyst of the unity of EU citizens. Together with the input of academics, and civil liberties groups, EU citizens become important participants for shaping Internet freedom.

The shaping of Internet freedom is one of the meanings of Internet freedom, described by Rebecca MacKinnon, namely freedom of the Internet. In chapter 3, technology is described as the non-human actor for shaping the Internet and establishing the Internet. One of the Internet Governance Principles describes the needed special attention for technological developments to establish Internet freedom. Certain political actors, including Neelie Kroes, Marietje Schaake, and the Swedish Pirate Parties are important techno-activists for creating more political consciousness (according to Geert Lovink, there is a certain political consciousness about how tools can be used to preserve Internet freedom) of technological developments for establishing Internet freedom.

Technological developments include the open source and free software movement. Open source and free software are constructive actors for both the establishment of alternative nets (Szilvasi 2012a) and Internet freedom. Alternative nets characterize the ideals of Internet freedom: a self-defining environment, which is secure and trustworthy, and where communication and storage of personal information stays private.

Both Arnout Engelfriet and Sophie in 't Veld believe that alternative nets are a solution for protecting personal information and privacy. However, both Sophie in 't Veld and Sasha Meinrath

believe that these projects need special attention to become interesting and uncomplicated for the public to use. Both Sasha Meinrath and André Rebentisch refer to user-friendly interface designs and deploying freedom features in smart phones. Here comes into play, according to Eben Moglen, the role of academics to make the public feel more comfort about new technology, and the creation of appealing stories to aware the public about the importance of new technology.

Furthermore, companies can invest in these projects because they have indicated that they use both open source and proprietary software in their business model. Moreover according to Lenker and Schankerman, politicians can make sure that the proprietary software does not take a dominant position. However, the open source and free software movement does not oppose copyright (Lessig 2004, 264), it supports copyleft. Copyleft perceives copyright as a part of creativity, which is argued by Lawrence Lessig and Séverine Dusollier.

One example of using copyleft is found by the Free Software Foundations uses the GPL to ensure the freedom to modify, share and copy software. Other copyleft ideals were found in alternative business models, which have created a balance between copyright protection and preserving human rights and liberties: Creative Commons and Spotify.

In the context of online music sharing, according to David Martin, music is all about access, and the right to access is one of the Internet Governance Principles. Online music services compensate access to music while safeguarding artists' income (Van Daalen 2012). According to Ot van Daalen, it is now up to politicians to determine which balance between protecting copyright and preserving human rights is the best to be made.

4.1.5 Translations destabilizing Internet freedom

ACTA's provisions on enforcement in the digital environment, including new technologies for IPR protection, would have destabilized the establishment of Internet freedom. One of these technologies is the 'three-strikes system', which has been criticized for using censorship to block access to the Internet. Two of the Internet Governance Principles are 'architectural principles' and ' universality of the Internet', which ensure that access to Internet cannot be blocked in order to preserve the end-to-end principle of the Internet.

Furthermore, ACTA would have prohibited the use of open source and free software, as both kinds of software would have infringed copyright. Microsoft and Steve Jobs have criticized the nature of open source because it is patent infringement. Due to the potential copyright infringement of open source and free software, technological projects, including alternative nets, to establish Internet freedom would fail. Moreover, the freedom to modify, to share or to copy technology would have been made impossible.

As described in paragraph 4.1.3, ACTA's provisions would have violated human rights and liberties, including freedom of expression, freedom to information, right to communicate, right to access, and right to privacy. ACTA's provisions did not distinguish between the kind of goods, between tangible and intangible, and commercial and non-commercial culture. ACTA would have had the entire Internet culture under the regulation of law, which would have resulted in a less free culture.

4.2 Conclusion

The Internet is a network of networks, which includes a lot of different actors who all behave differently according to their beliefs, needs, interests and values. These beliefs, needs, interests and values are translated into the establishment of Internet freedom and ACTA. To answer the main question of this thesis:

The following translations that have stabilized ACTA were the negotiating countries signing the agreement and the European Commission's attempts to convince the European Parliament that ACTA's provisions for enforcing IPR and copyright protection would benefit the EU's competitive economy. However, the translations that have destabilized the establishment of ACTA were the critical points made by EU citizens, several politicians and companies: ACTA's lacked transparency, ACTA violating human rights, and ACTA jeopardizing EU economy and democracy. These translations have been used by the European Parliament to vote against ACTA, which has further translated into the destabilization of the establishment of ACTA.

With ACTA we have seen that the key policy to Internet freedom is to create consent of all actors involved in multi-stakeholder participation, including citizen participation, in which a divers array of perspectives are taken into consideration for the purpose of building and defending together an Internet that holds the principles of Internet freedom and takes in mind the importance of copyright protection. Together with technology, the aforementioned are strong translations for overcoming the translations that destabilize the establishment of Internet freedom.

To end this thesis, a quote from André Rebentisch who has told me the importance of multi-stakeholder participation for building and defending an Internet that holds the principles of Internet freedom, and which is worth building and defending:

> The fundamental principles of Internet freedom stay the same. A high degree of interoperability, access and removal of bottlenecks is essential, as well as risk reduction. The state, often antagonized by civil rights campaigners, is also the most powerful defender. Civil society has to ride the Leviathan to defend internet freedom (Rebentisch 2012).

4.3 The future

Academics play an important role in the research of Internet freedom, including the impact of ACTA on human rights, business and industry, technology, democracy and policy-making. It is a complex context to do research in, but if we can open up a debate, which covers a divers array of perspectives, proposals and solutions for current developments related to Internet freedom, we can address this complexity and turn perspectives, proposals and solutions into reality. Furthermore, "researchers have a civic role, and they must, more than ever, involve themselves in societal matters and debates" (Aigrain 2012, 117). As one of the persons I have met in Brussels told me: "Be part of the Brussels' experience!"

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