The Copyright Dispute: A Transnational Regulatory Struggle

Workshop “Mashing-up Culture – The Rise of User-generated Content“, Uppsala University, 13-14 May 2009

Leonhard Dobusch & Sigrid Quack
Transnational Copyright Regulation: Public vs. Private Authority

> Why copyright?
  - Long history of transnational regulation (no “tabula rasa”)
  - Dynamic development during the last 20 years (“digital revolution”)

> Copyright regulation as an “issue field”: actor-oriented, dynamic version of organizational fields

> Regulatory battles in political and market arena: conflict, complementarity and paradoxical relations of regulatory initiatives
„The Copyright Scene“: two coalitions, two arenas

**Political Arena**
- WIPO, WTO, EU, Nation States
- Transnational Corporations
- Industry Associations
- Collecting Societies
- Epistemic Communities
- NGOs
- Social Movements
- Start-up Companies

**Market Arena**
- Consumers / Users

**„Incumbent Coalition“**
- Regulation via technological standardization: DRM

**„Challenger Coalition“**
- Regulation via standardization of legal licensing: Creative Commons
DRM Coalition: Field Related Characteristics

> Relation to copyright legislation: complement and expand copyright protection

> Perceived threat: large scale copyright infringement ("piracy")

> Internal front lines: content providers vs. hardware manufacturers

> Allies: established artists & copyright collectives
DRM Coalition: Organizational Characteristics

> Dominant actors: transnational corporations and trade associations

> Ressources: financial resources and political lobbying power

> Mode of coordination: conferences in the realm of informal (CPTWG) and formal (SDMI) standard setting bodies

> Selection of regulatory alternative: negotiation among experts and market competition
DRM Coalition: Adoption & Diffusion

> **CPTWG**: Development and market launch of some standards (e.g. CSS for DVD protection); challenged by effective circumvention software and political protests

> **SDMI**: complete failure with silent dissolution in 2001

> **PressPlay, Musicnet and others**: ultimate failure in 2007/2008; MP3 as de facto standard for online music distribution in 2009
„The Copyright Scene“: two coalitions, two arenas

Political Arena

WIPO, WTO, EU, Nation States

Transnational Corporations

Industry Associations

Collecting Societies

Epistemic Communities

NGOs

Social Movements

Start-up Companies

„Incumbent Coalition“

lobbying

lobbying

lobbying

lobbying

define & propagate

Regulation via technological standardization: DRM

„Challenger Coalition“

define

propagate

Regulation via standardization of legal licensing: Creative Commons

Quasi-Actors

Consumers / Users

Market Arena
Creative Commons: Field Related Characteristics

> Relation to copyright legislation: neutralize or alleviate copyright protection

> Perceived threat: industry controlled and all-embracing DRM regime

> Internal front lines: copyright radicals/abolitionists vs. copyright reformists

> Allies: selected, avantgardistic artists & quasi actors (filesharing scene, users of commons-based services)
Creative Commons: Organizational Characteristics

> **Dominant actors**: social movement organizations & epistemic lawyers community

> **Ressources**: grassroots activism & political identity and motivation

> **Mode of coordination**: formal standard setting organization, mailing lists & conferences

> **Selection of regulatory alternative**: negotiation among experts
Creative Commons: Adoption & Diffusion

> Strong and fast growth of license usage: linkbacks to Creative Commons licenses as a diffusion proxy

> License porting as a growth strategy: adapting licenses to local jurisdictions together with local partner organizations (“affiliates”)
  - 50 jurisdictions by the end of 2008
  - over 70 different affiliates
Conclusions:

> **Mode of regulations:** private regulation in spite of (or even: because of) strong public regulation

> **“Dialectics of private governance“ (Teubner 1998):** apolitical character vs. re-politization

> **Organizational forms:** different characteristics and resources correspond with regulatory logic on different levels
Contact:
Leonhard.Dobusch@fu-berlin.de & Quack@mpfig.de