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The digital rights and Access to Knowledge movements: the rise of a networked do-ocracy

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Abstract

The Access to Knowledge (a2k) advocacy community has been reinforced and its status as influent stakeholder has been confirmed around the World Intellectual Property Organization (WIPO) Development Agenda and the Treaty for Visually Impaired Persons voted in June 2013. This community gathers classical NGOs with professional recruitment, working with experts, consultants and academics, and informal groups who do not participate to the formal negotiations, but contribute to the elaboration of the political agenda and the mobilization of citizens. This networked form of digital activism is led by a very small number of actors without traditional forms of democratic representativity or accountability, building legitimacy through do-ocracy.

Deriving from the Free Software and Open Source Software movement and inspired by the ethics of the hackers and the Do It Yourself movements, do-ocracy is an organizational principle based on decentralisation and action. Actors choose their role and by executing tasks, they are gaining responsibilities and developing expertise and social capital through their work, rather than from elections or from a more traditional socio-professional selection process of the elites. The paper proposes to study the emergence of a socially very diverse and loose advocacy coalition which has been developing collaboratively a policy agenda. Its way of action is grounded on digital participatory tools and culture, such as liquid democracy. I will then question the legitimisation of the do-ocracy, presented as a new form of power developing policies. The methodology associates desk study with participatory observation at WIPO conferences and in more informal settings online and offline.

Keywords

intellectual property, copyright reform, electronic democracy, internet, international relations, do-ocracy, democracy, digital participation, digital activism

1. Introduction

The international regulation of Intellectual Property (IP) is the theater of confrontations between stakeholders with opposite interests: developed countries with a strong publishing industry are opposed to developing countries and Non Governmental Organisations (NGOs) representing users. International treaties related to IP are developed within a United Nations special agency, the World Intellectual Property Organisation (WIPO). Negotiations are led by delegations of the member-states, constituted by diplomats of career advised by IP experts working in governmental cabinets or national IP institutes, often with a maximalist vision of IP. At the last row of the assembly, lobbying and advocacy group have the opportunity to present statements and informally discuss with the delegates. They are civil society organisations representing economic interests of the rightholders, supporting typically stronger rights and enforcement, and social interests of users communities, in favour of more exceptions to exclusive rights or user rights.

The paper analyses the construction dynamics and the advocacy strategies and techniques of the Access to Knowledge (a2k) community, a coalition constituted by countries of the global South and NGOs developing and promoting a positive political agenda (Kapczynski & Krikorian, 2010). Based on scientific research on copyright and the commons, the a2k community proposes to take into account the public interest, after two centuries of IP development increasing the level and the scope of protection to support the rightholders' investments and economic monopoly. I claim that this epistemic community, a transnational network, and its advocacy strategy based on do-ocracy. This new (or renewed, thanks to online participatory tools) form of collective action relying on digital activism is affecting policy-making and the balance of power within the international organisation and the IP regulatory ecosystem.

The research hypothesis is that among the collective drafting of a positive agenda for IP, the vote of a Treaty for Visually Impaired Persons in June 2013 is turning point in policy-making and in the balance of power within the International Organisation and the IP ecosystem. A very small number of diverse actors changed both power relationships as it is the first time that the public interest is taken into account in a treaty. Advocacy strategies are based on decentralised digital networking, actors gaining legitimacy through do-ocracy.

I first present IP geopolitical stakes and the conflicts between the a2k coalition and the dominant group, within the context of the production of international treaties at WIPO (section 1). I then describe the constitution of this advocacy coalition (section 3). This loose group of networked people and NGOs integrates communities which were previously separated (IP academics, librarians, universities, intellectual and digital commons, Free Libre and Open Source Software (FLOSS), open data and open science movements, etc.). They have been collaborating to develop a positive policy agenda, culminating with the vote of an international treaty granting rights to associations providing books to blind people. Their method of work uses do-ocracy (section 4) and digital activism (section 5) which may contrast with other forms of representativity/legitimacy (section 6) and challenge democracy (section 7).

The research methodology associates participant observation, towards an ethnography of the community, and activism to collect data and try to better understand power relations than external observers relying on questionnaires (Polaud, 2012). After the participation to a European research project on the public domain (Communia European Network), I co-founded with colleagues the Communia international association on the public domain which applied to the status of observer at WIPO. As a representative of the association, I could get legitimacy and access to data through the drafting of statements. The participation to the work of the international organisation as a stakeholder is the only option to be authorised to follow the debates, which are only opened to state actors and representatives of accredited NGOs which are granted the status of observer because they justify of an expertise in the domain of IP. Attending the diplomatic conferences allows to collect

data on the power relations and the constitution of ad-hoc coalitions depending on the topics and subtopics discussed at WIPO diplomatic conferences. This information would be otherwise hardly accessible to a researcher. Journalists are not allowed during the sessions, most sessions are not webcasted and the recent trend to live-tweet the sessions and disclose the position of delegates, which is otherwise secret and not subjected to accountability, has recently been banished. Finally, the production of questions and technical comments triggers reactions by the other actors involved and helps to identify the most active/powerful ones interacting with state delegates, staff of the international organisation, industry and other NGOs delegates. In addition to the participation at five of these diplomatic WIPO conferences, both as an academic studying a2k and as a stakeholder advocating for the preservation of the public domain from copyright overextension, I have been attending scientific and advocacy conferences of the a2k community as a legal researcher on digital commons, and reading mailing-lists of the a2k community¹ relating WIPO diplomatic conferences.

2. Intellectual Property, a policy with geopolitical stakes

IP is the branch of law with a heavy geopolitical weight (Dulong de Rosnay & Le Crosnier, 2012) organising a temporary monopol of exploitation for intangible resources. The norms and policies on IP developed by the community of new diplomats studied in this article are related to the constitution of a policy agenda based on the scientific discourse of access and sharing (Aigrain, 2012) grounded on the commons (Ostrom, 1990). This vision is opposed to the movement of IP extension of scope and duration which prevailed since 30 years as the technical possibilities of reproduction also allow new forms of enclosure and commodification. The introduction of IP as a legal norm more than two centuries ago was meant to organise the relations within the printing industry between the librarians and the authors and regulate the economic interests of the rightholders.

Only in 2004, on a proposal by Brazil and Argentina, the countries of the group of the Development Agenda succeeded to revert the paradigm of always more IP in the agenda of WIPO. They are constituting a counter-power (similar to the group of 77 at United Nations) to the group B, gathering the United States, the European Union and other developed countries with a strong knowledge, entertainment and publishing industry such as Canada or Switzerland, which economies are relying on IP (also patents, big pharma, etc). With the Development Agenda, WIPO, had to integrate the needs of emerging actors in the negotiations and the projects. This group is led by countries which matter economically and politically: Brazil and Argentina were joined by Chile, Algeria, India and South Africa among the strong actors of this group. On their side can be found NGOs observers working on the development of exceptions and alternatives to IP. There is a switch of paradigm with another evaluation mean for IP: IP for development (of access to education, science, innovation, culture) and not development of IP.

Since the adoption of the Development Agenda, the norms of the International Organisation have to take into account not a balance between the interests of the rightholders and of development, and include elements of flexibility to facilitate access of developing countries and least advanced countries. The recommendations of the Development Agenda voted in 2007 allow to integrate their specific needs in the rules defining IP, for instance for technology transfer, access to innovation and education for the populations or the study of the public domain (Dusollier). A treaty with for the first time exceptions to exclusive rights (for the blinds) and not more rights has been voted in 2013 and others are in discussion (libraries and educations).

¹ http://lists.keionline.org/mailman/listinfo/a2k_lists.keionline.org

3. The dynamics of constitution of a community

The community observed in this paper is a transnational network and coalition of civil society actors named a2k (access to knowledge, with a conference born in Yale) active in the field of IP both within and outside of WIPO, the IO where norms and treaties which will be transposed in national laws are being negotiated. An interdisciplinary epistemic community, interdisciplinary and highly qualified, is developing around the negotiations of the Development Agenda: researchers in law, economy, sociology, physics, biology and political science, lawyers, librarians and activists of NGOs for the right of access to medicines for AIDS patients, to patents, to research, to education and to culture, free software programmers, college students involved in free culture, farmers freeing seeds digital commoners and voluntary sharing (P2P, technobrega, Creative Commons, Open Access, Freedom of Information, open data (Krikorian and Kapczynski, Lee for the last one). This community managed to develop an agenda which was carried by the Development Agenda Group until the vote of a Treaty in 2013.

A federative moment for this community occurred in 2005 with the drafting of a treaty for access to knowledge which was not voted but as a shadow treaty had a structural, programmatic effect to create a joint political programme. Until 2013, the coalition has been working at WIPO to apply the principles of the Development Agenda at WIPO towards the recognition of a legal status for exceptions to exclusive rights, breaking with the supremacy of IP. The community focused on the negotiations of a treaty installing an exception for access of blind and other visually impaired persons to books (Fitzpatrick, 2014). On 26 June 2013, the treaty of Marrakech was voted and organises new exceptions to allow books to be converted to accessible formats without seeking permission from copyright holders. The event is documented by a dramatic corpus: YouTube videos, live tweets, emails based on Freedom of Information between MPAA and US delegates, the death of Rahul Cheria, one of the principal drafters of the Treaty a couple of months before the vote.

Outside of WIPO SCCR and CDIP conferences, the community has been working online to reach the success of a treaty and meeting at many conferences to develop a common agenda (Access to Knowledge conferences born in Yale, more recently Global Congress for Intellectual Property and the Public Interest, Economics of the Commons conferences of the Fondation Heinrich Böll, or thematic conferences such as Free Culture Forums). The advocacy community is based on an heteroclit coalition who managed to change the power relations and have a treaty voted, taking into account for the first time at WIPO the public interest. Around a positive agenda ghost treaty for a2k and a declaration (Declaration of Geneva on the future of WIPO, 2008, at one of the a2k conferences), they are working for the definition of flexibilities and exceptions to IP for access to education, culture, medicines or patents. Their motivation and purpose is the exit of the framework of cultural and economic domination by the neocolonialist neoliberal North order, mixed with arguments of human rights and libertarian arguments of freedom and return on tax money. There is a conflict between left and right values, but a coherence in the definition of objectives for more freedom for users.

The a2k coalition at WIPO can be described as epistemic community (Haas), a transnational policy community (Stone), it has been studied as an epistemic transnational community (Dobusch and Quack, Barron, Mansell), with NGOs (Lee, Polaud), civil society (Bangasser) working with developing countries (Dixon) in a loose coalition (Florini). However, the scientific framework for this advocacy group does not succeed to explain the mode of action based on previous activism forms and I apply the concept of do-ocracy coming from the hacker culture to describe the work of this community.

4. Do-ocracy: hypothesis and strategies

'A do-ocracy (also sometimes do-opoly, which is a more obvious pun on “duopoly”) is an organizational structure in which individuals choose roles and tasks for themselves and execute them. Responsibilities attach to people who do the work, rather than elected or selected officials.'

(Wiki of the Open Source Geospatial Foundation)

Do-ocracy (Mischform aus engl. Do und Democracy) ist eine Organisationsform, in der Individuen selbstständig ihre Aufgaben aussuchen und ausführen. Verantwortlichkeiten liegen bei den handelnden Personen und nicht bei gewählten oder bestimmten Posten. Ursprünglich wurde dieses Modell von der US-amerikanischen Libertarian Party von Sean Haugh und Michael Gilson-De Lemos vorgestellt. Es wird heutzutage vor allem von der Open Source- und Wikibewegung benutzt. Auch unter Teilnehmern des Burning Man-Festivals ist es beliebt.

(Wikipedia Deutsch)

Besides a few occurrences in geek vocabulary, there is a single occurrence of the word in an academic book on Burning Man and a single paper in English, by Imrat Verhoeven, Tamara Metzger & Ted van de Wijdeven presented in April 2014. They relate it to active citizenship and participation: 'active citizens who wish to contribute to the public domain by simply doing things instead of voting, deliberating or negotiating'. In their references, they cite three papers in Dutch by Wijdeven on doe-democratie in local cities, therefore outside of the hackerspace.

A synonym is actocracy, seen in Dutch (actocratie) on a mailing list of the Pirate Party Netherlands², about people who do something and are therefore natural leaders of a group also composed by people who do nothing.

Mathias Klang³ explains actocracy is a form of governance observed in 'voluntary net-based organizations' where all members have the possibility to participate even if sometimes lengthy discussions can prevent action, where consultation favours inertia if no consensus may be reached. This horizontal, distributed format of democracy where power is derived from action and work is an evolution of the vertical form of democratic representativity through elected people to whom the power is delegated: 'In an actocracy the person prepared to do the work actually steers the movement.' A tweet by @kyrah in 2010 defines Actocracy as follows: 'let the one who holds the brush decide the colour of the wall she paints. Inversion of control structures' is what characterises this form of power. The other occurrence of the word is found in the book From Cairo to Wall Street: Voices from the Global Spring edited by Anya Schiffrin and Eamon Kircher-Allen where one of the authors claim that 'The Tunisian Revolution was all about actocracy, nothing was planned'. A hackerspace in Oslo⁴ is governed as an actocracy: 'they that do — rule. If you would like to organize an event, build something or improve upon the space, just do so.'. A community of software developers applies the principle to the decisions related to product development: 'Ultimately whoever ends up doing the work should have final say.'

The expression is also used outside of the geek culture, namely in a mountain rescue team, where decisions are taken by the most experienced and skilled persons whose voices get a greater weight:

'I know a guy who has worked on a mountain rescue team. The work is exacting and dangerous, involving cross-country travel in hazardous conditions, rappelling down steep

² <https://lists.piratenpartij.nl/pipermail/algemeen/2013-February/020027.html>

³ <http://www.digital-rights.net/?tag=actocracy>

⁴ <http://hackerspaces.org/wiki/Bitraf>

slopes and hauling injured people back up, and so forth. The teams have to make difficult tactical decisions at times, and the decisions are made by those who participate and do the work. He calls it “actocracy” – those who act get to make the decisions. So, within the team, those who have been on previous missions participate in deciding; and the opinions of those who have more experience and greater skill and competence – as judged by others on the team – carry the most weight. There is clearly a hierarchy of status, but the status is based on a track record of past performance.⁵

Do-ocracy evokes self-organisation, a deconstruction of the contestation space, a community with a variable geometry configuration, an non-institutional decentralisation of advocacy with an ad-hoc coalition. It is distributed (Cammaerts), but a personal re-centralisation can occur around leaders of do-ocracy. Actors are classic NGO with professional recruitment (TWN, IFLA), consultants, experts and academics (the role of Nigeria was very prominent at one of the last conferences before the vote of the treaty as the delegate from Nigeria was a US law professor with the double citizenship). But the a2k community also gathers groups who do not attend WIPO meetings but are participating to the agenda setting and the mobilisation.

5. Methods of online activism

The a2k coalition is part of a broader movement for digital rights opposed to ACTA, Anti-Counterfeiting Trade Agreement Rejected at European Parliament on 3 July 2012 and to three strike laws, supporting a free and open internet. They can rely on the efforts of a few individuals (Zimmermann) whose legitimacy has been questioned by civil servants in charge of developing ACTA at the European Commission or Hadopi in France (“5 gus dans un garage” representing themselves. Or they can rely on a broader movement (demonstrations to defeat ACTA in Poland). The closest political party (the Pirate Party, see Bocquet) has not been accepted as an observer at WIPO, but has 1 to 2 MEPs part of the group of the Greens at the European Parliaments. They use methods of online participation of which have been studied: see Cammaerts for multi-stakeholders and the mobilisation about multilateral treaty on investment OECD, or against Sopa, Pipa, Acta (Powell, 2013), the work to defend EU net neutrality (Axel Arnbak) and digital activism in general (Tréguer). Only La Quadrature, Telecomix and Anonymouse (Coleman) have been reclaim themselves directly from do-ocracy⁶.

6. Comparison with other forms of representativity and power sources

Democracy. In a democracy, everyone has a say in what gets done. In a do-ocracy, everyone does jobs that they think need to be done, without everyone’s input.

Meritocracy. In a meritocracy, the most qualified people for a job are selected for that job. In a do-ocracy, whoever does the job gets it, no matter how well they’re qualified.

In order to participate and justify participation, it is possible to justify democratic representativity and legitimacy in a transversal way. Technical legitimacy and academic expertise are scalable and able to host schools and accept to enlarge the community, successful as able to filter and exclude actors. The ability to participate (Nanette) qualifies civil society and ad hoc coalitions for network neutrality or the developers as power-users, providers developing the infrastructure and taking care of it (resilience and scalability), in the sense of Ostrom (Musiani).

The do-ocracy contrast with other forms of representativity/legitimacy and is inspired by hackers

5 <http://www.bmeacham.com/blog/?p=248>

6 <http://opensource.com/life/11/6/telecomix-anonymous-anarchy-and-getting-things-done-through-do-ocracy>

and FLOSS culture (Kelty, Chopra, Berry, Coleman). It can be compared to ad-hocracy⁷, peer process⁸, technocracy, democracy of the experts, epistocracy (Eslund, Danaher 2013), algocracy (Danaher 2014), liquid democracy⁹. It relies on networked activism and digital tools. Motivations are social recognition (like with classical political engagement) and acquisition of competences (see free software contributors). Participation can cause frustration of those who have the expertise but not the time, of those who accomplish dull work and can be discouraged. There is a risk of sustainability of the community leaders, and a risk of despotism of actors who, like autocrats, can control the discourse because they occupy the space.

7. Conclusion: risk of open source for democracy

Do-ocracy share critics of open politics (Tkacz), open government (Armstrong) and open source democratic (Rushkoff). It can lead to dictatorship according to some¹⁰.

In order to provide a solution to the lack of accountability, Verhoeven et al (2014) 'suggest that pragmatist criteria should always be in place and depending of the type of institutional involvement one may add classical criteria. More concretely, this means thinking about symbolic representation, horizontal story based forms of accountability, and looking at reciprocity instead of equality.'

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