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– ACTA –

Model debate or wasted opportunity?

A poststructuralist discourse analysis

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I ABSTRACT

The growing digitalization of recent decades and the ease with which we can connect to others on the web has resulted in many forms of civil activism which appear hardly conceivable without it. Ironically, one of the most profound of these manifestations has been in its defense. In 2012, a European public went online and took to the streets to demonstrate, ultimately successfully, against the Anti-Counterfeiting Trade Agreement (ACTA). An international trade agreement intended to establish a minimum standard for copyright protection among members many feared it would facilitate online surveillance and censorship. The surrounding debate had many lasting effects yet also stands as an example of prejudiced allegations and subjective debate. This is seldom criticized because it developed the excitement of a mass movement for the short time of its existence. Almost a year later however, one has to wonder: What was actually achieved?

Utilizing a poststructuralist discourse analysis, this thesis will investigate the development, composition and impact of the ACTA debate in Europe. Following Foucault's reasoning that discourses establish facts which tend to inform subsequent decision-making processes, it will be shown that this discussion was split in focus. Its division between the specific legislative proposal and the principal of copyrights roughly corresponded to the distinction between expert and public discourses whose reciprocal influence will also be considered. Comparatively analyzing two major daily newspapers each of two major Member States (*i.e.* Germany and the UK) will showcase how the public discourse developed. A subsequent analysis of the expert discourse, based on a number of interviews conducted with Brussels based authorities, will chronicle this development from an institutional point of view. Based on these findings, the protests against ACTA will be critically evaluated. It will be argued that they failed to realize an existing potential to have a more profound impact beyond the rejection of the specific agreement. The point being that no viable alternatives in ACTA's place had been suggested, thus increasing the likelihood of similar advances to reemerge in the future. Despite the justified concerns regarding the agreement, protesting alone will not automatically result in better policies. After all, effective political decision making requires effort from both sides: political experts and the public.

KEYWORDS:

ACTA, Poststructuralism, Foucault, Discourse Analysis

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II SHORTUCT INDEX

ACTA	Anti-Counterfeiting Trade Agreement
Council	Council of the European Union
EC	European Commission
ECJ	European Court of Justice
EP	European Parliament
FAZ	Frankfurter Allgemeine Zeitung
FT	Financial Times
INTA	International Trade Committee (of the European Parliament)
ISP	Internet Service Provider
MEP	Member of European Parliament
NGO	Non-Governmental Organization
ORG	Open Rights Group
PA	Publishers Association
PIPA	PROTECT Intellectual Property Act
SOPA	Stop Online Piracy Act
SZ	Süddeutsche Zeitung
UK	United Kingdom

1 INTRODUCTION

The case of the Anti-Counterfeiting Trade Agreement (ACTA) was unique in many ways. It was the first time the European Parliament (EP) exerted some of its newly gained authority under the Lisbon Treaty to *veto* a legislative proposal by the European Commission (EC) already signed by the Council of the European Union (Council). The surrounding debate motivated the temporary manifestation of a European public, which coordinated Europe-wide protests against ACTA. It introduced the internet community and net policy to the mainstream and initiated a principal debate on the viability of contemporary copyright legislation and democratic transparency. (Knop, 2012(b)) While it touched upon a number of topics, the discourse on ACTA was also at times ill-informed, greatly diminished its overall quality. (Heidtmann, 2012) Nevertheless, under the impression of mass protests against the agreement, politicians started to call for additional reviews or even recalled their signatures. Critics of ACTA saw their concerns confirmed while proponents were surprised in view of such behavior regarding a legal agreement that had been negotiated in the presence of some of these politicians over the preceding years. It hardened resolve on both sides, further polarizing the debate. (Amann, 2012)

In the years before the February 2012 protests, ACTA was mostly debated among experts within the EU institutions. Chief among them the EC, who negotiated it on behalf of the EU and the mandate given by Member States, and the EP, whose members were initially only aware that ACTA was being negotiated yet were not involved in this process. (Ayoob, 2010) (Weatherall, 2011) The EC obviously supported the agreement in principle and worked to improve it from their perspective. Most of the Members of the European Parliament (MEPs) on the other hand were not automatically opposed to ACTA itself but first of all wished to be better informed. Procedural in nature, these concerns were first expressed when MEPs, alarmed by previously leaked drafts of the agreement, passed a resolution on 10 March 2010 demanding the release of the whole text, to which the Commission obliged on 6 December 2010. (European Parliament, 2010) This information confirmed some of the suspicions a few political groups concerned with the sensitive nature of net policy, who principally opposed ACTA, have had. (Interview (Associated Expert), 2013) However, the final text was rather vague concerning actual sanctions or legislative actions. While that would become a major factor in its eventual downfall, in this environment, it meant that opponents found it difficult to find compelling factual evidence that the agreement would have a drastic enough impact to warrant its rejection. Most heavily disputed

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suggestions, such as the so-called three-strikes-rule¹, had been removed from the final text during negotiations. (Meyer, 2012) So, the argument of the opposition shifted to principle, critiquing for example the lack of legal certainty and remedy. At the time, this opposition remained confined both in distribution and pretension to the EP. Familiar with the legislative procedure, which would require the agreement to be ratified by MEPs, such a self-imposed restriction actually represented the most effective utilization of resources. Yet the corresponding information campaign quickly reached its limits. In addition to ongoing information work conducted by the EC, eager to address the concerns expressed by the resolution, ACTA was simply not a priority or even relevant issue for the majority of MEPs. (Interview (MEP), 2013)

ACTA proponents, most prominently the EC, on the other hand profited from a favorable predisposition among the target audience (*i.e.* the MEPs) regarding their proposal. The importance of copyrights and their enforcement in facilitating and protecting creativity, intellectual innovations and design, all identified as cornerstones of EU economy, was well accepted among experts. They were also familiar with the usual procedure according to which negotiations take place, thus few took offence at the initial secrecy involved once the Commission had published the complete text. The main point of content then was the rather small chapter on the internet. Net policy had yet to attain mainstream relevance. So even when related concerns were raised they did not seem to interest too many MEPs. (Interview (EC Official), 2013)

However, the February 2012 protests against ACTA, first in Poland, then Germany and the rest of Europe, catapulted ACTA into the spotlight, introducing it to the mainstream. They proved that serious concerns regarding the agreement were not limited to a small minority. Even the aforementioned resolution in the EP had failed to generate that much public interest in the topic. Now, the evident publicity facilitated the quick political prioritization of the issue. (Pignal & Cienski, 2012) The protests were certainly the major turning point, introducing and reinforcing a split in the ACTA debate between the political experts who had been involved in its negotiation and were going to vote on its ratification and the mainstream public who perceived their concerns to be neglected. The increased publicity ensured that politicians and other actors scrambled to capitalize on this development. (Bernau, 2012) It also brought about a change in argumentation on both sides who found their starting positions reversed. Now, the prevailing mood supported the opponents while it regarded the supports of the agreement

¹ Authorizing Internet Service Providers (ISPs) to disconnect individual internet access on grounds of copyright violations after serving two warnings. (Prantl, 2012(a))

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more skeptical, forcing them to adapt a corresponding defense.

The way in which ACTA entered the public awareness, put proponents at a disadvantage from the start. Opponents of the agreement on the other hand found themselves unable to steer the discussion as they might have hoped. Not only because the protests and public attention came as a surprise to both sides, but mainly due to the rather restricted scope of protesters which limited the appropriation of their popularity for other purposes. For the most part, public demands did not extend beyond stopping this particular proposal, a side-effect of the protest movements' diverse composition which complicated other matters too. On the one hand, it allowed the unification of a wide variety of protesters who had different motivations for joining in. On the other hand, while the common goal of defeating ACTA held them together, the protesters splintered into their respective subgroups on most other issues. There was for example no common vision of a viable alternative to be suggested in place of ACTA. Not only did this limitation reduce the relevance of this discourse for future discussions but it also diminished the chance for an objective debate. (Knop, 2012(a)) (Prantl, 2012(a))

Opponents quickly zeroed in on the perceived consequences of the agreement regarding censorship and surveillance. They aimed to support this reasoning with factual evidence, such as passages from the agreement and derived the intentions of the negotiators from their conduct (*e.g.* the secret negotiations and the disapproval of public scrutiny). (Silva, 2010) That these passages were based on outdated drafts and had long since been removed from the text as it stood in February 2012 was conveniently omitted. Vocal ACTA opponents therefore mostly built their arguments to capitalize on the skeptical prevailing mood of the mainstream public, at the cost of their viability in expert discussions. (Kreye, 2012(c)) (Doctorow, 2012)

Proponents on the other hand did their best to discredit these accusations while emphasizing the diminished legal consequence of the text in conjunction with its necessity for the protection of the European economy. Finding it difficult to sufficiently explain this inherent contradiction, their position was even more disadvantaged in the public discourse. So, proponents downplayed the relevance of ACTA for the internet while emphasizing the principal propriety of copyrights and their protection. The agreement was thus established as a necessary and long overdue legal update to the application of this principle. Accusations against it were addressed by pointing out their factual inaccuracies to quickly dismiss them from the discussion. This approach was arguably more aimed at convincing political

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decision-makers rather than the general public. For that purpose it combined explicit legal analysis of the agreement itself, to show that none of the frightening scenarios presented by the opposition were actually written down, and a debate on principles, which stressed the importance of copyrights and their enforcement for the contemporary European value system. (Arthur, 2013(d))

While the combination of ACTA with the principle of copyrights was accepted by opponents as intended, the subsequent public reaction thereto was not. Instead of restricting the opposition, due to the generally accepted necessity of copyrights, it fueled their argument further as the legitimacy of current models of copyrights was questioned by the public. (von Gehlen, 2012(c))

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This Master thesis will utilize a poststructuralist discourse analysis to reveal current trends in political decision-making processes at both the national and the EU level which highlight the importance of discursive traditions and their effect on societal democratic self-understanding. After introducing some general techniques which can be employed to preemptively strengthen any specific argument under discussion, the ACTA case study will be utilized to showcase their application. (Foucault, 1982) A detailed examination of this agreement, which was rejected by the European Parliament (EP) on 4 July 2012, will be especially interesting for the following reasons:

- (1) ACTA is, as far as the legal process is concerned, a ‘concluded case’. This will facilitate analysis and evaluation of its development, the different steps it traversed and its inherent complexities regarding the reciprocity of public and expert discourse.
- (2) ACTA received a fair share of media attention and remains significant as a landmark debate to this day. Essential in initiating an apparently long overdue and ongoing debate on principles regarding copyright, the potential impact of its eventual interpretation will be significant not only for related debates in the future but also for the evaluation of the political structures within which it occurred.
- (3) The apparently sudden manifestation of a successful heterogeneous ACTA opposition combining digital and physical activism implies an atypical change of how different types of discourses interact and inform each other. Understanding this reversal of established processes will be helpful to adjust discursive practice regarding the inclusion of new venues for debate.

As a first step, the public discourses in two major Member States, namely Germany and the United Kingdom (UK), will be analyzed in turn. Based on an inclusive sample over one year, namely from October 2011 until October 2012 of online articles of two widely circulated newspapers in each country, they will uncover national characteristics of the respective discursive practice. The tabloid press has been excluded from these samples because they tend to propagate preconceived perceptions of public opinion instead of reporting it. Focusing on online articles offers a precise possibility to retrace the specific development of a debate as they are published more frequently and thus capture the prevailing sentiment more accurately than printed versions and can be commented on directly by internet users. Citations of the German newspapers have been paraphrased as best as possible to

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establish a comparable basis. (Wodak & Meyer, 2009)

The research also included 15 interviews with Brussels based experts, composed of MEPs, EC officials and associated experts, who were involved in the ACTA debate at the EU level. It was not possible to assemble a representative sample across all political parties or actors involved. Nonetheless, the present interviews are believed to constitute a sufficient cross-section of both ACTA proponents and opponents from different EU institutions to justify their inclusion in this thesis. To support the analysis, questions were designed to investigate the perception of the debate at the EU-level, potentially revealing aspects outside the national discussions and facilitating understanding of EU decision-making processes. The interviews were semi-structured and consisted of the same 7 questions (to be found in the annex). Depending on the given responses, additional topics were explored. Though all interviews were planned for 30 minutes, they lasted on average an hour, some of them even 90 minutes. To ensure confidentiality, these interviewees will only be referenced by affiliation to one of the above mentioned categories. (Denzin & Yvonna, 2005)

The concluding analysis of these findings will uncover and describe developments of discourse, assessing their immediate utility and their potential effect on contemporary political structures. In turn, current trends regarding the composition and manipulation of contemporary political discourse in the EU will be identified. This will facilitate the recognition of opportunities for more effective involvement in the political decision-making process. Subsequent investigations might then derive improvements to the current structural framework thereof.

3 WHAT IS POSTSTRUCTURALISM?

Poststructuralism categorizes writings on the inherent inadequacy of social sciences to fully explain human behavior due to their dependence on established structures and the inherent complexity of human interaction. It posits that there are no objective truths. That the structures in which societies organize themselves do not develop out of necessity but rather that social behavior tends to reproduce the underlying power structures expressed therein. (Williams, 2005)

Among the theorists who tend to be classified as poststructuralists, many of whom reject the label, Michel Foucault's (1926-1984) approach to understand history and social behavior will form the basis of this analysis. He focused on the role that discourse (*i.e.* written and oral communication) plays in informing social awareness and decision making. (Foucault, 1991(b))

Discourse can be won by achieving largely unchallenged interpretative hegemony. That means that a specific argumentation is accepted by a sufficient majority of participants as true. These form the basis to establish facts (*i.e.* a certain reading of developments which are not challenged henceforth). Or in other words, facts constitute an argumentative fallback position which is not disputed further in the context of a debate. Foucault argued that understanding the processes by which facts are established, enables one to uncover the power relations which they actually express. This in turn facilitates recognizing the underlying motivation of argumentative reasoning in discourse so as to better evaluate both its obvious and hidden intentions. (Foucault, 1982) (Foucault, 1991(b))

One of the most interesting utilizations of poststructuralist discourse analysis is the assessment of so-called debates on principle. These are debates which, either due to *e.g.* the time they occurred, the level of participation therein or their perceived societal importance, define a specific subset of societal understanding. They possess both an immediate (*i.e.* the actual topic) and a remote (*i.e.* its role in informing any related debates to be held in the future) impact which remains traceable to them. They tend to be recognized only in retrospect when their influence is more readily observable. Thus identifying them beforehand remains difficult. Facts established by debates on principle will be more crucial due to the range of subsequent discourses that they might inform. (Hall, 2001) (Torfing, 1999)

They could for example benefit the assertion of one standard over another (*e.g.* essential in the so called format-wars between for example Betamax and VHS or BlueRay and HighDefinitionDVD) or

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cement definitions of social order (*e.g.* that democracy is believed to be the best political system). The effort necessary to relinquish any predispositions to established facts among discourse participants alone will ensure that concluded debates on principle are seldom challenged. Given the potential impact of facts, influencing their creation can be extremely useful. (van Dijk, 1993) To achieve this, three aspects of discourse, which will be analyzed in turn, can be addressed, namely access, conduct and content. (van Dijk, 1995)

Access to discourse here means who is included and in turn excluded in what manner from the debate. For the purpose of this analysis, those debates that are exclusive in nature will be called expert discourses. These include all discussions whose participants have to qualify in one way or the other (*e.g.* by party affiliation, professional occupation, societal status, academic reputation, age, gender, *etc.*) to participate. In turn, those debates that are essentially open to anyone wishing to participate will be called public discourses. (Bacchi, 2000)

These two types of discourse tend to be arranged in a specific way: Interestingly, the more specialized or technical the subject matter at hand, the more likely it is that the general public will accept it to be discussed in an expert setting. The expert discourse tends to inform aspects of the public discourse due to the perception of their respective capacities. Exclusivity implies that participants are experts and thus more suited to discuss a specialized topic. Furthermore, most outsiders will have little knowledge of the subject under discussion and accordingly might less be likely to be interested in or not care about neither the discussion nor its participants. (Kintsch, 1988)

Public discourse on the other hand tends to be more concerned with larger debates. In this context, such a distinction relates to its popularity (*i.e.* the amount of public interest and subsequent participation in it). It is shaped by how important citizens judge a specific discussion to be and how it will affect their lives. Since not all participants are sufficiently familiar with the technicalities of the issue, public discourses tend to be less specific and more concerned with the principle, leaving the details to subsequent expert discourses. (Chouliaraki & Fairclough, 2005) In essence, public interest determines the size of any given discourse. So, the less popular the debate, the easier to enforce exclusivity, the more popular the discussion, the more likely it will attract popular discussion. (Christiano, 1993)

The definition of what topics are discussed in which setting are fundamental to the definition and self-

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understanding of our political system. In other words, contemporary political systems are characterized by the degree to which they facilitate or restrict the participation of citizens therein. The subtle differences in form of government across Europe mostly detail how such participation is achieved (*i.e.* directly, through an elected representative, *etc.*). (Dryzek & Dunleavy, 2009)

Popular attitude to particular issues is constantly influenced by lobby groups. A sometimes negatively connoted term, lobbying as such simply describes the active attempt to inform a specified target population in a predefined way on a particular subject. A staple feature of contemporary political decision-making processes, lobbying is an effective non-parliamentarian technique to influence political priorities. Due to the sheer number of societal actors who inform public opinion (*i.e.* work and private environment, media, social environment, politics, *etc.*) however, it is that much more difficult to reliably influence or even predict what topics are discussed in open or closed discourses. (Michalowitz, 2004)

Conduct here means the way arguments within any given debate are built, disseminated and defended. It also relates to the distribution of authority embedded within the procedural structure of the discussion (*i.e.* how the meaning of different arguments varies according to who presents it and how it is presented). In other words, two factors constitute the conduct: presentation and agency. (McHoul & Rapley, 2001)

The aforementioned acceptance of expert discourses on specialized topics for example stems from the contemporary belief in the superiority of discursive rationality. So, arguments should present facts with as little discernible subjective bias as possible to imply that the argumentation in itself is objectively true. In other words, that it remains plausible regardless of the presenter. Agency relates to the opposite aspect, namely how arguments are evaluated because of who presents them (*i.e.* which participants are deemed and accepted as experts by whom and due to what qualifications). (Kintsch, 1988)

Finally, **content** of discourse means both the actual topic under discussion and how it is placed within the context of other debates, ongoing or forthcoming. (Connolly, 1993)

All three of these aspects tend to be informed by established facts, created in preceding debates on principle. It depends on the aspect however how palpable this influence is.

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Relating the content of a discussion to the debate on principle which preceded it (*e.g.* how the detailed legislation regarding stem cell research has to be shaped once it is decided whether or not to allow it in the first place) might be relatively easy. Correctly predicting the access restrictions of a given discourse, if any, might be more difficult, mostly because of changing political priorities. (Schiffrin, Tannen & Hamilton, 2001)

Critically reflecting on the conduct of discourse, at last, is most difficult since its ideal direction is historically so deeply embedded in our contemporary understanding of discursive structures that it is seldom, if ever, challenged. Challenging the supremacy of objectivity here would require the reexamination of facts, whose establishment one has not consciously experienced yet according to which one has been socialized. That no viable alternative is at first even imaginable shows how deep the belief in objectivity and facts is embedded in contemporary individual reasoning. (Foucault, 1991)

The main point of poststructuralism here is not to champion one specific fact over another, but to stimulate independent reasoning by creating awareness on how facts are established to identify and assess their implied motives and resulting biases for oneself. Through discourse analysis, Poststructuralism aims to prompt cognitive dissonance so that the decision what to believe in, is an informed and conscious effort of the individual rather than an automatic repetition of firmly rooted power structures. (Foucault, 1991(b))

There have been numerous accusations during the ACTA debate regarding for example its non-transparent development. All polemics or overly simplified descriptions aside, the discussion has been characterized by a strong emotional commitment of both proponents and opponents. (Bradshaw & Palmer, 2012) (Müller, 2012) This intensification in addition to the increased public interest augmented the discourse with consequence beyond the topic at hand. A relevant analysis of this potential impact, in addition to the actual one, would have to transcend the structures within which the debate occurred and integrate the development thereof. Poststructuralism is believed to be best suited to take the reciprocal relationship between this specific discourse and its overall environment into account, thereby facilitating a reasonable assessment of the ACTA debate and its lasting effects. (Ashenden, 2005)

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In contemporary understanding, democratic behavior is categorized by discourse. Its structure is so deeply embedded that political alternatives are hardly perceivable, idealizing discursive democracy at the expense of all other forms of government. (Gauthier, 1993) While the inherent advantages of such political systems are not disputed, settling into any *status quo* entails a tendency to resist subsequent change, forgetting the ever-changing nature of society. Following Foucault's analysis of sociological development, discursive practice is continuously evolving. Omitting such a perspective due to the acceptance of the predominant narrative not only impedes societal progress. It also bereaves individuals of the clues an understanding of historical advancement could provide, based on which, subtle changes to current practices might be recognized. (Foucault, 1982)

The ACTA debate showed how quickly, seemingly accepted conventions could be challenged when the associated discourse is neglected. Revealing the public attitude towards copyright enforcement in the internet, this discourse emphasized that apparently secure social understandings of pre-established systems might easily be disrupted. (Hardin, 1993) On the other hand, the approach regarding the associated debate on the principle of copyrights also showed that such upheavals can be very limited. Regardless of individual attitude towards ACTA, the surrounding debate exemplified that discursive practice not only affected the negotiation of social concerns (*i.e.* the legitimacy of public protests to raise awareness of popular concerns) but simultaneously limited the degree to which current social order might develop (*i.e.* through the implied acceptance of established procedural structures and ultimate parliamentary supremacy over all other political and non-parliamentary expressions). (Foucault, 1982) How this specific case will eventually be classified remains to be seen yet a rough understanding of the structural development up until this point is believed to be vital in this regard.

Historically, discourse tended to be decided by force not by argumentative superiority. Enforcing one's position despite resistance helped to determine and cement the then current social order, especially in the pre-democratic era. The existing power structures were thus inherently flawed in that their validity had to be constantly displayed, lest citizens would forget them. Not only was this a very strenuous system but it implied that alternatives were possible. In other words, why would a supposedly 'natural' or 'god-given' social order have to be artificially pronounced by the privileged top? (Foucault, 1979)

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Democratic systems in turn determined social course of action through consensual discourse, promoting the role of rational argumentation therein. While challenging non-consensual decision-making processes, this development did not denote the abolition of power structures, it merely disguised them. Embedded in discursive practice, they facilitated the specialization and accompanying separation between public and expert discourse. The organizational and structural changes required for realizing an inclusive approach to policy-making, proved more effective in securing the *status quo* than earlier attempts. Theoretically enabling individuals to participate in discourse automatically increased the legitimacy of its result whether or not this offer was actually seized. Idealization of rationality and the multitude of available topics under discussion ensured that a certain amount of effort remained required to be taken serious in a debate, which in turn also raised the entry barrier for non-professional debaters. Emphasis on individual responsibility on the other hand implied that decisions which were not actively argued against were consented to. (Peters, 1996)

This should not be misinterpreted as a dismissive reckoning with democratic theory. It just goes to show how essential discursive behavior is to our understanding and legitimization of political systems. An interesting paradox in this regard is the evaluation of participation. While individual influence during a debate grows the fewer people are engaged in it, the lasting impact of the subsequent result is diminished to the same extent. The maximization of the two has thus been central to the development of discursive behavior over time, especially in expert discourses. (Connolly, 1993)

Democratic decision-making processes are theoretically designed to determine the optimal solution through popularity, discouraging obvious bribery through secret ballots and transparent negotiations. Exposing the available options to as much scrutiny as possible beforehand is believed to ensure that the option eventually commanding the most support will be the most rational. (Dryzek & Dunleavy, 2009) During that period, all positions usually aim to influence the debate to their advantage, an essential part of discursive reasoning and expected by both participants and observers. So, winning a discourse through manipulation is inherently neutral, neither good nor bad. The moral evaluation of the used techniques tends to be a retroactive process and largely depends on the actual outcome of the debate. Nevertheless, they mostly fall into two categories: conscious and subconscious manipulation. They apply to each of the three aspects of discourse outlined earlier, yet in different ways. (Michalowitz, 2004) (Connolly, 1993)

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Conscious here means every action whose underlying motivation is readily apprehended by an observer. Examples for each of the three aspects include:

1. **Access:** announcing prohibiting entry criteria (*e.g.* election thresholds)
2. **Conduct:** dismissing opposing arguments on unrelated grounds (*e.g.* gender discrimination)
3. **Content:** making an argument which addresses only uncontroversial parts of an issue (*e.g.* omitting data protection concerns when proposing information sharing for law enforcement purposes) (Potter, 1996)

Subconscious here means every action whose underlying motivation is intended to be difficult, if at all, perceivable by an observer. Examples include:

1. **Access:** previously presenting the debate in a way which discourages participation (*e.g.* promoting the technical complexity of an issue)
2. **Conduct:** dismissing opposing arguments on technical grounds (*e.g.* insisting on the observation of procedural deadlines)
3. **Content:** emphasizing the applicability of preexisting facts to prevent closer examination of a related point in one's own argumentation. (*e.g.* establishing a proposal to monitor financial transactions as the principal extension of the State's interest to identify tax evasion) (Potter, 1996)

Not surprisingly, contemporary democratic discourse sees fewer instances of conscious manipulation due to the number of competing positions. Their mutual monitoring ensures that too blunt manipulation attempts are quickly exposed. That usually restrains even those debaters who might be powerful enough to impose their preferences against the will of others from doing so. (Chouliaraki & Fairclough, 2005) (Christiano, 1993)

Subconscious manipulation on the other hand, is believed to be more common. They tend to be effective whether they actually succeed or not as potential opponents would be required to divert effort from their actual argumentation to detect and subsequently expose them. (Michalowitz, 2004)

An interesting hybrid is the so called thought-terminating cliché. This type of argument is designed to introduce argumentative fallback positions or facts which are not discussed further. They reduce the

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complexity of previously established facts, which might be unrelated or irrelevant to the current issue. The result is intended to appeal to debaters, equating simplicity with logic, to completely shut down critique. Needless to say, they are most effective when remaining unchallenged. Whether they are categorized as subconscious or conscious manipulation depends on the extent to which they are accepted as objective fact or identified as thought-terminating cliché respectively. (Lifton, 1989) While this evaluation might vary individually, it conveys that facts themselves constitute the epitome of subconscious manipulation. After all, they are defined by the extent to which they are challenged: seldom, if at all. (Foucault, 1991(b))

The current and long-standing anti-terrorism debate provides some good examples of utilizing thought-terminating clichés in discourse:

In the wake of the large-scale terrorist attacks in New York, United States of America (USA) on 11 September 2001, in Madrid, Spain 11 March 2004 and in London, UK 7 July 2005, European legislation has dramatically increased the authority of law-enforcement agencies to combat terrorism at the expense of individual freedoms and rights. (Norris, Kern & Just, 2003) In most of the associated discussions, proponents often pointed out that this was necessary to apprehend terrorists. (Chailand & Blin, 2007) Arguing this way created a moral barrier to critique these restrictions as it suggested that only terrorists had to worry about them, thus implying that only terrorists would oppose them. (Zedner, 2005)

Another example would be the debate on the introduction of so-called body-scanners at airports. Their technical specifications and inner workings were excluded from discussion lest they offer clues as to how to overcome them. While on the surface a somewhat reasonable point, it also prevented scientific evaluation of these machines' potentially adverse health effects by independent experts. It thus bereft body-scanner opponents of an argument in the debate. (Mitchener-Nissena, Bowers & Chetty, 2012)

The occurrence of each category of manipulation varies depending on the respective aspect of discourse. Arguments regarding access tend to be influenced by a mix of conscious and subconscious manipulation, depending on the extent to which the authority of the proposed group of participants is accepted by the public. The theoretical division of powers for example is clearly specified and accepted in contemporary democracies, thus the legislative authority of a Parliament and the exclusivity of its membership is seldom challenged. Yet who from outside this political structure (*e.g.* lobbyists, NGOs,

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civil society, *etc.*) may consult or contact them in what way, varies depending on the topic. (van Dijk, 1995)

Arguments regarding conduct tend to be influenced mostly by subconscious manipulation so as to deny an opponent benefits while retaining them for oneself. Approaching this openly, would by contrast create an equal basis for all participants. The aforementioned thought-terminating clichés would be an example. These justify the exclusion of one or more specific points from the current debate in a way which impedes counter-arguments by closely connecting the issue at hand with a suitable pre-established fact. Opponents then either have to accept the exclusion of some points, which might have been used to improve their argument, or they have to challenge an accepted fact, potentially damaging their own credibility. Regardless of the actual choice, they would be diverting effort from building an argument for the issue at hand. (Michalowitz, 2004)

Lastly, arguments regarding content tend to be influenced mostly by conscious manipulation. Subconscious efforts are simply not as effective here since all arguments are expected to have self-promoting intentions. (Kintsch, 1988)

In addition, assuming the goal is to win a specific debate, a hierarchy among the three aspects of discourse can be discerned:

1. **Access:** Successful manipulation thereof would enable one to preselect the opposition.
2. **Conduct:** Influence here would enable the prior regulation of what kinds of arguments will be used, facilitating for example the introduction or exposition of thought-terminating clichés.
3. **Content:** Exerting authority in this aspect would enable the specialized adaptation of one's own argumentative position, to take advantage of potential weak points of the opposition. Still, the effectiveness of an argument here depends to a great extent on the preliminary work regarding the other two aspects. (Michalowitz, 2004)

To conclude, defining the political system we live in and the processes through which it can be modified shows how central discourse remains to our democratic self-perception and behavior. Pointing out how the interpretation thereof can be manipulated showcases the need for ongoing

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individual critical reflection, strenuous though it might be. While such cognitive dissonance will not be able to identify a mystical absolute truth, it might facilitate the recognition of the motives underlying the arguments we encounter. Consciously evaluating them might enable one to expose the power structures which continue to be embedded through discourse, ensuring that their acceptance or refusal is a conscious act rather than an unconscious reproduction. (Williams, 2005)

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The February 2012 protests introduced the ACTA case to the mainstream. While the agreement had been rudimentary covered by the press before, it remained a niche topic until then. (Menn, 2010) The huge turnout at the initial demonstrations in Poland and subsequent events in other Member States demonstrated that ACTA was relevant to the public yet this varied among states. Extended coverage by the newly intrigued mainstream media exposed the surrounding debate even more and in turn facilitated more public attention. (Hauck & Kuhn, 2012)

Public discourse on a given topic can be influenced to a large extent through the way it is covered by the mainstream media due to the impact of reporting on public opinion making. This was also showcased in the ACTA case where the initial presentation of the agreement favored only one specific line of argumentation which continued to inform the remainder of the public discourse. (Meyer, 2012)

An analysis of the two most widely circulated daily national newspapers for the UK (*i.e.* the Guardian and the Financial Times (FT)) and Germany (*i.e.* the Frankfurter Allgemeine Zeitung (FAZ) and the Süddeutsche Zeitung (SZ)) will be utilized to retrace this predisposition and its impact. In the following the coverage of ACTA by these four newspapers will thus be compared to reveal national characteristics.

5.1 German Public Discourse

The following chapter will present the public discourse on ACTA in Germany from October 2011 until October 2012 to showcase its effect. FAZ and SZ articles have been analyzed jointly due to space restrictions. It sampled 17 articles regarding ACTA from the FAZ and 22 from the SZ, published on their respective web pages between October 2011 and October 2012, starting their coverage on 6 February 2012.

Together they presented multiple aspects of the debate but commonly focused on the public protests against ACTA, which had either already happened in Poland the weeks before or were planned for the

following Saturday, as a continuation of the then recent SOPA/PIPA controversy in the USA². (Kurz, 2012) Copyright was quickly identified to be the underlying issue of this debate. A specific validation of the contemporary German system not only accounted for technical developments but also pointed to the changes in societal norms and values associated with radical reforms. ACTA opponents were at the center of attention, detailing their concerns, both expert and layman, regarding the agreement. Considering the limited response given by ACTA proponents and the German government, it was hardly surprising that the demonstrations continued. (von Gehlen, 2012(b))

Overall, central to these initial and almost all following portrayals were four main topics, which will be presented in turn. They addressed the context, the conduct and the participants of the debate.

5.1.1 Political developments

This placed the German developments within the wider European context by addressing the developments in other EU member states such as Poland, the Czech Republic and Latvia, where considerable protests had also prompted the delay of the national ratification. (Bernau, 2012) The first divisions among party lines were also reported, with the Pirate party, the Greens and the Left against ACTA and Conservatives, industry groups and the EC for it. When the German Office of Foreign Affairs announced that it would postpone the signature of the agreement "... until all outstanding concerns have been addressed ..." (Bernau, 2012) on February 10th 2012, ACTA was declared dead, as the German government was perceived as having handed the case off and awaiting a cue on what to do next from Brussels despite their earlier declaration to support ACTA. (Amann & Ankenbrand, 2012) (Freisfeld, Jahn & Stabenow, 2012)

While other relevant developments were reported on, such as the referral of the agreement to the European Court of Justice (ECJ) by the EC to assess its conformity to the EU *acquis*, this stance persisted. In the absence of game-changing developments which could revive ACTA until the July vote in the EP, the focus mostly remained on the underlying issue of copyrights, implicitly reinforcing their

² The Stop Online Piracy ACT (SOPA) and the PROTECT Intellectual Property Act (PIPA) were legislative proposals aiming to facilitate the enforcement of copyright in the internet by restricting access to or shutting down websites which host or facilitate the trading of pirated content. On January 18th 2012 the websites of Wikipedia, Google and others either remained blacked out or displayed a banner, to inform visitors of the SOPA/PIPA plans. This publicity stunt proved extremely effective in creating mainstream awareness thereof and the subsequent public outrage resulted in the shelving of SOPA & PIPA shortly after. (Pepitone, 2012) (Magid, 2012) (Kurz, 2012)

earlier statements regarding ACTA's prospects. (von Gehlen, 2012(a))

A notable exception here was the early recognition of missing points of contact between politicians and the protesters, especially the internet community. Although "... nobody knows yet how a dialogue between the two worlds might be achieved ..." (Höll, 2012(a)), politicians were starting to address this problem, a process which continued with limited success. (Höll, 2012(a))

5.1.2 ACTA positions

The two sides of the ACTA debate were introduced as follows:

On the one side were opponents, who were concerned that the envisioned extension of law enforcement authority in ACTA would serve as a pretext to enhance internet surveillance and censorship on behalf of the copyright industry. They critiqued the negotiation of the agreement on procedural grounds. Their argument, presented through demonstrations and public debates, was targeted at a mainstream audience to generate popular support, implicitly lobbying MEPs and other publicly elected officials to vote against ACTA. (Küchemann, 2012(b))

On the other side were proponents, who argued that, given the principal importance of copyright inherent to contemporary European value systems, an application thereof to the internet remained absolutely necessary. They also emphasized, as expressed by the German government, that "... many of the accusations raised in the internet are not correct ..." (Roßmann & Höll, 2012). They targeted the mainstream public mostly to discourage popular support for ACTA opponents, while their main focus remained on convincing the relevant political decision-makers to support the agreement. (Roßmann & Höll, 2012)

Though the two groups were never precisely categorized, opponents for example included members of the internet community, protesters, legal and academic experts on copyrights and finally, politicians from a growing number of major political parties. They could further be divided into critics of the agreement itself and of the contemporary copyright system overall. (Höll, 2012(a)) The former usually included the popular protesters (*i.e.* the people in the streets and the internet community) and the latter tended to be experts (*i.e.* academic and legal specialists and party representatives). (Küchemann, 2012(a)) While most protesters seemed content to defeat ACTA in itself, experts merely saw it as a necessary step before negotiating the adaptation of the overall copyright system. Interestingly, the

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majority of ACTA opponents did not doubt the institution of copyrights as such, apart from a few protesters, who were presented as radical. (Gehlen, 2012(b)) (Prantl, 2012(b)) Critique of the agreement focused on the conduct of the negotiations (*i.e.* the alleged secrecy) which in turn warranted the concerns regarding the content of the agreement (*i.e.* the potentially oppressive legal initiatives taken because of ACTA). The expert argument on the other hand judged the agreement as too wide and unspecific. While also doubting the effectiveness of the proposed measures, the main argument was that the text did not provide legal certainty or remedy. (Off, 2012) (Kreye, 2012(a))

Proponents on the other hand initially included the EC, industry representatives and a declining number of politicians. Amongst them, the argument was split as well.

One group, the EC and, at first, some of the politicians, mostly focused on promoting the agreement itself by addressing the concerns regarding its conduct and content. They cited that for example the widespread allegations of secrecy were unfounded since the relevant documents had been already published in December 2010. Furthermore, secret negotiations were quite common in trade talks to allow participants room to maneuver. (Kuhn, 2012(a)) They also stressed that ACTA remained fully compliant to the EU *aquis* and did neither include any legal requirements to create any of the repressive instruments imagined nor required any modification of existing German law. (Carstens, 2012)

The other group (*i.e.* lobbyists, politicians and a few copyright holders) focused more on promoting the principle of copyrights *per se*. While they principally supported ACTA as an essential tool in safeguarding copyrights in Europe and beyond, they did not necessarily argue in favor of this specific agreement due to the public animosity associated with that stance. (Bender, 2012(a)) Eventually, most of the proponents, except the EC, shifted their argument to this position, implicitly accepting the defeat of ACTA long before its rejection by the EP.

So, the argument against ACTA ultimately dominated the public discourse due to the continuing exploitation of the existing skeptical prevailing mood towards the agreement and the aforementioned difference in discursive focus of the two sides. (Kuhn, 2012(b))

The protests which introduced ACTA to the mainstream had already voiced many of the concerns which persisted throughout the discussion. (Amann & Ankenbrand, 2012) The ineffectual explanations, with which ACTA proponents addressed these concerns, stressing the conceptual importance of the agreement so as to convince MEPs of its necessity, actually impaired their defense. Not only because

ignoring accusations could have been perceived as implicitly acknowledging them. Rather due to the fact that it was readily interpreted as openly neglecting popular concerns, an impression fostered by the protest movement from the beginning. Reported publicity blunders by ACTA proponents further reinforced such beliefs. Chief among them was Commissioner de Gucht's advice to MEPs "... not to let themselves be too impressed by the protests in some Member States ..." (Knop, 2012(a)), implying they were mainly based on misunderstanding or willfully misinterpreting the facts. Publicly expressing such a patronizing stance towards popular concerns would have certainly damaged any argumentative position. It certainly invoked public resentment, thereby also complicating the subsequent introduction of potential sympathizers to the debate. (Knop, 2012(a))

Overall, the movement vocally supporting ACTA seemed to shrink while the opposition grew.

5.1.2.1 The Internet Community

A group newly introduced to the mainstream by this debate was the so-called internet community. The initial protests and internet information campaigns and stunts were attributed to this major though elusive player. Described as a predominantly younger generation of internet users, which according to the not very differentiated presentation includes online activists, hackers, bloggers, *etc.*, the internet community was presented as the main challenger of traditional copyrights in the digital environment. (Peters, 2012) Not necessarily because they favored illegal downloads, but because they were against any accompanying increase in surveillance. Their rallying point in general was not any specific political proposal but net neutrality, which they saw threatened by ACTA. (Amann & Ankenbrand, 2012) They were presented as a defender of the *status quo*, thus implicitly favored. (Hofmann, 2012) That this special status was independent of their actual proportion to the mainstream population and thereby their representative legitimacy, was not reflected upon. (von Gehlen, 2012(b)) Other grounds for critique of the internet community were explored in separate discussions (e.g. the phenomenon of so called shitstorms, outlined below). Aspects such as the hacker attacks on government websites in Poland and other countries were reported but hardly critiqued or attributed to the internet community. (Küchemann, 2012(b))

The arguments of ACTA supporters were by contrast more thoroughly questioned, possibly reflecting the disproportionate amount of opponents in the discussion. Furthermore, proponents tended to argue

principally (*i.e.* on the need for copyright itself regardless of what happened to this specific agreement) rather than factually (*i.e.* on ACTA itself). The voices of legal and academic experts were intermixed regardless, arguably lending credibility to both positions. The overall presentation of ACTA, either portrayed negatively or as hardly relevant for the wider copyright discourse, further facilitated the early condemnation of the agreement. (Hauck, 2012)

5.1.2.2 Shitstorm

The shitstorm, a certain form of the digital noise the internet community had raised, was critiqued in some detail. It warrants individual analysis as it reflected on the conduct of the public debate overall. It was defined as neither balanced nor legitimate banter, arguing that such digital gossip should not be the basis for political decision making. The outrage displayed so impressively by parts of internet users against any defenders of ACTA (*i.e.* individual copyright holders, lobby groups, *etc.*) through emails, hacker attacks, angry blog entries, *etc.* were for the most part little more than insulting rants. Lacking any constructive aspect, they represented the antithesis to democratic opinion making through discourse. Policy makers acting on such campaigns instead of proper debate outside the internet would therefore be less democratic since the opinions voiced online were and remain easily inflated and might not constitute an accurate representation of society. (Bender, 2012(a)) (Amann, 2012)

5.1.3 Debate on Principle

Ignoring physical goods from the start, the change in consumer behavior brought about by the internet remained central to the discussion. It was argued that not the volume of consumption had changed, as the content industry continued to complain in light of falling revenues, but the venue thereof. (Grossmann & Kirsch, 2012) (Moorstedt, 2012)

As the existing structures to protect and enforce copyright could not be as simply digitalized as consumer behavior, their supplementary adaption was identified as the core issue of the debate. Especially the distribution model was seen as crucial there because it encapsulated the problem to guarantee the dissemination of copyrighted content that is fair both to consumers and to copyright holders. The approach as represented in ACTA (*i.e.* its alleged surveillance and censoring capacities) was not appreciated but rather fueled corresponding concerns of protesters that the enforcement of

copyrights would take priority over net neutrality. Without a corresponding response by the industry, the criticism continued, questioning amongst others their efficiency, their utility for the majority of copyright holders even if working as intended and their causal effect on economic growth. Sensing the potential challenge to existing non-digital copyrights, most of ACTA proponents centered on the less challenging aspects of the agreement (*i.e.* physical product piracy) arguably hoping to link the principle of copyrights to the ratification of the agreement when minimizing the relevance of its internet chapter to increase its chances for ratification. (Grossmann & Kirsch, 2012) (Kurz, 2012)

Representatives from all major German parties at the time and a few other experts introduced the variety of conceivable options on how to address this issue of copyrights. Presenting an arguably balanced overview of available suggestions to the public, none of them was actually championed. Still, it was stressed that, before any viable policies could be developed, this problem would need to be solved. Such a process would not only be shaped by usual political decision-making processes but would also cement the associated social norms. (von Gehlen, 2012(b)) (von Gehlen, 2012(d))

5.1.4 German Public Discourse Conclusions

Brought to the attention of the mainstream public through the mass protests in February 2012, the presentation of the ACTA debate retained a slight bias towards the opposition throughout. Partly because of argumentative and PR mistakes by proponents but mostly because the two sides addressed the public discourse differently. (Müller, 2012)

Considering the structural constraints of EU decision-making processes, focusing on the expert discourse seemed to be the most effective way to ensure ACTA's ratification. Yet actively conveying the implied negligence of the public discourse had to quickly offset any associated principal advantage. The ECs' position as among the prime advocates of ACTA thus quickly dissolved into being one of the few, if not the sole vocal supporter of the agreement. This homogeneity made it difficult for other supporters to join the argument lest they would be publicly evaluated not by their own argumentation but by the previous actions of the EC. (Kreye, 2012(b))

The opposition on the other hand remained a heterogeneous group without common leadership. Even its constituting subgroups lacked prominent key figures with which to identify. This provided only

limited connections among the opposition itself, which explains why subgroups tended to be more self-centered. (Hofmann, 2012) That this group did not eventually implode depended solely on its limited scope. As each subgroup shared the most common goal (*i.e.* defeating ACTA) but was uninterested to negotiate a common position on anything else, each was free to plan and execute their subsequent course of action as they saw fit. Those that were not interested in anything beyond defeating ACTA would not worry further. Those that saw ACTA as one of many doubtful legislative proposals were confident that they would be able to defeat any similar initiatives in the future. (Paukner, 2012) Those that wanted to establish a viable alternative in its place were focused on transferring the momentary popularity into continuing political influence. The resulting difficulty to establish a certainty regarding the demands of the opposition as a whole, inherently limited the impact their discursive position would be able to have due to the structural constraints within which it operated. While achieving their immediate goal did not require a homogenous opposition, the discursive bargaining to subsequently establish an own alternative to the agreement was seriously impeded by a lack thereof. (von Gehlen, 2012(c)) (Heidtmann, 2012)

5.2 British Public Discourse

The following chapter will present the public discourse on ACTA in the UK from October 2011 until October 2012 to showcase its effect. The articles from the sampled newspapers have been analyzed jointly due to space restrictions. It sampled 12 articles regarding ACTA from the Guardian and 7 from the FT, published on their respective web pages between October 2011 and October 2012.

Overall, the ACTA debate had received comparatively little coverage in the British mainstream press. Initially, the agreement was placed in the context of the then recently shelved Stop Online Piracy Act (SOPA) and PROTECT Intellectual Property Act (PIPA) in the USA. (Arthur, 2012(a))

The presentation of ACTA centered at first on the renewed protests and associated developments in Poland, after the EU and 22 other Member States, including Poland and the UK, had signed the agreement on January 26th 2012. While acknowledging that the proposal had “... been significantly changed from earlier versions ...” (Arthur, 2012(a)) the assertion that it shared “...some similarities with the hotly debated Stop Online Piracy Act (SOPA) in the US ...” (Arthur, 2012(a)) implied a skeptical

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stance towards it. The initial protests in Poland, both the hacking attacks and the physical manifestations continued to be featured throughout the debate. Given the lack of similar actions in the UK until the European wide February 11th protests, it seemed not surprising that the Polish responses were identified as the starting point. (Bradshaw & Palmer, 2012)

Being introduced as “... the latest in a string of measures planned to combat online piracy to falter in the face of coordinated protests ...” (Pignal & Cienski, 2012) ACTA was on the defensive from the outset. The internet chapter was quickly identified as the main source of public discontent, despite contrary assurances of the EC. Heightened sensitivity regarding net policy issues at the time and the evident success of combining hacking attacks and demonstrations to draw attention to these issues, as shown especially in Poland, foreshadowed the approach to ACTA. A continuing association with SOPA and PIPA, including individual perspectives from then prominent opponents like Kader Arif³, further facilitated a skeptical prevailing mood. (Arthur, 2012(b)) Although the EU secured the removal of some troubling provisions, like the three-strikes-rule, ACTA was still seen as “... troubling on several counts.” (Meyer, 2012) Most prominent among those were its loose definitions, lacking legal certainty, and the fact that it had already been finalized. This left no option but to actively lobby national and European parliamentarians to reject it. Furthermore, rights holders were believed to be at the core of this and similar agreements as they saw their established business models threatened by the internet. (Meyer, 2012)

Among the first active British involvement with ACTA was the participation in the coordinated European wide protests on 11 February 2012. The support of the British Pirate party for this action day also seemed to constitute the first time that a national political party had commented, at least in a minor way, on the developments. Given their relative political insignificance in the UK this might have been motivated by a desire to raise awareness. (Plunkett, 2012)

British public participation at the European action day itself appeared to be of little importance. The focus remained on presumably larger protests in other Member States such as Germany, Poland and Bulgaria. Generally, the debate remained more balanced than elsewhere because it actually considered ACTA supporters and the way they organized themselves. (Arthur, 2012(c))

³ A French MEP who resigned his position as EP rapporteur on ACTA to protest against the way it was negotiated and its potential impacts. (Arthur, 2012(b))

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Providing them with agency outside the EU institutions in this way furthered the understanding that organized support for ACTA was not limited to the EC. Given the limited overall coverage of the issue, every reference of proponents stuck out even more. Furthermore, a possible reason for the apparent British indifference on the issue might have been the knowledge that "... its copyright and counterfeiting laws ..." were "... already as strong as any suggested in ACTA." (Arthur, 2012(c))

The decision to refer ACTA to the ECJ was welcomed as it would possibly provide more clarity on the issue of compatibility. Yet doubts persisted as to whether a court ruling would be able to address most of the other issues. There were also concerns that public interest would have died down by then, enabling ACTA to resurface in a calmer political climate, possibly increasing its chances for ratification. (Pignal, 2012) Also, at this point, the perception of EU institutions was split in the sense that the EP was perceived to advocate citizens' concerns against the others. (Arthur, 2012(d))

The suggestion by Neelie Kroes, the European Commissioner for Telecoms and Technology, that ACTA was unlikely to be ratified, was assumed to foreclose the result of the plenary vote in July. (Arthur, 2012(e)) In light of this development there were some calls cautioning against an overestimation of unconventional lobbying. They pointed out that even the supposedly new forms of public expression (*i.e.* the recently successful combination of coordinated digital and physical demonstrations) were still subject to traditional political and legal structures. This position argued that despite the increased role of technology, tech-savvy internet users still constituted a minority. Regardless of the growing importance of net policy issues, citizen-centered policies would also need to include the majority of citizens without deeper technical knowledge of the internet. (Doctorow, 2012)

Briefly showcasing the conduct of the debate between non-governmental organizations (NGOs) was the argument between for example the Publishers Association (PA), a representation of publishers in the UK, and Google or the Open Rights Group (ORG), an advocate for digital rights. The PA claimed that campaigning for a completely unregulated internet would facilitate online piracy. They thus implicitly equated internet freedom with theft of intellectual property. Strictly denying such a connection, Google responded by emphasizing its engagement with rights holders to combat online piracy while the ORG argued that instead, regulation of the internet runs the danger of facilitating government or corporate censorship. While this point was sadly not explored any further it at least started introducing a more differentiated perspective on the actors involved in the overall debate. (Bradshaw & Palmer, 2012)

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After the EP's International Trade Committee (INTA), the lead committee on ACTA, rejected the agreement, there was little doubt that the ACTA would be defeated in the plenary vote. While that expectation was subsequently proven, it was still pointed out that the agreement could possibly be revived by the EC in the future, depending on the eventual ECJ ruling. (Arthur, 2012(f)) Nevertheless, opponents were quickly expressing their gratitude for this outcome. Proponents on the other hand, though bemoaning the rejection, appeared eager to explore alternatives as soon as possible. While the ACTA chapter in the global struggle for stricter copyright legislation was perceived to be closed for good, the need to address the underlying issue remained unchanged. (Barber, 2012) The content industry would be on one side, eager to revert its falling revenues, while technology companies, such as Google and Facebook would "... remain wary of evasive online copyright rules, which they fear could make them liable for links and content that they cannot easily control ..." (Fontanella-Khan, 2012). That this issue will need to be addressed regardless remained unchallenged as opponents and proponents alike confirm the need to protect intellectual property. (Arthur, 2012(g))

Following assessments of the concluded case were surprisingly critical, insisting to objectively evaluate the concluded case. For example, these interpretations acknowledged that "... the anti-counterfeiting treaty had some good intentions behind it ..." (Arthur, 2012(h)). For the most part, these referred to the provisions regarding physical goods. The internet chapter was identified as the crucial issue of the agreement. Regardless of their justification, the purposeful selection of different aspects about the negotiation process (*e.g.* the secrecy thereof, the fear that border controls would include inspection of private digital media, the vague definitions of the final text, *etc.*) meant that "... a social crowd formed online with one aim, of killing ACTA ..." (Arthur, 2012(h)). Connoted an internet tidal wave, this behavior ensured that the agreement was unlikely to be ratified casually, as might have been expected otherwise. Interestingly, the previously often repeated secrecy of ACTA negotiations was explained as a necessary part of political bargaining only from this time on. (Arthur, 2012(h))

Continuing the critique of ACTA protesters, other positions added that the rejection of the agreement, and by implication other regulation attempts, would not result in a free internet as might be imagined. First, because copyrights as the underlying core issue would still have to be addressed. Second, because the implied lax public attitude towards online piracy, was believed to be damaging to society in the long run. A reinforcement of contemporary value systems, the argument was simple: if no one would be

willing to pay for content, no content would be produced. That modern consumers were not realizing the apparently self-destructing behavior of demanding free online content was presented as worrisome. The only way to address this growing problem would be governmental intervention, in other words: relevant legislation. (Morrison, 2012) Arguably a call to policy makers and consumers alike, it reinforced the conviction that the conflict regarding the adaptation of copyrights was far from over.

5.2.1 British Public Discourse Conclusions

At first glance, the British debate appeared to be much more balanced than other national debates (*i.e.* the German one). Constantly considering the non-European origins of the agreement, alluding to its development and possible effects in different countries, within and outside the EU placed the national discussion in a more global context. (Bradshaw & Palmer, 2012(a)) It also meant that the ACTA protests in Poland brought the issue to mainstream attention in the UK. The different sides of the EU debate were also more pronounced in that it not only featured the institutional actors but also relevant NGOs of proponents and opponents alike. Still, the prevailing mood slightly favored ACTA contestants. (Bradshaw & Palmer, 2012(a)) Aspects of the agreement which were concerning continued to be highlighted, for example the secrecy of most of its negotiation and the alleged assumption that it would just be rubberstamped by the EP. (Arthur, 2012(g)) (Fontanella-Khan, 2012)

On second thoughts, the British debate appeared somewhat indifferent to the developments. The sporadic reporting mostly followed the major political developments. Overall, mainstream interest seemed rather small, especially when compared to other Member States. Neither the signature of the UK government, nor the European Action Day appeared to have evoked exceptional public responses. (Arthur, 2012(a)) Another peculiarity of the British discourse were recognizable attempts to nationalize the debate. The pronounced reactions in Eastern and Central Europe for example were explained in two irritating ways:

1. Historically: A reasonable deduction considering the experiences with secret police and Communist state surveillance these countries (*i.e.* Poland, Germany, Bulgaria, *etc.*) have had.
2. Opportunistic: because “... downloading films and music is a popular way for many young Eastern Europeans to obtain free entertainment ...” (Arthur, 2012(c)).

This was the only instance in which the fear of being caught was utilized to explain the motivation of

protesters. The motivation for introducing such a thought-terminating cliché, because it suggested that ACTA only concerned those engaging in illegal downloading, remained elusive. Even if the argument would apply to some proportions of protesters, there was no discernible reason to mention this there. (Meyer, 2012) It might be possible that the establishment of such national stereotypes was not intended to demean those concerned. Rather, since there was no further follow-up, creating otherness in such a way might have been intended to foster the special status of the British within Europe. Then, pointing out opportunistic behavior of others might serve to define what the national debate was not supposed to be like. (Arthur, 2012(c)) However, amidst significantly lower public participation and the implied moral elevation above other, more engaged populations, this would not be exemplary in any case.

5.3 Overall Public Discourse Conclusions

The national debates succeeded for the most part in conveying the structurally predetermined simplicity of the issue. As ACTA had already been finalized, it could only be ratified or rejected as a whole, without room for amendments. While factually correct, this urgency showcased the most prominent difference in national emphasis. While the German discourse eagerly assessed the debate and how its underlying issue could be addressed, the British discourse appeared to be comparatively indifferent to the debate. (Müller, 2012) (Arthur, 2012(a))

Common to both public discourses was the utilization of non-national developments, namely the SOPA/PIPA protests in the USA and the Polish ACTA protests, to introduce the debate. The attitude expressed by the demonstrations predetermined the overall sentiment towards the agreement for the remainder of the discussion. Public attention in both countries focused on similar key points throughout, mostly following the political developments. These included the European-wide protests against ACTA on 11 February 2012 (Bernau, 2012), its referral to the ECJ by the EC on 22 February 2012 (Pignal, 2012), the suggestion by Neelie Kroes that ACTA might not come into force as it is on 2 May 2012 (Arthur (e), 2012), the votes on ACTA in the EP subcommittees, especially the lead INTA committee on 21 June 2012 (Arthur, 2012(f)) and the final vote in the plenary on 4 July 2012 (Kafsack, 2012). Since it was quickly concluded that ACTA would be defeated, the public discourse strengthened its focus on how to handle copyrights, identified to be at the core of the agreement.

The justification for dismissing the agreement so early on rested on similar arguments in both Member

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States. While the worrisome character of some of these is not disputed, the way in which they were portrayed is. To explain, the example of secret negotiations was continuously promoted, suggesting a hidden agenda. While that served to raise suspicions, it conveniently failed to mention that secret negotiations are not an extraordinary but a common feature of political bargaining. Different parties might adopt extreme stances while negotiating that they do not want to become public before arriving at an agreeable consensus. The problem with presenting usual procedures in this way is that it might endanger the credibility of other, more relevant arguments if uncovered. In other words, a viable critique of ACTA is believed to have been possible without relying on this technique. Additionally it presupposes that those adopting such an argument will either accept it unreflectively or will not care about these methods being used. Not a flattering assumption in either case. (Bender, 2012(b))

A similar point is the accusation that the agreement was intended to be ratified in silence, past established national and international regulating bodies. First of all, that assumes that EU officials are either not aware of the established ratification process or are able to circumvent it, neither of which is very likely. Or in other words, even if assuming that all the conspiracy theories regarding the intent of ACTA are true, what are the chances that the scheming masterminds behind it would have forgotten that to be ratified it would have to be voted on by elected officials? Such masterminds would indeed have to be very selective in their thought processes. (Schwartmann, 2012) Additionally, it would paradoxically pronounce popular confidence in their elected representatives and deprive them of it at the same time. Simple because it implies that the same body of MEPs whom the public trusted to defeat ACTA, would have simply rubberstamped the agreement without the protests. This would pronounce popular confidence in their elected representatives and deprive them of it at the same time. Given that the full text was released in 2010 already, such a perception of the abilities of MEPs could not be very reassuring for the citizen. (von Gehlen, 2012(c)) Rather than believing this, perhaps the possibility that ACTA was not as one-dimensional as had been implied could be entertained. Accordingly, instead of presuming malicious intent, it could be assumed that negotiators genuinely believed in the agreement. Otherwise they would not have defended it as long and as fiercely as they did, fully aware of the reputational damage this would mean. This is not suggesting that their argument should be accepted just because they were convinced themselves. But simply dismissing opposing points on irrelevant grounds will eventually weaken any position as well as discursive practice overall. This in turn also applies to overrating the relevance of one's own arguments. (Torfing, 1999)

6 THE EXPERT DISCOURSE

The following chapter is based on 15 face-to-face interviews with Brussels based experts, conducted by the author between January and February 2013. Though anonymous, the author wishes to express his utmost gratitude to all interviewees for finding the time in their busy schedules to detail the ACTA debate from their perspective. Due to the sensitivity of the issue and to maintain the guaranteed confidentiality of interviewees, no quotes have been included, transcripts have been omitted and references follow their aforementioned categorization (*i.e.* according to position).

6.1 Interviews Summary

Most experts expressed the conviction that the February 2012 protests against ACTA came as a surprise to these involved in the debate. (Interview (MEP), 2013)

Concerns regarding the agreement had been expressed by the EP already years earlier, for example on 10 March 2010, when it passed a resolution demanding the publication of the negotiated text. Still, a reliable majority among MEPs against ACTA in the scheduled plenary vote was yet to be secured. In early 2012, even those closely associated with the opposition did not anticipate the forthcoming demonstrations or the associated increase of public interest in the agreement. Considering the then recent signing of the agreement on January 26th by the EU and 22 of its Member States, their attention was focused on gathering support among MEPs to reject ACTA in the deciding vote. (Interview (MEP), 2013) (Interview (Associated Expert), 2013)

Proponents also focused on MEPs from the start, assuming that the Council of the European Union was unlikely to oppose the agreement, considering the involvement of Member States in the negotiations. At that time, most observers would have predicted ACTA's eventual ratification in the EP but not because of unchallenged argumentative supremacy. Rather, most MEPs were either uninterested or too preoccupied with their own portfolio to deal with an agreement of apparently little legal consequence. (Interview (MEP), 2013)

This only changed when the February 2012 protests introduced ACTA to the mainstream public. MEPs were quick to pick up on these developments and in turn investigated the agreement. Protesters demanded the rejection of the agreement from the outset and public opinion seemed to confirm a

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general sentiment against ACTA over the following days. Additionally, the flood of protest letters and emails directed at the EP and in a lot of cases at parliamentarians personally, fostered the perception that opposing ACTA might be easier than supporting it. Especially MEPs, as elected representatives, were thus quickly convinced not to go against their respective electorates. It was suggested that, comparing the result of the final vote to the predictions before the protests, public pressure might have antedated quite a few voting decisions yet the extent of such alleged opportunism remains speculative. This is not to discredit the work or justification of ACTA critics but implies that, despite prior knowledge of the agreement, a significant number of MEPs and other experts had yet to determine their position thereon when the February 2012 protests occurred. (Interview (MEP), 2013)

A main characteristic of the expert discourse was the identification of copyrights as ACTA's underlying core issue. Given the technical developments, there was a widespread belief that a reform of copyright protection and enforcement remained necessary. The envisioned provisions of such modifications varied of course, without a clear favorite emerging. Still, most included the establishment of a minimum legal standard across the EU, in principle similar to ACTA. The problem then was not the idea of regulation itself, but its execution. Nobody doubted that the agreement would have been ratified if not for the internet chapter. Earlier cases⁴ had already established how sensitive net policy issues could become. Proponents were thus prepared for an argument but the February 2012 protests and subsequent critiques exceeded their expectations. Still, they remained dedicated to champion the agreement. All else aside, it did represent years of work. They felt that not preparing a defense would mean to simply dispatch it due to populist agitation instead of objective discussion, thereby capitulating to political opportunism. (Interview (EC Official), 2013)

However, such conviction proved disadvantageous due to public preconception in this case, which diminished prospects for a factual public debate when arguing in favor of the agreement. This supports the perception that, while the February 2012 protests came as a surprise for both ACTA proponents and opponents in Brussels, they predetermined the outcome of the public debate. The initial negative impression continued to dominate the public attitude, decisively impairing any defense of ACTA in public discourse by negating the possibility for an unbiased discussion thereof. (Interview (Associated Expert), 2013)

⁴ Such as the controversial Software Patents Directive which was, after a long debate, eventually rejected by the EP in 2005. (Buck, 2005)

In the face of such resistance, most experts concluded that this specific agreement was not sustainable. Instead they started to debate how best to address the underlying principle (*i.e.* copyrights) in an eventually forthcoming new approach. Separating the agreement from the issue in this way implied its redundancy thereby increasing the likelihood of its rejection. Yet on the other hand, it enabled a defense of copyrights which sidestepped the heated popular attitude towards ACTA. (Interview (Associated Expert), 2013) The resulting isolation of proponents, who focused on the actual proposal rather than the principle, strained relationships between the institutions, at times even on a personal level, hardening resolve on both sides. Supporters and opponents alike identified certain aspects of subjectivity in each other's argumentation, which neither assessed as justified. (Interview (Associated Expert), 2013) (Interview (EC Official), 2013) (Interview (MEP), 2013)

To remain impartial, this aspect will not be evaluated further but goes to show to what extent the conduct of the public discourse informed the content and the conduct of the expert discourse, especially at the beginning, in this case.

6.2 Expert Discourse Conclusions

The analysis of the expert discourse showed how accurate their perception of the public debate was. Identifying the key points of the dominating opposition movement, the Brussels-based decision-makers and other officials quickly strived to reclaim the discussion. By focusing on the underlying principle of copyrights, while implicitly acknowledging the envisioned defeat of ACTA in the plenary vote, they succeeded in appropriating a part of the argument for expert discussion. As the public continued to focus on the agreement itself, experts, including party politicians at local, national and EU level, gladly utilized the debate on copyrights. Not challenging the principle, there seemed to be little popular interest in the technicalities of this inherently complex aspect. In other words, believing that the popular engagement against ACTA had succeeded in introducing and establishing popular discontent with current expert approaches to copyright enforcement, the public appeared confident that the details of associated reforms could be left to the experts. That almost all of them seemed to support the popular rejection of the agreement probably reinforced this perception. (Interview (Associated Expert), 2013)

This is where the aforementioned simplicity of the public discourse aggravated its remote impact. Without prior efforts to enlarge the common basis among the protest movement beyond the rejection of

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the agreement, it was difficult to transfer the existing disposition to other aspects. The prevailing perception was that the demonstrations had forced the experts to grant public access to the ACTA debate. Its conduct had seemingly adapted to the combination of digital and physical action. These two were nevertheless circumstantial. They applied only until its content, predefined from the start, had been addressed. As most opponents appeared uninterested in pursuing the matter further (*i.e.* past the plenary vote) this limitation never occurred to them, which is believed to have been the point. By moderately conceding the most pressing popular demands, experts actually facilitated if not predetermined what the content of the debate would be. Assured that the discussion would be decided within the established political structures, the admission of other participants and forms of conduct was not a risk in any way. The perceived compliance of experts to address popular concerns in turn enabled them to slowly convert the prominence of the public and the expert discourse over time. The changed relation between the two, introduced through the February protests, was thus reversed. By emphasizing the debate on principle, experts accommodated a non-parliamentarian movement into the existing legislative procedure without actually modifying the process. Offering little resistance in a potentially heated debate also reinforced the existing political structures. Either because popular concerns were addressed, demonstrating democratic control over political decision-making processes, or because the institutional *status quo* was conserved, preserving the pre-existing arrangement of experts. This is not to say that opposition to ACTA was not justified or serious, but considering the actual impact on the organizational structure of the EU, defeating the agreement achieved little else. While perhaps the intended objective, the problem remains that without further public input, these existing structures will most likely reproduce similar solutions to the same principles. (Interview (Associated Expert), 2013) (Interview (MEP), 2013)

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7.1 Predicting Protests

Throughout this analysis, the February 2012 protests against ACTA have been identified as the linchpin of the debate. Yet very little information regarding its exact origin has been found and the available explanations were mostly unsatisfactory. (Heidtmann, 2012)

Chronologically speaking, the Polish protest movement spearheaded what would later develop into European demonstrations. Attempts by the state to regulate the internet tended to be perceived suspiciously, for historical reasons alone. The Polish internet community remains particularly strong and had long since championed a free and uncensored world wide web. The turnout at the protests despite the cold of the Polish winter further underlined the special status of net policy and the public interest it attracted there. (Arthur, 2012(c))

Demonstrators were surely motivated by a number of factors, including pre-existing political attitude, contemporary media coverage, individual understanding of the agreement and a number of other national and European characteristics. Regardless of individual attitude towards the agreement, the public display of resentment in this way initially puzzled opponents and proponents alike. Thus, chronicling localized developments might be more feasible than a universal explanation. (Klimova, 2009)

Even if such national narratives might suffice, explaining a European origin of the protests might not be possible with less than complex theories. Attributing the protest movement to a somewhat incomprehensible spontaneous occurrence, while surely simplifying the matter, might thus be acceptable here. It might also partly clarify why no definite overall leadership emerged over time, despite the utility a successful appropriation of the movement would have implied for any organization or party. (Koopmans & Erbe, 2004)

One has to wonder whether this analytical deficiency is actually disadvantageous. Assuming a definite catalyst is known, it would surely either be utilized to address or to side-step demonstrations. For example, when evaluating the ACTA case retrospectively, one might argue that more targeted information campaigns, designed to preemptively appease citizens' concerns, or more transparent and inclusive negotiations, incorporating citizens' concerns would have ensured the ratification of the

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agreement. Regardless of individual attitude thereto, both imply that protests as such are considered a nuisance, a disruption to the political decision-making process. Consequently, avoiding them would further facilitate political decision-making processes within the established political networks, arguably serving public interest best. (Gauthier, 1993)

On the other hand, protests do constitute a tool to express public sentiment outside of contemporary structures. In that capacity, they are supposed to be disruptive and unpredictable as long as they remain reasonable. Whether they confirm or upset current political prioritization in the process is relevant only insofar as it affects the accommodation of their demands. (Hardin, 1993)

This is believed to be one of the key points of this debate: the variable evaluation of the February 2012 protests by different participants. That they were crucial in opening the expert discourse on ACTA to the mainstream public has already been established. Equally important however is the effect their assessment will have on both subsequent related discussions and the lasting reputation of non-parliamentary activism as a whole. So, the following analysis is not interested in discovering the true reason for the demonstrations. Rather it focuses on detailing the peculiarities of this discourse to outline both its apparent and hidden potential effects. (Potter, 1996)

7.2 The Absence of Supporters

One of the most puzzling aspects has been the apparent absence of vocal ACTA proponents in the public discourse. The initial impression of widespread public resentment against ACTA has been continuously reinforced by the almost unchanged representation of its proponents. While, for example, representatives of major political parties gradually joined the discussion to oppose the agreement, no such influx has been observed on the supporting side. One might argue that such behavior constituted political opportunism. Aiming to benefit from the debate in the future, politicians might be very eager to position themselves on the winning side. (Küchemann, 2012(c)) Yet if ACTA was inherently as bad as some protesters charged, why was it signed by so many Member States? Conspiracy theories aside, the explanation that industry lobbyists simply succeeded in coaxing elected ministers and experienced EU officials into accepting an agreement without knowing its content is highly questionable. Even if somewhat correct, where were its supporters, be they political or industry lobbyists, from February 2012 onwards? If the agreement was indeed as crucial as either side claimed, why did it fail to mobilize corresponding support in the public discourse?

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The different aspects of these questions are going to be addressed in turn, yet it is believed that once again, the protests are essential to the answer.

First of all, arguing in favor of ACTA was difficult from the start, as outlined before. The initial mainstream introduction of the topic was hostile, putting proponents on the defensive. Additionally, the inherent contradiction of its premise, namely that the agreement was vital to the EU economy yet did not require any changes in the current *acquis*, was difficult to rationalize. The explanation offered (*i.e.* that it would create a fallback position, a minimum level of protection for copyrights) showcased that the agreement was essentially an expert project, having been drafted, negotiated and finalized by experts for the evaluation of other experts. That it thus presumed a specific knowledge in evaluators certainly impaired its appeal to the mainstream public. (McHoul & Rapley, 2001) Depending on participants' ability to abstract, an argumentation based on practical examples tends to appear more convincing than a position utilizing theoretical examples. They are easier presentable as objective while arguments on principle might be more prone to rely on corresponding individual interpretation. Remaining focused on experts, especially the MEPs, proponents also aimed to ensure that any critique of ACTA viable in these circles would have to be based on the actual text. This already restrained some of the wilder accusations present in the public debate. There, outdated information was sometimes taken at face value (*e.g.* when critiquing the alleged inclusion of the so-called 3-strikes-rule, which had been deleted from the final text a year earlier). (Meyer, 2012) Actions such as the referral of ACTA to the ECJ, intended to dispel concern of experts, namely that the agreement might not conform to the EU *acquis*, tended to achieve the opposite. A confirmation of their respective interpretation by the Court would have been a major boon either to opponents or proponents. The disruption of the ongoing public debate in the meantime however, was easily portrayed as the actual reason for this belated referral. An arguably obvious approach, if successful, might have reset the conditions to before the public protests. Not only would it have been difficult to sustain the current popularity, thus ensuring access to the debate. It would have also implied a change in conduct as the ruling of the Court, as the highest legal authority, would have had to be respected, possibly foreclosing certain aspects of argumentation. A decision not to wait for the ruling was complicated by the implied dismissal of the Court's opinion on the matter. This was the subject of a brief discussion within the EP, which showcased how well timed the referral to the ECJ was, if a delay of the vote was the intention. In the end, the vote was not postponed, confirming that conformity to the EU *acquis* was not the only substantial concern. (Küchemann, 2012(c)) Ironically, the parliamentarian opposition had tried to refer ACTA to the ECJ

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themselves some time before, assuming that the Court would agree with their point of view. Yet changing their approach to lobby for a rejection of the agreement in the plenary at the beginning of 2012 instead, proved to be more successful. (Interview (Associated Expert), 2013)

Secondly, its initial target audience was split between elected and appointed experts who were susceptible to popular opinion in different ways. This is not to suggest that once the protests started every expert simply dismissed the agreement. Rather, the original conduct of some of them initiated a sequence which led to the impression that the EC remained the sole defender of the agreement. Under the impression of the public protests, national politicians, for example in Poland and Germany, were quick to stall or even retract their commitments to the agreement. (Bernau, 2012) Naturally, this came as a huge surprise to the EC which had negotiated ACTA on behalf and in the presence of some of these politicians. Yet it could hardly be expected that they would therefore abandon years of hard work on an issue they believed to be of vital importance for the future of the EU economy. Hence representatives of the EC were determined in their defense of the agreement. (Interview (EC Official), 2013) This dedication arguably motivated some of the statements which were all but understanding of the public protests (*i.e.* Commissioner De Gucht's aforementioned suggestion to MEPs). (Knop, 2012(a)) That this would damage their reputation among protesters was apparently deemed acceptable, reinforcing the perception that the main focus of supporters remained on swaying MEPs who would actually be voting on the proposal, instead of the public.

While somewhat logical, this attitude made it difficult for other experts, who might have endorsed the agreement in principle otherwise, to publicly pledge their support, lest they would incur similar public hostility. It needs to be remembered that this includes experts who were not necessarily EU officials themselves and were usually only partially involved in its decision-making processes, conditioned by their specialization. Depending on their background (*e.g.* as an industry expert or prominent researcher, *etc.*), their position might have suffered more from bad publicity than those of appointed EU officials. (Interview (Associated Expert), 2013) This is not to say that EU officials do not care about their public image. On the contrary, MEPs and elected EU officials might consider very carefully going openly against strong public opinion. Yet the argument remains that experts outside the EU institutions will be less inclined to risk their position by expressing unpopular views without good reason. Since the protests increased the publicity of the debate and subsequent public scrutiny to unprecedented levels, these experts tended to restrict themselves to arguing the underlying principle of the discussion:

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copyrights. This way, they were able to keep themselves involved in the overall discussion while avoiding its emotionally charged aspects. (Interview (Associated Expert), 2013)

Thirdly, and probably most importantly, it was not necessary to defend ACTA for most proponents. Not because newspapers were quick to pronounce it dead after the February protests or because the oppositions' argumentation could not be challenged. Rather, defending the agreement had become obsolete due to the limited scope of the protests. The demonstrations were utilized as a non-parliamentarian way to attract the attention of policy makers to public concerns over the issue. The opposition movement plainly defined the rejection of ACTA as its only common agenda. (Höll, 2012(b)) That they focused on convincing MEPs of their position implied that protesters acknowledged the authority of the EP within the existing decision-making process. This approach ultimately proved effective because it cleverly exploited the current political structure, in which elected officials might be more inclined to carefully consider popular demands. Their seemingly uncompromising stance on very limited common demands (*i.e.* to reject ACTA) served to reinforce their argumentative position. Not because of rhetorical superiority but because it raised decision-makers' potential opportunity costs associated with ignoring it. (Hardin, 1993)

As outlined above, apart from the EC, potential proponents were less inclined to openly support the agreement or criticize the opposition. To them, ACTA was important only insofar as it could be utilized to settle the underlying issue of copyrights. Additionally, the voiced concerns mostly applied to the relatively small internet chapter. Such focus implied that the paragraphs regarding physical goods, which constituted the majority of the agreement, were not actually problematic. Realizing that the importance of copyrights would not be fundamentally challenged by protesters, experts could assuredly assume that this issue would be back on the agenda, irrespective of the outcome of this particular debate. Being eventually involved in that process, the priority shifted towards securing the individual expert status for the time being. So experts had to ask themselves: why should ACTA be publicly defended? Given the then prevailing mood and palpable hostility towards the agreement, such a step might have tarnished one's public reputation beyond the current debate, whether or not the proposal would be ratified as a result. (Amann, 2012) (Klimova, 2009)

On the other hand, only participating in the principal part of the debate, again involving mostly experts, might have been more prudent to preserving one's current position. Additionally, the overall formulation of the agreement provided ample opportunity for comments. The, at times, vague wording

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for example enabled even those experts who strived to appear more differentiated than others to critique the lack of legal certainty. The call for a new, more inclusive approach to discuss copyrights could also be securely voiced. This was especially relevant in this case where the overall opposition seemed neither able nor interested in providing a commonly agreed upon viable substitute for ACTA. Without a readily available alternative, the principal discussion on how to reform the copyright system continued with the same core of experts, not relevantly changing the pre-existing discursive practice. (Knop, 2012(b))

7.3 Winning is not Winning

In this regard the attitude of the opposition became problematic. Simply winning a discussion without establishing its subsequent evaluation might undo the initial achievement. The rejection of ACTA for example could be attributed either to concerns regarding its conduct (*e.g.* insufficient transparency during the negotiations) or its content (*e.g.* the sensitivity associated with regulating net policy). While both aspects were important in this case, it is believed that the conduct of the debate was more crucial to the outcome. Yet does that conversely mean that, if it had been negotiated openly, it would not have sparked the protests? Even more important, how are future proposals supposed to address concerns which have not been clearly defined? (Bevir, 2010)

To be sure, defeating ACTA was a major accomplishment in its own right, but it should not be overestimated. The apparently self-imposed limitation in scope mentioned earlier, not only facilitated its mass appeal but also antedated the at times populist argumentation it utilized. Not due to malignant intentions but because the inherent complexity of reforming copyrights necessitated a simplified focus during the popular debate. (Klimova, 2009) To raise this level might in turn have devalued the current achievement, as a continuation would imply that it did not suffice. Given the emotional connection many people felt to this case, this might have been extremely difficult to achieve.

Still, emphasizing this victory runs in danger of misinterpreting the value of such an approach. Or in other words, while political decision-makers might be impressed by a display of public protest against a proposal without much political consequence, they might not be as effectively swayed on more substantial issues. Depending on the matter, political decision-makers might not be influenced even by

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extreme public pressure as can be observed in a number of cases. These include the popular environmentalist movements against nuclear power or peace movements against involvement in Iraq in Germany and the UK, respectively. These and other instances showcased that protests alone are mainly a tool to attract public attention. They still require to be translated into discursive power at the level of decision-makers. To this end, it remains necessary to conform to the existing political structures unless they themselves are challenged. Simplifying an argument might be effective to ensure mass appeal, but tends to reduce its viability in expert discourses. Yet this is where most political decisions are taken, at least in contemporary democratic systems. (Sunstein, 1993)

So when evaluating the ACTA case, it is essential to remember that public protests cannot substitute debates on principles, even if successful. On the contrary, prioritizing popularity over substance will certainly impede the accommodation of whatever alternatives might be suggested. This is not to say that only expert discourses are able to contribute to political processes. Rather, a discussion should provide for the complexity of a given matter regardless of the setting. After all, democratic decision-making processes require effort from both policy makers and the electorate. This includes incorporating the intricacies of the manipulation of discourse, such as apprehending the effect of seemingly unrelated actions. Considering how central political discourse is to contemporary decision-making processes, the knowledge of the different ways how a debate can be influenced consciously or subconsciously is a minimum requirement. If not to apply them oneself, then at least to recognize it when others do, to react accordingly. Ironically, to effectively change this situation would necessitate winning a debate on principle first with exactly those methods. (Bevir, 2010)

7.4 Digital vs. Analogue Influence

The progressing technical developments in recent years have facilitated the transfer of personal and societal interaction to the internet. A corresponding recognition of its political potential however has been slow to materialize. Its greatest weakness regarding political legitimacy simultaneously constitutes one of its biggest advantages: the facilitation of communication. The ease of largely anonymous access to the web is the key issue here. Without accessible and reliable mechanisms to verify information disseminated there, online material remains prone to willful or random falsification acknowledged by the persisting basic skepticism to online material. (Waters, 2012)

The resulting political devaluation of online debates is believed to have been essential in the

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development of an independent awareness of the internet community. Given the legal challenges a borderless internet posed to traditional regulatory efforts, web users established their own ideals guiding its development (*e.g.* net neutrality). The prevailing political disregard for online culture further facilitated the impression that the internet community would have to organize itself. The mutual understanding appeared to be that traditional politics and net policy would not interfere with each other. Yet in light of SOPA/PIPA and ACTA, this regulatory equilibrium became increasingly challenged. These recent regulatory clashes signaled that societal developments would eventually necessitate a rapprochement of the digital and the physical realms, despite their individual preferences. (Mueller, 2002) In the course of this development, their mutual relation will certainly be redefined based on their respective significance in pioneering debates such as ACTA.

After all, a novel feature of this debate was how the combination of digital (*i.e.* online debates, hacker actions, *etc.*) and physical activities (*i.e.* demonstrations, public debates, *etc.*) promoted the opposition movement. Evaluating the reasons for their success unearthed an interesting challenge regarding the necessity to accommodate new forms of protest in existing discursive structures. While digital actions were important in raising awareness in the first place and subsequently retaining public attention, both sides emphasized that only physical debates would be acceptable to address these issues. (Küchemann, 2012(a))

2012 has been somewhat of a breakout year for effective internet activism. While not disputing the success of earlier efforts, it oversaw the defeat of SOPA/PIPA and ACTA and witnessed the continuing promotion of net policy on the political agenda. (Pignal & Cienski, 2012) The intermittent success of parties like the German Pirates, who mainly focus on internet issues, suggested that the transfer of political processes to the digital world might, partly at least, constitute a lasting trend. The enduring association if not equation of the internet community with younger citizens further reinforced the potential for increasing emphasis on online activity in political processes. (Anduiza, James & Jorba, 2012) However, in the current structures such a change seems unlikely. While the simplicity to connect online arguably lowers the participation threshold, the resulting action usually remains restricted to the internet. The European-wide protests against ACTA for example were preceded and accompanied by considerable digital commotion. For example, the hacker attacks were only retroactively legitimized through the expressed public support for their motivation. Yet their effect on the political process depended almost exclusively on the actual turnout. So overall, the physical manifestations secured

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popular and expert attention. (Pignal & Cienski, 2012) Most of the online debates continued to be disregarded, showcasing the persisting skepticism towards internet discussions and the established authority of traditional venues of discourse. (Küchemann, 2012(a))

The point here would be that in this reciprocal relationship which might have suggested equality, the physical manifestations were certainly more important to influence the discourses. They introduced the topic to the mainstream, they showcased the extent of public discontent to experts and they created an impression of European public unity on the issue. So, the demonstrations were necessary to prioritize their concerns on the political agenda. Selectively emphasizing the online movement in addition thereto increased the perceived public interest in the topic. While the physical manifestations provided the required political relevance, the digital exchanges were essential in conveying their continued presence. In other words, the digital buzz created through individual actions of ACTA opponents facilitated the impression that their movement was far larger than the actual turnout suggested. (Miller, 2011)

When evaluating the ACTA debate it is of paramount importance to point out this difference. The main problem here would be that digital support cannot simply be equated with physical support. For example, the millions of digital signatures on AVAAZ⁵ against ACTA did not translate into as many active protesters on the streets. While it might seem easy to express support for a given campaign online (*e.g.* liking something on social networks, following a blogger, uploading a home video, *etc.*), inverting this process requires much more effort. For ACTA this meant that reasons to get involved online should not be assumed to be purely political. That is not to say that only bored web surfers supported the opposition movement but rather that the skepticism towards online interaction will continue to restrain its equation with real-world participation. (Küchemann, 2012(a)) This point has to be emphasized to prevent disappointment based on the impression that internet action could eventually replace analogue engagement. Additionally it might create false expectations as to the effort required to influence political processes and in turn the effectiveness of such involvement. (Gauthier, 1993) Establishing for example a new forum for debate or form of political action will only succeed if its supremacy over existing structures is established through discourse. If this necessity is ignored, then subsequent failures to influence political decision-making processes as imagined might discourage future commitments. Regardless of perception, the defeat of ACTA was neither easy nor predetermined

⁵ A global online activist network which, amongst others, collects digital signatures to petition politicians. (Pilkinton, 2012)

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but an intensive contest. Establishing a difference in effectiveness between digital and analogue efforts is not intended to devalue either of them. Yet the study on hand showcased how deeply embedded the exclusive authority of traditional negotiation remained despite growing digitalization. (Chouliaraki & Fairclough, 2005)

8 CONCLUSIONS

The ongoing evaluation of the ACTA discussion will eventually establish a dominating reading thereof. Although it initiated a necessary debate on the principle of copyrights, the way in which it illustrated the evolution of discourse is believed to be its most interesting aspect. After the decline of conscious in favor of subconscious manipulation and the specialization of discourse and its participants, this case showcased a viable alternative in the continuing development of discourse: namely its negligence, under specific circumstances. Rather than vesting effort in influencing the access, conduct and content of a seemingly predetermined discourse, a more passive approach might suffice. (Ashenden, 2005) This is believed to constitute a development of discourse. Similar to though-terminating clichés, such an approach would constitute a novel way to forego the established discursive structures while still achieving subconscious discursive hegemony. It thus remains vital to be alert for such subtle changes to the *status quo* to consciously face them.

As outlined in the ACTA case, it appears to be most applicable when the following conditions are met: First of all, the result of the debate should appear decided in advance, thus rendering the need for conventional manipulation obsolete or disproportionately complex. (Amann & Ankenbrand, 2012)

Secondly, the scope of the opposition should be limited to the immediate issue, not disputing the underlying principle, implicitly limiting the future impact of the discourse result. (Stuart, 2001)

If these two conditions are met, the point would be to forego winning the discourse by not participating in it at all. Rather than arguing on the losing side, it might be more useful to side-step heated debates of limited relevance. This would not only preserve resources, including reputation, which could be better utilized in other discussions. It might also tempt the opposition to rationalize their unquestioned success with innate argumentative superiority. After all, cognitive dissonance is even less likely when evaluating a dominantly successful argument. The resulting familiarization to a lower argumentative standard and implied underestimation of the opposing capabilities might subsequently be exploited in future discussions. To prevent these and similar subconscious manipulations it remains necessary to continuously evaluate both the opposing and one's own argument in any given discussion critically. After all, engagement in discourse requires effort from all participants. The potential consequences, especially of political debates, ensure that such effort will be maximized by all sides whenever possible. So, encountering only token resistance in a supposedly important discourse should evoke suspicion rather than confidence. (McHoul & Rapley, 2001)

CONCLUSIONS

In conclusion, it is believed that profound political change can only be achieved through debates on principle. The example of ACTA showcased how little consequence even a decisive result in discourse can have, beyond the immediate issue, if the underlying principle is not addressed. This has nothing to do with individual engagement or commitment but is structurally conditioned. Forthcoming legislative proposals are the product of the existing political configuration which in turn is based on facts established in previous debates on principle. Simply rejecting this output without communicating what alternative would be acceptable will not improve decision-making processes in the future. Instead, it is more likely that similar content will be reproduced, especially since neither the responsible process nor the involved agents are provided with a sufficient basis upon which to model possible adaptations. (Connolly, 1993) The problem here is not the number of suggestions but insufficient public engagement in the principal debate. Defeating ACTA was only the first step. Mystifying this achievement might be utilized to legitimize personal indifference in other instances. Yet democratic policy making processes depend on continuous participation, not one-off displays of outrage. That the development of suitable alternatives will be difficult and time consuming is undisputed. One has only to decide whether or not the reform of the principle of copyrights is worth the effort and act accordingly. (Potter, 1996) (Foucault, 1982)

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INTERVIEWS:

To ensure the guaranteed confidentiality, the interviewees will only be categorized according to their position. All interviews were conducted face-to-face in Brussels, Belgium from January 2013 until February 2013.

MEPs	(5)
EC Officials	(3)
Associated Experts	(7)

ACKNOWLEDGMENTS

IV ANNEX

The interviews were based on the following questions:

1: What is your current position and what was your position within the EU during the ACTA debate (defined here as lasting from October 2011 to October 2012)?

2: How did you first hear of ACTA? What was your main source of information regarding ACTA?

3: Did you or any other politician/colleague as far as you know, anticipate the public backlash/interest in ACTA? Why or why not?

4: In your opinion, what was the main reason for ACTA's political defeat/failure, if applicable?

5: In hindsight, would you change anything (*e.g.* your conduct or argumentation) in the ACTA debate?

6: In hindsight, if you would have had to endorse ACTA, what would you have done to ensure its success?

7: In your opinion, what effects, if any, did the ACTA debate have on the political decision-making process within the EU?