The Copyright Dispute: A Transnational Regulatory Struggle

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Research Context: Institution Building Across Borders

> Research interest: preconditions, processes and mechanisms of institutional regulation beyond national and supranational statehood

> Research focus: participation of non-state actors, and the interaction of intended and emerging institution-building in the transnational realm

> Research group: very interdisciplinary; different regulatory fields such as private labor regulation, environmental protection standards or micro finance.
Research Questions

> Which preconditions, processes and mechanisms facilitate transnational institutional experimentation by non-state actors, leading to mutually shared rules with a relatively high binding character? Which factors prevent this?

– How do issue fields of transnational rule-setting become over time structured by organizational actors and their interorganizational relations?

– Under which conditions and by which means can civil society actors, such as associations, professions, social movements, or unions influence transnational rule-setting and institution building?

– Which arguments and ideas do these actors mobilize to convince others to accept certain rules and third party control of rule-following?

– How does the local rootedness of actors affect their ability to experiment and mobilize?
Transnational Copyright Regulation: Public vs. Private Authority

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

> Regulatory battles in political and market arena: conflict, complementarity and paradoxical relations of regulatory initiatives

> Why copyright field?
  - Long history of transnational regulation (no "tabula rasa")
  - Dynamic development during the last 20 years ("digital revolution")
„The Copyright Scene“: two coalitions, two arenas
Field Level Lessons:

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

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

> Organizational forms: different characteristics and resources correspond with regulatory logic on different levels
Organizational Forms of Regulatory Non-State Actors

- **Non-hierarchic ("peer relations")**
  - Social Movements
  - Quasi-Actors
  - Transnational Communities
- **Hierarchic ("power relations")**
  - Meta-Organsiations
  - Organizational Networks
  - NGOs
  - BINGOs
  - TNCs
- **Uncoordinated / Emergent**
  - Organizational Networks

The diagram shows a classification of regulatory non-state actors based on their organizational forms and the nature of their relations.
Creative Commons: Internationalization & Diffusion

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

> License porting as a growth strategy: adapting licenses to local jurisdictions together with local partner organizations ("affiliates")

- 42 jurisdictions by the end of 2007
- over 60 different affiliates
Creative Commons: Internationalization & Diffusion

Linkbacks zu Creative Commons Licenses (in Millions)
Creative Commons: Internationalization & Diffusion

Jurisdiction Ports (p.a. / cum.)

- Newly Porting Jurisdictions
- Ported Jurisdictions (cum.)

- USA

<table>
<thead>
<tr>
<th>Year</th>
<th>Newly Porting</th>
<th>Ported Cumulative</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2003</td>
<td>1*</td>
<td>1</td>
</tr>
<tr>
<td>2004</td>
<td>12</td>
<td>13</td>
</tr>
<tr>
<td>2005</td>
<td>26</td>
<td>35</td>
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<td>2006</td>
<td>35</td>
<td>43</td>
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<tr>
<td>2007</td>
<td>43</td>
<td></td>
</tr>
</tbody>
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*USA
Behind Creative Commons: Epistemic Community and/or Social Movement?

> Founding phase: (epistemic) community of professional lawyers, often with information technology background

> First internationalization phase: builds heavily upon lawyers involved in Free/Open Source Software licensing

> Second internationalization phase: license users from diverse (professional) backgrounds join the Creative Commons community and lead to an increase in affiliate diversity
Behind Creative Commons: Epistemic Community and/or Social Movement?

Affiliate Type: Early and Late Adopter

Jurisdictions 1-21
Jurisdictions 12-42
## Social Movements vs. Epistemic Communities

<table>
<thead>
<tr>
<th></th>
<th>Epistemic communities</th>
<th>Social movements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common political project</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Shared interests</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Shared principled beliefs</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Size</td>
<td>Limited</td>
<td>Large</td>
</tr>
<tr>
<td>Boundaries</td>
<td>Relatively clear</td>
<td>Fuzzy</td>
</tr>
<tr>
<td>Internal heterogeneity</td>
<td>Low</td>
<td>High</td>
</tr>
<tr>
<td>Causal beliefs</td>
<td>Consensual</td>
<td>Disputed or absent</td>
</tr>
<tr>
<td>Knowledge base</td>
<td>Shared</td>
<td>Not necessarily shared</td>
</tr>
<tr>
<td>Means of changing the world</td>
<td>Persuasion by facts and arguments</td>
<td>Persuasion and pressure by action and framing</td>
</tr>
</tbody>
</table>
Creative Commons: Strategic Agency of Core Actors

> Conflict of goals: Creative Commons as a provider of legal licenses vs. Creative Commons as a platform for political activism

> Core group of actors: Formal split for preserving the community’s unity
Conclusions

> Challenge of overlapping organizational forms in one regulatory endeavor: synergies and threats

> Distinction of different organizational types is difficult but fruitful: actors seldom belong to only one type, even though they predominantly can be assigned to either of them

> The role of formal organization and conflict for community development: community management is conflict management
Thank you for your attention.
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