Winning the web

Stories of grassroots campaigning for access to knowledge in the networked digital age

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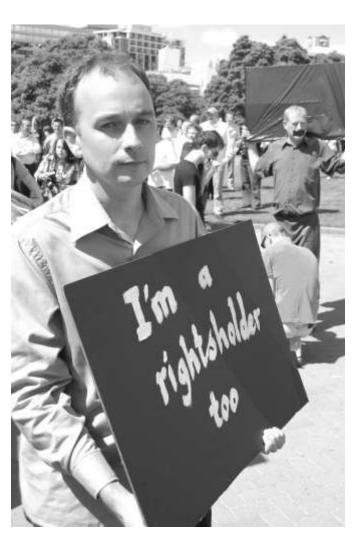**Supported by the Open Society Institute**

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Introduction

The global intellectual property regime is no longer fit for purpose. As the networked, digital age matures, it puts into the hands of millions of citizens the tools to access create and share "content": text, pictures, music and video; data, news, analysis and art. Against this, the intellectual property regime falters. It presents citizens with a choice: stop using the technology – stop communicating, stop creating – or break the law.

Legal reform is presented with two separate challenges. The first is a small but vocal minority of entrenched corporate interests – the rightsholder lobby. Wedded to business models that pre-date the age of networked digital technology, they exploit their position as incumbents to influence legislators. Often representing the world's biggest multinational corporations, they hijack a narrative that belongs to poor artists struggling in garrets and use the considerable profits they have made from exploiting these artists in the twentieth century to access the corridors of power and make their case.

That legislators listen is related to a second, geopolitical, challenge. Since the 1970s, the developed world has sought to use the global intellectual property regime to ensure its continued prosperity. Motivated by the ability of developing countries to undercut

A protester outside the New Zealand Parliament in 2009

it on the global manufacturing market, it has sought to augment the financial privilege afforded to "knowledge workers". The self-interest behind this practice is masked by a flawed orthodoxy that is rarely backed up by evidence – that more intellectual property provision is always good for economic growth.

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Against this backdrop, a global IP reform movement (also called the access to knowledge movement) is emerging. Motivated by a range of concerns – from global justice, to the narrowing spectrum of permitted speech, to the broadening of surveillance power – these individuals and organisations approach their campaigning work with combined levels of ingenuity and intellectual rigour that make them stand out in the history of fledgling civil rights movements. Recently, these pockets of activism have taken IP reform issues to a wide audience, triggering sweeping civic action in the general population.

The goal of this report is to identify and interrogate these pockets of activism, and to draw lessons from them. It is hoped that these lessons spread across the broadening global network of IP reform activists, ensuring a strong, sustainable and ultimately successful global movement for IP reform well into the future.

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Lessons for IP reformers

The report looked at six successful IP reform campaigns from around the world, and examined the strategies, messages and goals of the campaigners who fought them. Although each example has its own lessons to share, broad trends did emerge.

Several of the most striking campaign successes employed the internet as a mobilising force. A template for such action emerges from examining these campaigns in concert. Almost without exception, campaigners worked in coalition with other stakeholders. These coalitions varied both in style and in substance, and examining those differences is instructive. The campaigns were fought on intellectual and emotional ground which was often some distance from the mechanism of intellectual property law itself. This observation should encourage campaigners to think about the merits and pitfalls of different messaging approaches, and to consider the need for a less fragmented critique of the current, flawed orthodoxy of the strong-IP lobby. Finally, the observation that very few of the case studies emerge from countries in the developing world prompts the report to examine why this might be so, and to challenge campaigners to examine the value of a more global perspective.

Using the tools of the internet

Fair Copyright for Canada, the two campaigns against graduated response in France and New Zealand, and the Open Rights Group's campaign against copyright term extension all employed tools on the internet to substantial effect. Such tools include:

- Facebook
- e-Petitions and the mass email lists they create
- Internet "blackouts"
- YouTube
- Wikis
- IRC channels
- Twitter

Campaigners are keen to stress that in all cases, online mobilisation campaigns were coupled with more traditional lobbying activities and mainstream media work. But the use of online tools appeared to achieve two additional outcomes. First, they created a virtuous circle of mainstream media attention. Perhaps because of their novelty factor, the mainstream media covered the large numbers of people supporting campaigns using these tools, which led to increased coverage for the issue, as well as increased support for the online campaigns. But more importantly, they gave campaigners a pool of people whom they could mobilise into more traditional forms of political engagement. All campaigns that used these tools report that elected representatives received far higher than average

contact from their constituents on the campaign issue. In many cases, this led to a positive outcome for the campaign.

Different groups put forward different cases for the particular tools they employed. Facebook and other proprietary social networking platforms gave campaigners access to large groups of people, and allowed individual group members to quickly spread the word about causes across their own social networks. But building a large group on Facebook has the twin disadvantages that group administrators cannot message a group with more than 5,000 members all at once, nor can group administrators contact group members outside of Facebook's messaging system. E-Petitions grew less quickly, but did give campaigners direct access to large pools of email addresses. Internet blackout events (where campaigners urged those concerned by an issue to "black out" some aspect of their web presence, normally again on Twitter and Facebook, but also on their own websites) again allowed for the viral spread of a campaign message, with the added advantage of catching other people unawares, as they browsed through an unrelated website or checked on their friends on Twitter. However, this strategy also deprived campaigners of email address pools.

That no one tool came out the winner in the course of the research is no bad thing. Web trends move quickly, and campaigners are likely to get the best results if they take advantage of the latest popular medium – not least to benefit from the virtuous circle of mainstream media coverage generated by the novelty of the technology. However, what did emerge was a template for grassroots mobilisation on the web.

- **Time the campaign correctly.** A grassroots mobilisation campaign should start one or two weeks before the event on which the action is focussed (a vote, say, or the enactment of a law)
- **Make the message simple and accessible.** It should break down into three parts:
    - a simple statement of the problem
    - an emotional or moral appeal
    - an assurance that individuals can change the situation, if they take action
- **Provide people with a graduated series of actions.** Start with simple actions (sign this, click here and join the protest group), and provide increasingly involved actions: blacking out web profiles, blacking out websites; writing letters; participating in consumer boycotts; turning up to protests; lobbying elected representatives on the phone, or face to face.
- **Channel these actions as much as possible through established political mechanisms.** The internet is still "the other world" to most legislators, so public opinion should be brought to them through the established channels, like letters, petitions and protests.

Some campaigners have ambitions to employ the internet to connect with established political channels – to in effect "close the loop" between online and offline protest movements. La Quadrature du Net have been building web tools that give citizens "direct

access" to the law-making process. They have launched a wiki called Political Memory, which seeks to track the voting patterns and opinions of MEPs and provide their constituents with ways to contact them (ultimately, they wish to provide clickable links for constituents to make VoIP phone calls from the site). And when writing to petition signers asking them to contact their MEPs, ORG sent links to the WriteToThem.com website, which allows UK citizens to contact their representative MEPs by email, simply by entering their postcode. ORG stress the need to roll out the WriteToThem service to the entire EU.

Coalition building

Almost all the campaigners interviewed used coalition building as a key tool to affect change. Given the strength of rightsholder lobbies in many of the countries where campaigns were fought, this is not surprising. Some campaigners also spoke of the value in building relationships with industry figures with interests aligned to IP reformists.

Coalitions built varied in character along two axes – mandate and geographical location. Frequently, more than one type of coalition was employed in a single campaign. So, some coalitions, such as the one formed in the ACTA campaign in the US, featured groups from the same region (the US) with the same mandates (broadly, civil rights and the public interest). Others campaigns, such as the one against term extension, or the Fair Copyright for Canada campaign, or the campaign for IP reform in Brazil, featured coalitions of groups from the same region, but with different mandates. Coalitions of groups with the same mandate but from different regions also featured in the term extension campaign, as well as in the campaign against graduated response. No campaigns were observed where coalitions featured groups with different mandates from different geographical regions.

	Same mandate	Different mandate
Same region	A	B
Different region	C	n/a

A **coalition of type A** was observed in the United States, a country which drives the IP agenda, and which has arguably the most developed network of IP reform activists.

Coalitions of type B (same region, different mandate) were often the result of broadly academic actors joining in coalition with activists. For the academics, the activists provided a channel through which their ideas and analysis could be publicised and used to affect change, but which was far enough removed from their own activities so as not to compromise their academic reputations (in particular, for impartiality) and their access to privileged sources. For the activists, the academics provided them with inside contacts, expert briefs and substantial analysis from a reputable source all of which were of great value as they began to engage with legislators.

In the campaign against copyright term extension, expert analysis was one of the key tools used by the Open Rights Group. However this was a curse as well as a blessing, since the analysis was of a highly technical nature that did not, at least not initially, play well in the media. Open Rights Group forged other coalitions of type B – with broadcasters, librarians, remix artists and public domain record labels – each of whom helped to concretise the problem with a copyright term extension, taking the message away from economic theory and more abstract ideas like balancing the of interests of consumers and creators.

Michael Geist acted at least partly as an expert academic in the Fair Copyright for Canada campaign, and the organisers of the local Facebook groups acted as activists.

In France, La Quadrature du Net produced their own substantive analysis in their fight against graduated response, as well as doing significant lobbying and mobilisation work. This put the organisation under strain – La Quadrature felt they would be quickly attacked if their analysis was seen to be flawed, given they were understood to have an agenda. But their lack of sufficient legal resources meant they often had to wait longer than they would have liked for good analysis. It is fair to assume that La Quadrature du Net would have benefitted from an engaged academic partner able to deliver them analysis of the many legal documents that came their way during their campaign.

Good coalition partners

Law and economics academics. Academics can provide evidence, re-usable policy briefs and inside contacts.

Creative Commons. Look for the legal team that ported CC licences to your country, but also for major users of CC licences.

Free and Open Source Software advocates.

Creators. Not all creators feel they are fairly represented by the information intermediaries (eg publishers, record labels, collecting societies) who claim to speak on their behalf to legislators.

Businesses, especially internet service providers, web service providers and other "new" tech businesses.

Librarians and Teachers.

Other re-users of copyrighted works, such as film-makers, broadcasters, commercial archivists, re-issuers.

Advocates for the visually impaired.

Privacy and Free Speech campaigners.

Coalitions of type C (same mandate, different region) studied here were coalitions of public interest organisations. They generally came about in response to campaigns waged in regional fora, such as the European Union. Both the Open Rights Group and La Quadrature du Net formed coalitions of type C (which in both cases included each other) to take their campaigns to Europe.

Almost all of those who spoke about attitudes towards coalition-forming emphasised that coalitions had been achieved in a loose, informal way. Connections were based on personal relations, and any structures that were in place were non-hierarchical.

Having a diverse group of stakeholders raising concerns over a particular issue is a very effective strategy, as it gives the impression to legislators of a groundswell of opposition. Forging partnerships with existing advocacy groups, for example librarians, or musicians, or free and open source software promoters, is a good strategy here. However, such advocacy groups do not exist in all countries. One campaigner who did not wish to be named spoke of the possibility of helping to create regional groups with different mandates with whom IP reform campaigners could then form coalitions. He identified a template methodology for establishing the formation of such groups.

First, campaigners should identify individuals who will champion their own community – this is often the hardest thing to do. Once they've found such people, they can educate them on why they think IP reform issues should matter to their community, and provide them with resources to launch a website – a public-facing presence that will help them spread their message. A white paper, outlining in detail the substance of their community's policy concerns should be a prominent feature of this site. Once the public-facing and policy tools are in place, they should then write an open letter to relevant legislators requesting an audience for their concerns.

Although this might appear to be a labour-intensive process, the pay-offs in countries where previously debate has been captured by rightsholding industries can be significant.

The message

Some of the campaigns studied were fought on intellectual and emotional ground which was some way removed from the mechanism of intellectual property law itself. The table overleaf demonstrates the contrast between the baseline problem campaigns sought to address, and the messages they used to win support.

Campaigns whose messages were closer to the IP mechanism included the Fair Copyright for Canada campaign, in its emphasis on the ill-balanced trade-off between consumer rights and copyright that would be introduced by Bill C-61. Brazil's sense of national identity and cultural heritage – its history of "cultural cannibalism" – make copyright reform a natural thing to support, although proponents of reform in Brazil also employ messages which appeal to national pride and anti-Americanism. The campaign that came closest to basing its message on the IP mechanism itself is the ORG campaign on copyright term extension. However, ORG gradually moved away from messages about the balance necessary to functioning IP law towards messages about corruption, once it realised its initial messaging could not match the emotional appeal of the messaging employed by its opponents.

	Campaign	Problem	Message
Least IP-related	ACTA	Fundamentally changes the framework for IP enforcement	Transparency
	Graduated response (France)	Favours industry with outdated model for exploiting copyrights	Privacy, access to justice
	Graduated response (NZ)	Favours industry with outdated model for exploiting copyrights	Privacy, access to justice
	Brazil	Copyright law should favour all sections of society, not just media corporations	"Cultural cannibalism", national identity, national pride, anti-Americanism
	FC4C	Anti-circumvention, increased scope of liability for infringement	Consumer rights, privacy, freedom of expression, anti-Americanism
Most IP-related	Term Extension	Does not incentivise creation, locks up cultural heritage for no commercial gain	Need to balance needs of users and creators, policy not evidence-based, corrupt

How should campaigners feel about this? It is natural for campaigners who want to succeed to pick the messages that are going to speak loudest to most people. As many campaigners observed, without an emotional message, grassroots mobilisation is more difficult, even impossible.

But if the campaign message is wildly different from the campaign goal or motivation, will this shore up problems later on? It is too easy to imagine legislators coming up with solutions to the concerns on which the messaging focuses, which do not address the concerns of the campaign motivation or goal. In this scenario, campaigners would have to switch messaging mid-campaign to highlight other problems, and this could damage the image of their campaign.

Furthermore, when IP campaigners are working in loose coalition across regions, if they each pick messages that diverge from the campaign goal or motivation, those messages may differ. As the case study into the ongoing ACTA campaign suggests, if different groups pick

different issues from the suite of problems with the treaty, it could end up leaving legislators confused as to the real issues.

If avoiding these potential problems means centring messaging on the IP mechanism itself, then is it easier, or harder, to find messaging that is suitably emotional as to appeal to the grassroots? Not all countries have a cultural history like Brazil's which can easily accommodate the "remix" message. And as the ORG campaign suggests, campaigners are often faced with simple, instinctually appealing messages from the other side ("artists need to get paid") that are difficult to beat with a focus on the IP mechanism. Fair Copyright for Canada successfully employed a consumer rights message in its campaign against C-61, which allowed it to highlight how copyright law entails trade-offs between creators and users and how those trade-offs need to be carefully balanced by legislators. This strategy could be repeated in countries with a developed consumer rights movement. Should IP reformists accept that the consumer rights agenda is the most appropriate home for their concerns, or is there room for IP-centred messaging that calls for action from citizens, and not consumers, that finds its home in the civil rights movement?

Finally, does campaigning using emotional messages that are removed from the IP mechanism consign campaigners to fighting reactive, as opposed to proactive campaigns? Access to health initiatives that seek to reform the global IP regime suggest that this is not the case, but are they an exception? Could familiar consumer and civil rights, such as privacy, or freedom of expression, be harnessed in order to launch a proactive campaign for change in the copyright sphere? The test will be whether the WIPO Development Agenda, which uses the narrative of development to project proactive IP reform campaigns onto the global stage, turns out successfully.

The campaign against ACTA presents an opportunity for campaigners to forge a strong, common message about IP reform that is a good fit for describing the right for citizens of the developing world to have access to medicine and an equally good fit for the right for consumers in the developed world to have access to innovation in music services. That is quite some challenge. As one campaigner observed:

> There's a consensus view on IP which is wrong. It's the wrong vision, but it's is a very well known and popularised and famous vision. The critique of this vision is fragmented. It is associated with piracy and 'we don't want to pay' and, you know, 'no business model' and a sort of hippydom.

A global movement?

During the course of this research, it has become clear that different types of campaign appear to flourish in different types of country.

Canada, for example, falls into a group of countries with similar characteristics, some of which have also seen successful grassroots mobilisation against draconian IP enforcement proposals. Like New Zealand, Canada is a developed country that is fairly small and does

not have a large lobbying infrastructure in place. Other countries with similar profiles include the Nordic countries.

But can grassroots campaigns, mobilised online, translate into other "types" of country? For example, countries where there is a larger lobbying presence on behalf of rightsholders? The answer proffered by this research is a tentative "yes". The experience in France and the UK, where both domestically and at EU level there is a large rightsholder lobbying presence, are positive, and techniques employed in New Zealand and Canada have also been employed in France and the UK, with some very significant success. The forecast for the US is less clear. Each of these campaigns has their own characteristics, and it remains for activists in countries not studied here to take up or re-examine the tools this research identifies, and to try them out for themselves.

What about developing countries? The online petition against the Cybercrime bill in Brazil gives hopeful signs, but it remains the case that this report is dominated by case studies from the global North. One reason for this could be that communications technology is less advanced in the developing world, making the tools with which to agitate for change less accessible to the general population in the global South. However, it should be noted that widespread take-up in the global South means that the mobile phone has already demonstrated its utility in fights for social justice on issues that are not IP-related. The literature provides examples of mobile phone use to gain fair prices for goods and produce in rural India, or in mobilising for political change in the Philippines.

It could be the case that fault lines in the copyright regime only begin to be widely apparent once internet use is pervasive amongst the population. The internet makes everyone a publisher, making experience of the inflexibilities of the copyright regime much more real to many more people. It reduces the marginal cost of reproduction to almost zero, which throws copyright enforcement practice into disarray, triggering over-zealous proposals for enforcement from rightsholders.

But we should not assume that the global South simply lags behind the global North, and that the problems as experienced by the populations of the global North are about to hit the populations of the global South in some five or ten years hence. Technological development will not necessarily follow the same pattern in the developing world as it has in the developed world. The rise of mobile phones in the global South, and particularly in Africa, demonstrates this. Broadly, mobile phones are non-generative platforms connected to private networks. This is in contrast to the internet, which is made up of mostly generative platforms (PCs) connected to communications networks that were, at one stage, developed as public goods. Will these structural differences mute the need for IP reform in the digital developing world, and does this matter? Are mobile phones more likely to be the future of communications – do they suit a region better that has lower literacy rates and highly fragmented national communications systems? What opportunities are inhabitants of the global South missing out on, if their networked digital technology is less generative than the technology in use in the global North? Is there a role for IP reform campaigners to be

advocating for a more internet-like communications network to be established in the developing world, or is this beyond their mandate?

It could simply be the case that governments and citizens of the developing world are dealing with other problems: citizens are focussed on securing basic provisions such as food, healthcare and education, while legislators are working hard to meet these needs and ignoring other "duties" such as copyright enforcement, meaning physical piracy can fill the access to knowledge gap left by copyright regimes that perform poorly in a developing world market. But if this is the situation now, we should assume that, as the global North continues to dictate the global IP enforcement agenda, this will change and is changing. The question remains then, if IP reformists are concentrating on fights in the developed world, what fights are they missing that are going on in the developing world?

Case Study: Fair copyright for Canada

For several years, Canada has been under pressure to ratify the WIPO Internet Treaties. In the Summer of 2007 Canada hosted a meeting of leaders of the three countries in the NAFTA group – Canada, Mexico and the United States. At that meeting it was made clear to Canada that in order for them to progress issues on their agenda, they would need to make ratifying the WIPO Internet Treaties a priority, creating a law modelled on the US Digital Millennium Copyright Act (DMCA). In October 2007, when the Canadian government set out the Parliamentary agenda, it made clear its intentions to move forward on copyright reform.

Location:	Canada
Lead Campaigners:	Fair Copyright for Canada
Issue:	Section C61 – the "Canadian DMCA"

Aug-07	Canada hosts meeting of NAFTA leaders
Oct-07	Government announces intention to legislate
Nov-07	Geist publishes op-ed in *The Hill Times*
02-Dec-07	Facebook group launched
07-Dec-07	Copyright bill placed on Notice paper
08-Dec-07	Protesters attend Industry Minister's party
10-Dec-07	Debate in Canadian Parliament
13-Dec-07	Introduction of Bill delayed
13-Dec-07	Facebook Group passes 20,000 members
12-Jun-08	Revised Bill finally introduced
26-Jun-08	Facebook Group reaches 80,000 members
07-Sep-08	Election called, C-61 dies on the order paper

Michael Geist, a Canadian academic, and the Canada Research Chair in Internet and E-Commerce Law at the University of Ottawa, was following these developments with interest. He was reliably informed that Canada's new Industry Minister, Jim Prentice, was likely to put forward a bill that did not take into account the concerns of IP reformists. In December 2007, shortly before a copyright reform bill was to be put on Canada's Parliamentary order paper, Geist launched a Facebook group and asked people to join it if they were concerned about the upcoming bill.

In the weeks and months before the launch of the Facebook group, Geist had been preparing the way by publishing material that questioned what he understood would be in the bill. In November

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2007 he wrote a piece for *The Hill Times*, a Parliament Hill insider publication he knew would get the attention of Ministers, MPs and lobbyists. In it he second-guessed the contents of Prentice's copyright reforms, and posed ten questions that should be asked in response. The article was later quoted back to him in meetings with MPs. In early December, Geist published a blog post that listed thirty things concerned Canadians could do to stop what he dubbed "The Canadian DMCA".

Geist launched the Facebook group, called Fair Copyright for Canada, on 2 December 2007 with low expectations of participation. But within a day it had 1,000 members. By the second day, it had 2,000 members, and by the end of the week, 10,000 members. Inevitably, the size of the Facebook group drew the attention of bloggers and the mainstream media – it was the first successful attempt to mobilise people on Facebook in Canada, a country with a high proportion of Facebook users. This created a virtuous circle: the more people who heard about the group, the more people who joined it, and the more people who joined it, the more the media talked about it.

Jim Prentice confronts his critics at his Calgary riding Christmas party

Geist knew the size of the Facebook group, and the outpouring of concern over the new copyright reforms, was worrying legislators. Just over a week after the Facebook group launched, an opposition MP raised the issue in Parliament. And Geist used the Facebook group, as well as allied bloggers like BoingBoing.net, to encourage people in the Minister's riding of Calgary to attend an open event being held for constituents at the riding office. Between fifty and sixty people showed up.

These combined pressures meant that the Bill was not introduced before the Christmas break, presumably because Prentice and his department realised the opposition they might face to the Bill as it stood. In January an amended Bill which Prentice hoped would allay some of his opponents' fears got stuck in the Cabinet approval process. The Bill was further delayed by the expectation of an upcoming election. But the election didn't happen and in June 2008, the Bill was finally introduced, as Bill C-61.

In the six months of delay, Geist had been helping to organise local chapters of the Fair Copyright for Canada Facebook group. Geist had run into problems with Facebook, since it does not let group administrators message group members all at once, after the group reaches a certain size. Setting up new, local groups, was a way to get around this, as well as to encourage people to get involved further. Geist worked in a non-hierarchical frame and

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over time, many of the local groups would become organised and autonomous, releasing their own campaigning tools such as wikis which gave people information about how, where and when to contact their elected representatives.

When the bill was introduced in June 2008, it came with a series of additional provisions – for example a cap of $500 on liability for downloading copyrighted files without permission, and time-shifting provisions for recording broadcasts. In the mainstream media, it enjoyed a brief spell of positive, or at least mixed, coverage, on the day that it launched. However, by the end of the week, thanks to negative commentary on the web, this story changed, and coverage became almost uniformly negative. Before the introduction of the bill the Facebook group had grown to 40,000. On 26 June, the group had over 80,000 members, with many of the local groups boasting more than 1,000 members apiece. Geist was later told that, within three weeks of the Bill being introduced, the Department of Industry had received 20,000 letters.

As the Canadian Parliament broke for the Summer, Geist and the organisers of the local chapters made it their goal for every Member of Parliament over the course of the Summer to have heard about constituent concern over the Bill. Though they didn't expect to kill the Bill over the Summer, they wanted to ensure that everybody from all parties knew that C-61 was going to create a problem for them. The strategy looked like it worked – a number of MPs and candidates for office said copyright was one of the top three issues they heard about all Summer long, and some ridings organised town hall meetings on the C-61 issue.

In the end, the bill died on the order paper, because the Canadian Government called a general election in September 2008. Results of that election – which returned another minority Conservative Government – mean that another election could happen early in 2010. This situation, coupled with the fact that the Industry department is now being kept busy by the global economic crisis, could delay the introduction of the Bill until Autumn 2009, or even the beginning of 2010. In the meantime, and in a situation that is similar to the one observed in Brazil, Geist believes that rightsholding industries are ratcheting up their lobbying efforts in response to the success of the Fair Copyright for Canada campaign. However, when the Bill does re-emerge, Geist is confident that the tools he used and the mobilisation it inspired means he can resurrect the resistance to Bill C-61.

Online tools

Fair Copyright for Canada succeeded on Facebook because Facebook was the online social networking platform of choice in Canada. Other countries may not have so much take-up of social networking platforms, or may have take-up of different social networking platforms (for example, in Brazil, Google's Orkhut social networking tool is preferred). Although the privacy policies of Facebook did not completely align with Geist's own views on internet privacy, if Geist had not been prepared to trade off these values to engage with the Facebook community, Fair Copyright for Canada may not have been such a success.

Geist's use of online tools was by no means limited to Facebook, however. He says he was prepared to experiment with anything, including wikis, Twitter and FriendFeed. Having

noted that a lot of video mash-ups were appearing on the issue, Fair Copyright for Canada launched a YouTube contest over the Summer, asking Canadians to make 61 second videos about C-61. Geist reports that although the winning video was strong, the number of entries the contest received was lower than expected.

Had the bill progressed, Geist had hoped to use Twitter to get volunteers to report, in real time, proceedings in Committee meetings as the legislation was negotiated. He reports that this, more than anything, seemed to alarm officials:

> *Every time I mention this to government officials they go bug-eyed. The very idea… everyone's hearing exactly what's being said and by the time the MP or whoever it is finishes the meeting it's all over the internet and there are responses to it… So the goal of trying to start getting some of that Twitter stuff would be, we're going to find ways to just, you know, maximum speed, maximum dissemination and maximum pressure, so there were a lot of things that we have thought about doing to fight back on a bill.*

The success of the local chapters demonstrates that, at least when using online tools, a distributed organisational structure is the best option. Geist:

> *"I always emphasise, especially to individuals active for the first time, that they should say, they were looking sometimes for prepared speaking notes, and my view always was that we don't want prepared speaking notes. You need to become informed about what the bill is and what its implications are, but we don't want to turn into a mirror image of the recording industry… We actually want you to speak from the heart about what your own view is, warts and all. That will have more impact."*

There were limitations to the tools Geist used, especially Facebook. After membership passed the 1,000 mark, Geist was unable to message the entire group, because of limits set by Facebook to avoid spam (the limit has since been upped to 5,000, but this would still have been no use for Geist). And because of the choice to use Facebook, Geist – unlike other campaigners, for example in the UK – did not have access to the email addresses of Canadians concerned about C-61, so could not take grassroots messaging activities out of Facebook. And now, although the Facebook group is dormant, because Geist knows he may want to resurrect the group, he has to regularly remove a lot of spam messages that get posted to the group page.

Offline campaigning

The success of Fair Copyright for Canada was not all about Facebook. After the success of the Facebook group, Geist quickly moved aspects of the campaign offline and into the "real" world, for example through encouraging relevant group members to attend Jim Prentice's Calgary riding party.

Geist also directed Canadians to communicate their concerns through well-established official mediums. Half of Geist's "30 things you can do" are about writing letters to official

bodies, with other established forms of protest, such as petition signing and consumer boycotts, also suggested.

The media attention that the novelty of the Facebook protest attracted to Geist's campaign is something that may not be able to be repeated, at least in Canada:

> *It probably would be far less effective today. So if you had a group of even 100,000 people, I think it would get attention but I don't think that they would see that as a big deal where now there's lots of groups that have grown to that kind of scope. If Ashton Kutcher can get a million people to follow him on Twitter, then these numbers just don't mean that much anymore. And so the whole key is how can you go ahead and convert? I think my goal always was if we can get 10-20% to do at least one thing, if you're big enough that's going to have an impact.*

The right message

Fair Copyright for Canada had a campaign message that appealed on three levels. The core message was one of consumer rights. Messaging asked Canadians to think about what C-61 would mean for them in terms of what they could do with their CDs, DVDs, cell phone etc. It asked students to think of what C-61 would mean for what they do as a student in terms of the electronic books they buy. And it asked parents to think of what C-61 would mean for them in terms of, for example, making back-up copies of their children's favourite videos. Geist:

> *For the broader public a lot of it was very much 'They're telling you it's about filesharing. It's not. It's actually about your property rights'*

The consumer message played well in the media, because it spoke to people's everyday lives:

> *Especially to the media, you say 'Well, do you realise that the legislation says finally that you can record a television show, but it creates twelve conditions in order to be able to do it, and you better be sure that if you're using a PVR that it doesn't record any repeats because you can only record it the once, you have to delete it after a short period of time.' And they're like, 'Really? What? I mean, how can that be?'*

On top of this was a message about civil rights – about the effects the legislation would have on privacy, and on the right to free expression, in terms of letting Canadians be creators and speak for themselves. Finally, the message appealed to a sense of national pride, and in particular to latent anti-Americanism. Campaigners could message on the fact that the Bill was being introduced in response to US pressure.

In sum, Geist describes the basic message of the campaign thus:

> *Essentially, the message that ultimately got out there was, 'Holy shit, this really is going to affect me and I don't… why are we doing this kind of backward approach? What's going on?'*

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Working the inside track

Geist was in a uniquely good position to head-up the Fair Copyright for Canada campaign, given that he had a significant public profile as a blogger and columnist, as well as contacts with a number of insider stakeholders.

The success of the Fair Copyright for Canada campaign relied to some extent on inside information Geist was able to get from his stakeholder contacts. Geist identifies government relations officers for major corporations as good sources of information.

It's important for campaigners to understand where IP policy is formed in the legislature. Often, as in Canada and the UK, it will be the responsibility of more than one Government department. Advocates can take advantage of differences in opinion between departments with shared responsibility for IP policy, to delay new legislation, or to ally with the department with the more reformist agenda in order to get inside information.

Further resources

http://www.michaelgeist.ca/

http://www.faircopyrightforcanada.ca/

http://www.facebook.com/group.php?gid=6315846683 (Facebook group)

Lessons from the campaign

Provide analysis. Geist provided detailed analysis of the bill's contents throughout the campaign.

Protest where the people are. Fair Copyright for Canada succeeded on Facebook because Facebook was the online social networking platform of choice in Canada. Geist had to trade off his privacy concerns to engage with the Facebook community, but if he hadn't, Fair Copyright for Canada may not have been such a success.

Take the campaign through established channels. Geist quickly moved aspects of the campaign offline and into the "real" world. Half of Geist's "30 things you can do" were about writing letters to official bodies (elected representatives, government departments, educational institutions), with other established forms of protest, such as petition signing and consumer boycotts, also suggested.

Encourage local groups. Don't try to micro-manage their activities - distributed systems are more efficient and letting people speak from the heart will have the most impact.

Get the message right. Geist asked Canadians to imagine what the Bill might mean to them.

Know what's going on inside Government. Geist was in a good position to head-up the Fair Copyright for Canada campaign, given that he had a public profile as a blogger and columnist, as well as contacts with a number of insider stakeholders.

Case Study: Graduated Response in France

I n September 2007, the French Culture Minister asked Denis Olivennes, former CEO of French music chain FNAC, to investigate responses to copyright infringement online. Two months later, Olivennes came back with a report entitled *Le développement et la protection des œuvres culturelles sur les nouveaux réseaux* (*The*

Location:	France / EU
Lead campaigners:	La Quadrature du Net
Issue:	Graduated Response

development and the protection of cultural works on new networks). In it, he proposed a "graduated response" to those accused of infringing copyright across peer-to-peer filesharing networks, ultimately resulting in their disconnection from the internet.

The proposals did not come as a surprise. During the transposition of the European Union Copyright Directive (EUCD) into French law and the subsequent passing of DADVSI (*Loi sur le Droit d'Auteur et les Droits Voisins dans la Société de l'Information – Copyright and Neighbouring Rights in the Information Society*) into French law, similar proposals had been put forward. Back then, they had been crushed by the French Constitutional Council, but campaigners knew to expect their return.

Sep-07	Olivennes report commissioned
Nov-07	Graduated response proposals tabled
Mar-08	Launch of La Quadrature du Net
Apr-08	European Parliament adopts Bono Report
May-08	Telecoms Package campaign begins
Sep-08	First vote on the Telecoms Package
Nov-08	French Senate votes through HADOPI law
Mar-09	Launch of internet blackout campaign
Apr-09	French National Assembly rejects HADOPI

A group of campaigners, some of whom had previously fought anti-circumvention provisions in the DADVSI (under the EUCD.info banner) and/or software patents in Europe, came together to fight the graduated response proposals. As Government and industry agreed to take forward the Olivennes Report in the shape of the Olivennes Bill, later to become known as the HADOPI Law, these campaigners came together to found La Quadrature du Net ("Squaring the Net"). The organisation was officially launched in March 2008.

Because France would hold the Presidency of the EU in the second half of 2008, Europe was a key venue for la Quadrature to launch their campaign. In March 2008 they joined a loose coalition of European campaigners, led by EFF Europe, in

campaigning for amendments to Guy Bono MEP's report on the cultural industries. The campaign was successful, and the report aligned the European Parliament to a non-binding statement that condemned disconnecting citizens from the internet in any but the most extreme circumstances.

In May 2008, La Quadrature became aware of a suite of disjointed proposals in revisions to a complex group of European directives (known collectively as the Telecoms Package), revisions intended to update the regulation of telecommunications networks. La Quadrature describe these proposals as a "Trojan horse" that would covertly deliver the graduated response scheme to European member states:

> *There were 8 or 10 bits of it. They were mostly harmless when taken separately, but altogether they shaped the whole scheme we were familiar with in France.*

Again in coalition with other groups, La Quadrature worked to neutralise the proposals by promoting a series of favourable amendments to the legislation. Key in this campaign was getting the plenary vote on the Package postponed from 2 September, right at the start of the EU Parliamentary session, to 24 September. This allowed for almost a month of significant campaigning, that in turn resulted in a positive outcome: 90% of amendments they promoted rated as "+++" (the most important) were adopted. As a result the package has now gone to a second reading, and could well be delayed until after the European elections.

A few screenshots from the HADOPI blackout campaign

Back in France, despite La Quadrature's best efforts, and despite the obvious steer from Europe, the French Senate voted almost unanimously in favour of adopting HADOPI in

November 2008. However, after a concerted "internet blackout" campaign, combined with other lobbying and media interventions from La Quadrature in the first months of 2009, the French National Assembly voted to reject the law in April 2009. A revised version of the proposals is expected to go in front of French legislators in due course.

Ambitions, practicalities, strategy

La Quadrature had been motivated to form since the French elections of May 2007, which brought in an administration they feared would have no qualms about compromising the civil liberties of internet users in favour of corporate interest. La Quadrature had hoped to promote a more positive agenda, picking up on the "licence globale" proposals put forward but quickly (and, arguably, undemocratically) rejected during the DADVSI negotiations. The proposals would have initiated a flat tax on internet connections to provide new revenue for creators in exchange for the right to share copyrighted works over peer to peer networks, making France one of the first countries to "legalise" peer-to-peer filesharing.

However, as the Olivennes proposals took shape in late 2007, La Quadrature understood that this was their chance to bring public attention to a number of key issues in legislation on copyright and new technologies: network neutrality; the internet connection as a civil right; the unacceptable nature of filtering technologies; and the high levels of technical illiteracy in the French administration.

The goal of the organisation was to combine their experience of campaigning at the grassroots with their experience of the legislative process in order to bring back the citizen's voice to law-making. To achieve this goal, they built tools, such as politicalmemory.org, which allowed citizens to easily track and contact their elected representatives. And they produced condensed versions of complex policy papers, to give ordinary people easy insight into legislative proposals being discussed:

> On the one hand, we make the information accessible; on the other hand, we make the channels towards the elected representatives accessible. And in the middle we make calls to campaign.

Working in Europe

La Quadrature were fighting graduated response on at least two fronts. In contrast to the UK campaign against term extension, where the push for an increase to copyright term needed to be fought first domestically and then subsequently at the European level, for La Quadrature, the battles took place almost simultaneously. This had positive effects – arguments won in Europe, such as with the Bono report, were more likely to echo back home (and vice versa). It also had less positive effects – the complexity and intensity of campaigning against the Telecoms package could well have prevented La Quadrature from campaigning during the Senate vote with the same intensity they later campaigned – successfully – during the National Assembly vote.

Each time La Quadrature worked in Europe, they did so in coalition. La Quadrature stress that coalition working is a vital strategy for them. But they also stress that coalitions work

well when they are achieved through informal, personal connections, rather than structured or formalised arrangements:

> *The coalition aspect is something that is important. It was made in a very informal way out of contacts with key people in the major countries. By gaining the trust of people around our analysis, that allowed us to trigger the European movement.*

They also actively encourage other activists to take the material on their wiki into different directions, describing new volunteers who start initiatives that are out of their control as "very, very useful".

The importance of rigour

The most important tool for La Quadrature was the rigour and robustness of their analysis – and not just for inspiring coalition-making. During the National Assembly campaign, they encouraged citizens to send a 42-page dossier on the HADOPI law to their representatives in the Assembly . They understood that this analysis needed to be watertight:

> *One key of all this might be that people expect rigour and precision in our analysis. So, because we have precise analysis, because we use the correct terms and we have the proper reference to the legal text, then we cannot be attacked. Then the journalists trust us, other groups trust us, and we are successful with what we do.*

La Quadrature say that occasionally they felt a lack of legal resources within their organisation, which meant they needed to seek analysis from other parties. This incurred delays. But they stress that waiting was preferable to making mistakes in the analysis.

Messaging the media

The emphasis on rigour affected how la Quadrature shaped their messaging. For La Quadrature, messaging started with a detailed level of analysis, and was "distilled" from there:

> *Coming from... the pile of amendments to a weekly list of short analysis, [then] to a shortlist of the most problematic amendments, [then] to an analytical press release describing this shortlist and specifying the problem, [then] to a quick press release summarising those problems... [then] to the quotes in the press release that summarises the summary, [then] to the way you deliver these quotes to the media. I think this is all the same message that you make shorter and shorter and shorter and shorter all the time.*

During heavy media days, messages would be further honed "on the hoof", as spokespeople for La Quadrature put messages into practice, and saw what worked well. During the period around the National Assembly vote, La Quadrature broke all media records, getting coverage on all the major news channels and newspapers in France.

La Quadrature found the media was on their side, particularly when one Minister described them as "just five guys in a garage". He would later regret the comment, as the media used it

to portray the fight over HADOPI as one of David versus Goliath, and to illustrate both the Minister's ignorance about the internet (the "just some guys in a garage" story lies behind many internet businesses that are global success stories today) and dismissal of the public outcry over the law (one political opponent responded "They are not five guys in a garage. They are millions!").

Although in contrast to other campaigners, La Quadrature downplay the role of email lists in their campaign, they do stress that their journalist email list was an important tool in the campaign against graduated response.

Agitating the grassroots

Based on their experience, La Quadrature believe that the proper time to launch a grassroots campaign is one or two weeks before the event upon which the campaign is focussed (for example, the National Assembly vote). Their messaging appears to follow a three-step template:

- You have a problem

- Your civil liberties are under threat

- There is something you can do

Lessons from the campaign

Work with what you've got. If an opportunity to campaign arises that communicates the core values of your organisation, take it. La Quadrature had initially started with a proactive agenda, but they seized the opportunity to campaign against HADOPI.

De-mystify the legislative process. The new tools of the internet are an opportunity to put the voice of the citizen back into law-making. Create simple, informative websites that help citizens navigate the institutions of government. Wikis are a good way to do this with limited resources.

Work in coalition. Making an impact in the EU is hard, but small groups loosely joined can make a difference. Encourage people from other member states to join in and don't try and manage their activities.

Stay rigorous! If you are a campaign group producing original analysis, be aware that it will be under special scrutiny. Mistakes will cost you.

Distil your message for the media. Stay true to your analysis but make the messages shorter and shorter.

Keep messages to the grassroots simple. Show them how the problem will affect them, and give them simple steps to change things.

Let people come to you. An internet blackout campaign will capture people when they least expect to be sent campaigning messages.

Like the Creative Freedom Foundation in New Zealand, they recommend keeping actions simple and have a graduating series of actions people can undertake – from actions that suit

those who want to just add their name to something, to people who want to spend days phoning their elected representatives or inviting them to meet face to face.

The internet blackout campaign they initiated (inspired by the New Zealand campaign) originated from their own and their coalition partners' websites, and spread virally over the net. As with the Creative Freedom Foundation, La Quadrature gave people support in blacking out aspects of their presence on the web (see http://www.laquadrature.net/wiki/HADOPI_BlackOut). And many of the "HADOPI blackout" pictures they supplied contained embedded links back to pages on La Quadrature's website that gave instructions on how to contact your representative in the National Assembly. An impressive gallery of HADOPI blackout actions is maintained at http://www.laquadrature.net/HADOPI-blackout-gallerie.

During the period around the National Assembly vote, the record for incoming email on one issue at the French Parliament was broken. During the vote itself, the record for simultaneous connections to the National Assembly webcast stream was also broken. La Quadrature estimate that tens of thousands of French citizens contacted their representatives to protest against HADOPI.

La Quadrature identify their wiki and IRC channel as key tools in organising and amplifying their campaigning activities. They see email as less important and believe that the blackout campaign, in bringing web users from all over the internet to their message (rather than broadcasting their message to web users using mass emails) was a highly effective means of campaigning.

Further resources

http://www.laquadrature.net/en

http://www.laquadrature.net/wiki/HADOPI_BlackOut

Case Study: Opening up debate in Brazil

I n 1998, on the basis of what was for all intents and purposes a symbolic vote in the Brazilian Congress, a new Copyright Act for Brazil was passed. It transformed Brazilian copyright law into one of the strictest regimes in the world. That the law had no concept of fair use, or fair dealing of

Location:	Brazil
Lead campaigners:	Multi-party
Issue:	Creating a public debate in Brazil

copyrighted works, and a permissions system for the use of copyrighted works that was highly limited, was in a great part the result of an absence of civil society pressure during the drafting process. The law was drafted in accordance with private interests, and any debate around provisions of the law was restricted to disputes around the divergent interests of national and international rightsholding industries.

From 2002, new stakeholders and constituents from civil society have been gradually joining a public debate about copyright reform. The public debate was initially seeded by scholars, but has been amplified by various other communities and civil society constituents. Public debate on copyright reform is now mainstream, to the extent that it is unlikely that a law such as the 1998 Copyright Act could be passed again. Copyright reform has chalked up a number of campaign success along the way, and the Brazilian Ministry of Culture is about to release a draft Bill amending the 1998 Act that promises to redress the balance in Brazilian copyright law, at least in part. This case study looks at how – and why – the public debate changed in Brazil over this period.

Proactive beginnings

Copyright reform in Brazil was driven by proactive campaigns such as the Free Software Forum, and important parts of the academic sector in Brazil. The Brazil Free Software Forum (FISL), which is held annually in Porto Allegre, attracts thousands of participants and is currently on its tenth edition. For instance, it was here, in June 2004, that Creative Commons Brazil was launched by Brazilian academics, journalists, industry representatives, artists and others, led by the FGV Law School in Rio de Janeiro, to an audience of 2,000 people – by far the biggest audience for a CC licence launch in the world before or since.

The Free Software movement, and other NGO´s such as IDEC (Institute for Consumer Defence), became important, proactive copyright reform campaigns in Brazil. This public interest in copyright traces back a year earlier, when Harvard's Berkman Centre for Internet and Society had held its iLaw programme in Rio de Janeiro, where John Perry Barlow, co-founder of the Electronic Frontier Foundation, had debated the economics of culture with newly appointed Culture Minister and national cultural hero Gilberto Gil.

Although neither the copyleft philosophy that underpins Free and Open Source Software, nor the "some rights reserved" approach of Creative Commons, challenge the fundamentals of the copyright system, understanding these alternative systems allowed officials to more immediately understand the restrictions that Brazilian copyright law, as it stood after the 1998 Act, placed on creativity. So it was that in December 2006, responding to an aggregation of movements and issues of which the proactive reform agenda was a main feature, the Ministry of Culture created a National Copyright Forum. The Forum was to take the form of a series of open seminars across Brazil, with a view to amending the 1998 Act once a way forward had emerged from the discourse.

Feb-98	Brazilian Copyright Act Passed in Congress
Jan-03	Gilberto Gil appointed Minister of Culture
Mar-03	Conference including Gil, Lessig, Zittrain, Perry Barlow etc...
Jun-04	Creative Commons Brazil launched at FISL5
Oct-04	Brazil and Argentina launch the Development Agenda at WIPO
Jun-05	São Paulo statement on exceptions for private copying
Oct-06	IFPI press-launches lawsuits against Brazilians suspected of illicitly sharing files
Dec-06	Ministry of Culture launches National Copyright Forum
Oct-07	IIPA complains about São Paulo statement to USTR
Jul-08	Campaign against Brazilian Cybercrime Bill begins

Fertile ground

Brazil was well-placed to progress ideas about copyright reform, because the message of reform spoke directly to Brazilian national identity and to Brazilian national aspirations.

The philosophy of proactive copyright reform movements like copyleft and Creative Commons already had mainstream appeal in Brazil, thanks to the country's cultural history. So-called "cultural cannibalism" – the building of culture out of and on top of other cultures – is seen as a central characteristic of Brazilian creative life. This tradition was strengthened with the advent of Tropicalia, the sound associated with Gil and his fellow musicians in the 1970s, when electronic guitars were added to Brazilian music to create the Tropicalia sound. Remix culture was, therefore, alive and thriving in Brazil well before the advent of the networked, digital age.

Furthermore, intellectual property reform was seen as an opportunity for Brazil on the geopolitical stage. It was understood early on that Brazil could make an economic impact by presenting an alternative to strong IP that was economically productive. Adopting such a strategy could not only ensure Brazil a place at the top table in global economic discussion, it could also insert Brazilian ideas into the international agenda. Early indicators of the

success of this strategy include Brazil's introduction, in partnership with Argentina, of the Development Agenda at WIPO in 2004.

Ivory Towers and Grassroots

The campaigns for copyright reform were inspired by issues detected by the Brazilian academy, including well known institutions such as the Center for Technology & Society at the FGV Law School in Rio de Janeiro, the University of São Paulo´s GPOPAI, the Communication School at the Federal University of Rio de Janeiro, and others. Also, Brazilian civil society – students' unions, consumer groups and the Free Software Forum – worked closely with one another. Understandably, the academy maintains a non-partisan, unbiased analysis. But other key network leaders in grassroots movements have been active and political, taking this analysis and giving it to civil society as a vital tool to seed popular action over key issues.

"Copiar Livro e Direito"

After the Associação Brasileira de Direitos Reprográficos (ABDR – Brazil's major publishing industry body) began prosecuting Universities who allowed students to photocopy portions of copyrighted books in a practice the ABDR maintained went beyond the narrow exceptions provided for by Brazil's copyright law, students began agitating for change. Student Unions in campuses across Brazil formed a short-lived movement called "Copiar Livro é Direito" ("To Copy a Book is a Right").

Logo of the "Copiar…" campaign

Publishers argued that if libraries were poorly stocked, students should buy their own copies of vital course books, and refused to license campus copy shops. But the economic realities in Brazil mean that most people could not afford to do this – research showed that one year of course books could cost as much as a year's salary on Brazil's minimum wage.

São Paulo University issued a statement in June 2005 which sought to safeguard Brazil's constitutional guarantee of access to education and culture. It stated that so long as students had no intention to profit from the endeavour, they should be permitted to copy whole chapters from books, and to copy works licensed under Creative Commons or – most controversially – works which were out of print in Brazil. Later, the International Intellectual Property Alliance (IIPA) would petition the USTR to encourage São Paulo University to reverse this policy as part of the Special 301 report process.

Although the São Paulo University statement remains in place, ultimately the "Copiar..." movement was short-lived. This is ascribed to those students who had led the movement graduating and moving on. Those activists in the faculty who valued the input of "Copiar..." now recognise the need to support students' movements to ensure they remain sustainable beyond the school days of the students who initiate them.

The IFPI in Brazil

In October 2006, the International Federation for the Phonographic Industry (IFPI) staged a conference in Rio de Janeiro's prestigious Copacabana Palace Hotel. The conference was intended to sweeten the launch of IFPI lawsuits against twenty Brazilians suspected of sharing files unlawfully over the internet. John Kennedy, Chairman and CEO of IFPI, made the announcement, and the Brazilian Association of Disc Producers (ABPD) turned up to support it.

Enrolment was open to all, and three law professors from the Center for Technology & Society at the FGV Law School in Rio de Janeiro duly enrolled. Although their accreditation was accepted, when they arrived on the day, security guards refused to let them in. Given there was plenty of space inside the conference, the academics believe they were refused entry in order to stop them asking uncomfortable questions at a recording industry-staged press event.

Lessons from the campaign

Plug copyright reform issues into a national frame. Brazil was well-placed to progress ideas about copyright reform, because the message of reform spoke directly to the Brazilian idea of "cultural cannibalism" and to Brazilian national aspirations.

Get to know your local creative industries. Become aware of the cultural industries in your country, so you can understand the real relevance of your opponents. Get data. What is the size of the market? Are the industry enabled to publish, for instance, CDs, books? How many bookshops are there in the country?

Establish good relations with local media. Local media will be interested in well-informed and reliable local sources on what are often international issues. Let them know you will comment on a wide range of "new technology" issues.

Combine academic integrity with grassroots action. Get together with your allies, understand who they are and work with them in partnerships. In Brazil legal opinions and policy papers produced by academics were used by Free and Open Source Software advocates as calls for action among wider civil society, which in turn put pressure on the media and politicians to act in accordance with institutional advice.

Ensure your organisations are sustainable. Student groups can be a great catalyst for change, but remember that students graduate, and that the next generation of students need to be involved in campaigns early on to ensure a sustainable cycle of activism.

However if this was indeed the IFPI's intentions, their strategy back-fired. Almost all press coverage of the event was split between outrage that Brazilians should be sued by wealthy Western corporations, and more outrage that Brazilian experts should be refused entry to the conference. Whether this had a long term effect on the IFPI's strategy in Brazil is unclear, but it remains the case that the IFPI is yet to launch any lawsuit against Brazilians suspected of illicitly sharing copyrighted files.

Cyberactivsmo campaign

In July 2008, after a punitive bill dubbed "the Cybercrime Bill" that included minimum five year jail sentences for copyright infringement was passed by the Brazilian senate, the Brazilian academy raised several problems and activists started a campaign. Academics from the University of São Paulo, Federal University of Bahia, the Center for Technology & Society at the FGV Law School in Rio de Janeiro and others worked up a twenty-page legal opinion, analysing the bill article-by-article. Others in the IP reform movement, such as the Free Software community, and other members of the Brazilian academy, spread the word about an online petition. They then targeted Brazil's Lower Congress with the petition, which had attracted more than 140,000 signatures. The mainstream media picked up on the story, which added pressure on the Congress. Congress stopped the Bill and called for a public hearing. The issue is still ongoing.

Further resources

http://www.a2kbrasil.org.br/ENG/-Weblog-ENGLISH-

Case Study: Guilt on Accusation in New Zealand

The Creative Freedom Foundation was set up by Matthew Holloway and Bronwyn Holloway-Smith in 2008, in response to changes to the law in New Zealand that threatened to undermine artists' and public rights in the name of protecting creativity. The founders wanted to give a unifying voice to New Zealand artists in debates about changes to the law made in their name, where they felt artists were not represented and public awareness was low. Their launch campaign was against a new provision in New Zealand's Copyright Act – Section 92A – which mandated that internet service providers adopt a policy of terminating the internet accounts of so-called "repeat copyright infringers".

Location:	New Zealand
Lead campaigners:	Creative Freedom Foundation
Issue:	Graduated response

Section 92A had been introduced in 2008, prior to the setting up of Creative Freedom, but was yet to be implemented. The Creative Freedom Foundation made it their goal to raise awareness among the public about Section 92A, with the ultimate goal of having the law repealed or significantly amended. In November 2008, they designed a website to promote the campaign, releasing it to a hand-picked group of legal experts, artists, media commentators and other opinion-formers for comment and feedback. Following revisions to the site that were guided by this process, the website was eventually launched on 17 December 2008.

Apr-08	Section 92A introduced, implementation date set.
17-Dec-08	Creative Freedom Foundation website launched
16-Feb-09	New Zealand internet blackout begins
19-Feb-09	Protest outside Parliament – petition handed over
23-Feb-09	Prime Minister announces Section 92A will be delayed
23-Mar-09	NZ Government announces it will remove section 92A

Creative Freedom had decided to use the internet as the core tool for the campaign against Section 92A. The decision was based on how they thought they could raise the most awareness given their limited resources (both of the founders have day jobs and ran the campaign in their spare time), and was also based on the nature of the legislation they were campaigning against – the issue related directly to the internet so it

made sense to have an internet-based campaign. However, during the later stages of their campaign, protests and campaigning activities did take place offline too.

The most striking feature of the Creative Freedom campaign against Section 92A was the so-called "New Zealand internet blackout", which saw a significant number of internet users in New Zealand and internationally black out aspects of their online profiles – avatars, status-update messages and whole website pages – in protest against Section 92A. On 23 March 2009, the New Zealand Government announced that they would remove Section 92A of the New Zealand Copyright Act, and begin redrafting it.

Strategies and goals

Holloway-Smith identifies the feedback given about the Creative Freedom website by their group of "beta-testers" in the early stages of their campaign as crucial for the campaign's later success:

> *One key piece of feedback that was received was that no-one wants to have to care about an issue. It's quite hard convincing people that it's worth their time and energy to come on board and respond to an issue and so it takes time. People don't understand or dedicate themselves to every issue that comes along so you need to make it really easy and significantly convincing for them to care.*

The campaign was faced with the challenge of making the issues presented by Section 92A accessible and easy to understand and get behind by the general public. Of significant concern was the fact that those accused of copyright infringement would be so at the behest of rightsholding organisations, and would have no opportunity to defend themselves in a neutral court of law. In the end, Creative Freedom came up with the phrase "Guilt Upon Accusation":

> *The 'Guilt upon Accusation' phrase that we used for the first part of the campaign was coined as the sound bite version of the issue and subsequently it became a kind of brand and beyond the brand I guess this was kind of the capture point.*

Once Creative Freedom had captured the public's attention and support for the issue, the website was specifically structured to provide increasing levels of information and participation opportunities based on the increasing levels of thought and time individuals felt they wanted to dedicate to the campaign:

> *We had a list of ways that people could participate so the first step was to sign the petition. The second step was asking people to email their friends about the issue and we provided a piece of sample text that they could use or modify... We provided banner adverts for people to place on their own website and that linked back to our site. And then we started to bring in the social media aspect. So we set up the Facebook group, Twitter account and a MySpace page...*

Campaigning began in earnest in the two weeks before the law was due to come into effect. It was then that Creative Freedom encouraged the spread of the internet blackout campaign:

> *That week was the real turning point for the campaign... There were instructions for participating on the website... We asked people to black out their profiles on Facebook, Bebo, their Twitter profile pictures, and also to change the appearance of their website or their blog and MySpace pages to black and then we provided instructions on how to do that and what to say, so Facebook would be one example, where we provided the black profile images that people could use...*

Although Creative Freedom have no hard statistics on how many people acted on their call to action, they estimate that tens of thousands of people supported the internet blackout campaign in some way. Anecdotal evidence suggests there was a high take-up both within New Zealand and internationally, with many high-profile figures, including British comedian Stephen Fry, taking part in the internet blackout. The campaign attracted significant media interest, and Creative Freedom capitalised on this by orchestrating a series of events in the week before the law was to be implemented, in order to give the media something to pick up on nearly every day. This kept the issue current and alive.

Protesters gather outside the New Zealand Parliament

Throughout the campaign, Creative Freedom had been collecting signatures on a petition protesting Section 92A. On 19 February, protesters carrying black placards joined Holloway-Smith outside New Zealand's Parliament, where she handed the petition and its 9,000+ signatures to Peter Dunne MP, a member of one of New Zealand's coalition parties. Creative Freedom also gave a copy of a song that had been composed about the issue – "The Copywrong Song" – to each of the 122 members of the New Zealand Parliament.

During the campaign, Creative Freedom maintained good relations with the media. They understood that they needed the media to take their message beyond the online world. They describe the media as being broadly supportive of their message, but highlight that they occasionally received phone calls from individuals who may or may not have been directly attached to the press, who would try and get them to say controversial things (for example that they condoned illicit filesharing of copyrighted material), which could ultimately have harmed their campaign. Despite being a young and fairly inexperienced

organisation, they understood that they needed to put forward a reasonable and professional public image in order to be taken seriously in the long term.

Creative Freedom are conscious that the New Zealand electoral cycle played a part in the success of their campaign – Section 92A had been introduced by the previous Labour government, and it was the National Party – who won power from Labour in November 2008 – who eventually scrapped it. They do not wish to take all the credit for the scrapping of Section 92A, but they do assert that the amount of public support for their campaign was a factor in the legislation's demise. The success of the campaign has been a great start for the Creative Freedom Foundation, and they plan to use the momentum that is now behind their organisation in New Zealand in order to campaign on new issues, such as DRM, and

New Zealand's role in the ACTA negotiations. They also hope to feed in positively to the government's redrafting of Section 92A.

The Creative Freedom campaign against Section 92A came very early in their history as an organisation, and they describe it as "a bit of a rollercoaster ride". They found that working day jobs as well as working on the campaign meant they were often up working into the early hours of the morning, a situation they found "pretty taxing". Both founders would like to approach new campaigns so that they are more manageable, through finding funding for their organisation, and through engaging in more forward planning and delegation. One other thing that could have helped them during the campaign was software that allowed them to update their presence on the various social networking sites they were employing all at once, instead of one by one.

Further resources

http://creativefreedom.org.nz/

Case Study: Copyright term extension in Europe

In February 2008, Charles McCreevy, Commissioner for the Internal Market at the European Commission, announced that his Directorate (DG) would be considering the proposal to the extend the length of time copyright is afforded to sound recordings, from 50 years to 95 years.

Location:	UK/EU
Lead campaigners:	Open Rights Group; EFF
Issue:	Copyright term extension

One of the most striking things about McCreevy's proposal was that it went against evidence commissioned by his own DG. In early 2007, the Institute for Information Law at the University of Amsterdam (IViR) had been commissioned to look into the case for extending term and had concluded that the proposals should not be taken forward. This evidence backed up the findings of an early study from the UK, which had been commissioned in 2006. The Open Rights Group, who had fought proposals to extend term in the UK in 2006, prepared to begin their campaign afresh.

Dec-06	UK campaign against copyright term extension campaign successful
Jan-07	iVIR publish study rejecting term extension for DG Internal Market
Feb-08	DG Internal Market announces term extension proposal
Feb-08	ORG launch Sound Copyright petition at FOSDEM
Jun-08	ORG ask Commission DGs to reject proposal
Aug-08	European Commission formally propose term extension
Nov-08	First JURI hearing on proposal
Jan-09	ORG event in European Parliament
Feb-09	JURI vote proposal through; ongoing Council of Ministers negotiations
Mar-09	Proposal enters Trialogue discussions
Apr-09	Parliament vote in favour of compromise proposal

Since the 2006 campaign, the rhetoric of term extension appeared to have changed. Whereas in 2006 wealthy, big names stars like Cliff Richard had spear-headed the campaign, with complaints that without the copyright term extension they would "lose their pensions", this time around the measure was said to be of benefit to performers and session musicians who were not household names. It was felt that this rhetoric was being employed by proponents because the "underdog" story would play better in the media.

In late February 2008, in coalition with EFF Europe, ORG launched the Sound Copyright campaign, which called on European citizens to sign a petition opposing the term extension. The petition was launched at FOSDEM, the annual gathering of free and open source software practitioners in Brussels, and by the end of March, over 10,000 people had signed.

In June 2008, ORG travelled to Brussels to meet with representatives from other Commission DGs and urge them to block the proposals. However the proposals eventually went through and were put forward formally by the Commission in August 2008.

Responding to a call for evidence put out by the UK's Intellectual Property Office ORG submitted an evidence-based document which demonstrated that the average European performer stood to gain as little as 50¢ per year from an extended term. They made the argument that an copyright term extension made in the name of the average performer would be a nonsense, and that laws based on nonsense were unlikely to win the support of the general public. This was a direct appeal to other initiatives within the EU to strengthen the enforceability of copyright law.

ORG tracked the progress of the proposal through the European Parliament, attending the first hearing on the proposal by the Legal Affairs Committee (JURI), co-hosting (with the European Green Grouping) their own event in the Parliament in January 2009, and meeting with key MEPs on these trips and on separate trips in March and April 2009. They also developed a coalition of stakeholders who opposed the proposal. Among them were a group of academics from across Europe already active on the issue, as well as consumer advocates and digital rights activists from across Europe, sound archivists, performers, remix artists, librarians and broadcasters. As well as lobbying MEPs face-to-face and on the telephone, ORG and other members of this loose coalition were working behind the scenes to influence national governments to block the proposals at Council of Ministers negotiations. ORG also encouraged those who signed the Sound Copyright petition to get in touch with their MEPs on the issue.

These strategies combined to complicate – perhaps fatally – the progress of the Directive through Parliament. Although the JURI committee voted the proposal through in February, a full Parliamentary vote was delayed by blocks established at the Council of Ministers. The proposal then went into Trialogue negotiations, as representatives from the Commission, Council and Parliament attempted to achieve consensus on some sort of proposal for Parliament to vote on before the end of the Parliamentary session and the start of the European elections. A proposal to extend the copyright term to 70 years instead of 95 years was eventually put before Parliament on 23 April. ORG encouraged petition signers to ask their MEPs to support an amendment rejecting the proposal. 222 MEPs supported that amendment, with 370 opposing it. In the end, the proposal to extend term was voted in by 317 in favour, with 178 against and 37 abstentions. The 70 year proposal will now go back to the Council of Ministers, where it remains blocked by a significant number of member states.
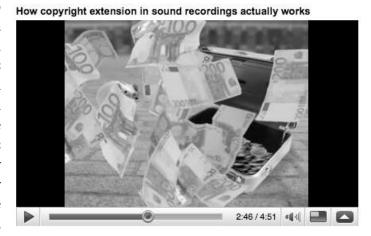
Bypassing the media

ORG are aware that copyright term extension in sound recordings could well be perceived as a niche issue. However, they see it as part of a wider mission to wrest the debate around copyright reform from the clutches of major rightsholding organisations. They chose to message on the fact that the EU proposals had no evidence to back them up, and were not being made in the interests of all European citizens, but in the interests of a very select few.

On an emotional level, this message can have been said to have performed badly, at least initially, against the rightsholder message of "poor performers". As ORG Executive Director Jim Killock observes, there are several key aspects of a good campaign:

> *It's got to be important. It's got to be immediate. It's got to be clear and make a moral case.*

ORG's strongest tools appeared to be the cross-European independent academic rejection of the proposals – but arguments here were highly technical and didn't translate easily into moral messages. However much the message of balancing interests and evidence-based policy appealed to intellectual property insiders, it was hard to translate into sound bites for the media. ORG's sustained critique of the lack of evidence behind what they dubbed the "fairy tale" of the poor performer did in the end have some impact in the mainstream media, with ORG's perspective represented in the national print and broadcast media in the UK. But, in comparison to many of the other issues ORG was fighting on at the time, their interface with the mainstream media was low.

Still from "How Copyright Term Extension Actually Works"

Faced with this situation, ORG chose to create its own media. A viral video was commissioned (a cartoon called "How Copyright Term Extension Actually Works"), and uploaded to YouTube. Details of the video were sent to those who had signed the Sound Copyright petition, as well as to high-volume online communities such as BoingBoing.net and TorrentFreak.com. In the space of two weeks, it had been watched by over 25,000 people. The January event was also filmed and uploaded to YouTube, although it attracted far fewer views than the cartoon. ORG remain proud of these figures, but are also aware that the majority may well represent people who were already concerned about IP reform, rather than new converts to their cause.

Grassroots engagement

In terms of grassroots engagement, the email list generated by the Sound Copyright petition was ORG's main tool for achieving mobilisation. The call to action was almost exclusively that petitioners write to their MEPs and in-country representatives, although they also invited petitioners to come to the January 2009 Parliament event, with some success.

ORG used a series of campaign touch points to encourage petitioners to engage with MEPs, both events in the legislative agenda (votes at committee, votes in Parliament) as well as peripheral events, such as statements from the group of campaigning academics, or the ORG YouTube video. In each call to action, they tried to address a different aspect of the issue: the poor deal for the performers; the lack of evidence; or the particular views of ORG with regards to culture and balanced IP. They gave petitioners briefings that summarised the issues, but stressed that petitioners should write to their MEPs in their own words.

ORG were faced with the challenge posed by form responses that many of the petitioners received back from their elected representatives. Although ORG gave clear instructions to petitioners about the importance of following up on these form letters with further written enquiry, telephone calls or face to face meetings, they are sceptical about how many petitioners took up this advice. The sustained timeframe in which ORG asked supporters of their campaign to write to their MEPs – which contrasts with the short timeframes of the New Zealand and French internet blackouts against graduated response – is also worth noting. Nonetheless, ORG received reports – and occasionally complaints – from MEPs about the volume of mail they were receiving on the term extension issue.

In the UK, citizens can engage with their elected representatives (including MEPs) using a one-click service called WriteToThem.com. Jim Killock is keen to stress that it is vital that such a tool be developed for all EU member states:

> *Writetothem.eu is absolutely critical if we want to run these campaigns in the next four years. It shows the contempt in which we seem to hold our European institutions and the irrelevance that they are felt to have across Europe.*

Killock believes that the attitude of some MEPs towards the emails they received on the back of the term extension issue, coupled with the fact that – less than two months before an election – so many of them were willing to vote for term extension despite the clear public support for rejecting the proposals, indicates that MEPs still don't feel accountable to their electors.

Coalition building

Faced with a massive lobbying effort on the part of rightsholders, ORG's only hope of equalling the impact was to bring other organisations with aligned interests on board. ORG believe that the coalition they have helped build around the term extension proposals will be of immense benefit in future campaigning activities. They also believe that it was fundamental in complicating – perhaps fatally – the passage of the Directive.

One latecomer to the coalition with which ORG hopes to build strong bonds is the Featured Artists Coalition, a recently formed group of musicians, including many famous names, formed to bypass collecting society and label interests when discussing the future of music copyright and the music business in political fora. ORG see a coalition with creators as key to advancing a more positive agenda around the internet and copyright in the future, wresting the debate from rightsholder interests.

Although ORG in no sense controlled the output of coalition partners, they did encourage some factions (notably libraries, broadcasters, public domain record labels and remix artists) to put their side of the story to legislators. This helped concretise the problems within the proposals, moving the debate away from abstract ideas such as balance. ORG also took advantage of actions from coalition partners, such as public statements and open letters from academics or from artists, using them as touch points for their own campaigning activities.

Within the European consumer and citizen activist space, ORG helped craft and distribute joint statements aimed at legislators, in order to make it clear that opposition to the proposals came not only from the UK, but from across Europe.

Lessons from the campaign against term extension

Start petitions early. Even if you only trigger grassroots action two weeks before a crucial campaign event, you can collect emails addresses through initiating a petition early on in your campaign.

Look for other stakeholders. Seek out people from different backgrounds who will be affected by the legislation, and ask them to make their voices heard among legislators. Academics, remix artists, broadcasters, librarians and musicians were all part of the loose coalition against term extension.

Create your own media. If your issue is not getting the attention it deserves, bypass the mainstream media using cartoons or videos of speaking events.

Make sure people stay interested. It's tough keeping the grassroots involved over a sustained period. Use campaign touchpoints to renew your call to action, or else delay the call to action until you really need it.

Challenges

The Sound Copyright campaign was ORG's first campaign in Europe. ORG had to learn the complex ins and outs of European political life quickly. However, they gradually grew more confident about how the European system worked and in hindsight, they say, they probably would have engaged more with legislators early on.

ORG realised that the power to influence large groups of MEPs is held by a very small number of experts and group leaders in Parliament. This situation is difficult to circumvent as MEP loyalties are dictated by a complex set of individual, national and party loyalties.

Privately, MEPs admitted that their positions were dictated by "political" considerations rather than the balance of evidence. ORG concentrated on building coalitions of MEPs who wished to reject the term extension within each party group, even when their party officially supported the measure.

ORG also faced significant logistical challenges running a campaign aimed at Brussels from their base in London. The situation was made worse by the fact that the April 2009 plenary vote took place in Strasbourg.

Further resources

http://www.openrightsgroup.org/

http://www.soundcopyright.eu

http://www.writetothem.com/

Case Study: ACTA in the USA

I n October 2007, the United States Trade Representative (USTR), together with counterpart bodies in the EU, Switzerland and Japan, announced they would begin negotiating a new plurilateral trade agreement. Called the Anti-

Location:	US/global
Lead Campaigners:	Multi-party
Issue:	ACTA

Counterfeiting Trade Agreement (ACTA), its aim was to enhance intellectual property enforcement. But as was to emerge over the following months, the scope of the proposals in ACTA went far beyond enforcement against counterfeit goods.

The campaign against ACTA was, from the beginning, a global one. In June 2008, OSI hosted a meeting in the UK that brought together IP reform activists from around the world to discuss ongoing and further action to be taken against the treaty initiative. These groups and others (notably Fair Copyright for Canada, as well as individuals from New Zealand, Sweden and Australia) entered into loose coalition, co-ordinating actions using an email list, and sharing information that leaked from the various negotiating parties to the treaty to gradually create a full picture of the substantial issues ACTA dealt with.

The US story

This case study reflects on the US arm of that global campaign.

The most striking thing about ACTA was the secrecy that surrounded it. The USTR released a short briefing note in February 2008, in order to solicit public comments on the proposals. But from the beginning, based on comments that came from rightsholder industries about substantive issues within the treaty, IP reform campaigners suspected there was more on the table than they were being allowed to see.

When a document entitled "Discussion Paper on a Possible Anti-Counterfeiting Trade Agreement" – far more substantial than the official USTR briefing note – was released onto the whistle-blowing website Wikileaks in May 2008, these suspicions were confirmed.

Eddan Katz, International Affairs Director at the Electronic Frontier Foundation, describes two different but equally alarming types of problem presented by ACTA for IP reformists. The first is that ACTA as a mechanism demonstrates a new strategy among IP maximalists:

> *The opening up of WIPO to broader multi-stakeholders has actually forced the IPR enforcement policy-making into darker and darker rooms, and bilateral treaties are one context. But that requires some congressional oversight... and so a plurilateral agreement... is the answer [in that] it eludes accountability and is specifically designed*

to fall in between the cracks of established accountability mechanisms. And so it really is meant to be a dark room where these things are negotiated.

23-Oct-07	USTR announces ACTA, simultaneously with bodies in EU, Switzerland and Japan
15-Feb-08	USTR ask for comments, public interest groups respond
22-May-08	Discussion Paper on a Possible Anti-Counterfeiting Trade Agreement leaked
Jun-08	EFF launch "Sunlight for ACTA" campaign
Jul-08	EFF and Public Knowledge launch FOIA request
Sep-08	EFF and Public Knowledge launch FOIA suit
05-Sep-08	USTR posts further notice asking for comments, public interest groups respond
15-Sep-08	100+ organisations send letter asking USTR to publish draft agreement
Dec-08	USTR writes letter to EFF stating reasons for withholding documents on ACTA
Jan-09	USTR issues Vaughn index
21-Jan-09	Obama announces memo on transparency, court case stayed
19-Mar-09	Attorney General issues guidelines on FOIA that interprets Presidential memo
07-Apr-09	USTR releases 6 page document on contents of ACTA
21-Apr-09	Deadline for USTR/EFF court report into status of suit under new guidelines

As well as strategic issues, campaigners and advocates could also see from leaked documents that ACTA presented several substantial issues too: further criminalisation of infringement; increased scope of infringement liability; new powers at the borders and over goods in transit which could have significant impact on, for example, the movement of life-saving generic drugs; and a general creep in the maximisation of rights. Jamie Love, Director of Knowledge Ecology International, goes as far as to say that:

ACTA fundamentally changes the entire set of global norms over the enforcement of intellectual property rights, even in cases where there is political support for weaker norms on enforcement.

It was clear to campaigners that the ACTA needed to be stopped.

The transparency piece

A coalition of NGOs in the US came together to discuss strategy, and there was general consensus that the most effective way to progress a campaign was to concentrate on the lack of transparency around the negotiations.

NGOs – following their submissions to the USTR call for comments – had secured meetings with the USTR on ACTA. But they had found USTR unwilling to reveal more substance on the treaty – indeed they had to push USTR hard to even publish responses they had had to their call for comments. In June 2008, EFF launched a grassroots letter-writing campaign called "Sunlight for ACTA" asking their supporters to write to their Senators to demand that documentation be released. So far, EFF reports, the call has prompted around 2,500 individuals to write to their Senator.

In July 2008, the EFF and another public interest NGO, Public Knowledge, submitted an official request under the US Freedom of Information Act (FOIA) for the USTR to reveal the contents of ACTA. Although EFF's FOIA team had been in discussions with USTR about the scope of the request since June, after the request was formally submitted, drawn to the scope agreed between USTR and EFF, USTR went silent. In September 2008, when the deadline for USTR to respond to the request expired, EFF and Public Knowledge filed suit.

In December 2008, USTR sent EFF a letter claiming they were withholding the information requested for national security reasons and under the "deliberative process privilege". And in January 2009, USTR filed a Vaughn Index, something they are required to do in the course of a FOIA lawsuit, which breaks down in detail what they are withholding and why.

Then, on 21 January, a day after he was inaugurated, President Obama issued a memorandum that indicated that his administration would employ improved policies on transparency. This delayed the court case significantly, as EFF and USTR waited for the Attorney General to issue new FOIA guidelines. These guidelines were eventually issues on 19 March. On 7 April, the USTR issued a six-page briefing document on ACTA, which went further than previous briefs, but not far enough for campaigners.

David Sobel, Senior Counsel at EFF's Washington Office and legal lead for the FOIA action against USTR, believes that the publishing of this new brief indicates the Attorney General's guidelines have not changed the USTR's mind about fighting the case. Eddan Katz calls the USTR's six-page release "transparency theatre" and anticipates a "chess-move forward" in the campaign for transparency, where the concept is transformed into a request for meaningful participation in negotiations by civil society voices currently excluded from the debate.

When USTR and others announced ACTA in October 2007, they had hoped to conclude negotiations by the end of 2008: fighting ACTA on transparency grounds could thus be understood to have delayed treaty negotiations significantly. Jamie Love believes that in the medium to long term, ACTA negotiating documents will be out in the open. At that point, the battle will only just begin: advocates are now in agreement that they must look towards campaigning on the substantive issues ACTA presents.

Substantive issues: "carve-outs" and contradictions

Although discussions on where to take a substantive campaign against ACTA are only really beginning at EFF, Eddan Katz believes discussions should move beyond how US law might

need to be changed in order to comply with provisions in ACTA, and towards the public policy interests for foreign trade in a knowledge economy. Jamie Love points out that some of the draft proposals will have a substantive effect on little-publicised but prolific US legal strategies around compulsory licensing that take advantage of the fact that within the TRIPS framework, norms on remedies are much weaker than norms on rights:

> *It would frustrate the ability of the United States to have a statutory regime for access to author works... which rely upon injunctive support and reasonable damages. It threatens the whole set of areas where you might want to actually implement a different solution for copyright owners that involves money going to them, different forms of compulsory licensing.*

Love sees other problems around the elimination of patent prosecution safe harbours for goods in transit. His suspicions are borne out by a number of recent generic drug seizures in Amsterdam:

> *One of the shipments was a drug, it was a batch of 60,000 or so [second line Aids drugs] that were manufactured in India and shipped via Amsterdam on their way to the US Embassy in Nigeria to be picked up by the Clinton Foundation...*

> *It's not like drugs being sent to the Clinton Foundation via the US Embassy [can reasonably be called] a counterfeit ring... but it flows out of an EU Directive on border measures that deals with the rights of patent orders to seize goods in transit*

Accordingly to Love, during the ACTA negotiations the EU was asked to eliminate any reference to goods in transit in its Directive on Border Measures. He sees a direct link between the Dutch seizures and ongoing ACTA negotiations.

However, issues such as patent safe harbours are currently absent from civil society discourse on the dangers of ACTA. Rather, grassroots voices have focussed on changes to border search practice for Western consumers, such as the confiscation of iPods if border guards suspect them to contain illicitly downloaded .mp3s (this message was initially spread in the Canadian press) and the global roll-out of graduated response-style solutions to online copyright infringement, with consequential invasion of privacy and threats to network neutrality.

This messaging has transferred to the media. A June 2008 report on ACTA in *Ars Technica* is one good example:

> *That might be less important when trade deals are really of concern only to specific industries, but the internet, it's fair to say, has broader applications than swapping copyrighted songs. Is it really too much ask that the billions of users this might affect get a say in the treaty before it emerges full-grown into the light of day?*

But the fear is that what works to mobilise the grassroots may not play so well in the inside track. As Jamie Love observes:

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Suppose that Parliament members think that the ACTA agreement is all about stopping illegal filesharing. If you take a vote among governments whether that's a good thing or a bad thing, most governments will say let's stop illegal filesharing. I mean actually, you're doing yourself strategic misfortune because you may be pleasing some people at the grassroots, but you may be persuading governments that they should pass the ACTA.

The challenge for advocates now, then, is to conduct a substantive campaign that takes all the issues into account, and to find messaging that will work at the grassroots level to mobilise support without prejudicing opinions at the negotiating table.

Strategies

Both EFF and KEI emphasise their preference for a coalition approach. Different organisations bring different qualities to a campaign, and where KEI is well-known on the inside track for producing accurate and reliable briefs and policy positions, it relies on organisations with greater public-facing operations to mobilise grassroots support and attract media attention, and will actively seek coalitions with such groups, both from within the IP reform community (EFF) and further afield (Médecins Sans Frontiers).

Lessons from the campaign against ACTA

Watch your messaging. When campaigning against complex legal instruments, make sure the messages you're playing to the grassroots don't compromise the arguments you want to make on the inside track.

Use the tools of democracy. Citizens have a right to observe and influence the legislative process. Demand transparency and use whatever statutory provisions there are in your jurisdiction to pursue it.

Let each organisation play to their strength. If your organisation does not have a big public presence, work with one that does.

Emphasis is also put on communicating the potential consequences of new legislation to powerful global companies. One effective strategy employed by KEI during debate around the 2005 Hague Conference's Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters was to ask key industry representatives to realise that they had complex interests when it came to IP, and to get them to imagine themselves not as plaintiffs, but as defendants in IP enforcement cases:

We said to Sony Pictures, you're extending this to sui generis regimes, do you realise you might get sued for violating folklore rights? Well, true enough, the guy we were talking to had in fact been through one of those suits in a Central American litigation and it dawned on him that there was a whole area of liability that they hadn't looked at...and they actually changed their position on key factors of the Treaty.

Although the substantive campaign on ACTA is only just beginning, no advocate interviewed regretted the focus on transparency as an initial strategy. Indeed, the external factor of a new administration in the US had made that strategy all the more powerful. The FOIA lawsuit offers the new administration a chance to put substance behind its rhetoric of change: whether or not they take up this opportunity is guaranteed to play well in the media, ensuring sustained media interest in ACTA as an issue.

But regardless of whether such external factors are at play, David Sobel recommends taking up the transparency tool:

> *It tends to be the case that the more controversial government initiatives, the ones that are subject to being the target of a critical campaign, those initiatives tend to be the least transparent, meaning that the government is looking for as little attention as possible and is usually not willing to be very forthcoming… So I think it's always very valuable to demand transparency even when you anticipate that that request is likely to be denied, because then the denial becomes another point of opposition to the initiative. But if you don't…formally make the request for the information, then you're not really able to say that it's been denied.*

Further resources

http://www.eff.org/

http://www.keionline.org

http://www.michaelgeist.ca/content/view/3786/99999/ (international ACTA timeline)

Conclusion

This report has looked at six successful IP reform campaigns from around the world, and examined the strategies, messages and goals of the campaigners who fought them. Although each example has its own lessons to share, broad trends have emerged.

Several of the most striking campaign successes employed the internet as a mobilising force. A template for such action emerges from examining these campaigns in concert. Almost without exception, campaigners worked in coalition with other stakeholders. These coalitions varied both in style and in substance, and examining those differences is instructive. The campaigns were fought on intellectual and emotional ground which was often some distance from the mechanism of intellectual property law itself. This observation should encourage campaigners to think about the merits and pitfalls of different messaging approaches. Finally, the observation that very few of the case studies emerge from countries in the developing world prompts the report to examine why this might be so, and to challenge campaigners to examine the value of a more global perspective.

It's fair to say that the issues that motivate IP reform activists go beyond the public messages their campaigns focussed upon. The upcoming campaign against the substantive issues contained in the plurilateral Anti-Counterfeiting Trade Agreement offers campaigners an opportunity to find and voice these concerns, concerns that have motivated them thus far to undertake the significant an impressive policy interventions in the global intellectual property space that have been detailed in this report. The time has come to for a mobilising critique against the flawed orthodoxy of tough, unwieldy global intellectual property regimes.

Over the coming years, we can expect new groups to emerge and strengthen in countries not covered by this research. Hopefully, this report will help them on their way, and provide tools that will be of use to all campaigners who fight intellectual property laws that do not serve the needs of citizens in the networked, digital world.

Table of Abbreviations

ABDR	Associação Brasileira de Direitos Reprográficos (Brazilian Publishers Association)
ACTA	Anti-Counterfeiting Trade Agreement
CC	Creative Commons
DADVSI	Copyright and Neighbouring Rights in the Information Society (French law)
DG	Directorate-General (EU)
DMCA	Digital Millennium Copyright Act (US law)
EFF	Electronic Frontier Foundation
EU	European Union
EUCD	European Union Copyright Directive
FC4C	Fair Copyright For Canada
FGV	Fundacao Getulio Vargas (Brazil)
FISL	Free Software Forum (Brazil)
FOIA	Freedom of Information Act (US law)
FOSDEM	Free and Open Source Software Developers' European Meeting
IDEC	Institute for Consumer Defence (Brazil)
IFPI	International Federation for the Phonographic Industry
IFRRO	International Federation of Reproduction Rights Organizations
IIPA	International Intellectual Property Alliance
IP	intellectual property
IPA	International Publishers Association
IPR	intellectual property rights
IViR	Institute for Information Law (Netherlands)
JURI	Legal Affairs Committee (EU)
KEI	Knowledge Ecology International
MEP	Member of the European Parliament
NAFTA	North Atlantic Free Trade Agreement
NGO	non-governmental organisation
NZ	New Zealand
ORG	Open Rights Group
OSI	Open Society Institute
SCCR	Standing Committee on Copyright and Related Rights (WIPO)
TRIPS	Trade-Related Aspects of Intellectual Property Rights (international treaty)
USTR	United States Trade Representative
VoIP	voice over internet protocol
WIPO	World Intellectual Property Organisation

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