

Internet-based Protest in European policy-making:

The Case of Digital Activism

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Abstract:

European Institutions, especially the European Parliament, are venues of access for digital activist networks wishing to influence policy-making on issues of intellectual property rights, internet regulation and the respect of civil rights in digital environments. We refer to these networks as “digital activism”. They are more or less loosely rooted in the hacker culture and are intensively making use of online tools in order to organize and consolidate a collective identity and build a transnational public sphere. This study focuses on the “no software patents” campaign led by this movement that aimed at influencing the directive on the patentability of computer-implemented inventions (2002-2005). By discussing the advocacy techniques – both online and offline – that were developed by this digital activist network, we provide an insight into power struggles that are currently taking place in Europe, but also in other regions of the world.

Keywords:

Online Community, European Union, Political Campaigns, Public Sphere, Intellectual Property Rights, Information Age, Civil Rights, Civic Networks.

On July 6, 2005 the European Parliament (EP) rejected the directive on the “patentability of computer-implemented inventions” (CII). This historical decision - it was the first time the EP rejected a directive in its second reading - should be read as a compromise between proponents and opponents of the directive: on the one side, corporate interests pushing for the directive to pass, as it was proposed by the European Commission in February 2002. On the other side, a loose coalition of activists, rooted in the Free, Libre and Open Source Software (FLOSS) movement, that considered the directive as a hidden attempt to introduce software patents in Europe and who aimed at modifying the directive. The outcome was the result of a fierce battle between both camps that lasted over two years and was marked by extensive lobbying on behalf of both sides that is still remembered nowadays in the halls of the EP.

This struggle marks the politicization of a community characterized by the intensive use of electronic means of communication. The FLOSS movement is one of the first “online communities” that has emerged, using the internet in order to develop free and open source software as its core activities. The mobilization surrounding the CII directive shows that this community has begun to organize in order to defend its interests, notably, but not exclusively, by influencing European policy-making. The aim of this paper is to examine how these activists organize, in order to influence European policy-making. The research question can be subsumed as follows: how do digital activists use the internet in order to influence European policy-making?

The focus lies on the advocacy techniques developed by the loose coalitions of activists who took part in these political debates. In the first case opposing the introduction of “software patents”ⁱ in the EU, in the second, mobilizing around issues of privacy, internet regulation and above all the implementation of a mechanism known as “graduated response” or “three-strikes approach”ⁱⁱ aiming at countering illegal downloading. While not entering into the discussion of these issues, we argue that both campaigns are exemplary of an emergent movement currently constituting itself - a movement we refer to as digital activism as it makes not only extensive use of the internet, but claims for the protection of “digital rights”. While various movements across the globe work on the protection of civil rights in digital environments, the campaigns under study are particular in the sense that, inspired by hacker culture, they advocate alternative models, notably in the domain of intellectual property rights (IPRs).

Digital activism underlines the shift current “information societies” are undergoing. This transformation is not disruptive or revolutionary as some may have claimed. On the contrary, many of the observations in this paper link to theories developed before the advent of the internet. In this sense, this paper rejects technological determinist claims about the sole transformative power of the internet. The shape and objectives of political actors are being transformed, not due to the sole presence of the internet but in a socio-technical process of coevolution.

The outline of this article is as follows: first we present the methodology used. Second, we discuss the relevance of the internet for activism before considering the “hacking community” that constitutes the natural constituency of digital activism. Third, we discuss the way in which European policy-making can be considered an opportunity structure for diffuse interest representation. Finally, we examine the two campaigns in the light of the developed framework.

Methodology

To analyze digital activism, we draw upon first findings from two case studies of campaigns aimed at influencing European directives. Yin (2002) defines the case study as follows: “*an empirical inquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used*” (p. 23). As research on online activism is emergent, it is particularly necessary to consider the context in which it is situated. To understand how “digital activists” proceed, one needs to look at their community and culture, the political system they wish to

influence and society at large. The goal is not to achieve generalizable results but to provide an insight into an emergent movement.

The “no software patents” (SWPat) campaign was selected because it marks the politicization of the community as it constitutes its first large mobilization at European level. The “Telecoms package” campaign provides a second example of digital activism as it is currently taking place. If the claims of both campaigns are very different, this article aims at highlighting the similarities between the advocacy techniques used and the importance of the internet in both campaigns.

Triangulation, i.e. the use of multiple data collection techniques, is used in order to obtain reliable information. The internet itself constituted a crucial resource for collecting the data sets supporting this analysis. The dataset comprises documents generated by the activists themselves. These are messages posted on mailing lists, documents and analyses published on websitesⁱⁱⁱ. For the “no SWPat” directive, written testimonies of campaigners not active anymore have also been taken into account.

The second data set consists of transcripts of in-depth interviews with leading campaigners, some involved in both campaigns, from February 2008 to April 2009. The selection of activists followed a “snowball sampling” strategy, according to which initial contact was made with a small group of campaigners based in Brussels, who then suggested other potential interviewees. Additionally, exploratory interviews with parliamentary assistants provide the viewpoint of the “targets” of such campaigns. This is helpful in order to grasp how web-based advocacy is received by decision-makers. In total ten activists, one parliamentary assistant and two political advisors have been questioned about these particular campaigns. All data sets have been analyzed using the qualitative analysis software TamsAnalyzer, following a thematic, inductive inspection.

In order to examine these campaigns, we refer to the transnational advocacy networks frame developed by Keck and Sikkink (1998). Digital activists show striking similarities with transnational advocacy networks defined as “*relevant actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services.*” (Keck and Sikkink, 1998, p. 2). The main objective of these networks is to influence the behavior of States and international organizations, in this case the institutions of the EU. Digital activists described in this article form a network that is a “*form of organization characterized by voluntary, reciprocal, and horizontal patterns of communication and exchange*” (Keck and Sikkink, 1998, p. 8), operating simultaneously on a national and European level. In order to do so, they rely intensively on the internet.

The internet: place, tool and object of political struggle

The internet and other electronic devices played a major role in this battle as one “no SWPat” campaigner declared in a book he wrote after the events:

For a pressure group that consists of activists throughout and even beyond the EU, there is no alternative to the extreme use of electronic communication. There is no way to meet physically, at least not frequently

(Mueller, 2006, p. 47).

The technological infrastructure of the internet enabled the encounter, organization and collaboration of a vast array of individuals, groups and organizations from across the continent. If the Foundation for a Free Information Infrastructure (FFII), a Munich-based non profit organization, played a major role during the campaign, it must be noted that various initiatives appeared independently in most European member states. The basic technologies used were internet sites, wikis, mailing lists and Internet Relay Chat (IRC), a popular instant messaging system among FLOSS supporters. Later, as most activists are technophiles, they quickly integrated Web 2.0 applications such as Facebook, YouTube or RSS feeds into their communication strategies during

the “Telecoms package” campaign.

The usefulness of internet for protest, particularly for marginal actors, is highlighted by a broad literature, discussing the use of internet tools by contemporary social movements such as the global justice movement (e.g.: Van Aelst & Walgrave, 2004; Kavada, 2005, 2007), environmental activists (e.g.: Pickerill, 2004) and hacktivists (see below). The internet allows for fast interaction, offers tools for collaboration – such as wiki sites – and lowers costs of participation while increasing the reach of a message. This makes it a useful tool for mobilizing people. Furthermore, it allows connecting locally rooted individuals and groups to each other across the globe. As political decisions are increasingly taken at the supranational level, local units need to address global issues in order to influence these (Castells, 2001).

If the internet is a crucial resource for activists, its capacity to mobilize should not be overestimated. As Mosca (2007) points out in his analysis of the democratic potential of the internet: *“on one side it is horizontal, bi-directional, interactive, and cheap, and it empowers resource-poor collective actors and individuals. On the other side, the problem of the digital divide raises a discussion on the democratic nature of this medium”* (Mosca, 2007, p. 16). Furthermore, even if the internet allows reaching many people at relatively low costs, traditional dilemmas of collective action are not necessarily resolved by its use. It remains difficult to mobilize people to act in the defense of a common cause as highlighted by the free-rider problem identified by Olson in 1971.

Keeping this double-faced aspect of the internet in mind, this paper particularly focuses on web campaigning, an emergent phenomenon that provides institutional and non-institutional actors with new tools for informing, mobilizing and convincing that complement their offline campaign activities. As analyzes Baringhorst (2009):

While the adaptation to a competitive commercialized mass media culture has reduced the incentive to explain campaign issues in long statements and favored a campaign culture of sound bites and strong visuals, the internet has significantly reduced transaction costs of political information and mobilization due to its speed and the outreach of its communication. It offers opportunities to overcome traditional spatial limitations and contributes to a decentralization as well as transnationalization of political campaigning.

(p. 19)

The campaigns under study exemplify this trend as both of them were conducted in a highly decentralized way, involving a loose network of activists, which is transnational by nature and scope. Following Baringhorst (2009), the aim of political campaigns is to evoke *“cognitive, evaluative and behavioral changes in a defined target group or audience”* (p. 20). Traditionally, the best way to obtain such change was to gain mass media resonance. As the internet allows for disintermediation, activists can easily create their own channels, circumventing at times mainstream media in order to reach their targets directly. Yet, has media resonance ceased to be a prime goal of web campaigning?

The internet has also become a new repertoire of collective action. It is not only the place where current political struggles are taking place. The web has become a tool for action, ranging from forms of electronic civil disobedience to electronic petitions or demonstrations. However, online and offline forms of protest should not be considered as isolated of each other. As argue della Porta and Mosca (2005): *“there is no sign that offline and online environments as alternative to each other. Since they are more and more integrated and overlapping, human activities such as protest also take place in both environments.”* (p. 186). As both spheres tend to be increasingly interconnected, it is not surprising that the internet itself becomes an object of struggle.

The claims supported by both campaigns suggest that online networks have started to organize in order to defend their interests by intervening in policy-making. This is the reason why we define

this movement as “digital activism”. It comprises two aspects: the tools used in order to influence policy-making are largely of digital nature. Like hacktivists (see below), they intensively use, or create, electronic applications that constitute integral parts of their repertoire of action. Second, the claims of the movement refer to “digital rights”, i.e. the protection of civil liberties such as privacy or freedom of expression in digital environments, and to the regulation of digital spaces. In the next section, we will examine the broader “hacking community” to which belong the activists under study.

Hacking EU policy-making

Following Jordan (2008), hacking is centrally constituted of two core components: crackers “*who break open your computer and sneak inside, for their own purpose*”, and free software and open source programmers “*who build digital freedoms through new infrastructures in the digital world*” (p. 3). Originally, the term hacking refers to engagement with technology as hackers actively try to create something different in a computer or communication network. They are inspired by a hacker ethic of sharing, openness, decentralization, free access to computers and the wish to contribute to a certain world improvement (Levy, 1984). Nowadays, hacking has extended beyond the digital realm as individuals and groups apply these principles to social, legal and political realms of society.

The “*community of hacking*” (Jordan, 2008, p. 66) is a technologically-mediated network based on a notion of collective identity that is constantly negotiated by its members. It is also an “imagined community” as geographical boundaries may hinder its members to meet. Yet, by making extensive use of all possible forms of electronic communication, they actively build relationships with each other. As Baringhorst (2009) emphasizes: “*Members of geographically dispersed and even culturally heterogeneous collective actors can mutually observe each other on the internet and develop shared understandings of political issues*” (p. 20). This is certainly the case inside the “community of hacking” whose members are present on all five continents, holding different ideological views.

Inside the network, ideological differences are present. Some activists entirely identify with the “pure” free software discourse advocated by the Free Software Foundation of Richard Stallman, rejecting the use of certain words such as IPRs. Others share more moderate views, bending towards the open source software model. Finally, other associations, businesses afraid of “patent trolls”^{iv} and individuals joined the movement. As a consequence, the activists we met were not only computer geeks and programmers but also lawyers, academics, translators and students. This is how an ally inside the EP describes the coalition that formed during the CII directive:

They were boys, there were no girls, who were very intelligent, some were engineers in computer science, others physicians, others mathematicians. They were guys who would tell you that code is like poetry, they were at once very idealistic, and not necessarily good communicators, which is paradoxical in this story. But they were smart. They generally come from privileged social classes or at least they have learnt everything that is necessary.
(Interview, Brussels, March 2009)

The internet serves as a basis for the encounter, organization and collaboration of this heterogeneous community. Discussion groups and forums such as Linuxgroups have contributed to the politicization of the movement. Around the year 2000, more and more groups started to debate software patents and the “damage” they had caused in the US. To a certain extent, software patents mobilized the community, making out of some programmers and open source software users, “patent experts” and leading campaigners. Aiming at mobilizing a broader public on a technical issue, the campaigners need to combine offline and online advocacy techniques. Obviously, online techniques alone are not sufficient for the group to influence the political process.

Jordan defines hacktivism as the use of hacking principles in order to change the social or the political. Early examples include the promotion of online mass protest or the protection and extension of information on the internet by creating software such as the Tor network that enables users to surf anonymously. The activists under study are loosely rooted in this hacker culture (Thomas, 2002) as they constitute one form of its politically oriented expression. However, contrary to hacktivists, they do not restrict their actions to the virtual realm. Instead their activities are guided by necessity: do whatever is needed in order to “patch”^v the directive. The discourses reveal a strong tendency to adopt an “*engineering philosophy to 'make things work'*” combined with an “*insistence on adopting a technocratic approach to solving societal problems and to bypassing ('hacking') legislative approaches*” (Berry, 2008, p. 102). Or as explains one activist:

Basically, what you had in this kind of community is a certain pragmatic approach towards implementing stuff, by doing stuff and problem solving. So you have a problem, try to get a fix for it, try to get a solution. You're not so much interested as other political communities in socializing or in feeling good among us and sticking together as a community. So this doesn't really matter. We want to achieve our objective. Yeah. It's very focused. (...) Actually, politics is also a technocratic system and in the same way you program computers, you somehow try to fix the political regulatory framework.

(Interview, Brussels, February 2008)

The reason why activists all across Europe mobilized against the CII directive was simply that it was considered an important threat to the FLOSS community. Patents on software products would hinder innovation and the development of free and open source software and are framed as being a hidden attempt of large US corporations to attack the open source model, especially small European software businesses. Informed by the US hacking community, individuals from various countries started to organize resistance to the CII directive. For some activists, this is part of a fight between old, industrial powers and new, digital ones emerging in a society where information is becoming the central value. As the places where such issues are decided move increasingly to supranational levels of governance, the activists soon realized that they needed to act at these levels. In the next section, we will therefore examine in which way the EU constitutes an opportunity structure for diffuse interests such as digital activism.

The EU: a favorable opportunity structure?

Transnational by nature and scope, the digital activist network can be considered both a social movement - in the sense that it is a citizen-driven network, principally based on volunteers who defend a cause - and a diffuse interest organization as it actively tries to influence European policy-making. One of the inherent characteristics of the European political system is the integration of various socioeconomic groups. In a pluralistic society, interest groups bear an economical and judiciary function by informing and advising political representatives and contributing to the writing of legal texts (Teuber, 2001).

If the industry has been represented in Brussels even before the establishment of the European Communities in 1958, the lobbying landscape underwent important changes and tremendous growth. The establishment of a unified European market in January 1993 offered a strong reason for being present in the European capital to all kind of actors willing to influence the regulatory framework. EU consultancies, large corporations but also public interest organizations such as non-governmental organizations, citizen-initiatives or consumer associations increasingly turn towards the EU to defend their claims and interests. Estimations vary, yet experts agree that Brussels enjoys the highest density of lobbyists in the world.

EU institutions present “*opportunities as well as risks for diffuse interests such as environmentalists, consumers, and women*” (Pollack, 1997, p. 572). As digital activists consider themselves as being part of civil society and use civil liberties frames to sustain their actions, the

framework of diffuse interest representation can be applied to their actions. EU policy-making “*is characterized by both a multi-tiered system of territorial government and a separation of powers at the Community level, providing diffuse interests with multiple points of access*” (Pollack, 1997, p. 755). These access points are national representatives; the European Commission which holds the sole right of initiative and the European Parliament (EP) “*which has demonstrated considerable sympathy with the demands of diffuse interests, especially within the relevant parliamentary committees*” (Pollack, 1997, p. 755); or the European Court of Justice. For the campaigns under study, the EP constitutes the main target. As the only directly elected political organization, the EP is rather open to receive input from diffuse interests - especially when these concern electorally popular causes - as part of a legitimacy strategy but also in order to maximize its competences in a context where its “*ability to influence policy outcomes depends largely on its evolving powers under the Treaties*” (Pollack, 1997, p. 581). In this sense, digital activism contributes to the competition between institutions, claiming for more “Power to the Parliament” during the “no SWPat” campaign for example.

European policy-making has undergone important changes in order to address its lack of proximity with constituents. As argues Ruzza (2002), “*new spaces of influence for advocacy coalitions and social movements*” are opening up as EU governance is “*increasingly deliberative and inclusive as a means to address the 'democratic deficit'*” (p. 94). As one way of dealing with this issue, European Institutions rely increasingly on online tools, conducting online consultations or providing access to documents in order to reinforce informational transparency and encourage the formation of a European public sphere considered as a prerequisite for democracy (Niesyto, 2009). However, if the information is available online, it is still challenging for persons not familiar with the European system to find what they are searching for. Digital activists therefore often reorganize the data as we will examine below.

Because of the complexity of channels, directions, actors and issues involved no unequivocal definition of interest representation exists. As Fairbrass and Warleight (2002) outline, the “*terms - lobbying and mobilization - are problematic. The word lobbying has acquired some unfortunate connotations*” (p. 2) while the term mobilization refers generally to the study of social protest movements by focusing principally on their internal features. This study concentrates on grassroots activities, i.e. “*self-organized social and political participation inspired by community interest*” (Powell, 2008, p. 4), as opposed to corporate lobbying. Therefore, we refer to these activities by the terms activism or advocacy, defined as the actions undertaken by civil society organizations in order to influence a public decision^{vi}, in this case a European directive.

If the practice of lobbying is controversial in some countries, the complexity of matters and processes at EU level is such that decision-makers lack the necessary resources to deal with the legislative decisions without intensive external counseling from third parties (Dagger & Kambeck, 2007). A study conducted by Lester Milbrath (1960) underlined already that in order to make up their mind, the “*decision-maker must have access to ideas, arguments, information, and so forth*” (p. 34). Information is a crucial resource in the legislative process, as decision-makers need to take into account the complexity of their environment, particularly challenging at European level. As digital activists contribute to the production and analysis of information using the internet, this may lead to a transformation of the information environment.

Yet, mere accessibility is not enough following Milbrath (1960). The predispositions of each person, such as his personality, provide a perceptual screen for each individual, through which some stimuli are allowed to pass while others are stopped. This is what Milbrath (1960) calls “receptivity”. Following the scholar,

The only effective communications are those which get through the perceptual screen. (...) The lobbying process, then, is essentially a communication process, and the task of the lobbyist is to figure out how he can handle communications most effectively in order to get through to decision-makers.

In order to analyze the communicative practices developed by digital activists, we resort to the transnational advocacy tactics proposed by Keck and Sikkink (1998), highlighting the various uses of the internet for advocacy.

Advocacy techniques and the internet

Keck and Sikkink's (1998) typology of advocacy techniques constitutes a framework that is useful in order to understand the ways in which digital activists influence policy-making. The typology of tactics comprises: informational politics, symbolic politics, leverage politics and accountability politics.

Informational politics

By informational politics, Keck & Sikkink (1998) understand the "*ability to quickly and credibly generate politically usable information and move it to where it will have the most impact*" (p. 16). In this domain, internet usage was crucial for both campaigns. From the very beginning of their actions, activists elaborate a wiki site, i.e. a collaboratively edited website that serves as a database of everything that concerns their issue: software patents on the one side, the Telecoms package on the other side.

A clear strategy is to try to take control of the discussion. One way of doing this is to organize conferences in Brussels and Strasbourg, but also in European member countries, proposing an alternative view on these issues. Furthermore, they attempt to dominate the online information environment on these issues, so that for example all major search engines lead to information provided by the activists or that the online encyclopedia Wikipedia displays an argumentation favorable to their positions. The fact that most activists spend much of their time on the internet and display a sound knowledge of digital tools explains why they succeeded rather well in diffusing this issue online.

If Members of the EP (MEPs) increasingly acknowledge the internet as a source of information, they will not necessarily search the web to make up their mind on an issue they don't consider being competent for. Therefore, an important part of the activities of core campaigners is to be physically present in the institutions in order to deliver the necessary information and analysis for backing supported amendments and positions. In order to sustain their claims, they provide not only facts about the issues they defend – e.g. by extensively quoting academic reports - but also testimonies of persons involved and affected by the legislative project. In the case of the "no SWPat" campaign, this led independent developers and small business representatives to speak at conferences or talk with politicians. The main ambition of the campaigners was to counter the argumentation of the opposing coalition who launched the "campaign 4 creativity" that they accused of being an "astroturfing" campaign, i.e. a fake grassroots campaign. Therefore, activists felt they needed to demonstrate that the genuine legitimacy was on their side as explains one activist:

At that time I was a professional, I didn't have a company. So I went with my tax declaration. I went showing my tax declaration. My tax declaration was saying that I was an IT professional and that my revenue was this. So after this it's difficult to say that we are fake and we got meetings with all the MEPs.

(Interview, Brussels, December 2008)

Internet tools greatly facilitate the search and display of information. The fact that citizen action groups have their own unmediated broadcasting (or narrowcasting) channels is recognized as an important potentiality of the internet. Electronic access to information is that crucial to the

movement that it became a claim from the early stages of their activities. Activists frequently criticize the way institutional websites display information, using proprietary formats that hinder open source operating systems to access it. Frequently, this data is “mirrored” on their servers, increasing informational access. Activists are not only collecting information but also reorganizing any kind of data that favors their cause. Telecoms package activists list on their wiki the names and contact details of national and European politicians and their voting behavior in order to keep track of these. The objective of information politics is double in this case: providing alternative information to politicians on a direct basis by being physically present but, above all to citizens so that these influence policy-making indirectly. In order to do so, activists frame the debate in a certain perspective.

Symbolic politics

Symbolic politics refers to the “*ability to call upon symbols, actions, or stories that make sense of a situation for an audience that is frequently far away*” (Keck & Sikkink, 1998, p. 16). Digital activists appropriate the debate on these issues by calling upon a vast array of symbols and discourses. The concept of “frames” proposed by Snow et al. (1986) can be defined as “*organizing ideas (catchwords, images) that describe or represent a problem that, from the viewpoint of the scientific observer is not inherently given but a social construction*” (van de Donk et al., 2004, p.12). The use of such frames sustains the power of public interest organizations as they grant them a certain amount of legitimacy by influencing the public sphere.

The public sphere is considered as one of the cornerstones of modern democracy. It is the place where diverse opinions meet, notably through the media. The use of ICTs by citizens has given rise to alternative, dynamic spheres that exist next to the State and the mass media (Dahlgren, 1993). This leads to the multiplication of public spheres Keane (2000) describes as a mosaic of microspheres (interpersonal communication), mesospheres (local/national media) and macrospheres (international media), interconnected by the internet. The role of public interest organizations being to “*bridge the space between public discourse and institutions*” (Ruzza, 2002, p. 99). The frames used during the campaigns belong to two categories depending on the strategy: constructing a coherent collective actor and convincing decision-makers.

In order to involve the FLOSS movement, digital activists use frames belonging to the hacker culture such as open access and freedom of information. As the “natural constituency” for mobilizing people around these issues is the hacker community, the use of programming language comparing the legislative process to the development of a computer program is common, making fellow “geeks” understand how politics is working. In this sense, when an amendment needs to be introduced, this is known as “patching” the directive. Similarly, proponents of the CII directive were portrayed as “patent trolls”.

As supporters come from across the political spectrum, “*from right-wing libertarians to left-wing Marxists*” (Berry, 2008, p. 101), the use of a common language, although with different shades, helps to build consensus among very different individuals and entities. “*Collective action frames are necessary to develop a coherent interpretation and a coordinated action strategy - to create a collective actor with a coherent collective identity*” (Haunss & Kohlmorgen, 2009, p. 17). If these authors examined the framing processes during the CII directive by analyzing newspapers, we argue that online spaces are essential in building frames as they offer unmediated spaces of symbolic expression to activists.

Digital activists use framing techniques in order to maximize their impact upon decision-makers by using concepts of competition, innovation and regulation of the internal market falling within EU competencies. The activists also take advantage of the particularities of the European system by using democratic procedures related frames such as the rule of law or the separation of power. If both campaigns touch upon different issues, their framing strategies are similar: instead of proposing a counter-frame, they successfully reframe the issues, engaging directly with the other

side's arguments. For example during the "no SWPat" campaign, activists rapidly framed the directive as the "*Software Patents Directive*" with only core supporters holding onto the *CII directive*" (Haunss & Kohlmorgen, 2009, p. 4). Software patents were redefined as "monopolies" and "exclusion rights". They replaced the original frames introduced by the European Commission, i.e. "*harmonization, European competitiveness, and innovation*" by "*competitiveness of SMEs*", and "*innovation and transfer of knowledge*" (Haunss & Kohlmorgen, 2009, p. 16). Internet sites offer a vast space for activists to frame the debate following their principles and ideas.

If the "no SWPat" activists accused large software companies and the patent system in general, Telecoms package activists denounce the lobbying activities of "the entertainment industries". Changes to the principle of Net neutrality, that refers to the fact that no distinction is made between packets following their origin, destination or content, become "Net discrimination". The activists position themselves as the defenders of "civil liberties" on the internet, protecting internet users from the excesses of "greedy industries" whose objective is to protect their financial interests at the expenses of citizens. Telecoms package activists consider not only that civil liberties should be equally protected online and offline but also that the access to the internet itself needs to be guaranteed in a digital economy. One of the claims introduced in the Telecoms package is to recognize as a fundamental freedom, the access to the internet.

By contesting the tactics and resources of their opponents, the activists clearly position themselves as David against Goliath, considering themselves as "freedom fighters" against powerful business monopolies. The clearest example constitutes the "naval battle" in Strasbourg during the "no SWPat" campaign: when activists realized that their opponents had hired a yacht on which they displayed a banner pushing for the approval of the directive, they decided to rent a kayak in order to display their banners next to the yacht. The opposition between the activists in their kayak and rich corporations symbolized by their yacht was a particularly striking illustration of the differences in resources.

In order to add weight to their argumentation, both groups relied extensively on quotes and argumentations either from their opponents - such as a quote by Bill Gates about the negative impact of software patents - or by academics, companies and public figures. For interested individuals, hyperlinks lead to more detailed information. In this sense, much of the content of the WebPages of digital activists consists in information available elsewhere, on institutional websites, reports, or news extracts. Yet, wikis and WebPages are used in order to restructure this information so that it fits the narrative of the activists. Furthermore, campaigners use all available tools in order to involve individuals, asking them to translate pages or add information onto the site.

Leverage politics

Leverage politics is the "*ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence*" (Keck & Sikkink, 1998, p. 16). These leverages are material and moral leverages.

Material leverages consist in demonstrating that the campaign represents a wider community and prospective votes. In order to do so, both groups build larger coalitions and alliances. In the case of the "no SWPat" campaign, they managed to side with some small and medium size open source companies, organizations involved in the defense of free software and consumer associations. A very important - and difficult - part of the campaign was therefore to sensitize these to the issue at stake. This is done by organizing conferences and spreading the word online. Not only increase these supports the legitimacy of the campaign but activists also hope to receive funding from allies, covering the cost of their activities.

An important stress of both campaigns lies on the delivery of information to traditional media for influencing politicians via public opinion. However, the interest in software patents or internet regulation is not given by mainstream media, let alone that activists rarely have privileged access

to these. The information is therefore first relayed on blogs, websites, discussion forums and mailing lists, building a micro-public opinion on these issues. Once the topic acquires a certain "buzz" - sometimes sparked by online protest actions - specialized IT online news sites such as *Heise.de* or *Zdnet.fr* relay the information that eventually ends up in the mainstream media. A strategy that is quite successful as MEPs increasingly realize the importance of online media as argues one political advisor:

After all, the deputies are interested in the media. Now they understood quite well that there are medias that you don't know if you want. Next to the mainstream media everybody watches and on which everybody dreams to have his picture in front page, you have all this world on the internet.

(Interview, Brussels, March 2009)

At crucial moments such as the readings in the EP, campaigners sometimes mobilize as many people as possible in order to demonstrate in front of the institution. The goal is to show that the campaign not only represents a new kind of business model but also a community. Petitions sustain this claim of representativity but seem to have made less impact on decision-makers than real-life demonstrations, phone calls, letters or emails from citizens. Frequent calls for action are displayed online at important moments of the legislative process. Hyperlinks lead visitors to the wiki that displays further information on how to act. In the case of the Telekoms package campaign site, this goes as far as to display examples of phone conversations or standard emails in order to facilitate the actions of supporters. A section of the site, called political memory, displays the way MEPs voted previously so as to easily find out who needs to be convinced. As the "no SWPat" campaign made clear, mass emails proved to be counter-productive. Personal emails or phone calls are preferred ways of communication as they are perceived to be more likely to influence MEPs.

Giving policy-making more visibility is a central aspect of both campaigns. However, being part of a large alliance also proved useful in the sense that activists profit from various access points as shows this example reported by an ally in the EP:

They searched in their network people from each Member State. One example I always tell, which I think is significant, during the first reading, end of the legislature, comes a small guy from Greece. He pays his own plane ticket. He lands here in Brussels, at the office of a Greek deputy. He arrives here and says 'Well, I'm here, I'm a software developer, I just finished university, I'm doing a PhD' or something like that, that kind of guy. And then 'You are ruining my life with this nasty thing'. And the Greek representative he really fell from his chair and after that he has always been an unfailing ally. I think he was from the EPP. I don't remember which one it was but he was not a natural ally.

(Interview, March 2009)

Moral leverages that aim at "*influencing the behavior of target actors by holding it up to the light of international scrutiny*" (Keck & Sikkink, 1998, p. 23) consist in the publication of information concerning the political process and the debate surrounding the directives on the internet. The activists' websites record the legislative process, analyzing it following their arguments and frames. They start by shedding light on their opponents, monitoring their activities and contesting their analysis. At the same time, they focus on European policy-making, particular politicians or parties, by urging citizens and companies to contact these in order to convince them. At central stages of the campaign and in an attempt to reach a wider public, they communicate directly to the media mainly in the member States themselves. As a unified European public sphere does not exist, national public spheres need to be mobilized in order to influence public opinion. The internet played an important role in interconnecting these spheres.

Finally, established leaders were asked to support the campaign. The founder of the GNU license, activist and leader of the Free software movement, Richard Stallman, spoke at several gatherings

against software patents. This was a way to sensitize a larger public, among the FLOSS movement and beyond, as Stallman is one of the few widely recognized figures of the movement. "Movement intellectuals" are also mobilized during the Telecoms package, in order to speak at conferences, talk directly to decision-makers and analyze what is happening in order to higher the awareness of a broader public. Yet, few are known beyond their country of origin or issue area.

Accountability politics

Accountability politics consist in the "*effort to hold powerful actors to their previously stated policies or principles*" (Keck & Sikkink, 1998, p. 16). A clear aim of advocacy networks is to make governments' and decision-makers' positions publicly known. Influencing national decision-makers is crucial in both campaigns, even more during the Telecoms package as at the same time a similar project is examined in France. This is facilitated by the fact that the network comprises various organizations in most European States that act at the national and European level depending on where it is most needed. As soon as a government or politician publicly commits to vote in a certain direction, the campaigners release the information to the press, publish it on the internet and use it in order to hold the government or politician to his words.

Following Garrett (2006), the use of ICTs to increase accountability of governments can be seen as "*a reversal of the Foucauldian panopticon*" (p. 11). In this particular prison imagined by the philosopher, guards can watch their prisoners without being seen by them:

For Foucault, the dynamics of power in the panopticon are a metaphor for power dynamics in society more generally. Oppressive self-regulation is the basis of power in a modern disciplinary society (Foucault, 1977). New ICTs potentially invert this metaphor, allowing challengers to observe elites.

(Garrett, 2006, p. 12)

During both campaigns, the internet has been used in order to shed light upon European policy-making. Any stakeholder could also leak information anonymously on the Net. Nonetheless this reversal of surveillance is not perfect. Activists from both campaigns confirmed that it was at times hard to access information in the first place. Furthermore, the basis for observing elites is to be present in the political process, meeting decision-makers. Personal contacts remain crucial for obtaining insider-information. Therefore, the direct communication towards decision-makers constituted an equally important part of the campaign activities.

Discussion

In the above sections, we have underlined the emergence of a digital movement in Europe. Rooted in the hacker culture, activists from various countries are starting to defend the protection of civil liberties in digital environments, the free and open source software model but also the preservation of an anarchic model of the internet, free from state intervention. As these activists are spread all across the globe and the European continent and extensive users of digital tools, it is not surprising that they are using the internet in all possible forms in order to defend their "cause". This article offers an insight into this movement by analyzing the advocacy tactics surrounding two European legislative processes, insisting on the ways the internet has been used for this. However, limitations to such activities need to be highlighted too. If we compare to traditional lobbying tactics, advocacy techniques bear some advantages and many disadvantages in influencing policy-making. Here a short outline that should not be considered as an exhaustive list, as more comparative research is needed.

Digital activists hold clear advantages when it comes to influencing European policy-making. First of all, they constitute a large network that has supporters in basically all member countries, who are easily reachable (yet not necessarily mobilizable), technology literate and have connections to

virtually any country in the world where open source platforms are developed. This proximity to their constituency is the basis of their legitimacy, representing civil society in policy-making. A legitimacy corporate lobbyists sometimes try to create artificially, e.g. by organizing grassroots campaigns, yet for the lack of which they are often criticized.

Second, the network can count on a small number of very involved campaigners who have learned from past experiences and turned into “veteran campaigners”, providing new activists with their insights into European policy-making and “digital” issues. These “movement entrepreneurs” gained a reputation among their constituency and extended their network to key figures inside the institutions they aim at influencing. Yet, the lack of human, financial and logistic resources becomes particularly striking when compared to corporate lobbies. Fierce discussions divide the movement at times on whether leading campaigners should be paid for their work or not.

Third, activists know how to use online tools which enables them to exploit the potentialities of the internet. The community exchanges information at a very fast pace to keep up to date with the evolution in various countries and, to have access to many different venues for influence which is not necessarily the case of corporate lobbies. Nonetheless technical difficulties - such as sending encrypted messages - remain a challenge for the movement.

In terms of potential for influence and next to the limitations highlighted above, digital activism also bears important disadvantages which need to be linked to traditional dilemmas of collective action. First of all, the movement only holds a defensive position for the moment. Contrary to corporate lobbies that follow the European policy-making continuously, digital activism mainly reacts once an external threat consolidates the tensions in the movement. When the danger disappears, the lack of resources makes a sustained follow-up difficult.

Similarly, the free rider problem identified by Olson (1971), i.e. the fact that members of a given group wish to profit from the benefits of a collective good while trying to contribute as less as possible to its realization, remains in online environments. The movement encounters the difficulty to mobilize individuals, especially “geeks”; an important challenge as politicians are generally unimpressed by electronic protest actions. These may consolidate the movement as a collective actor but both examples have shown that in order to have a real impact, face-to-face contacts and real-life power demonstrations remain critical. The fact that the movement uses its own language defends particular values and ideas and has its own communication channels (e.g.: using IRC when “non-geeks” use Hotmail or Skype.) can lead to an impression of withdrawal and isolation that can be rather unattractive to outsiders and hinder its ability to form alliances with non-technical movements.

Finally, a certain (over)simplification of complex legislative processes, aggressive forms of communication and mobilization can be negatively received by “moderate” politicians who prefer to listen to the “balanced” analysis of traditional lobbying groups. Also the moment of access is important: as corporate lobbies tend to follow European policy-making very closely, they intervene as early as possible in order maximize their influence. The lack of resources and internal divisions on the function of the network hinders a more “institutionalized” approach towards interest representation.

Conclusion

This paper argues that the internet has become a place, tool and object of power struggle for digital activists. Rooted in the hacker culture, these activists are present in most European countries and committed to issues of IPRs, internet regulation and civil liberties. The analysis of the advocacy techniques used during two campaigns has shown that this “online community” pursues clear strategies in which the internet plays a crucial role: dominate the information environment on these issues, appropriate the debate and frame it in a certain way, mobilize a larger community when needed and exert pressure on decision-makers by providing a follow-up on their activities

and declarations.

This paper contributes to the literature on the representation of diffuse interests in the EU by providing an empirical example of internet-based protest activities surrounding two European directives. It shows that the internet connects local activists to the European level, constituting an online public sphere in which citizens exchange their views, debate and participate in policy-making. Digital activists contribute to the construction of a certain European public sphere by drawing awareness to European matters that (in)directly impact their lives, even if these public sphere(s) may remain isolated from a broader public sphere as idealized by Habermas (1969).

This analysis contributes to the literature on the articulation between politics and the internet. The empirical findings show in which way activists are not only using the internet for organizing themselves internally but with a view to influence policy-making. It highlights that online and offline realms are increasingly intertwined and constitute one reality. "Internet-based communities" may be principally active online, yet they aim at intervening in "traditional" politics by focusing on power demonstrations in the offline realm.

In order to broaden the understanding of digital activism, future research is needed to examine the very nature of this "public sphere(s)" and the articulation between online and offline realms, politics and counter-politics, focusing particularly on the communicative practices developed by digital activists.

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ⁱ Software patents are patents granted on algorithms, models and ideas that are implemented in computer programs. In the EU, the Convention of Munich (1973) stipulates that computer programs are not patentable "as such". Yet activists claimed that the European Patent Office was delivering such kind of patents which was the reason why they supported a European regulatory framework that would confirm the Convention of Munich.

ⁱⁱ "Graduated response" is a mechanism that aims at punishing copyright infringements by tracking illegal file exchanges and addressing alert messages to infringers. After three infringements, an automatic mechanism cuts off the internet access of the infringer. Depending on the countries, a regulatory authority would be created in order to supervise such a mechanism.

ⁱⁱⁱ Respectively for the CII directive, the main web sites used were: <http://www.nosoftwarepatents.com/> and <http://stopsoftwarepatents.eu/>; for the Telecoms package, <http://www.laquadrature.net/en> that links to a wiki site http://www.laquadrature.net/wiki/Main_Page (all accessed March 30, 2009)

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- iv “Patent troll is a pejorative term used for a person or company that enforces its patents against one or more alleged infringers in a manner considered unduly aggressive or opportunistic, often with no intention to manufacture or market the patented invention.” (Wikipedia “Patent troll”, http://en.wikipedia.org/wiki/Patent_troll, accessed March 30, 2009)
- v “A patch is a small piece of software designed to fix problems with or update a computer program or its supporting data.” (Wikipedia “Patch”, [http://en.wikipedia.org/wiki/Patch_\(computing\)](http://en.wikipedia.org/wiki/Patch_(computing)), accessed March 30, 2009)
- vi As derived from Attarça's definition of lobbying as “actions undertaken in order to influence a public decision” (2007, p. 68)