
Abstract
Copyright is difficult to enforce on the Internet. While copyright seeks to protect creative content, the Internet encourages widespread distribution. This study investigates recent policy initiatives dealing with the online enforcement of copyright in the European Union. It asks how and why these policies have developed. Building on the theory of political economy of communications and the empirical analysis of five cases, this study claims that the outcome of the policy initiatives is determined by an intricate interplay of ideas, discourses, interests and institutions.

Strong online copyright enforcement is heavily contested in the European Union. Of the five policy initiatives analyzed, two pass into law (2009 French and 2010 UK graduated response laws), two result in stalemates (2008 Creative Content Online and 2010 E-Commerce Directive consultations) and one is rejected (2011 Anti-Counterfeiting Trade Agreement). At the level of the European Union, online copyright enforcement policies hardly change. At the level of certain member states however, strong enforcement policies are adopted.

Policy stakeholders compete to see their ideas and interests adopted into policy. This study argues that their views on creativity and knowledge, and stances on the role of copyright and the Internet in society, determine their ideas and interests on online copyright enforcement. Analysis of the cases also reveals that the meager outcome of the online copyright enforcement initiatives at the level of the European Union is due to the lack of common interests between the media and Internet & technology industries. Currently the Internet & technology industries have little incentive to pro-actively enforce copyright online. At the same time the cases indicate that civil society actors succeed in giving pushback on online copyright enforcement policies. In the Anti-Counterfeiting Trade Agreement, they even reverse European Union plans. Finally, stakeholders cunningly choose institutional rules and settings that favor their views.

In the online copyright enforcement debate, copyright is often portrayed as opposed to intermediary liability rules and fundamental rights. This picture is painted too starkly black and white, but it is true that the role of Internet intermediaries in intervening in their networks is at the crux of the debate today. This study raises concern about the use of monitoring, blocking and filtering technology to regulate the availability of creative content. The Internet built with open, unfettered communication in mind, provides exciting opportunities for creativity, collaboration and freedom of expression. Neither technology nor policy are neutral. Therefore careful consideration is needed on how and why we regulate access and control on the Internet.