

before and after ACTA

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4 July 2012

- ACTA: Anti-Counterfeiting Trade Agreement
 - European Parliament voted down ACTA by 478 votes to 39, with 165 abstentions
 - first time European Parliament had rejected an international trade agreement negotiated by European Commission
 - culmination of 6 months of EU-wide protests
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Statute of Anne (1710)

- "An Act for the Encouragement of Learning"
- gave limited monopoly (14 years + 14 year extension)
- text became freely available after that period – created modern public domain
- strongly influenced US copyright law



Gutenberg 2.0: the Internet

- blogs (100 million)
- Flickr+Instagram (7 billion)
- YouTube ("hundreds of millions")
- Facebook (approaching one billion)
- Web pages (one trillion)
- all about sharing
 - Web turned ordinary people into creators and *recreators* through re-use of existing material

DMCA/EUCD

- DRM (Digital Rights Management/Digitale Rechte-Minderung) failed
- Digital Millennium Copyright Act (1998)
- makes DRM circumvention illegal
- introduced "takedown" notices
- European Copyright Directive (2001)



SOPA

- Stop Online Piracy Act (2011)
- notice to payment processors and ad services; regarding sites that
 - allegedly engage in, enable or facilitate infringement or
 - allegedly are taking or have taken steps to avoid confirming a high probability of infringement
- surveillance
 - loss of privacy, freedom of speech



SOPA protests


- Internet Blackout 18 January 2012
- Wikipedia, Google, Mozilla + 115,000 sites went dark/modified
- Net community: 4.5 million signatures
- SOPA (and sister legislation PIPA) withdrawn
- Europe woke up to ACTA




ACTA

- civil damages - "any legitimate measure of value the right holder submits"
- criminal damages - "piracy on commercial scale": "for direct or indirect economic or commercial advantage"
- digital - "promote cooperative efforts"; preserving "fair process and privacy"; "identify a subscriber" allegedly infringing

the great digital lockdown

- even harsher punishments for sharing digital files
 - allegedly
 - no price too high
 - presumption of guilt
 - criminal sanctions for trivial infringement
 - collective punishment of families (HADOPI, Digital Economy Act; ACTA originally included "3 strikes")
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an unwinnable arms race

- DMCA/EUCD brought in to "solve" problems with existing copyright laws
 - SOPA/ACTA are being brought in to "solve" problems with DMCA/EUCD
 - beyond ACTA lies TPP – Trans-Pacific Partnership agreement
 - "problem" more fundamental: even if the Net could be locked down, still can't stop sharing
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Moore's Law

- every 18 months, for given price
 - computing power doubles
 - computing storage doubles
- key way in which digital technology differs from analogue
- total computing power of 1960s US Apollo moonshot
 - on-board + on-the-ground for all the Apollo missions
 - = 1 Google search




hard facts

- amazon.de
 - portable 3 terabyte hard disc, plugs into USB port, costs €110
 - 3 terabytes = 3,000 gigabytes = 3,000,000 megabytes
 - roughly one million MP3 songs
- new meaning to "partying hard"
 - bring your own hard disc, and swap a few hundred thousand songs



today's laws (1)


- 2007, Jammie Thomas fined \$222,000 for sharing 24 songs
 - 2009, Joel Tenenbaum fined \$675,000 for sharing 30 songs
 - \$150,000 per copyright infringement
 - owner of a full 3 terabyte hard disc could face a fine of \$150,000,000,000 – roughly 5% of Germany's GDP
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today's laws (2)

- John Tehranian "Infringement Nation: Copyright Reform and the Law/Norm Gap" (2007)
- "an ordinary day in the life of a hypothetical law professor named John"
- up to \$4.5 billion in potential liability annually, for copyright infringement



tomorrow's reality

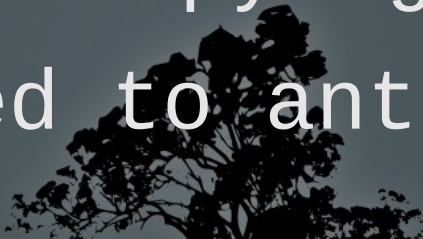
- three years' time, ten million MP3s
 - few years later, it will be every song ever recorded
 - after that, every film ever recorded
 - finally, end up with everything ever created, on a single storage device that fits in your pocket
 - 3d printers
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time to get real

- for 300 years, copyright law has moved in one direction
- in an analogue world, copyright was of interest to lawyers
- in a digital world, copyright matters to everyone using a computer or smartphone
- this is a major transition
 - not "once in a lifetime"
 - "once in a civilisation"



what to do?

- recognise that analogue and digital are different
 - analogue artefacts are scarce
 - digital artefacts are abundant
 - recognise that copyright for each is different too
 - public debate is needed about form and contours of digital copyright
 - lack of public debate led to anti-ACTA protests
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perpendicular politics

- the politics of the anti-ACTA protesters neither on the left, nor on the right
- confusion about where left-wing and right-wing parties stand on copyright
- not just a left-right spectrum, now have scarcity-abundance spectrum



scarcity politics (1)

- 1972: United Tasmania Group, Values Party of New Zealand
- 1973: UK PEOPLE Party, later Ecology Party, Green Party
- 1980: German Green Party
- moved on from being a single-issue grouping to one that could join mainstream coalitions with traditional parties



scarcity politics (2)

- policy related to central theme of scarcity – of natural resources
- raising awareness of serious effects of negative externalities of abundance
 - pollution of physical sphere (treating air, water, land as infinite dumping grounds)
 - over-exploitation (fish stock collapse, deforestation, desertification)




abundance politics (1)

- 2006: Swedish Pirate Party
- 2009: 2 seats in European Parliament
- 2011/2012: 4 German Piratenpartei wins in state elections
- moving on from being a single-issue grouping to one that could join mainstream coalitions with traditional parties



abundance politics (2)

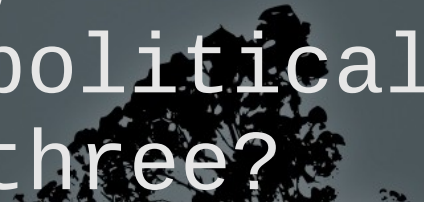
- policy related to central theme of abundance – of digital resources
 - raising awareness of serious effects of negative externalities of scarcity
 - "pollution" of ethical sphere (treating monopolies as more important than basic freedoms)
 - under-exploitation (failing to realise huge gains that shared knowledge can produce)
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a party of the commons?

- significantly, in September 2011, the Greens in the European Parliament announced they would adopt the Pirate Party's position on copyright
- suggests the emergence of a third force, neither left, nor right, but drawing on both, uniting analogue scarcity with digital abundance - the "commons" position



the next epicentre?

- Germany led the way with the rise of the green movement as a serious party of government
 - it led the way with the rise of the Piratenpartei
 - it led the way with the anti-ACTA protests
 - could it lead the way again with the creation of a new political force building on all three?
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