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Mapping A2K Advocacy: Towards a Coalition Against ACTA

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History of IP & Trade

— [What is similar between designer handbags, hollywood movies, and genetically modified food?

— [IP alliance formed between agri-biotech, pharmaceutical industry, copyright alliance, and anti-counterfeiting.

— [Agenda to shift IP as the domain of international trade and set out harmonized global regime

— [Exploit anxieties about US trade deficit - claim about maximizing IP protection as key to maintaining hegemony in knowledge economy.

Regime Shifting & Public Choice Theory

- [Small multi-national corporate alliance first drafting of IP regime wish list.
- [Frustrated by WIPO, alliance moves to WTO. TRIPs Agreement .
- [Bi-lateral trade negotiations with regions & countries.
- [TRIPs-Plus Agenda Harmonization &

Information Theory

- [Information - basic facts, news, weather, government documents
- [Knowledge - education, artisan and technical skill
- [Knowledge-Embedded Goods - pharmaceuticals, agricultural seeds, computer software
- [Knowledge-Embedded Tools - internet infrastructure, technical standards, research databases

Access to Knowledge

— [Creativity

— Collaboration

— Appropriation

— [Innovation

— Competition

— Integration

Human Development & Fundamental Rights

— [Human Development

— Essential Needs: Food security, Medicine, Education, Participation in Culture.

— [Social Justice

— Distributive Equality. Fundamental Rights & Civil Liberties. Human Freedom.

— [Technology & Competition Policy

— Dependent on Economic development & Cultural Context.

— [Knowledge Production

— Sustainability. Education of Knowledge Workers. Democratization of Opportunity.

Open Infrastructure

— [Peer Production - Non-market volunteerism

— [Modularity, Granularity, Integration

— [Modifiability - Customization & Localization

— [Training Knowledge Workers

— [Interoperability - removing barriers to entry

— [Improved Efficiency and Productivity

— [Safeguarding Human Freedom - decentralization of control

Totality and Infinity in the Information Society

- Open vs. Closed
- Privacy vs. Security
- Entrepreneur vs. Incumbent
- Commons vs. Proprietary
- Data Protection vs. Data Retention
- Non-commercial vs. Monetized
- Information vs. Manufacturing
- Access vs. Control
- Competition vs. Monopoly
- Transparency vs. State secrets
- Human vs. Automation
- Circumvention vs. Lock
- Community vs. Corporate
- Communication vs. Censorship
- User Rights vs. Intellectual Property
- Anonymity vs. Identification
- Exceptions vs. Enforcement
- Disintermediation vs. Centralization
- Trust vs. Surveillance
- Neutrality vs. Discrimination
- Freedom vs. Fear

Advocacy Networks

- [Consumer Protection
- [Human Rights
- [Privacy
- [IP & Commons
- [Environmentalism

Transnational Memetics

— [Advocacy Issue Brokerage

- Identifying Parallel & Complementary Organizations
- Translating common values across specialized fields

— [Methods

- Network of Networks
- Mailing List cc: & fwd:
- International Surveys
- Co-signatories on Declarations

Mapping A2K Advocacy

- [Regulations & Institutions
- [Production Models & Public Services
- [Technologies

Categories of Knowledge

- [Food & Health
- [Education & Science
- [Culture & Media
- [Communications & Infrastructure

Food & Health

- [Agriculture
- [Genetic Resources
- [Public Health

Agriculture

— [Regulations: GMOs & Patents

— [Production: Open Research Tools

— [Technology: Terminator Seeds

— [Institutions: Convention on Biological Diversity (CBD) administered by the Conference of Parties (COP); the Commission on Genetic Resources for Food and Agriculture (CGRFA) at the Food and Agriculture Organization (FAO); and the Union for the Protection of Plant Varieties (UPOV).

— [NGOs: Genetic Resources Action International (GRAIN), ActionAid, the Center for International Environmental Law (CIEL); Biological Innovation for an Open Society (BIOS) project based at the Center for the Application for Molecular Biology to International Agriculture (CAMBIA)

Genetic Resources

— [Regulations: Disclosure of Origin

— [Production: Community Benefit-Sharing

— [Technology: Knowledge Registries

— [Institutions: CBD; CGRFA; UPOV; Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) at WIPO

— [NGOs: GRAIN; Action Aid; CIEL; BIOS; Erosion, Technology and Concentration (ETC) and Third World Network (TWN); Archaeological Markup Language of the Alexandria Archive Institute

Public Health

— [Regulations: Access to Medicines

— [Production: Innovation Prize Funds

— [Technology: Neglected Diseases Research

— [Institutions: Intergovernmental Working Group on Public Health (IGWG) at the WHO

— [NGOs: Medicines Sans Frontières (MSF); Knowledge Ecology International (KEI); IBM's World Community Grid; Africa@Home's Malariaccontrol.net

Education & Science

— [Scientific Research

— [Educational Materials

— [Libraries & Archives

Scientific Research

— [Regulations: Database Rights

— [Production: Open Access Journals

— [Technology: Distributed Computing

— [Institutions: European Directive on Database Rights

— [NGOs: Biomed Central; Public Library of Science (PLOS); National Programme on Technology Enhanced Learning (NPTEL) in India

Educational Materials

- [Regulations: Exceptions to and Limitations on Copyright
- [Production: Open Educational Resources
- [Technology: Low-cost laptops

Libraries & Archives

- [Regulations: Digital Copyright
- [Production: Access to Information
- [Technology: Digital Archives

Culture & Media

- [Cultural Production
- [Software Engineering
- [Censorship

Culture

- [Regulations: Global Public Sphere
- [Production: Creative Commons
- [Technology: Peer Production

Software

- [Regulations: Software Patents
- [Production: Free & Open Source
- [Technology: Digital Rights Management

Censorship

- [Regulations: Global Internet Freedom
- [Production: Blogging & Social Networking
- [Technology: Anonymity Tools

Communications & Infrastructure

- [Information & Communications Technologies (ICTs)
- [Network Infrastructure
- [Information

ICTs for Development

- [Universal Access
- [Spectrum Policy
- [Mobile Internet

Network Infrastructure

- [Regulations: Internet Governance
- [Production: Open Standards
- [Technology: Internationalized Domain Names

Information

- [Regulations: Freedom of Information Laws
- [Production: Network Neutrality
- [Technology: e-Government

Mobilizing Against ACTA

- [Conflation of Piracy & Counterfeiting
- [Global Information Customs
- [Policing by Internet Intermediaries
- [Three Strikes (Graduated Response)
- [Confiscation of Generic Medicines

Background History of ACTA

- [Anti-Counterfeiting Congress. Australia. 2004.
- [World Customs Organization (WCO) Standards Employed by Customs for Unified Rights Enforcement (SECURE) Initiative
- [US STOP! Initiative (Strategy on Targeting Organised Piracy) (Oct. 2004)
- [Bi-lateral and regional trade agreements
- [US-Korea & EU-Korea FTAs
- [EU-US Strategy on the Enforcement of IPR

Pluri-lateral Agreement

- [Initial Negotiating Partner Countries: EU, US, Japan, Switzerland; Australia, Canada, Jordan, Mexico, Morocco, New Zealand, Republic of Korea, Singapore, and United Arab Emirates.
- [Current Negotiating Partners: Australia, Canada, the European Union, Japan, South Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, and United States

Counterfeiting & Piracy

- [Purposely blurred & misleading
- [Perpetuating Incumbent Business Models concentrated in multi-national corporations
- [Consumer protection justification in Trademark vs. propertization of incentive regulations
- [European Parliament Common Resolution, voted 633-13.

Global Information Customs

- [Ex-Officio Authority for Border Guards
- [New Internet Governance regime
- [Harmonization of maximilized legal rules
- [Privatization of oversight
- [Forcing changes in national laws
- [Laptop searches & privacy/due process

Anti-Circumvention Regulations

- [Exportation of the DMCA
- [Legal Fortification of Technological Locks
- [Asymmetry of IP protection & exceptions
- [Automation of adjudication
- [Abuse of technological control
- [Anti-competitive leveraging of ancillary

Intermediary Liability

— [Notice and Takedown systems

— [Due Process

— [Right to Appeal

— [Internet Disconnection

— [Defining Repeat Infringers

— [Filtering & Monitoring Obligations

Criminalization of Copyright

- [Overemphasis on deterrence
- [Shift of enforcement from private parties to the state
- [Organized crime vs. alternative distribution models
- [Not knowingly engaged in infringement
- [Undermining Legitimacy of the Law

Civil Enforcement

- [Expansion of definition of piracy
- [Beyond purposes of commercial advantage or personal profit
- [Mandatory Injunctions undermines Collective licensing solutions
- [Third party liability
- [Statutory Damages

International Relations

- [Pluri-lateralism - Coalition of the Willing
- [Bypassing Legislative Processes
- [Expansion of executive power
- [Trade Advisory Groups for foreign trade policy
- [Not about trade, but enforcement coordination
- [Faith-based policy-making

Impact on Developing Countries

- [Ratcheting up international norms
- [Exclusion from norm-setting process
- [Applied in bi-lateral & regional negotiations
- [Interconnectivity of world trade - in-transit
- [Border seizures - generic medicines
- [Setting new standards for national implementation

TRIPs Article 13

— [Members shall confine limitations or exceptions to exclusive rights to **certain special cases** which do not conflict with a **normal exploitation of the work** and do not **unreasonably prejudice the legitimate interests of the right holder**.

Exceptions & Limitations to Copyright

- [balance the interests of creators of intellectual works and the users' rights to use protected works to further creative endeavour, learning and research.
- [link with fundamental human rights: equality, the right to education, freedom of expression and the right to access culture and share in scientific advancement.
- [legal instrument harmonizing minimum standards of exceptions and limitations

Treaty for the Visually Impaired

- [make an accessible format of the work
- [exceptions extended to for-profit institutions
- [circumvention of technological measures
- [importation and exportation of works
- [database on availability of works
- [orphaned works

Innovation in Digital Education

- [Bridging the physical and temporal gaps between students and centers of learning.
- [Provide new materials to the classroom that previously were unavailable or impractical.
- [Providing teachers and students new ways of learning information and interacting with educational objects
- [Transforming the way in which student work is evaluated, both in the classroom and outside.

Taxonomy on Educational Exceptions & Limitations

Standards vs. Rules

Rule-based approach: bright-line divides between unauthorized acts of infringements and permitted uses

Standards-based approach: adopt a balancing test approach

Constraint Clauses

Actor

Purpose

Context

Action

I. Actor

- [limits who may take advantage of the exception
- [students, teachers, educational institutions
- [accreditation barriers and informal education

2. Purpose

- [control the breadth of exception without the type of content that it covers or actions that can be done with it
 - personal use
 - non-profit status
 - teaching
 - educational
 - examinations

3. Context

- [contexts within which exceptions can take place
 - geographical (i.e., classroom-setting)
 - non-geographic (i.e., educational institution)

4. Action

- [Quantity of copying
 - i.e., not more than 1% of work
- [Type of copy, examples:
 - reprographic copying; handwritten or typewritten copy
 - single, personal copies
 - up to 1,000 words

E&L Advocacy

- [International Law

- Treaty for the Visually Impaired

- [Declarations

- Free Culture Forum

- Copyright for Creativity

- Paris Accord

- [Projects

- IPWatch List

- Copyright Watch

Thank You

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