

Birth of a movement: The Anti-Counterfeiting Trade Agreement and the politicization of Mexican copyright

Abstract: The February 2012 mass protests in Europe against the Anti-Counterfeiting Trade Agreement (ACTA) demonstrated an international increase in the political contentiousness of copyright policy. ACTA, a U.S.-led treaty among several developed countries, and Morocco and Mexico, would further strengthen international intellectual property (IP) laws, potentially negatively affecting human rights and freedom of expression.

Possibly as consequential was the Mexican Senate's June 2011 rejection of the treaty. This not only signaled copyright's politicization in Mexico, but also reversed the Senate's previous pro-stronger-copyright position. As a major developing country with strong U.S. ties – the main proponent for stronger copyright – the Mexican copyright debate reveals much about the possible future of developing-country engagement on IP issues. This paper examines the factors that contributed to this rejection. It focuses particularly on the mobilization of Mexican civil society on copyright – a new development in Mexican copyright policymaking.

Presented at the Canadian Association for Latin American and Caribbean Studies Congress
May 3-5, 2013
Ottawa, ON

A previous version of this paper was presented at the International Studies Association Annual
Convention
April 3-6, 2013
San Francisco, CA

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The year 2012 witnessed several dramatic developments in the increasingly contentious global intellectual-property debate. On January 18, the Internet declared war on two copyright-related bills before the U.S. Congress, the Stop Online Piracy Act (SOPA) and the Protect Intellectual Property Act (PIPA). In order to draw attention to concerns that the bills would, in the name of reducing online copyright violations, fundamentally damage the open architecture of the Internet itself, thousands of websites, most notably Wikipedia and Reddit, blacked out their sites, directing their users to information about the bills and how to contact their Congressional representatives. In an unprecedented demonstration of grassroots mobilization, millions of Americans flooded Congress with calls and emails protesting the bills, famously crashing the Senate's website (Washington Post 2012; Wikipedia 2012). Within 24 hours, the bills had been withdrawn (Sell 2013).

Less than one month later, on February 11, more than 100,000 people¹ took to the streets across Europe to protest an intellectual-property treaty, the Anti-Counterfeiting Trade Agreement (ACTA), a U.S.-led treaty that had been negotiated among several countries, including the United States, the European Union, Japan, and Mexico. Critics argued that it would have a negative effect on “human rights – especially the rights to due process, privacy, freedom of information, freedom of expression, and access to essential medicines” (Amnesty International 2012).

Like the SOPA protests, the European anti-ACTA protests compelled the European Commission (as well as several member governments) to withdraw its support for a treaty that the Commission had previously seemed intent on passing. The two events represented victories

¹ According to organizers. Figures are from <http://wiki.stoppacta-protest.info/INT:Teilnehmerzahlen>.

against well-funded and politically powerful intellectual-property interests, and offered evidence that transnational activists could stand up to powerful economic and state interests and win (Sell 2013).

While these European and American events were dramatic and important, they have overshadowed an earlier civil-society victory against stronger intellectual-property laws, a victory all the more significant for where it happened. On June 22, 2011, the Mexican Senate unanimously passed a resolution calling on the Mexican president not to sign ACTA (Juárez 2011). This rejection is remarkable for several reasons. It represented the first time the Senate had taken a firm stand against strengthening intellectual property. It occurred in a country with a poorly institutionalized civil society and relatively low Internet penetration rates, and on a policy traditionally negotiated behind closed doors. Furthermore, it was largely the work of about a dozen individuals who, working under a transnational Stop ACTA banner, used Twitter to hand the Mexican copyright establishment and the United States a rare defeat in the copyright wars.

This paper examines the conditions that allowed this small group of intellectual-property outsiders to make themselves part of the Mexican debate, and asks whether this form of online activism can be emulated by activists in other developing countries. Based on interviews conducted in February 2013 with those most directly involved with the protest movement, this paper argues that they succeeded thanks to four main factors: savvy leveraging of social-media technology, particularly Twitter; *de facto* coalitions with powerful actors, notably the telecommunications and Internet industries; successful framing the ACTA debate as digital human-rights; a key legislative ally; and the exploitation of ACTA supporters' missteps, notably a failure to engage with opponents and to consult the Senate on the treaty as required by law.

More generally, it fills a gap in the literature on social movements and social media, which has tended to focus on cases from the global North rather than the South (Loudon 2010, 1069; Harlow and Harp 2012, 197). In particular, it reveals an asymmetry in the construction and conduct of transnational advocacy networks, including one-way (North-South) information flows (Keck and Sikkink 1998). This paper also argues that while the Stop ACTA movement shows how an online social movement can succeed even in countries with low broadband penetration rates and a weak civil society, it leaves unanswered questions about the *durability* of online social movement victories in the absence of “offline” civil-society institutions dedicated to preserving its gains. Online organizing offers the potential for activists in developing democratic countries to engage more fully with the policymaking process, but given its relative newness, we should be cautious about its ability to facilitate activists’ engagement in sustained policy debates in the absence of more traditional “offline” advocacy groups.

This paper is structured as follows. The first section, drawing on social-movement theory and recent writings on its intersection with social media, briefly outlines the theoretical debate. The second provides an account of the Mexican copyright establishment before ACTA. The third section examines the negotiation and content of ACTA, the fourth provides an account of how the Mexican anti-ACTA forces achieved their Senate victory, and the fifth discusses the current state of the debate. The paper concludes with an analysis of the significance of the anti-ACTA campaign for Mexico and other countries, and for our understanding of transnational activism.

A. Social movements go online

If, as a recent special issue on “Online Collective Action and Policy Change” in the journal *Policy and Internet* argued, “research exploring the relationship between online mobilization and policy change is still limited” (Calderaro and Kavada 2013, 1), the same is

doubly true for online efforts in developing countries and the global South (Loudon 2010, 1069).² Harlow and Harp remark that “few studies examine [social media] in Latin America, and social movement literature tends to privilege a US or Euro-centric perspective” (2012, 197). Furthermore, much of the research on the effects of information and communication technologies on social movements has been conducted in developed countries, and “has assumed a Northern context of ubiquitous connectivity ...” (Loudon 2010, 1070). Whether these findings can translate to countries with lower connectivity rates needs to be shown (Harlow and Harp 2012, 197).³

It is generally accepted that social-media technologies – interactive technologies such as Facebook and Twitter that allow for two-way dissemination of information – have made it easier to connect and organize disparate individuals. “Scholars argue that information communication technologies (ICTs) collapse the boundaries created by money, time, space, and distance, allowing information to be disseminated cheaply to many people at once” (Harlow and Harp 2012, 197). The result is a reduction in the cost of mobilization, even over great distances (Flanagin, Stohl and Bimber 2006, 41). Social media and ICT “enable appeals [by social movements] to be organized extremely rapidly, at a global scale and at reduced cost. Organizational efficiency is also likely to be improved by better information and communications infrastructure” (Loudon 2010, 1072-3). Furthermore, they help promote the existence of collective identities and communities among spread-out populations (Garrett 2006: 204; see also McAdam, 1982: 48-51).⁴ While they can be used by anybody, these technologies

² The *Policy and Internet* issue, for example, presents cases from the international sphere, the European Union, and Australia, with only one touching on developing countries (Milan and Hintz 2013).

³ Loudon’s work emphasizes the use of mobile phones to create a social network; however, her point can also be applied to a country’s degree of Internet connectivity.

⁴ However, it still takes *some* time and money to set up such an organization. Realistically speaking, relatively few people have the drive and the time to devote to running a social movement. Nevertheless, the fact remains that for those who choose to do so, it is now much easier to “get in the game.”

are therefore generally seen to favour relatively weaker groups, the “Davids” versus “Goliath” (Sell 2013). Similarly, the ability to reach out to various parts of society, including “academia, political and professional elites ... raises the possibility of building bottom-up social movement coalitions that challenge the dominance of older, hierarchical groups” (Gavetti and Anderson 2006, 1076).

Beyond domestic mobilization and following the same logic, social media also favours the transnationalization of social movements (van Laer and van Aelst 2010, 1148). Transnational advocacy networks, “networks of activists, distinguishable largely by the centrality of principled ideas or values in motivating their formation” (Keck and Sikkink 1998, 1). These “network actors” participate in and affect “domestic and international politics simultaneously, drawing upon a variety of resources, as if they were part of an international society” (Keck and Sikkink 1998, 4). In doing so, network participants exhibit characteristics similar to Tarrow’s concept of “rooted cosmopolitans”: individuals “who can broker links between the domestic and the international arenas. They are familiarizing domestic actors with the international arena and legitimating the involvement of international actors in the domestic realm” (Tarrow 2010, 192; see also Sell 2003, 2).

Overall, in line with the social-movement literature on resource mobilization (e.g., McAdam et al. 1996) social media change the relative importance of the various factors required for successful social movements – leadership (Garrett 2006, 211), money, time, membership, a compelling issue frame. However, they do little to change the underlying dynamics of social protest. Twitter is not a silver bullet that will fell The Powers That Be. The advent of social media does not necessarily change the “opportunity structures” – the “attributes of a social system that facilitate or constrain movement activity” (Garrett 2006 212; McAdam et al. 1996) –

faced by a social movement. As political process theory (McAdam 1982) reminds us, “social movements” – online or not – “are influenced by the surrounding political climate” (Ruggiero and Montagna 2008, 5). Protests and organizing may occur “online,” but they still require attention to the “real world” institutional and political contexts within which they are undertaken. Consequently, the success (or failure) of any new “online” social movement will depend on its ability to exploit its advantages and tailoring its activism to its specific situation. Online protests cannot be understood in the abstract. It is to the real-world context of the Stop ACTA movement that this paper now turns.

B. Mexico before ACTA

Crafting copyright laws involves a difficult balancing act between what Doern and Sharaput (2000) refer to as “protection” and “dissemination” interests. Protection interests – including creators and the “content industries” (such as the music, film and publishing industries) – tend to seek stronger control over copyrighted works. Dissemination interests – such as research libraries, telecommunication companies, individuals and creators⁵ – depend on access to copyrighted works. As a result, they have an interest in ensuring that copyright laws are not so strong as to give copyright owners a veto over how copyrighted works are used and disseminated. The global trend in copyright law, particularly since the mid-1970s, has favoured “protection” interests, such as the “content industries” seeking ever-stronger copyright protection, over “dissemination” interests, including “user” groups such as libraries, telecommunications companies and individuals (Doern and Sharaput, 2000). Over this period, the content and intellectual property (IP) industries, and their government allies, particularly the United States, have been pursuing their interests by lobbying domestic governments and creating international treaties, including ACTA. Such treaties and IP-rule strengthening pose particular problems for

⁵ All creators build out of what has already been created.

developing countries, since stronger IP rules imply increased net outflows of royalties while increasing the difficulty of accessing the information and technological know-how necessary for development (see, e.g., Drahos and Braithwaite 2002; Sell 2003). This developed-country push for stronger IP rules is an instance of “kicking away the ladder” (Chang 2002),⁶ in which advanced countries and firms deny developing countries the means that the advanced countries themselves used to develop: protectionism in the case of industrial development, and rampant copying of other countries’ intellectual works in the case of IP.

Deere (2009, 21-22) remarks that there is a “considerable variation among developing countries in their approaches to IP decision-making across the range of aspects of work,” notably the presence or absence of a IP-public-policy framework; the administration, organization, funding and coordination of the government’s IP bureaucracy; the degree of public participation; links between IP laws and other domestic laws; and their relationship to international fora. These institutional variables, as well as who is represented in the IP decision-making process, influence the type of IP laws that are adopted and the degree to which they are enforced.

Domestically, the Mexican copyright establishment – the institutions and actors that set the country’s copyright policy – pre-ACTA had a largely singular view of the purpose and direction of copyright, favouring the “protection” side of the copyright equation. Its policymaking process in large part reflected the country’s corporatist past, in which a not-completely-neutral state coordinates negotiations among accepted groups representing capital (i.e., the copyright industries, both domestic and foreign) and labour (i.e., *sociedades de gestión colectivas*, the creator-focused collection societies) from an oligopolistic sector (Callejas, interview by author, October 26, 2009). The U.S. government has also taken a strong interest in

⁶ Chang uses this phrase to refer to the developed-country preference for free trade over protectionism, but the same logic is at work for stronger versus weaker intellectual-property rights.

Mexican copyright, particularly since the mid-1980s. It was of little political interest to those not directly affected by it, and was little studied by the Mexican academy.⁷

The main government policymaking institutions, the *Instituto Nacional del Derecho de Autor* (National Copyright Institute, INDAUTOR) and *Instituto Mexicano de la Propiedad Industrial* (Mexican Intellectual Property Institute, IMPI), saw, and continue to see, their primary mission as strengthening Mexican copyright protection. Similarly, the dominant copyright interests in Mexico – those with whom IMPI and INDAUTOR work most closely – also favour stronger copyright. These include the *sociedades de gestión colectivas*, collection societies that represent Mexican creators in the policymaking protests, as well as industry groups such as the *Asociación Mexicana de Productores de Fonogramas y Videogramas* (Mexican Association of Phonogram Producers, AMPROFON), which represents foreign music companies.

Until the ACTA debate, politicians from all parties treated copyright as an apolitical, technical issue of interest primarily to creators and the content industries – that is, those directly affected by copyright laws. This reputation, combined with the popular perception of copyright as a policy to safeguard Mexican culture, did not provide politicians with many reasons to oppose its extension. For example, at the request of the *sociedades de gestión colectivas*, the government in 2003 increased the general term of protection to life of the author plus one hundred years, easily the longest term of protection on the planet.⁸ This change benefited the *sociedades*, which stood to collect royalties on works that were about to fall into the public domain. However, it was so drastic that even INDAUTOR's Director of Protection, Alfredo

⁷ The first Mexican-related book on copyright and the Internet from a cultural perspective, a volume of essays loosely comparing Mexican and Spanish situations regarding digital-copyright issues, was published only in July 2009 (López and Ramírez 2009); the author's forthcoming book (Haggart forthcoming) represent the first political-economy account of Mexican copyright policymaking.

⁸ In contrast, the main international copyright treaties (the *Agreement on Trade-Related Aspects of Intellectual Property* and the *Berne Convention*) require only a term of life plus 50 years.

Tourné, a proponent of strong copyright protection and copyright owners' rights, says the changes went too far (Tourné, interview by author, September 24 and 29). Nonetheless, this change gave rise to only cursory Congressional debate (Serrano Migallón 2008, 336).

New Mexican copyright actors, with a different institutional base, have emerged in recent years. As the Mexican copyright establishment's concerns have shifted to digital infringement (tracking the rise in Mexicans' broadband use), the telecommunications industry has become an important actor in the copyright debate. While the traditional copyright establishment is primarily fixated on strengthening copyright protection, telecommunications companies like Telmex (owned by Carlos Slim, the world's richest person, with a near-monopoly on the Mexican ISP market) and their federal regulator, the *Comisión Federal de Telecomunicaciones* (Federal Telecommunications Commission, COFETEL), are primarily interested in ensuring the spread of Internet access.

Meanwhile, Mexican voters were largely disengaged from copyright issues. In an early 2010 interview with the author, Miguel Margáin, the current head of IMP but then a vice president with the American Chamber Mexico, which represents U.S. businesses in Mexico, remarked that outside of a few young “*cybernautes*” there is little public interest in copyright (Interview by author, April 27, 2010). While their numbers are increasing, relatively few households had Internet access (22.3% in 2010, compared with 71.1 % of Americans in the same year), or broadband Internet access (21.1% in 2010, compared with 68.2% of Americans).⁹ Beyond the low broadband penetration rate, the lack of civil-society involvement in copyright issues in Mexico is also likely attributable to the newness and weakness of Mexican civil society in a nominally post-corporatist era. Until the mid-1990s, civil society was a “highly restricted space”: “tightly controlled from above, creating a political culture characterized by verticalism

⁹ OECD Broadband portal, <http://www.oecd.org/dataoecd/20/59/39574039.xls>.

and hierarchy, as well as the exclusion of large segments of the population not represented in the corporatist system” (Blacklock and Macdonald 1997, 146-147). Mexican civil society’s relative newness thus presents groups and individuals not already directly involved in the copyright debate with an additional challenge of gaining a foothold in the debate.

C. The Anti-Counterfeiting Trade Agreement: Negotiation and Issues

The Anti-Counterfeiting Trade Agreement (ACTA) is a “TRIPS-plus-plus regime” (Sell 2010, 3), strengthening global IP norms and laws beyond the previous 1995 TRIPS standard. Announced in 2006 and concluded in 2011, it was negotiated outside of the main intellectual property international institutions, such as the World Intellectual Property Organization and the World Trade Organization (home of TRIPS). It “was negotiated for the most part among IP-maximalist countries¹⁰ with incentives to leave other parties out of the negotiations” (Kaminski 2011, 390), with the United States being the main state driver of the agreement. Mexico and Morocco were the only developing countries involved in the talks, while key countries like Argentina, Brazil, India and China – “countries who have vested interest(s) in more flexible IP regimes” – were not (Kaminski 2011, 390). Furthermore, a confidential diplomatic cable between the U.S. Embassy in Mexico and the U.S. State Department released by WikiLeaks¹¹ suggests that Mexico was invited in order to offer the agreement some legitimacy among developing countries (La Quadrature du Net 2011).

Much of the treaty’s six chapters is concerned with border enforcement, and the criminalization of IP violations, and the expansion of violations to include those who indirectly benefit from infringement, including potentially companies like Facebook and Google (e.g., when people use these systems to arrange to infringe IP), all radical changes to domestic and

¹⁰ The United States, the European Union, Japan, Australia, Canada, New Zealand, Singapore and South Korea.

¹¹ WikiLeaks Cable 07MEXICO6229, dated December 19, 2007, released August 30, 2011. On file with the author.

global IP laws (Kaminski 2011, 392; 407-412). It also potentially affects access to generic drugs (Flynn 2011). However, despite its title, ACTA is as much a copyright as a trademarks treaty. Section five of ACTA chapter 2 (Article 27) is devoted entirely to “Enforcement of Intellectual Property Rights [i.e., copyright] in the Digital Environment.”

ACTA critics have tended to focus their energies on Article 27, the digital enforcement chapter, warning of its potential implications for digital innovation, online privacy and freedom of expression. Somewhat ironically given the continued opposition they continue to engender, it is the digital provisions that have undergone the greatest moderation from the initial (leaked) ACTA drafts, with the United States backing down on several issues. In particular, the U.S. had sought a regime, modelled on its domestic law,¹² that would require that ISPs, upon receiving an allegation of infringement, to remove the allegedly infringing material in order to qualify for immunity.¹³ Instead, the section’s final language says only that a Party *may* set up a specific regime to require ISPs to provide rights holders with information that identifies accused infringers. Nothing more stringent is required. It also requires that any measures not create “barriers to legislative activity, including electronic commerce, and, consistent with that Party’s law, preserves fundamental principles such as freedom of expression, fair process, and privacy.”

Despite this moderation, critics have seized on these provisions’ resulting vagueness: while the treaties do not *require* that countries adopt U.S.-style policies, they also leave open the possibility that they *could* be adopted. At best, then, ACTA postpones members’ decisions on how to implement the treaty, providing the United States and its allied content industries with future openings to promote its preferred policies.

¹² Specifically, the 1998 *Digital Millennium Copyright Act*.

¹³ Also known as “notice and takedown.”

Unusually,¹⁴ ACTA was negotiated in secret, with the first official draft not released until April 2010 (Kaminski 2011, 391). Key stakeholders from business and civil society were not consulted initially and learned only of its content when the treaty was leaked in March 2010. As copyright expert Mike Masnick remarked, “entertainment industry and pharma lobbyists had full access... everyone else? Not so much” (Masnick 2012). Secrecy remained an obsession throughout the negotiations. Before supposedly public consultations in Mexico on January 20, 2010, on the Internet section, IMPI officials required that participants signed a confidentiality agreement because the discussions would cover issues of “national security” (Juárez and Martínez 2010, 70).

This secrecy raised “concerns of unequal access by stakeholders (the concern being that the USTR [United States Trade Representative], for example, may be engaging in more detail with representatives of IP owners than other stakeholders). It also prevents effective participation by interested parties, which is problematic given that any agreement negotiated will have inevitable impact on domestic IP law and law enforcement policy” (Weatherall 2008, 4). The initial treaty reflected a one-sided approach to the issues. David Fewer, Director of the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic at the University of Ottawa remarked that “if Hollywood could order intellectual property laws for Christmas what would they look like? This is pretty close” (cited in Sell 2010, 9).

D. ACTA comes to Mexico

At a time when the Arab Spring has broken the politics of the Middle East wide open, it is tempting to treat yet another online social movement triumph as old hat. And yet, it is worth considering exactly what the Mexican Stop ACTA movement had to do in order to get a unanimous Senate vote. First, and most importantly, they had to get themselves recognized by a

¹⁴ At least at the time. The current Trans-Pacific Partnership talks are likewise being negotiated in secret.

closed copyright establishment that leaned definitively toward the protection side of copyright's protection/dissemination divide. Second, and almost as daunting, they had to get all parties in a Senate that previously went along with the status quo to reject the copyright establishment.

Like most social movements, online and otherwise, Stop ACTA benefited from a combination of past experience, fortuitous timing (i.e., luck), and smart and superior organizing. In this case, civil society and the general public were mobilized by a small network of about a dozen individuals active on Internet and copyright issues (Antonio Martínez, interview by author, February 18, 2013). The Stop ACTA movement was built upon a network of individuals established in a 2009 battle against a government proposal to levy a 4% tax on the Internet. On October 19, 2009, countering government assertions that Internet was a luxury (the tax program was part of a wider tax hikes on goods such as alcoholic drinks and tobacco), Alejandro Pisanty, chair of the Internet Society in Mexico, a transnational group dedicated to maintaining an open Internet, argued on his blog that Internet access was a necessary service (Pisanty 2009). Playing off a similar phrase from a digital protest in Venezuela, he coined the phrase “*Internet necesario*,” which his colleague, intellectual property lawyer and co-leader of the Mexican chapter of Creative Commons Mexico¹⁵ León Felipe Sánchez Ambía, tweeted as a hashtag #internetnecesario (Pisanty, Sánchez, interviews by the author, February 25, 19, respectively; Zamora 2010, 22).

The move, which the Spanish newspaper *El País* called “the first Twitter protest” (cited in Zamora 2010, 26), was a huge success. #internetnecesario became the first global trending Twitter topic to emerge from Mexico (Martínez, interview by author, February 18, 2013). More importantly, traditional media covered the novel #internetnecesario, amplifying the movement

¹⁵ Creative Commons is the alternative copyright licensing system developed by U.S. law professor Lawrence Lessig.

and legitimizing the existence of digital communities (Zamora 2010, 24). By October 31, the game was up. While the tax went through on mobile telephones, landlines and cable television (Castellón 2010, 85), more than 100 Senators voted against a proposed (reduced) 3% tax on Internet services; none supported it (Zamora 2010, 26), a victory Campos Cortés (2011, 31-33) credits to the online community, favourable media coverage and strategic alliances with affected businesses.

The success of #internetnecesario had several decisive effects on Mexican politics and the eventual ACTA debate. First, it demonstrated to Mexican activists that they could successfully use a decentralized network like Twitter to organize without the huge investments of time and money typically required of social movements. Second, it legitimized the main #internetnecesario spokespeople in Mexican politics. According to Pepe Flores, a blogger who followed both #internetnecesario and the Stop ACTA movement, those involved became opinion leaders on the subject of the Internet, which was a relatively new public-policy issue in Mexico in 2009 (Interview by author, February 20, 2013). These leaders included Pisanty and Sánchez, as well as Antonio Martínez Velázquez, a young lawyer with an interest in human rights, and artist Geraldine Juárez, who was instrumental in publicizing the Mexican copyright debate internationally on sites like Techdirt.

Third, #internetnecesario created a network of like-minded individuals, such as Sánchez, Pisanty, Martínez and Juárez, who would go on to form the core of the Stop ACTA network – in the words of Martínez, “the usual suspects of the Internet” (Interview by author, February 18, 2013). These activists, interviewed by the author, see themselves as part of a larger transnational movement, against ACTA specifically, and for more balanced copyright and open Internet legislation generally. They are in frequent contact with activists from other countries – Stop

ACTA's initial call for the Mexican Senate to demand the release of the official ACTA text was supported by Jamie Love and Gigi Sohn, of the U.S. groups Knowledge Ecology International and Public Knowledge, respectively (Juárez and Martínez 2010, 69). Many of the movement's motivating ideas about copyright and net neutrality originated outside of Mexico – unsurprisingly since the Internet was originally created in the United States – in the U.S. and Europe, where these debates have a longer history. Martínez, for example, cited as influences the French website *La Quadrature du Net*, the U.S. net libertarian group the Electronic Frontier Foundation, and the Swedish Pirate Party. He wrote the first anti-ACTA editorial to appear in a mainstream paper as a member of the (virtual) Mexican Pirate Party. Along the same lines, Sánchez is the Mexican director of Creative Commons Mexico, Creative Commons being an alternative copyright licensing system developed by U.S. law professor Lawrence Lessig.

Finally, not only did #internetnecesario put these activists in touch with each other, it also put them (and Mexicans in general) in closer contact with their elected officials. The year 2009 seems to have been a watershed for Mexican politicians in terms of social media. Coming as Mexican broadband use continues to rise, campaigns such as #internetnecesario and, in the United States, that of Barack Obama demonstrated that social networks could have decisive political effects. Consequently, they began using (and paying attention to) Twitter (Castellón 2010, 85; Martínez, interview by author, February 18, 2013). In short, Twitter, and social media generally, became part of the Mexican political discourse.

Most consequentially, #internetnecesario allowed “the usual suspects of the Internet” to develop a relationship with Senator Francisco Javier Castellón Fonseca. As chair of the Senate Science and Technology Committee, Castellón played a key gatekeeper role in both the #internetnecesario and ACTA debates. A professor with a doctorate in economics, and a member

of the leftist *Partido de la Revolución Democrática* (Party of the Democratic Revolution, PRD), Castellón is a firm believer in the importance of Internet access, and one of the few Senators who understands the importance of this issue, according to Flores (Interview by author, February 20, 2013). As such, he was a natural ally for the #internetnecesario activists. In the #internetnecesario case, Sánchez says that Castellón “was like this captain of freedom that grabbed the cause and took it to the Senate, [saying] ‘we need to listen to the people. I mean, Twitter isn’t some kind of social network that doesn’t matter. This is really happening and there’s real discomfort in the people for having the telecommunications taxed’” (Sánchez, interview by author, February 19, 2013).

Global civil society started to pay attention to ACTA in 2008 when the Wikileaks released information about the negotiations.¹⁶ In 2009 and 2010 the issue began to heat up in Mexico. It was to Castellón that Juárez and Martínez turned as they were trying to put ACTA onto the public agenda. Initially, however, Castellón did not even believe that the treaty existed. While a 2007 law requires the government to notify, and keep informed, the Senate of any economic treaties it is negotiating,¹⁷ Castellón had not been informed of the negotiations. It was only after Castellón sent a formal request to the government that he and the Senate were officially notified that the government, with IMPI as the lead agency, was in fact negotiating ACTA (Castellón, interview by author, February 20, 2013).

In the face of government responses that ranged from dismissive (its first response took four months to arrive [Castellón, interview by author, February 20, 2013]) to insulting,¹⁸ the

¹⁶ Sánchez created the openacta.org webpage on August 25, 2008, although it was only updated a few times over the following year (Juárez and Martínez 2010, 66).

¹⁷ The Ley sobre la Aprobación de Tratados en Materia Económica.

¹⁸ In a March 9, 2010, appearance before the Science and Technology Commission, IMPI head Jorge Amigo dismissed critics as “clueless people who believe that ACTA will destroy the Internet” (cited in Castellón 2010, 86; author’s translation).

Senate repeatedly requested information on the treaty, only to be stonewalled. In response, on October 5, 2010, Castellón, with all-party support, created a Working Group to examine ACTA (in Spanish, the *Grupo Pural para dar seguimiento al proceso de Negociaciones del ACTA*). The group's mandate called on it to:

- follow the (then still-ongoing) ACTA negotiations in order to increase their transparency and to ensure that it is in line with the Constitution; and
- hold public meetings with government officials, experts, and interested members of the public to determine an alternative to ACTA that would address intellectual property, the Internet, and freedoms of expression and privacy.

As Castellón noted in the group's first organizing meeting, the Working Group's objective was not so much to analyze ACTA, but rather to give affected parties an opportunity to express their opinions, and for the Working Group to listen (Grupo Plural, Nov 23, 2011, p. 25). In forming the Working Group, the Senate also called on the government to suspend its participation in ACTA talks (Grupo Plural 2011, 1). While the government did not follow this directive, it did agree not to sign the treaty until the Senate had issued its final report (Grupo Plural, July 12, 2011, 23).

The government's refusal to notify the Senate of its involvement in the ACTA negotiations reveals the Catch-22 nature of ACTA secrecy. The secrecy was necessary because involving critical actors, such as the telecommunications industry and civil-society groups, would have vehemently opposed treaty language that was written to satisfy the content industries had they been invited to comment early on. However, given the power of domestic telecommunications lobbies, not only in Mexico but also in the United States, it is highly unlikely that their interests would not have to be taken into account when a treaty is eventually translated into domestic law.

There is one huge flaw in this plan: Treaties have to be ratified and/or implemented by domestic parliaments, and there is little that a politician dislikes more than the feeling that they are being ignored. Trying to bypass a politician – any politician – in an area in which they have legislative responsibility, in which they hold power, is a sure-fire way to invite their ire. The Working Group was the Senate's response. While not unusual in Mexican parliamentary politics, treaties and laws are usually not subject either to examination by Working Groups or to such intense scrutiny by members of the public.

While ACTA contains several potentially controversial elements, the Stop ACTA network made a conscious decision to focus on its online section and specifically on ACTA's potential effect on online privacy, freedom of expression, and the importance of broadband access to Mexico's future (Martínez, interview by author, February 18, 2013). These concerns were all reflected in the Working Group's final report. Between November 23, 2010, and July 12, 2011, the Working Group held nine meetings, six of which were devoted to hearing from witnesses and three to organizational issues. The overall structure of the hearings reveals a great deal about the Senators' intentions. First, the hearings were the most open in Senate history. Not only were they streamed online, with some 600 citizens also responding to an invitation to submit a brief (via email) to the Working Group, but they also heard from many more witnesses than is typical for legislative hearings, and from beyond the copyright establishment. Second civil-society groups were given pride of place in the hearings. Originally, the Working Group had planned to invite civil society to present at the second meeting (government officials had presented first, on November 24). However, at the February 2, 2010, meeting Senator Federico Döring Casar, who belongs to the same party as then-President Felipe Calderón (the *Partido de*

Acción Nacional (National Action Party, PAN)), argued successfully that civil society should be given the first and the last word.

Castellón and his allies in the Stop ACTA network actively pursued a strategy of maximum openness, not simply because of their confidence that their side had the better arguments. If #internetnecesario legitimized the activists as representatives of the Internet, the Working Group hearings legitimized these Internet representatives within the copyright establishment in a way that they would not have been able to achieve otherwise. Mexican copyright and IP policymaking historically has taken place among a small group of like-minded individuals and institutions. Extending copyright to cover online activities meant that new institutions and actors, namely the telecommunications regulator COFETEL and Telmex, had to be included in copyright discussions.¹⁹ However, before the ACTA debate civil society and actual Internet users did not have a seat at the table. Open sessions gave them that seat.

The hearings broke down into the copyright establishment versus everyone else. IMPI, INDAUTOR, intellectual-property lawyers (with the exception of Sánchez, an outlier in Mexican legal-IP circles), collection societies and content-industry group representatives put forward several arguments. These included that ACTA was necessary to modernize Mexican IP law, to promote creativity, and to keep Mexico in line with international standards. In their November 24, 2010, appearance before the Working Group, government officials also downplayed concerns about the treaty. IMPI head Jorge Amigo, for example, remarked that the “three strikes” approach to infringement (an individual would be cut off from the Internet after three copyright infringements) was no longer required by the treaty. INDAUTOR Director-General Manuel Guerra Zamarro contended that ACTA would not violate individuals’ rights, did not include an

¹⁹ This had already led to problems. In 2010 the author was told that the telecoms/copyright sides were having difficulty merely setting up meetings to discuss possible digital-copyright reforms.

obligation for ISPs to monitor user activity, and allowed member states to design their own policies.

In contrast, civil-society groups, telecommunications and Internet representatives largely argued that while intellectual property rights were important, they should not come at the expense of fundamental rights, including the constitutionally guaranteed right of the inviolability of communications. Presenters focused on several points, notably the ability of existing laws to address concerns raised under ACTA, ACTA's potentially stifling effect on Mexican innovation and human rights, and the fact that Mexico was the only Latin American country in the negotiations. While the copyright establishment's response was largely defensive and concentrated on defending author's rights, ACTA critics framed their argument in terms of ACTA's constitutionality, its negative effect on human rights and social and economic development. Critics, including from the telecommunications sector, focused on the ambiguity in ACTA's Internet provisions, specifically Articles 27.1, 27.2 and 27.4 dealing with ISP requirements to police their systems. Telmex, the leading Mexican ISP, for example, did not want the cost or hassle of having to monitor its customers activities (Castellón; Flores, interviews by author, February 20 and 19, respectively), while human-rights groups objected to the monitoring on constitutional grounds. There was no business support for ACTA beyond the usual suspects: Telmex, Google (which had just recently set up an office in Mexico), the Internet industry, as well as the banking and tourism industries were all against it (Jesús Ramírez Díaz, interview by author, February 21, 2013).

Throughout the six-plus months of hearings, social media kept the conversation going, and that conversation was almost unanimously anti-ACTA. Organizing largely around the Twitter hashtag #ACTA, as well as on blogs and other social media, activists shared information

and planned strategies. The response was very negative toward government officials, whom they saw as lying about ACTA (Ramírez, interview by author, February 21, 2013). The debate was also almost completely one-sided. According to Sánchez, the copyright establishment – which was not used to this form of negotiation – was dismissive of the activists at the first meeting: “you could see the faces of these guys, they were just mocking us, they were just laughing at us, they were just like ‘okay, let’s listen to these guys and everything will just pass by and we’ll have our treaty’.” (Interview by author, February 19, 2013). Neither did the Executive – IMPI or the President – engage beyond using press releases according to Jesús Ramírez Díaz, the technical secretary for the Senate Science and Technology Committee (Interview by author, February 21, 2013). IMPI head Jorge Amigo, says Martínez, also kept a low profile. While Stop ACTA was accusing him of representing “institutional corruption” for IMPI’s one-sided representation of copyright interests and not those of Mexican society as a whole, he stayed silent, essentially allowing his opponents to define him (Interview by author, February 18, 2013). They were further undercut by critiques of ACTA by COFETEL, the federal telecommunications regulator, by the National Human Rights Commission and the Federal Institute of Access to Public Information. They also received little support from the traditional media, with critical stories and columns running in prominent publications like *El Economista* and *El Universal* (Martínez; Ramírez, interviews by author, February 18 and 19, 2013, respectively).

By the Working Group’s final hearings in July 2011, it was clear that the copyright establishment had lost both the public opinion and policy battles, gaining no allies in the Senate or in the wider society. Throughout the hearings senators such as Beatriz Zavala from the ruling PAN (the president’s party) echoed protestors’ main argument that copyright protection must be balanced against the right to access to information, free expression, communication, access to

education and culture. Implicit throughout was Senators' conviction that ACTA did not meet this test and their dissatisfaction with the copyright establishment's responses. The final – unanimous – report, released on July 20, 2011, covered all of these points, and called for President Calderón not to sign ACTA, on the grounds that:

- The government had broken the law in negotiating the treaty in secret;
- ACTA, if implemented, would violate Mexican law;
- ACTA's ambiguity would introduce ambiguity into Mexican law (in civil-law jurisdictions like Mexico, treaties become part of a country's law, below the constitution but above legislated law, upon ratification)
- ACTA could limit access to the Internet and worsen the “digital divide” in Mexico; and
- ACTA could lead to Internet censorship, restricting net neutrality and endangering the legitimate development of e-commerce, digital creativity and the legitimate diffusion of culture.

E. Aftermath

While this unanimous vote represented a significant triumph for the anti-ACTA forces, it did not signal the end of Mexican ACTA debate. On Sunday, July 12, 2012, less than two weeks after the July 1 presidential election, outgoing President Calderón signed ACTA.²⁰ While no one knows for certain why Calderón signed the agreement, some of those interviewed have speculated that it was a condition demanded by the United States for Mexico's entry to the Trans-Pacific Partnership trade talks, which Mexico formally joined in October 2012. Neither is it clear as of April 2013 whether the new president, Enrique Peña Nieto will submit the treat to the Senate for ratification or continue ACTA talks within the TPP. According to the sources interviewed by the author, the Senate's unanimous vote against ACTA does not guarantee that it would be rejected if it were submitted for ratification. The constitutional rule mandating that senators cannot serve consecutive terms means that many of the senators who voted against ACTA – including Castellón – are no longer there, and it is unclear if the new senators will be as

²⁰ In Mexico, presidents can serve only one term.

offended by the lack of consultation as those of the previous session. This uncertainty underscores – in line with political process theory – the extent to which the success of social movements (online or otherwise) depend on the institutional and political contexts within which they operate.

F. Analysis and conclusion

The continuing uncertainty over ACTA's future in Mexico should not detract from the accomplishments of the Stop ACTA movement. The Stop ACTA network was able to expand the Mexican copyright establishment to include not only heavyweights like COFETEL and Telmex (who would have had been included regardless), but also civil society. While the future direction of Mexican copyright remains uncertain, Stop ACTA's politicization of copyright has raised the political price of ignoring users' digital-copyright concerns. Furthermore, while it certainly did not hurt that they were able to rally so many important groups to their cause, and while Senators' offense at the government's attempted end-run around them doubtlessly contributed to the Senate's unanimous rejection of ACTA, Castellón argues that without the Stop ACTA network, the Senate vote against ACTA never would have happened (Interview by author, February 20, 2013). Beyond copyright and Internet policies, according to those interviewed, the sheer openness of the Working Group also offers an example of how to increase the transparency of Mexico's rather opaque politics.

Stop ACTA's victory is attributable to the leveraging of the characteristics of social media – namely, lower resource requirements for organizing and disseminating information – within a political strategy that exploited openings in the Mexican political system (a sympathetic committee chair, a very annoyed Senate) and the Executive's Catch-22 secrecy strategy. They

also benefited from a compelling message that focused on the need for openness in the political process and copyright/Internet policy.

Successful framing of an issue is key to any social movement's success (Campbell 2004; Garrett 2006, 204), and Stop ACTA won this battle handily. In doing so, they also strengthened the framing of Internet access and net neutrality as important values. The importance of this development should not be underestimated. In the global North, the Internet developed as an open, decentralized network, outside the intense political attention it now receives. By the time the content industries began to fully grasp how it would affect their business models, the norm of open access had already been institutionalized in the code and norms in and around the Internet. Institutions, once created, are very difficult to change. These norms are much younger, and therefore much weaker, in Internet latecomer countries like Mexico. The task of defending the idea that the Internet should be open to all (net neutrality) is therefore that much harder to defend against well-moneyed interests (like the United States and the U.S.-dominated content industries).

Several lessons can be gleaned from the Mexican Stop ACTA campaign. This conclusion focuses on two in particular: lessons for democratic countries with weak civil societies, and what it tells us about the functioning of transnational advocacy networks.

1. Lessons for developing countries

For other developing countries, the Stop ACTA debate demonstrated that individuals can use social media to mobilize effectively, even in (democratic) countries with a relatively weak civil society, and to change the framing of an issue and alter the policy agenda.²¹ According to Antonio Martínez, Stop ACTA's success has led Mexican NGOs to focus more on online activities (Interview by author, February 18, 2013). Their success also suggests that, at least for

²¹ Thanks to George Shambaugh for pointing out the last two results.

some types of protests, low Internet penetration rates do not necessarily limit a movement's potential for success. More important than the penetration rate is the fact that Mexican politicians had been sensitized (by #internetnecesario and the Obama campaign) to pay attention to what was being said on Twitter. The politicians believed this discursive arena was important, and so it became important. From this perspective, that the copyright establishment would not (or could not) engage in a Twitter war with the activists likely went a long way to sealing ACTA's fate, at least for now.

That said, the protest and ACTA's uncertain future revealed the strengths and weaknesses of social media-based protests. That social network campaigns are built for speed is both an advantage and a disadvantage. On the one hand, it allows individuals to coordinate actions easily and to diffuse information and strategies incredibly rapidly. On the other, social media campaigns succeed quickly because they have to if they are to succeed at all,²² meaning that their effectiveness may be limited, or take a different form, in protracted policy disputes. Jesús Ramírez, of the Senate Science and Technology Committee expressed exactly this concern when asked about the future of Internet and copyright policy in Mexico (Interview by author, February 21, 2013). Tilly (2003, 23) echoes this concern as well:

Neither Smart Mobs nor weakly linked networks enjoy the capacity for sustained political work on behalf of their programs that earlier centuries' histories have shown us as the accompaniment of social movement repertoires. Quick mobilization of millions in opposition to WTO policies or McDonald's hamburgers sensitizes their targets to public relations and encourages them to defend their perimeters. It does not obviously give ordinary people voice in decision-making.

These points are separate from the issue of whether online social movements can have decisive political and policy effects: they obviously can, as shown by this and other studies (e.g., Carty 2008; Harlow and Harp 2012; and Margetts et al. 2009). Although they can allow for

²² Thanks to Alejandro Pisanty for this perspective.

successful political action in the absence of a well-institutionalized civil society, social-media networks should be seen as a complement, not a replacement for, traditional non-governmental organizations. It is unclear whether such campaigns can successfully prosecute a drawn-out conflict without a solid, bricks-and-mortar institutional base. In the context of Mexican copyright, absent an institutionalized actor like the Electronic Frontier Foundation in the United States, Ramírez expressed concern that it would be difficult to defend principles like net neutrality supported by the Stop ACTA network. Getting the Senate to acknowledge the importance of Internet rights in the Mexican copyright debate was a short-term battle. It remains to be seen whether a network of individuals, each with their own day jobs, will be able to undertake the long-term politicking required to defend this new norm. That said, the establishment of a new norm in favour of more open Congressional hearings would represent a long-term structural reform.

2. The Mexican Stop ACTA debate in transnational context

The Mexican ACTA debate also sheds some light on the phenomena of transnational activist networks. Most notable is the asymmetrical nature of the anti-ACTA transnational network. As noted above, the Mexican Stop ACTA movement possesses many of the characteristics of a transnational activist network, particularly with respect to the spread of norms. Despite this involvement, one should not overestimate the transnational nature of the Mexican Stop ACTA movement. The information exchange, which is supposed to be a hallmark of a transnational activist network (Keck and Sikkink 1998, 2), is largely asymmetrical. Activists outside Mexico have not paid similar attention to the Mexican case – a fact remarked upon bemusedly by two of the Stop ACTA network participants (Martínez, Pisanty, interviews by author, February 19 and 25, respectively). While it garnered some international attention as it

was happening (mostly, it seems, thanks to the efforts of Geraldine Juárez, who contributed several articles to influential websites like Techdirt and Infojustice.org), this attention seems to have little effect on the outcome. As for the actual work of convincing the Senate to reject ACTA, all of the work was done in-country. The non-Mexican presence in the Mexican Stop ACTA camp was limited to this normative influence and Google's brief against ACTA. This finding is in line with Tarrow's concept of rooted cosmopolitanism, in which people talk globally and act locally. It also suggests some good news for other potential online activists, namely that effective online social mobilization on an international issue like ACTA can occur even if the world is not paying much attention. What matters is the effective exploitation of social media in a way that is appropriate to the domestic political context.

Stop ACTA's achievement – a dozen people with little in the way of institutional support convincing a previously pro-stronger-copyright Senate to take a stand on an issue of great interest to Mexico's most important trading partner – is in danger of falling into the memory hole, even among copyright and open-Internet activists. It would be a shame if this were to happen. Social-network stories like the Arab Spring may be more dramatic, but the Mexican Stop ACTA network offers a valuable example of how citizens can leverage social networks and an understanding of their domestic political regime to effect political change.

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