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Social vs legal norms

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In October 2011, the United States, Canada, Australia, New Zealand, Japan, South Korea, Singapore, and Morocco signed in Tokyo the Anti-Counterfeiting Trade Agreement (ACTA), establishing international standards for intellectual property rights enforcement (The Anti-Counterfeiting…, 2008). In this context, regulations applying to Internet dissemination of works protected by law, identified with a combating of media piracy (The Anti-Counterfeiting…, n.d.), aroused the greatest excitement. The Council of the European Union adopted the ACTA on 4 July 2012 during the Polish presidency.

The ACTA applies to combating all forms of intellectual property violation. Its most controversial provisions pertain to the digital environment, principally computer networks. The content of the agreement, and the confidentiality of the negotiations met with a broad opposition. The commonest allegations were that the regulations violate the constitutions of liberal states, particularly the principle of freedom of expression and the restriction of the freedom of the flow of innovation (this includes open source software, which is also important to our Journal). The restrictions imposed by the provisions of the ACTA serve the interests of large transnational corporations who possess rights to well-known brands, trademarks, patents, and cultural works (ACTA: a global…, n.d.). The guardian of the interests of the corporations are the United States that perform – not for the first time – the role of a policeman of the appropriated goods. 'The legal tradition of the defence of what has yet been captured grew on the American tradition of plundering. It was enough

to recognise that, since the Indians do not have a land registry, or do not own the land, the land can be taken free. The American ACTA lawyers act […] similarly' (Chmielnik 2012b: 33).

That conclusion is supported by two other regulations: SOPA and PIPA. The former (The Stop Online Piracy Act) is a bill that expands the ability of U.S. law enforcement to fight online trafficking in copyrighted intellectual property by requesting of court orders requiring Internet service providers to block access to the websites and thus expand existing criminal laws to include violation of the respective rights. The PIPA (The Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act), is in turn a law proposed in 2011 with the stated goal of giving the U.S. government and copyright holders additional tools to curb access to 'rogue websites dedicated to the sale of infringing or counterfeit goods' (PIPA n.d.), especially those registered outside the USA. The official view of the U.S. government of June 2012 assumes that the ACTA will help protect intellectual property, this being essential for the American labour market in innovatory and creative industries (Sapiro n.d.). Both president G. W. Bush and B. Obama's administrations rejected, however, a requests to make the text of the ACTA public by mainaining that it would cause 'damage to the national security' (McCullagh 2010). They refused, however, to work on a civil Freedom of Information Act.

In Poland, non-governmental organisations expressed concern about the work on the preparation for the adoption of the ACTA. A letter to the Prime Minister turned out to be unsuccessful. Other public official pointed out the possibility of the ACTA breaching the privacy of personal data (GIODO 2012). After 20 sites of the government, Parliament, and President had been blocked by the hacker's group Anonymous, the question of the restriction of freedom by governments and corporations gained extensive attention. At the end of January 2012, demonstrations took place in many Polish cities, the largerst one, of 15,000 people, being in Cracow (cf. a map: Stworzyliśmy…, 2012). Protests also appeared on the Internet (Polskie strony…, 2012). Over 800 Polish portals were unsolicitedly blackouted (Marczak 2012), and over 3,900 services supported the www.jestemprzeciwacta.pl (I'm against ACTA) site, on which 400,000 signatures were gained under the respective petition

(„Offloadowanie"…, 2012). Some 1,800,000 e-mails were sent to members of Parliament, including 97% against the ACTA (ACTA n.d.). A poll conducted in late January indicated that 64% of the respondents opposed the agreement's signing, and 50% thought it would curtail essential freedoms (ACTA n.d.). In February 2012, protests were held against the ACTA in more than 200 European cities (Rispoli 2012; Anti-ACTA day…, 2012). In the same month, the Polish government stated that the ratification was suspended, recognising its previous support for the ACTA as an error (Dohoda…, 2012; Poland and Slovenia…, 2012), while the Prime Minister sent a letter to the EU's leaders urging them to reject the ACTA (Norton 2012; Trudelle 2012). The European Parliament rejected the ACTA (Acta was…, n.d.), the more so that many EU states, which had signed the ACTA, decided to postpone its ratification under the pressure of public outrage, and this in turn resulted in the inhibition of the ratification and its entry into force (Norton 2012).

Critics of the ACTA in Europe and North America indicated that the agreement in its current draft would profoundly restrict the fundamental rights and freedoms of citizens, most notably the freedom of expression and communication privacy (ACTA: a global…, n.d.), by creating a culture of surveillance and suspicion (Speak out against…, 2008) and introducing unduly harsh legal standards that do not reflect contemporary principles of democratic government, free market exchange, or civil liberties (Shaw 2009). It also includes shifting liability for the actions of their subscribers to Internet service providers since the ACTA would facilitate privacy violations by trademark and copyright holders against private citizens suspected of infringement activities without any sort of legal due process (Shaw 2009), violating in this way the presumption of innocence, which is a fundamental principle in lawful states. The problem with the ACTA is therefore that it is third party policing. Private firms hired by corporations, and not the police, would fight intellectual property theft. In this way, private firms would receive the ability to trade personal data. A non-state actor would be charged with surveillance of real or imaginary opponents of the capitalist system (Ruszczyński 2012). As a result, a free software creation would be perceived as dangerous and threatening rather than creative, innovative,

and exciting (Speak out against…, 2008). This resonantes with the thought of Karl Marx, namely that the only freedom known in capitalism is the freedom of trade.

The widely proclaimed values of the neoliberal ideology, i.e. innovativeness and competitiveness, deregulation and freedom from constraint, turn out to be purely ideological slogans in this context, subordinated to the primal value of market success. The innovativeness itself is not sufficient for the success if it is not supported by exclusiveness, monopoly, money, or the state power, which support innovation by the appropriate means. In this way, innovativeness ceases to be a technical category and becoms a legal category (Chmielnik 2012a) while social norms, including decency and reliability, are reduced to legal norms. The Latin imperative *non omne licitum honestum* (not everything what is permitted is honest) is thus replaced by the legal formula 'what is not prohibited is permitted'. Law is, obviously, a social class of category that provides benefits, including profit, to the strongest. For the latter, innovativeness is not an aim but merely a means to maximise profit. Without overcoming the limitations imposed by the legal system, of which the ACTA is a part, there will be no freedom or development either.

In the globalised world, the imposed legal system serves to strengthen the competitive advantage of the core while suppressing the innovativeness of semi-peripheries and peripheries. The institutions of democratic states are subordinated to the interests of global corporations, the global hegemon, i.e. the United States, being the guarantor of this order. Polarisation, which is a tool for innovativeness, serving not only the dominance of the core over the (semi)periphery, but also strengthening this dominance, is an important element of this order or, rather, disorder (Bauman 1998). In this (dis)order, periphery is doomed to the role of victim while simi-periphery has to struggle hard to keep its position. Our journal, *Przestrzeń Społeczna (Social Space)*, represents interests of the very semi-periphery and therefore gives priority to (1) moral over legal norms by opting for the free flow of unlicensed ideas, and (2) social capital, consisting of trust in the partner, over political capital, consisting of trust in the provisions of the law.

An important question is what should be protected in democratic society: liberty or property, and which of the two is more important (Ruszczyński 2012)? For

the core of the social system, property is the best guarantee of personal liberty. For the financially weak but intellectually awoken semi-periphery of the social system, any restriction of liberty in the public space involves an extension of censorship, an increase in state repressiveness, and surveillance of citizens (Ruszczyński 2012). It is liberty that contributes to the advancement of education and the dissemination of new trends in culture, being also a prerequisite for the development of creative industries since 'the freedom of creation fosters the enrichment of states, corporations […] and artists' (Ruszczyński 2012: 34).

The concept of man and his works is one pillar of European culture. The concept consists of the belief that talent, genius, and art are a deposit given to people by nature, gods or God, and people – as custodians of these qualities – are to share them with others. In this context, the perception of art, but also science, in monetary terms was incompatible with the traditional ethos of the artist and scientist, and as recently as a hundred years ago offensive for them, therefore Homer, Leanardo da Vinci, Nicolaus Copernicus, Galileo Galilei, and Johannes Kepler 'did not expect royalties for rewriting, quoting, and reprinting their works' (Chmielnik 2012b: 32). 'The free drawing on the achievements of previous generations is the essence of culture. Imitation and creative processing of achievements of others […] has formed civilisation since [...] millenia [ago]' (Ruszczyński 2012: 34). Few authors violate the principle of equality by imposing the rest of humanity a rationing of what is the common good (Chmielnik 2012b). 'The excessive protection of intellectual property decreases [so] the creativity of societies and their ability to innovate' (Chmielnik 2012b: 32) by destroying the principle of intellectual inspiration, for since the Church has ceased to control science, knowledge ceased to be the domain of the few copyright owners (ibidem).

Importantly, this rule was much more important for the development of the United States than Europe because America would not have had a chance to overcome her peripheriality without the free movement of European thought and with a respect to Indians' property. Having seen, however, a great economic and political potential of culture, including science, America has become the main promoter of the change from moral to legal norms and the imperative to share in

commercial 'success'. 'Copyright became an industry, with which America wants to dominate the world even at the cost of restoration of the anti-Enlightenment character of science and culture' (Chmielnik 2012b: 33). Greed destroys culture because noble rivalry and 'noble ideas disappear in the shadow of a long list of payments filled with the names of dodgers having nothing to do with […] science', freely sharing a common cultural heritage themselves (ibidem).

The case of the protection of pharmaceuticals by the ACTA is even more spectacular by blurring the difference between counterfeit and generic medicines, i.e. cheap equivalents of expensive medical products of pharmaceutical companies, which are not interested in research on low-cost treatments, including cancer and malaria, not yielding sufficiently high profits (A blank cheque …, 2012). In 1975-1995, pharmaceutical companies introduced to the market 14,000 new medicines, including only 14 for tropical diseases (Dylus 2005). The lack of interest in the study of anti-malaria treatment results from the extreme poverty of the victims of this disease who could not therefore be customers of these companies. The restrictions provided for in the ACTA is therefore to ensure a full control of the medicines trade, i.e. not only of people's liberty, as in the case of the Internet control, but even of their lives.

In May 2012, European Commissioner for Digital Agenda, Neelie Kroes, noted the emergence of a new mass and politically strong civil movement protesting against the provisions restricting the openness and innovativeness of the Internet. This calls for the need to recognise the Internet as a place of freedom from the SOPA and ACTA for all citizens, not only for the techno avant-garde (Knüwer 2012). The rebellion of the, mostly juvenile, Internet community, 'protesting against the collusion of governments and corporations for the defence of giant income of a few greedies' (Chmielnik 2012b: 33) seems to indicate that the protesters found the legal protection of intellectual property is a patent for consolidation of the, somewhat already strained, dominance of the global hegemon (ibidem).

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