The Anti-Counterfeiting Trade Agreement and the Networked Public Sphere: How to avoid a Convergent Crisis
I would like to extend my thanks to a number of people who provided considerable input the development of the ideas in this thesis including, Dr. Christian Christensen, Dr. Christian Fuchs, Dr. Ben Scott, Sascha Meinrath, Dr. Victor Pickard, Tim Maurer, Marcin de Kaminski, Jan-Peter Kleinhans, Simon Schöpf, and Erwin Spil.
# Table of Contents

Table of Figures 5  
Abstract 6  
I. Introduction 7  
II. Background 11  
  A. Introduction to Information Policy 11  
  B. Background on ACTA 17  
  C. Outline of Actors 21  
  D. Conclusion 30  
III. Theoretical Approach 31  
  A. The Public Sphere 32  
  B. The Networked Public Sphere 34  
  C. Networks and Digital Feudalism 41  
  D. Networked Civil Society 44  
  E. Conclusion 47  
IV. Methodology 49  
  A. Motivation to Use ACTA as a Case Study 49  
  B. Relating Theory to Data 51  
  C. Data Collection and Analysis 52  
  D. Conclusion 58  
V. Networks and Civil Society 59  
  A. The Global Networks of ACTA 60  
  B. European Networks 66  
  C. Engagement with European Parliament 72  
  D. Understanding Technology 75  
  E. Conclusion 80  
VI. A Networked Public Sphere? 81  
  A. From Movements to Institutions 81  
  B. A Networked Public Sphere 83  
  C. Conclusion 87  
VII. Conclusion 88  
IX. References 91  
  A. Books and Journals 91  
  B. Additional Resources 96
# Table of Figures

<table>
<thead>
<tr>
<th>Figure</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Figure 1.</td>
<td>Eleven Rounds of ACTA Negotiations</td>
<td>19</td>
</tr>
<tr>
<td>Figure 2:</td>
<td>The Countries of ACTA</td>
<td>22</td>
</tr>
<tr>
<td>Figure 3.</td>
<td>The OSI Model</td>
<td>43</td>
</tr>
<tr>
<td>Figure 4:</td>
<td>A streamlined codes-to-theory model for qualitative inquiry</td>
<td>52</td>
</tr>
<tr>
<td>Figure 5.</td>
<td>Categories and Codes</td>
<td>55</td>
</tr>
<tr>
<td>Figure 6.</td>
<td>IssueCrawler Seed URLs</td>
<td>57</td>
</tr>
<tr>
<td>Figure 7.</td>
<td>Protests for February 11, 2012</td>
<td>71</td>
</tr>
<tr>
<td>Figure 8.</td>
<td>Protests for June 9, 2012</td>
<td>72</td>
</tr>
<tr>
<td>Figure 9.</td>
<td>Network Map of EU and NA Civil Society Websites and Blogs</td>
<td>82</td>
</tr>
</tbody>
</table>
Abstract

Communications scholarship faces a convergent crisis. Research on networks includes the role of information networks in supporting social movements, networked civil society, the information society, and new forms of communication. But while communications literature utilizes a variety of approaches to describe the impact of networked communications, a dearth of technical expertise permeates scholarship. Despite the discourse on networks potentially bridging previously distinct disciplines, the lack of a fundamental understanding of communications networks and relationships between technical and socio-political networks remains a consistent gap. This thesis will investigate the extent that opposition to the Anti-Counterfeiting Trade Agreement (ACTA) in Europe constitute a networked public sphere. Through studying the role of civil society and the networked public in the European ACTA debate, the horizontal and vertical dimensions of socio-political and communications technology networks are not only illuminated, but the importance of analyzing the mechanisms through which vertical hierarchies enclose the public sphere become abundantly clear. This research provides the foundation for an interdisciplinary approach to understanding the relationship between information technology and socio-political networks and offers lessons for information policy makers, communications scholars, and networked civil society within the context of European democracy.

Key words: networked public sphere, global civil society, enclosure, digital feudalism, Anti-Counterfeiting Trade Agreement, civil society
I. Introduction

Communications scholarship faces a convergent crisis. Discussions of networks underline over two decades of scholarship from a variety of perspectives and disciplines that use the term for discussions on societal shifts, politics, and social movements. Communications research ranges from techno-deterministic perspectives on the liberating aspects of new technologies (Diamond 2010), suggestions for the disruptive qualities of online discourse (Lindgren 2013), emergent spaces (M. Christensen, Jansson, and Christensen 2011), as well as the surveillance threats posted by networked technologies. Research on the political outcomes of the internet suggests both opportunities for democracy (Howard 2011) to the use of social media for ideological control in opposition of democratic shifts (Pearce and Kendzior 2012). Networks have also been used to describe structures and organizations (Kahler 2009). Castells argues that the rise of networks have resulted in a shift in societal structures impacting international politics and the role of the nation-state, and a distinct change in communications (Castells 2009). Despite the seemingly common language across these disciplines, research on networks increasingly focuses on similar ideas without a common framework for analysis. Indeed, too often communications research misses the opportunity to incorporate technical knowledge of communications networks to better understand the convergent reality of this evolving area of research.

One attempt to gain greater understanding has been to focus on the underlying socio-political structures of the Internet. Curran revisits the technology development of the internet and criticizes scholars as neglecting how “commercialization subsequently distorted in the internet in the West while state censorship, in particular, muzzled the internet in the East” (Curran 2012, 59). McChesney has begun incorporating the relationship between market dominance and control (McChesney 2013) while Fuchs proposes Marxism as a framework for critical discourse on the internet (Fuchs 2011). Castells structures his research on developing a framework for understanding power in networks (Castells 2009).
But while communications literature utilize a variety of approaches to describing the impact how networked communications, technical novice permeates the scholarship. Despite the discourse on networks potentially bridging previously distinct disciplines the lack of a fundamental understanding of networks and relationships between technical and socio-political networks remains a consistent gap. Strikingly, Castells approaches networks as horizontal structures without adequate understanding of the underlying codes, protocols, and standards. Regrettfully, the more technically savvy a scholar might be, even relating the importance of architecture to function (Lessig 2006; Zittrain 2008; Galloway 2004), the research either shifts towards legal rather than social theory, such as in the case of Lessig and Zittrain, or focus on theory rather than empirical evidence as with Galloway.

In this thesis I propose a new framework for understanding the relationship between technical and socio-political networks, one that builds form and updates the Habermasian public sphere to understand networked publics. Applied as a dialectic to critically analyze the horizontal relationship and vertical hierarchies of the socio-political layer, the approach utilized in this thesis is grounded in both the actions and relationships of a networked public and the technical structures of the underlying communications networks that support these actions and relationships.

My analysis is focused on opposition in Europe to the Anti-counterfeiting Trade Agreement (ACTA), a timely and illustrative example. The European ACTA debate was an unprecedented period of European democracy. Although the European Commission initially negotiated the agreement on behalf of the European Union, ACTA was the first trade agreement completed after the ratification of the Lisbon Treaty. As a result, European Parliament had an opportunity to reject or accept a proposal from the European Commission, a body of experts that had previously served as unelected “guardians of the Treaties” (Hooghe 2001). During the period when European Parliament was considering the Agreement, street protests spanned the European continent in opposition to the agreement and citizens contacted Members of European Parliament to express their concerns. Additionally, the issue of ACTA occurred during a period of growth and institutionalization of information policy civil society in Europe.
As a case study, ACTA in Europe provides the opportunity to build on convergent concepts of networks. Using the network public sphere as a framework this thesis bridges global informant policy, international politics, communication theory, and social movements. However, rather than conflating different uses of networks as metaphor I offer a grounded analysis on networks at the socio-political layer as they relate to the technical layer with consideration to the vertical hierarchies in addition to horizontal relationships.

The analysis in this thesis will be focused on a research question that will be answered through investigating three subquestions. The main question is as follows:

Through this analysis this thesis seeks to answer the following question:

To what extent did the opposition to ACTA in Europe constitute a networked public sphere?

This question is intended to frame the analysis as well as provide a basis for developing a theoretical understanding of the debate within the context of networks and European democracy. This question will be addressed through three subquestions:

1. What is the origin and initial trajectory of ACTA?
2. What was the role of civil society in opposing ACTA and how did technology support networked relations?
3. What were the institutional outcomes of the ACTA debate?

In addressing these questions so I will explore the actors of a networked public sphere. Through this process I will define the boundaries of information policy and the role of civil society in global politics.

This discussion is provided through six further chapters. The next chapter will provide background to information policy, present ACTA as an example of international information policy, and discuss the origin and trajectory of ACTA. Although non-traditional approach to present data and analysis before engaging in a methodological discussion, a firm understanding of ACTA and involved actors will aide the reader in understanding the networks in later chapters. Additionally, this approach provides an opportunity to not only discuss the concept of information policy but situate ACTA as an example. The third chapter presents the theoretical framework used in this thesis. Beginning with a discussion of Habermas and the public sphere I offer a critical discussion of the networked public sphere.
before providing a definition. Additionally, I discuss provide an overview for understanding the networks and hierarchies at both the technical and socio-political layers of the networked public sphere. In the fourth chapter I discuss my personal motivations for studying the ACTA debate, provide an overview of qualitative research and discuss abduction as an approach for grounding theory in data. I also discuss my methodology for answer each of the research questions.

During my fifth and six chapters I present my data and analysis. Chapter five discuss the actions and relationships of ACTA during the period of negotiations in addition to activities during a period of protests, and the role of civil society relating a networked public to the democratic institution of the European Parliament. Additionally, I discus the technologies that supported civil society and the networked public. My sixth chapter discusses the institutionalised outcomes of the ACTA debate with regards to civil society and European democracy and discusses opposition to ACTA in terms of my framework for a networked public sphere. The Seventh and final chapter concludes my research and offers lessons for scholars, information policy makers, international politics, and European democracy.
II. Background

This chapter will cover three important areas of background for understanding a case study on ACTA. First, I will provide an introduction to information policy. As an international agreement ACTA can be viewed by various policy perspectives including economic, intellectual property, and foreign policy. However, the impact of intellectual property regulation on information exchange is an important example of how information policy represents a convergence of a variety of policy areas, and as an international agreement, prefaces the role of civil society in global politics. Additionally, the pervasiveness of the internet for daily communications demonstrates how information policies can elicit greater attention that copyright discussions have in pervious decades.

After discussing information policy this chapter will provide two background components for ACTA. I will provide an historical overview to ACTA including the origins of the agreement and negotiations. This will provide a background understanding of not only the agreement but reasons for concerns including the opaque nature of the negations. Additionally, I will provide an overview of key actors of civil society and politicians that contributed to the opposition of ACTA in Europe. Encompassing individuals and organizations, this will background on the the interests, history, and geographic locations of the political movement.

A. Introduction to Information Policy

Information policy is a broad field, one that often encompasses interdisciplinary policy areas with transnational or stateless implications. Indeed, information policy is an area of precedent setting in global politics. The first international organization the International Telecommunication Union (then the International Telegraph Union), and the first international regulatory agency, the International Corporation for Assigned Names and Numbers, are both products from the development information policy regimes (Braman 2009). As such, investigating international examples of information policy such as ACTA provide fertile ground for researching multi-national politics and networked civil society. Defining information policy, and the convergence girders the field as an umbrella of information, communications, and other policy areas, depends on a firm grasp of information in modern society.
Information as an output and structuring element of society was first developed through research by Fritz Machlup in the 1960s. Machlup offered an early conceptualizing defining and social forces around information in *The Production and Distribution of Knowledge in the United States*. Using economic reasoning to propose a definition of *knowledge society* - a society where knowledge-producing industries play a larger role (Machlup 1962, 9). Within this concept knowledge - or information - is “anything that is known by somebody” and “production of knowledge” as “any activity by which someone learns of something that he has not known before even if others have” (Machlup 1962, 7). Daniel Bell expands on this approach, offering an update on the knowledge society with the concept the *post-industrial*. Daniel Bell describes society as “the first and simplest characteristic...is that the majority of the labor force is no longer engaged in agriculture or manufacturing but in services, which are defined, residually, as trade, finance, transport, health, recreation, research, education, and government” (Bell 1973, 5). However, both of these approaches would only document two aspects of Braman’s definition of information: information formation as a resource by attempting to document quantity and social function and information as commodity by discussing industry output.

In defining *information society* Castells strives to expand the scope of information understanding. Castells first develops his approach in *The Information Age: Economy Society and Culture Volume 1, The Rise of the Network Society* positing the information society as better described as a a networked society structured through interdependent, asymmetrical relationships as well as regional economies (Castells 1996, 206). A precursor to his research on power and networks, which I will critique in detail in the next chapter, begins to address more perspectives of information including information as a constitutive force and as an agent.

Using a theoretical pluralism approach, Sandra Braman bridges the theories of information and society with socio-legal constructions in defining the realm of information policy. Braman offers a compelling taxonomy of information categorizing information as a resource, a commodity, perception of pattern, an agent, a basin of probability, or a constitutive force in society (Braman 2006, 9-20). This framework can be viewed as inclusive, and more
expansive than, approaches of defining the information society, a framework that has particularly permeated european policy discussions (Lundblad 2008), and one that is critical for understanding the importance of networks.

Information transcends many industries and daily activities, and as a result, defining information tends to be a broad swath of issue areas. Maxwell notes that information policies are “social, political, legal, economic and technological decisions about the role of information in society” (Maxwell 2003, 2). Drawing more on information as a controlled or enabled output Braman offers an excellent definition of informant policy: “Information policy is comprised of laws, regulations, and doctrinal positions – and other decision making and practices with society-wide constitutive effects – involving information creation, processing, flows, access, and use” (Braman 2011, 3).

1. Examples of Information Policy
Information policy is a broad area built on traditionally political analysis of government, governance, and governmentally with the potential for far-reaching implications impacting both national and international relationships and power dynamics. Maintaing normative behaviors, legal boundaries enforces power dynamics and the “impact of information creating, processing, flows, and use that makes information policy so fundamental to the exercise of power” (Braman 2006, 37). The potential power implications are simple to imagine: from barriers to communication to enabling property rights to to cultural outpoint. Additionally, as the precedence setting of international bodies built on on information policy suggest, the international or trans-border implications of information policy decisions abound (Braman 2009; Maxwell 2003).

In practice examples of information policy encompasses access, regulation, governance, privacy, security, intellectual property, industry structure, development, human rights, and user behavior as they relate to information and communications technology. However, to illustrate the convergent nature and broad implications of information policy I discuss two examples: the relationship between the sinking of the Titanic and the regulation of communications networks and the relationship between State interests to censor information and the rise of intellectual property.
From the Titanic to Spectrum

During the night of April 14, 1912 disaster struck on the Atlantic. The RMS Titanic, the infamously unsinkable passenger liner, sank. The ship struck an iceberg on her maiden voyage resulting in over 1,500 deaths resulting in the one of the largest peacetime maritime disasters in history and setting in motion a number of policy shifts. One such trajectory of policy implications included maritime regulations including requiring the number of lifeboats on passenger ships match the number of passengers; the Titanic carried fewer spots on lifeboats than passengers, as was common at the time.

Another policy implication likewise stemmed from maritime safety but evolved into an example of a world-wide information policy regime. On the morning of April 15, 1912 countless newspapers led with the headline that the unsinkable Titanic had hit an iceberg. However, many of headlines erroneously reported that the ship was being towed to Halifax, Nova Scotia, an error blamed on miscommunication between amateur radio operators (Barczewski 2006, 48), and leading to global ramifications for wireless communications.

After the Titanic sank U.S. Congress passed the Radio Act of 1912. This first act introduced requirements for licenses for wireless radio operators, and build the framework for a century of legislation for governing communication (Starr 2005). While pre-1912 wireless communications allowed generally unlicensed, and unregulated, wireless communications, subsequent legislation, the Communications Act of 1934 and the Telecommunications Act of 1996, created the Federal Communications Commission and numerous regulations impacting the flow of information (Starr 2005; Wu 2011). Today, nearly a century after that tragic night maritime operators have access to a specific allocation portion of radio spectrum while other wireless operators, such as military, television broadcasters, and mobile telecommunications companies, have access to swathers and slivers of spectrum. Some slices are of airwaves remain for unlicensed use, including Wi-Fi while spectrum for cell phones and television broadcast is privately operated and monetized. This command-and-control framework for allocating the airwaves dominating not only the U.S. policy landscape but is the global standard as well, with harmonization between nations driven by the International
Telecommunications Union. The implications, however, range from market structure, wireless broadband access, and freedom of expression (Pickard and Meinrath 2009).

From Censorship to Copyright

The second example of information policy development begins in 16th century with the pre-history to copyright. While today copyright is global tension increasingly focused on the flow of information on the internet the 16th century is a story of political rather than economic interests. In 1504 King Henry VII awarded the first “grant of privilege” for the “exclusive right to print royal proclamations, statutes, and other official documents” to select printers (Hesse 2002 30). However, interests to outsource the oversight of censorship in books led to additional grants beyond royal publications. Later, Henry VIII issued a series of proclamations solidifying centralized control over printed material including a 1529 proclamation banning the sale or import of fifteen books followed by a created a centralized mechanism for the review, licensing, or potential censorship of books in England (Loewenstein 2002). By 1538 publishers were required to receive a license to print books subject to ideological scrutiny by the Privy Council, and in 1546 the requirements were expanded to include licensees for importation as well (Loewenstein 2002). By the late 16th Century, ideological surveillance shifted from the sole responsibility of the Crown to the responsibility of private actors. In return for the responsibility of the content of their printed works London-based companies received State-backed monopolies - patents - for entire categories of books, such as on law or education (Loewenstein 2002; Johns 2010). Cultural shifts of the 18th century including a rise in literacy and readership combined with the rise of individual property created the foundation for an economic basis for printed works and the commercial interest for copyright (Hesse 2002).

3. Information Policy and Copyright

Investigating debates on intellectual property focused trade agreement offers a striking and timely example of information policy. As Braman notes, copyright is both a question of economic policy as well as the ability to communicate (Braman 2006, 39), Chadwick defines intellectual property as a pillar of internet politics (Chadwick 2006), and regulation of intellectual property online implicates user behavior and norms (Lessig 2002; Lessig 2008; Larsson 2011). Additionally, as distribution models are disrupted through access to media
online, the global nature of the internet disrupts border defined information commodity markets.

Today, copyright law continues intersects both examples of information policy discussed above. The sinking of the Titanic spurred policies to control communications channels by defining legitimate and illegitimate use communications tools, an approach that has been explored in copyright legislation. One such example is HADOPI, an agency in France, created by the law “Création et Internet”, and tasked terminating the internet access of households accused of downloading infringing content. Following a third accusation of copyright infringement a household would be cut off from Internet access from any provider between three months and one year (Anderson 2009, Loi 2009, Journal Officiel de la République Francais 2009). As I will expand on later, a similar “three strikes” provision in ACTA. Copyright also continues the State-driven efforts to regulate the flow of information in print stemming from 16th Century British patents for print. Following enlightenment-era association of personal property and individual through, thereby refuting the notion that ideas sourced to divinity, authors insisted, and were granted property rights in the 19th century (Loewenstein 2002). Indeed, the enlightenment era discourse that birthed the public sphere began to frame written works as the creation and property of authors (Hesse 2002; Loewenstein 2002). By the late 19th century a rising international book trade led to European publishers pushing for an international property rights agreement (Hesse 2002), a historical echoes of the politics of ACTA.

In leading to background on ACTA it is important to revisit a critical point demonstrated by these two brief examples: policy, information or other, does not exist in a vacuum but a complex social environment. Lundblad describes law as a “social technology” that is influenced by and influences society (Lundblad 2008, 28), and subsequently approaches law through Akrich’s de-scripting approach for understanding the sociology of technology (Akrich 1994). Similarly, Braman describes that law is created from governments and influenced by private actors seeking institution of laws that support specific interests while

---

communities of practice operate in resistance to the law (Braman 2006). Information policy depends on a number of interdependencies. Braman writes:

“There are other interdependencies. Technology design may be the instrument of law, or it may provide a means of superseding the law altogether. Privacy may be a matter of property rights, and vice versa. Surveillance reduces our right to access information via reading publicly available newspapers when the readership of specific news items is tracked” (Braman 2006).

For example, limiting the availability of copyright infringing media online can result in a number of other information policy questions. The ease of which a third-party can request that a video is deleted can result in non-infringing videos being removed, cutting off internet access creates human rights concerns, and tracking users traffic is a surveillance system. The interdependencies, not only create or reduce other policy concerns but also impact the variety and number of demographics interested in related legislation.

Situated historically, ACTA is the advancement of over century of international copyright treaties, each reactions to different social political, or technical influences, and attracted the interest of a large number of internet users. However, the convergence that drives the forefront of information policy also connects the users the policy will directly impact.

B. Background on ACTA

1. Origin of ACTA

Intellectual property transitioned to an international information policy concern during the 19th century. European book publishers, seeking to obtain fees for book printed in the United States, pushed for the Berne Convention (Johns 2010). More recently, international bodies emerged to oversee international intellectual property disputes, a process that has shifted between various bodies and agreements. For example, in 1967 the World Intellectual Property Organization (WIPO) was created as a United Nations agency focused on protecting intellectual property rights globally. Later, in the 1980s, representatives from the U.S., E.U. Japan, and other countries pushed for bodies outside of the WIPO. This resulted in the Trade-Related Aspects of Intellectual Property Rights (TRIPS), an agreement administered by the World Trade Organization, in 1994 (Ayoob 2010; Chadwick 2006).
As an example of information policy, ACTA provides a recent snapshot of the politics of international intellectual property agreements. Later chapters will provide in-depth background on the debate, particularly in Europe, while this chapter offers background on ACTA’s origins.

Discussion for a new international agreement for intellectual property began in January 2003 when Japanese Prime Minister Moizumi announced a strategy build on the premise that Japan is “a nation built on the platform of intellectual property” (Yu 2011a, 81). At the time, TRIPS was losing support from major markets including India and Brazil, and countries like the United States were negotiating bi-lateral intellectual property agreements independent of the WTO and WIPO (Kaminski 2011). The following year the United States created the STOP! Initiative, an effort focused on fighting “global piracy by systematically dismantling piracy networks, blocking counterfeits at [U.S.] borders, helping american businesses secure and enforce their rights around the world and collaborating with our trading partners to ensure the fight against fakes is global” (Yu 2011a). In 2005 Japan presented a proposal for an anti-counterfeiting treaty to the Second Global Congress in Lyon France. The United States proposed their own agreement in 2006 before officially their intention to negotiate a new anti-counterfeiting trade agreement in October 2007 (Yu 2011a, 81).

Negotiations for ACTA began in June 2008 and continued over eleven rounds until the final round in Tokyo, Japan in September 2010 [See Figure 1]. The final list of negotiating countries includes: Australia, Austria, Belgium, Bulgaria, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, the Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, Morocco, the Netherlands, New Zealand, Poland, Portugal, Romania, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, the United Mexican States, the United States, and the European Union (Kaminski 2011). The negotiations were decidedly Western focused and documents were not made available to actors not party to the negotiations. These excluded actors included civil society organizations writ large. Entities with existing relationships to trade representatives were able to provide some input.
Although, as I will discuss later, opposition to ACTA resulted in some massive protests, countries began signing the Agreement with minimal opposition. Indeed, European activists, NGOs, and politicians acknowledged privately that ACTA was not on the radar of many politicians or media. President Barack Obama adjoined the United States to the agreement through an Executive Order in May 2011. On October 1, 2011 eight countries met in Japan to formally the agreement: Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea, and the United States, met in Japan on October 1, 2011 to sign the agreement (Yu 2011b). The European Union signed the agreement on January 26, 2012, after which the Agreement need to first be ratified by the European Parliament and later by Member States. At the time, 22 member states also signed the document.

2. Details on Text

The Anti-Counterfeiting Trade Agreement creates a new framework for international cooperation and enforcement of copyright infringement and international cooperation, as well as proposes a new governing body outside of existing international bodies including the WTO, WIPO and United Nations and the agreement applies to counterfeit goods, generic medicine, and copyright infringement online (Ayoob 2010). Consisting of six chapters, chapter one refers to past international agreements and bases the definition of intellectual property on the TRIPS agreement. Chapter two creates a standard of intellectual property enforcement, standards for civil procedures for rights holder enforcement of intellectual property rights, standards for border controls, and criminal enforcement mechanisms for rights infringement. Chapter three

1. Geneva, Switzerland (June 2008) (border measures);
2. Washington, United States (July 2008) (border measures and civil enforcement of intellectual property rights);
3. Tokyo, Japan (October 2008) (civil and criminal enforcement of intellectual property rights);
4. Paris, France (December 2008) (criminal enforcement, international cooperation, enforcement practices, institutional arrangements, and internet distribution and information technology);
5. Rabat, Morocco (July 2009) (international cooperation, enforcement practices, institutional arrangements, and transparency matters);
6. Seoul, South Korea (November 2009) (enforcement of rights in the digital environment, criminal enforcement, and transparency matters);
7. Guadalajara, Mexico (January 2010) (civil enforcement, border enforcement, and enforcement of rights in the digital environment);
8. Wellington, New Zealand (April 2010) (civil enforcement, border measures, criminal enforcement, and special measures for the digital environment);
9. Lucerne, Switzerland (June–July 2010) (initial provisions, general obligations, civil enforcement, border measures, criminal enforcement, enforcement measures in the digital environment, inter-national cooperation, and institutional arrangements);
10. Washington, United States (August 2010) (all sections); and
11. Tokyo, Japan (September 2010) (all sections).
sharing of information related to intellectual property enfacement included statistics and best practices while chapter four describes enforcement practices. Chapter five creates an organization to oversee the agreement Chapter six notes that the agreement will be effective after the first five parties ratify the agreement.

Arguments in favor of ACTA included the effort to establish a harmonized information policy regime with respect to intellectual property enforcement and supporting for the agreement focused on economic incentives and protecting jobs. When the agreement was signed U.S. Trade Representative Ron Kirk said: “Protecting intellectual property is essential to American jobs in innovative and creative industries” (USTR 2011). The International Federation of the Phonographic Industry said that ACTA “will protect Europe's creativity, innovation and jobs” (IFPI 2012a). Members of civil society expressed a number of concerns with the agreement.

One enduring concern civil society organizations and some member of European Parliament was the opaque, non-democratic process of how ACTA was negotiated. Concerns about the lack of transparency during the negotiations were raised early and and Michael Geist and the Electronic Frontier Foundation attempted to use freedom of information laws to gain access to documents with limited success. Although the full text of the final agreement was released, members of civil society did not have access to documents during the negotiations and relied on the extent that leaked drafts were accessible. Additionally, members of European Parliament that were not on the International Trade Committee likewise relied on accessing leaked drafts. By the time the official text was released there was no opportunity for civil society to provide input on the agreement. Some industries had access to confidential agreements (Yu 2011a).

The policy development process of ACTA was also criticized as an effort to push a U.S. and western view on intellectual property rights. The negotiations were government-to-government negotiations, were not open to civil society input, and negotiated through a by-invitation process (Port 2011). Most of the countries that are party to the WTO were excluded, India and Brazil chose not to participate in the process, and Mexico chose to leave the negotiations. Additionally, the agreement proposed criminal enforcement provisions that
had previous been rejected during democratic European debates results in the charge of “backdoor lawmaking” and “policy laundering” (Yu 2011a). From a development perspective, some members of European Parliament were concerned that the fact that the agreement focused on the interest of Western countries economic priorities towards generic medicine would result in increased health care costs in developing countries.

The criminal enforcement framework for intellectual property infringement proposed in ACTA resulted in civil society concerns that ACTA would create a floor for intellectual property rights making it difficult to reform existing legislation. The agreement was also more stringent than previous international agreements including the TRIPS agreement (Yu 2011a) and civil society organizations focused information policy recognized that intellectual property reform would become more challenging if ACTA were ratified. For example, the agreement would criminalize the circumvention of digital security technologies (Kaminski 2011).

One enforcement provision that caused specific concern was the feat that a user could have their internet access terminated if they, or someone else using their IP address, were accused of copyright infringement three times. Although this provision was not included in the final text, it was present in a leaked negotiating draft and continued to be an enduring concern (Matthews 2012).

During my presentation of data I will discuss how these these concerns resulted in a crescendo of opposition to ACTA and how the European Parliament, as the democratic body reviewing the Agreement in Europe, became the focus of civil society. First, however, I will provide background on the key actors below.

C. Outline of Actors
A variety of actors participated in the greater public debate about ACTA. These include countries that participated in the negotiations, political parties or members that took vocal positions on the Agreement, civil society organizations, and groups representing industry. The following list is not exhaustive but demonstrates some of the major actors as well as the geographic spread of those involved in the debate.
1. Negotiating Countries

Developed through discussions from the United States, the first round of negotiations included 14 countries, including the U.S., Mexico, and Canada, and the European Union, the number of countries increased as negotiations progressed (European Union 2008). In addition to Japan, the U.S. was an early driver in pushing for a new intellectual property agreement (Kaminski 2011). By the final round of negotiations over thirty countries were involved (See Figure 2). Mexico withdrew from negotiations when Senators voted on their concerns on the lack of transparency during the negotiation process. Two countries, India and Brazil, were noticeably absent during negotiations. Both countries rejected the negotiations on the basis that ACTA undermined the negotiating position of developing countries by moving intellectual property discussions to a new arena rather than existing international bodies.

In the United States ACTA negotiations were lead by the United States Trade Representative and the agreement was signed by in Tokyo by Miriam Sapiro, Deputy U.S. Trade Representative in October, 2011. In signing the agreement Deputy Shapiro highlighted the importance of ACTA for the enforcement of intellectual property rights (Sapiro 2011). Luc Devigne, head of the European Commission Intellectual Property Unit lead the negotiations from the European Union. Citing the leaks already occurring on ACTA texts, Devigne unofficially supported the releases of document texts in 2010 (Anderson 2010). The European Union and 22 member states signed ACTA on January 26, 2012.

2. Politics

*Rapporteurs for ACTA*

Kader Arif, a French politician from the Socialist party, was the first EU Rapporteur for ACTA. In January 2012 he resigned from his role as rapporteur citing the lack of inclusion of civil society organizations and the lack of transparency as primary concerns (Masnick 2012).
Arif is also a member of the Committee on International Trade, the primary committee for ACTA in Parliament, which recommended that Parliament reject the Agreement in June 2012.

David Martin, a Scottish politician and member of the British Labor Party, took over as rapporteur following MEP Arif’s resignation. In April 2012 he recommended that European Parliament reject ACTA citing concerns for civil liberties posed by the Agreement (European Parliament 2012d).

The Greens/European Free Alliance
The Greens/European Free Alliance (Green Group) is a 58 member coalition bringing together 21 parties in the European Parliament. A leading voice of opposition to ACTA in the European Parliament the Green Group launched a task force to review ACTA and passing a resolution in 2010 raising concerns to civil liberties posed by the Agreement (The Green Group 2010). Members of the Green group also raised concerns that the Agreement would raise prices for medicines in developing countries.

Piratpartiet
Piratpartiet, the Swedish, and first, Pirate Party was formed in 2006 with an initial platform focused on copyright reform. In the 2009 European Parliament elections the Pirate Party received 7.13% of the vote in the 2009 elections for European Parliament, aided in part by publicity from the Pirate Bay trial, the party earned one seat in Parliament, with a second being added when the ratification of the Lisbon treaty increased Sweden’s total number of Members of European Parliament (MEP) from 18 to 20. Elected at the age of 22, Andersdotter was the second member of the Pirate Party when elected in 2009, and the youngest member of parliament to be elected to European Parliament. Andersdotter was not officially granted a seat in Parliament until December 2011 following the ratification of the Lisbon Treaty. The Swedish Pirate Party is part of the Green Group and Andersdotter wrote opinion on ACTA for the Industry Committee (ITRE) recommending the rejection of ACTA on political grounds.
**Piratenpartei Deutschland**

Piratenpartei Deutschland, Pirate Party Germany, formed in 2006 after the launch of the Swedish Pirate Party. Although relatively small membership in terms of national politics, information policy issues in Germany, such a law suit against a telecommunications data retention law in 2010, bolstered party membership (EDRI 2010). The party does not have any seats in the European Parliament and won four seats to German state parliaments in 2011 (Eddy 2012). These members, and the party infrastructure, played a major role in organizing opposition to ACTA in Germany including making use of party mailing lists, coordinating protests, and mapping the European protest movement.

**European People's Party**

The European People’s Party (EPP Group) is a centre-right coalition in European Parliament consisting of 44 parties. Currently the largest group in parliament with 265 members, the group strongly supported ACTA. In April 2012, led by Swedish MEP Christofer Fjellner and German MEP Daniel Caspary, the EPP Group recommended that Parliament focus on fixing ACTA rather than reject the agreement outright (Fjellner 2012). However, the EPP group was not uniformly steadfast in support of ACTA and some factions began to oppose ACTA. Paweł Zalewski, a member of the Polish Christian Democrats and Vice Chair of the International Trade Committee, voted against ACTA with concerns that intellectual property laws were outdated and the proposed agreement would have unintended consequences to online communications (Zaleski 2012). Additional Polish conservatives, such as the Civic Platform party, also moved against ACTA.

**Palikot's Movement**

Palikot's Movement is a left-wing oppositional political party formed in 2011 and winning 40 seats in Poland’s parliament later that year. Information policy issues are not central to the Palikot’s Movement as with Pirate Parties, the party gained considerable attention in Europe and internationally through a poignant protest against ACTA. On January 26, 2012, the same day that Poland signed the Agreement, members of the party donned Guy Fawkes in Poland’s parliament. The Guy Fawkes mask is an image associated with the Anonymous and Anonymous supported movements. Although some activists criticized the move as a publicity
seeking attempt to garner political gain through opposition to ACTA, a photograph of fifteen party members wearing the masks resulted in considerable media attention and even critical activists concede that the resulting media coverage helped attract the attention of members of Europe’s Parliament.

3. Civil Society

La Quadrature du Net

La Quadrature du Net (LQDN) is a Paris, France-based advocacy focused on digital rights, or civil rights information policy founded in 2008. A non-profit member of civil society, the organization is led by co-founder and spokesperson Jérémie Zimmermann. The organization focus on information policy issues, first gaining prominence in France for opposing HADOPI, a french law three-strikes copyright enforcement law. The organization gained considerable attention for their work organizing opposition to ACTA resulting in Zimmermann being awarded the EFF Pioneer Award in 2012. LQDN supports a network of volunteers and releases technical tools to promote citizen engagement in politics including hosting a wiki on legislation, IRC channels for communications, email lists, and a tool to call members of European Parliament for free. The name La Quadrature du Net based on the quadrature of the circle is based on the Euclidian geometry problem of constructing a square with the same area as a given circle in a finite number of steps, proven to be impossible in 1882.

EDRI

European Digital Rights (EDRI),2 is Brussels-based non-profit civil society organization focused on civil rights and information policy. Originally founded in 2002 with ten members, EDRI now coordinates analysis and strategy for thirty-five organizations in eighteen European members states. These members include La Quadrature du Net, Digital Gesselshaft, the Modern Poland Foundation and the Panoktykon Foundation. In addition to coordination, EDRI serves as a Brussels representative for this network of civil society organizations.. EDRI covers issues including privacy, copyright, governance, and security, particularly with regards how policies could limit freedom of speech online; the organization began tracking ACTA in 2007. EDRI is led by Joe McNamee since 2009. In 2011, Kirsten Fielder joined

2 http://www.edri.org/
EDRI the advocacy manager after meeting McNamee at an event in Brussels. Fielder is also the treasurer and Brussels representative for the German based Digitale Gesellschaft.

_Panoptykon Foundation_

The Panoptykon Foundation is a Polish civil society organization founded in 2009 by Katarzyna Szymielewicz, Małgorzata Szumańska, Piotr Drobek and Krystian Legierski. Named in reference to Jeremy Bentham’s surveillance prison design popularized by Michel Foucault, the Panoptykon Foundation focus on issues concerning the intersection of modern technology and the surveillance society. Their website highlights a focus on protecting human rights and privacy.³ Their activities include influencing information policy by writing amendments and alternative legislative language as well as publicizing concerns over legislation. The organization focused on ACTA in Poland including meeting with ministers to discuss concerns.

_Modern Poland Foundation_

Modern Poland Foundation, known as Fundacja Nowoczesna Polska in Polish, is a Poland-based member of civil society focused on information policy as it relates to education.⁴ Issues include promoting open education resources, such as text books with free licenses, and how internet use can positively impact education. Co-founder Jarosław Lipszy has been president of the foundation since 2007. Like the Panoptykon Foundation, the Modern Poland Foundation was involved in ACTA opposition in Poland.

_Netzpolitik_

Netzpolitik is a german blog focused on freedom of expression, information policy, and digital society.⁵ Founded and edited by Markus Beckedahl in 2002, Netzpolitik has grown to include a number of contributors such as Andre champion, Matthias Mehldau, and Kirsten Fielder. Beckedahl describes Netzpolitik as a bridge to the German public on issues realated to the digital society, of which ACTA was a major concern. In addition to the blog, Netzpolitik also has Facebook page, twitter account, and YouTube account.

---

³ [http://panoptykon.org/](http://panoptykon.org/)

⁴ [http://nowoczesnapolska.org.pl](http://nowoczesnapolska.org.pl)

⁵ [Netzpolitik.org](http://Netzpolitik.org)
Digitale Gesellschaft
Digitale Gesellschaft, German for Digital Society, was founded by Markus Beckedahl, Netzpolitik alumnus Andre champion and Matthias Mehldau, and others in 2010 as an advocacy hub for information policy issues. The organization focuses on campaigns to promote digital rights and took up ACTA as a early issue to focus on. Beckedahl is the chairmen of the organization and Fielder is the treasurer. In addition to a website, Digitale Gesellschaft has a facebook page, twitter account, and YouTube account.

Michael Geist
Michael Geist is a writer and a law professor and at the University of Ottawa. He founded the Canadian Internet Policy and Public Interest Clinic at the University of Ottowa in 2003 has written extensively about intellectual property and copyright. He authored Our Own Creative Land: Cultural Monopoly and The Trouble With Copyright in 2006 and edited In the Public Interest: The Future of Canadian Copyright Law in 2005. In addition to intellectual property, he has written book chapters and articles on other information policy issues including privacy, network neutrality, and Top Level Domains. Geist is a regular blogger and was cited as a key source of information on ACTA. Geist first wrote about ACTA on his blog in October 2007, and as of March 2013, had published over 500 posts on the trade agreement (Geist 2007).

Knowledge Ecology International
Founded in 1995 by Ralph Nader, Knowledge Economy International (KEI) is a non-governmental organization that focuses on how intellectual property affects other sectors such as public health and e-commerce. The organization has offices in Washington, DC and Geneva, Switzerland is is directed by Jamie Love. KEI conducted analysis on ACTA negations and drafts, as well as supported networks of civil society actors concerned about the agreement. KEI also hosts the Access2Knowledge (A2K) list serve which shares news and analysis on intellectual property concerns.

6 See https://digitalegesellschaft.de/
7 http://www.michaelgeist.ca
Electronic Frontier Foundation

Founded in 1990 by John Gilmore, John Perry Barlow and Mitch Kapor over concerns on law enforcement action with respect to the internet, the Electronic Frontier Foundation (EFF) has grown into a driving civil society voice on civil liberties in the digital environment in the United States and increasingly active internationally. With a large base of volunteers, and a team of technologists, lawyers, analysts, and activists, EFF covers a range of information policy concerns including intellectual property. Press releases from EFF in 2007 raised attention on ACTA for other civil society organizations.

Public Knowledge

Co-founded in 2001 by David Bollier and current president Gigi Sohn, Public Knowledge is a Washington, DC based NGO focused intellectual property, telecommunications, and open internet policy concerns. Public Knowledge, along with KEI, EFF, and other organizations criticized the non-transparent ACTA process in 2008. Additional activity included covering news stories, legal analysis, and filing Freedom of Information Act requests. Public knowledge staff regularly blog, and the organization has a twitter account, YouTube channel, and hosts issue-specific mailing lists.

Access

Founded in 2009, Access is a civil society organizations focussed on information policy issues from a freedom of expression perspective. Access was involved involving European civil society organisations in opposing the Stop Online Piracy Act and the Protect IP Act. Although headquartered in New York City, Access has an office in brussels that engaged in institutional advocation opposing ACTA.

Anonymous

Anonymous, a loosely coordinated online organization recognized by the adoption of Guy Fawkes masks, become involved heavily involved in ACTA opposition including using their polished online media strategies. Coleman describes Anonymous as “part digital direct action, part human rights technology activism, and part performance spectacle, while quite organizationally flexible, is perhaps one of the most extensive movements to have arisen almost directly from certain quarters of the Internet” (Coleman 2013, 210). As the
organization has no outward facing uniquely identifiable leadership it is difficult to discern which how or when members of Anonymous become directly involved in opposing ACTA, or how many were involved during the prior five years. However, different pockets of Anonymous with different degrees of organization were involved. One pocket based in a German city known for their video editing skills uploaded a video on the agreement in 2009.

4. Trade Groups

*International Federation of the Phonographic Industry*

The International Federation of the Phonographic Industry (IFPI) was founded in 1933 and represents the interests of some sectors of the recording industry on a global scale. IFPI supported ACTA as a measure that would protect European jobs without changing existing EU law (IFPI 2012b).

*Motion Picture Association of America*

The Motion Picture Association of America (MPAA) is a trade organization representing six U.S. based studios. The organization has a long history of supporting strong intellectual property rights and resisting new technologies. For example, the MPAA opposed the sale of the home videocassette recorder arguing that the technology would cause detrimental business harm to Hollywood (Patry 2009). The MPAA supported ACTA as both an effort to strengthen intellectual property rights cooperation as well as combining intellectual property rights enforcement to economic interests. A 2010 statement reads: “[ACTA] is also an important signal that the world’s largest economies recognize the critical value of intellectual property rights to their global competitiveness” (MPAA 2010). The organization is also responsible for MPAA ratings for movies.

*Recording Industry Association of America*

Formed in 1952, the Recording Industry Association of America (RIAA) is a trade organisation representing members of the recording industry and is active on intellectual property issues. The RIAA has conducted lawsuits against U.S. individuals whose IP addresses are connected peer-to-peer file sharing of copyrighted material. The organisation has also vocally supported intellectual property enforcement legislation such as SOPA and ACTA.
The Foundation for a Free Information Infrastructure (FFII) is German-based non-profit association focus on intellectual property issues including software patents and ACTA. Founded in 2000, the organization focuses on promoting free competition by lowering barriers caused by intellectual property rights and supporting open standards. The organization opposed ACTA arguing that the agreement would “ACTA will increase social welfare costs, inflict unjustified and disproportional punishment and endanger lives” (FFII ACTA Analysis). FFII has offices in fifteen European Countries, Latin America, India, and the United States.

D. Conclusion
Wrapping up this chapter there are three key points I want illustrate the convergence and networks of transnational informant policy. First, as a convergent field, information policy is often an interconnection of numerous policy areas. In some cases, it is a bridge between previously disparate areas or in others, the convergence of issue areas. Second, as a case of information policy, ACTA suggests a series of complex relationships. Originating from original intentions of the United States and Japan, ACTA was negotiated by representatives of a handful of governments suggesting between governments. As I will document in my data section, tensions also developed both within governments, and between different political interests within countries-- tensions that were both local, global, and with in the European arena. Third, law and policy are issues that concern a wide variety of actors. I listed a selection of primary civil society actors and a limited selection of politicians and other interests. The relationships that connect actors around ACTA are tensions of at times competing interest, or at least direction. These are suggest underlying political powers and political movements.

In my next chapter I will provide theoretical framework for understanding these issues in greater detail. Specifically, I will discuss the role technology plays in supporting transnational networks around specific policy issues and why we should understand this within the framework of the networked public sphere.
III. Theoretical Approach

The concept of a network can be discussed from multiple perspectives and the term has been used to describe types of communications, organization of social movements, technology links, and relationships. The term describes a serious of interconnected entities or activities and has found broad usage in communications scholarship. Two notable examples are how networks have also been proposed as a structuring element for society, most notably the network society from Manuel Castells and the networked public sphere.

This chapters presents a critical approach for theories on networks and proposes a new analytical framework. This framework critiques the absolutism of horizontal structures, suggesting that while networks do support horizontal relations, vertical hierarchies exist and can still be fostered within networks. Additionally, theses hierarchical relationships can create tensions that impact horizontal interconnectivity. Tracing the history of the public sphere from Habermas, this theoretical framework outlines the links and nodes that constitute a networked public sphere at the technology and social layers.

To establish my critique I explore the technical hierarchies of the networks that mediate online communications to demonstrate interdependencies. Secondly, I introduce theories of global politics civil society as they relate to ACTA. Together, this framework also critiques the academic literature conflating relationships and technologies, arguing that technologies mediate communications but relationships and intermediaries are separate facets with different characteristics. This discussion includes a discussion on the how civil society in a multi-national context, an overview of international relations and networked politics as it relates to ACTA, and a suggestion for how scholars can better understand networks and the public sphere by recognizing the vertical as well as horizontal tensions of technologies and socio-political relations. In conclusion, I provide a framework for the networked public sphere that links the socio-political relationships to the architecture of the underlying technologies that mediate the relationships.
A. The Public Sphere

The public sphere was formulated by Jürgen Habermas in his history of the rise of the bourgeois society (Habermas 1991). This post-enlightenment period, which also placed greater acceptance on the ideas of individual property and ideas, and consequentially intellectual property (Loewenstein 2002), was a period of significant structural changes. The rise of a new class with both an economic stake and resultantly interest in the political sphere challenged the paradigm of political discussion as belonging solely the realm of the crown.

This bourgeois public sphere emerged as a separation between the traditional public, the realm of the state and public servants, and the private sphere of the home. The public sphere represented "private expletives coming together as a public" (Habermas 1991, 27). As a result, this created tension with the existing public - the state, by open debating of laws and norms. As Habermas writes:

"The bourgeois public sphere evolved in the tension-charged field between state and society. But it did so in such a way that it remained itself a part of the private realm. The fundamental separation of those two spheres, upon which it rested, initially referred merely to the disengagement of elements of social reproduction and political power, which in the forms of domination typical of the High Middle Ages were welded together" (141).

Of note, which will be expanded up on later, this shift also lay ground work for the rise of civil society.

The ideal public sphere consists of three core characteristics (Habermas 1991; van de Steeg 2010; Michailidou 2010). First, the public sphere encompasses open, accessible, and participatory discourse among individuals and civil society. Second, discourse evaluates and questions the political decision making process and outcomes. Third, discourse trends towards rationality rather than simply the volume of one argument compared to another. Posited as the ideal public sphere, Habermas describes elements that act as undermining forces.
The rise of mass media, and the position of media as an arbitrator of public informant, contributed paradigm of the public sphere and ultimately became a corrupting factor. Media platforms mediated the information available and secured, but while this creates a platform for accessing of information, broadcast is inherently non-participatory and thus can cause detriment to the ideal public sphere (van de Steeg 2010). A more pressing corrupting force, though closely linked to mass media, is when economic interests focus on swaying public opinion. This rejection of rationality in favour of rationalisation contributes to what Habermas contends is the decline of the public sphere:

"Between the two spheres, naturally, exists a linkage, always through the channels of the mass media; it is established through that publicity, displayed for show or manipulation, with the help of which the groups participating in the exercise and balancing of power strive to create a plebiscitary follower- mentality on the part of a mediated public. We also count this vehicle of managed publicist influence among the formal opinions; but as "publicly manifested" they have to be distinguished from "quasi-public" opinions" (Habermas 1991, 247).

The ideal public sphere is a space independent of state or economic powers, Habermas recognized the corrupting forces which he defined as the *refeudalization* of the public sphere. For the kind of integration of mass entertainment with advertising, which in the form of public relations already assumes a "political" character, subjects even the state itself to its code. Because private enterprises evoke in their customers the idea that in their consumption decisions they act in their capacity as citizens, the state has to "address" its citizens like consumers. As a result, public authority too competes for publicity” (Habermas 1991, 195).

Of note, Habermas’ original conceptualisation of the public sphere, the bourgeois society of the 18th and 19th century, was not the ideal public sphere. In reality the bourgeois public sphere excluded women and was limited to bourgeois discourse. Habermas’ original conception of the public sphere more as an assumption of the of democratic debate than a representative example. As such, it provides a useful dialectic for approaching democratic engagement and a framework for evaluating the extant that democratic discourse occurs or what barriers to such discourse exist.
Additionally, four important details of the public sphere are important to highlight. First, Habermas recognized the role media would later play in the public sphere. Media platforms mediated the information available, and thus the relationships between individuals and media messages can demonstrate the dominant and subversive voices of a democratic debate. Secondly, the public sphere as defined exists as a space independent of commercial and state interests. In addition to the the potential of media being corrupted, Habermas recognised the potential for economic interest would aim to sway public opinion through public relations and refuedalize public sphere (Habermas 1991, 247). Third, the public sphere is anchored by civil society, the “more or less spontaneously emergent associations, organisations, and movements” (Habermas 1996, 267). Finally, the voices present or excluded provide a foundation for analysis of existing underlying social inequalities.

**B. The Networked Public Sphere**

Habermas idealised the public sphere as a the realm of rational debate for democratic society, although the space that was mediated by media and invariably corrupted by financial interest. As a conceptualisation for a space for democratic debate the public sphere provides a useful dialectic for a critical approach, though the public sphere and the concept of refeudalization must be updated to be situated in the modern media landscape. Scholars such as Benkler, Friedland et al, and Papparachisi have made various steps in this direction, though with different outcomes on the roles of networks in mediating contemporary public spheres (Benkler 2006; Friedland, Hove, and Rojas 2006; Papacharissi 2009), others such as Castells shifted from the concept of the public sphere and utilised the concept networks in a different and ill-advised direction (Castells 2009).

The emergence of new media platforms, with increased complexity and architecture, require a revisiting of the public sphere. Friedland et all write: “Networks are becoming more and more central both within the sphere of social integration in the lifeworld and for the conceptualisation and understanding of complex systems" (Friedland 2006, 6). One trajectory of debate among scholars is in discussing the environment and characterising the interaction supported by these networks. For example, Koopmans and Zimmermann argue that the World Wide Web (WWW) “fulfils the basic requirement of a public sphere” because communication is assessable and participatory (Koopmans 2007, 218).
By contrast, Paparachissi defines this new space that is created through these networks as a “virtual public sphere”, though not entirely in the same framework as Habermas. Paparachissi writes: "Cyberspace is public and private space. It is because of these qualities that it appeals to those who want to reinvent their private and public live" (Papacharissi 2009, 13). Focusing on specific networked services such as Twitter and YouTube, Lindgren (2013) questions the emergence of new public sphere, suggesting that the discussions and discussions and debates online services offer the potential for the public sphere. Lindgren describes the space supporting these discussions, such as comments on YouTube or conversations on Twitter about Wikileaks, as “disruptive spaces” which he defines as “latent building blocks of a tentative alternative public sphere—a counterpublic” (Lindgren 2013, 21).

Where as Friedland et al. base the driving factor of the networked public sphere on strategic communication or reaching understanding" (Friedland 2006, 7), Benkler focuses on information production, an approach that draws the potential for the emergence of a new public sphere on the disruption of existing dominance over informations. Benkler argues that the ability for individuals to create and share information supports a shift from “the mass-mediated public sphere to a networked public sphere” (Benkler 2006 317). Not only does this challenge the dominance of mass-media, networks can be utilised for organising political action (Benkler 2006, 220). Benkler also argues: "The networked public sphere is not only more resistant to control by money, but it is also less susceptible to the lowest-common-denominator orientation that the pursuit of money often leads mass media to adopt" (Benkler 2006, 259).

Castells is another scholar who has attempted to define a modern public sphere, though his work has moved in a different direction. He has discussed that the “the interaction between citizens, civil society, and the state, communicating through the public sphere, that ensures that the balance between stability and social change is maintained in the conduct of public affairs” (Castells 2008, 79). These types of interactions, particularly diversified media systems, are supported by “horizontal, autonomous networks of communication” (Castells 2008, 86). Castells sees beyond interaction but defines the highlights the “cultural/
informational repository of the ideas and projects that feed public debate” and ultimately impacting use of state power (Castells 2008f, 79).

Castells attempts to build a framework on how information, and power, flows between points through networks. and defines network society as a society “whose social structure is made around networks activated by microelectronics-based, digitally processed information and communication technologies” (Castells 2009, 24). These networks are assumed to be open structures interconnecting “a set of interconnected nodes.” In addition to supporting the network society, these networks allow for a shift in communications.

Different configurations of technologies support different types of relationships such as one-to-one, one-to-many, or many-to-many (Fuchs 2008, 128). For example telephones are an example of a one-to-one relationships with two people conversing with each other. Broadcast media such as radio or telephones are examples of one-to-many communications. Social networks such as Twitter and Facebook are examples of many-to-many communications which Fuchs describes as the ability for “many users to reach many recipients; each receiver can be a sender of information, each consumer a producers” (Fuchs 2008, 131). Castells redefined the emergent communications resulting from the internet as mass self-communications, a term later adopted by Fuchs (Fuchs 2001, 291). The term applies to the real-time, interactive nature of online communications and the potential for information to reach broader audiences:

“it is mass communication because it can potentially reach a global audience, as in the posting of a video on YouTube, a blog with RSS links to a number of web sources, or a message to a massive e-mail list. At the same time, it is self-communication because the production of the message is self-generated, the definition of the potential receiver(s) is self-directed, and the retrieval of specific messages or content from the World Wide Web and electronic networks is self-selected” (Castells 2009, 55).

Castells argues that mass self-communications exists in tandem and supplemental with one-to-one (which he describes as interpersonal) and one-to-many (or mass communications).
The new types, and directions of communication, support by horizontal networks have potential for new exercise of power. By forming the relationships between actors that may serve as nodes networks define the power relationships where one actor can influence the will of another (Castells 2009, 19). As he writes: “The relational capacity of power is conditioned, but not determined, by the structural capacity of domination. Institutions may engage in power relationships that rely on the domination they exercise over their subjects” (Castells 2009, 10). Inclusion and exclusion that defines theories of spaces and territories is also prevalent in networks, are are additional forms of power including the ability to create new networks, the power to define normative behavior, and the rules that govern specific networks. Castells places considerable emphasis on the networks themselves. He writes: “Governments, parties, corporations, interest groups, churches, gangsters, and power apparatuses of every possible origin and kind have made it their priority to harness the potential of mass self-communication in the service of their specific interests” (Castells 2009, 414). Shifting this power dynamic on the network society requires reprogramming these networks.

Castells is correct in some aspects of his analysis. Network supported services have allowed for mass self-communications: where information had previously been sandboxed by specific channels internet support information has a greater potential to be shared beyond the original intended audience. Multiple types of communications exist in tandem through platforms such as YouTube, Twitter, email lists, online petitions, Wikis and can support participatory culture (Benkler 2006, 317). These platforms can also support horizontal relationships, collaboration or sharing of information between individuals with a greater focus on shared interested and goals rather than merely geographic restrictions. The potential for communications networks to support this last point will be further illustrated in the relationships formed in opposition to ACTA in Europe.

But despite his acknowledgment of networks supporting new types of communications, specifically mass-self communications, he errs in two significant and related ways. First, he places considerable emphasis on the importance of new communications technologies supporting new communications forms and reprogramming being a core operation of shifting power. He writes that networked communications, specifically “[t]he diffusion of Internet,
wireless communication, digital media, and a variety of tools of social software,” has resulted in horizontal networks. Horizontal networks are networks that connect local and global, (Castells 2009, 65), allow direct and interactive communication (Castells 2009, 323), and are “built around people’s initiatives, interests, and desires” (Castells 2009, 65). Significantly, participants define the network including “both the content and the destination of the message, and are simultaneously senders and receivers of multidirectional flows of messages” (Castells 2009, 123).

Secondly, Castells conflates two different types of networks: relationships between people and electronic communications networks, and this in-turn, undermines his understanding of the distribution of power in his approach. Building on hypothesis that communications networks are central to “implement the power-making process of any network,” (Castells 2009, 430) Castells separates power into four distinct categories (Castells 2009, 42):

- Networking Power: The ability to control information and participants in a network
- Network Power: The ability to create the normative standards of a network
- Networked Power: The power of one node over another and,
- Network-Making Power: The ability to build or shape networks

Defining power as a relationship, and documenting the way that communications can mediate that relationship is a correct assessment. However, like many communications scholars, Castells does not offer adequate technical foundations for discussing communications networks and results in conflating two entirely different things: connections between people and connections between electronic devices. Indeed, as a medium of communications, communications networks can support a horizontal connection, but the anatomy of networks and nodes demonstrates vertical tensions that can restrict or control communications. Although technology networks can support horizontal relationships and communications but this should not be an assumption as limitations on the technical layer can create barriers on the social layer.

Networked technologies have changed how people communicate, but why and how depends on the underlying network architecture. Castells uses a variety of examples to constitute his theory such as videos on YouTube, sharing information on email lists, and wikis, Lindgren’s
“disruptive spaces” (2013). As a platform, these create space for discussion and common platforms accessible in numerous countries have supported geographic independent relationships. However, technological networks and relationships each have their own structural concerns.

Analysing the technical layer, Lessig describes code as a type of law (Lessig 2006), an idea furthered by Galloway (Galloway 2004). In Lessig’s work the architecture of technologies defines the opportunities and limitations for how that technology can be used (Lessig 2006). Focusing on network protocols, Galloway argues that network standards such as protocols are a governing mechanism for how information flows on a network and thus the types of relationships it can support (Galloway 2004). Technical structures defining how a network can be used is included in Castells’ definition of “network power”, and this power is held by those with “network-making power.” However the distinction is not clear if and when these powers are applicable to underlying technical architecture or the inter-personal relationships themselves. Secondly, these platforms exist in complex environments. YouTube, for example, is not merely an artifact of a single company but the complex relationships between network operators, Google (who owns YouTube), web browsers, video codecs, and the financial and legal tensions interacting with each component that results in the websites users interact with often aware of the underlying structural tensions. Simply put: A website or online services exists as a cross-section - of hierarchical relationships that define the online environment. These relations - those underlying the horizontal relationships of a community sharing a video clip - could be included in networked and networking making power, but Castells does not make the distinctions of which networks he is discussing and how to be approach documenting them.

Koopmans and Zimmerman have attempt compare the structural relationships between technological and socio-political layers of the World Wide Web (WWW) with respect to the vertical and horizontal nature of these relationships. Koopmans and Zimmerman compare the vertical hierarchies of search engines with the horizontal networks of hyperlinks (Koopmans and Zimmerman 2007), a step towards describing the meta-dynamics of the networked public sphere. In their example search engines are controlled by private gatekeepers while links between website are governed by public actors. Conducting a study of where websites are
found less national bounding with search engines and inconclusive evidence with regards to the linking between websites. Similarly, van Os conducted a study on visibility of european issues online in Europe to explore the relationships between networked media theorise the extent that a public sphere exists beyond national interests (Os and Jankowski 2007). While important in their effort to ground theory in the technological and empirical realities, web searches and websites do not represent the broad range of services online, particularly participatory platforms, that can contribute to supporting a public sphere (Benkler 2006).

By contrast, Castells does not demonstrate an understanding how these technologies function beyond the most basic level. Granted his understanding has developed from assuming that “networks are open structures, able to expand without limits, integrating new nodes as long as they are able to communicate within the network” (Castells 1996, 501) to a more nuanced understanding that networks are “made of codes that include valuation of performance and criteria for success or failure” (Castells 2009, 20). However, in addition to conflating organization and technical networks Castells see then a static and unable to change from internal tensions: “To alter the outcomes of the network, a new program (a set of goal-oriented, compatible codes) needs to be installed in the network – from outside the network” (Castells 2009, 20).

Simply put, Castells’ binary inclusion/exclusion logic for networks is simplistic and ignores important relationships within networks. A wide variety of protocols and platforms are supported through the internet and different architectures can impact their use. Although there there is the ability to refeudalize the networked space the technical structure and control of communications technology can both resist enclosure and create alternative channels for communication (Meinrath, Losey, and Pickard 2011). Secondly, just as individuals have different relationships how they receive information from mass media, personal relationships impact information flows (Lazarsfeld, Berelson, and Gaudet 1968). Katz and Lazarsfeld describe this process as the two-step flow of communications where information is shared between opinion leaders and personal contacts (Katz and Lazarsfeld 1955). In an networked society, to borrow Castells’ language, these relationship are strengthened, and as I will discuss in the case of ACTA, existing networks expanded that were independent of mass media (Lazarsfeld, Berelson, and Gaudet 1968; Katz and Lazarsfeld 1955).
The networked public sphere is better understood as complex interconnection between civil society and individuals around common political points of intervention such as a national legislative body. Networked technology supports networked relationships, including the potential for global civil society. However, these relations include vertical tensions as well. The potential for networked technology to support horizontal relationships is a potential and limitations at the technical layer creates at the socio-political layer. The networked public sphere includes the key characteristics of the idealized Habermasian public sphere.

First, the networked public sphere is open, accessible, and supported by the participatory discourse of individuals sharing and creating content across a range of medium (Benkler 2006). This exceeds the searching engines and websites studied by Koopmans and Zimmermann but includes Wikis, email lists, social media, and chat channels. Second, the networked public sphere supports a discourse that evaluates and questions the political decision making process and outcomes. For this to be the case the networked public must be linked to the political institutions. Thirdly, platforms must support a rational discourse and not simply be an argument amplifier. As such, and aligned with the Habermasian model, the ideal networked public sphere independent of state or economic interests and depends on the active participation by civil society.

While understanding network architecture does not compete with theoretical approaches that focus on structural elements of society, but it does provide insight to how commercial or state interests limit networks, and impact civil society, or restrain communications. In a distinct departure from Castells, the framework offered in this thesis is significantly more sound. The following sections provide concrete distinctions between the networks that mediate relationships between various actors in the public sphere and these relationships themselves. Additionally, I argue that vertical tensions permeate both the technological components of the networked public sphere as well as the relationships of the public sphere itself.

C. Networks and Digital Feudalism

A significant flaw of existing network studies is technical novice. Scholars begin with a basic understanding of networks that generally takes Shannon and Weaver’s (Shannon 1949;
Weaver 1949) model of communications, a channel mediating transmission between two individuals with a mixture of signal and noise, and replicate it to form a network. The assumption that networks exist as only horizontal relationships follows form this outdated simplistic approach. Channels are still a convenient phrase to describe a communications link between two people or nodes but the reality is much more complex (Longstaff and Oettinger 2002). Understanding the layers of networks, the hierarchy, and how technological differences can result in control over the entire network are critical for a more nuanced understanding of modern communications. Galloway describes how protocols can impact communications (Galloway 2004), and Castells discuss how values are “programmed in the networks” (Castells 2008, 4), but these approaches need be expanded.

A basic understanding with on the impact of different aspects of networks begins with acknowledging the ability for internet service providers (ISPs) to act as gate-keepers of the Internet (Lessig 2002). Other intermediaries, such as social network or blog hosting services can also impact accessible or allowable content (Zittrain 2006; Zittrain 2008). In his analysis of networks Zittrain proposes a three-layer analysis that distinguishes between physical, protocol, and applications layers (Zittrain 2008). As a stack, these three layers support the social layer - communications and interaction online.

In previous research Meinrath, Pickard, and myself propose using a more nuanced analytical approach drawing on an older schematic (Meinrath, Losey, and Pickard 2011). The Open Systems Interconnection (OSI) model, developed by International Standardization Organization, is a seven-level cross-section of networks that breaks each core function of the network into a separate layers (see Figure 3) (ITU X-200). The model presents the hierarchical architecture of networks can be a useful heuristic for illustrating the impact of network architecture on networked communications. The range of function at each layer is impacted by how open or closed the surrounding layers, and as Meinrath et al. write: “sufficient control at a single layer can enclose the Internet commons and limit end-user freedoms” (Meinrath, Losey, and Pickard 2011).
Borrowing from Habermas in creating the theoretical framework of “Digital Feudalism”, Meinrath et al. offer a detailed look at enclosures to the public sphere across the OSI stack and I want to examples on three areas of the OSI stack that impact the networked public sphere. First, internet access is a essential to participate in the networked public sphere. Just as the Bourgeois public sphere represented the interests and voices of a wealthy echelon of industrial society, the networked public sphere brings together the voices of networked users. The physical layer, copper, fiber, routers, radio spectrum, is the foundational layer of networks. Fundamentally, a lack of physical access restricts a user from the networked public sphere. Pricing can impact adoption and ISPs might terminate the data link such as for copyright infringement as was proposed in early drafts of ACTA.

Although European ISPs operate in different local markers, through commercial peering agreements to exchange traffic, either directly or consequential of agreements between larger common providers, users of these ISPs are able to connect to a common internet. A key technical aspect of this phenomenon is the the common TCP/IP protocol suite for transmitting information, operating at the network and transport layers respectively. This framework can be conceptualized as an hourglass where users on numerous networks access a wealth of services and websites through a common communications protocol (Deering 2001. However, the TCP/IP suite which originates in a best-efforts first-come first-served data transmission can be altered to favor one application or service over another. Tim Wu describes this as a

<table>
<thead>
<tr>
<th>Layer</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Application</td>
<td>Network Process to Application</td>
</tr>
<tr>
<td>6. Presentation</td>
<td>Data Representation and Encryption</td>
</tr>
<tr>
<td>5. Session</td>
<td>Interhost Communication</td>
</tr>
<tr>
<td>4. Transport</td>
<td>End-to-end Connections and Reliability</td>
</tr>
<tr>
<td>3. Network</td>
<td>Path Determination and Logical Addressing</td>
</tr>
<tr>
<td>2. Data Link</td>
<td>Physical Addressing (MAC &amp; LLC)</td>
</tr>
<tr>
<td>1. Physical</td>
<td>Media, Signal and Binary Transmission</td>
</tr>
</tbody>
</table>

Figure 3. The OSI Model (Ciccarelli and Falkner 2004)
binary between broadband discrimination and network neutrality, with the latter being a framework where users are able to access the websites and services of their choose (Wu 2003). Discriminating against some services by either slowing them down or prioritizing others can impact what services users have available to them, and if differences arise between ISPs, a Balkanized internet can restrict which platforms users can use to communication (Meinrath, Losey, and Pickard 2011).

As a third area of focus operate higher up the stack. The Domain Name System Protocol (“DNS protocol”) is the translation of IP addresses to text (Bangia 2010, 177-178). The protocol makes webbrowing easier by allowing a user to use a numerical web address, such as http://www.europarl.europa.eu/, rather than the Internet Protocol address 136.173.60.59. When a user enters a domain name into their browser their DNS server performs a query, and if it resolves positively, directs their browser to the appropriate website. If an ISP does blocks access to a domain, such as proposed SOPA or implemented by court order in the UK with regards to www.thepiratebay.se, the website is crudely blocked. This is a crude mechanism because a user can change their DNS server manually or type in the IP address to access the site.

In summary, networks do create horizontal connections but they also foster vertical tensions. Examples of horizontal connections include network interoperability, common spectrum usage, the World Wide Web, and what we might define as the internet. Vertical tensions, which can result from commercial enclosures or State control, are defined by digital feudalism and the ability for actors with sufficient control at different layers of network components to enclose others.

While understanding network architecture does not compete with theoretical approaches that focus on structural elements of society, but it does provide insight to how commercial or state interests limit networks, and impact civil society, or restrain communications.

D. Networked Civil Society

Civil society represents a critical component of the networked public sphere. Discussions of civil society emerged in 18th and 19th century theorists. Kant and Vattel represent european
thinking “that understands civil society (societas civilis) as the condition of living within an armed legal order that guarantees its subjects stable peace and good environment” (Keane, 2003, 21). Indeed civil society as birthed from European thought. Additionally, Alexis de Tocqueville credited the functioning of democracy in the early history of the United States to the vibrant and engaged civil society. The concept of civil society also permeates theoretical discussions of the public sphere and networked publics. Habermas held emergence of civil society as a significant outcome of the public sphere: "Civil society came into existence as the depersonalized state authority" (Habermas 1991, 19).

However, one debate in scholarship is how to define civil society and efforts to develop a definition often result in a blurred line with the concept of the public sphere. For example, Keane offers a broad definition wherein civil society comprises “individuals, households, profit-seeking businesses, not-for-profit non-governmental organizations, coalitions, social movements, linguistic communities and cultural identities” (Keane 2003, 8). Cohen and Arato form their definition by distinguishing civil society from political parties and organizations, but specifying that the does not apply the term to “all social life outside of the administrative state and economic process” (Cohen and Arato 1994). By defining civil society as a space of political discussion independent of state oversight, these efforts align with some elements of the public sphere without accounting for the need for rational debate and open participation.

Viewing civil society as a network of institutions helps narrow the term as well as define the role of civil society in democratic discourse. Castells expands on the role of civil society within democratic discourse: "Civil society is the organized expression of these views; and the relationship between the state and civil society is the cornerstone of democracy. Without an effective civil society capable of structuring and channeling citizen debates over diverse ideas and conflicting interests, the state drifts away from its subjects" (Castells 2008, 78). Civil society can emerge as a convener of publics or bridge between citizens and democratic bodies. Lang differentiates these activities as public versus institutional advocacy: where the former includes protests, mobilizing citizens while the latter is lobbying, access to governance bodies (Lang, 2013, 23).
Today, an outcome of the global political arena has been the emergence of a global civil society which Keane describes as “vast, sprawling non-governmental constellation of many institutionalized structures, associations and networks within which individuals and group actors are interrelated and functionally interdependent” (Keane 2003, 11). These actors connect within larger framework of the network society, and participate within a public sphere. The effect of the internet, writes Benkler, is the “information and cultural production activity of emerging nonmarket actors: individuals working alone and cooperatively with others, more formal associations like NGOs, and their feedback effect on the mainstream media itself” (Benkler 2006, 219-220). Because the relationships between civil society organizations is more of a focal point than the assumption a civil society representing a global sphere I focus choose to discuss networked civil society.

As I will explore later, the connection between the underlying technology and the socio-political layer of networked civil society is closely related. For example, with respect to transnational politics, the WWW also enables access for civil society without institutional power and supports a transnational forum (Koopmans and Zimmerman 2007). Broadening analysis beyond the role of the WWW better demonstrates the networks of transnational civil society.

In discussions on international politics Kahler critiques the imprecise use of networks in scholarship on international politics: “network has too often remained a familiar metaphor rather than an instrument of analysis” (Kahler 2009, 2), and stresses the importance of analyzing networks in terms of structural characteristics and organization. On a socio-political level, for example, discussing international politics in terms of multi-level governance provides the ability to analyze the horizontal and vertical dimensions with “supranational, national, regional, and local governments are enmeshed in territorially overarching policy networks” (Marks 1993, 402-403), and situate the European Union as a layer between international and national politics (Bache and Flinders 2010). Additionally, within political theory connecting horizontal relationships with vertical hierarchies can provide a better understanding of European politics (Hooghe 2001, 24). Not only does this recognition of vertical and horizontal tensions of the socio-political layer need to be better
incorporated into communications research, but a similar framework must also be applied to
the technical layer.

Keane challenges separating civil society into “levels” of national and global (Keane 2003).
Instead Keane views world politics as “cosmocracy”: a “[m]uch messier, a far more complex
type of polity. It is better understood as a salmagundi of multiplying, highly mobile and
intersecting lines of governmental powers. It is a conglomeration of interlocking and
overlapping sub-state, state and suprastate institutions and multi-dimensional processes that
interact, and have political and social effects, on a global scale” (Keane 2003, 98). From this
perspective the networks of politics and civil society maintain horizontal connections with
different but related foci without operating on distinct levels. However, the challenge with
Keane’s approach envisions an orbit of civil society, and by creating a center focal point, such
as the European Union, creates a defacto hierarchy of legislative importance. While civil
society relationships to national and international politics - or indeed local to national - may
well be messier than distinctly defined levels, horizontal and vertical tensions still exist based
on the type of relationship and the focal point of intervention.

E. Conclusion

The networked public sphere provides a valuable theoretical framework for investigating the
ACTA debate. The framework combines analysis of the relations between civil society and
the extend that the public is independent of sway from economic and State interests, the
relationship between civil society and democratic processes, and the technologies that
mediate these relationships.

In summary, the networked public sphere is network mediated space of political and social
discussion independent of economic or state interests, one that is open, accessible and
participatory while focused on critical discourse of political processes. The technological
underpinnings of these relationships - the networked technologies that connect people and
ideas - support the relationships between politically engaged individuals and institutions, and
as such, the networked public sphere depends on an active civil society. However, the
dynamics of networks cannot be simply understood as flat, horizontal relationships. Internet
infrastructure, while supportive of horizontal relationships, is build on a hierarchical
technology stack and the relationship between operators at different layers of the network can re-feudalize the networked public sphere. Secondly, focal points of intervention of civil society can include operating on the same political plane, such as coordinating politics between member states or vertical focal point such as addressing an international body such as the European Union. In the coming chapters I will discuss the relationships among civil society, and the technologies that supported these relationships, surrounding the European ACTA debate as a case study for understanding the networked public sphere.
IV. Methodology

This chapter will provide my personal background with information policy and motivations for selecting ACTA as a case study. I will also provide justifications for utilizing qualitative research methods and describe my methodology in documenting the background of ACTA and my investigation of civil society and the public sphere. I will outline how I will approach answering my research questions. Additionally, I will conclude the chapter by discussing how I will relate my data to my theoretical approach.

A. Motivation to Use ACTA as a Case Study

The motivation to investigate the networked public sphere and civil society in the ACTA debates stems from the uniqueness of ACTA in shifting international politics and my personal background. Over the last several years I have been increasingly interested in the overlap between international politics and the trajectory of information policies. As a global information infrastructure (Borgman 2003), the internet seemingly shortens distances between citizens and politicians of various states while also creating tensions as countries develop different approaches towards domestic regulation (Goldsmith and Wu 2008) as well as international internet governance (Meuller 2010). These are also issues that I have developed expertise in first as a policy analyst, and currently as a fellow, with the Open Technology Institute at the New America Foundation, a public policy think tank based in Washington, DC.8 Additionally, as the internet becomes pervasive in daily life for many users, otherwise seemingly mundane issues, mundane aside from their large-scale impact on online communications and normative behaviors, receive considerable attention from some sectors of civil society and members of populations that appear to construe a version of a Habermasian public sphere.

Two recent examples of domestic information policy with that received global attention were a pair of bills intended to address piracy online in the United States. These bills, the Protect IP Act (S.B. 968, 2011) and the Stop Online Piracy Act (H.R. 3261, 2011) proposed censoring the domain names of websites that were accused of hosting infringing materials. However, in my analysis of the legislation the proposals were “so technically impractical that they do little

---

8 See opentechinstitute.org.
to address these problems” and would “lead to collective reprisals against online communities (Losey and Meinrath 2011).” Blocking the domain of a website results in all pages of that website being blocked. For example if YouTube.com were accused in supporting pirate material, which indeed it has in a lawsuit from Viacom, all videos of YouTube would become inaccessible. Similarly, if a blogging services, such as Tumblr.com or Wordpress.com, were to be blocked all blocks, not just the infringing material would be inaccessible, as occurred in the case of Mooo.com. Following an online protest on January 18, 2012 that including Wikipedia.org blacking out, Google censoring their doodle, and over 115,000 websites blacking out in protest of the bills both pieces of legislation were pulled (Fight for the Future). I personally visited Congressional offices on January 18, 2012 with human rights organizations to discuss concerns of the bills and the phones were ringing off the hook with individuals expressing their own concerns.

However in the days following the defeat of two bills a different kind of protest was brewing in Europe: citizens in Poland began protesting in the street to raise concerns over ACTA. The months culminated in the ultimate rejection of ACTA by the European Parliament. As I mention before, these protests raise interesting questions on the relationships between local and national to the Community level politics of the European Union as well as the international politics surrounding information policy issues. Additionally, they also raised questions as to how actors involved with the protested were networked and the role of civil society as advocates as well as bridges to the political sphere, and in totality suggest the importance of networks in a variety of spaces. Summarily, ACTA provides a timely example of how civil society engages on international information policy issues and a offers an opportunity to investigate the networked public sphere. Additionally, as I discussed previously, ACTA was also the first trade agreement to be reviewed by the European Parliament providing an unprecedented example of pan-European democratic debate.

My close involvement in these issues provides both a benefit and a potential challenge for academic research. As benefits, I previously had access to a number of key people to interview through having worked with them on various issues or joined them on panels. However, where as my work experience allowed me to develop an expertise on internet policy issues, it could be a potential hinderance as a bias: my primary network matches
personal views in opposition to ACTA. Additionally, my involvement with the network and previous analysis leads me to a different theoretical method. I temper my bias in three significant ways. First, my research questions are not normative judgements of ACTA but focused on gaining a greater understanding of how the agreement was opposed. Second, evaluation of the public sphere is not about what the viewpoints that are being discussed are, but striving towards understanding the fact that viewpoints themselves are discussed. Third, I sought interview subjects beyond my initial network that could support a fuller perspective on the debate, including subjects that were in favor of ACTA.

B. Relating Theory to Data

The umbrella of qualitative research brings together a range of approaches to theory. Ranging from traditional social science, the application of theory to interpret data, to grounded theory (Corbin and Strauss 2008), where data is analysed to develop a theory (Strauss 1987). Other approaches include phenomenology that build from Heidegger and “zigzags” between data and theory to gain a deeper analysis (Aspers 2006). Concretising a theory before interpreting the data observing empirical data can result in a dependence on a theory that is not reflected in the data. Because I approached my research with an understanding of the field and theoretical preconceptions an inductive grounded theory would not be an appropriate approach. Instead, I analyse my data to through an adductive approach.

First introduced by Charles Sanders Pierce, abduction achieves understanding through inferring the best explanation for a set of data (Reichertz 2007). A critical feature of abduction is recognizing the relationships between two previously independent ideas (Ibid.) Within this thesis I am critiquing a Castilian model for networks by connecting the technologies used to share information and analysis regarding ACTA in Europe and theories on the Habermasian public sphere. This involves presenting a technical understanding of how information flows or is restricted as well as the dynamics of political relationships and civil society within European and international politics.
C. Data Collection and Analysis

To collect and analyze my data I employed multiple strategies of qualitative research to document the networked publics sphere with relation to ACTA. Qualitative research is a method of inquiry encompasses a range of disciplines and methodologies (Denzin and Lincoln 2005). Covering a broad range of practices, qualitative research is difficult to definitively define and over the years, different approaches to qualitative research have developed with debates ontological, epistemological, axiological, rhetorical and methodological grounds (Spencer, Ritchie, and O’Conner 2003). Additionally, qualitative research employs different relationships to theory ranging from ignoring theory until evidence is collected to testing a theory through evidence (Strauss 1987; Spencer, Ritchie, and O’Conner 2003). In this section I will focus on the methodological approaches I employed in researching the historical background, interviews, and networking mapping of civil society websites with relation to the networked public sphere and ACTA. Additionally, I will relate my data collection and analysis to my research questions.

1. Historical Background

The historical background is essential for addressing the first of my questions: What is the origin and trajectory of ACTA. This data, presented in my background chapter, provides an overview of the Agreement, the counties involved in the negotiations, and organizations that were concerned. In order to present a history of ACTA I drew from law review articles documenting the changes in the legislation, leaked ACTA documents themselves and blog posts and news articles covering events. Through policy analysis, these documents allowed me to construct a timeline of events surrounding ACTA as well as understand the who was included, or excluded, in from discussions during negotiations and what types of concerns civil society organizations were raising. Michael Geist and Knowledge Economy International both have helpful time lines (Geist Acta-timeline, KEI) and Yu documents negotiation rounds (Yu 2011a). One criticism of ACTA that remained a challenge in my research is the lack of transparency in the process, including delayed release of documents. This opaque nature of the negotiations created challenges for organizations to conduct analysis while the negotiations were on going, but some ACTA documents and proposals were leaked including through the organization La Quadrature du Net, WikiLeaks, and Knowledge
Economy International. Additionally, I culled the blog archives of civil society organizations to document when the organizations began writing about ACTA.

2. Interviews
Interviews provided the my data through a series of interview and were vital to answering my second question: What was the role of civil society in opposing ACTA and how did technology support networked relations? Interviews also contributed to answering my third question: What were the institutional outcomes of the ACTA debate. Finally, interviews were crucial to understanding my overarching question: What was the nature of the networked public sphere in the European debate on ACTA.

Conducting a total of nine interviews, my interview subjects were based in Brussels, Canada, France, Germany and Poland and included activists, members of NGOs, trade associations, or staff for members of European Parliament. Using an open-ended semi-structured interview, I spoke with subjects over the phone, with Skype, or in person. I allowed the interviews to flow as conversations as one would through an in-depth interview (Legard, Keegan, and Ward 2003), but I had a foundation of information that I wanted to secure from each subject. This included:

- When and how the subject became aware of ACTA
- Their views on the Agreement
- Which individuals or organizations they collaborated with
- What technologies they used to share or access information on ACTA

Engaging in an interactive process from a baseline of questions provided a thorough understanding of each subjects relationship to a networked public sphere and the ACTA debate in Europe.

While an in-person interview can provide non-verbal queues and other benefits of being face-to-face, I have established relationships with four of my subjects including having talked with them several times in person on similar subjects. My subjects were chosen based on their leading roles in the opposing ACTA. One of my subjects works with an organization that favored many provisions in ACTA. Together, these subjects provide important background on how information flowed between civil society organizations nor development of the protests
I analyzed my interviews through transcription and coding. Coding is a process that can be used to identify and group related data (Spencer, Ritchie, and O'Conner 2003) and “fractures the data, thus freeing the researcher to higher levels of abstraction” (Strauss 1987). Strauss describes three types of coding: open, axial and selective (Strauss 1987):

- Open coding: “Breaking data apart and delineating concepts to stand for blocks of raw data” (Corbin 2008, 195);
- Axial Coding: “Crosscutting or relating concepts to each other” (Corbin 2008, 195); and,
- Selective Coding: Identifying and confirming links between sub-categories and a core before code categories have been determined (Strauss 1987).

I used selective coding for my analysis. In addition to approaching interviews with an understanding of the information that was needed to investigate the networked public sphere,
I approached my data with a baseline of code that be used to preliminary sort my data. Building from codes to develop categories, and (see Figure 4).

I structured my data around twenty codes grouped into seven categories: Activities, Tools, Concerns, Events, Relationships, and Institutionalized Outcomes (See Figure 5). Combined, these categories provide a deeper understanding on how individuals and organizations were involved in ACTA, how they were collaborating or sharing information, and the networks that formed their relationships. Additionally, I first documented the tools that were used for sharing information and connect these tools to the networked relationships among civil society organizations as well as the political sphere. Creating a category of outcomes allows me to investigate what, if anything, resulted in institutional change beyond the rejection of ACTA in the European Parliament including the involvement of the civil society in European democratic institutions as well as changes in the relationship between European Parliament and the European Commission.

3. Network Analysis
To substantiate the network links between websites and provided additional evidence for a network relationships between civil society I conducted network analysis. Documenting the relationships between civil society websites offers the potential to visualize the extent that organizations sharing analysis and which
organizations stand out as central nodes. While Koopmans and Zimmerman document hyperlinks between websites to evaluate the presence of a public sphere online, (Koopmans and Zimmerman 2007) my goal is to visualize the strength of relationships between civil society organizations and visualize the key nodes.

Even without mapping these relations in real-time during the ACTA debate a network map illustrates present day relationships which is important for understanding the breadth of civil society working on European information policy issue today. This includes organizations that formed or otherwise came of age during the ACTA debate in Europe.

To conduct my networked analysis I used IssueCrawler to map relationships between organizations. IssueCrawler is a server-side software that collects data on websites links and creates network visualizations. A user inputs seed URLs and and software conducts crawls and provides analysis. IssueCrawler offers three scenarios for crawls: co-link, snowball, and inter-actor. Co-link finds websites that two or more seeds link to. Snowball is similar but only requires one link to be included. Inter-actor analysis relationships between the seed URLs and documents any links between them. Results can be displayed in three different maps: circle, cluster, and geographical.

I first explored IssueCrawler after Lang’s use of the software in her analysis of civil society and the public sphere (Lang 2013). IssueCrawler is network visualization software that maps between websites. After inputting a list of seed links IssueCrawler a researcher can set the depth of the crawl for each seed from one to three and set the crawl to complete one to three iterations. IssueCrawler conducts three types of crawls: co-link analysis, snowball analysis, and inter-actor analysis. The first two types of crawls identifies the network stemming from the seed URLs while latter identifies links between seed URLs. Co-link analysis harvests the pages that receive at least two links from the seeds, snowball analysis harvests pages with one from a seed, and inter-actor analysis harvests pages identifies links between the seeds.

For this study I conducted an inter-actor crawl to map links between civil society organisations working in the North America and Europe that were active on ACTA (see Figure 6). If possible I selected the blog of the organization as a starting point in order. I
conducted one iteration and the deepest option of three. My results, which are discussed in Chapter VI, document demonstrate which see URLs receive the most links and here for the most centrality within the North American and European information policy civil society space.

While illustrative, the results are temporal and relatively shallow for analyzing connections between blogs. For example, the maximum depth for a crawl is three links within a website. This means that if a blog or article is four pages into an archive IssueCrawler will not recognize if that blog links to another organization in the space and thus documenting more relatively recent links while missing others. As a result IssueCrawler captures a snapshot of recent links at the time when the crawl is conducted. Additionally, by documenting links between websites IssueCrawler does not detect other relationships between organization such as networks of volunteers that mobilize on issues or less public communications. Furthermore, because I used organization websites and blogs for my seed URLs the network map discussed in Chapter VI does not cover the role of social media in facilitating networks between organizations. Despite these limitations the network map does provide a recent snapshot of how websites and blogs between these civil society organizations are linked and demonstrates that networks do continue to exist nearly one year after the European Parliament rejected ACTA.

Figure 6. IssueCrawler Seed URLs

1. http://www.laquadrature.net/
3. https://netzpolitik.org
4. https://www.bof.nl/blog/
5. https://www.accessnow.org/blog
10. https://ansol.org/politica
11. http://www.ccc.de/
15. https://digitalegesellschaft.de/
17. https://www.dfri.se/
27. https://netzfreiheit.org/category/blogpost/
32. http://www.openrightsgroup.org/blog/
33. http://www.panoptikon.org/blog
34. http://www.quintessenz.org/
35. http://www.ri.fhi.sk/sk/aktuallne
37. https://www.vibe.at/
38. https://www.vrijschrift.org/
39. https://bitbureauten.dk/
41. https://www.eff.org/deeplinks
42. http://www.laquadrature.net/wiki/Main_Page
43. http://www.publicknowledge.org/blog
44. https://www.cdt.org/blog
D. Conclusion

Analyzing the networked public sphere of an information policy issue requires multiple methods to document the origin of the policy, the actors involved in the debate and their activities, and the extent to which these networks became institutionalized. I discussed the origin of ACTA in depth as part of background in Chapter II in order to provide the reader with a firm grasp on information policy and Agreement. Building from this historical background and policy analysis I answer my additional research questions over the next two chapters.
In December, 2011 members of various civil society organisations met in Berlin to discuss ACTA. Just six months before European Parliament was expected to vote on the agreement the prognosis from those in the room was that ACTA was scheduled to pass. According to staff of Members of European Parliament the agreement was largely unknown beyond a core circle of Members and civil society members acknowledged that the agreement had seen few press cycles during the preceding five years.

However, on January 18 a core tension of information policy sparked. A day of scheduled protest against the Stop Online Piracy Act and PROTECT IP Act, two pieces of legalisation in the United States, culminated in websites such as Reddit, Tumblr, Wikipedia, and Google raising concerns of potential internet censorship resulting from intellectual property enforcement. Following the protests, both bills were immediately rejected by U.S. Congress and ACTA quickly become a central focus in Europe.

On January 25, 2012, protestors took to the streets in Poland to protest the Anti-Counterfeiting Trade Agreement (Mezzofiore 2012). These protests, with an estimated 10,000 - 15,000 people in Krakow and an additional 5,000 in Warsaw (Coleman 2012)(Associated Press 2012). The protests in Poland quickly began to raise the profile of ACTA and marked the beginning of significant and mounting opposition to ACTA over the next several months. This opposition grew throughout Europe and included two separate days of protests, one in February and one in June, that spread across an estimated 200 cities.

I preluded in my previous chapters to the significance of this series of events, a chain of an unprecedented scale of European democracy. Not only was this the first time that European Parliament voted on an international trade agreement, a democratic body with oversight over the unelected European Commission (Hooghe 2001), but the ACTA debate was also a groundbreaking event in terms of citizen engagement on a Europe-wide political issue.

This chapter will discuss the data I have gathered for the thesis in and contextualizes in within my theoretical framework in three ways. First I will discuss the activity of civil society
before, during, and after the protests with respect to ACTA. Addressing my second research question, this discussion will provide evidence for the existence of a networked civil society focused on information policy. Documenting the role of civil society includes illustrating the for the horizontal networks that emerged in opposition to ACTA on a global scale: members of civil society contributed to a common pool of analysis, shared concerns, leaks, and news, and discussed strategies for approaching ACTA.

Second, I will discuss the protests that developed and the impact they had on European Parliament. The protests, spontaneous and adhoc organization demonstrate the open and participatory nature of the opposition to ACTA, contributing the networked public sphere (Habermas 1991; Benkler 2006), with horizontal networks between national protests and the vertical governance intervention with respect to the European Union. Together, the participation of civili society organizations in these networks demonstrate the public and institutional advocacy of civil society (Lang 2013). By providing information on contacting or lobbying members of European Parliament to direct energy the towards the legislative body represents a critical bridge role played by civil society.

Third, I will explore the technological networks that mediated this public sphere. Beyond scattered “disruptive spaces” described by Lindgren (Lindgren 2013) or a collection of hype links (Koopmans and Zimmerman 2007), I will demonstrate the range of networked technologies that were critical in supporting the debate. Refuting the assumption of purely horizontal networks presented by Castells (Castells 2009), I discuss how characteristics at the technical layer were critical to supporting the roles of civil society discussed above and where digital feudalism would have had adverse effects on critical discourse.

A. The Global Networks of ACTA

Before discussing the streets protests against ACTA that played significantly in drawing attention to concerns over the agreement I would like to first begin with the five years of civil society efforts that become essential during the protests, and later connecting citizens with members of European Parliament. During this section I will discuss how networks emerged with civil society around ACTA including how these networks supported the sharing of leaks.
1. Networked Civil Society

As I discussed in my background chapter, ACTA is a trade agreement between numerous countries. What I want to focus on in this section is the relationships between civil society organizations in various countries negotiating ACTA with a particular focus in Europe. In analyzing these organizations and the sharing of information between them we can begin to notice networks of information flows, analysis, and development of expertise that later supported an ad-hoc protest movement. Indeed, as Keane describes global civil society as “refers to a vast, sprawling non-governmental constellation of many institutionalized structures, associations and networks within which individuals and group actors are interrelated and functionally interdependent” (Keane 2003). The civil society focused on information policy during this time was by no means vast, but the relationships that developed during this time were invaluable for supporting networked opposition.

Members of Civil society were spread across the U.S., Canada, and Europe, as well as in other countries that were negotiating ACTA. However, the engagement on the issues developed in a staggered fashion over five years. An early and significant part of the network of global civil society was the sharing of information on ACTA, an ad-hoc process that helped build a network over time. Groups became engaged by having their attention drawn to blog posts, press releases, and analysis by other groups, and as they became engaged published their own information on their websites.

While many interview subjects cited Michael Geist, a law professor and at the University of Ottawa who has written extensively about intellectual property, as a point of introduction to ACTA. Markus Beckedahl, author of Netzpolitik, described Geist as a “super network node.” (In turn, Geist notes that he became aware of the agreement from the Electronic Frontier Foundation.) Having been concerned about how ACTA would impact the Canadian regulatory environment, he began following the discussions. Geist first wrote about ACTA on his blog in October 2007, and as of March 2013, had published over 500 posts on the trade agreement. Geist’s posts were cited as a early source of information for groups in Europe including La Quadrature du Net in France and Digitale Gesellschaft in Germany. Paris based La Quadrature du Net (LQDN) first became aware of ACTA when a volunteer posted a link
to one of Geist’s blog posts on ACTA in 2008 in an Internet Relay Chat (IRC) channel used by LQDN. Members on the channel suggested the volunteer built a page on LQDN’s wiki, a process that began June 28, 2008. In September 2011, LQDN organized their ACTA content into a common portal. The portal, which is available in English, French, Italian, Portuguese, contains information about ACTA including analysis and concerns as well as information on how to contact Members of European Parliament.

European Digital Rights (EDRI), is Brussels-based non-profit civil society coalition organization focused on civil rights and information policy. Originally founded in 2002 with ten members, EDRI now coordinates analysis and strategy for thirty-five organizations in eighteen European members states. In addition to coordination, EDRI serves as a Brussels representative for this network of civil society organizations. EDRI first began writing about ACAT in November 2007, citing Geist’s blog among other sources. EDRI posts included news on ACTA, concerns, and analysis on how the Agreement could be stopped in Europe. EDRI members include La Quadrature du Net, Digital Gesselchaft, the Modern Poland Foundation and the Panoktykon Foundation.

Digitale Gesellschaft, German for Digital Society, was co-founded by Beckedahl in 2010 to focus on campaigns to promote digital rights in information policy, though Beckedahl had been tracking ACTA for some time following email lists at both the European level and the international level. Some of the co-founders for Digitale Gesellschaft are authors or editors at Netzpolik, a German blog that has published information on freedom of expression and information policy since 2002. Beckedahl, the editor of Netzpolitik, describes the blog as a “bridge to the German public sphere” and posts include updates on the negotiation process, translating Geist’s analysis to German, and concerns ACTA could post for freedom of expression.

Poland, the spark point for the European protests, also has networked civil society organizations, though these organizations were considerably Poland focused. The Panoktykon Foundation is a Polish civil society organization founded in 2009 that focuses on issues concerning the intersection of modern technology and the surveillance society. Their website highlights a focus on protecting human rights and privacy. The Panoktykon
Foundation quickly became engaged in ACTA including participating in a 2011 meeting described as the “meeting of the prime minister and bloggers.” Although originally focused on other issues related to information policy, participants in the meeting used the opportunity to raise concerns about ACTA. The prime minister assured meeting attendees that ACTA would not be signed by Poland while they continued to have concerns. Another NGO in Poland is the Modern Poland Foundation, known as Fundacja Nowoczesna Polska in Polish. The Modern Poland Foundation focuses on information policy and intellectual property particularly how the relate to education policy and followed ACTA as well.

Although prioritized sample of key organizations in Europe working on ACTA, the Agreement was not high profile. Far from a sprawling constellation in Keane’s description of global civil society (Keane 2003), information such as ACTA captured the attention of only a small selection of NGOs. Indeed, one staff of a member of European Parliament working on ACTA I spoke with noted that “ACTA was not followed by journalists and only very few NGOs” before the protest. Although largely geographically isolated, and even more so from organizations in North American such as EFF, civil society organizations were still building relationships. Through channels such as IRC and mailing lists civil society organizations were able to share resources and discuss ACTA with other organizations including LQDN. Members at organizations would also meet at in person at conferences, conduct phone calls, and keep each-other informed. During one such meeting in Berlin at the end of 2011 a group of digital rights activists - various perspective of civil society members working on information policy issues - discussed the current status of ACTA and the likelihood of the Agreement passing Parliament. However, before discussing the expansion of the public in Europe regarding ACTA I want to first discuss the significance of leaks the value of networks in transmitting them.

2. Civil Society and Leaks
Access to ACTA documents was a common challenge for activists, civil society, and politicians alike. Indeed, the opaque nature of the negotiating process became a common point of contention for those opposing the agreement. Leaks of the drafts, which become a common resource for organizations to analyze and discuss the text. The leaks themselves quickly became established nodes in the information networks of global civil society.
Wikileaks became one source of leaks releasing “Discussion Paper on a Possible Anti-Counterfeiting Trade Agreement” on May 22, 2008. WikiLeaks released (Wikileaks 2008), following with a leak of a “Japan-US Joint Proposal on April 11, 2009. La Quadrature du Net also posted leaked drafts to their website and interview subjects noted that Knowledge Economy International, a Washington, DC based non-governmental organization that focuses on intellectual property from the access to knowledge perspective, was a source of leaked documents as well. As a trade agreement impacting a large number of countries, members of civil society found different levels of success securing information or access to leaks in different countries. Once available, the information could be posted publicly or shared with allies.

Wikileaks played a pivotal role in releasing forcing some transparency in the ACTA process. Although ACTA was largely a blackbox negotiation between government negotiators, Wikileaks obtained and leaked documents on two separate occasions. On May 22, 2008 WikiLeaks released “Discussion Paper on a Possible Anti-Counterfeiting Trade Agreement”, a document provided to industry groups in favor of increased penalties for violation of intellectual property rights such as the Recording Industry Association of America and the Motion Picture Association of America (Wikileaks 2008).

The undated document provides an overview of the key discussion elements of ACTA including provisions that would encourage Internet Service Providers (ISPs) to “cooperate with rights holders in the removal on infringing material” and ban the circumvention of digital locks which in the United States have since expanded to ban the jailbreaking of tablets and the unlocking of smartphones (Losey 2012).

On April 11, 2009, Wikileaks released “Japan-U.S. Joint Proposal”. The July 7, 2008 document -- revised from May 20, 2008 -- contained the current proposal being discussed as well as comments from the U.S., Japan, the E.U., Canada, Australia, Mexico, and Singapore. Presumably other countries were not currently included in the negotiations (Wikileaks 2009). IP Justice, an international civil society organization based in San Francisco that focuses on intellectual property issues, described the ACTA process as a negotiation between a few key
countries while additional countries would be invited to sign on without the option to renegotiate provisions.

Leaks momentarily raised the profile of ACTA and resulted in fleeting news cycles while also demonstrating the networks that supported civil society organizations. Due to the blackbox nature of negotiations, the shortage of details on the Agreement and the desire to make information available created a demand for leaks. In fact, even Members of European Parliament relied on leaks if they were not on the leading committee. Once leaks were posted, such as through Wikileaks, individuals and organizations could link to, copy, and share the document. The ability to access the document was critical for analysis. As one member of civil society explained “we have been relying mostly on leaks, which is possible through the internet, and made our whole work possible in the first place.”

Leaks also played a significant role in the politics of ACTA. The countries negotiating the agreement do not have uniform freedom of information laws, and requests for information about ACTA rejected by one country were at times responded to in another. Additionally, leaks created a power-dynamic between countries, and civil society members recognized that details might be shared with them about the Agreement by countries that were not pleased with the dominant language.

Also of significance, civil society -- and members of parliament that were not privy to the negotiating documents -- depended on outdated documents. Kaminski offers a timeline of the leaks:

“Despite the fact that negotiations began in 2008, the first available draft of ACTA, dated January 18, 2010, was not leaked until March of 2010.16 The first official draft of ACTA was not released by the United States until April, 2010.17 A third draft was leaked in July, 2010.18 Another draft, dated August 25, 2010, was leaked in September of 2010,19 and the final available draft was released on December 3, 2010,20 after a nearly identical consolidated draft was released on October 2, 2010.21” (Kaminski 2011).

As a result to the staggered release of details on ACTA, particularly unofficial releases, civil society analysis did not always match the up-to-date details being negotiated. This
information asymmetry played two significant roles that will be discussed later, first in some of the dominant concerns of the protests and secondly in the concerns raised by European Parliament.

B. European Networks
Following a five years of a small network of civil society organisations discussing ACTA street protests beginning in January 2012 marked the beginning of a period of a rapid shift in the political viability of ACTA in Europe. Following the January protests, two additional significant peaks in February and June raised the profile of ACTA to a Europe-wide issue. Building and expanding European socio-political networks, the public opposition bridged to European Parliament and directly impacted ACTA. The spark point of this phase in opposition were three geographically independent in January that both raised the issue of ACTA and culminating into the initial spark of protest. Two events, focused online, had strong transnational impact, and combined with a third focused in Poland, sparked protests against ACTA.

The first of these events, on January 18, 2012 marked a significant turn in the ACTA debates. On this date 115,000 websites blacked out to censor to pieces of copyright legislation in the United States (Fight for the Future 2012). While these bills were not directly related to ACTA, they were examples of intellectual property regulation that could impact the online communications. The bills, the Protect IP Act (PIPA) and the Stop Online Piracy Act (SOPA) proposed censoring the domain names of websites that were accused of hosting infringing materials and raised significant concerns among internet users and companies. Companies that participated in the online protest on January 18 included Wikipedia while Google censored the doodle on their homepage, their first overtly political act on their homepage. Although domestic legislation in the U.S., these bills raised concerns that efforts to stop copyright infringement would impact access to websites in other countries.

While January 18 massively raised the profile of SOPA and PIPA, some activists and members of civil society were aware of the legislation. One Polish activist I spoke to describe the “polish internet” - people with blogs, twitter users, social network users - had been concerned about SOPA and PIPA without feeling like there was anything they could do about
the legislation. Following the online blackout one german activist who had been living in
Poland said that the event demonstrated that a protest could have an impact.

The second event was localized in Poland and occurred on January 19 2012. During a
meeting between multiple Polish ministries, NGOs, and businesses, the Minister of Culture
noted acknowledged that Poland was planning on signing along with other members of the
European Union the following week (Woźniak 2012). Although the agreement would then
need to be ratified by the European Parliament and then the member states the Cultural
Minister acknowledged Poland’s intention to sign the ACTA. This act would have undercut a
commitment made by the Prime Minister to NGOs at a previous meeting that ACTA would
not be signed if they had continuing concerns. For activists and NGOs in Poland this
provided a valid reason to protest.

A third event occurred on January 20, 2012 in New Zealand local time. Local authorities,
acting on charges leveled by the United States, raided the home of Megaupload co-founder
Kim Dotcom (Goodman and Mackey 2012). In addition to the raid, Megaupload.com, at one
point one of the top 15 visited websites in the world according to the indictment, was shut
down the same day (Gallagher 2012). Interviews subjects suggested that the shutdown of
Megaupload.com had significantly lesser impact than the SOPA/PIPA blackout but the
example of a popular website being removed from the internet as a result of copyright
enforcement provides an stark example.

1. Poland as a Catalyst
From the Polish perspective these events occurred within the course of a single day. The
online blackout to protest SOPA and PIPA was continuing occurring when the meeting with
ministries began and by that evening Megaupload.com was offline. Together, these built on
socio-political networks to spark protests against ACTA.

Following the visibility of the the SOPA and PIPA protests, which had demonstrated the
efficacy of protesting unwanted information policy proposals, and the January 19
announcement that Poland would sign the agreement smaller, spontaneous street protests
began. The first peak of these events occurred on January 25, when an estimated 10,000 -
15,000 people in Krakow and an additional 5,000 in Warsaw (Coleman 2012)(Associated Press 2012).

One interview subject discussed how these protests were organized by outside of the leadership of existing civil society organizations and described the organizers as a generation in their late teens and early twenties exercising the right to protest for the first time. Realizing the grassroots nature of the the protests members of Modern Poland Foundation and the Panoktykon Foundation were among organizations such as Internet Society Poland that worked to keep the protests civil and on message. Civil society organizations in Poland served as network nodes rather than traditional leaders and focused on supporting the burgeoning opposition energy. These efforts included checking with protest organizers, many of which were new entrants to activism, to ensure they had applied for permits, as well as encouraging the protests to adhere to a non-violent format. Additionally, my interview subjects noted that pushing for a “no-logo” rule was an important step. As momentum against ACTA quickly grew in a matter of days different political interests attempted to coopt the momentum against ACTA including associating it with their party or suggesting that the protests be against the government. Established society organized pushed the no-logo rule as a way to focus the protests on ACTA itself.

Actions and symbols of Anonymous made significant appearances during this first week, both of which supported horizontal networks in Europe. Anonymous launched a distributed denial of service attack on Polish government websites, an example of what Chadwick calls hacktivism (Cert Polska 2012; Chadwick 2006). Although members of Polish civil society expressed reservations for this action citing the potential negative response DDOS attacks can elicit, civil society in Germany noted the potential benefit of the attack. The attacks became news and drew attention both to ACTA and the protests in other European member states.

Additionally, Guys Fawkes masks, a symbol of Anonymous, were visible both in the early days of Polish protests, and Anonymous utilized their online media arm to spread information. A number of videos on YouTube posted January 25, 2012 from various Anonymous accounts discussing concerns about the trade agreement have exceed 1 million
views. Some of these videos included links to the websites of NGOs for additional information or to join campaigns, another example of a horizontal network.

Perhaps the most significant event during this time involving Anonymous involved actors not traditionally affiliated with the hacktivist group. Following the initial protest in Poland, Polish politicians found ways to associate themselves, and their parties, with the movement in an effort to sway the growing oppositional power towards their interests. One striking example occurred within Poland’s Parliament. After the Polish government signed ACTA on January 26, 2012, 30 members of the Polish Parliament from the Palikot’s Movement Party wore the masks in Parliament as protest (Cert Polska 2012). The Pakilot’s Movement Party is a center-left opposition party and civil society members privately criticized the parliamentarians as being unable to offer a concrete argument ACTA but instead were seeking to gain popularity through a political stunt. None-the-less, my interview subjects acknowledged that the stunt, and the resulting press coverage, helped support the momentum of the movement. Indeed, while some networks were successful in reaching younger potential opponents to ACTA bridges to mainstream media audiences were more limits. Actions such as the Palikot’s Guy Fawkes mask stunt plated a significant role in raising the profile of ACTA opposition.

2. Networked European Protests
After January, protests bubbled up in Europe over the next several months. However, I want to draw attention to two significant days where massive, multi-city protests were organized: February 11, 2012 and June 9, 2012. These event provide a vivid example of the public advocacy of civil society and pan-European networks. Additionally, the inspiration of these events demonstrate a broader international network. These events were not solely the result of Poland but like the protest in Poland were inspired by the SOPA/PIPA blackout as well. Both of these dates followed similar patterns of ad-hoc, networked organizing across multiple online mediums.

As in Poland, the visibility and success of the SOPA/PIPA protests helped draw attention to ACTA in other European countries. Justus Römeth, a member of the German Pirate Party who had lived in Poland thinks that the protests in Poland may have been instigated even
without the SOPA/PIPA but notes that the blackout “really catalyzed the momentum in the rest of Europe.” Members of civil society began adopting the frame of ACTA as Europe’s SOPA. Additionally, the networked visibility of the blackout - which spanned 117,000 websites including Wikipedia, Reddit, and Google.com, activated different actors in the public that became leaders in organizing protests, such as Anonymous in France. EDRI’s Kirsten Fielder described the SOPA/PIPA blackout as a “blueprint for the protest throughout Europe.”

The first event, February 11, 2012, a date selected by the core European network of civil society organizations that had been involved with ACTA. Through participatory organizing across Europe the day culminated in protests in several dozen cities heavily concentrated in Europe One list of protests documents 131 separate protests worldwide with a heavy concentration in Europe while RT reports that protests were held in over 200 European cities (RT 2012). Some countries had more central leadership than others. For example, LQDN along with Anonymous played a considerable organizing role in France, where civil society reported seeing printouts from YouTube videos or even their websites used as signs against ACTA. In Germany the Pirate Party infrastructure, including mailing lists and party members promoted protests in many cities while in Berlin Digitale Gesellschaft played a central organizing role. These events were largely organized on Facebook groups while details were also shared on email lists, social media, and word of mouth. The event pages for the protests were collected by LQDN volunteers and posted to an Etherpad, a collaborative editing platform, and locations were posted to a Google map (see Figure 7). Justus Römeth who played a critical role in mapping the protests described the process as an example of when swarm politics work and he largely played the role of a moderator in a forum and “kicking gout people that were trolling” or intentionally not contributing and instead attempting to derail the process.

Three impacts of the February 11 protest are worth noting. First, the day before the scheduled protest Germany announced the country would not sign ACTA (Lee 2012), an example of a national protest impacting national politics. Second, the scope of the protests led to mass media coverage. Benkler the value of the participatory internet as the potential for individuals to create networks of interest (Benkler 2006), a theory demonstrated through the protests.
against ACTA. However, media coverage leads gains the attention of individuals not participating in the protest or on the same Facebook groups and email chains as the protestors. Third, and related to the German decision and news coverage, the protests were necessary, though not sufficient as I will expand on later, to bring the attention of ACTA to MEPs.

Organising through online communications, core members of civil society selected a second date for a mass protest: June 9, 2012. While activists, many protesting for the first time, intended to protests regularly against ACTA, June 9 was chosen by a core group of organizers to create a second organized day that would be near when ACTA was expected to be voted on in Parliament. Following a similar pattern to the February 11 protests, event pages created on Facebook were shared across a variety of communications channels. As in the first case, the events were collected on a LQDN Etherpad and organized on a Google map and Römeth acknowledged that he did not know many of the people contributed to the map. Noticeably, the spread of the mapped protests covered less cities than February 11 while retaining a sizable footprint in Europe (see Figure 8). After the June protests Marielle Gallo, an MEP
from France, criticized protesters as a “soft form of terrorism” in an interview (Gallo 2012), a statement demonstrates the visibility of the protests.

Figure 8. Protests for June 9, 2012 (Google Maps B)

These protest illustrate the public advocacy networks of this slice of European civil society. Horizontal collaborations among civil society in different countries; is it worth noting that in Germany a political party played a key organising role, one sharing the same networks and information. Next I will discuss the institutional advocacy role - bridging the public with the political - that civil society played during this time period before discussion more in depth the technology layer that supported this socio-political layer.

C. Engagement with European Parliament

In addition to organising, tracking, and supporting the networked protests civil society played a crucial role in connecting opposition to European Parliament, the democratic body that had the potential to pass or reject ACTA. These activities can be described as institutional advocacy. Lang defines institutional advocacy as “attempting to influence decision making by gaining some degree of insider status in institutions or in organisations that initiate, prepare, legislate, or execute policy change” (Lang 2013, 22). These activities can include
providing expertise to policy makers or lobbying. I am including acting as a node between a networked public and policy makers as an additional example of institutional advocacy. These actions supported the vertical socio-political networks opposing ACTA by bridging protests occurring at the national level to the European level.

During the time between the first protest in Poland the rejection of ACTA in July 2012 civil society provided a key role in connecting citizens with members of European Parliament. One example is Avaaz. AVAAZ is an example of an organisation that organised mass petitions. Post-SOPA momentum continued in beyond the initial spark of the Polish protests. Avaaz, an online campaign organization launched a petition acknowledging the success in opposing SOPA and describing ACTA as “The new threat to the net” (Avaaz 2012). In under two weeks this online campaign collected over two million signatures that were delivered to Members of European Parliament in February. This action that gained the attention of MEPs and helped raise the profile of the protests in Brussels.

La Quadrature Du Net is an example of an organisation played a more sustained role, acting as a major node to connect citizens with European Parliament by developing a series of tools. For example, the LQDN wiki included a section titled “How to Act Against ACTA” with details on how to contact elected representatives, as well as what to expect from a call and examples of talking points. LQDN also developed tools to aid citizens. One tool, PiPhone, provides a free way to call members of European parliament “selected at random or according to particular criteria (country, political stance, committee...)”9 For helping citizens track MEPs, LQDN released Political Memory, an open source tool that enables users to “create a website to track their Members of Parliament on any topic they wish, and remember what they said and what they did, as well as score MPs according to chosen criteria.”10

In addition to building bridges between the public and parliament, civil society played an active role in serving as voice and presence in European Parliament. Several of my interview subjects stressed their involvement in Brussels, including working with members of

9 See https://www.laquadrature.net/wiki/Piphone.
10 See http://www.politicalmemory.eu/.
parliament to organize panels or being present in public debates to raise questions. LQDN is an example of organization present in Brussels as was EDRI. EDRI, a Brussels-based coalition organization connects 27 other European NGOs. The supported a two-way flow of information to Brussels, sharing information on ACTA developments their member organizations while actively lobbying within Brussels. Other individuals such as Michael Geist visited Parliament to speak while others made numerous visits over in the months preceding the votes and organized volunteers to be present in parliament during committee votes. Civil society organisations also created avenues for members of the public to visit brussels. These activities included organizing trips as well as providing resources to enable volunteers to be present in European Parliament.

These efforts directly impact politics in Brussels, including on question if the Agreement needed to be directed to the European Court of Justice. MEPs critical of ACTA had originally suggested referring the Agreement to the Court which would both provide additional review as well as delay the approval process. However, following the protests the European Commission, originally resistant, agreed on the referral. At this time the action would have slowed the momentum of public criticism of ACTA.

In May the Industry committee, the first of five committees that would vote in the coming weeks, voted on ACTA. Piratpartiet MEP Amelia Andersdotter, selected by the Green group to write the opinion, suggested that the Committee reject ACTA on political grounds. The opinion focused on ACTA as an issue of business self-regulation as opposed than human rights concerns, thus avoiding the need to refer the Agreement to the Court. The Industry Committee, as well as two additional committees during the month of May, voted to reject ACTA (Whittaker 2012). On June 5, 2012 a fourth committee, the Legal Affairs Committee rejected the agreement as well leaving only the Trade Committee, the lead committee on the issue left to vote (European Parliament 2012b). Less than three weeks later, during which another massive protest day occurred (June 9) and activists and civil society members continued to lobby Parliament, the Trade Committee rejected ACTA on June 21, 2012 (Brown 2012). On July 4 2012 the full Parliament rejected ACTA by a vote of 478 to 39, with 165 abstaining (European Parliament 2012c). ACTA, a trade agreement that at one point seemed inevitable, had been effectively defeated by opposition in European.
D. Understanding Technology

So far this chapter has discussed one aspect of a networked public sphere: the interconnection between civil society and individuals around common legislative body. By examining the actions of civil society in opposition of ACTA I have demonstrated the horizontal and vertical socio-political networks. In this section I will examine the specific technologies that support these horizontal networks. While I will borrow Castells’ discussion of communications I will provide a more detailed discussion Castells and elaborate on the characteristics of technology that allowed communications to reach greater audiences in the opposition to ACTA. In doing so I will examine key characteristics of email, online video, and Wikis that can support mass self-communications as well as potential barriers to other platforms that were used that can support technological enclosures of the network public sphere contributing to digital feudalism.

1. Horizontal Networks and Vertical Hierarchy
Castells defined the new type of communications supported networked technology as mass though the “potentially reach a global audience” while still the “the production of the message is self-generated” (Castells 2009, 55). This type of communications is built on the potential, but not guarantee, to reach a broader audience and Castells writes that mass self-communications is “characterized by the capacity of sending messages from many to many, in real time or chosen time, and with the possibility of using point-to-point communication, narrowcasting or broadcasting, depending on the purpose and characteristics of the intended communication practice” (Castells 2009, 55). However, as I outline in my theoretical approach in Chapter III, Castells neglects to engage in a technical discussion in what allows messages to be shared widely, and more important, what structural characteristics of the underlying technical architecture would create barriers. In turn, this results in his assumption that the networks that support mass self-communications are purely horizontal.

The linkable web is a fairly straightforward example of how information be shared. A video or blog posted on one website can be referenced to by another. As a result, a viewer on a blog discussing ACTA in Germany can click through to to an analysis written on another blog Canada or a video posted on YouTube. Koopmans and Zimmerman describe these
relationships as horizontal and part of the meta-dynamics of the networked public sphere (Koopmans:2007wr). The linkable web with respect to ACTA included a variety of platforms such as the websites and blogs were oft cited sources of information and analysis regarding ACTA. These examples include Michael Geist’s blog and Netzpolitik. Additionally, links from blogs were shared on mailing lists, social media, and linked to other organizations.

The video sharing website YouTube was used by Anonymous, LQDN, and others to share videos about ACTA. Some of these videos, including some that were uploaded on January 25, 2012, have received over one million views. Videos posted to YouTube were also edited by users other than the original unloaders, translated, and reuploaded with subtitles in order to reach new audience. Through these actions, the networks opposing ACTA were able to expand through peer-production (Benkler 2006) but this also depended on two important characteristics. First, videos on YouTube use commonly available Codecs. Codecs, short for encoders and decoders, are pieces of software required to save or playback media. When codecs for online media are standardized and freely available cross-platform users on different devices are able to view the same video. YouTube currently uses the H.264/MPEG-4 AVC codec, a codec included in the HTML 5 standard. Although privately owned by a patent pool, YouTube and other online services are not required to pay a fee for using the codec until at least 2015 (MpegLA 2010). If videos about ACTA were not available in uniform codecs a visitor to the website might not be able to view the content. This vertical tension of the technology stack creates barriers between the ability to support horizontal networks. Two, ACTA related content was not regionally restricted. Some media, including media available on YouTube is restricted to viewers with IP (internet protocol) addresses linked to a specific region. This can occur when a song or video is only licensed to an uploader, such as a record label, for use in a specific region. However, videos expressing concerns over ACTA were not limited and were able to be shared without geographic restrictions supporting the ability for media to be shared through transnational networks.

Facebook was also utilized as a platform to share information about protests. However, while the service provides a level of sharing beyond the linkable web, including real-time two-step flow within smaller personal networks (Katz and Lazarsfeld 1955; Lazarsfeld, Berelson, and Gaudet 1968), the service also presents a potential limitation. When Facebook was first
launched in 2003 the service was only available to University students and focused on providing the ability to connect with classmates. Today, in addition to sharing news, links, and photos, the service also has a function to create and promote events and for both the February 11 and June 9 protests days individuals and organizations created and promoted event pages on Facebook to organize protests. Links of these events could quickly and easily be shared on Facebook, and links to these events were also collected on Wikis and maps to centralize information on the protests. However, Facebook has built a platform for sharing information on top of the linkable web but this service may not always be available to those who do not have Facebook accounts. As a result, this can reinforce a vertical hierarchy that restricts access to nonusers.

2. Group Communications
In addition to information shared publicly online information two messaging services were highlighted as important forms of communications: email lists and IRC. Email lists were used at the national level, European level, and international level. For example, Access2Knowledge, a list managed by Consumers International, was highlighted as a key source of information on ACTA for actors on both sides of the Atlantic while the German Pirate Party email lists were used to organize protests in Germany. While Chadwick (Chadwick 2006) describes email as one-to-one communications, listserives which send a message to multiple subscribed users and therefore are better described as interpersonal communications.

Email is a delay tolerant communications and incredibly common for internet users today. Simple Mail Transfer Protocol (SMTP), the underlying protocol for email transport and facilitates the transport of email between different servers across multiple networks (Klensin 2008). In other words, SMTP allows users to choose different email hosts, such as using Gmail, the email of their business, or hosting their own email server, and messages can be sent between different services and across internet services providers. By contrast, other messages are restricted to users of services, such as Facebook or Twitter messages. Whereas email is built on an open standard and supports communications with users of different services, Twitter and Facebook enclose communications by restricting access to users of their services.
For some organizations IRC, or internet relay chat, channels was an important point of exchanging information, including the initial introduction to the issue. For example, in early 2008 a LQDN volunteer posted a link to a blog post by Canadian law professor Michael Geist’s about ACTA. The issue was discussed on IRC and after discerning that it was within the range of issues that LQDN focuses on, the volunteer was invited. IRC was also used as a link but people participating in multiple channels.

First developed in 1988 (Coleman 2013) and published in 1993 (Oikarinen and Reed 1993), Internet Relay Chat (IRC) is a text-based protocol for synchronous messaging. IRC is a client-server protocol. A channel is hosted on a server, designated by a “&” or “#” and created when a user first connects to the channel. Additional users may join the channel by specifying the server and channel in a chat client. The channel is closed when the last client leaves. From a users’ perspective, IRC operates like a real-time chatroom, commonly hosted on one server with users logging in from their respective networks and devices. Multiple users can be logged into the same channel, the most popular channels have upwards of fifty-thousand users (IRC States), and conversations are real-time. IRC channels can be restricted, such as requiring a password, but what is significant about IRC is that it is an example communications infrastructure that an organization was able to own and provide for their network.

3. Peer Production
Some civil society organizations created opportunities for networks of individuals to contribute analysis or information related to ACTA. The production of these outputs can be described as peer production which, as Benkler writes “depend on individual action that is self-selected and decentralized, rather than hierarchically assigned.” (Benkler 2006, 62). These platforms, Wikis and Etherpad, were used to share information, develop messaging, or collect data.

Wikis are most closely associated with Jimmy Wales and his website Wikipedia but the software for collaborative editing of webpages was created by Ward Cunningham in 1994. The online encyclopedia Wikipedia is based on the wiki software and was launched in 2001.
Most commonly used for collaborative editing, a wiki allows multiple users to add and organize content to an online website with in a standardized set of formatting and syntax. Benkler describes Wikis a group tension resulting a common output: “In the process, the output is more easily recognizable as a collective output and a salient opinion or observation than where the form of the conversation is more free-flowing exchange of competing views” (Benkler 2006, 218). Wikis can be public or private, as well as allow different privileges for users with usernames. LQDN is one group that heavily utilized a Wiki. When a volunteer first mention ACTA on a LQDN IRC channel in 2008 the volunteer set up a Wiki page and began collecting background on the Agreement. In September 2011, LQDN organized their ACTA content into a common portal. The portal is available in four languages: English, French, Italian, Portuguese and provides analysis on ACTA as well as additional information such as how to contact MEPs.

Organizations also made use of Etherpad, a real-time text editing platform. Although originally launched in 2008 (Arrington 2008), Etherpad was acquired by Google in 2009 and the code was released as open source that same year (Perez 2009). Hosted by a server, users can access an pad, or an instance of an Etherpad, through a URL. LQDN hosts their own Etherpad server at https://pad.lqdn.fr and one use case of Etherpads was collaboratively building lists of protest event pages. Römeth, who managed the Etherpad for tracking protest locations, described the collaboration as swarm politics, an interaction made possible through the accessibility of the platform. In Poland, Etherpads were used to write memos as well as talking points for discussing ACTA.

Videos on YouTube also represent peer production through remixing. Remixing is the act to repurpose existing content and can be restricted through technical or legal means (Lessig 2008). Although YouTube does not provide a native option to download video, videos can be downloaded from third party services and therefore reedited on a user’s expanding the content on participatory platforms that Benkler argues supports a public sphere (Benkler 2006).


E. Conclusion

This chapter has discussed the active role of civil society organizations in engaging in public and institutional advocacy against ACTA. Additionally, I have presented my data on how these activities included national, European, and international level networks for sharing information and analysts. These networks supported and interconnected with street protests and civil society organizations represented bridges between these protests and the European Parliament. Additionally, I discussed the types of technologies that supported these networks. Rather than discuss the internet or social networks generally I highlight features that made some technologies interoperable with users in different countries while others were favored for the ability to support peer production. This chapter answers my second sub-question, and in the next chapter I will discuss which aspects of these networks represent institution changes and how the meta-perspective represents a networked public sphere.
VI. A Networked Public Sphere?

Thus far I have provided an in-depth discussion on the actions and relationships of civil society organizations with respect to the ACTA debate in Europe and the technologies that mediated these relationships. However, the questions remains if this can be framed as a networked public sphere. But revisiting the theoretical framework offered previously in this thesis I conclude that a networked public sphere is an appropriate description for the networked critical discourse on ACTA during this period. Additionally, I provide evidence that suggests the networked public sphere regarding information policy in the European Union is growing but needs further support.

A. From Movements to Institutions

Following the European Parliament’s rejection of ACTA in July 2012 the European Commission continued an appeal to refer the Agreement to the European Court of Justice. In December 2012 the Commission dropped the appeal and Geist called the agreement “politically dead” in Europe (Geist 2012). However, the final remaining sub-research question is what were the institutional outcomes of the ACTA debate. These changes can be discussed in terms changes within the institution and within civil society. I will first begin with civil society.

1. Changes in Civil Society

The period of the ACTA debate played a considerable role in the development of a European civil society focused on information policy issues. Some organizations, such as EDRI and Netzpolitik existed prior to the rise of the issue, others were formed during the time period between ACTA was announced and ultimately rejected in Europe. For example, the LQDN was formed in France in 2008, the Panoptikon Foundation in 2009, and Digitale Gesellschaft in 2010. One interview subject described the ACTA debate as a coming of age for LQDN and Panoptikon Foundation.

Analyzing a cluster map of how European and North American civil society organizations link to each other demonstrates the centrality of different organizations within the linkable web (see Figure 9). EDRI stands out as the central organization within Europeans network of civil society organizations. Because EDRI is a coalition organizations with the majority of
the other mapped organizations as members this result makes logical sense. EFF is the second most central node, although not nearly as central as EDRI, the map demonstrates the role of EFF as a source of information in the European information policy civil society despite being based in San Francisco. While the Panoptykon Foundation and Digitale Gessellshaft remain a smaller nodes, LQDN has grown to be more central position in Europe with 5th actor ranking behind EDRI, EFF, Statewatch, and CCC. Less visible relationships continue included established mailing lists, IRC channels, Wikis and other infrastructure that developed during the ACTA debate.

Additionally, the relationships between civil society organizations and European parliament shifted. Although some organizations were newer to fostering institutional relationships, EDRI had been working in Brussels since 2002. ACTA presented a momentous shift when concerned raised by EDRI and other civil society organizations, while at first largely ignored,
were supported by street protests, petitions, phone calls to MEPs, and emails. Following the ACTA debate, EDRI reports greater recognized credibility within European Parliament and therefore a stronger position for institutional advocacy. Within Poland civil society members report an increase in workshops to discuss issues related to information policy.

Changes with the European Commission and European Parliament are more difficult to discern. One interview subject who worked for an MEP acknowledged that the relationship between the Commission and Parliament changed over the course of the ACTA debate. Most notably the Commission would spend more time briefing MEPs on the negotiations. Within European Parliament reported shifts include a greater receptiveness towards civil society, with some reservations to be discussed in a moment, as well as a new recognition for the importance of following information policy issues. Although, these examples are not based on a large enough sample to be conclusive they do present issues to watch in future European information policy debates.

One shift that stands out is a potentially more restrictive approach to engagement with the public on the part of European Parliament. Although, as I discussed earlier, SMTP allows emails interoperability between email servers, a receiving server can still block or filter email. In March 2013, Piratpartiet MEP Christian Engström reported that emails to MEPs concerned about an information policy issue were being filtered and thus not reaching the intended recipient (Engstöm 2013). The issue at stake, a law proposing a ban on pornography, was in fact not being proposed and the spam filter was blocking form emails (Baker 2013).

B. A Networked Public Sphere
During my theoretical discussion I built on the three core components of the Habermasian public sphere to provide a framework of the networked public sphere. First, the networked public sphere is open, accessible, and supported by the participatory discourse of individuals sharing and creating content across a range of medium (Benkler 2006). Second, the networked public sphere supports a discourse that evaluates and questions the political decision making process and outcomes. Thirdly, platforms must support a rational discourse and not simply be an argument amplifier. During this section I will evaluate the opposition to
ACTA with respect to these components. Networked technology can support the complex interaction of civil society and individuals focused on common political issues, and with these three core components present, constitute a networked public sphere. This section will address my overarching research question: to what extent did the opposition to ACTA in Europe constitute a networked public sphere.

Initially, ACTA negotiations were did not represent a public sphere. The process were conducted behind closed doors and excluded civil society (Kaminski 2011). The agreement did evolve over the course of negotiations and resulted in a final document that some characterized Geist as “ACTA Ultra-lite” (Geist 2010), civil society organizations such as those in France and Poland viewed the agreement as outside intervention that would create barriers to future copyright reform. Additionally, the Polish government signed the agreement contradicting previous commitments to civil society organizations. However, the networks that emerged surrounding the Agreement were open and participatory and did pointed towards a point of democratic intervention.

From 2007 onwards a small, core group of civil society organizations tracked, analyzed, and shared information on ACTA and the negotiation process. Through leaks that resulted from different negotiating governments and were posted online these organizations were able to share critical information and cite the negotiating documents to highlight concerns on the text. Concerns, such as those posted as the result of peer-production on wikis or mass self-communications though videos on YouTube were examples of the types information shared in a growing and networked public. Additionally, public protests against ACTA were by and Germany Pirate Party did play a role but endeavored to not take ownership over the opposition and efforts for political usurpation of the counter-power building the protests towards political party gain were rejected in Poland. Through the participatory technologies discussed above the adhoc organizing of these protests were open and accessible to a networked public.

It is worth noting that the networked public does not represent a the public in whole. In his original conceptualization of the public sphere Habermas noted that the the bourgeois society of the 18th and 19th century excluded women from participating in political discourse, and
additional forms of exclusion exist in the networked public. Parrachissi, who describes Habermas’ ideal form ironic in the level of exclusion and undemocratic structures (Papparacharissi 2009, 4), finds similar exclusion in the networked public and computer users to bourgeois property holders, though (Papparacharissi 2009, 14). Additionally, the as networked technologies - and a networked public sphere - takes greater prominence in political decision making exclusion from the network such as through the digital divide becomes a greater concern. In other words: the more valuable the network is the greater the cost of exclusion (Tongia and Wilson 2011).

For internet connected users, particular younger generations that more closely followed SOPA and PIPA, followed Anonymous, followed information policy issues, or trafficked video game forums and other areas where ACTA was discussed, participating in the network was more accessible. However, the size of the protest on February 11, 2012 coordinated in upwards of 200 cities does demonstrate the accessibility of the networked public with regards to ACTA.

The second point of evaluation is exploring if the networked public sphere supports a discourse that evaluates and questions the political decision making process and outcomes. Opposition to ACTA directly pointed to concerns of political decisions at the national level and european level. The protests in Poland followed the announcement by the Cultural Minister that the country would be signing the Agreement contradicting earlier assurances. Additionally, through the combination of public and institutional advocacy on the part of civil society organizations, created horizontal networks of opposition across European member states to the European-level body of democratic decision making. The protests amplified and contributed legitimacy to the concerns that the ACTA process was undemocratic, created concerns for civil liberties, reintroduced previously rejected provisions through an undemocratic side-channel, and would raise barriers for future copyright reforms.

However, these networks and built from common interests. Indeed, the participatory features of platforms such as Wikis and YouTube that supports horizontal relationships around a shared interested described by Benkler are less focused on incorporating discourse on opposing views (Benkler 2006). Instead, these networks represented a portion of the public
and the final debate was arbitrated through the Parliamentary votes of the European Parliament.

The third metric of evaluation is if the platforms supported a rational discourse and thus served as more than an argument amplifier. Analyzing the networked opposition clearly demonstrates a firm view on ACTA, a view that expanded and became louder as the network grew. Additionally, the arguments supported by these protests did not always reflect the factual reality of ACTA. The characterization of the protests some of my interview subjects - both opponents and proponents of ACTA - was that there was a fear that ACTA would result in the termination of internet access or the removal of someone’s cat videos from YouTube. While an earlier ACTA leak did include a three-strikes provision that could result in terminated internet access, this provision was removed in the final agreement (Kaminski 2011; Ayoob 2010; Geist 2010). However, while this criticism was outdated, valid criticisms were also expressed including the undemocratic process of ACTA negotiations, viewing the Agreement as policy laundering, and the barriers that an intellectual property trade agreement would place on future intellectual property reforms. While a discourse analysis of the debate is beyond the scope of the paper the data still supports conclusion on the nature of the networked public sphere.

What can be drawn from the data is that segment of the public opposed ACTA and through networks direction that opposition towards the European Parliament. This public is significantly less than the total population of Europe but did represent the majority of the vocal public on the issue. The networked public represented horizontal relationships around shared interested in goals and were not restricted by national borders (Benkler 2006). With the dual role of public and institutional advocacy played by european civil society working on information policy issues this networked public directly engaged with European Parliament. Thus we can conclude that the networked public opposing ACTA participated within the public sphere sphere of European democracy. The opposition does not represent the entirety of the european public but instead example of how ICTs supported transeuropean networks in debating an information policy issue.
C. Conclusion
Opposition to ACTA in Europe represented a strong example of a networked public. This public did not constitute a networked public sphere but the participation of a networked public within in the European public sphere. This required access to information on ACTA and building bridges with European Parliament. Civil society grew through networks built during the debate against ACTA and following the ACTA debate Europe has a stronger civil society focused on information policy. Although what longterm institutional shifts are sustained remains to be seen, there are a number of lessons that can be drawn from this research for a range of audiences and I will discuss these lessons in my concluding chapter.
VII. Conclusion

The debate over ACTA represented an unprecedented and educational moment. The networks of civil society organizations combining public and institutional advocacy offer an illustrative example a networked public within the context of horizontal and vertical dimensions of multi-level politics. Analyzing these the relationships of this networked public draws attention to how various networked technologies, such as email, IRC, Wikis, and Etherpads to support mass self-communications, group communications, and peer production. The relationships supported by these networks combined with personal communications and in-person meetings were critical in supporting the growth of a networked civil society focused on information policy.

The important element of this research is more than the analysis of how technology can support a networked civil society but the importance of understanding the relationship between socio-political networks and the structures of underlying technology. Technological enclosures can result from economic, state, or other interest but the technical acumen to discuss the point of control in relation to the socio-political outcome is a crucial for understanding networked communications. Short of a common theoretical approach for understanding the relationships between these interdependent layers will result in a collision of incompatible research. Drawing from this foundation this research offers direct lessons for specific audiences in this coming convergent crisis.

Communications scholars have faced the convergence of multiple academic disciplines brought together by the common foundation of networks. Networks support online territories (M. Christensen, Jansson, and Christensen 2011), disruptive spaces (Lindgren 2013), and new forms of communications (Castells 2009). However, research remains insufficient if shallowly focused on the idealism of purely horizontal networks. Scholars such as Lessig correctly identify the importance of technology architecture (Lessig 2006) and critical theorists such as Fuchs highlight the important of economic structures. Moving forward, scholarship needs to document the greater understanding of underlying technical structures in relation to society.
The debate on ACTA demonstrates the need for policy makers to better understand technology when engaging in information policy. Information policy is a convergent field and includes “laws, regulations, and doctrinal positions – and other decision making and practices with society-wide constitutive effects – involving information creation, processing, flows, access, and use” (Braman 2011, 3). Laws or regulations that impact the underlying social structure can directly impact the overarching social layers particularly when introducing vertical enclosures. One fear that sparked from an early ACTA leak was the potential for intellectual property enforcement to result in terminating a user's internet access. This action exceeds enforcing copyright and severs a user from the networked public sphere. Policy makers need to understand the implications of technically novice regulations when confronted by questions of information policy.

Networks present new challenges for international politics. Political theorists have a toolbox for analyzing some perspectives of global governance including the nuances of horizontal and vertical dimensions (Marks 1993; 402-403; Hooghe 2001). The leaks surrounding ACTA demonstrate a need for a better understanding of information flow within the context of international negotiations. During my research Woźniak commented on the internal divisions between Poland's ministries by saying that government is not monolithic. The pluralistic reality of internal politics is exacerbated by competing interesting with international politics. Before documents were officially releasing documents to civil society organizations served leverage for some terms of the ACTA agreement. Gaining access to and sharing leaks through transnational advocacy networks became part of the institutional advocacy during the ACTA debate and one that will continue to exist within international politics.

The final lesson is for European Parliament. The ACTA debate gave rise to a networked public of opposition but fostering a networked public sphere requires active participation on the part of European instituting bodies. Schmitt writes: “A European public sphere is an ‘area’ in which all citizens want to participate in political decision-making, be it actively or passively, are able to do so” (Schmitt 2007). Additionally, these opportunities are fostered by the role of government in supporting public and civil society participation and engaging in transparent negotiations (Lang, 2012, 6-7). Secretly negotiating provisions that had previously rejected by a democratic European body undermined public engagement. Moving
Networks are increasingly central to social integration and serving as the foundation for complex interactions (Friedland, Hove, and Rojas 2006). This thesis has analyzed networks through information policy, international politics, civil society, and publics. The ubiquity of networks leads to a convergence of previously independent disciplines and a crisis if a framework for interdisciplinary analysis is not developed. This thesis has offered one option for moving forward. Networks need to be analyzed by their horizontal and vertical dimensions as well as related to underlying structures. Conflating technical and socio-political layers results in a convoluted analysis while outright ignoring one or the other results in shallow discourse. When linking networked politics or social movements to technologies analysis grounded in potentiality and idealism or anecdotal pessimism is insufficient for offering a deeper understanding of technology or society. Networks are already pervasive in both theory and reality and technically novice analysis is fast approaching obsolescence.
IX. References

A. Books and Journals


Ayoob, Emily. 2010. “Anti-Counterfeiting Trade Agreement, the.” Cardozo Arts & Ent. LJ 28: 175.


91


Lang, Sabine. 2013. *NGOs, Civil Society, and the Public Sphere.* New York: Cambridge University Press.


O’s, Reneé van, and Nichlas W Jankowski. 2007. “An Online European Public Sphere? the Web and Europeanization of Political Communication in the EU.” In *A European Public Sphere: How Much of It Do We Have and How Much Do We Need?*, ed. Claes de Vreese and Hermann Schmitt, 53–78. Mannheim: Connex Report Series No. 2.


**B. Additional Resources**


H.R. 3261 “Stop Online Piracy Act.”


S.B. 2011. “To prevent online threats to economic creativity and theft of intellectual property, and for other purposes.”.


