

## Chapter 32

# Internet–Based Protest in European Policymaking: The Case of Digital Activism

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### ABSTRACT

*European Institutions, especially the European Parliament, are venues of access for digital activist networks wishing to influence policymaking on issues of intellectual property rights, internet regulation and the respect of civil rights in digital environments. We refer to these networks as “digital activism”. They are more or less loosely rooted in hacker culture and are intensively making use of online tools to organize and consolidate a collective identity and build a transnational public sphere. This study focuses on the “no software patents” campaign led by this movement that aimed at influencing the directive on the patentability of computer-implemented inventions (2002-2005). By discussing the advocacy techniques—both online and offline—that were developed by this digital activist network, we provide an insight into power struggles that are currently taking place in Europe, but also in other regions of the world.*

### INTRODUCTION

On July 6, 2005 the European Parliament (EP) rejected the directive on the “patentability of computer-implemented inventions” (CII). This historical decision—it was the first time the EP rejected a directive in its second reading—should be read as a compromise between proponents

and opponents of the directive: on the one side, corporate interests pushing for the directive to pass, as it was proposed by the European Commission in February 2002. On the other side, a loose coalition of activists, rooted in the Free, Libre and Open Source Software (FLOSS) movement, that considered the directive as a hidden attempt to introduce software patents in Europe and who aimed at modifying the directive. The outcome was the result of a fierce battle between both camps

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that lasted over two years and was marked by extensive lobbying on behalf of both sides that is still remembered nowadays in the halls of the EP.

This struggle marks the politicization of a community characterized by the intensive use of electronic means of communication. The FLOSS movement is one of the first “online communities” that has emerged, using the internet in order to develop free and open source software as its core activities. The mobilization surrounding the CII directive shows that this community has begun to organize in order to defend its interests, notably, but not exclusively, by influencing European policymaking. The aim of this paper is to examine how these activists organize, in order to influence European policymaking. The research question can be subsumed as follows: how do digital activists use the internet in order to influence European policymaking?

The focus lies on the advocacy techniques developed by the loose coalitions of activists who took part in these political debates. In the first case opposing the introduction of “software patents”<sup>1</sup> in the EU, in the second, mobilizing around issues of privacy, internet regulation and above all the implementation of a mechanism known as “graduated response” or “three-strikes approach”<sup>2</sup> aiming at countering illegal downloading. While not entering into the discussion of these issues, we argue that both campaigns are exemplary of an emergent movement currently constituting itself - a movement we refer to as digital activism as it makes not only extensive use of the internet, but claims for the protection of “digital rights”. While various movements across the globe work on the protection of civil rights in digital environments, the campaigns under study are particular in the sense that, inspired by hacker culture, they advocate alternative models, notably in the domain of intellectual property rights (IPRs).

Digital activism underlines the shift current “information societies” are undergoing. This transformation is not disruptive or revolutionary as some may have claimed. On the contrary, many

of the observations in this paper link to theories developed before the advent of the internet. In this sense, this paper rejects technological determinist claims about the sole transformative power of the internet. The shape and objectives of political actors are being transformed, not due to the sole presence of the internet but in a socio-technical process of coevolution.

The outline of this article is as follows: first we present the methodology used. Second, we discuss the relevance of the internet for activism before considering the “hacking community” that constitutes the natural constituency of digital activism. Third, we discuss the way in which European policymaking can be considered an opportunity structure for diffuse interest representation. Finally, we examine the two campaigns in the light of the developed framework.

## **Methodology**

To analyze digital activism, we draw upon first findings from two case studies of campaigns aimed at influencing European directives. Yin (2002) defines the case study as follows: “an empirical inquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used” (p. 23). As research on online activism is emergent, it is particularly necessary to consider the context in which it is situated. To understand how “digital activists” proceed, one needs to look at their community and culture, the political system they wish to influence and society at large. The goal is not to achieve generalizable results but to provide an insight into an emergent movement.

The “no software patents” (SWPat) campaign was selected because it marks the politicization of the community as it constitutes its first large mobilization at European level. The “Telecoms package” campaign provides a second example of digital activism as it is currently taking place. If

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