Public Opinion and Interest Group Influence: How Citizen Groups Derailed the Anti-Counterfeiting Trade Agreement

Andreas Dür, University of Salzburg
Gemma Mateo, University of Salzburg

Abstract

In 2011 and 2012, 31 countries and the European Union (EU) signed the Anti-Counterfeiting Trade Agreement (ACTA), which envisages stricter standards for the transnational enforcement of intellectual property rights. Despite strong support for the agreement from business groups, the anti-ACTA campaign that was initiated by an initially small number of citizen groups was successful in derailing the agreement. This result is puzzling because the anti-ACTA side controlled few material resources and should have found it particularly difficult to have its voice heard on an issue negotiated between governments at the international level. What then explains the success of the anti-ACTA campaign? Our response to this question stresses the complex role of public opinion: interest groups shape public opinion; public opinion shapes interest group behaviour; and public opinion shapes policy outcomes. Using this theoretical framework and relying on nearly 100 interviews with groups active on both sides of the ACTA campaign, we explain how citizen groups derailed ACTA.

Word count: 7,900 words.

Key Words: ACTA, lobbying, interest groups, public opinion, intellectual property rights.

Acknowledgments: The research would not have been possible without funding from the Jubiläumsfonds of the Austrian National Bank and the Salzburg Centre of European Union Studies (SCEUS), and the willingness of a large number of interest group officials to respond to our survey. We also thank Johanna Bötscher, Robert Huber, Gerald Lindner, Jan Sand, Niklas Stappenbeck, Zdeněk Staszek and Markus Vogtenhuber for research assistance.
Introduction

In 2011 and 2012, a total of 31 countries and the European Union (EU) signed the Anti-Counterfeiting Trade Agreement (ACTA), which envisages the establishment of stricter standards for the transnational enforcement of intellectual property rights. Many broad-based and sectoral business associations, including the Bundesverband Deutscher Industrie, the International Chamber of Commerce, and a large number of associations representing the music, film, pharmaceuticals and other industries, actively supported the agreement. They were opposed by a coalition of (largely) relatively resource-poor citizen groups. Against all odds, the latter managed to win a major victory when in July 2012 an overwhelming majority of members of the European Parliament voted against the agreement. This result is puzzling as material resources are often seen as a major determinant of influence. Moreover, for a variety of reasons resource-poor groups should find it particularly difficult to have their voices heard on issues negotiated between governments at the international level (Grande 1996; Grossman 2004). What then explains the success of the anti-ACTA campaign?

We develop a theoretical framework that stresses the interdependence between public opinion and interest group lobbying. Interest groups often try to shape both the public salience of issues and the stance that people take on specific issues. Public opinion, in turn, has an impact on interest group behaviour, by influencing on what issues interest groups become active. Public opinion, finally, is an important determinant of public policy. Again, however, the extent to which public opinion can influence public policy crucially depends on interest group lobbying, as interest groups transmit information about public opinion to decision-makers.

The empirical analysis, which focuses on the campaign as it developed in Europe\(^1\), is based on nearly 100 interviews with groups active on both sides of the ACTA campaign,

---

\(^1\)Similar developments took place in countries outside Europe, such as Australia and New Zealand.
which we carried out in late 2012 and early 2013. The interviews encompass both national-level groups from five different countries and European-level and transnational actors. Using evidence gathered from these interviews, but also a large variety of other primary sources, we find support for the conjectures set out in the theoretical framework. We show that the public salience of ACTA sharply increased at the peak of the ACTA campaign, when the anti-ACTA campaign engaged in a considerable amount of outside lobbying; and that the increasing salience of the issue in turn had the effect of mobilizing a large number of interest groups that came out against the agreement. The combination of these dynamics explain the final defeat of ACTA.

The paper provides one of the first scholarly analyses of the ACTA campaign (among the few studies that already deal with this case, see Crespy 2013 and Parks 2013). This is astonishing given that this political episode is of high substantive interest: not only was it highly publicly salient, but also the global regulation of intellectual property rights remains an important issue on the political agenda. Explaining this case thus is an important objective per se.

Our results are also of relevance to the large literatures on interest groups (Baumgartner and Leech 1998), transnational actors (Keck and Sikkink 1998), and social movements (Della Porta and Diani 2011; Tarrow 2011). While some of this earlier literature already stressed the relationship between public opinion and interest group lobbying, we are among the first to tackle the simultaneous effects of lobbying on public opinion and public opinion on lobbying. Finally, we contribute to the literature on interest group influence in the EU (Dür 2008a; Klüver 2013; Dür, Bernhagen and Marshall 2013). So far, much of this literature has explained interest group influence in this entity with reference to the provision of expertise to decision-makers. By contrast, we show that public opinion matters for interest group influence also in the EU.

In the next section, we first provide a brief background to ACTA and the ACTA campaign. Section three then develops the theoretical framework. In section four, we
use the theoretical framework to shed light on the defeat of ACTA in the EU. In the conclusion, we briefly summarize our findings and present some broader implications of our research.

**ACTA and the ACTA Campaign**

In July 2006, the United States took up an idea originally raised by Japan when it suggested to negotiate an agreement that would contain commitments on intellectual property rights that go beyond the respective rules in the World Trade Organization. When approaching other countries and the EU, it specified that the agreement should strengthen the enforcement of intellectual property rights, whether this concerns counterfeit goods or copyright infringements on the internet. An early discussion document specified as goal of the negotiations the establishment of “a common standard for IPR enforcement to combat global infringements of IPR particularly in the context of counterfeiting and piracy.”

In the same year, Canada, the EU (and its member states, represented by both the European Commission and the Presidency of the Council of Ministers), Japan, Mexico, New Zealand, South Korea, Switzerland and the United States announced that they would start negotiations for an ACTA. These negotiations started in 2008 among an even larger set of countries (Australia, Jordan, Morocco, Singapore, and the United Arab Emirates also participated in the negotiations) with several negotiating rounds taking place in that year.

From the beginning, business groups supported the negotiations. Backing mainly came from the motion picture, music and software industries. In the US, associations representing these industries formed the International Intellectual Property Alliance. Governments also pro-actively approached the business community with requests for input into the negotiations. Business groups thus expressed their “appreciation to the negotiating nations that have engaged the business community in collecting comments

---

Nearly in parallel, a few citizen groups started to criticize the secrecy surrounding the negotiations. A coalition of citizen groups sent an open letter to the European institutions urging them to “establish transparency in the negotiation process and publish the draft agreement, and not to accept any proposal which would undermine citizens’ rights and freedoms.” The Foundation for a Free Information Infrastructure lodged a complaint with the European Ombudsman to get access to Council documents relating to ACTA, but the complaint was rejected (European Ombudsman 2010). In early 2010, then, a full draft of the agreement was leaked to the public, which forced the negotiating parties to release an official draft text. Around that time, the opposition to the agreement became even more organized. In New Zealand, critics of the negotiations started a petition in support of the so-called Wellington Declaration, which asked for greater transparency in the negotiations and opposed specific negotiation provisions. In Europe, La Quadrature du Net and some other citizen groups staged a public protest in Luzern during the ninth negotiating round.

The opposition showed some early results. Mexico withdrew from the negotiations after a negative (and unanimous) vote in the Senate in 2010. In Europe, a written declaration by the European Parliament established some red lines and asked the European Commission to make all negotiation documents public. Nevertheless, in October 2010 the agreement was finalized after eleven rounds of negotiations. Eight countries, including the United States and Japan, signed the agreement in October 2011, and the
European Union and 22 member states followed suit in 2012.

Rather than accept defeat, in Europe the anti-ACTA campaign really took off with the signing of the agreement. Citizen groups organized “anti-ACTA days” including street protests in opposition to the agreement, and Avaaz collected nearly three million signatures in an online petition.\(^\text{10}\) The opposition mainly focused on the copyrights aspects of the agreement, with the argument being that ACTA favours copyright holders to the detriment of citizens. Also a provision that could make Internet service providers liable for users’ copyright infringements was criticized.

The European campaign was partly inspired by parallel developments in the United States. There, major protests took place against two pieces of legislation, the Stop Online Piracy Act (SOPA) and the Protect IP Act (PIPA), in December 2011 and January 2012. Major internet companies, including Google, and websites, including Wikipedia, joined the protests. In the end, Congress decided to shelve the two proposed bills. These protests, which were also widely reported in Europe, brought the issue of internet freedom to greater public attention.

The (largely unexpected) opposition forced broad-based and sectoral business associations – including the Bundesverband Deutscher Industrie, the International Chamber of Commerce, and a large number of associations representing sectors such as the music and film industry – to intensify their lobbying in support of the agreement.\(^\text{11}\) Nevertheless, in the end the anti-ACTA campaign was successful. Facing strong public opposition, a series of European governments (starting with Poland and the Czech Republic, then followed by Bulgaria, Germany, the Netherlands, Latvia, Lithuania, Slovakia and Slovenia) stopped the process of ratifying the agreement in February 2012. A positive vote in the Council of Ministers thus became highly questionable. In July 2012, then, members of the European Parliament sounded the death knell for ACTA by voting against the agreement with an overwhelming majority (478 to 39, with 165

\(^\text{10}\)https://secure.avaaz.org/de/eu_save_the_internet_spread/?tta.

\(^\text{11}\)See, for example, a long list of ACTA supporters at http://www.actafacts.com/contact.htm.
abstentions). Even if parts of the ACTA agreement may be integrated in future free trade agreements signed by the EU, the death of ACTA was a major victory for the anti-ACTA campaign. What explains this outcome?

Public Opinion, Interest Groups and Public Policy

With the aim of responding to this question, we develop a theoretical framework that stresses the two-way relationship between the behaviour of interest groups (defined as actors that show a minimum level of organization, try to influence policy outcomes, and do not compete in elections, see Beyers, Eising and Maloney 2008: 1106) and public opinion. Interest groups can try to mobilize and shape public opinion, at the same time as public opinion impacts on interest group behaviour. Public opinion, finally, has long been shown to influence public policy. In the following, we develop these theoretical ideas, before showing how they can contribute to an explanation of the defeat of ACTA in the EU.

The impact of interest groups on public opinion

Public opinion, while influenced by many factors including social conditions and the media, is not fully exogenous to interest group lobbying (Smith 2000; Weakliem 2003). Interest groups can use a variety of tactics to mobilize or shape public opinion. These tactics, which involve press releases, information events, protest activities, media advertisements and many more, are often summarized as “outside strategy” (Kollman 1998; Dür and Mateo 2013). Using an outside strategy, groups can have an impact both on the salience that an issue has to the public, and the position that people take on an issue.

---

12 Following new rules introduced in the Lisbon Treaty, also the European Parliament needs to approve international trade agreements in the EU.
13 Formally, the agreement is still alive. It could still enter into force in a few countries, although this now seems highly unlikely.
Not all interest group attempts at shaping public opinion are successful. In a rare study of the impact of lobbying on public opinion, Page, Shapiro and Dempsey (1987) even found that interest groups’ attempts at influencing public opinion via the media are more likely to have the opposite effect. That is, if interest groups push in one direction, public opinion more often than not moves in the other. The authors of that study, however, stress that “public” interest groups may have a positive impact, whereas groups representing narrow interests may have a negative impact (Page, Shapiro and Dempsey 1987: 37). Similarly, in a study of referendums in the American states, Gerber (1999) found that business expenditures had little impact on referendum outcomes. She concludes that “if voters do not like what initiative proponents are selling, not even vast amounts of campaign spending can get them to vote for a new policy” (Gerber 1999: 6).

While money thus cannot buy a favourable public opinion, it still seems plausible to expect that outside lobbying matters (e.g. Keck and Sikkink 1998; Weakliem 2003; Fordham and Kleinberg 2012). The effect on public opinion, however, “is likely to depend on a combination of factors including the number, size, demands, and tactics of groups devoted to the same general end” (Weakliem 2003). Outside lobbying, in turn, is mainly a strategy used by citizen groups, which – with their broad base of members or supporters – have an advantage in putting into practice classic outside strategies such as demonstrations and petitions (Binderkrantz 2008; Dür and Mateo 2013). As a result, we expect citizen groups to have a greater chance of influencing public opinion than other types of groups. Our first conjecture thus is that citizen groups are more likely to achieve their desired impact on public opinion than other groups.
The impact of public opinion on interest group behaviour

The relationship between interest groups and public opinion is not a one-way street, however. Public opinion also likely has an impact on the behaviour of both citizen groups and business interests. On the one hand, citizen groups will need to address issues that are dear to their broad base of potential supporters and/or members. This means that their agendas should broadly reflect public priorities, because otherwise they will not survive in the long run. In fact, recent research has shown that interest group mobilization is higher on issues that are highly salient to public opinion (Rasmussen, Carroll and Lowery 2013).

On the other hand, business groups are not exempt from concern about public opinion, either. Here the logic is different, however. Business associations have firms as members and thus do not need to focus on issues that are highly publicly salient to attract members or supporters. Rather, many members of business associations, namely firms that sell consumer goods and services, may be reluctant to see their names associated with highly unpopular campaigns for fear of losing customers (or even becoming the target of a consumer boycott). High public salience, then, may have the effect of deterring business lobbying, or at least of shifting the burden of lobbying from firms to business associations.

So far, several studies have shown that citizen groups’ concern with public opinion may go to the detriment of lobbying success. As argued by David Lowery (2007: 48), “a membership organization that is hemorrhaging members may have to shift from lobbying on narrow but potentially achievable policy goals to lobbying on hot button issues that stimulate joining, even if moving those issues in a favorable direction is unlikely.” Moreover, interest groups that are forced to take extreme positions on an issue to appeal to their supporters tend to be unsuccessful in shaping policy (Dür and De Bièvre 2007).

At the same time, being responsive to public opinion may also enhance the success
of citizen groups. Responsiveness can have the effect of mobilizing a large number of
groups on a specific hot button issue. Witnessing the initial success of a campaign in
mobilizing public opinion, many groups will join the bandwagon. This, in turn, can
further empower this side of a debate. A positive feedback effect can develop, in which
the increasing salience of an issue mobilizes more groups, and more lobbying makes the
issue more salient among the public. The campaign then develops like an avalanche: a
snowball ends up causing a snow slide.

The expectation for the side that defends a position that does not have public
backing should be just the opposite. Groups may decide that it is better not to have
the own name associated with a highly unpopular policy or that it may be better to cede
on this issue rather than face negative repercussions for many other policy debates. The
second conjecture that we propose thus is: the initial success of a campaign in terms
of mobilizing the public leads to a bandwagon effect that strengthens that side of the
debate, at the same time as it deters counteractive lobbying.

The impact of public opinion on public policies

In democratic countries, public opinion is likely to have an impact on public policies. Decision-makers either listen to public opinion to stay in power, or, if they systematically disregard public opinion, are substituted by a new government that is closer to public opinion. It is not astonishing, then, that a large number of studies show that public opinion has an impact on policy choices (Burstein 2003; Soroka and Wlezien 2010; Gilens 2012). In an influential article, James Stimson et al. (1995: 557) even found a “one-to-one translation of preferences into policy.” Public opinion’s impact on policy, however, is likely to vary across issues: an impact can mainly be expected on issues that are highly salient to the public. On opaque issues, which receive little pub-

---

14 We limit our theoretical discussion to democracies. Public opinion, of course, also matters in autocracies. An autocratic government that systematically ignores public opinion is likely to be toppled sooner or later.
lic attention, politicians have little incentive to follow public opinion. In fact, on such issues, public opinion may not even exist (Burstein 2010). Furthermore, the opinions of some segments of society may matter more for decision-making than the opinions of other segments, for example because affluent people are more likely to vote and become politically active (Gilens 2012).

Granting that public opinion impacts on policy does not mean saying that interest groups have no role to play or are just epiphenomena. Going beyond the discussion above about the influence of interest groups on public opinion, interest groups serve as links between public opinion and decision-makers (Agnone 2007). On the one hand, they provide decision-makers with information about public opinion. In the words of (Hansen 1991: 227, emphasis in original), “interest groups are influential, but not because of their ability to bring “pressures” to bear on members of Congress. Rather, interest groups are influential because they direct lawmakers’ attention to some pressures rather than to others.” On the other hand, they inform constituencies about what decision-makers are up to.

Neither is public opinion just an epiphenomenon to lobbying. Research has shown that when interest group demands run counter to public opinion, public opinion tends to win (Smith 2000). In fact, interest groups are generally constrained to making “demands that are, or can be construed as, legitimate or within reason by the standards of the larger publics that will eventually learn of them” (Wilson 1995: 288). The expectation thus is for interest group lobbying to be most effective if it is consistent with public opinion. The third conjecture thus is that groups supported by public opinion are more likely to see their preferences reflected in public policy than other groups.
Derailing the Anti-Counterfeiting Trade Agreement

We use these theoretical expectations to shed light on the defeat of ACTA in Europe. Our approach is outcome-centric; that is, our primary interest is not to offer a systematic test of the expectations put forward (which would require a different kind of case selection), but to use these expectations to explain a specific outcome. ACTA also is not a typical example of the issues that are on the political agenda and thus does not allow for easy generalizations. At the same time, the following analytic narrative offers some interesting insights that can stimulate theoretical debates on the complex relationship between public opinion and lobbying.

In late 2012 and early 2013, we carried out phone interviews with officials from nearly 100 interest groups at the European-level and from five European countries, namely Austria, the Czech Republic, Germany, Ireland and Spain. The focus on five countries allowed us to interview not only the most prominent actors in the lobbying campaigns, but also those that only joined the bandwagon, which is important given the theoretical framework set out above. The countries offer variation in terms of system of interest group representation and size. We focus on EU member states to avoid having too many moving parts in our research design. This decision reduces the ability to generalize our findings beyond Europe, but increases the likelihood that our findings are internally valid (see also Lowery, Poppelaars and Berkhout (2008) for a cautionary tale on having context vary too widely in research on interest groups).

For each of the five countries and the European level, we established lists of actors that engaged in lobbying. For this purpose, we systematically searched web pages and media sources. The number of actors that we identified as being engaged in the ACTA campaign widely varies across countries. At the European level, our list comprised 63 actors (nearly evenly split between pro and contra groups), whereas in Ireland we only found 12 groups. We then contacted the actors that engaged in lobbying and tried to
arrange interviews. In total, we were able to arrange 94 interviews, which amounts to a response rate of 51 per cent. Importantly, we were able to interview groups from both sides of the debate (see Table 1). The response rate, however, varies across the two groups: 61 per cent of the anti-campaign actors were willing to grant an interview, compared to 45 per cent of the pro-campaign actors. That the side that lost is less willing to talk about the campaign is not astonishing. The imbalance, however, is also due to quite a few groups that were listed online as supporting ACTA telling us that they had not been active in the campaign. If we eliminate these groups from our sample, we reach a response rate of 53 per cent for the pro campaign. The interviews, which followed a standardized questionnaire, lasted up to 84 minutes, with a mean of 29 minutes.

<table>
<thead>
<tr>
<th>Country</th>
<th>Favourable</th>
<th>Opposed</th>
<th>Total</th>
<th>Response Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>2</td>
<td>9</td>
<td>11</td>
<td>44</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>2</td>
<td>5</td>
<td>7</td>
<td>54</td>
</tr>
<tr>
<td>Germany</td>
<td>8</td>
<td>9</td>
<td>17</td>
<td>44</td>
</tr>
<tr>
<td>Ireland</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>25</td>
</tr>
<tr>
<td>Spain</td>
<td>17</td>
<td>7</td>
<td>24</td>
<td>75</td>
</tr>
<tr>
<td>European-level</td>
<td>22</td>
<td>10</td>
<td>32</td>
<td>51</td>
</tr>
</tbody>
</table>

| Total            | 53         | 41      | 94    | 51                |

It may be questioned whether our focus on interest groups really captures the essence of the campaign. Indeed, networks with a low level of organization, mainly the hacker collective Anonymous, and political parties, mainly the pirate parties of various countries, played a role in derailing ACTA. Most activity, however, was steered by organizations that can easily be classified as interest groups. Among them were the European Digital Rights Initiative, La Quadrature du Net (France), Digitale Gesellschaft (Germany), Panoptykon Foundation (Poland) and Doctors Without Borders. We also do not think that the campaign against ACTA should be classified as a social movement, as it does not fit Sidney Tarrow’s (2011: 7) definition of social movements as
“sequences of contentious politics based on underlying social networks, on resonant collective action frames, and on the capacity to maintain sustained challenges against powerful opponents.” The ACTA debate can be seen as a single case of contentious politics; but it was not part of a sustained challenge.

The impact of the ACTA campaign on public opinion

While ACTA was being negotiated, it was not clear that this agreement would get a lot of public attention. As put by the co-founder of Digitale Gesellschaft, a German citizen group: “The combination of European Union policy, copyright and technology sounds incredibly dull. In theory, it ought to be fatal for any campaign” (cited in Beste, Schmundt and Schwägerl (2012)). Neither was it clear at the beginning that public opinion would end up being wholeheartedly opposed to the agreement. In a Eurobarometer poll from 2011, only 12 per cent of the respondents indicated that buying counterfeit products is always justified (Eurobarometer 2011). By contrast, 41 per cent answered that it is never acceptable to do so. Given this opinion with respect to piracy, it could have been expected that an agreement aimed at reducing piracy will garner public support.

In late 2011 and early 2012, however, groups opposing ACTA engaged in a massive outside lobbying campaign, using demonstrations, information events, press releases and petitions to spread their message to the broader public. They created a campaign website (STOPP ACTA), which summarized the main objections to ACTA. On 11 February 2012, moreover, 58 protests against ACTA, with an estimated 100,000 people participating, took place in Germany alone (Beste, Schmundt and Schwägerl 2012).

Figure 1 shows that the anti-ACTA side had a clear advantage in terms of outside lobbying. The figure relies on responses to the following question included in our survey: “Our research on ACTA has revealed that your organization [e.g. signed a letter to the European Commission or published a position paper]. Could you tell me whether your organization has carried out any other activities with respect to ACTA?” We then prompted respondents with a list of ten different tactics,
had used a tactic at least once. As can be seen, demonstrations, press conferences and campaign websites all were used by the anti-ACTA side. By contrast, these tactics hardly featured in the toolbox of the pro-side. Only quite late in the campaign, a few groups sponsored “ACTA Facts” as a campaign website for the pro-ACTA campaign. Of the outside tactics, only press releases and petitions were used quite frequently by the supporters of ACTA.

Figure 1: Tactics used by the two sides in the ACTA campaign.

The fact that the pro-ACTA side hardly used outside lobbying was not a result of a lack of interest in the issue. In fact, throughout the negotiations they had pushed for the conclusion of the agreement. Rather, several respondents suggested that they simply were “badly prepared” for an outside lobbying campaign. Given that this coalition mainly consisted of business associations, our result is in line with existing

ranging from personally meeting with officials and/or politicians to organizing or participating in demonstrations.

\(^{16}\) The site, www.actafacts.com, is no longer online. The website’s authors claimed to represent more than 120 organizations, from the European Automobile Manufacturers Association to the Polish Audiovisual Producers. Some of these organizations, however, told us that they “had nothing to do with ACTA”.

\(^{17}\) Interview, 22 November 2012.
research on the use of inside and outside tactics (Dür and Mateo 2013).

Any mobilization of the public thus is likely to be a result of the lobbying efforts by the anti-ACTA side. In fact, we see a strong impact on the public salience of the issue. In Figure 2 we rely on Google search data to show the importance of the topic in internet searches. ACTA hardly features as a search term for much of the two-year period from January 2011 to December 2012. But public attention sharply increased in late 2011 and early 2012, when the lobbying campaign was at its peak. It then fell again, with another brief period of public interest in July 2012, when the European Parliament voted on the agreement. The comparison with Google searches for the term “climate change” shows how pronounced the February 2012 peak was. Interestingly, the geographic origin of the searches (mainly Poland and Estonia, followed by Austria, Romania and Germany) further corroborates the link to the anti-ACTA campaign, as these were the countries with the strongest campaigns.

Figure 2: Internet search for “ACTA” (Google trends).

![Graph showing relative search volume for ACTA and Climate change](http://www.google.com/trends/).

A public opinion poll carried out in Poland in February 2012 with 999 respondents offers further evidence of the high salience of the issue at that time. Only 17 per cent
of the respondents indicated that they had never heard of ACTA. Another 15 per cent answered “don’t know” to the question whether they support Poland joining ACTA. The large majority of respondents (68 per cent), therefore, were able to take a position on an international agreement with rather opaque contents.

Was this spike in attention to ACTA mainly driven by traditional media rather than the anti-ACTA campaign? Disentangling the causal effects of media and the campaign is difficult. As shown in Figure 3, newspaper reporting on ACTA also peaked in early 2012. Nevertheless, the comparison with articles on “climate change” suggests that media attention may not translate into Google searches in the absence of a campaign (the axis on the right-hand side of the figure). Media attention to climate change was far higher throughout the two-year period, with peaks reaching up to 3,500 articles in a month. But neither do Google searches reflect the far higher media attention to this topic, nor do they reproduce the peaks in media attention. The ACTA episode thus developed very differently to a comparable topic.

Figure 3: Number of media articles on “ACTA” (Lexis Nexis).

Data from Lexis Nexis for major international newspapers.

---

18 This figure shows the number of articles that mention “ACTA” in major international newspapers, according to Lexis Nexis. We excluded searches in Spanish newspapers, as acta has a specific meaning in Spanish.
Unfortunately, too little public opinion data are available to assess whether the ACTA campaign had an influence on the positions people held with respect to that agreement. The only data that we could find are from the height of the campaign. The February 2012 poll in Poland mentioned above shows strong opposition to ACTA (CBOS 2012). Of those that had heard of ACTA and took a position, the ratio of opponents to supporters was 6 to 1. In the absence of time-series or cross-country data, we cannot relate this opposition to the campaign. Nevertheless, for respondents from the pro-ACTA side, it was evident that “the misinformation spread by the Anti-ACTA campaign” had influenced public opinion.\footnote{Interview, 14 December 2012.}

The strong effect that the campaign had on the public salience of the issue clearly benefited from the new tools that the internet offered (for an analysis of online collective action, see Breindl and Briatte 2013). Twitter and Facebook were important instruments in spreading the message of the critics of the agreement. Nevertheless, social media probably were neither necessary not sufficient in bringing about the effect that we observe. That they are not necessary is witnessed by earlier protests on the EU’s services directive (2006), which evolved in a similar manner to the protests on ACTA (della Porta and Parks 2013), but still largely without help by social media. At the same time, the many potential campaigns that do not get off the ground despite using social media suggest that these new tools are not sufficient in having an impact on public opinion, either.

The impact of public opinion on the ACTA campaign

At the peak of the ACTA campaign, a large number of interest groups were active on that issue. That the issue would mobilize so many groups was not evident at the beginning. In fact, as described above, it took a long time for opposition to the agreement to become mobilized. Our interviews offer much evidence that suggests that
interest group behaviour was influenced by the effect of the initial campaign on public opinion. As put by one respondent to our interviews: “Measured with respect to the effects or consequences that ACTA would have had, it was one among many topics, as we are frequently active on international trade agreements. It was the resonance that ACTA had with the public and the resulting opportunities to present us and our demands that made the topic one of very high importance.”

Another respondent was even more blunt: “The topic was very important for the external impact (how strong is the public awareness of our organization) of our organization. For the internal impact (how big was our real interest in the topic) it rather had medium priority.” The topic’s “audience appeal” made it important for the groups’ “mobilization efforts, to show strength.” Several groups confirmed that they “received a lot of positive resonance from the broad masses for our campaign against ACTA.”

Our interviews actually likely underestimate the extent of bandwagoning in this campaign. Quite a few groups that we contacted refused an interview with the argument that their level of engagement with the campaign had been minimal. They signed letters to decision-makers drafted by other groups or even showed up in the media, but only because this was such a hot issue, not because they were substantively interested in the topic. One group, when refusing an interview, commented that it had been “dragged into the debate” and did not want to talk about this topic any more. Still, in the view of our respondents even this rather passive participation strengthened the opposition to ACTA: “the more organizations from civil society are participating in a debate, the stronger you are.”

Whereas public opinion thus pushed interest groups opposed to the agreement into action, the effect of public opinion on the pro-ACTA campaign was just the opposite.

---

20 Interview, 1 March 2013.
21 Interview, 22 January 2013.
22 Interview, 5 March 2013.
23 Interview, 7 February 2013.
24 Interview, 29 January 2013.
25 Interview, 6 November 2012.
Respondents from that side spoke about a “difficult situation in which we did not want to give a bad image to the public opinion.”\textsuperscript{26} Another respondent mentioned that he “was afraid that the people might have a bad feeling about us if we strongly support ACTA.”\textsuperscript{27} Nevertheless, also on that side the high public salience forced some groups to become more active. As put by one respondent, “the ACTA topic was so hot in the media that we had to get more involved.”\textsuperscript{28}

Overall, our interviews suggest that the salience of the ACTA issue was much higher for the anti-ACTA side. Asked to indicate the importance of the ACTA campaign for their organization “compared to other topics that your organization was active on over the last few years”, 68 per cent of the respondents that represented organizations from the anti-ACTA campaign answered “very important” (on a five-point scale, from not at all important to very important). By contrast, only 20 per cent of the participants in the pro-ACTA campaign did so. The evidence above suggests that it was not the substance of the agreement that made this campaign so important for the citizen groups objecting to ACTA; rather, it was the public resonance of the agreement that made it crucial for the groups to be involved.

**Public opinion and the defeat of ACTA**

So far, the discussion has showed that the ACTA campaign likely had an influence on the public salience of the issue; and that the greater salience of the issue translated into a greater mobilization of the anti-ACTA side. But what role did public opinion play in the final defeat of ACTA? Our respondents clearly linked the outcome to the strong public opposition to the agreement. A respondent from the anti-ACTA side, for example, argued that “It was key to bring the topic to the attention of the public.”\textsuperscript{29} Similarly, respondents from the pro-ACTA side explained that their defeat was a result

\textsuperscript{26}Interview, 25 October 2012.  
\textsuperscript{27}Interview, 3 December 2012.  
\textsuperscript{28}Interview, 14 November 2012.  
\textsuperscript{29}Interview, 7 December 2012.
of the “pressure of public opinion”\textsuperscript{30} and a “one-sided debate” in the media.\textsuperscript{31} As members of the European Parliament “have to take into account the citizens’ voice”\textsuperscript{32}, they understood that they lost because they had failed to shape the public debate.

Also decision-makers clearly referred to public opinion when explaining the decision not to ratify the agreement. The German Justice Minister Sabine Leutheusser-Schnarrenberger, for example, explained her decision to halt the ratification of ACTA in Germany with a reference to the “many people there are in all of Europe that do not want ACTA” (Darnstädt and Stark 2012). Moreover, Martin Schulz, the President of the European Parliament at that time, mentioned “the existence of European public opinion that transcends national borders” in his explanation of the parliament’s decision not to ratify ACTA (European Parliament, The President 2012).

Stressing the role of public opinion does not mean saying that lobbying did not matter, however. As discussed above, it seems plausible that the campaign had a major influence on the public salience of the issue. Moreover, interest groups were key in transmitting public opinion to decision-makers. La Quadrature du Net, for example, launched a highly successful phone campaign targeting members of the European Parliament Committee on International Trade. The petition pushed by Avaaz that gathered nearly three million signatures also sent a clear signal to decision-makers. Finally, various national groups, including the Austrian “STOPP ACTA” campaign, target national parliamentarians.\textsuperscript{33} In fact, in the press release mentioned above, Schulz stressed the “intensive, inclusive and transparent debate with civil society, business organisations, national parliaments and many other stakeholders” (European Parliament, The President 2012).

An alternative explanation for the outcome could stress that business was divided on ACTA, which may have undermined the pro-ACTA campaign. In fact, however,

\textsuperscript{30}Interview, 22 November 2012.
\textsuperscript{31}Interview, 20 November 2012.
\textsuperscript{32}Interview, 14 November 2012.
\textsuperscript{33}https://www.stopp-acta.at/anschreiben/.
business nearly unanimously supported ACTA. Only seven (6 per cent) of the 112 business associations that we identified in the five countries and at the European level as being active in the campaign opposed ACTA. The opposition in the business camp mainly came from internet service providers (represented for example by EuroISPA) and operators of telecommunications networks (represented for example by the European Telecommunications Network Operators’ Association). With a large number of sectoral and peak business associations coming out in favour of ACTA, opposition by two narrow sectors can hardly explain the decisive defeat of ACTA in the EU.

A study of interest group influence always begs the question of the counterfactual (Dür 2008b): would the outcome have been different in the absence of the anti-ACTA campaign, or would party politics and ideology have produced the same outcome? Several factors suggest that the anti-ACTA side indeed was influential and not only lucky. For one, governments that had participated in the negotiations and that had signed the agreement undertook a u-turn when the protests erupted. Only the campaign can provide a plausible explanation for their behaviour. Moreover, while the European Parliament had been critical of ACTA in earlier votes, in 2010 it had also rejected a resolution by centre-left party groups that criticized the final text of ACTA. An earlier resolution asking the Commission for more transparency, but also calling on it “to continue the negotiations on ACTA in order to improve the effectiveness of the IPR [intellectual property rights] enforcement system against counterfeiting” had only been opposed by three members.34 Similarly, in 2009 a large majority of members of the European Parliament called on the Commission “to further the negotiations on the multilateral Anti-Counterfeiting Trade Agreement (ACTA)”.35 In the absence of the anti-ACTA campaign of late 2011 and early 2012, it thus seems unlikely that the parliament would have struck down the agreement.

Conclusion

The defeat of ACTA in the EU poses an interesting puzzle: how could a relatively resource-poor campaign stop an agreement that was supported by a broad business coalition? And how could civil society mobilize so effectively on a relatively opaque issue that had been negotiated at the international level, where international negotiations often are seen as empowering the state vis-à-vis civil society?

We have developed a theoretical framework that disentangles the complex relationship between public opinion, interest groups and policy outcomes. Interest groups influence public opinion, and public opinion also has an effect on interest group behaviour. Public opinion, in turn, shapes policy outcomes. Our argument that public opposition to ACTA was crucial in explaining the defeat of this agreement in the EU thus does not negate the role of interest groups; rather, it suggests that public opinion and interest group lobbying are interdependent. Although ACTA is a quite particular issue on the political agenda, and although this paper took an outcome-centric approach mainly aimed at explaining this interesting policy episode, we think that this interdependence merits broader theoretical attention.

Our research on ACTA is of interest to the broader literature on lobbying in the EU by showing that in this entity, too, public opinion matters for interest group lobbying. This is an interesting observation, as – based on the assumption that the EU lacks a public sphere – lobbying in this entity has often been seen mainly as an exchange of access against expertise. Future research should analyze exactly when lobbying in the EU follows the resource exchange logic, and when public opinion can be expected to matter. Finally, our findings speak to a literature on the global regulation of intellectual property rights. Despite the defeat of ACTA, developed countries remain committed to including chapters on intellectual property rights in trade agreements, such as the Transatlantic Trade and Investment Partnership between the EU and the
United States. But whereas in earlier episodes the property right holders were successful in shaping key political decisions (Sell 2003; Dür and De Bièvre 2007), they lost the ACTA battle. Whether this signals a longer-term shift in the balance of power between property right holders and users or just a temporary set back for the former will be seen in the coming years.

References


CBOS. 2012. “Public opinion about ACTA.”.


