

Political claims-making in IP conflicts

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1. Introduction

In the official declaration of the G8 summit 2007 in Heiligendamm the heads of government of the most powerful industrialized countries have given the »protection of intellectual property rights« a top priority. IP protection was mentioned in their final statement even before climate change as a political issue of crucial importance, preceded only by global economic growth, the stability of financial markets, and the freedom of investment. They state that: »Innovation is one of the crucial drivers of economic growth in our countries. ... The protection of IPRs is of core interest for consumers in all countries, particularly in developing countries.« (G8 2007, 2). This prominent place reflects the growing importance of the politics of intellectual property, that – over the last 15 years – has changed from a field of technical expertise to become an increasingly contentious issue in global politics.

How did the protection of intellectual property become such a high level issue? And how has the interpretation that strong IP regimes should be a central part of a global trade regime become the dominant perspective?

Susan Sell shows in her study of the history of the TRIPS agreement how, during the Uruguay round of global trade talks, a small group of transnational corporations was able to successfully set IP protection on the agenda of the negotiations and subsequently managed to codify their vision of a strong IP protection regime in the form of the TRIPS agreement in a relatively uncontested way (Sell 2003; Drahos and Braithwaite 2003). This political process that led to TRIPS is an excellent example for a power game, in which resourceful private actors with the support of the most powerful countries have managed to successfully install a global IP regime that requires all WTO member countries to adopt strong national systems of IP protection. Developing countries that initially resisted the tightened IP regime were silenced through the initiation of »Section 301 actions«, i.e. bilateral trade sanction, by the United States (Meier 2005, 506).

But Sell's study also shows that the success of the lobbying that led to the TRIPS agreement cannot be explained as a power game alone. Many of the same resource- and powerful actors were not that successful a few years later during the negotiations of the new WIPO copyright treaties that, in their current version, emphasize a much more balanced approach between author's rights and the public interest in access to information (Sell 2003, 26). She claims that this time a well organized group of opponents was able to lend their framing of IP as an issue of »fair use« relevant weight to counter the domi-

nant frame of IP as a trade issue. These findings suggest that a strategy that focused on discursive hegemony was able to, at least partially, balance the weakness in financial resources and economic power. Even further a careful reading of her analysis reveals that also the TRIPS story was not just a story of economic power and resources. Sell claims that the influence of Jacques Gorlin, advisor to the US Advisory Committee for Trade Negotiations (ACTN) and for the private Intellectual Property Committee (IPC), »is difficult to overestimate« (Sell 2003, 49). His achievement was the development of a coherent argumentation that framed intellectual property rights as a (free) trade issue – a, in the first place, contradictory task. Intellectual property rights are inherently state granted monopolies for a limited time. As such they intrinsically contradict the idea of free market competition without state interference and of competitive advantages. Gorlin (1985) developed in a policy paper a frame that coherently connects the two seemingly contradictory issues.

It seems that the framing of the issue is not just important for weak actors but also for the powerful players in the field. In this perspective, the above cited G8 policy statement can be read as an attempt to re-frame IP as an issue of consumer interests in the Global South – a quite surprising interpretation that clearly accounts for the growing challenges the the TRIPS interpretation of IP as a trade issue.

How important these framing processes are as interventions on the discursive level to influence policy outcomes, has been overlooked in much of the interest groups literature but has been corroborated in other areas of research. Students of social movements have long realized that the construction of collective action frames is an important factor, besides resources, political opportunities, and others, to explain the success or failure of social movements (Snow et al. 1986; Snow and Benford 1992; Gamson, Fireman, and Rytina 1982).

But if framing processes are so important the question remains: Under which conditions can which frames successfully influence IP policies. Sell's example of the WIPO copyright treaties suggests that opponents should construct a convincing counter frame that offers an alternative interpretative frame. The conflict about IP issues and global health policies also follows this pattern. Here the construction of a counter frame that pitted IP protection for pharmaceuticals against public health was a successful strategy for those actors that wanted prioritize the fight against HIV/Aids over IP protection (Hein and Kohlmorgen 2008; Hein 2007).

The literature on framing, on the other hand, suggests that collective actors must construct a coherent master frame that has the potential to integrate a heterogeneous set of actors ideologically (Gerhards and Rucht 1992, 573; Snow and Benford 1992, 138).

To test the role of framing processes in IP conflicts we have analyzed two recent conflicts in the European Union about two EU directives in the field of IP policies. Based on these cases we argue that the construction of a coherent master frame is, indeed, a precondition for a successful mobilization, especially for resource-poor actors. But we challenge the notion, that the success of oppositional actors always depends on their ability to construct a strong counter frame. Instead, we argue, that displacement strategies, that attempt to re-frame an already existing hegemonic frame, and giving it a new meaning may often be more fruitful, especially in cases where IP protection cannot easily be pitted against general normative values.

2. Conflicts about the EU directives on software patents and IP enforcement

The two directives that we have chosen have played a central role in shaping the regulatory framework for intellectual property rights in the EU during the last decade. Both directives have been introduced and decided in a similar time frame between 1997 and 2005. They have been subject to the codecision procedure in which an agreement must be reached between the European Parliament and the Council. They were drafted in the same directorate general of the Commission (DG Internal Market), and in both cases they were confronted with opposition from stakeholders, who tried to influence the decision making process in their favor.¹

The »directive on the enforcement of intellectual property rights« (IPRED 1) intends to strengthen and harmonize the enforcement of intellectual property rights, including copyright, trademark and patents, in the EU member states. It requires all member states to apply »penalties which must be effective, proportionate and deterrent« (COM 2003, 19) against counterfeiting and piracy. The directive gives rights holders more possibilities to prosecute counterfeiters and other infringers using civil law measures. Rights holders e.g. are to be able to call on judicial authorities to issue an interlocutory injunc-

¹ However, there is one significant difference in the de-facto decision-making process: In the case of the IPRED 1, the decision-making process was considerably speeded up through the introduction of a so called trialogue; i.e. informal meetings and negotiations between the European Parliament, the European Commission and the Council of the European Union. The main actors involved in this legislative procedure wanted an adoption in the 1st reading in order to finish the legislative act before the EU enlargement in May 2004. There were concerns that the new EU member states (with widespread IPR infringement in some countries) might complicate and slow down the decision-making process.

tion to prevent further infringement of intellectual property rights or to demand destruction of counterfeited goods.

The »directive on the patentability of computer implemented inventions« was drafted by the commission to introduce patents on inventions »implemented on a computer or similar apparatus which is realized by a computer program« (COM 2002, 13). Whether this definition would include »software as such« which is explicitly exempted from patentability in the European Patent Convention was highly disputed among the opponents in the conflict around this directive. Certainly the opponents of the directive succeeded in labeling it as the »Software Patent Directive« and only the core supporters were talking about the CII directive.²

In both cases the Commission received strong support by industry lobby groups and business associations, which represented a number of powerful key players in the respective fields. But also in both cases business interests did not unanimously support the Commission's proposals. Major firms from the European telecommunications industry opposed the IP Enforcement Directive, and a large number of mostly SMEs opposed the Software Patents Directive. Civil society and consumer interest groups mobilized against the directives in both cases. Members of the European Parliament (MEPs), national politicians and scientific experts can be found both in the proponents and the opponents camps in both conflicts.

In spite of the similarities of the two decision making processes we can observe significant differences in the course and intensity of the conflicts: While we witness a heated debate about the pros and cons of software patents³ – an issue that seemed from the outset much less controversial – we see a relatively smooth and undisturbed legislative process in the case of the IP Enforcement Directive where one could have expected much more conflict as the directive touches upon issues like file-sharing that have received much more public attention than the arcane issue of software patents. We argue that the explanations for the different course and outcomes of the conflicts can be found in the framing processes.

3. Methodology

To collect data about the actors involved in the two IP conflicts and about their positions and frames we used the methodological framework of *political claims analysis* devel-

² According to a former commission employee even the Commission circulated its the preparatory documents with filenames containing »swpat«.

³ This controversy has generated according to some European parliamentarians [##Source?##] – one of the most intensive political conflicts the European institutions have seen in the recent past.

oped by Koopmans and his collaborators (Koopmans and Statham 1999). The principal idea of this approach is to collect data on all actors involved in political conflicts, their forms of action and interaction, and on the respective collective action frames. The assumption is that collective action that goes beyond lobbying depends heavily on presence in the public sphere. Only claims that are reported have a chance to influence decision making processes. Political claims analysis combines the empirical power of traditional protest event analysis with the analytical power of a frame analysis of the discursive level, and tries to map the claims of all actors, not just those of the challengers, within a given policy field. Adopting Koopmans and Statham's definition (1999) we conceptualize claims as: *demands, proposals, criticisms, decisions, etc. made by actors active in the respective field of conflict in the form of statements or collective mobilizations*. A frame is understood as an »interpretive schemata that simplifies and condenses the ›world out there‹ by selectively punctuating and encoding objects, situations, events, experiences, and sequences of actions within one's present or past environment« (Snow and Benford 1992, 137).

For our two cases we analyzed data from quality newspapers in four countries: Germany, France, Great Britain and Poland. These countries have been chosen because of general criteria and their specific role in the two conflicts. France, Germany and Great Britain were chosen because of their political and economic importance in Europe. In addition Britain was selected as the country with the most liberal patent practice with regard to software patents. France was selected because in both conflicts the rapporteurs of the EP were French nationals, and because France was one of the most vocal critics of software patents. Germany was an essential candidate because the most important oppositional actor in the software patents conflict, the FFII, had its origins in Germany, and because it represents a country with a comparably strict practice with regards to the granting of software patents. Poland finally was selected because of its important role in the software patents conflict, where it was the most vocal of the newly acceded East European countries criticizing the CII directive.

For all countries we selected all newspaper articles, published between January 1997 and July 2005 in selected national quality newspapers, that mentioned one or both of the conflicts or had the issue of software patents or IP enforcement in general as their main issue, and that were available in the full text collection of Lexis/Nexis for the whole period. Articles were only coded if they contained a claim. They were not included in the data base if they only contained some information about the respective issues but if no

attributions to specific actors were made. Overall a total number of 170 articles (G: 75, UK: 37, F: 45, PL: 31) were coded according to a previously developed code book that was adapted from the code book used in the EUROPUB project (Koopmans 2002).

In these articles a total number of 324 claims were reported, 277 in the software patents conflict and 47 in the IP enforcement conflict.

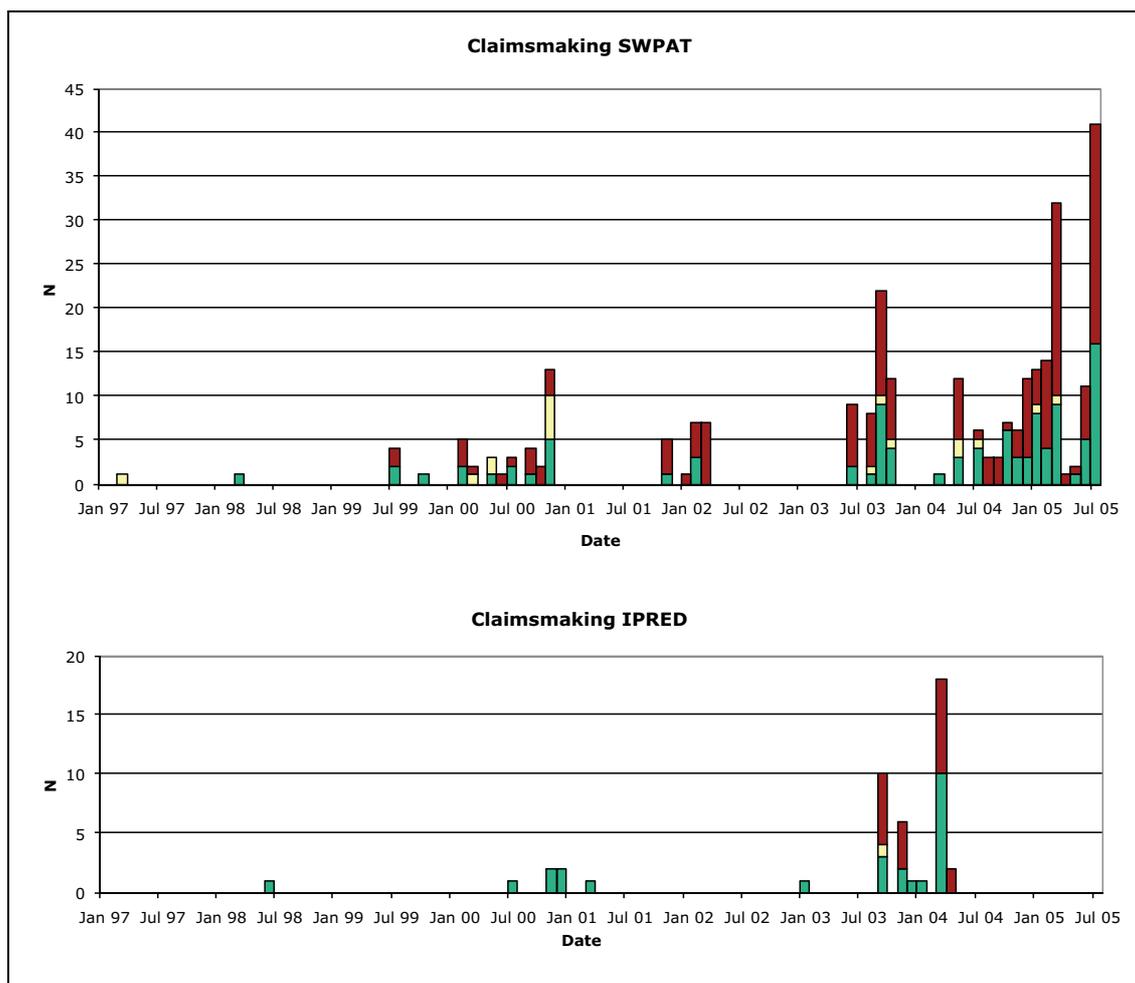
4. Results

The claims-making in both conflicts differed significantly in content and in scope. Figure 1 shows that in both cases the overall pattern of claims-making visible in the newspapers is closely linked to important steps in the decision making process. The respective peaks of reported claims-making correspond the publication of the directive proposals, the readings in the parliament and the meetings of the Council.

A comparison of both time lines reveals immediately the rather different intensity of both conflicts. As mentioned we counted 277 claims in the software patents conflict but only 47 claims in the conflict about the enforcement directive. Also, we see several waves of intense claims-making in the software patents conflict, cumulating at the second reading of the directive in the European Parliament, whereas in the other conflict only one wave of claims-making has made it into the news, at the very end of the conflict. The contention was publicly visible only between September 2003 and March 2004, in the six months before the first and only reading in the EP. And only in this last stage do we find a relatively balanced reporting of the claims of supporters and opponents of the enforcement directive. Earlier claims were made exclusively by the European Commission, who announced several times the publication of a proposal for the directive. During the whole conflict claims of proponents of the directive were slightly more often reported than claims of opponents (51.1 % vs. 42.6 %).

In the software patents conflict opponents of the directive entered the stage much earlier. Already in July 1999 the first claims against the proposed directive were reported in the newspapers, and during the whole conflict the opponents remained highly visible. 58.1 % of the reported claims were made by opponents, only 35.4 % by supporters of the directive. The remaining 6.5 % of the claims were either neutral or ambivalent.

Figure 1: Time line of claims-making in both conflicts



In both cases the group of actors that was more often in the media finally succeeded in the conflict. The opponents of software patents averted the directive while the proponents of the enforcement directive were successful in the other case. The time lines clearly show that the software patents conflict was, indeed, a political conflict that happened to a significant extent in the public sphere, whereas the conflict about the enforcement directive was much more a lobbying conflict that only at the very end became a publicly visible political conflict.

To get a more detailed picture of the conflicts beyond these structural characteristics we now take a closer look at three aspects of the claims-making: Which actors were present in the conflict? Which forms of action did the conflicting parties choose? And how did they frame their claims?

4. 1. Actors

Which actors were present in the newspaper coverage of the two IP conflicts? In both cases parliamentarians and political parties from the European Parliament were the most visible actors. They were responsible for 18.8 % of the claims in the software patent conflict and for almost one third (29.2 %) of the claims in the conflict about the enforcement directive. The Commission – in contrast – played a much smaller role with a share of 5.6 % and 8.3 % respectively.

As expected, the stronger intensity of the *software patents conflict* brought a larger number of actors into the conflict. Two groups are especially noteworthy: Small and medium-sized enterprises (SMEs) and lawyers. The significant number of lawyers present in the conflict is an expression of their status as experts in the field. Before this conflict, software patents were generally regarded as a highly specialized field of patent law. The fact that this issue became a field of political contestation is in itself remarkable.

Table 1: Actors present in the software patents conflict (N=287)

Actor	Sum	Pro	Contra	Neutral
European Parliament	18.8 % (N=54)	12	41	1
Civil society organization	11.8 % (N=34)	2	32	0
Small and medium-sized enterprises (SME)	11.8 % (N=34)	0	34	0
Big company	10.1 % (N=29)	21	5	3
Business association	10.1 % (N=29)	19	8	2
National governments	8.0 % (N=23)	8	11	4
Lawyers	6.6 % (N=19)	11	4	4
National politicians	5.6 % (N=16)	1	14	1
European Commission	5.6 % (N=16)	16	0	0
Scientists	4.5 % (N=13)	1	9	3
Media and journalists	2.8 % (N=8)	1	7	0
The Council	1.7 % (N=5)	5	0	0
Patent offices	1.4 % (N=4)	1	0	3
National parliaments	1.0 % (N=3)	0	3	0

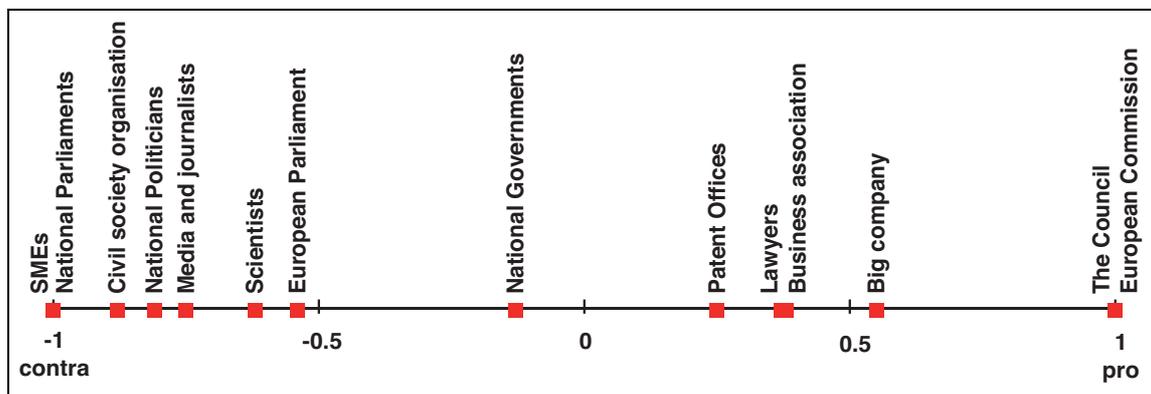
The strong participation of SMEs is a very characteristic element of the software patents conflict. The opposition against the directive was mainly organized by computer programmers working self-employed or in small and medium-sized enterprises. They successfully lobbied the European and national SME business associations who then also

positioned themselves against the directive. As we can see in table 1 SMEs were the only relevant actor category from which only claims against the directive were reported. The attempts of the European Information & Communications Technology Industry Association (EICTA) and the Business Software Association (BSA) to mobilize SMEs in favor of the directive was not successful in terms of press coverage.⁴ The only other actor groups that were unanimously for or against the directive were a number of national parliaments who positioned themselves against the directive and the Council which was for the directive – but they both did not play a relevant role in the reporting. Of those actors relevant for the public discourse only the European Commission – not very surprisingly – unanimously supported its directive.

The other actor groups were split, although some were clearly more in favor of the directive than others as figure 2 shows, where the actor groups are plotted according to their overall position towards the conflict.

We can see a large cluster of opponents scoring between -1 and -0.5 on the positional scale, that together represent roughly half of the actors mentioned in the press (56 %). On the other pole the Council and the Commission, lawyers, business associations and a number of single large firms are supporting the directive, but even the large firms are not unanimously in favor of the directive.

Figure 2: Actor positions in the software patents conflict



If we look at single actors, instead of actor groups, the most important single actor in the software patent conflict was clearly the Foundation for a Free Information Infras-

⁴ In June 2005 56 SMEs published a »SME Manifesto on Patents for computer-implemented inventions« (http://w3.cantos.com/05/eicta-504-0arfg/documents/SME_manifesto_0106.pdf). It does not mention EICTA in the text. But the website where it is available and where it can be signed is run by EICTA and its member firms – large IT firms without exception (<http://w3.cantos.com/05/eicta-504-0arfg/cii.php?page=aboutus>).

structure (FFII) who accounted for 5.8 % of the claims. EITCA (4.0 %), Michel Rocard (3.6 %), Florian Müller (2.5 %), and Frits Bolkestein (2.5 %) are other other noteworthy single actors who together were responsible for a bit less than one fifth (18 %) of all published claims. Interestingly this varies greatly between countries. FFII is not mentioned in the French press at all but responsible for 10 % of the claims in the German newspapers. Michel Rocard on the other hand is mentioned only once in Germany but responsible for 10 % of the claims in France. EICTA is insignificant in France and in Germany, but important in Poland and the UK, where it is responsible for 6.4 resp. 10 % of the claims.

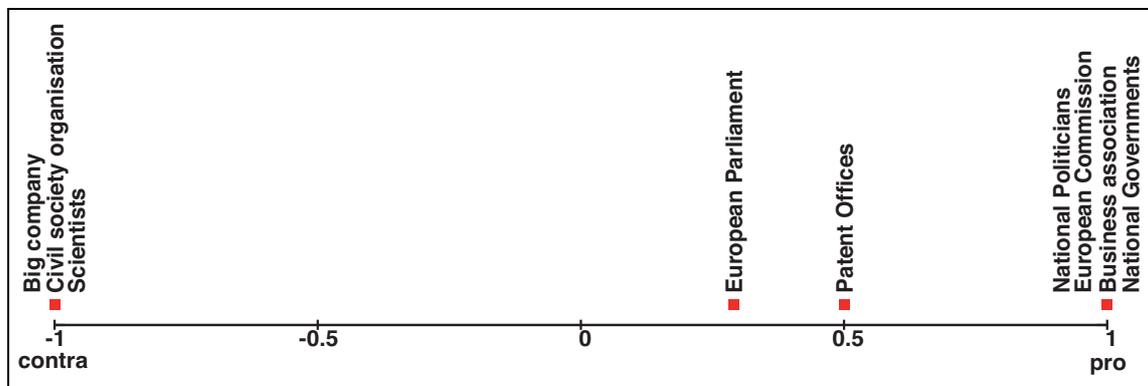
In the case of the *IP enforcement directive* the picture is more clear cut. 5 actor groups dominate the reporting: MEPs and political groups from the European Parliament, civil society organizations, business associations, the European Commission and 3 large corporations (British Telecom, Telecom Italia, and Nokia). Interestingly in this case the single large firms that all come from the telecommunication sector speak out against the directive whereas the business associations – in this case mainly from the music and IT sector – strongly support the directive. However, the business association that represents the telecommunication industry on the European level, ETNO, was never mentioned in the newspapers even though they actively tried to prevent the directive.

Table 2: Actors present in the enforcement conflict (N=48)

Actor	Sum	Pro	Contra	Neutral
European Parliament	29,2 % (N=14)	9	5	0
Civil society organization	27,1 % (N=13)	0	13	0
Business association	14,6 % (N=7)	7	0	0
European Commission	8,3 % (N=4)	4	0	0
Big companies	6,3 % (N=3)	0	3	0
Patent offices	4,2 % (N=2)	1	0	1
National governments	4,2 % (N=2)	2	0	0
Scientists	4,2 % (N=2)	0	2	0
National politicians	2,1 % (N=1)	1	0	0

The actor groups are clustered largely on the opposing poles. Unlike in the case of software patents most actors – with the notable exception of the MEPs – were either clearly for or against the directive.⁵

Figure 3: Actor positions in the IP enforcement conflict



The relative weight of the different actors in the public discourse does not simply reflect their respective influence. It also mirrors their different strategies. The business associations and large companies focused mainly on the traditional lobbying channels. They tried to exert influence during the drafting and consultation process of the directive and later lobbied important MEPs. The civil society organizations, who were not able to use these avenues concentrated much more on a public media strategy. The media again focused on the MEPs who were – on equal grounds with the Council – the central decision makers but much more accessible than the later.

The low number of claims-makes a comparison between the four countries less reliable than in the software patents case. In Poland the conflict did not show up in the press. We could only find one article in which a claim concerning the enforcement directive was reported. As the conflict ended before the EU enlargement and therefore before Poland's entry into the EU this is not very surprising. There was slightly more coverage of the conflict in the British and French press than in Germany (18, 17 and 11 Claims). This contrast sharply to the situation in the software patents conflict where the German press accounted for 123 of the total 276 claims (UK: 56, F: 55, PL: 42).

Based on this limited data base the most important single actor in the IP enforcement conflict were Janelly Fourtou, the French MEP and rapporteur for the parliament, Frits Bolkestein, the German MEP Angelika Niebler, the Foundation for Information Policy Research (FIPR), and IP Justice who all were mentioned three times in the news. Again

⁵ The British patent office is only not in the camp of the supporters because one of its two claims was reported rather ambivalent.

national differences were significant. Fourtou and Niebler were present only in their respective home countries. Bolkestein's claims were only reported in France and claims of the two non-governmental organizations (NGOs) FIPR and IP Justice were only reported in the UK (FIPR) and Germany (IP Justice).

In both cases the actor constellation clearly reflects the politicization of the IP conflicts. The actors involved in the conflicts represent not only business interests and legal experts but diverse stakeholders and civil society groups. FFII is an interesting case in itself. Its members are individuals who are mainly single software developers or CEOs of SMEs in the field of software development and IT. FFII claims to represent the business interest of its members and of IT SMEs in general, but it is not a business association in the traditional sense. In its internal structure and action forms it resembles much more a NGO. In the end it is some sort of hybrid between business association and NGO which is also true for the LinuxPetition and the economic-majority campaign.

In the IPRED 1 case, MEPs, Frits Bolkestein and few civil society organizations were the most important claims-makers. Here, particularly one aspect is interesting: The most important proponent organization (IFPI) and the connected network («Anti-Piracy Coalition») only once appeared in the media discourse. We know, however, that IFPI played an important role in drafting the proposal of the enforcement directive and had close contacts with MEPs and members of the Commission. Its work was quite effective, but obviously IFPI relied on traditional forms of lobbying and more direct non-public avenues of interest representation to influence the decision-making process.

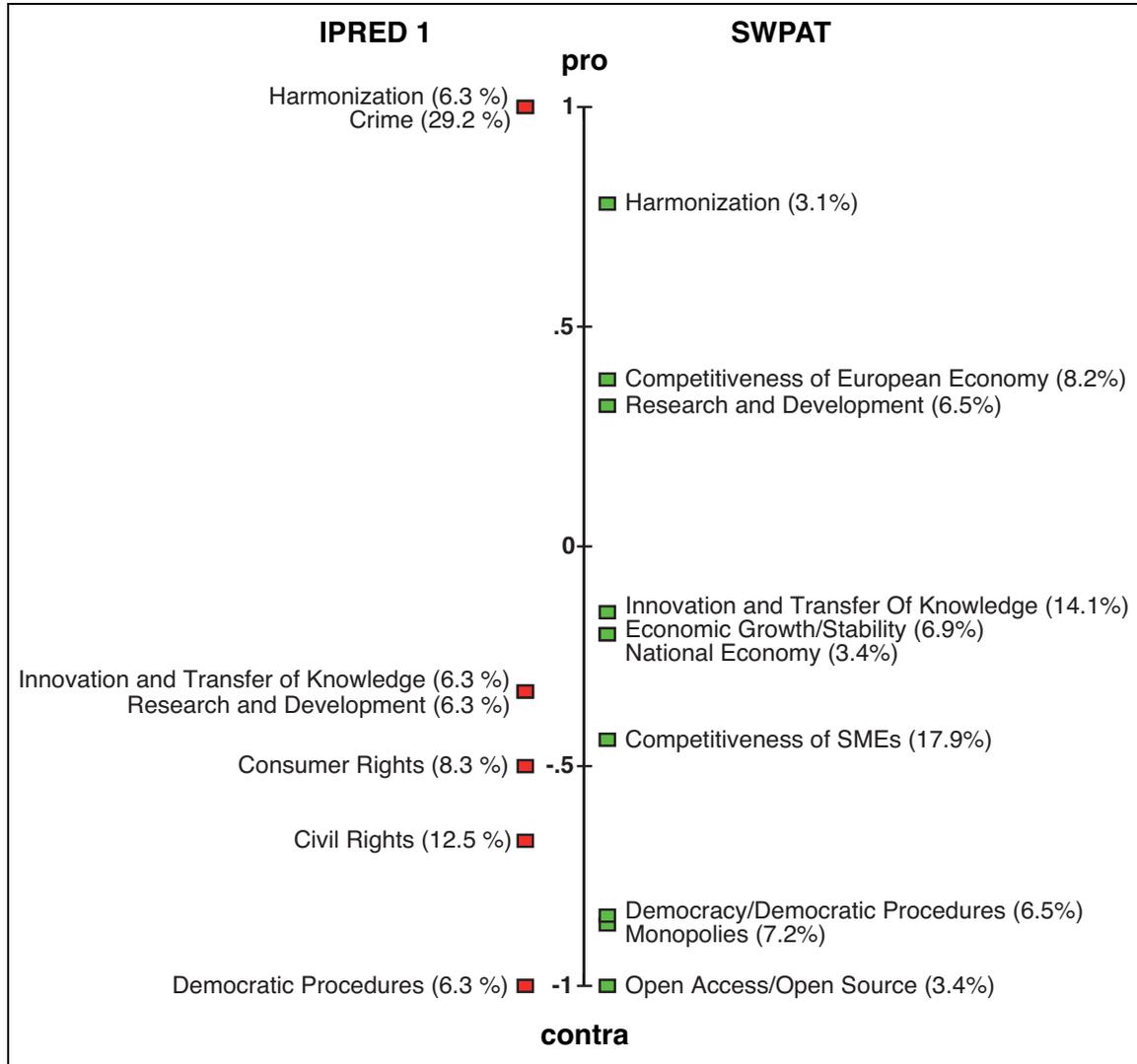
Furthermore, one important oppositional network (ETNO) did not appear in the media, and while our network analysis and expert interviews have shown that the European Digital Rights Initiative (EDRi) is the central actor of the network of civil society organizations that were against IPRED 1 (Haunss and Kohlmorgen 2007) only two claims of EDRi are reported in the newspapers. This shows that EDRi was not very effective in placing claims in the media and in mobilizing actors.

4.2. Framing

Until here we have concentrated on the characteristics of the actors involved in the two conflicts. We now take a closer look at the frames the actors used to justify their claims. First we have to note that in both cases for roughly one third of the claims (SWPAT: 31.4 %, IPRED1: 29.8 %) no frames were reported but on the other hand in about 40 % of

the cases more than one frame was reported for the same claim. Overall we therefore have 291 reported frames in the software patent conflict and 4 reported claims in the IP enforcement conflict. Again the picture is rather different for both cases.

Figure 3: Position of frames in the two conflicts



As figure 3 shows the conflict about the IP enforcement directive is characterized by the dominant *crime* frame that justifies 29.2 % of the claims and is only used by the proponents of the directive. The criminality issue functions as a master frame that unites the diverse interests of the music and film industry, large software firms (esp. Microsoft) and luxury goods manufacturers. The argument is that the directive is about fighting product piracy and that the directive is necessary to protect consumers from counterfeit goods.

The opponents were not able to use this master frame in their own argumentation. Instead of trying to re-frame it they tried to construct a counter-frame focused on consumer rights and civil rights (together 20.8 %). But these arguments were not as successful as those claiming that IPRED 1 is about fighting piracy and counterfeiting. As mentioned before, ETNO, the business association representing the telecommunication industry, did not appear as claim-maker and thus also their main argument, that IPRED 1 could impose high costs on internet providers, was not part of the public debate on the enforcement directive. Also the argumentation of the automotive parts producers and generic medicines manufacturers did not play any role in the public discourse. The only frame that was exclusively used by opponents of the directive was the *democratic procedures* frame, by which mainly MEPs criticized the selection of the rapporteur⁶.

It is striking, that in the IPRED1 conflict the frame »culture« does not show up in the reporting, especially since IFPI, the interest group representing the music industry, was the main actor in the conflict. In our expert interviews, a number of actors involved in the conflict told us that in their perception the argument, that the directive would protect (European) culture and artists played a significant role in shaping the conflict. But whether or not this framing was present in the conflict, it obviously did not resonate in the public discourse.

Overall the opponents did not succeed to create a common interpretive frame, and were consequently not able to agree on a common political strategy. There was no master frame of the opponents, which might have been convincing in the public debate and which also could have facilitated the construction of a collective actor with a more or less consistent identity. The framing of each opponent groups remained unconnected and each frame alone was not able to convince the general public and the majority of the decision makers. This is one reason for the failure of the efforts to prevent the enforcement directive.

The positional distribution of frames in the software patents conflict gives a rather different picture than in the IP enforcement conflict. Figure 3 shows that the frames were generally much more contested than in the other conflict, indicating a much more vivid public debate. Unlike in the IP enforcement conflict, where arguments basically stood besides each other, in the software patents conflict opponents engaged with the other side's arguments and tried to re-frame them according to their aims. Looking at the most

⁶ Their main point of criticism was that French MEP Janelly Fourtou's private interests as wife of Jean-René Fourtou, the CEO of Vivendi-Universal, would interfere with her role as rapporteur for the directive.

often used frames that together make up almost two thirds of the frames used one can see that the conflict was dominantly framed as an economy issue. In figure 3 only the democratic procedures frame does not refer to the economy.

Competitiveness of SMEs was used in 17.9 % of the claims. Opponents and supporters of the directive used this frame (contra: 36; neural: 3, pro: 13) – although with opposing meanings. The opponents (e.g. software developers, SMEs and some MEPs) claimed that the directive would endanger European SMEs, as they would neither have the knowledge nor the resources to use the patent system to their advantage. The supporters on the other hand (large firms, European and national business associations, and again some MEPs) argued that SMEs would profit from the directive, as patents on computer implemented inventions would for them be an asset that would allow them to acquire venture capital.

How important the SME argument was in the course of the conflict is well illustrated by the above mentioned EICTA SME mobilization, where in the last phase of the conflict the European IT business association mobilized 56 SMEs to speak out for the directive. Our interviews confirm, that until then, neither the Commission nor the supporters of the directive had taken the SMEs seriously.

The second-most used frame in the software patents conflict was *innovation and transfer of knowledge* (14.1 %). Again this was a highly disputed frame (23:1:17) that both sides used to support their claims. The opponents of the directive usually combined this frame with the SME frame, arguing that SMEs are the cornerstone of innovation in Europe, and that software patents that would disadvantage SMEs would have a negative effect on innovation in Europe. The other side followed mainly the conventional reasoning in the economic and legal mainstream, arguing that strong IP protection in general and patent protection in particular is needed to protect investments in innovation. Patents on computer implemented innovations would therefore be a crucial factor for innovation in Europe. Not being able to file such patents in Europe would keep large companies from investing in Europe with the effects of a competitive disadvantage for European enterprises and for the whole European economy. This would result then in the loss of many jobs.

Innovation in combination with economic development were, indeed, the central issues of the conflict. It therefore is no wonder, that both sides feverishly tried to claim these issues as theirs.

The only relevant⁷ frame that was used exclusively by one side of the conflicting parties was the *open access/open source* frame, which was an attempt of some opponents to construct a counter-frame similar to those used in the IPRED1 conflict. This open source frame may have had some relevance for the internal discussions of the opponent organizations.⁸ In the conflict as a whole, however, the argument that open source software should be supported and that European IP policies should advance open access systems represented too closely the interests of the opponents of the directive and was not adaptable to the interests of the other side and also had only limited importance in the public discourse.⁹

The *monopolies* and the *democracy* frames were also almost exclusively used by the opponents. The later mainly from MEPs when after the parliament's first reading the Commission and later the Council completely ignored the parliament's amendments to the directive, and when, in the Council, the presidencies of Ireland, the Netherlands, and finally Luxembourg tried to pass the directive without discussion. The relative strength of the *democracy* frame (6.5 %) illustrates that one level of the conflict was an institutional power struggle between Council, Commission and Parliament, in which the Parliament tried to defend its newly augmented decision making rights in the codecision procedure. The *democracy* frame was rather powerful mainly in the final phase of the conflict between March and July 2005. It helps to explain the reluctance of some MEPs to let the common position of the council pass in the second reading – sometimes regardless of their own principal position towards the patentability of computer implemented inventions. The *democracy* frame is not related to the issue of software patents originally but is a *legitimacy* frame that derived from the decision making process and was combined with frames originating from the software patent issue. This is an example for ›frame bridging‹ a process that describes the linkage of two structurally unconnected frames (Snow, Jr, Worden, and Benford 1986).

⁷ Only frames that were used in 3 or more percent of the cases were classified as relevant.

⁸ Thomas Eimer (2007) distinguishes two different conceptual approaches within the opponents camp how to treat software: Whereas the FFII favors a club good or open source approach, which guarantees some rights for the developer, other relevant organizations, such as the Free Software Foundation (FSF) champion the idea of free software as a public good or as common. This latter approach widens the largely economic perspective of the club good approach and takes up political and ideological arguments that are critical to capitalism and neoliberalism. However, this difference did not play an important role in the campaign.

⁹ It is quite interesting that the European Commission did not use the open source/open access frame as it would have fit nicely to the argumentation put forward in the anti-competition case where the Commission in March 2004 ordered Microsoft to pay €497 million for not complying with its order to disclose the interface information necessary for other firms to integrate their media player software into the Windows desktop environment – a classical open access case.

Research and development, on the other hand, was used mainly by supporters of the directive who argued that patents would be necessary to recover the R&D expenses. When the other side picked up this frame it argued mainly that software patents would inhibit research because it would make sequential innovation, which is dominant in the field of software engineering, more difficult and costly.

We can see that the opponents successfully re-framed this issue, which originally was framed by the European Commission as a *harmonization* and *European competitiveness* and *innovation* issue. During the conflict these frames retreated in favor of the frames *competitiveness of SMEs* and *innovation and transfer of knowledge*. The frame *innovation* that was originally used by the commission and also the big companies was re-interpreted by FFII and others claiming that innovation is promoted by SMEs and individual software developers and thus endangered by the CII Directive.

5. Conclusion

Our analysis reveals the publicly visible part of the complex claims-making processes that accompanied the two recent European decision-making processes on IP issues. It shows how important the framing of the issue is on two levels:

1. On the inter- and intra-organizational level collective action frames are necessary to develop a coherent interpretation and a coordinated action strategy.
2. In the public sphere the resonance of a frame determines its potential to become hegemonic and influence those decision-makers that depend on public opinion – in our case mainly the MEPs.

In the case of the enforcement directive the proponents managed to construct a successful master frame that became hegemonic: They claimed that the directive was about »fighting against criminality and product piracy«. And this master frame was accepted by the majority of the actors as the adequate interpretation. Thus the directive was seen as the proper tool to solve the problem of product piracy. Even some of the left wing MEPs agreed to this frame and the proposed problem solving strategy.

Looking at the opponents we see that the framing of the relevant two opponent actor groups did not merge. They were not able to establish a an oppositional master frame, in which the different interests to prevent the Enforcement Directive could have been accommodated. Instead each group advanced its specific counter-frame that interpreted the conflict as a consumer issue, a civil-rights issue, a access to information issue, etc. But the framing of each sub-network alone was not able to counter the hegemonic fram-

ing of the proponents in the discursive field. Whereas the argument of the civil society organizations – that the Enforcement Directive would threaten civil rights, would be too far reaching and would criminalize more or less innocent citizens who only wanted to share their music with their friends, – had at least some success with a number of MEPs, the rationale of the telcos and the generic producers played only a minor role in the discourse and was not taken up by other actors.

IPRED1 was a clear case of a failing counter-framing strategy. The dominant crime frame was not »re-framable« and the opponents' attempts to establish their respective counter-frames did not succeed.

In contrast, in the conflict about the software patents directive is a good example of a successful re-framing strategy. The opponents of the directive did not concentrate their efforts in constructing a consistent counter-frame, but successfully shifted the original frame of the the commission (innovation, harmonization and competitiveness of European Economy) and effectively turned it on its head. The opponents reaffirmed the necessity of innovation and a competitive European economy, but claimed that the principal agents of the European IT sector would be SMEs and that only a directive that effectively forecloses the possibility of software patents would secure innovation. The course of the conflict represents a discursive struggle in which both sides tried to continuously re-frame this innovation frame to include their respective core interests. Both actor groups engaged in attempts of frame-bridging and frame-amplification. Attempts to construct genuine counter-frames remained largely marginal. In the software patents conflict we see less a struggle to establish a hegemonic frame but attempts to tie specific frames together to shift the overall meaning of the frame. We suggest to call this strategy »*frame-bundling*«. It tries to alter the meaning of an original frame by bundling it with other frames that shift the content of the whole package.

In the end, the opponents were more successful in this discursive struggle. Their master frame, that *innovation* and depended on the *competitiveness of SMEs* which could only be secured without software patents had the potential do mobilize a diverse constituency with a unified collective action perspective. Together with the *democracy* frame it mobilized many affected enterprises and individuals, resonated in the broader SME sector and – even more important – with many MEPs, who finally stopped the directive.

Our political claims analysis of the two IP conflicts supports our argument that the framing of the issue profoundly affects the outcomes of the decision-making process. It

suggests that under certain conditions re-framing strategies may be more successful than counter-framing strategies. With only two cases we are not able to fully qualify these conditions. But a number of factors seem to play a role:

1. Can the conflict be embedded in a larger normative conflict, e.g. the provision of health services vs. property rights?
2. Does the dominant frame offer hooks for frame bundling? Innovation can be an issue of many different things, but crime is usually just an issue of criminality – the question is only: What is defined as criminal?
3. High diversity of a possible coalition makes it more difficult to establish a counter frame as a master frame. A gradual re-framing strategy may be more successful in such a situation.

To qualify under which conditions different framing strategies are successful is certainly an area where further research is needed.

Last but not least our research also shows the limits of a political claims approach. Our parallel network analysis of the two conflicts reveals an actor network that is much bigger than the actors present in the newspaper reports. Some actors that obviously have played important roles in the two conflicts are completely absent in the press. A political claims analysis based on newspaper data can only reveal the public part of a political conflict. But besides this public level actors use other routes to influence decision-making processes. Only a combination of different approaches will give an accurate picture of the conflicts.

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