



Copyright reform and business model innovation: Regulatory propaganda at German music industry conferences



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ABSTRACT

Inspired by new digital technologies, diverse actors in cultural and creative industries propagate conflicting visions of how to adequately innovate – or rather preserve and strictly enforce – copyright-related business models, which has resulted in substantial amounts of regulatory uncertainty. Looking at a decade of regulatory discourse at industry events in the popular music industry in Germany, we investigate how these actors make sense of and strategically shape this uncertainty in the process of industry transformation. Our longitudinal argumentative discourse analysis reveals cycles of regulatory propaganda of two discourse coalitions that do not engage in debate, but aim to find support for competing business models among regulators and the public. Organizing, canceling, and participating in industry events are discursive strategies used effectively to transport their claims by both industry lobbyists and challenging actors, but industry incumbents are failing to use these sites for testing out and introducing new business models. We conclude that regulatory struggles, not least at industry events, mediate between disruptive technologies and business model innovation.

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1. Introduction

Recent technological developments, above all the Internet and file sharing software, have created uncertainty about whether extant copyright regulation and according business models will be sustainable in the future, particularly in the music industry [4,5,23,41]. During the 1990s, copyright-related regulatory struggles were fought out predominantly in transnational arenas such as the World Trade Organization (WTO) or the World Intellectual Property Organization (WIPO). Subsequently, debates and lobbying efforts shifted to national arenas, as the transnational treaties had to be built into national law. European countries are hereby expected to follow the EU Copyright Directive, passed by the European Union in 2001 as a step towards implementing the WIPO copyright treaty. Today, more

than ten years later, even large European countries such as Germany have not implemented all parts of the Directive and heated debates about copyright reforms continue.

While the lobbying efforts of major corporations and industry associations for a stronger protection of copyrights on a transnational level are already well understood (e.g. [24,40,50,65]), we know much less about the national regulatory struggles that followed. This is an important gap in both regulation and business studies, as the outcome of these national regulatory processes is indispensable for the development of viable business models in the music industry specifically (e.g. [6]) and in the intellectual property industries (e.g. [17,77]) more broadly.

In order to capture the political dimension of business model innovation that is largely missing in research on web-based business models (e.g. [31,83]), we define a business model as a new “system of interdependent activities that transcends the focal firm and spans its boundaries” [89], but explicitly include the societal level of organizational fields and accompanying regulatory issues [42] in this definition as well. This allows us to consider the free

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provision of cultural goods [55] pursued by an increasing number of actors not necessarily from the music industry, but from the wider field of copyright regulation as an alternative business model in our analysis and provides a bridge to recent studies on social or institutional innovations accompanying the technological ones in processes of industry transformation (e.g. [27,51]).

Empirically, we follow Hajer's [35] argumentative discourse analytical approach and study the discourse coalitions forming in the German popular music industry around the issue of copyright regulation between 2001 and 2010, the decade after the passing of the EU Copyright Directive. We investigate how different actors make sense of regulation alternatives in the light of old and potential new business models at industry events. Events such as conferences have recently been introduced as discursive spaces in organizational fields where central and peripheral field actors can come together and shape regulatory structures [38]. Convening at industry events may thus be a viable strategy for industry actors facing regulatory uncertainty in processes of industry transformation. In order to elaborate on our understanding of the regulatory and political dimension of business model innovation, we study the discursive struggles among industry incumbents and other field actors unfolding at German music industry events and ask: *How do different actors in a transforming industry address regulatory uncertainty in processes of business model innovation?*

We find, first, that regulatory debate is taking place increasingly at music industry fairs and festivals, venues that have not traditionally hosted conference sections. New events and event formats have been founded to provide discursive spaces for addressing regulatory uncertainty regarding copyright. Second, we find an ebbing and a growing intensity of regulatory debates depending on the perceived success of copyright-related business models over time. The dominant public narrative throughout our ten-year examination period has revolved around the threat posed by Internet file sharing and the call for regulation to protect existing business models, manifested in the lobbying efforts of core music industry actors to legally protect Digital Rights Management (DRM) technologies against circumvention [7,76]. As a reaction to these developments, a growing number of organizations and individuals have developed a counter-narrative, in which they depict industry incumbents as part of a problem rather than the solution to any copyright reform efforts. Without the backing of strong corporate support, this challenger coalition consisted (at least initially) mostly of startup companies, small online-only music distributors ("netlabels", see [30]), non-profit organizations such as Creative Commons [20], dissident or avant-garde artists and, later in the process, the newly founded pirate parties.² By advocating copyright reform and new business models that were compatible with new digital technologies such as peer-to-peer file sharing, these actors resemble social-movement-like market activists, or "market rebels" [70]. Rather than engaging in regulatory conversations [10] and

synthesizing new business models, however, the competing incumbent and challenging actor groups directed their claims mainly at the public and regulators. We thus observe cycles of conflicting regulatory propaganda fueled by recurring industry crises within the phases of industry evolution (e.g. [80,67]). The outcome of these regulatory struggles may eventually mediate the passing from one stage in the industry life cycle to the next.

The remainder of this paper is organized as follows: we introduce our theoretical perspective on business models, regulation, and the discursive spaces provided by industry events. Then we explain in more detail our research setting, the popular music industry in Germany, and outline our methodological approach, methods of data collection, and data analysis. We present our findings on overall changes in the music event landscape as well as the discourse coalitions forming over time before discussing our results on what we call cycles of regulatory propaganda and business model innovation.

2. Theoretical perspectives: Business models, regulation, and the role of discursive spaces

Over the last two decades, the difficulties of copyright regulation in accounting for new technological developments and enforcing certain parts of copyright such as the right to distribute music online have cast doubt on its functionality. In spite – or even because – of its repeated revisions (see, e.g. [53]), the accuracy of copyright as a regulatory basis for business models has been contested, leading to regulatory uncertainty among actors in copyright-related industries such as music, film, and publishing.

2.1. Business model innovation and regulatory uncertainty: A discursive perspective

In ideal terms, a central feature of regulation is the reduction of uncertainty for the actors within a given field by making the actions of others more predictable [13]. In an industry context, regulation is therefore both restricting and enabling, in that it prescribes a set of behaviors against which business models and paths of innovation can be developed. Consequently, uncertainty resulting from the absence, complexity, or ambiguity of regulation, i.e. regulatory uncertainty, is mostly considered to be problematic for corporate investment decisions [68,43]. In the field of environmental regulation, Engau and Hoffmann [25] even state that "regulatory uncertainty considerably constrains firms and can adversely affect their profitability [11] because the continuous preparation for, and the adjustment to, uncertain regulations absorb firm resources". From the perspective of corporate actors, regulatory uncertainty may therefore be defined as the "inability to predict the future state of the regulatory environment" [44].

As opposed to this predominantly negative view of regulatory uncertainty from an investment perspective, others point to the fact that uncertainty also leaves room for innovation. Jauch and Kraft [46], for example, argue that an uncertain environment might help actors to be more proactive and innovative [59,57,29]. In the history of information and communication technologies, business models based upon new technologies such as radio or cable television typically created and exploited regulatory uncertainty; often, innovative business

² The German Pirate Party is one of the strongest, holding seats in several municipal and state parliaments. See <http://governanceborders.com/2011/09/19/boarding-berlin-the-pirate-party-triumph-in-the-german-capital-faq/> [accessed November 29, 2011].

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