

There's more than Law in Controlling IP! From Low IP Regimes to Multimodal Copyright Governance

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This paper develops a multimodal concept of copyright governance. Building on the literature on low IP regimes, this concept does not privilege law ex-ante, but positions norms, discourses and technology as equally relevant modes of ordering and controlling the circulation of cultural goods. This allows to address the control/circulation-nexus raised in the CfP from an integrative, empirical perspective.

The literature on low IP regimes has proven that the absence of formal IP protection does not mean the absence of IP control: communities such as French chefs, comedians and magicians have developed their own set of rules delineating legitimate and illegitimate practices (Fauchart/van Hippel 2009; Oliar/Sprigman 2009). Building on this perspective, scholars have identified strategies to cope with leaky legal protection in more mainstream sectors such as fashion, TV formats and digital games (Sprigman/Raustiala 2012; Singh/Kretschmer 2012; Katzenbach et al 2016). But this applies not only to marginal spaces outside of formal IP protection. Qualitative studies on creative practices (Silbey 2014; Murray et al. 2014) substantiate the position that there is always more than law in framing and controlling the circulation of cultural goods: informal norms, discourses, economic rationales and the technologies underlying creative practices. These frames may align to copyright provisions, but in many cases they do not (Silbey 2014).

While there is empirical evidence for this position, a theoretical foundation to understand and investigate these phenomena within a systematic and comparative framework is still missing. This paper develops such a conceptual framework based on sociological institutionalism (SI). SI provides a theoretical background for showing that mutually related rights and obligations, and the distinctions between right and wrong, possible and impossible actions are not only constituted by law but also by normative orientations and cognitive framings. Building on Scott (2008), the paper suggests a framework with four modalities of copyright governance: (1) A *regulative dimension*, addressing the provision and enforcement of formal rules such as laws, court decisions, terms of services; (2) a *normative dimension* investigating the prevalent assumptions about legitimate and illegitimate behaviour in a specific community or sector; (3) a *discursive dimension* addressing the framings and debates on creativity, authorship and originality; and (4) a *technological dimension* that investigates the embodiment of affordances and rules in infrastructures, devices and algorithms relevant to creative work. The paper applies this framework to the governance of online platforms and to imitation and innovation in the games sector.

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Short Bio

Christian Katzenbach is a Senior Researcher at the Alexander von Humboldt Institute for Internet and Society (HIIG), Berlin. He is head of the Internet Policy and Governance research group and lead researcher of research program I “The Development of the Digital Society”. Christian studied media and communication, philosophy and computer science in Berlin, Madrid and Potsdam. From 2008-2012 he was a research associate and lecturer at the Institute for Media and Communication Studies at the Freie Universität Berlin where he also obtained his PHD with summa cum laude. In 2011, he contributed to the foundation of the HIIG as a new research centre promoting interdisciplinary Internet research. Christian’s research focuses on the interdependency between technology, communication, and governance.

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CV

Academic Positions

- Since 2017 Alexander von Humboldt Institute for Internet and Society,
Senior Researcher
- 2011-2016 Alexander von Humboldt Institute for Internet and Society,
Project Manager Research
- 2008-2011 Freie Universität Berlin, Institute for Media and Communication Studies
Research Associate and Lecturer
- 2003-2006 Social Science Research Centre, Berlin
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Education

- PhD, 2016, Media and Communication Studies, Freie Universität Berlin (summa cum laude)
- M.A., 2007, Media and Communication Studies, Philosophy, Computer Science,
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Thematic Research Interests

Copyright Law, Internet and Media Governance, Digital Transformations, Online
Communication, Discourses and Public Sphere

Selected Publications

- Epstein, D, Katzenbach, C. & Musiani, F. (Eds.) (2016). Doing internet governance:
practices, controversies, infrastructures, and institutions. Special Issue. *Internet
Policy Review*, 5(3).
- Katzenbach, C., Herweg, S. & van Roessel, L. (2017). Copies, Clones, and Genre Building.
Discourses on Imitation and Innovation in Digital Games. *International Journal of
Communication* 10, 838-859. doi: 1932–8036/20160005.

- Hofmann, J., Katzenbach, C. & Gollatz, K. (2016). Between coordination and regulation: Finding the governance in Internet governance. *New Media & Society*, doi: 10.1177/1461444816639975.
- Epstein, D., Katzenbach, C. & Musiani, F. (2016). Doing internet governance: how science and technology studies inform the study of internet governance. *Internet Policy Review*, 5(3), 1-14.
- Pentzold, C., Katzenbach, C. & Fraas, C. (2014). Digitale Plattformen und Öffentlichkeiten mediatisierter politischer Kommunikation [Digital Platforms and Publics of mediated political communication]. *Aus Politik und Zeitgeschichte* 14 (22/23), 28-34.
- Hofmann, J., Katzenbach, C. & Münch, M. (2013). Kulturgütermärkte im Schatten des Urheberrechts. Zur Pluralität praktizierter Regelungsformen [Markets for cultural goods in the shadow of copyright law. The plurality of practiced regulation], *Aus Politik und Zeitgeschichte* 41/42, 39 – 45.
- Katzenbach, C. (2013). Media Governance and Technology. From 'Code is Law' to Governance Constellations», in: Monroe Price, Stefaan Verhulst und Libby Morgan (Eds.), *Routledge Handbook of Media Law*, Routledge, pp. 399-418.

Selected Talks

- Katzenbach, C. (2016). Regulations, Norms, Discourses and Technology: An Integrated Governance Perspective for Media and Communication Studies. *ECREA 2016 – 6th European Communication Congress*. Prague, Czech Republic: 09.11.2016.
- Katzenbach, C. (2016). Continuous Ordering and Algorithmic Translation: How STS opens up and re-assembles Internet Governance. *Internet Research 16. Association of Internet Researchers*. Phoenix, USA: 23.10.2015.
- Katzenbach, C. & van Roessel, L. (2015). Playing without Rules? Regulating Imitation and Innovation in the Games Industry. *European Policy for Intellectual Property (EPIP) 2015*. University of Glasgow / CREATE. University of Glasgow, Glasgow, UK: 03.09.2015.
- Hofmann, J., Katzenbach, C. & Gollatz, K. (2014). Between Coordination and Regulation: Conceptualizing Governance in Internet Governance. *GigaNet, 9th Annual Symposium*. Istanbul, Turkey: 01.09.2014.
- Van Roessel, L. & Katzenbach, C. (2014). Negotiating the Boundaries of Game Imitation: From Pong to Ridiculous Fishing. *Annual Conference: DiGRA 2014*. Snowbird, Utah, USA: 06.08.2014.
- Katzenbach, C. (2014). Technologies in Digital Media Regulation. A Governance Perspective. *Kick-Off Workshop: "Broadcasting in the Post-Broadcast Era: Policy, Technology, and Content Production"*. University of Tampere, Finland: 29.03.2014