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# Conflicts in the Knowledge Society

The Contentious Politics of Intellectual Property

Sebastian Haunss



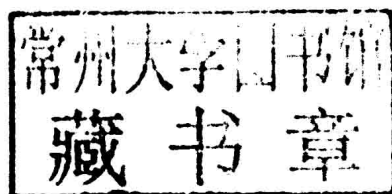
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## Conflicts in the Knowledge Society

In *Conflicts in the Knowledge Society*, Sebastian Haunss demonstrates how conflicts related to the international system of intellectual property have resulted in new cleavages in the knowledge society. He argues that new collective actors have emerged from these conflicts with the ability to contest the existing dominant order. With a focus on political opportunity structures, collective action networks and framing strategies, he combines a theoretical discussion of social change in the knowledge society with empirical analyses of four recent developments: software patents in Europe, access to medicines, Creative Commons licensing and Pirate Parties.

SEBASTIAN HAUNSS is a senior researcher in political science at the University of Bremen, where his research interests are social conflicts and political mobilizations in the knowledge society, changes in political and economic legitimacy, social networks and social movements.

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## Acknowledgements

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The plan to write this book grew out of a puzzle: being aware of the relative rarity of coordinated political protest at the European level (Imig and Tarrow 2001), I was wondering how, of all things, software patents were able to galvanize a truly European protest mobilization and to create a political conflict of surprising scale. How was it possible that an issue that seemed to be the prototype of arcane was able to mobilize hundreds of thousands on the internet and thousands, in more traditional forms of protest, on the streets of Brussels, Strasbourg and other European cities?

When I started to take a closer look, first at the software patents conflict, and then at a broader range of conflicts which were developing around issues of intellectual property rights, only a handful of social scientists had begun to explore the politics of intellectual property, and their main focus was the inclusion of these rights into international trade agreements. But it turned out that a growing number of junior and some senior scholars with a variety of disciplinary backgrounds had also become aware of the growing politicization of intellectual property, and the ongoing exchange with them in a series of conferences and workshops sponsored by the European Consortium for Political Research (ECPR), the American Political Science Association (APSA) and others, provided the intellectual stimulation to proceed with my project. Some of them have read and discussed single chapters or even large parts of this book's manuscript in its various stages of production. For this, I'm most grateful to (in alphabetical order) Jan Biesenbender, Thomas Eimer, Jeanette Hofmann, Katharina Holzinger, Kai Huter, Lars Kohlmorgen, Ingrid Schneider, Volker Schneider, Susan Sell and Peter Yu. Their feedback and critical comments have been invaluable to iron out a number of mistakes and to unentangle my argumentation.

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and websites and coded, sorted and processed this data, allowing me to work with it in meaningful ways. I'm also grateful to my interview partners who openly shared their knowledge and their views about the conflicts this book is about, and who provided me with background information that only longtime participants in these conflicts have. A special thank you goes to Sigrid Quack and Leonard Dobusch for sharing – in a truly open access spirit – their interview transcripts with core activists of the Creative Commons project.

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## Abbreviations

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|         |  |
|---------|--|
| A2K     | Access to knowledge  |
| ACT UP  | AIDS Coalition to Unleash Power  |
| ACTA    | Anti-Counterfeiting Trade Agreement  |
| ACTN    | Advisory Committee for Trade Negotiations                                    |
| AEL     | Association Electronique Libre   |
| AFUL    | Association Francophone des Utilisateurs de Linux et des Logiciels Libres    |
| AIDS    | Acquired immune deficiency syndrome  |
| AIPPI   | International Association for the Protection of Intellectual Property        |
| ALDE    | Alliance of Liberals and Democrats for Europe                                |
| ANVISA  | Agência Nacional de Vigilância Sanitária                                     |
| ARV     | Antiretroviral   |
| ASCAP   | American Society of Composers, Authors and Publishers                        |
| BDI     | Bundesverband der Deutschen Industrie  |
| BGH     | Bundesgerichtshof  |
| BITKOM  | Bundesverband Informationswirtschaft, Telekommunikation und neue Medien      |
| BA      | Bundeskriminalamt  |
| BMGF    | Bill and Melinda Gates Foundation  |
| BMS     | Bristol-Myers Squibb   |
| BSA     | Business Software Alliance   |
| BUKO    | Bundeskoordination Internationalismus  |
| CAFC    | Court of Appeals for the Federal Circuit                                     |
| CC      | Creative Commons   |
| CCC     | Chaos Computer Club  |
| CCTV    | Closed circuit television  |
| CEA-PME | Confédération Européenne des Associations de Petites et Moyennes Entreprises |
| CEEC    | Central and Eastern European countries                                       |



|         |   |
|---------|---|
| CII     | Computer-implemented inventions   |
| CIPIH   | Commission on Intellectual Property Rights,<br>Innovation and Public Health |
| CompTIA | Computing Technology Industry Association                                   |
| COREPER | Committee of Permanent Representatives                                      |
| CPTech  | Consumer Project on Technology  |
| CSIR    | Council of Scientific and Industrial Research                               |
| CSO     | Civil society organization  |
| CULT    | European Parliament Committee on Culture and<br>Education                   |
| ddI     | Didanosine (2',3'-dideoxyinosine)   |
| DDOS    | Distributed denial of service   |
| DG      | Directorate General   |
| DRM     | Digital rights management   |
| EC      | European Commission   |
| EDRi    | European Digital Rights   |
| EEA     | European Economic Area  |
| EEUPC   | European and EU Patents Court   |
| EFA     | European Free Alliance  |
| EFF     | Electronic Frontier Foundation  |
| EFPIA   | European Federation of Pharmaceutical Industries<br>and Associations        |
| EGA     | European Generic Medicines Association                                      |
| EICTA   | European Information and Communications<br>Technology Industry Association  |
| ENA     | École Nationale d'Administration  |
| EP      | European Parliament   |
| EPC     | European Patent Convention  |
| EPO     | European Patent Office  |
| EPP-ED  | European People's Party-European Democrats                                  |
| ESC     | Economic and Social Council   |
| EU      | European Union  |
| FFII    | Foundation for a Free Information Infrastructure                            |
| FIAR    | Forum for Interamerican Research  |
| F/OSS   | Free/Open source software   |
| FSFE    | Free Software Foundation Europe   |
| FTA     | Free trade agreement  |
| GATT    | General Agreement on Tariffs and Trade                                      |
| GDP     | Gross domestic product  |
| GFDL    | GNU Free Documentation License  |
| GNU     | GNU's Not Unix  |

|            |   |
|------------|---|
| GphA       | Generic Pharmaceutical Association  |
| GPL        | General Public License  |
| GPO        | Government Pharmaceutical Organization  |
| GUE/NGL    | Confederal Group of the European United Left/<br>Nordic Green Left                        |
| HAART      | Highly active antiretroviral therapy  |
| HAI        | Health Action International   |
| Health GAP | Health Global Access Project  |
| HIV        | Human immunodeficiency virus  |
| ICTSD      | International Centre for Trade and Sustainable<br>Development                             |
| IFPI       | International Federation of the Phonographic Industry                                     |
| IFPMA      | International Federation of Pharmaceutical<br>Manufacturers & Associations                |
| IGWG       | Intergovernmental Working Group on Public Health,<br>Innovation and Intellectual Property |
| IIPA       | International Intellectual Property Alliance  |
| INGO       | International non-governmental organization   |
| INPI       | Instituto Nacional da Propriedade Industrial  |
| IPC        | Intellectual Property Committee   |
| IPR        | Intellectual property right   |
| ISP        | Internet service provider   |
| ITRE       | Committee on Industry, Research and Energy  |
| JURI       | Committee on Legal Affairs  |
| KEI        | Knowledge Ecology International   |
| MEP        | Member of the European Parliament   |
| MIT        | Massachusetts Institute of Technology   |
| MSF        | Médecins Sans Frontières  |
| NGO        | Non-governmental organization   |
| NHSO       | National Health Security Office   |
| NIH        | National Institutes of Health   |
| OECD       | Organisation for Economic Co-operation and<br>Development                                 |
| PCT        | Patent Cooperation Treaty   |
| PhRMA      | Pharmaceutical Research and Manufacturers of<br>America                                   |
| PLWHA      | People living with HIV/AIDS   |
| PMA        | South African Pharmaceutical Manufacturers'<br>Association                                |
| PPI        | Pirate Parties International  |
| PSE        | Party of European Socialists  |

|         |   |
|---------|---|
| QUNO    | Quaker United Nations Office  |
| R&D     | Research and development  |
| RIAA    | Recording Industry Association of America   |
| SME     | Small and medium-sized enterprises  |
| SMO     | Social movement organization  |
| SPLT    | Substantive Patent Law Treaty   |
| SUS     | Sistema Único de Saúde  |
| TAC     | Treatment Action Campaign   |
| TPN+    | Thai Network for People living with HIV/AIDS  |
| TRIPS   | Agreement on Trade-Related Aspects of Intellectual Property Rights                          |
| TWN     | Third World Network   |
| UEAPME  | Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises                      |
| UK-PTO  | UK Patent and Trademark Office  |
| UN      | United Nations  |
| UNAIDS  | Joint United Nations Programme on HIV/AIDS  |
| UNCTAD  | United Nations Conference on Trade and Development  |
| UNICE   | Union of Industrial and Employers' Confederations of Europe                                 |
| UNITAID | International facility for the purchase of drugs against HIV/AIDS, malaria and tuberculosis |
| USTR    | United States Trade Representative  |
| VCR     | Videocassette recorder  |
| WHA     | World Health Assembly   |
| WHO     | World Health Organization   |
| WIPO    | World Intellectual Property Organization  |
| WTO     | World Trade Organization  |
| ZVEI    | Zentralverband Elektrotechnik- und Elektronikindustrie                                      |

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# 1 Introduction

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On 22 December 1999, about 100 people protested in front of the Thai Ministry of Public Health building demanding that the authorities grant a compulsory licence for ddI, a widely used antiretroviral HIV/AIDS drug (Limpananont et al. 2009: 146). This was the beginning of a campaign that seven years later mobilized 10,000 people during protests against the US-Thailand Free Trade Area in which the question of compulsory licences and access to medicines played an important role, and which became part of a global mobilization for access to essential medicines (Krikorian 2009). A couple of months earlier, on 11 February 1999, eleven people met in a backroom of the restaurant Rhaetenhaus in Munich to found FFII, the Federation for a Free Information Infrastructure (FFII 1999). This NGO – created with minimal resources and maximal commitment – grew in the next ten years to 850 members and 100,000 supporters, has chapters in twenty European countries and spearheaded the campaign that in 2005 stopped the introduction of software patents in Europe (Eckl 2005; Eimer 2007; Haunss and Kohlmorgen 2009, 2010). Also at about the same time a small group of lawyers from US Ivy League law schools started to think about alternatives to the current copyright regime, leading to the establishment of the Creative Commons project in 2001 (Dobusch and Quack 2008).

What do these seemingly unrelated stories have in common? They are examples of mobilizations that question the current regimes governing intellectual property (IP). The Thai AIDS activists had realized that the existence of a seemingly distant international treaty on ‘Trade-Related Aspects of Intellectual Property Rights’ (TRIPS) was hindering their access to the medication needed to keep the infection at bay, at prices they could afford. The software programmers, entrepreneurs, computer geeks and civil liberties activists had realized that the seemingly arcane matter of software patents was affecting the viability of their business models and the ability to create free and open software like Linux that today drives major parts of the internet infrastructure.



And the university-based lawyers had realized that the current copyright regime was effectively closing access to ever larger parts of the knowledge produced inside and outside academia.

The first two cases are examples of IP mobilizations from below. Groups and individuals without formal education in patent or copyright law started to join the game that was until then almost exclusively played by specialized lawyers and officials working in the relevant IP bureaucracies (patent, copyright, trademark offices and the like). In the third case IP specialists developed a project to establish an alternative to the existing copyright framework that quickly reverberated far beyond the legal community, and now involves individuals with various professional backgrounds from many parts of the globe.

The cases are just three examples in a series of similar mobilizations. The struggles against ‘biopiracy’, i.e. the private appropriation of traditional (indigenous) knowledge (Wullweber 2004), the conflicts about file-sharing in peer-to-peer networks (Krömer and Sen 2006), the coming-together of the access to knowledge (A2K) movement (Krikorian and Kapczynski 2010) and the advent of Pirate Parties in various European countries (Demker 2011) address similar and related issues. Obviously in the past fifteen years a number of conflicts have developed which challenge the normative and institutional frameworks that regulate how knowledge is produced, appropriated and used.

### 1.1. Why now?

The institutions that govern intellectual property are not particularly new. The Berne Convention for the Protection of Literary and Artistic Works, which governs copyrights and related rights, came into existence in 1886 and was last revised in 1971; the Paris Convention for the Protection of Industrial Property, which governs patents, trademarks and designs, dates back to 1883; and even the Agreement on Trade-Related Aspects of Intellectual Property Rights, which is often seen as the most important recent change in IP governance, was signed back in 1994. Intellectual property rights are obviously not a new political issue. They have been around internationally for more than a century and for much longer periods in national legislations.

But despite this long history, conflicts like the ones mentioned above are relatively new. Obviously there was no timeless consensus about the merits of strong IP rights among states, within national administrations, or in the scholarly community. The tension between strong patent rights and anti-trust legislation, for example, led to several shifts in US IP policies in the twentieth century. The US Supreme Court decision in