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Published online: 21 Sep 2020.

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Power to the people? Evaluating the European Commission's engagement efforts in EU copyright policy

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ABSTRACT

This paper asks to what extent the European Commission's stakeholder participation model takes into account non-expert citizen contributions in policy processes pertaining to copyright. In theory, the increasing scale of citizen engagement in stakeholder consultations on copyright could help address the EU's democratic deficit. The paper analyses the European Commission's consultation processes in copyright policy across the Barroso 1&2 and Juncker Commissions (2004–2019). It documents the scale and the type of stakeholder involvement in public consultations. Through expert interviews and a survey, the paper gives critical insight into stakeholders' perception of the Commission's consultation practices and citizens' role in policymaking. It concludes that the Commission is inclusive of different types of stakeholders, but casts doubt on the (perceived) motivation and appropriateness of its stakeholder participation model for non-expert citizens. The paper thus sheds light on the attempts and the struggle to engage with citizens in a digital age.

1. Introduction

The controversial political process that led to the adoption of the Directive on Copyright in the Digital Single Market (DSM Directive, Directive (EU) 2019/790) demonstrates the popularity of copyright policy and reveals changing patterns of participation. Particularly interesting in our view is the rise in citizen participation in this policy field.

The digital revolution has exasperated challenges within copyright, linked, amongst others, to new uses of protected material (such as streaming and sharing of content), liability of online service providers, and rights management. It has brought this policy field closer to citizens, who enjoy wider access to and use of creative content, but due to copyright enforcement, have also come to fear loss of fundamental rights. As one might imagine, citizens' viewpoints have not often been in line with European Commission (EC) proposals. Most notably, the European Parliament (EP) rejected the Anti-Counterfeiting Trade Agreement (ACTA) in 2012 after social mobilisation and citizen protests arose across

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Europe and the United States (Dür and Mateo 2014; Matthews and Žikovská 2013; Meyer and Vetulani-Cęgiel 2017).

Citizen contestation to copyright at a European level fits within a wider context of differing, even opposing, ideas and interests on the need for strong property rights to incentivise creativity (see e.g. Benkler, 2006; Gillespie 2007; Lessig 2002, 2004; Yu 2004). Inherent to property rights is a balance that needs to be struck between exclusive rights for the owner and exceptions and privileges for the user (Davies 2002). When the balance tips in favour of either party, power struggles arise. Assessments of whom are currently favoured differ greatly: the architecture of the Internet encourages widespread distribution of copyrighted content, yet the rights granted to owners have never been stronger. Copyright policy over the years has thus been marked with fierce debates (e.g. Farrand 2014; Horten 2013; Littoz-Monnet 2006; Meyer 2017; Vetulani-Cęgiel 2014). Free and open software movements and digital rights organisations have successfully politicised the most draconian of policy proposals and mobilised citizens to protest globally (Haunss and Kohlmorgen 2010; Mercea and Funk 2016; Rone 2018).

Within this context of public debates surrounding copyright policy in last years, this article focuses on the European Commission's efforts to engage citizens in copyright policy processes. The EC recognises citizens in its categories of stakeholders. In its Stakeholder Consultation Guidelines (SCGs), it makes inclusive consultation mandatory, which could constitute a powerful tool for citizens to influence the political process (European Commission 2015). The Guidelines, set within the Better Regulation Package, aim at making the policymaking processes more transparent and balanced. In theory, citizen engagement could help address the EU's democratic deficit and the legitimacy of the policymaking process. We analyse these engagement efforts through the lens of the European Union (EU)'s democratic governance, and in particular consultation patterns (Bunea and Ibenskas 2017; Kohler-Koch and Finke 2007; Kohler-Koch and Quittkat 2013; Quittkat 2011; Quittkat and Kotzian 2011; Saurugger 2008).

The wider literature on EU democratic governance explains different aspects related to political engagement at the EU level. It, before all, draws attention to the policy context within which European institutions have adopted subsequent tools to engage stakeholders in EU policymaking. In this respect it points toward the EU democratic deficit and the (lack of sufficient) transparency as concerns EU policymaking, which among other factors, induces political distrust (Saurugger 2008, 2010). It also pays attention to different aspects of political participation and governance, such as the concept of interest representation (Kohler-Koch 2010; Kohler-Koch and Quittkat 2009), categories of stakeholders and applied strategies (Binderkrantz 2008; Dür 2008; Dür and Mateo 2013; Klüver 2013), institutional participation tools, such as consultation regimes (Bunea 2017; Quittkat 2011; Quittkat and Kotzian 2011) and the European Citizens' Initiative (De Clerck-Sachsse 2012), or the role of public opinion (Rasmussen, Mäder, and Reher 2018; Rasmussen and Reher 2019).

We complement literature on participatory democracy and (online) governance by focusing on citizens' role in EU policy formulation, providing further empirical evidence to the changing patterns of engagement and political participation in an online environment, and revealing continued issues in engaging citizens in policymaking – in a field that has grown in salience over the years. In particular, we ask to which extent the Commission integrates non-expert citizens opinions into its stakeholder consultation model pertaining

to EU copyright. Our analysis shows that *EC engagement efforts towards a more inclusive consultation process have provided an institutional window of opportunity for citizen mobilisation*. We also assume, however, that *the European Commission, being a political actor, by making the policymaking process more inclusive and transparent, seeks to gain input legitimacy*. We evaluate the longitudinal stakeholder engagement efforts of a traditionally technocratic body geared towards expert input (usually delivered by organised stakeholders). In this manner, we shed further light on the attempts and the struggle to engage with citizens in a digital age.

The article is structured as follows: Section 2 explains the theoretical and policy context of evolving EU stakeholder engagement in a digital environment, while Section 3 documents the methodology and data selection of our analysis. Next, Section 4 discusses the results of our longitudinal analysis of the consultation tools used in EU copyright policy across the Barroso 1&2 (2004–2014) and the Juncker (2014–2019) Commissions, powerfully demonstrating that citizens have seized the opportunity to participate in policymaking. The article would be incomplete however, without Section 5, which summarises the results of our expert interviews and survey evaluating the Commission's engagement efforts. While stakeholders acknowledge the shift in consultation practices, their negative perceptions on use of stakeholder input and easy manipulation of citizens indicate that power is not (yet) with the people.

2. EU stakeholder engagement in a digital context

The European Union is portrayed as being distant both geographically and politically from European citizens. National governments can quite easily blame Brussels for unpopular decisions, even though national interests are represented both in the Council and the Parliament (see e.g. León, Jurado, and Garmendia Madariaga 2018). National media's coverage of European politics differs across countries and outlets, but is secondary to national and local events (Curran et al. 2009). As direct representative of European citizens, the European Parliament has received increasing clout, with the latest expansion of powers obtained through the Lisbon process. Yet the sustained low electoral turnout for the EP has proved a rather weak representation of citizens' interests. This lack of a shared European identity, incomprehension of European affairs and low levels of participation in its political processes point toward the perceived democratic deficit of the EU.[1]

There is no lack of proposed solutions to reduce the EU's democratic deficit. Most important to this article are those focusing on stakeholder engagement. The neofunctionalist approach that organised stakeholders could transfer the loyalties from the national to the European level and spill-over the European idea (Haas 2004) has not resulted in forming a European identity (Greenwood 2011). Indeed, it has been noted that not all organised stakeholders engaged in EU policy processes strive to foster broad citizen participation (De Clerck-Sachsse 2012) and direct communication down to the grassroots level is marginal (Kohler-Koch 2010). Gradually, the Commission turned to reforming European governance (Kohler-Koch and Finke 2007; Saurugger 2010) by 'opening up the policymaking process to get more people and organisations involved in shaping and delivering EU policy' (European Commission 2001).

The European Commission initiated a range of reforms aimed at structuring relations with stakeholders. In particular, the White Paper's 'good governance' model (European Commission 2001, pp. 10–11) set out principles of transparency, openness, accountability, effectiveness and coherence for EU governance, which the Commission developed (2002, pp. 15–22) into a set of standards concerning the consultation and dialogue with 'interested parties' in the course of the policymaking process, which refers to clear content of the consultations, group targeting, adequate awareness-raising publicity, and the time-frames.

A decade later, the Commission launched actions leading to the review of its consultation policy (European Commission 2010, 2012a, 2014).[2] This resulted in the Better Regulation Package and new Guidelines on Stakeholder Consultation (SCGs) (European Commission 2015, Chapter VII). The SCGs aim to improve the application of established principles and standards *a.o.* by making public online consultations mandatory,[3] strengthening their visibility, structuring the content analysis, and highlighting stakeholder mapping. By 'stakeholders' the Commission understands all third parties who want to contribute to the policymaking, including citizens (European Commission 2015, pp. 73–74).

Through these actions, the EC aims to improve the quality of the EU's policy input and output (Scharpf 1999), to the betterment of EU governance (Bunea and Ibenskas 2017), also enabling the Commission to gain legitimacy (Bunea 2017, 2019, 2020).[4] The shift toward direct citizen engagement should not be underestimated. The Commission has traditionally been perceived as a technocratic institution, reliant on external expertise, provided by organised stakeholders.[5] Here, at least in the policy documents, we notice that non-expert citizens[6] have been sought and welcomed to become involved in stakeholder consultation processes.

In this context, it is important to emphasise the facilitating role that digital technology can play. Digital media has eased interaction with and participation of citizens in politics, whether at national or European level (Lindner, Aichholzer, and Hennen 2016). For stakeholders, the digital context provides opportunities to coordinate policy positions, build coalitions and mobilise citizens. In copyright policy, campaigning efforts of digital rights organisations have been significant.[7] For political institutions, myriad digital communication channels are available from online news coverage and political campaigns to direct citizen interaction on social media and dedicated engagement platforms. A primary tool used by the EC to engage citizens is online public consultations (Quittkat 2011). Through its stakeholder engagement strategy and digital means, the EC pushes the EU governance model towards a more inclusive one. In copyright policy, which is marked by an asymmetry of interest representation (Vetulani-Cęgiel 2015a) and intense lobbying in exclusive consultations,[8] this opens a window of opportunity for citizens to be heard.

Direct and digital communication with citizens could thus reduce the democratic deficit. However, this is far from a given (Davesa and Shahin 2014; van Dijk and Hacker 2018). Policymaking that invites the viewpoints of many stakeholders to an open public debate is good for raising awareness (Binderkrantz 2012), but this in itself does not lead to empowered citizens or better policymaking. Many examples can be given where the process serves as 'window dressing', providing an additional venue for organised lobbying (Donders, Van den Bulck, and Raats 2019) and failing in 'inclusiveness (of actors and

discourses) and consequentiality' (Buxton 2019; Schouten, Leroy, and Glasbergen 2012). Effective multistakeholder models require scrutiny on matters, such as how rules of participation and engagement are structured, whether a mandate for joint decision-making is provided, and which accountability mechanisms are in place (Bäckstrand 2006; Drieghe et al. 2020; Raymond and DeNardis 2015).

In 2018 the Commission received the highest score for stakeholder engagement[9] in the OECD Indicators of Regulatory Policy and Governance (iREG) (OECD 2018). At the end of the Juncker Commission, the EC took stock of its Better Regulation policy since 2015. In terms of stakeholder engagement, the 'relatively low level of knowledge about the opportunities to participate in the Commission's policymaking' (European Commission 2019, 9) was recognised as an issue. The EC's evaluation document contained little reflection on whether these engagement channels destined primarily for organised interests with high expertise in the policy field, although accessible, are comprehensible to the interested yet non-expert citizen.

In sum, EU stakeholder engagement seeks to address its perceived democratic deficit through inclusive and transparent consultation models, with an emphasis on increasing the legitimacy of EU policymaking. However, it is questionable whether this brings citizens closer to Europe (Kohler-Koch and Quittkat 2013). Indeed, EU stakeholder engagement illustrates the hybridity and tensions between representative and participatory democracy well (Greenwood 2011). It has never easier to mobilise or involve citizens in this digital context, and as such an institutional window of opportunity for citizen participation has been opened, yet it is unclear how the Commission integrates and interacts with non-expert interests in policymaking. If one entertains the metaphor, citizens are currently stuck in the digital gap between representative and participatory democracy.

3. Methodological remarks

We conducted a longitudinal analysis and evaluation of stakeholder engagement in copyright policy within the Barroso 1&2 (2004–2014) and the Juncker (2014–2019) Commissions. As we analysed the stakeholder consultation regime and the participation in EC consultations, we took the definition of stakeholder adopted by the Commission that 'stakeholders' are all third parties who want to contribute to the EC policymaking, including citizens.

For Section 4, the analysis encompassed three consultation tools, *i.e.* public consultations (written, incl. online), public hearings and stakeholder dialogues.[10] Our choice of consultation tools resulted from, first, the Commission's common use of these consultation types, and second, data availability (which made us exclude expert groups, for which data from early 2000 were incomplete). All in all, among the 48 EC consultations we traced within the three Commissions, we identified 27 of a written and public character (public consultations), 8 public hearings and 13 stakeholder dialogues. Next, in order to analyse the stakeholder participation, and having in mind the focus on inclusiveness in the new SCGs, we moved to detailed analyses of public consultations.

All information about the consultation tools and the participation scale were retrieved from the official EC websites. We traced web-pages concerning the particular copyright policy area (managed by different Commission units), dedicated consultation websites

(also those already archived), as well as various reports from consultations. Due to systemic archiving of Commission content, some online data were not available. Moreover, information across various copyright policies was presented in diverse ways, as each Commission unit has had its own style of informing about its policies. These differences mainly refer to stakeholder categories, and the presentation of consultation results (*e.g.* we found information on contributions in number of replies and in percentage; the division to the registered and non-registered ones, authorised to be published and not authorised, public or anonymous). For reasons of data availability and comparability, we divided the consultation participants into two broad categories: individual and non-individual contributors.

For Section 5, we based ourselves on experts' opinions collected via interviews (2013) and a follow-up survey (2019), which allowed us to cover both the Barroso and the Juncker Commissions. The 2019 survey consisted of 2 rounds (May–July) and aimed at getting opinions of key actors actively involved in EU copyright policymaking. We requested the parties to assess the EC stakeholder engagement practices and (f)actors that contributed to the recent adoption of the Copyright in the Digital Single Market Directive (2016/0280(COD)). The questions were formulated to match inquiries made in 2013. In the 1st round of the survey, of the 23 EU stakeholders interviewed in 2013, 19 were contacted (after verifying that they are still active in the field), and 11 made a contribution. In the 2nd round, we contacted parties, both directly, and by spreading the information about our research with help of four following organisations: EURACTIV, 1709 Copyright Blog, BEUC, and DIGITALEUROPE, and we got 12 additional answers. All in all, we received 23 replies in 2019: 21 EU stakeholders, of which: 13 work for the creative sector, 5 represent the tech industry, 3 respondents are members of civil society (including academia), and 2 respondents (out of 5 contacted) sharing the views from the perspective within the EC (1 being an EC official, and 1 being an official formerly).

4. Tracing the Commission's engagement efforts in copyright policy

4.1 Evaluating the consultation practices in the copyright area

The European Commission uses a variety of tools when formulating policies and drafting copyright legislation. To have a notion of the scope of the consultation methods, Figure 1 presents an overview of public consultations, public hearings, and stakeholder dialogues opened by the EC in 2004–2019.
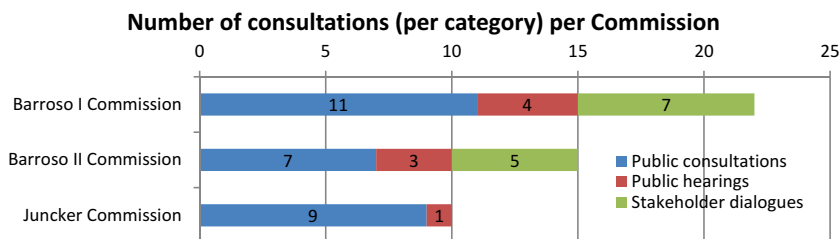

Figure 1. Number of consultations per category per Commission. Source: Own research on the bases of information retrieved from EC websites related to copyright.

As we see (Figure 1), only the number of public consultations is comparable across the three Commissions. In the first two Commissions, the consultation processes are much more differentiated, with a significant use of other consultations tools. It is worth noting, however, that the consultation processes in the Barroso 1&2 Commissions, run by different EC units, were quite diverse across policy areas. For instance, in the audiovisual sector, in 2004–2014, the Commission ran four public consultations, three stakeholder dialogues and another two public hearings, whereas in the area of copyright management the Commission only conducted 3 public consultations, one stakeholder dialogue and one public hearing. In turn, on copyright enforcement, the Commission organised a comparable number of consultations (four public consultations, four advisory groups and one public hearing) but in a shorter period (2008–2011). Another example constitutes the policy concerning exclusive rights with two parallel processes. While one consultation process (on the copyright term extension), run in 2006–2007, was based mainly on bilateral consultations and studies, another one (on orphan works), run in 2006–2010, included three stakeholder dialogues, one public consultation and one public hearing (Vetulani-Cęgiel 2015b). The analysis of the different consultation exercises allows for a general statement that the EC willingly opens stakeholder dialogues and public hearings when copyright debate relates to sectoral issues, while stakeholder input on larger copyright frames occurs mainly through public consultations.

The way in which a consultation process is run significantly impacts stakeholder engagement opportunities. A big differentiation in the consultations brings, however, risks of drawbacks in the policymaking. At the time of Barroso 1&2 Commissions, *i.e.* before the new SCGs set in 2015, Commission consultations were based on the 2002 principles and standards while running the consultation processes. Nevertheless, not all of established rules were followed. In copyright policy, the most important deficits in terms of the established good governance model concern the application of the principle of 'coherence' (contradictory interests of different EC units), 'wide participation' (accent on exclusive consultations), 'openness and accountability' (susceptibility to core demands of certain stakeholders), and maintaining the 'target groups' standard (lack of balanced interest representation) (Vetulani-Cęgiel 2015b). In sum, the consultation process in copyright (both in relation to the overall strategy and individual consultations) was seen as unclear. While this is not problematic for parties pushing for specific provisions, it causes problems for opponents to follow, which has practical implications on stakeholders' engagement.

This changed, however, with the Juncker Commission. The overall scope of consultations in this Commission significantly differs from those conducted before. The practice shows that with the new SCGs, the EC prefers open public consultations over other tools. Although with the new guidelines, the EC would be able to prevent (at least some) deficits that occurred during the Barroso 1&2 Commissions in relation to applying good governance principles and standards, the Juncker Commission seems to have resigned almost entirely from organising exclusive consultations (stakeholder dialogues and public hearings). As a result, we observe a shift from the policymaking based on deliberations in narrow fora consisting of stakeholders (being representatives of interest groups and considered as experts) towards a more inclusive public debate.
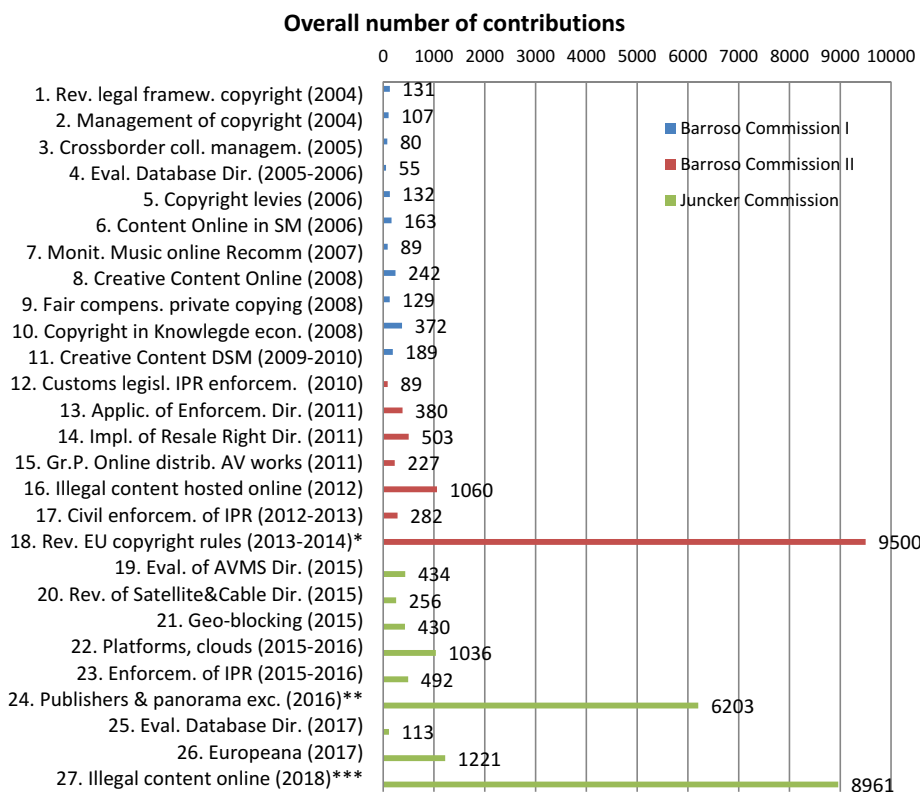
Overall number of contributions

Figure 2. Number of stakeholders' contributions in public consultations per Commission. Source: Own research on the bases of information retrieved from EC websites related to copyright.*Contributions were gathered i.a. within the following initiatives 'Fix copyright!', 'Creators for Europe' and 'Copywrongs.eu'; **2791 of contributions were gathered by the 'Fix copyright' website; *** the EC questionnaire was widely disseminated i.a. through the EC's website, newsletter, social media and targeted consultations.

4.2 Citizens' (new) participatory dimension

In order to see the scale of participation, we focus on stakeholders' participation in 27 public consultations on copyright that were run in the period 2004–2019 (Figure 2).

Looking at Figure 2 we can see an increasing number of contributions through the years. For instance, while in Barroso's 2nd Commission, two (out of seven) consultations collected more than 1.000 replies, in Juncker's Commission this was the case of nearly half of consultations (four out of nine). Moreover, in three cases, public consultations gathered a surprisingly high number of contributions (between 6.200 and 9.500). This was quite likely due to the fact that replies were also collected through digital rights organisations (such as *'Fix copyright!'*), as well as due to a wide dissemination of information on those consultations (using *e.g.* social media channels). Nevertheless, even if we omit those three consultations (treating them as something beyond the regular consultation practice), still the overall number of contributions submitted to public consultations increases system-atically: while in Barroso's 1st Commission, the average number of contributions was at the

rate of 150, in its 2nd Commission, it was 423 replies per consultation, and in the Juncker Commission – 568. We also observe that public consultations on the evaluation of already existing directives are less popular than those designing new legislations. The public consultations that attract most contributions by stakeholders (above 1.000) are those pertaining to illegal content online (2012, 2018), as well as those related to the recent copyright reform, *i.e.* on the review of copyright rules (2013–2014), on platforms and clouds (2015–2016), and on the new copyright for publishers and 'panorama exception' (2016). All in all, this shows an increasing popularity of online consultations. It is worth reminding, also, that in the Juncker Commission, the scope of consultation tools was much narrower comparing to the Barroso 1&2 Commission stakeholders (one public hearing, no stakeholder dialogues).

Having in mind an increasing stakeholder engagement, we now move to categories of stakeholders taking part in public consultations. Considering the citizen focus of this article, we differentiate between 'non-individual' and 'individual' stakeholders. Business and sectoral associations, civil society organisations (NGOs), companies and corporations, Member States, and public bodies, institutional users (such as libraries, archives), think-tanks and academic institutions are non-individual stakeholders. Citizens are part of the individual category. It is worth noting that in copyright policy, citizens may be users (end-users/consumers of immaterial goods, internet users), as well as right owners (*e.g.* famous artists, artists' managers, heirs), or researchers.

Since 2009/2010, we note a significant and consequent rise of individual contributions in public consultations on copyright. Figure 3 shows the percentage share of citizens' involvement in public consultations for three subsequent Commissions.[11]

As we see in Figure 3, the average share of individual responses to public consultations differs significantly. While in the 2004–2009, replies by citizens constituted 2.6% of all responses in all public consultations, in subsequent years the number of citizens' contributions increased significantly. For instance, in the Barroso 2nd Commission, the total amount of individual responses to all public online consultations constituted 45.1%, and in the Juncker Commission more than half of all replies (51,8%) derived from citizens. This significant increase of citizens' involvement in public consultations on copyright can be considered as a general tendency in the researched period.

One of the important questions concerns the reasons of such a significant increase in individual contributions. Importantly, several major EU NGOs (*e.g.* EDRI and LQDN) ran their own digital campaigns encouraging citizens to participate, as well as gathering contributions within various campaigns (*e.g.* '*Fix copyright!*' and '*Copywrongs.eu*'). Also, the EC used various digital channels to make its consultations more widely known. All in all, this increase of participation in consultations over the three Commissions is in line with the EC engagement efforts towards inclusivity, one of the goals of the Better Regulation initiative. Obviously, the stand-alone fact that the Commission encourages people to make contributions does not explain fully why so many individual citizens took this opportunity. However, without the mandatory public online consultation introduced by the SCGs, this large citizen participation (whether managed within larger campaigns or not) would not be possible.

Closer investigation into the individual contributions in different public consultations also provides us with information about categories of citizens that took part in the EC public consultations (right owners versus users) (see Figure 4).

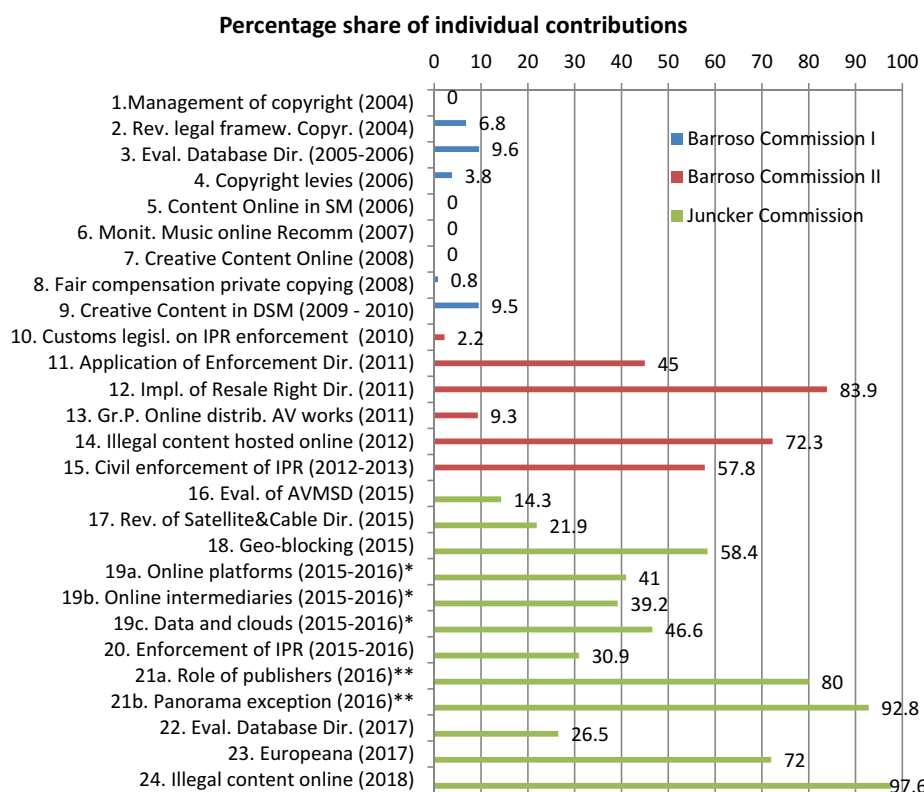**Percentage share of individual contributions**

Figure 3. Percentage share of individual contributions in public consultations per Commission. *Source: Own research on the bases of information retrieved from EC websites related to copyright.*For the consultation on 'online platforms/data, clouds (2015–2016)' we include 3 separate entries (for 1 consultation) as citizens' contributions were counted per consultation section;**For the same reason for the consultation on the 'role of publishers in the copyright value chain and the panorama exceptions' (2016)' we include 2 separate entries.*

In general, in the Barroso 1 Commission, there were practically no individual contributions coming from end users. The small number of individual contributions came from particular right owners or individual researchers. The situation changed in the 2nd Barroso Commission with a general increase in individual contributions. The analysis shows that the number and category of citizen contributions depend on the copyright topic. End-user participation is especially higher in consultations that touch on enforcement than in those that focus on copyright more narrowly (*e.g.* on customs or online distribution of audiovisual works). In one case, 100% of individual contributions were those of right owners (artists and their successors), because the consulted Resale Right Directive concerns these parties. In turn, in the Juncker Commission, we can observe large and regular end-user participation in the EC consultations.

The rise in citizen participation in recent years constitutes a *novum* in copyright policy and an evolution of the participatory democracy model. Traditionally, citizen interests have been represented through participation of non-individual stakeholders (interest groups, understood as membership-based organisations) rather than individual citizens
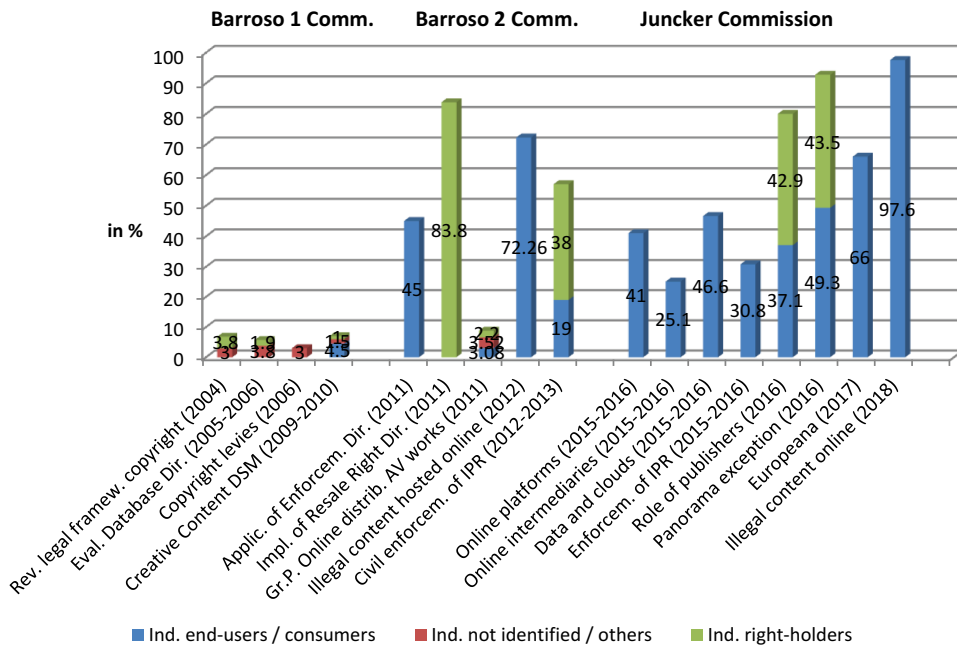
Figure 4. Categories of individual responders. Source: Own research on the bases of information retrieved from EC websites related to copyright.

in policymaking processes (Saurugger 2008). This was also typical for copyright, as demonstrated in Figure 3. The EC engagement efforts towards a more inclusive consultation process have provided an institutional window of opportunity which citizens and digital rights organisations have taken. The large scale of citizens' direct involvement in EU online public consultations leads us to conclude that, at least when it comes to copyright policy, we are facing a new dimension of a 'citizen-driven' participatory democracy.

5. Stakeholders' views on the Commission's engagement efforts in copyright policy

EU copyright policy came to an almost virtual standstill in the Barroso 1 & 2 Commissions. In Barroso 1, the effects of the digital revolution on the cultural industry and of the core legislative copyright reforms from the early 2000s were only just becoming evident. Under Barroso 2, stakeholders from all sides criticised the Commission for not moving forward. Instead, stakeholder engagement was seen as a stall tactic for a Commission who could not internally agree on the way forward and feared further backlash following the rejection and protests related to ACTA in 2012.[12] Under the Juncker Commission, the proposal of the controversial Copyright in the Digital Single Market Directive in 2016 came at a time of growing resistance to American online service providers across Europe and in Brussels. The Schrems privacy case, competition and tax inquiries, and finally the Cambridge Analytica revelations, have all contributed to a shift in political mood towards

tech companies. After giving opportunities for stakeholders to engage, the Commission seized its own opportunity to act.

Most interviewed and surveyed stakeholders viewed the Commission as a political institution, which some evaluated in a positive manner, but many as negative. There was consensus that the Juncker Commission took matters in hand on copyright policy. One stakeholder deemed that the Commission 'showed political will and was consistent' in its objective to solve an identified policy problem. Another stakeholder, however, viewed this differently: 'this [Juncker] Commission left behind the seriousness with which it has traditionally been associated. It is less technocratic, which might be good for refugee policy, but not for copyright'. With this statement, the stakeholder suggested that after years of consultations and stalemate on copyright policy, the Commission took a stance, siding with strong protection of copyright in the digital context, thus making a political choice which interests to primarily side with.

When it came to assessing the Commission's engagement efforts, respondents from the creative sectors and tech industry expressed both positive and negative views. Representatives of civil society organisations were scathing in their assessment. Representatives from the Commission defended the institution's practices as open, wide and balanced. Respondents from the creative sectors and tech industry highlighted a variety of different consultation methods, such as open consultations, public hearings, stakeholder dialogues, expert groups and individual meetings, as best practices that demonstrate a willingness to listen. At the same time, opinions varied between respondents (also within the same sector) on which methods work well and why. In particular several respondents specified that the effectiveness of a consultation method changes depending on when it is held, how it is organised, who is invited, which topic is being discussed. Half of the respondents from the creative sectors (5) and one representative of the tech sector believed that the Commission is open and/or listens to (all) stakeholders and their (reasonable) arguments and that the consultation process is transparent, while others expressed concern about the lack of transparency of the process, in particular how consultation results are evaluated and expert groups are formed (jointly five opinions: three from creative sectors, one from tech industry and one from civil society organisation). Importantly, stakeholders across the sectors shared the viewpoint that the Commission uses consultation methods to reinforce already drafted positions. This issue has been repeatedly raised in stakeholders' past claims (Keller 2013, 2015).

When inquiring whether these (expert) stakeholders deem that the Commission takes into account the (non-expert) nature of citizen contributions, opinions were equally mixed. According to the Commission, citizens' opinion matter is taken into account, and there are several opportunities for citizens to participate and express views. As to stakeholders' views, more than half of respondents shared the opinion that the Commission takes into account the voice of non-expert citizens, although some expressed that the Commission does (or should) treat contributions by organised stakeholders as more valuable than those of citizens. A representative of the civil society confirmed this attitude, however disagreed that citizen contributions are less important. Four representatives (of tech industry and civil society organisations) pointed that the EC might ignore citizens' views.

Evidence from the consultation practices also proves the voice of citizens in shaping the copyright provisions is not of crucial importance. An example illustrating this

statement concerns the new copyright for press publications and respective consultations (2016). Although the vast majority of citizens expressed reservations as regards the possible introduction of a new right (and citizen responses constituted 80% of all contributions), it did not prevent the EC from introducing the new copyright. This is in line with recent findings that 'organised interests may be able to offer resources and benefits to policy makers, which outweigh the benefits of making policy that is congruent with the views of the majority of citizens' (Rasmussen, Mäder, and Reher 2018, 158).

Across the 2013 interviews and the 2019 survey, respondents entered into reflections on the mobilisation of citizens through social media: right owners accused the tech industry of 'scaremongering' and 'intimidation', while civil society resented that 'all opponents/critics were [framed as] "Google stooges"'. Citizens are active on copyright and yet are quite quickly discredited as being manipulated by large corporations. Quite unfortunately, in this framing, citizens (and civil society) are effectively denied their own voice.

To conclude, the perception of stakeholders involved in copyright policy is that – by encouraging citizens to participate in the consultations – the EC seeks to make the policymaking process more inclusive and transparent. Equally, however, despite extensive communication and governance efforts, stakeholders share the viewpoint that the EC (increasingly) acts as a political actor. Similar to other cases (Gheyle and Ville 2017), this study reveals discrepancies between opinions of different stakeholders and the Commission about the desirable scope of transparency and participation. The image emerging from stakeholders' views is that the Commission gains input legitimacy, but it does not seem to give people real power to influence the political process. Citizens express their views, but despite the large scale, it seems their contributions do not necessarily have a high impact. It is therefore questionable whether, being perceived this way, the EC succeeds in reducing the EU's democratic deficit.

6. Conclusion. Power to the people?

As the analysis above demonstrates, the overall scope of consultations in the Juncker Commission significantly differs from those conducted before, which concerns both the stakeholder engagement approach (towards more inclusive consultations), and the scale and types of stakeholders involved. Individual contributions (as opposed to those of stakeholder groups) to the European Commission's public online consultations are on the rise. Besides individuals representing different creative sectors (artists, managers, performers, authors, or photographers), an increasing number of citizens are simply end-users (consumers of immaterial goods) or Internet users.

This article illustrates that the Commission's Better Regulation efforts in online governance (mandatory public online consultations, wide use of digital communication channels) facilitate citizen participation in European policymaking. Public online consultations are becoming inclusive not only in theory (Quittkat 2011) but also in practice, at least in the area of copyright policy. In times of digital participation, the Commission consultation model is moving towards a new dimension of a 'citizen-driven' participatory democracy.

At the same time, this finding does not find support among EU stakeholders. They question whether the consultation processes give 'power to the people' to influence the outcome of the policymaking process. Our analysis leads us to conclude that by striving to

make the policymaking process more inclusive, the EC primarily seeks to gain input (as opposed to output) legitimacy. Opening up the policymaking process to citizens is insufficient. The traditionally technocratic, yet increasingly political European Commission, despite including tools in its consultation processes to engage with non-expert stakeholders, currently struggles to take these citizen contributions into account.

In this age of political distrust and digital communication, EU institutions are stuck somewhere in the middle between representation of citizens through traditional elected channels (European Parliament and national governments), through stakeholder organisations, and direct participation in the policymaking process. EU copyright policy demonstrates that citizen participation in European policymaking is a reality that requires further reflection – and quite possibly new multistakeholder processes – in order to take the opinions of this new non-institutionalised non-expert group into account. The swift discrediting of citizen viewpoints in the Copyright in the Digital Single Market policy process powerfully demonstrates that the road to inclusive policymaking is still far off. The institutional window may have been opened, but citizens are only selectively heard.

Notes

1. Although relevant, this article is not able to focus on inter-institutional dynamics as they pertain to stakeholder representation. For this, we point toward *e.g.* Rittberger (2012), Rosén (2016).
2. In view of the fact that copyright policy area is led by DG CONNECT, it is worth mentioning DG CONNECT's own initiative to launch an external stakeholder survey within a preparation of a Stakeholder Engagement Strategy concerning existing practices, gaps and challenges for action in the area of stakeholder engagement (European Commission 2012b; Verheyden, Glidden, and Shahin 2013).
3. Public online consultations are mandatory in case of initiatives with impact assessments, evaluations, fitness checks, and green papers. According to the SCGs, it is at the EC's own discretion to decide when to open other consultations. Answering an important question, namely whether and/or to which extent the EC is susceptible to public (or stakeholders') pressure in this respect, would require further research.
4. 'Input' legitimacy is possible through participatory governance mechanisms, which get people engaged – traditionally represented through their organisations – in the public policymaking process (Saurugger 2008, 1276). In turn, 'output' legitimacy occurs when policies are made more efficient and 'legitimate decisions are the product of an exchange of reasonable arguments between equal individuals' (Crespy 2014, 83). For in-depth elaboration on different aspects of legitimacy throughout the policymaking processes, see *e.g.* Schmidt (2013).
5. We recognise that the technocracy of the European Commission has been contested and problematised in academic literature (see e.g. Egeberg, Gornitzka, and Trondal 2014; Kurki 2011; Rauh 2016). Similar to the democratic deficit, however, there is a perception of this bureaucratic and expert-oriented nature of the Commission.
6. With the term 'non-expert' we do not mean to diminish the importance or validity of the viewpoints expressed. Rather we seek to distinguish between organised advocacy interests and citizen contributions.
7. Indeed we found that the most popular online public consultations were those where digital rights organisations provided a pre-filled template for citizens to submit. Notwithstanding the importance of research on digital tools for advocacy and social mobilisation (in copyright, see e.g. Farrand (2014); Mercea and Funk (2016), Rone (2018)), this is largely outside the scope of this paper. The focus here is rather on the institutional reforms that ease these stakeholder

processes of interest representation. We do not make claims in this article that either institutional structures or stakeholders' strategies explain the outcome of any particular policy process better. Rather we emphasise the co-constitutive nature of policymaking, where ideas (and discourses), interests and institutions need to be accounted for.

8. Quittkat and Kotzian (2011) find that exclusive consultations usually attract more lobbying than inclusive ones.
9. Of 34 OECD member countries and the EU.
10. The 'stakeholder dialogue' category includes different kinds of advisory groups.
11. We analysed 24 public consultations, as in three cases data on the number of individual contributions were not available. This was the case of the consultations on: the cross-border collective management of copyright (2005), the Green Paper on Copyright in the Knowledge Economy (2008), and the review of the EU copyright rules (2013–2014).
12. Relevant to this article, in a twist of irony, some of the main criticisms on ACTA were the lack of stakeholder involvement and transparency during the negotiations and the Commission's seeming (political) tactic to bypass the stalemate at European level (Dür and Mateo 2014; Matthews and Žikovská 2013; Meyer 2017; Meyer and Vetulani-Cęgiel 2017; Vetulani-Cęgiel 2014).

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