

The Hegemonization and Counter-Hegemonization of Polish Copyright Discourses

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Abstract: This article explores the nature and structure of Polish discourses on copyright, specifically revealing to what extent social conflict over copyright is visible within these discourses and presenting the most important parties in this conflict. Following Ernesto Laclau and Chantal Mouffe's discursive reconstruction of the hegemony, the article indicates that Polish copyright discourses are structured by an alternating sequence of discursive hegemonic and counter-hegemonic practices. The article specifies the most important logic applied within discursive battles over copyright by deconstructing the central dualities visible in Polish copyright debates. Hegemonization and counter-hegemonization of the discourses are indicated based on the discourse analysis of the Polish public debate on copyright and a qualitative analysis of in-depth interviews and focus group interviews with representatives of selected parties in the social conflict over copyright.

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In January 2012, young Poles took to the streets to protest against the Anti-Counterfeiting Trade Agreement (ACTA)¹ and prevent further online copyright regulation (Jurczyszyn et al. 2014). These protests triggered a wave of anti-ACTA movements across Europe, which, according to some authors, changed the initial position of the European Parliament on the treaty (see, e.g., Vetulani-Cęgiel and Meyer 2021). The anti-ACTA protests also resulted in the emergence of the Polish discourse on copyright (Gracz 2013). Since then, copyright issues have occasionally been discussed in Polish public debate. One of the last opportunities for such a debate occurred during negotiations on the EU directive on copyright in the Digital Single Market (DSM Directive),² which in Poland was deliberately called “ACTA2” and discussed in 2018-2019.

The article³ primarily aims to characterize the nature and structure of contemporary Polish copyright discourse by presenting a discourse analysis of public debates on copyright and interviews with representatives of certain groups participating in these debates or interested in their outcome. Assuming a social conflict is built into the copyright system, I determined to what extent such conflict is visible within Polish copyright discourse and its

¹ The Anti-Counterfeiting Trade Agreement (ACTA) is a multilateral treaty establishing international standards for intellectual property rights enforcement. The agreement did not enter into force but aimed to establish an international legal framework targeting counterfeit goods, generic medicines, and copyright infringement on the internet.

² Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.

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relations with this discourse. To achieve this goal, I first define and describe the social conflict over copyright and identify the conditions under which such a conflict may lead to the emergence of a hegemonic order. Second, I provide a general characterization of Polish discourses on copyright. Third, an analysis that was conducted of hegemonic and counter-hegemonic discursive practices (Mouffe 2013) within Polish discourses on copyright is presented, showing how discourse participants play out “a game of signification,” consequently deconstructing hegemonic and counter-hegemonic constellations (Laclau 1996; Andersen 2003:58). Finally, discursive manifestations of copyright hegemony and counter-hegemony are examined.

As a result, I frame the hegemonization and counter-hegemonization of Polish copyright discourse by describing discursive practices used by conflicting parties and competing narratives on copyright law (Ewick and Silbey 1998) characteristic of those who use it daily. In addition, by deconstructing differences present in the discourse, the most important logics unfolding within the Polish discursive battles over copyright are identified (Laclau 1996; Andersen 2003). The description of discursive practices is based on the discourse analysis of the Polish media debates on copyright and a qualitative analysis of in-depth interviews and focus group interviews. In contrast, the description of competing narratives is based mainly on the analysis of the interviews.

Social Conflict over Copyright

Social conflict over copyright has been studied mainly in disciplines such as law and economics (see, e.g., Gordon and Bone 2000; Geller 2013), critical legal and cultural law studies (see, e.g., Coombe 2000; Tehranian 2012; Craig 2019), political economy (see, e.g., Dobusch and Quack 2013; Burkart 2018;

Cartwright 2019), and, of course, intellectual property law (see, e.g., Litman 2006; Frankel and Gervais 2014). A few sociological works have also addressed this topic (e.g., Rodríguez 2003; Mylonas 2011; Gracz and De Filippi 2014).

In intellectual property studies, the social conflict over copyright is an imbalance between the interests of three groups: 1) the creators, 2) users, and 3) intermediaries whose rights and freedoms are defined by copyright regulations. The third group (i.e., intermediaries) enables the transmission of creators' works to users. Due to the development of the internet and the related mass dissemination of digital content, this group has undergone significant changes in recent decades. Intermediaries currently include those who acquire rights from creators (right-holders), such as book publishers and music and film producers, and those who use creators' works (non-right-holders [Frankel and Gervais 2014]). The former are referred to as the "copyright industry" or "old intermediaries," and their business model sells the intangible goods of creators. In contrast, the latter "new intermediaries" have developed business models related to advertising or fair use. The largest and best-known new intermediaries are big internet corporations, such as Google and Facebook, which profit from exchanging content between internet users.

In the economic analysis of copyright law, the social conflict over copyrighted goods is the consequence of the nature of these goods. According to representatives of the law and economics, the works of authorship are quasi-public goods plagued with monopoly and free-rider problems related to the non-excludability and inexhaustibility of these goods. Per economists, problems with inefficient exploitation of creative works can be solved by "fashioning property rights that minimise transaction

costs and facilitate market transactions" that transfer copyrighted works to their highest valued uses (Gordon and Bone 2000:194).

A more diverse understanding of the social conflict related to copyright is characteristic of critical legal and cultural law studies. For example, a critical theorist of copyright, Carys J. Craig (2019:301), highlighted the importance of conflict over "control of information, communications, and cultural content." In contrast, a critical theorist of intellectual property, John Tehranian (2012:1233), wrote about conflict over the "power of cultural reproduction." Regardless of the terms used, both authors—similar to other representatives of critical studies of law—point out that the copyright regime creates convenient conditions for struggles over access to cultural goods and the rules for producing, reproducing, and protecting these goods. Moreover, critical cultural researchers have observed that conflict over copyright is a "conflict over culture": conflict over preferred forms of creative expressions and accepted cultural meanings (Coombe 2000; Fredriksson 2014).

According to political economists, the conflict over copyright is a struggle over valuable knowledge, which entails broader social tensions with transforming industrial societies into information and network societies (see, e.g., Haunss 2011). Such a struggle involves two (Dobusch and Quack 2013; Burkart 2018) or three essential groups of actors (Cartwright 2019). In the bipolar conflict model, two coalitions are distinguished: "the strong copyright coalition"⁴ and "the free culture coalition"⁵ (Herman

⁴ The name "strong copyright coalition" was used by Herman; Dobusch and Quack called the first coalition "the copyright coalition."

⁵ The name "free culture coalition" was used by Herman; Dobusch and Quack called the second coalition "the fair use coalition."

2008; Dobusch and Quack 2013). The first group primarily includes decision-makers and organizations representing old intermediaries and, to some extent, creators. The second group mostly includes organizations representing users of culture. However, some authors have indicated the need to distinguish a third group consisting of new intermediaries. For example, Madison Cartwright (2019) observed that although large internet corporations support social organizations guided by public good values (i.e., members of the free culture coalition), the interests of the former are only partially aligned with those of cultural users. Thus, new intermediaries cannot be identified with internet users and the organizations representing them. These intermediaries cannot also be included in the strong copyright coalition, as strengthening copyright protection is contrary to the interests of large internet corporations.

Finally, Marxist (see, e.g., Mylonas 2011) and systemic analyses (see, e.g., Gracz and De Filippi 2014) have dominated sociological approaches to the conflict over copyright. Systemic analyses have highlighted the discrepancies between the logic of particular systems, including the inconsistencies between the cultural and economic systems (Rodríguez 2003). Notably, the Frankfurt School previously highlighted the contradictions between economy and culture. According to Max Horkheimer and Theodor W. Adorno (2002), these contradictions are integral to the oppressive nature of the cultural industry, which commodifies and fetishizes culture, also using copyright law (Adorno 2001:36).

Using the abovementioned theoretical approaches to social conflict over copyright, one can conclude that this conflict is multifaceted and is built into the social system. Social conflict over copyright is simultaneously legal, economic, and cultural. Addi-

tionally, it is a conflict over power and values. This conflict's economic nature develops from conflicting interests between the right-holders and users and the specific features of copyrighted goods. Nevertheless, because copyright law defines the framework within which members of society can create and share their creative works, the conflict over this law affects culture and the values it promotes. Finally, the political character of the conflict concerns how particular groups of stakeholders cooperate in various coalitions to influence copyright regulations adopted by decision-makers. As a result, at stake in the battle over copyright are the economic profit associated with monetizing works protected by copyright and the possibility of promoting specific types of creativity and cultural values.

The parties of conflict over copyright are practically all members of society, but various groups have shown different levels of involvement. From the triad above of creators, intermediaries, and users, the most active participants in the conflict are old intermediaries, who, despite their conflicting interests, quite often claim to represent the interests of creators. The latter, although the most critical addressees of copyright law, take relatively little action to influence the content and scope of copyright regulations; if they do take such action, they do so mainly through the organizations representing them. However, the least active parties in the conflict are users whose interests are represented by various social organizations. The most important reasons for the differences in the level of engagement in the conflict are the level of awareness (see, e.g., Felczner et al. 2013), the number of resources, and the type of actions taken, including joining coalitions to increase the scope of representation (see, e.g., Vetulani-Cęgiel 2015). These reasons manifest the unequal power distribution among the particular parties in the conflict over copyright.

Copyright Hegemony as an Example of Local and Legal Hegemony

A hegemonic order may emerge when a struggle for power and cultural values accompanies the struggle for valuable resources. Such an order, in the form of copyright hegemony, has been indicated by legal scholars who have studied copyright, especially regarding the pursuit of the globalization and universalization of copyright law by the US and EU (see, e.g., Cammaerts 2011; Perry 2018). Although these authors have not defined this type of hegemony, it seems indisputable that copyright hegemony is simultaneously legal, economic, cultural (see, e.g., Hemmungs Wirtén 2006), and political. It is also a “local hegemony” (Hunt 1990; Santos 2020).

Knowing the main characteristics of the hegemony of copyright law, one may create its definition based on existing theoretical concepts. An extremely valuable source of inspiration in this regard is Antonio Gramsci’s theory of hegemony (Gramsci 1971; Mouffe 1979) and the related conception of hegemony and counter-hegemony, indicating the important role of law (Hunt 1990; Santos 2020). In addition, since the copyright hegemony is founded on the law, one can draw from Patricia Ewick and Susan S. Silbey’s critical concepts of law (see, e.g., Ewick and Silbey 1998; Silbey 2005).

According to Gramsci, hegemony is possible only for the dominant class and involves exercising political, intellectual, and moral power in a system cemented by “organic ideology” (Mouffe 1979:193). Although such hegemony is “ethico-political,” “it must also be economic, must necessarily be based on the decisive function exercised by the leading group in the decisive nucleus of economic activity” (Mouffe 1979:189). Additionally, this hegemony

may involve the power of the state, which Gramsci (1971) described as the continuous formation and superseding of the equilibrium (in the legal field) between the interests of the dominant group and subordinate groups. Consequently, the Gramscian conception of hegemony, as the intellectual and moral leadership within the state, emphasizes the influence of economic factors and ideological persuasion. The latter is, for the author of *Selections from the Prison Notebooks*, a precondition for acceding to political power (Niezen 2018).

If one displaces the assumption that only the dominant social class can exercise hegemony, one may be able to point to the possibility of the emergence of a local hegemony (Hunt 1990:312-313). According to Alan Hunt (1990:313), a local hegemony is a useful concept specifying the potential construction of counter-hegemonic projects within particular areas or regions of social life, such as the abortion rights movement, environmental movement, or civil rights movement. However, before I define counter-hegemony, I briefly characterize a legal hegemony as an example of a local hegemony.

According to Silbey (2005:330), a legal hegemony can help explain “the practical determinacy of a legal system,” that is, systemic power through which social interactions become patterned, principled, and naturalized. Hence, the hegemony of the law does not result from any social arrangement. Instead, a legal hegemony is produced and reproduced in everyday transactions and acts of communication, in which action structures and cultural symbols are experienced as a given and consequently as “unnoticed, uncontested, and seemingly not open to negotiation” (Silbey 2005:331). Ewick and Silbey (1998) explained that “legality”—people’s perceptions of the law—draws its hegemonic power from the existence

of competing narratives about the law's character. These narratives are based on how people describe their relationships with the law. Because people perceive the law "as something before which they stand, with which they engage, and against which they struggle," there are three opposing narratives: 1) "before the law," 2) "with the law," and 3) "against the law" (Ewick and Silbey 1998:47). In the first narrative, legality is a separate, distinctive, and authoritative sphere of social life (Ewick and Silbey 1998:57-107). In the second narrative, the law is "a game" in which rules can be adapted to serve particular interests and values (Ewick and Silbey 1998:108-164). Finally, within the against-the-law narrative, the law is described as oppressive to people who oppose its "schemas and resources" (Ewick and Silbey 1998:165-220). However, regardless of their differences, all three narratives may be invoked in divergent circumstances, allowing legality to maintain its dominance.

Indeed, some authors have questioned the hegemonic power of state law. For example, Marc Hertogh (2018) indicated that ordinary citizens feel alienated from the law because they have turned away from it rather than turning toward it in "blind faith." However, as Simon Halliday (2019:13) observed, "[t]he existence of legal alienation does not, in itself, challenge a claim about the hegemonic power of state law." Additionally, Halliday indicated that any conception of hegemony must consider counter-hegemony. According to Ewick and Silbey's (2009:225) conceptual framework, counter-hegemony involves an after-the-law narrative that indicates the importance of individual acts of resistance. As Simon Halliday and Bronwen Morgan (2013) highlighted, this kind of resistance should be extended to collective practices of counter-hegemony, including those indicated by Alan Hunt (1990).

Although Gramscian theory has no counter-hegemony, Gramsci's conception of hegemony leaves plenty of room for agency and dissent among the dominated, which some authors call counter-hegemony. As Ronald Niezen (2018) noted, the fact that there is no "counter" in Gramsci's works assumes that a change in power means the emergence of a new hegemony, while counter-hegemony is merely the exertion of influence over the current hegemony. Such an understanding of counter-hegemony requires the "remodeling" of constitutive elements of the prevailing hegemony, including, in particular, the reconstruction of the existing discourse. As Hunt (1990:314) asserted, "[t]he most significant stage in the construction of counter-hegemony comes about with the putting into place of discourses, which whilst still building on the elements of the hegemonic discourses, introduce elements which transcend that discourse." Thus, counter-hegemony is a kind of "transcendent project" whose strategy is not to reject that which exists but seek to construct—using Gramsci's terms—"good sense" from "common sense" to give prominence to "new" elements (Hunt 1990:314).

Consequently, in the case of legal hegemony, part of the struggle between hegemony and counter-hegemony occurs within the discourse on law. Such discourse, as any discourse, is "constituted as an attempt to dominate the field of discursivity" (Laclau and Mouffe 1985:112). Positions within this discourse are developed using two types of discursive practices: hegemonic and counter-hegemonic. Chantal Mouffe's (2013) hegemonic discursive practices used by participants in the copyright discourse are "practices of articulation," through which a copyright order is created and the meanings of copyright institutions are established. In contrast, counter-hegemonic discursive practices seek to disarticulate

the existing copyright order and its institutions “to install another form of hegemony” (Mouffe 2013:2).

In the following sections, I focus on Polish discourses on copyright as a tool through which copyright hegemony is constructed, as are the attempts to undermine it. Focusing on hegemonic and counter-hegemonic discursive practices provides a closer look at the social conflict over copyright, including its relationship to discourses.

Polish Discourses on Copyright

The first Polish public debates on copyright appeared in the 1990s and were dominated by narratives created by copyright-collecting societies.⁶ These narratives focused on stigmatizing piracy and drawing attention to the need to pay for public music performances. With time, the latter narrative began to be countered by entrepreneurs, such as restaurateurs and beauty salon owners, who publicly objected to signing public performance licenses⁷ with proper collecting societies. Subsequently, in 2006, a new narrative emerged, opposing excessive copyright regulations while highlighting the importance of freedom of expression and the right to access knowledge and culture. This narrative, still in use today, was mainly created by new non-governmental organizations interested in copyright policy, including the Modern Poland Foundation (*Fundacja Nowoczesna Polska*)⁸ and the Digital Center

Foundation (*Fundacja Centrum Cyfrowe*).⁹ The narrative and the organizations applying it—derived from the free-software¹⁰ and the free-culture movements¹¹ originating in the US—are examples of the copyright counter-hegemony.

As mentioned, wide public discourse on copyright in Poland was triggered by anti-ACTA protests. In 2012, when the EU was planning to ratify the ACTA agreement, all Polish media and political parties discussed the subject of copyright. This sudden public interest in copyright law increased both public awareness and the politicization of copyright debates. Moreover, this interest contributed to copyright becoming a recurring theme in Polish public debates.

An analysis of the discourse from 2012 to 2019 revealed that in 2013–2017 (i.e., between the end of the debate on ACTA and the beginning of the debate on the DSM Directive), Polish discourse on copyright was occasional and fragmented. Copyright issues were discussed mainly during debates on specific legal acts (e.g., a bill on open resources prepared by the Ministry of Administration and Digitization in 2012¹²) or during particular copyright disputes, especially when a well-known person was involved (e.g.,

2022, the foundation changed its name from *Fundacja Nowoczesna Polska* to *Fundacja Wolne Lektury* (Free Readings Foundation).

⁹ Official webpage of the Digital Centre Foundation: <https://centrumcyfrowe.pl/en/homepage/>. Retrieved June 17, 2024.

¹⁰ The free software movement is a social movement with the goal of respecting users’ freedom, such as the freedom to run, study, modify, and share copies of software.

¹¹ The free-culture movement is a social movement that promotes the freedom to distribute and modify creative works without the consent of or compensation to the original creators.

¹² The act was aimed at guaranteeing access to public resources created by employees of public cultural institutions or financed from public funds. However, due to the huge opposition from artists and collective societies, this law was never enacted. The content of the bill and information about the parliamentary work on the project can be found at the following website: <https://legislacja.rcl.gov.pl/lista/1/projekt/86492>. Retrieved June 17, 2024.

⁶ A copyright collecting society (also called copyright collective or copyright society) is an organization created by copyright law or private agreement that licenses copyrighted works on behalf of the authors and engages in collective rights management.

⁷ A public performance license is an agreement between the rights holder of the music and a user who grants permission to play the music in public, online, or on radio. In Poland, most public performance licenses are issued by collecting societies.

⁸ Official webpage of the Modern Poland Foundation: <https://fundacja.wolnelektury.pl/about-us/>. Retrieved June 17, 2024. In

Sapkowski and the CD Projekt dispute¹³). Thus, it is more legitimate to talk about multiple discourses on copyright rather than a single copyright discourse.

The most important exception from the fragmented character of Polish copyright discourse—apart from debates on ACTA and the DSM Directive—is a long-standing dispute between the largest Polish collecting society—the Society of Authors ZAiKS (*Stowarzyszenie Autorów ZAiKS*)¹⁴—and Digital Poland Association (*Związek Cyfrowa Polska*).¹⁵ This dispute involves a private copying levy (a reprographic fee in Poland) regulated in Article 20 of the Polish Copyright Act.¹⁶ Per this regulation, producers and importers of blank media (e.g., DVDs and memory cards) and devices that enable making copies of copyrighted works (e.g., DVD recorders and scanners) must pay a fee to collective societies¹⁷ as compensation for the free use of cultural works under fair use.

According to representatives of the Polish creative sector, the Minister of Culture and National Heri-

tage ordinance defining categories of media and devices for which the reprographic fee should be charged is outdated.¹⁸ The list of carriers and devices attached to the ordinance comprises cassette tapes and VCRs, which are no longer used in practice, while omitting the most popular devices currently used to copy and store copyrighted content, such as smartphones, tablets, and laptops. Hence, the Society of Authors demands an amendment of the ordinance by updating the list of devices for which a fee should be paid. Additionally, this society believes that the ordinance has not been amended thus far due to the lobbying activities undertaken by the Digital Poland Association, which represents consumer electronics and IT companies. At the same time, Digital Poland stresses that the idea of a private copying levy is anachronistic and argues that the costs of new levies from new devices (e.g., smartphones) would be primarily borne by users of those devices. In recent years, Polish right-wing political parties—such as the Confederation (*Konfederacja*)—have joined the dispute and criticized the Ministry of Culture for making another attempt to amend the aforementioned ordinance during the COVID-19 pandemic.¹⁹

Three decades of Polish public debates on copyright have led to the institutionalization of these discourses. As a result, there is a significant polarization among them, as with other discourses in the Polish public sphere. Consequently, two main

¹³ The dispute began in 2018 when Polish writer A. Sapkowski reached out to video game developer studio CD Projekt with the demand that he receive PLN 60 million in additional compensation for the company's continued use of the universe of Sapkowski's *Wiedźmin* book series. For more information, see: <https://medium.com/farbovanyi-lys/andrzej-sapkowski-vs-cd-projekt-red-eng-30c4dc6fcfb4>. Retrieved June 17, 2024.

¹⁴ Official webpage of the Society of Authors ZAiKS: <https://zaiks.org.pl/en>. Retrieved June 17, 2024.

¹⁵ According to the official webpage of the Digital Poland Association (<https://cyfrowapolska.org/en/about-us/> [Retrieved June 17, 2024]), it is “an industry employers’ organization, a non-profit organization bringing together the largest companies from the consumer electronics and IT operating in Poland, including both manufacturers, importers, and distributors of electrical and electronic equipment.” In the past, the association used the name the Association of Importers and Producers of Electrical and Electronic Equipment—ZIPSEE “Digital Poland.”

¹⁶ Act of 4 February 1994 on Copyright and Related Rights (Dz.U. No. 24, item 83) (Dz.U.2017.880-tłum.).

¹⁷ In the amount of no more than 3% of the sale value of such media and devices.

¹⁸ The ordinance on defining the blank media and devices that enables making copies of copyrighted works, and the fee that should be paid for the sale of these media and devices by their producers and importers (Dz.U. 2003 No. 105 item 991). Available at: <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031050991/O/D20030991.pdf>. Retrieved June 17, 2024.

¹⁹ The attempt to amend the ordinance came on the occasion of the debate on a bill concerning the rights of professional artists, which aims to improve the financial situation of Polish artists. The idea for the bill emerged during the COVID-19 pandemic when the situation of artists was particularly bad.

groups of social organizations are essential in Polish copyright discourse: organizations representing the creative industry's interests (i.e., creators and intermediaries) and organizations representing citizens' interests (i.e., culture users). Polish organizations representing the creative industry's interests primarily comprise collecting societies, the Legal Culture Foundation, and the Creative Poland Association, while organizations representing citizens' interests primarily include organizations such as the Modern Poland Foundation, the Digital Centre Foundation, and the Panoptykon Foundation. The first group of organizations is "the strong copyright coalition," while the second is "the free-use coalition" based on the bipolar conflict model described earlier (Herman 2008).

As mentioned, the largest Polish copyright-collecting society is the Society of Authors ZAiKS. It is also the most active and most recognizable collecting society, which was founded in 1918 by outstanding Polish artists. This society's current statutory objectives include "the protection of copyrights and the representation of authors' interests," "the improvement of copyright," and "the development and dissemination of creative works and Polish culture" (Polish Society of Authors ZAiKS 2023:2 [trans. ER]). The second most active collecting society pursuing copyright policy is the Polish Society of the Phonographic Industry (*Związek Producentów Audio Video—ZPAV*),²⁰ founded in the early 1990s by representatives of the Polish music industry. This organization is famous for its anti-piracy campaigns and incidental lobbying on copyright issues, and its goals include the continued extension of legal protection for phonogram and videogram producers

²⁰ Official webpage of the Polish Society of the Phonographic Industry: <http://www.zpav.pl/>. Retrieved June 17, 2024.

and intellectual property education (Polish Society of the Phonographic Industry 1991). Additionally, eight other Polish copyright-collecting societies represent the interests of creators such as filmmakers, performers, scientists, journalists, and folk artists. The activities undertaken by these organizations are far less visible to the public than the activities of the two described organizations.

Furthermore, the Legal Culture Foundation (*Fundacja Legalna Kultura*)²¹ was established to make citizens aware that how they access and use cultural goods impacts the condition of culture. Thus, the foundation aims to act for the common good in terms of "culture, art, protection of cultural goods, and national heritage [while] limiting the illegal distribution of cultural products and their use with the violation of rights and interests of producers of cultural goods" (Legal Culture Foundation 2011 [trans. ER]). Finally, the Creative Poland Association (*Stowarzyszenie Kreatywna Polska*)²² is a typical umbrella organization, representing many creative and innovative organizations, including the Society of Authors ZAiKS, the Polish Society of the Phonographic Industry, and the Legal Culture Foundation. The most important goals of Creative Poland (2014 [trans. ER]) are "acting for the development and protection of Polish culture, science, creativity, and innovation" and "inspiring and participating in all activities related to the law-making process and decision-making that affects the situation and possibilities of the actions of creators and scientists, as well as the shape of the Polish creative and innovative industry." As mentioned, the Legal Culture

²¹ Official webpage of the Legal Culture Foundation: <http://fundacja.legalnakultura.pl/>. Retrieved June 17, 2024.

²² Official webpage of the Creative Poland Association: <https://www.kreatywnapolska.pl/about-kreatywna-polska/>. Retrieved June 17, 2024.

Foundation and the Creative Poland Association are members of the Polish strong copyright coalition.

The Modern Poland Foundation was the first Polish non-governmental organization acting in the interests of culture users to become interested in copyright policy. This organization has operated since 2006, adopting the primary goal of “promoting and protecting the freedom to use cultural goods” (Modern Poland Foundation 2022 [trans. ER]). Its flagship projects are *Wolne Lektury*, *Prawo Kultury*, and the *CopyCamp*.²³ Soon after the Modern Poland Foundation launched its first project, the Digital Centre Foundation began its activity in copyright policy. One of the foundation’s strategic objectives is “adjusting regulations and using legal tools to support the needs and rights of users as they participate in open circulations of resources online.”²⁴ This foundation is part of the Creative Commons movement.²⁵ Finally, the last of the aforementioned organizations is the Panoptykon. Although this foundation does not discuss copyright or culture in its priorities,²⁶ its members were very active during public debates concerning ACTA and the DSM Directive, when the

issue of the dangers posed by excessive copyright protection on the internet was discussed. The Modern Poland Foundation, the Digital Centre Foundation, and the Panoptykon Foundation comprise the Polish free culture coalition.

Beyond the groups of organizations mentioned above, important participants in Polish copyright public discourses are the Ministry of Culture and National Heritage, the Ministry of Digital Affairs (previously the Ministry of Administration and Digitization), cultural institutions, famous artists, the aforementioned Digital Poland Association, and political parties. Ministerial authorities and cultural institutions declare that they consider the interests of both creators and users of culture, so it is difficult to assign them to either of the two distinguished coalitions. Well-known artists mostly speak on behalf of the entire artistic community and support the arguments raised by the strong copyright coalition. Digital Poland, on the other hand, claims to stand up for consumers (as shown later in this article) by portraying itself as an ally of the free-use coalition. In reality, it primarily represents “the broad interests” of consumer electronics and the IT industry.²⁷

²³ *Wolne Lektury* is a free online library that archives books (including school readings) in the public domain. *Prawokultury.pl* is an educational website that teaches on matters concerning copyright. *CopyCamp* is “an event on law,” during which people share their experiences in international and interdisciplinary groups of artists, experts, scientists, and social activists, revealing how copyright law affects everyone.

²⁴ A description of the Digital Centre’s mission is available at <https://centrumcyfrowe.pl/en/co-robimy/>. Retrieved June 17, 2024.

²⁵ Creative Commons (CC) is an international non-profit organization advocating for “better sharing” by equipping people “with technical, legal, and policy solutions to enable sharing of knowledge and culture in the public interest.” The organization has released several public copyright licenses, known as Creative Commons licenses. Official webpage of CC: <https://creativecommons.org/>. Retrieved June 17, 2024.

²⁶ The priorities of the Panoptykon Foundation include protecting freedom and human rights in the surveillance society: <https://en.panoptykon.org/>. Retrieved June 17, 2024.

Finally, most Polish political parties support either increasing copyright protection or guaranteeing appropriate freedoms to users of culture. The party most frequently declaring support for the arguments of the strong copyright coalition is the centrist Civic Coalition (*Koalicja Obywatelska*). Among the parties primarily favoring the freedom of users and thus joining the voices of the free culture coalition, right-wing parties, such as Law and Justice (*Prawo i Sprawiedliwość*) and the Confederation, are

²⁷ A description of the mission of Digital Poland is available at <https://cyfrowapolska.org/en/about-us/>. Retrieved June 17, 2024.

notable. Polish left-wing parties—that acknowledge the need to protect creators’ economic interests and user rights—present the most balanced position on the Polish political scene. The copyright policy pursued by these parties cannot be attributed to either the strong copyright coalition or the free culture coalition, despite the latter being associated with leftist views in public opinion.

Method

The purpose of this article is to present the most critical findings from a discourse analysis of the Polish discourses on copyright. This analysis investigated press, television, and internet discourses. The press discourse analysis was based on a corpus of press texts on copyright from dailies²⁸ and weeklies²⁹ with nationwide coverage from 2000 to 2019.³⁰ The television discourse analysis involved the analysis of TV content covering the following periods and topics: 2012 (ACTA), 2013 (copyright), 2014-2015 (private copying levy), 2016 (copyright), and 2018-2019 (DSM Directive).³¹ Finally, the internet discourse analysis explored selected websites (such as those of particular organizations involved). The study included the results from 26 individual in-depth interviews and four focus group interviews. The interviews were conducted with Polish copyright lawyers (11 interviews), intermediaries (Polish book publishers and music producers—12 interviews), and representa-

²⁸ The corpus of texts consisted primarily of the following dailies: *Gazeta Wyborcza* (GW), *Rzeczpospolita*, and *Dziennik Gazeta Prawa* (DGP; earlier, *Gazeta Prawna* [GP]), *Fakt*, and *Super Express*.

²⁹ The corpus of texts consisted primarily of the following weeklies: *Polityka*, *Wprost*, *Tygodnik Powszechny* (TP), *Przegląd*, *Angora*, and *Newsweek*.

³⁰ I created the corpus of press texts using online archives of daily and weekly newspapers. The corpus consisted of 1,876 press materials.

³¹ The database of TV materials was prepared by the Press Service company. 953 TV recordings were included in the analysis.

tives of six Polish non-governmental organizations pursuing copyright policy.³² The focus group interview participants were young Polish writers and musicians. All interviews were conducted between 2019 and 2020 in three large Polish cities (i.e., Warsaw, Cracow, and Lodz).

The data from the media were gathered and analyzed using spreadsheets and computer-assisted qualitative data analysis software (QDA Miner). Individual and focus group interviews were transcribed and analyzed using a spreadsheet. The analysis aimed to find the narratives that indicated the nature and structure of the social conflict over copyright while examining the narratives that contained interpretations and explanations about the relationship between this conflict and the discourse. All data presented in the article were translated into English.

Since one of the goals of the analysis described here was to examine the relationship between social conflict over copyright and discourse, I decided to apply the agonistic model of discourse. Thus, this article presents the results of the discourse analysis based on Laclau and Mouffe’s (1985) discursive reconstruction of the concept of hegemony. Assuming that hegemonization and counter-hegemonization involve the imposition of certain logics onto public discourse (Laclau 1996; Andersen 2003), I analyzed hegemonic and counter-hegemonic discursive practices while examining the discursive manifestations of copyright hegemony and counter-hegemony. The former was accompanied by the “deconstructive intervention” (Derrida 1988; Laclau 1996), pinpointing the most important logics unfolding within the discursive battles over copyright (Andersen 2003:58).

³² Some participants acted in more than one role (e.g., as a lawyer and as a representative of an organization).

Both the deconstruction and the related analysis of hegemonic and counter-hegemonic discursive practices consisted of systematically reading and viewing all the qualitative materials collected and simultaneously distinguishing and analyzing the most important dualities present in the Polish discourse on copyright. In turn, the analysis of manifestations of hegemony and counter-hegemony was carried out by analyzing the narratives used by selected participants in the social conflict over copyright. This analysis focused on searching for manifestations of the three types of narratives distinguished by Ewick and Silbey (1998) presented earlier.

To present the results of the analysis of hegemonic and counter-hegemonic discursive practices within Polish discourses on copyright, I 1) identify the most important dualities (i.e., two-sided differences) adopted by the discourses' participants as mechanisms in "a game of signification" ("logics of signification"), and 2) demonstrate hegemonic and counter-hegemonic constellations within which particular logics are played out (Andersen 2003). Hence, the basis of the deconstruction carried out in the article is the logic of signification "as the mechanism present in signification and in the displacement of signification onto the signified" (Andersen 2003:58). By revealing such mechanisms, this deconstruction can help recognize that "what appears to be the norm" is instead an imposed understanding of a particular concept or difference (Andersen 2003:58). Because copyright hegemony and counter-hegemony are built by discursive practices made by entities representing the interests of particular parties to the social conflict over copyright (i.e., government and social organizations), two specific applications of the general logic of signification are critical: the logics of power and representation. The logic of power indicates

the mechanism underlying the difference between power and liberation (Andersen 2003). As Ernesto Laclau (1996) observed, despite the commonly accepted assumption that power is the restriction of freedom, there is an unavoidable paradox within the antagonistic relationship between emancipation and power—the paradox highlighting that power simultaneously limits freedom and makes it possible. Such an observation emphasizes the need to analyze the negotiation and shifting of the boundary between power and freedom, which is particularly useful in the case of legal hegemonies (Andersen 2003).

In contrast, the logic of representation arose from deconstructing the difference between representative and represented (Laclau 1996). This deconstruction leads to the displacement of the classical theoretical question of representation, focuses on the insight that the representative participates in constructing the represented, and initiates a discussion about the struggle of representation as "a struggle over the construction of the represented" (Andersen 2003:60). Laclau (1996:52) described this logic as "internal ambiguities of the relation of representation."

While the logics of signification, with their associated dualities, form a point of departure for the analysis of the hegemonic and counter-hegemonic discursive practices, three competing narratives about law's character distinguished by Ewick and Silbey (1998) form the basis of the analysis of the discursive manifestations of copyright hegemony and counter-hegemony (see: Table 1). The latter analysis examined the narratives of particular parties in the social conflict over copyright (e.g., book publishers, music producers, non-governmental organizations pursuing copyright policy, creators, and lawyers). The before-the-law and with-the-law

narratives used by these parties are treated as indicators of copyright hegemony within this study, with the against-the-law narrative as an indicator of counter-hegemony.

Table 1. Indicators of hegemonization and counter-hegemonization of Polish copyright discourses

Hegemonization	Counter-Hegemonization
Hegemonic discourse practices	Counter-hegemonic discourse practices
Before-the-law and with-the-law narratives	Against-the-law narratives

Source: *Self-elaboration.*

Hegemonization of Polish Copyright Discourses

Hegemonic Discursive Practices

In Poland, hegemonic discursive practices through which a copyright order is created and maintained are characteristic of the government, organizations representing the interests of the creative sector, old intermediaries, and lawyers. The logic of power underlying these practices is built on the difference between the power of copyright law and freedom identified with the state of anarchy. Based on this duality, copyright's proponents and defenders, such as book publishers and organizations belonging to the Polish strong copyright coalition, present a world where copyright law exists as safe, civilized (e.g., “[introduction of copyright] is a rite of civiliza-

tion; it is done along with raising living standards” [O2]³³), and fair (e.g., “the world of copyright is just a fair world to me” [BP3]). According to representatives of the strong copyright coalition, this world also functions based on proper norms (i.e., moral and religious). For example, collecting societies have frequently indicated the relationship between copyright compliance and observing religious norms, mainly by using a narrative equating copyright with religious principles. The following statement by a representative of the Society of Authors ZAiKS made during a debate on ACTA organized by the Polish Prime Minister (at that time—Donald Tusk)³⁴ is an exemplification of such a narrative: “I think that if...everyone agrees on one directive, we will come to an agreement. This is a directive that has been in force for more than 6,000 years: directive number seven, commonly known as the seventh commandment: ‘Thou shalt not steal.’”

At the same time, those who co-create and co-maintain copyright hegemonic order contrast the orderly world with copyright with the world in which copyright does not apply. The latter, according to copyright proponents, is the world characterized by anarchy (e.g., “I believe that either the [copyright] law or anarchy” [O4]), numerous risks (e.g., “P2P is full of viruses and spyware” [GW 2006]³⁵), and non-compliance with moral and religious norms.

³³ Statements of particular representatives of organizations are marked as O1...O6, statements of book publishers as BP1...BP6, statements of music producers as MP1...MP6, statements of writers as w1...w12, statements of musicians as m1...m10, and statements of lawyers as L1...L11.

³⁴ The debate occurred on February 06, 2012, lasted over seven hours, and was broadcast on television. A video recording of the entire debate can be viewed on YouTube (<https://www.youtube.com/watch?v=cnT4ZVhWa-o&t=5s>). Retrieved June 17, 2024).

³⁵ Quotations from the press and television are marked with the name of the press title or TV station and the date.

On the one hand, using the logic of power behind the dichotomous division into a world with and without copyright helps supporters of the existing copyright order strengthen their arguments. On the other hand, this logic leaves no room for discussing changes to existing regulations and negotiating new legislation. Hence, it is a manifestation of the hegemonic discourse. The hegemonic character of discursive practices based on the copyright-freedom duality stems from the paradox that copyright not only limits users' freedom but also makes it possible. Representatives of the strong copyright coalition confront people with this paradox by presenting a negative image of a world without copyright law. According to the image provided by copyright proponents, this world could not provide freedom to those who use cultural goods due to the lack of adequate regulations and the many risks involved. As shown later, supporters of the free culture coalition use the same distinction between copyright and freedom for entirely different purposes.

Regarding the hegemonic narratives created by old intermediaries and organizations representing the creative sector, revealing the logic of representation underlying these narratives is particularly important. In the case of Polish intermediaries (i.e., Polish book publishers), some of their representatives presented themselves during interviews as responsible for ensuring that the creators with whom they work are aware of the copyright regulations applicable to them (e.g., "I reach out to copyright law and discuss, try to verify some knowledge, and also show how copyright works in the publishing market" [BP6]). Thus, although intermediaries are not formally obligated to represent the broader interests of creators (except for obligations assumed by signing contracts), they take the role of the representative while

simultaneously creating the role of the represented: the "lost artist." The latter, as revealed in the group interviews, is sometimes accepted, especially by young writers, in a thoughtless manner (e.g., "the first representative of our interests is...the publishing house" [w12]).

However, the logic of representation is exploited much more by organizations representing creators or intermediaries than by the intermediaries themselves. Both groups of organizations, unlike the intermediaries, are formally obligated to provide representation and, as shown by the analysis of the interviews, are aware of the limitations associated with this representation, such as a lack of awareness and interest on the part of the represented. Some members of these organizations treat the mentioned limitations as a manifestation of the incompleteness of the represented's identity and provide the represented with a language through which their proper identity can be constituted. At the same time, other members of the strong copyright coalition use legitimacy to speak on behalf of the represented, thus creating an image of the represented that is primarily compatible with their interests. The following press statement of a member of the Polish copyright collecting society from the debate on ACTA is an example of creating such an image, depicting the will of the creators in a manner favorable to their representatives.

General Director of the Society of Authors ZAiKS... supports the signing of ACTA on the grounds that it is intended to facilitate the protection of the interests of the authors his association represents. "We have an obligation to support everything that the Polish state wants to do to protect the interests of Polish authors. I think this is a natural reaction"—he acknowledged. [Newsweek 2012]

The author of the cited statement resorted to simplification, assuming that the entire group his organization represents has the “only right” view of a given legal regulation. This simplification may help influence legislators. However, it constitutes a kind of manipulation of artists’ will at the hands of their representatives when viewed from the perspective of the diverse community of creators.

The discourse analysis and accompanying deconstruction made it possible to identify other indeterminate dualities—related to other applications of the logic of signification—used in hegemonic practices within Polish copyright discourses. These dualities included the following: 1) the duality between legal and illegal (piracy) ways of using cultural goods, 2) the duality between valuable and non-valuable cultural goods, and 3) the duality between acting for and against Polish culture.

Although the line between compliance and non-compliance with copyright is unclear and constantly changing, even for lawyers, organizations working for the interests of the creative sector deliberately present this line as clear and definite. The representatives of these organizations use the logic of signification founded on such duality when convincing the public of the need to adopt either a specific copyright regulation or a certain position toward specific social practices. The following statement by a representative of the Polish Society of the Phonographic Industry regarding the legal evaluation of actions taken by movie subtitling services is an example of the application of this kind of logic.

When it comes to websites with movie subtitles, it’s hard to concede the point of those who claim that it’s only about free culture. The closed website had about 700,000 downloads per month. This means that those

who used it must have previously downloaded the film from the internet as well. In either case, therefore, it took place in violation of the creators’ copyrights. [DGP 2007]

The duality between cultural goods carrying values and cultural goods devoid of these values is frequently used by the participants in many Polish debates on legal regulations concerning culture. Regarding hegemonic discursive practices, the logic based on this duality mainly emphasizes the need for copyright law in society. Indeed, intermediaries and organizations representing the interests of the creative sector indicated that the creation and dissemination of works using copyright institutions and tools would guarantee that these works would be of appropriate quality. The following statement made by the representative of a Polish book publisher displayed this logic: “If we go in the direction of open domains, releasing without rights, without publishing houses, we will end up being flooded with crap literature...I would be against...opening licenses and open texts in general because, in a moment, no one will control it” (BP4).

Finally, organizations belonging to the strong copyright coalition have often used the duality between acting for and against Polish culture. In their press statements, organizations representing the interests of the creative sector have identified respecting copyright law with acting for the sake of culture (e.g., “By using legal sources, you support culture!” [GW 2013]), although many studies have indicated otherwise (see, e.g., Lessig 2004). Moreover, according to the members of these organizations, any activity taking care of the interests of Polish creators (e.g., “I am not prone to bombast, but I believe that Polish culture would be much worse without ZAiKS” [TP 2016]) and those who represent them

is the manifestation of activities for the benefit of Polish culture. These activities are contrasted with activities against the culture, such as those undermining the functioning principles and institutions of copyright law, even if the authors of the research report do the undermining. Accusing the authors of a study whose results did not speak in favor of the copyright system of acting to the detriment of Polish culture can be observed in the following excerpt from the press statement of the Society of Authors ZAiKS' representative: "The report proves the incompetence of authors in the matter of collective management in Poland and around the world... What is the purpose of such action? Perhaps nothing more than weakening the position of the creators. This report works against the national culture" (GW 2015).

Notably, the duality between acting for and against Polish culture, like the duality between valuable and non-valuable cultural goods, is an example of exploiting the ambiguity of the concept of culture. Assuming that only those works and those activities that are visible to and compatible with the copyright system deserve the title of culture, the strong copyright coalition privileges the particular meaning of culture while marginalizing others.

Manifestations of Hegemony

Beyond the hegemonic discursive practices described above, some participants in the social conflict over copyright use narratives presenting the law as a separate and authoritative sphere of social life (i.e., before-the-law) or a playing field where specific rules can be negotiated (i.e., with-the-law). These narratives manifest existing copyright hegemony, not an action seeking to introduce or maintain this hegemony, such as he-

gemonic discursive practices. Before-the-law narratives are primarily visible within the narratives of lawyers and representatives of organizations undertaking awareness-raising activities, highlighting the need to explain the complexity of copyright to citizens. Among organizations with educational missions, the Legal Culture Foundation is particularly notable. The foundation's website contains the following description of the social campaign of *Legal Culture*:

You'll meet us throughout Poland in schools, cities, towns, and villages during the most important film, music, and theatre festivals but also at showcases and cultural events organized by us...We're informing, inspiring, acting, debating, and trying to change the tone of the conversation regarding copyright and piracy into a constructive dialogue. We're promoting the use of legal sources of culture.³⁶

Within the discourses examined in the study, the with-the-law narrative was typical of Polish music producers (especially DJs) and young musicians. During the period studied, two main types of this narrative were observed: 1) those indicating factors or circumstances where copyright may not be complied with and 2) those rationalizing the use of "illegal" sources of culture. The former was dominated by arguments justifying the use of "illegal" sources of access to content by people without sufficient financial resources. The following statement by a music producer displayed this type of argumentation:

Everyone has experienced this process of going from piracy to legalization. I must say that today, I use mainly legal versions of software, but sometimes I in-

³⁶ For more information about the campaign of *Legal Culture* see the following website: <https://www.legalnakultura.pl/en/social-campaign/activities>. Retrieved June 17, 2024.

stall something illegal, especially if it is something that will be used sporadically or I will be using it for fun...I know a lot of people...from having fun to making music for money, [and] this is the rule that applies to everyone. [MP2]

According to music industry representatives, another circumstance that can cause music producers and musicians to “turn a blind eye” to copyright infringement is the willingness to disseminate cultural goods.

An example of the second type of with-the-law narrative is an argumentation based on the so-called “sampling effect.”³⁷ People using this argument indicate that it is a common, justified social practice to use illegal, free sources of access to culture to determine whether a given work is worth its price. Such argumentation was exemplified in the following statement by the young musician:

Most people have something like this, especially when they see that some things are expensive. Computer games are very expensive, and music is also not the cheapest, especially foreign music...So most people, while spending their money on culture on something that will be of no use to them but for entertainment and will eventually sit on the shelf getting dusty, would like to know that it is really good and that it is worth buying. Thanks to such practices, often illegal, people have the opportunity to check the cultural goods they want to buy. [m5]

Although the presented examples of the with-the-law narrative indicate numerous exceptions accepted by users and creators, they are still exceptions to

³⁷ The “sampling effect” is one of the possible positive effects of online piracy on the purchase of content from legal sources (see, e.g., Poort et al. 2018).

the validity of the rules of the copyright order. The fact that copyright addressees build such elaborate arguments to justify the need to deviate from the principles of copyright law shows that the copyright order is nevertheless considered dominant.

Counter-Hegemonization of Polish Copyright Discourses

Counter-Hegemonic Discursive Practices

In the Polish public sphere, counter-hegemonic discursive practices aimed at disarticulating the existing copyright order and its institutions are used mainly by organizations representing the interests of users or producers and importers of electronic devices through which people use copyrighted goods (such as Digital Poland Association). The former organizations, as mentioned, are, to some extent, supported by the major internet corporations. Additionally, counter-hegemonic narratives are used by politicians. However, these narratives manifest the instrumental use of copyright counter-hegemonic practices.

The supporters of liberalization or deregulation of copyright law, similar to copyright proponents, build their discursive practices on the logic of the duality between copyright law and freedom. However, members of the free culture coalition define the latter not as a state of anarchy but as an absence of restrictions imposed by copyright law. As a result, opponents of this law employ not so much the logic of power but the “logic of freedom,” which is the inversion of the former. The counter-hegemonic character of discursive practices using this logic stems from the same paradox from which stems the hegemonic character of discursive practices described earlier. However, supporters of the free cul-

ture coalition undermine copyright law's positive and inevitable nature, emphasized by those who support the strong copyright coalition. Thus, they do not propose a new hegemony but merely seek to undermine the existing hegemony by exaggerating the dangers of copyright. For instance, the Modern Poland Foundation has often emphasized that copyright law restricts access to culture (e.g., "A huge number of works that could be used freely were taken away from the public domain" [GW 2008]). At the same time, other representatives of the free culture coalition present values justifying the protection of creative and cultural freedoms as being at odds with the values underlying the protection of copyright.

Although counter-hegemonic practices are primarily aimed at disarticulating the existing order, to some extent, they also close the discussion by equating the restrictions imposed by copyright law with the existence of that law. For example, by identifying copyright law with the state of lack of freedom, users of such practices close the debate on which solutions could be sought to reconcile the rights of creators and intermediaries with the rights and freedoms of users.

The duality between freedom and copyright was particularly emphasized during the debate on ACTA. Counter-hegemonic discursive practices using this duality and the related logic of freedom appeared in the statements of protesting internet users and members of organizations representing them. For instance, the Panoptykon's representatives identified the ACTA agreement with a lack of civil liberties, as evidenced by the following statement made on television: "The point is to remove the ACTA from the table as soon as possible and... start...a conversation on how to regulate civil liberties in the digital age" (*Polsat News* 2012). Additional-

ly, politicians from the Law and Justice, who in 2012 were part of the opposition, quite often delimited the field of debate on ACTA by pointing out the inevitable contradiction between intellectual property rights and freedom. An example of such delimitation is in the following statement: "This is actually a dispute between two important values—the value of protecting intellectual property and copyrighted works and the value of freedom of expression and access to culture" (*Polsat News* 2012).

For counter-hegemonic practices, another critical difference applied by the organizations supporting the free culture coalition is that of the representative and the represented. This difference, like the difference between the power of copyright and freedom, has also been used by both sides of the conflict. Specifically, the logic of representation associated with this duality has been used by the Digital Poland Association. The president of this organization has criticized the system of private copying levy in the media by emphasizing the need to protect and represent the interests of ordinary consumers of culture while indicating what exactly should be considered by those obliged to such representation. He has repeatedly pointed out that the Ministry of Culture's support of the private copying levy system fails to represent the interests of Polish cultural consumers. The following statement made by the president of Digital Poland during a TV interview, creating an image of poor Polish consumers unable to bear the costs of fair use of cultural goods, is a perfect example of the counter-hegemonic use of the logic of representation.

It is weird that the Ministry of Culture is in favor of this fee as if trying not to look at this business from the other very important side in this dispute, from the side of the consumer who has to put out these few

dozen zlotys for each device out of his pocket, and unfortunately for the Polish consumer, still in the era of coming out of the crisis, it is a big expense. [TVP *Info* 2014]

A consumer image depicted in this statement is, of course, in line with the interests of Digital Poland, which, as explained, seeks to strengthen public criticism of the private copying levy.

A slightly different image of Polish users of commercial culture can be found in narratives created by the free culture coalition. Organizations of this coalition undertake numerous activities to increase the rights and freedoms of culture users. At the same time, members of these organizations indicate that the represented users are often uninterested in their entitlements when it comes to the copyright system (e.g., “When I use copyright, I try to get to know and understand it...One of my huge disappointments experienced some time ago, a life disappointment, was the discovery that people do not have such a need” [O6]). This lack of direct social legitimacy and the need to justify the initiated actions frequently cause members of organizations belonging to the free culture coalition to create images of the represented, consistent with their policy. The following press statement by the president of the Modern Poland Foundation is an example of this kind of “supplementation” of the represented identity: “We have reached the point where an ordinary citizen is unable to comply with the law because it is too complicated, imposes too-high barriers and criminalizes everyday communication behavior; this is a situation that must change” (*Wprost* 2012). An important question, although not resolvable at the level of the discourse itself, is to what extent the identity created is compatible with that of the typical user of cultural goods.

Other applications of the logic of signification captured during the analysis of copyright counter-hegemonic discursive practices have been based on the following dualities: 1) the duality between a world with open access to culture, knowledge, and information and a “fenced world,” 2) the duality between free and “overregulated culture,” 3) the duality between a free and censored internet, and 4) the duality between an analog and a digital world. The first three differences are somewhat derivative of the duality between the power of copyright and freedom. The main task of discursive practices based on these differences is to present a dystopian image of the world, culture, and internet subordinated to copyright.

The logic related to the duality between the fenced world and the world offering open access to knowledge and culture has been most frequently reiterated by the Modern Poland Foundation. The counter-hegemonic logic based on this duality can be illustrated by two excerpts from press statements made by the president of this organization. First, “it would be wrong, however, if fenced culture became a symbol of the information society” (*GW* 2006). Second, “in the open space of the internet, there are separate places that can be called—after the title of the album of [Polish music] band *Świetliki*—‘concentration gardens’”³⁸ (*TP* 2011). Additionally, the division into the fenced versus open world appeared during the debate on ACTA mentioned earlier, organized by the Prime Minister on February 6, 2012. During this debate, a representative of the Polish Information Technology Association (*Polskie Towarzystwo Informatyczne*) made the following statement.

³⁸ For more information about the band *Świetliki* see the following website: <https://en.wikipedia.org/wiki/%C5%9Awietliki>. Retrieved June 17, 2024.

The internet in the 1960s and 1970s grew out of counterculture trends, and at that time, it was about taking the information monopoly out of the hands of the government, big corporations, and the military and putting it in the hands of the people—a naive idea, but after all these years, it worked...And now others come who had nothing to do with it—lawyers, politicians—and they start “fencing off” the area that we have acquired and developed. They put up fences and prohibition signs: this way, it’s allowed; that way, it’s not allowed.

The free-overregulated culture duality—taken from the work of Lawrence Lessig (2004)—has been primarily used by representatives of the Digital Centre Foundation. The following press statement exemplified the logic related to this duality: “Increased control will cause that network culture that is rich today to soon resemble the relatively monotonous TV programs” (GW 2008).

Finally, the duality between the free and censored internet was introduced mainly by the opponents of ACTA and the “ACTA2.” The counter-hegemonic logic associated with this division consisted primarily of identifying the ACTA agreement and the DSM Directive with the introduction of censorship. Such identification was made notably by protesting internet users (e.g., “No one wants censorship on the internet of any kind, and the internet is freedom of speech” [Polsat News 2012]). Furthermore, organizations supporting these users treat specific regulations in the ACTA or the DSM Directive as manifesting censorship. For example, a representative of the Digital Centre Foundation criticizing the mandatory content filtering rule observed, “It may turn out that the first widespread application of artificial intelligence imposed by European law will

be the filters censoring the freedom of expression of internet users” (Polityka.pl 2018).

The narrative equating the introduction of the DSM Directive with censorship was also instrumentally used by the Law and Justice politicians during the 2018-2019 campaigns. The latter was exemplified in the following statement by Prime Minister Mateusz Morawiecki during the Provincial Election Convention in Gdańsk.

Dear ladies and gentlemen, you have access to the vast majority of media, and of course, you do not want the internet, the most liberal and free medium...to be also controlled because content filtering...sometimes under the guise of copyright protection, threatens censorship. They probably want to introduce censorship in this way.

In addition, the ruling party’s narrative using the metaphor of censorship to discredit the DSM Directive was further reproduced by the Polish public television (*Telewizja Polska S.A.—TVP*). The following statements of *TVP* reporters exemplified such reproduction: “if the Directive comes into force, the website administrator will have to check whether we are infringing someone’s copyright before publishing our text, photo, or video” [TVP1 2018]) and “under the guise of copyright protection, censorship is introduced on the internet” [TVP2 2018].

The last mentioned duality that counter-hegemonic practitioners use to construct their narratives is the duality between an analog and virtual world, which is commonly used and increasingly unclear. Within the analyzed discourses, this difference was emphasized primarily by the participants of the protests against ACTA (e.g., “We want to continue to have freedom on the internet” [Polsat News 2012]) and or-

ganizations supporting the anti-ACTA movement. For instance, specific excerpts from press statements by the Modern Poland Foundation and Digital Centre Foundation used the logic related to analog-virtual duality to argue against applying copyright to online activities. According to one such statement, “Access control systems limit our options. What for? They are trying to turn digital into analog” (TP 2011). Elsewhere, one member of the free culture coalition stated:

Traditional entrepreneurs, whose business models date back to the pre-internet analog times, are often afraid of the changes brought about by the development of the internet. This fear is sometimes irrational; sometimes, on the contrary, it is a rational calculation because new technologies disrupt existing models. [Rzeczpospolita 2013]

Manifestations of Counter-Hegemony

Beyond the counter-hegemonic discursive practices, a manifestation of the counter-hegemonization of Polish copyright discourses is the against-the-law narrative. Such narrative was used primarily by musicians and music producers, mainly regarding the part of the copyright system concerning the principles of the functioning of collective management organizations. Collecting societies were referenced by people from the Polish music industry as ineffective, dishonest, and abusive of power. The following statements by music producers and young musicians illustrated this critique: “[ZAiKS] is a completely rigid institution...often bending the law to suit its own needs” (MP4); “we followed the advice of older musicians who had already had a lot of contact with these organizations, everyone unanimously described them as thieves” (m3); and “ZAiKS is considered a quasi-mafia organization” (m9).

Polish Discursive Battles over Copyright

As established, counter-hegemony is an unfinished project whose main task is to undertake actions to undermine the current hegemony’s principles to introduce a new hegemony in the longer term. Although a counter-hegemony understood in this way is not a viable counterbalance to the existing hegemony, the interplay between hegemonic and counter-hegemonic discursive practices can be described as a kind of discursive struggle. The actors involved in this struggle create discursive practices appropriate to produce and reproduce copyright order (i.e., hegemonic discursive practices) or undermine it (i.e., counter-hegemonic discursive practices) while seeking to discredit the discursive practices created by their “adversaries.” A manifestation of such discrediting is the previously described logic of freedom used by Polish free culture coalition members. Other examples of discrediting the discursive practices of opponents are cases of undermining the dualities underlying the logic of signification they use.

Members of the free culture coalition question the differences imposed by copyright defenders as the duality between legal ways of using cultural goods and piracy and the duality between acting for and against Polish culture. An example of narrative questioning the first duality appeared in the following press statement by a member of an organization representing users of culture:

The traditional approach promotes existing sources, urging users to consider the legality of the content as an important selection criterion. In our opinion, it is equally important to consider whether the law artificially restricts some form of creation or distribution that could be legalized without harm or even to the benefit of all. [Rzeczpospolita 2013]

The line between acting for and against the culture drawn by Polish collective societies was challenged mainly by the Digital Centre Foundation. Notably, this counter-hegemonic strategy was visible in media statements made by the representatives of this foundation and in their research activities. The latter was most evident in the case of the research report *The Circulations of Culture: On the Social Distribution of Content* (Filiciak, Hofmokl, and Tarkowski 2012), published by the Digital Centre. This report was a kind of manifesto for ACTA opponents because it undermined the common belief that downloading illegal content from the internet is harmful to culture. According to the authors of the report, “participation in informal circulation does not entirely exclude buying cultural goods. On the contrary... such people are culturally very active, especially when compared to the rest of the Poles” (GW 2012).

At the same time, copyright defenders, opposing counter-hegemonic discursive practices, question the duality between the analog and digital world and the duality between open and “locked” culture. The latter combines the duality between the fenced world and the world with open access to culture, knowledge, and information with the duality between free and overregulated cultures. The open-locked culture duality has been frequently questioned by lawyers, indicating that open culture also requires copyright. As a lawyer specializing in copyright law explained: “Copyright law makes it profitable to be an artist...and from this perspective, copyright is an important catalyst for filling open resources or open culture” (L3). In contrast, a narrative undermining the division between the “real” world and the digital world used by copyright opponents appeared in a 2012 statement by Prime Minister Donald Tusk during an interview for *Wprost Weekly*.

In the case of the internet, it is customary to think that what is on it should be free of regulations. The internet, according to most users, should be treated differently than the world outside the internet. But today, for millions of people, the internet is the real world—they do shopping on it, meet people, and trade large amounts of money. [*Wprost* 2012]

The discourse analysis showed that the strategy of discrediting discursive practices of the opponents, including undermining dualities based on which opponents build their hegemonic or counter-hegemonic discursive practices, is typical of all parties to the social conflict over copyright. Moreover, the study indicated that this “deconstruction” is carried out alternately. First, opponents of the copyright order reveal the basis of hegemonic logic imposed by supporters of the strong copyright coalition. Next, defenders of the current regulations undermine the counter-hegemonic logic built by the oppositionists. Subsequently, those who seek to rechallenge the copyright hegemony counter the logic of those who produce and maintain this hegemony, and the latter undermine the counter-hegemony produced and maintained by the former. As a result, Polish discourses on copyright are structured as an alternating sequence of discursive hegemonic and discursive counter-hegemonic practices. However, this article describes only some logic used by the participants in the conflict under analysis.

Discussion and Conclusion

The theoretical considerations in this article have shown that copyright hegemony is a special kind of hegemony: a local hegemony built based on a legal order. This hegemony takes the form of diffuse hegemony in Poland: 1) due to the multi-level nature of Polish copyright hegemony, which primarily includes

the international, European, and regional (Polish) levels, and 2) because of the extraordinary diversity of social actors who are either “hegemons” (those who produce and reproduce the hegemonic order) or subjects of hegemony. On “the hegemonizing side,” in addition to the previously mentioned participants in Polish copyright discourses producing hegemonic discursive practices, are legislators (both Polish and EU) and a broad group of international organizations and corporations lobbying in the area of copyright. In turn, the party subjected to hegemonization is basically the whole of Polish society.

Interestingly, some Poles participating in the analyzed discourses indicated who they thought was the hegemon, which was especially visible during the protests against the ACTA and the DSM Directive. According to members of the anti-ACTA movement, the US tried to hegemonize the rest of the world by imposing its copyright regime. For many, especially young people, it was crucial to establish the interests of the American creative industry to ensure that Poland would profit from signing the agreement and that Polish citizens would not be subordinated to the ruthless logic of “bloodthirsty corporations.” A manifestation of such concerns is the following statement by one of the participants of a public debate on ACTA, mentioned earlier, organized by the Prime Minister: “Doesn’t the Prime Minister think that this deal is a part of the US ploy to gain domination over the rest of the world?”

A few years later, during the debate on the DSM Directive, many Poles used the same logic and indicated that the only thing that had changed was “the hegemon’s face.” In 2018, this entity was the EU (e.g., a *TVP* reporter stated, “The EU has this legal hegemony” [*TVP Info* 2018]) and the corporations lobbying within EU structures. Moreover, according

to the interviewees, there are “regional” copyright hegemons. Representatives of the Polish creative sector indicated that at the regional level, copyright hegemony is exercised mainly by collecting societies. As one music producer said, these organizations “act as if [they were] hegemonists” (MP2).

Because the copyright hegemony indicated by the Poles is a “perceived hegemony,” it does not reflect the full range of hegemonic practices. Their disclosure is possible only after analyzing the actions taken to establish and maintain the copyright order. This article analyzed only one type of such action: discursive practices. However, as shown in the theoretical part of the article, the constitutive elements of any hegemony can be found in the discourse. Moreover, this feature of hegemony makes the struggle between the current order and the projects aimed at overthrowing it (i.e., counter-hegemony) particularly visible on the ground of discourse.

Most research on discourse and copyright has primarily dealt with legal discourse, a professional discourse mainly used by lawyers. This research has focused on the most important copyright institutions (e.g., intellectual property, creative work, and authorship) and the associated dichotomies (e.g., idea expression and the original-non-original dichotomy). The authors of such studies have criticized the ambiguous and unclear nature of these institutions and the divisions that co-create them and draw attention to their oppressive (see, e.g., Tehranian 2012) and hegemonic nature (see, e.g., Hemmungs Wirtén 2006). Since legal discourse is rarely directly reflected in public discourse, the analyses of the cited researchers are of limited applicability to public debates on copyright. Therefore, I focused on the narratives and discursive practices of the general public who are interested

but do not necessarily discuss the shape and content of copyright law through legal concepts.

The results of the analysis showed that the framework of Polish copyright discourse is determined by the conflicting discursive practices of two opposing groups: the strong copyright and free culture coalitions. Both coalitions primarily consist of social organizations representing the interests of particular parties to the social conflict over copyright supported by numerous political, business, and cultural actors. Since the structure of the Polish copyright discourse is determined by the narratives created by two main groups, and these groups refer to each other in their narratives, this discourse is constructed from an alternating sequence of hegemonic and counter-hegemonic practices. This construction of the discourse leads to polarization while preventing the complete hegemonization of Polish society by ensuring the visibility of opposing solutions to the production and distribution of cultural goods.

Although Polish copyright discourses involve discursive practices and narratives created by supporters and opponents of the existing copyright system, hegemonic practices and narratives prevail in these discourses. The main reason is that hegemonic practices are used by those with power (i.e., legislative and economic), resources (i.e., EU and international government representatives), and organizations and corporations representing the creative sector. Moreover, hegemonic discursive practices used by copyright supporters are more effective, as evidenced, for example, by the higher visibility of hegemonic (i.e., before-the-law and with-the-law narratives) over counter-hegemonic (i.e., with-the-law narratives) narratives among discourses of those who use copyright law daily.

Moreover, the analysis of the Polish copyright debates demonstrated that the copyright hegemony of international organizations and corporations has encountered strong resistance in Polish society. This opposition was most visible during the protest against ACTA and "ACTA2." Counter-hegemonic narratives created and disseminated then were built mainly on logic related to copyright-freedom duality. Opponents of the current copyright law identified freedom with the lack of copyright regulations and advocated the non-application of copyright in the internet sphere. Non-governmental organizations representing internet and culture users were the primary sources of these counter-hegemonic narratives. Nevertheless, the difficult-to-define role of the large internet corporations that sometimes support civil society actors is worth recalling, mainly because underestimating the importance of these corporations can lead to overestimating the impact of counter-narratives created by social organizations (Cartwright 2019).

Although Polish society has strongly resisted copyright regulations protecting works distributed online, Poles have a surprising lack of openness to alternative solutions proposed by organizations seeking to change copyright law (see, e.g., Tarkowski and Majdecka 2015). The latter primarily include various free, open, and public licenses, created mainly by representatives of American organizations belonging to the strong copyright coalition. However, these licenses do not undermine the principles of the current copyright and thus do not constitute examples of a new hegemony. The lack of openness of the Polish public to new legal solutions proposed by American organizations is surprising, given that narratives created by American freedom movements have inspired most counter-hegemonic discursive practices of participants in Polish discourses on copyright law. The latter include the free-software, free-culture, and open-source-soft-

ware movements. Such narratives are typical of Polish social organizations representing users' interests. Another distinguishing feature of Polish counter-hegemonic copyright practices is the instrumental use of discourse by some participants in social conflict over copyright. Counter-hegemonic practices are used for purposes other than subverting the copyright regime primarily by Polish business representatives lobbying for copyright liberalization and Polish politicians.

The analysis of Polish discourses on copyright and the accompanying deconstruction of the logic employed by the main parties to the social conflict over copyright demonstrated the complexity of both the conflict and the discursive practices employed by its participants. Additionally, the conducted analysis revealed that the concept of hegemony, especially its discursive dimension, can be useful in analyzing public discourse on law.

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