

Paper title: Towards an enhanced copyright governance via multilevel consultations

Theoretical background

Multilevel governance has moved beyond its European setting to become an established concept applied to a wide range of political and policy settings (Rodon 2017). In addition, multilevel governance is the ‘brainchild’ of a period of optimism over the power of integration and the leading role of the Commission in transforming the European political order (Pagoulatos and Tsoukalis 2012). Multilevel governance approaches were first developed to consider the increasing complexity and dispersion of power amongst different levels of public institutions through the development of the European Union. The multilevel governance landscape is evolving rapidly through the settlement of public consultation that is producing a new dissemination of power. Scholars argue that public consultation has pros with a potential for public good (e.g. a two-way flow of information and opinion exchange between civil society and governments) (Brusca and Martínez 2016).

Problem to be examined

Multilevel consultation is the instrument that stems from the abovementioned aspect of multilevel governance. Although multilevel consultations constitute a significant part of the activities of the European Commission from policy-shaping perspective (De Wayne 2012), they have not been systematically examined for their potential to enhance copyright governance. In accordance with issues at stake, multilevel consultations are intended to provide opportunities for input from representatives of regional and local authorities, civil society organizations, the individual citizens concerned, academics and technical experts. In other words, it has been demonstrated that multilevel consultation enhances participation from a multilayer governance perspective.

The literature also reflects that the European Commission seeks to motivate stakeholders through public consultation on how to promote multilevel governance (Rasmussen, Carroll, and Lowery 2014). The European copyright reform package determines a case where public consultation has been introduced, in this respect (Haggart 2014). In particular, a recent public consultation has been conducted on the review of the European copyright rules (European Commission 2014). This consultation was held between 5 December 2013 and 5 March 2014. The objective of the consultation was to gather input from all stakeholders on the Commission's review of the European copyright rules.

Argument

A multilevel approach through public consultation could be beneficial for copyright policy makers in the member states as different societal layers are involved, which in turn the given input is more integrated/ comprehensive; in addition, it will be helpful in terms of sharing information resources among the member states by regulation based on a multilayer perspective; there is potential to create a dynamic of an ‘integrated approach’ towards further political integration in Europe, a pending European priority. The scheme of multilevel consultations involves the dynamic of comprehensive solutions for European member states and indicates whether multilevel governance should be promoted.

Research objective

The objective of this chapter is to examine whether multilevel consultation has the potential to enhance copyright governance. This analysis will be illustrated by employing a recent public consultation on review of the European copyright regulations, as a case study.

Research questions

1. What is the potential of a multilevel approach towards copyright law policy making?

Methodology

The methodology consists of a literature review on the instrument of the consultation procedure. There is analysis of the questionnaire used for the public consultation on the review of the European copyright reform package, which is constituted of 74 questions. The questionnaire contains 74 questions and the analysis focuses on those questions that refer to either open access or open data practice (e.g. questions 20, 42 to 49, 53 to 63, and 72 to 74).

The responses to this questionnaire illustrate a multilevel approach for the review on the European copyright rules. Hence, it supports the argument that a more ‘integrated approach’ toward copyright law policy making has the potential to offer a more comprehensive solution.

For the purposes of the argument in this chapter participants are those involved in information production and dissemination: a) end users/ consumers; b) authors/ publishers; c) publishers/ producers/ broadcasters; and d) service providers/ intermediaries. In addition, a representative size calculator has been applied (e.g. www.checkmarket.com hereinafter CM) to construct the required sample for analysis. Pursuant to CM, 332 participants are needed in order to build a representative sample for 384 participants.¹

References

- Bevir Mark. 2006. “Democratic Governance: Systems and Radical Perspectives.” *Public Administration Review* 66 (3): 426–36. <https://doi.org/10.1111/j.1540-6210.2006.00599.x>.
- Börzel, Tanja A., and Karen Heard-Lauréote. 2009. “Networks in EU Multi-Level Governance: Concepts and Contributions.” *Journal of Public Policy* 29 (2): 135–51. <https://doi.org/10.1017/S0143814X09001044>.
- De Wayne, Kurpius. 2012. “Consultation Theory and Process: An Integrated Model.” *The Personnel and Guidance Journal* 56 (7): 18–21. <https://doi.org/10.1002/j.2164-4918.1978.tb04660.x>.
- European Commission. 2012. “Communication from the Commission on Content in the Digital Single Market.” <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52012DC0789>.
- European Commission. 2014. “Report on the Responses to the Public Consultation on the Review of the EU Copyright Rules.” D1 Copyright. Directorate D - Intellectual Property.

¹ For consistency of approach the categories of participants are the same with those used for the questionnaire.

http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/docs/contributions/consultation-report_en.pdf.

- Huysse, Frits J., Thomas Herzog, Antonio Lobo, Ulrik F. Malt, Brent C. Opmeer, Barbara Stein, Graça Cardoso, et al. 2000. "European Consultation-Liaison Services and Their User Populations: The European Consultation-Liaison Workgroup Collaborative Study." *Psychosomatics* 41 (4): 330–38. <https://doi.org/10.1176/appi.psy.41.4.330>.
- Ines Österle, Paulus T. Aditjandra, Carlo Vaghi, Gabriele Grea, and Thomas H. Zunder. 2015. "The Role of a Structured Stakeholder Consultation Process within the Establishment of a Sustainable Urban Supply Chain." *Supply Chain Management: An International Journal* 20 (3): 284–99. <https://doi.org/10.1108/SCM-05-2014-0149>.
- Miguel, Sandra, Zaida Chinchilla-Rodriguez, and Félix de Moya-Anegón. 2011. "Open Access and Scopus: A New Approach to Scientific Visibility from the Standpoint of Access." *Journal of the American Society for Information Science and Technology* 62 (6): 1130–45. <https://doi.org/10.1002/asi.21532>.
- Quittkat, Christine, and Barbara Finke. 2008. "The EU Commission Consultation Regime." In, edited by Beate Kohler-Koch, Dirk de Bièvre, and William Maloney, 05:183–222.
- Rodríguez-Garavito, César. 2011. "Ethnicity.Gov: Global Governance, Indigenous Peoples, and the Right to Prior Consultation in Social Minefields." *Indiana Journal of Global Legal Studies* 18 (1): 263–305.
- Schilling-Vacaflor, Almut. 2012. "Democratizing Resource Governance Through Prior Consultations? Lessons from Bolivia's Hydrocarbon Sector." SSRN Scholarly Paper ID 1984033. Rochester, NY: Social Science Research Network. <https://papers.ssrn.com/abstract=1984033>.
- Shipley, Robert, and Stephen Utz. 2012. "Making It Count: A Review of the Value and Techniques for Public Consultation." *Journal of Planning Literature* 27 (1): 22–42. <https://doi.org/10.1177/0885412211413133>.
- Stewart, Jenny. 2009. *The Dilemmas of Engagement: The Role of Consultation in Governance*. ANU E Press.
- Zuiderwijk, Anneke, S. Choenni, R Meijer, Marijn Janssen, and R.S. Alibaks. 2012. "Socio-Technical Impediments of Open Data." *Electronic Journal of E-Government* 10 (2): 156–72.
- Brusca, Isabel, and Juan Carlos Martínez. 2016. "Adopting International Public-Sector Accounting Standards: A Challenge for Modernizing and Harmonizing Public Sector Accounting." *International Review of Administrative Sciences* 82 (4): 724–44. <https://doi.org/10.1177/0020852315600232>.
- Haggart, Blayne. 2014. *Copyright: The Global Politics of Digital Copyright Reform*. University of Toronto Press.
- Rasmussen, Anne, Brendan J. Carroll, and David Lowery. 2014. "Representatives of the Public? Public Opinion and Interest Group Activity." *European Journal of Political Research* 53 (2): 250–68. <https://doi.org/10.1111/1475-6765.12036>.