Tuning in to the Fine Print: Law & Social Change in Media
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In the ongoing debate over the Anti-Counterfeiting Trade Agreement (ACTA), a global initiative to curb counterfeiting and piracy, a familiar scene is playing out. Large, transnational corporations' lobbyists are convening in proverbial smoky backrooms with government officials to promote policies that are beneficial to a narrow set of economic interests. Meanwhile, NGOs, activist groups and incensed bloggers are standing outside trying to figure out what's going on with the cigar fumes rising from under the doors. Although familiar, this is not a scene that should be ignored by media scholars that study cultural phenomena. Culture, society and information policy are intimately linked, and in order to affect change, media scholars should look at specific policy debates and analyze the stakeholders involved. This response proposes that media scholars proactively address regulation issues like ACTA by continually focusing on the construction of new policy.

ACTA was initially proposed by the United States Trade Representative (USTR) in order to curb global counterfeiting and piracy by enforcing new policies that go beyond measures set by the World Intellectual Property Organization (WIPO). Canada, the EU, the US, Japan, South Korea, Mexico, Morocco, New Zealand and Singapore are all currently represented in the negotiations over ACTA, and it's unknown what policies, if any, will survive the discussions. Journalists and NGO representatives were locked out of the debate from the start, leading to plenty of whispering and rumors over the types of new, draconian intellectual property rights (IPR) and Internet policies being secretly formulated by government officials and media industry lobbyists. In mid-2008, Wikileaks released an early draft of the ACTA discussions, verifying the fears of the digital rights community. Particularly, ACTA contained a proposal for a three-strikes law. In a three-strikes system, copyright infringement is removed from its status as a civil offense and criminalized through a highly undemocratic process. First, ISPs are required to log the Internet use of all customers. An IPR holder can request the information log at any time, often with no court order. Then, if the IPR holder thinks infringement is occurring, the ISP has to send usually up to two warning letters to the alleged infringer. Finally, if the IPR holder still believes that infringement is occurring, the ISP bans the offending user from the Internet. Notice the absence of legal or political representation by the accused party, who is guilty with no formal outlet for proving innocence.

The three-strikes rule was only one aspect of ACTA that outraged the digital rights community. The text also contained calls for stronger anti-circumvention laws and endangers alternative media sites by applying criminal sanctions to sites that illicitly host copyrighted information (see here for a video from Public Knowledge on the "crazy stuff" in ACTA). None of these proposals were anything conceptually new, as the European Commission already failed to implement most of them through an updated proposal for its IPR directive, IPRED. Additionally, as of 2010, France has a three-strikes policy and the UK has the framework for one. The political and activist organizations and individuals that oppose these policies have had a fair share of victories—ACTA went from having FOIA requests denied due to a state secrets mandate by President Obama to becoming slightly more open after the European Parliament was pressured into demanding early drafts—but the losses outnumber the gains, and for reasons besides the commoditizing nature of global capitalism. The digital rights' movement doesn't have enough

creative, economically pragmatic alternatives to policies that it opposes. Media scholars can meet this challenge by paying attention to current debates and conducting stakeholder analyses in order to understand the power dynamic of those involved in regulatory debates. Often, this requires admitting that furthering the economic interests of the state is the best way to overcome policy lobbying from media industries. A striking example of economic trumping cultural interests in policy debates comes from the proposed IPRED revisions. The digital rights groups opposing harsher patent laws made economic arguments that such laws would destroy the European gaming industry and raise the price of auto parts. After tough lobbying, references to patent law were removed from the draft. On the other hand, the arguments against harsher copyright laws focused on the cultural and social, and included chilling effects to librarians, criminalizing street music and squashing academic freedom. Despite lobbying efforts similar to those made for patent law, proposals to harsher copyright laws were not removed from the draft.

It's clear that both unjust copyright and patent laws pollute the ideal of an open online ecology, but it takes economic arguments to advance cultural interests in a global capitalist society. The best contribution that media studies can make to keeping information policy debate out of smoky backrooms and into a public sphere is to focus on economic innovation that supports cultural and social achievements.