



# Disputes over intellectual rights in Brazil: interest organisations and their impacts on copyright law

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Received: 3 April 2022 / Accepted: 21 April 2023  
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## Abstract

Previous studies on lobbying outlined that business groups are more influential on low salient issues due to their organisation, unity, and expertise. This study addresses the causal mechanisms behind issue salience and business influence through an in-depth case study regarding copyright reform in Brazil. By employing a bibliographical and a documentary research, I analysed the statuses and legislative agendas of groups and other policy participants interested in either maintaining or changing copyright laws. Through the investigation of public hearings and draft bills discussed at a special committee of the Chamber of Deputies, I mapped the policy participants and their political preferences. Combining process-tracing and preference attainment, the analysis sought to identify the winners and losers in this debate as well as the strategies they implemented to achieve their goals. In contrast to other studies, the case under analysis revealed that certain participants acted as counter-vailing forces against powerful groups, though business organisations still succeed to achieve small concessions.

**Keywords** Interest groups · Public policy · Copyright law · Lobbying · Brazil

## Introduction

Although a growing body of research on interest groups has emerged over the past years, this field remains a small niche within political science (Beyers et al. 2008). Research on the Global South is still more scarce compared to the United States and the European Union, where researchers have access to large quantitative databases on interest organisations. Brazil, one of the largest Southern economies, has no publicly available dataset on interest organisations. Overall, scholars focus on the role of big corporations and other groups in certain domains, such as health (Paumgarten 2016) or agrobusiness (Iglécias 2008). Fewer studies address disputes in the cultural

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sector (Valente 2018). To fill this void, this paper introduces data on interest organisations and other policy participants engaged in discussing copyright laws in Brazil, a major topic in the cultural agenda.

The goal was to identify the winners and losers in this debate as well as to verify which factors might have resulted in their success or failure. Overall, studies point out that business groups are more influential on low salient issues (less competitive environments) and are more prone to reach policymakers through inside strategies (Beyers et al. 2008; Berkhout 2013; Dür et al. 2015). Not surprisingly, a significant body of research on lobbying in Brazil focuses on business groups (Coli 2021). However, few studies investigate the causal mechanisms behind the relationship between issue salience, strategies, and influence. This paper addresses this topic through an in-depth case study that traced the negotiation process of a copyright reform to verify the causal chain between strategies and interest group influence. In this sense, the case study sought to collect evidence about the causal chain linking issue salience and success. The main hypothesis is that business groups are more influential on low salient issues due to the employment of inside strategies as these issues draw less attention from the media and the large audience.

Focusing on a Special Committee at the Chamber of Deputies, I identified the stakeholders, their interests, and the policy outcomes. I traced all the process of approving a report on a broader legislative reform to verify how interest organisations were successful in achieving their goals. This included an analysis of a varied range of documents, from public speeches to the final report presented by the rapporteur. By conducting a critical discourse analysis (Fairclough 2003), I identified the participants' views and preferences. Then, I compared their positions to the report introduced by the rapporteur at the Special Committee. Observing the negotiation allowed me to collect evidence on interest group strategies and potential causes of influence. I confirmed the information through two in-depth interviews conducted with key policy participants in this debate.

The case partially confirmed the hypothesis. Inside strategies, notably private meetings with MPs, were efficient tools for achieving policy goals. Nonetheless, business groups were not the most successful players. Although they achieved certain goals in the case under analysis, public bodies and other actors acted as countervailing forces. Thus, the case analysis sheds light on the application of classical definitions of lobbying and interest groups as theoretical frameworks historically emphasised the lobbying activities of non-State actors. Furthermore, the case reinforced the presence of other determinants of influence in addition to those frequently cited by the literature (economic resources, unity, and political salience). In addition, the study revealed the blurred frontiers between lobbying coalitions.

The paper proceeds as follows. The first section brings a narrative literature review regarding conceptual dilemmas. It aims to explore critically previous works on the two theoretical puzzles: conceptualisation and determinants of influence. The second section describes the methodology. Sections 3 and 4 provide the background information, whereas the following sections introduce the data and analysis. The concluding remarks summarise the main results and point out other potential issues that further studies might address.

Despite its limits on generalisation, the study brings several contributions to further comparative studies by providing contextual description, theory-testing, and theory-building (Landman 2008). Mapping interest organisations might contribute to build a broader quantitative database, still absent in Brazil. As regards theory-testing and building, the in-depth case study aims to review and build new hypotheses on the relationship between strategies and influence. Moreover, it applies theoretical frameworks inspired by the American and European literatures in a different institutional environment. Hence, it helps to verify the ‘travelling’ capacity of these concepts (Sartori 1970) by testing them in a case from the Global South.

## Literature review: actors, strategies, and influence

There is no consensual concept of interest groups in political science. The lack of clarity is an obstacle to empirical works since science requires a common language for gathering results. Overall, the scientific literacy is divided into two broad styles: one linking interest groups to membership organisations and other conceiving IGs as simply organised or non-organised groups aiming at influencing policies (Jordan et al. 2004). In a classical work regarding the United States, Truman (1971 [1951]) defined interest groups as any group sharing attitudes and perspectives and making claims against other groups. This definition is too broad as it frames every type of political organisation or movement into the concept of interest group (Delgadillo 2017).

Trying to narrow this concept, Beyers et al. (2008) pointed out three elements in conceptualising interest groups: organisation, political interests, and informality. Organisation refers to a certain level of stability, whereas political interests are related to the attempts to influence. Informality means that interest groups pursue their goals through informal interactions without competing in elections or holding public offices. Similarly, Delgadillo (2017) defines interest groups as organisations which have a certain level of stability, try to persuade the government by non-violent means, and do not seek to fulfil governmental responsibilities.

Albeit useful, these definitions have some limitations. Firstly, they exclude the actions of public authorities in the input side of the political process. Ministries and government agencies may undertake lobbying activities or join coalitions to persuade other public authorities. Moreover, these definitions do not give full account of the differences between interest groups and similar organisations. Other types of organisations with a certain level of informality and stability also try to persuade policymakers, such as social movements and companies.

Despite its relevance for comparative studies, conceptual stretching may result in ambiguity and confusion (Sartori 1970; Collier and Mahon 1993). In contrast, narrower definitions might exclude key actors from the analysis of influence. Therefore, one of the main challenges in defining interest groups refers to efforts in differentiating this category from other types of political actors without excluding almost all the diversity of stakeholders in a policy domain. Jordan et al. (2004) try to solve this dilemma by proposing the employment of different categories: policy participant and interest group. According to the authors, policy participant refers to any

actor engaged politically, even if it is temporary, whereas the label ‘interest groups’ requires membership and organisation. In this sense, interest groups are conceived as multi-member bodies trying to affect policies. In this definition, members refer to both individuals and organisations. A key characteristic of these groups is the attempt to overcome the free rider problem. They are organisations created for influencing measures. Policy participants may act as interest groups at times when they mobilise to influence policies (Jordan et al. 2004).

Interest groups are a key component in the phenomenon known as ‘pressure politics’, which is also related to lobbying activities (Jordan et al. 2004; Beyers et al. 2008; Loomis and Cigler 2012). Klüver (2013) describes lobbying as an exchange of goods between interest groups and political institutions. Interest organisations supply policymakers with information on political support and policy-relevant material. Thus, whereas interest organisations provide policymakers with legislative subsidies, they gain access to institutions and strategic information. (Berkhout 2013). This exchange relationship is not exclusive of interest organisations, though. Other policy participants may exchange policy-relevant information, citizen support, or economic power with government officers and politicians. To the purposes of this paper, the term ‘lobbying’ refers to an action or process based upon direct contact between policy participants and public authorities (Truman 1971 [1951]; Delgadillo 2017). Lobbying is the action whereas interest groups are the main (but not the only) actors of the so-called pressure politics. This does not prevent other participants, such as social movements and companies, from undertaking lobbying activities to achieve their goals.

Lobbying activities may encompass a diverse range of strategies. Overall, the research literature highlights two types of tactics: inside and outside lobbying. The former refers to direct encounters with policymakers, such as face-to-face meetings and email exchanges. The latter consists of public mobilisation aiming to raise awareness of a broader audience. Outside lobbying is therefore considered an indirect way of addressing policymakers (De Bruycker and Beyers 2019). Interest groups, especially those representing business, are usually associated to inside lobbying strategies as they contact policymakers directly (Beyers et al. 2008; Berkhout 2013; Dür et al. 2015). Nevertheless, studies also revealed other factors which might affect groups’ choices regarding their strategies, such as coalition diversity and policy type (Binderkrantz 2008; Berkhout 2013; Binderkrantz et al. 2014; De Bruycker and Beyers 2019).

Whereas there is a consolidated literature on IG strategies and influence in the Global North (notably in the European Union or the United States), fewer studies address these issues in other regions. Research on Brazil emphasise the role of companies and business organisations (Coli 2021) but they lack stronger empirical evidence regarding causal mechanisms behind the privileged access of business groups to political institutions.

As influence is a multicausal phenomenon, the research literature points out several aspects that might affect business groups’ success in attaining their goals. The first element refers to the concentration of financial and organisational resources in lobbying activities. As big corporations tend to spend more on lobbying activities (de Figueiredo and Richter 2014), they are expected to have a higher impact on

public decisions. In addition to the material costs of lobbying activities, theories of structural power highlight that business groups' privileged position allows them to reach favourable policy outcomes (Bernhagen and Bräuninger 2005).

The second determinant of influence is unity, which refers to the capability of acting in unison, 'speaking with one voice' (Rasmussen 2015). Internal unity is a condition for all interest groups to have influence in policymaking, but business organisations are still more powerful when acting in unison due to their organisational and financial resources (Rasmussen 2015). In contrast, some scholars point out that coalition diversity might lead to success although this effect is counterbalanced by issue salience (Junk 2019; Dwidar 2022). Coalitions have common preferences, cooperation activities, and organisational structures of collaboration. Choosing between lobbying individually and in coalition is also a strategic choice available to interest groups (Dwidar 2022; Junk 2022).

Issue salience is another determinant of influence frequently cited in this literature. Issue salience consists of the relevance of a particular topic to the public opinion, estimated by the citizens' preferences and the media attention (Jesus 2010; Rasmussen 2015). As Rasmussen (2015, p. 369) explains:

Some issues are of great interest to specific business groups, but of little immediate interest to the broader public, giving rise to quiet politics. Other issues arouse boisterous debate in the media and on the floors of legislatures, inducing noisy politics. Business groups are expected to be particularly influential on low salience issues with a high issue complexity.

Finally, the institutional venue plays a role as some rules might facilitate business access to decisions. For instance, in the case of the European parliament, rapporteurs and shadow rapporteurs are more powerful than the other members (Rasmussen 2015). In Brazil, party leaders, committee chairs, and rapporteurs exercise leadership as they have more decisional power over the approval of draft bills (Figueiredo and Limongi 1998). In line with the discussion about information exchange, the ability to influence decisions also depends on the informational needs of MPs (Rasmussen 2015).

Although there are several reasons for claiming business groups are more powerful, this assumption has been challenged by studies demonstrating business may lose or that group type is not important for success (Mahoney 2008; Klüver 2013; Dür et al. 2015; Rasmussen 2015). Therefore, it is foremost to analyse the conditions that might lead to business success or failure in influencing decisions.

Unpacking causal mechanisms implies analysing these conditions in intensive studies. In this sense, analysing causal processes allow to explain why an outcome has occurred (Beach and Pedersen 2016). Regarding the context of Brazil, studies focus on business as a highly organised and politically active group (Diniz and Boschi 1999; Mancuso 2004). However, few investigate the causal mechanisms behind this influence deeper. This study aimed to fill this void by employing an in-depth case study on interest groups strategies and access to public decisions. It focused on two dimensions: coalition diversity and issue salience. Based on the theoretical considerations above, the hypotheses and causal mechanisms under investigation were:

**Hypothesis and Causal Mechanism 1 (H1/CM1)**—According to the literature on influence, unity is one of the factors that might lead to success (Rasmussen 2015). In this sense, the first hypothesis is that business groups are more influential because they are more cohesive which allows them ‘to speak with one voice’. As they share similar perspective, they are able to build larger, stronger, and cohesive coalitions for pressuring public authorities. Although diverse coalitions are more successful in influencing policymakers (Dwidar 2022), cohesiveness helps to avoid conflicts between group members. Moreover, diverse coalitions are prone to succeed on higher salient issues as they are marked by a lobbying environment with more political opponents. Hence, diverse coalitions have incentives to overcome their collective action problems and lobby together (Junk 2019). Accordingly, business groups are supposed to be more influential over copyright law as they do not have to compete with many policy participants once copyright is a low salient issue. Hence, they can unify their demands and efficiently reach policymakers as broader political responsiveness is expected to be low (Junk 2019).

**Hypothesis and Causal Mechanism 2 (H2/CM2)**—The low salience of copyright also allows business groups to employ inside strategies as copyright does not receive much media attention. Thus, business groups are more influential because issues in this agenda are not politically salient and have high complexity. As the members of parliament do not have a substantial knowledge of copyright, they have more informational needs regarding technical aspects. This allows groups to employ insider lobbying strategies (for instance, private meetings with MPs) to achieve their goals as information exchanges are crucial to developing copyright policies. As copyright policies do not draw too much attention from citizens and the media, business groups can act quietly as they usually do in other organisations, such as the European institutions (Dür et al. 2015).

Therefore, both causal mechanisms seek to investigate how low salience (X) contributes to business influence (Y). In this sense, copyright policies provide a vibrant environment for testing these hypotheses as cleavages between business groups and other policy participants are clear. Previous studies focused on two coalitions: one representing content industries and the other advocating for broader access to intellectual works (Horten 2013; Herman 2013; Valente 2018). The history of international law has emphasised the victory of the first coalition (‘copyright protection coalition’) as most treaties increased copyright protection instead of establishing flexibilities (‘fair use coalition’). Thus, copyright is a typical case regarding the expected relationship between X and Y as it is a low salient issue over which business groups achieved historical victories.

Nevertheless, the advance of new technologies is supposedly changing this scenario as new players emerged from civil society and started to mobilise against excessive copyright protection (Herman 2013; Valente 2018). This study also verified if Brazil passed through the same changes. Most studies addressing conceptualisation and interest group influence are focused on the European Union or the United States. By analysing the Brazilian case, this paper verifies the potentials and limitations of these theoretical frameworks in ‘travelling’ to other institutional contexts. Contrary to initial theoretical assumptions, the case revealed business groups are not

completely successful on low salient issues when policymakers' information needs favour countervailing powers.

## Data, research methods, and strategies

As the intent of this research was to investigate a particular case (disputes over copyright law), I carried out an intrinsic and instrumental in-depth case study (Berg 2001). Despite their limits regarding generalisations, single case studies provide insights into understanding similar individuals, groups, or events (Berg 2001; Gerring 2004). Moreover, case studies serve to assess the causal chain between the variables and to verify the congruence between theoretical predictions and the factual world (George and Bennett 2005). The focus of interest groups on specific policy domains explains the prevalence of case studies in this area (Beyers et al. 2008). In addition to these reasons, several characteristics of Brazil lead researchers to conduct case studies, such as the lack of publicly available information and limited resources. Albeit focused on a single case, this paper brings several contributions to further studies as it introduces original data on interest organisations and provides new insights into theoretical frameworks.

The case study refers to debates on copyright law in Brazil. As the theoretical framework addresses the relationship between issue salience and interest groups strategies and influence, the case is adequate as a typical case (Gerring 2008): copyright is a low salient issue in which business groups had historical victories (Horten 2013; Herman 2013). In addition, it involves stakeholders and coalitions defending contrasting positions with different levels of resources and unity, which reinforces within-case variance. Typical cases are useful for testing hypothesis (Gerring 2008). Furthermore, investigating causal mechanisms sheds lights on connections between causes and effects without assuming a regular association (Beach and Pedersen 2016).

The paper examines in detail the activities of a Special Committee at the Chamber of Deputies. I chose this Special Committee for three reasons. Firstly, it was an institutionalised forum where interest organisations interacted with public authorities. Secondly, it aimed to discuss more than 40 draft bills related to a comprehensive copyright reform. Thirdly, it operated from 2015 to 2017. Therefore, the scope, stability, and relevance of this Special Committee made it suitable for an initial effort to identify interest organisations involved in discussing copyright laws. Although it does not take full account of all groups, it is an adequate starting point. To verify the evidence related to CM1 and CM2, I analysed the following:

1. The proposals discussed at the Committee.
2. The biographies of its members.
3. Invitations made by MPs for organisations and individuals to join public hearings.
4. Speeches made at the Committee.
5. Statutes and other documents regarding organisations and their representatives.



6. The process to build the report discussed by the Committee, which includes all the actions the Committee taken observed through participation in the meetings and documents available at government webpages.

The investigation aimed to identify the process linking strategies and business groups' influence. The Committee organised ten public hearings in which several different stakeholders voiced their opinions. I analysed all the hearings to identify the stances and arguments held by the participants, as well as the claims made by the politicians. The methodology included a critical discourse analysis, which aims to identify the implicit meanings of speeches, i.e. 'the unsaid of a text' (Fairclough 2003, p. 6). As Fairclough (2003, p. 2) points out: 'a range of properties of texts is regarded as potentially ideological, including features of vocabulary and metaphors, grammar, presuppositions and implicatures, politeness conventions, speech-exchange (turn-taking) systems, generic structure, and style'. The meetings of the Special Committees were recorded in audios, which were transcribed. The transcribed texts were analysed considering not only the content of the speeches but also other aspects of interpersonal interactions, such as the pronouns treatment and the connections between the interlocutors (Fairclough 2003).<sup>1</sup>

The codification built for the textual analysis was based upon philosophical justifications of intellectual property as exposed by Fisher (2004). Therefore, codes were related to the reasons justifying copyright protection or flexibilities. In this sense, utilitarian theories tend to associate property rights to a mechanism for encouraging creation. According to this perspective, the non-rival and non-excludable character of intellectual goods makes the concession of a limited monopoly necessary to foster creativity (Landes and Posner 1989; Menell 2000). In contrast, other perspectives are based upon the idea of natural rights and focus on fairness. In this sense, property rights are seen as personal rights due to the efforts made by individuals (Fisher 2004). Critical perspectives point out the obstacles copyright may pose to access to intellectual works, which may have negative impacts on cultural and educational activities. Taking these theories as a starting point, the discourse analysis identified the arguments presented by the stakeholders and their positions regarding the draft bills and the general theme discussed at the Committee. Some speeches gave also clues about political strategies as stakeholders mentioned their encounters with politicians.

One of the central elements in the critical discourse analysis is that the text cannot be isolated from the circumstances and processes in which it is embedded (Fairclough 2003). In addition to the discourses, I considered other components, such as the characteristics of the groups, the interests they claim to represent, and their role in the cultural industries, among others. By comparing the arguments to external data related to the interlocutors, I sought to recognise the motivations behind their speeches. For instance, some groups representing cultural industries claimed

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<sup>1</sup> For instance, some stakeholders were treated with more informality than others (by being called by expressions such as friends whereas others were called by their previous official positions). All these nuances were observed in the textual analysis.



they were not against limitations or exceptions to copyright, but they opposed all the draft bills proposing such flexibilities. Limitations are clearly negative for those who make profit from the creation or distribution of intellectual goods. I also analysed the profile and the positions of the official members of the Committee.

As lobbying activities are not regulated in Brazil, researchers face additional methodological challenges. Despite these obstacles, I verified other pieces of evidence—records of meetings, procedures, public letters, and official requirements—to map stakeholders and their attempts to orientate the policies. I have also confirmed the evidence by conducting two semi-structured interviews. Albeit the number of interviewers is small to draw strong inferences ( $N=2$ ), it is important to highlight that the two informants were key stakeholders in this debate: a former civil servant from the Ministry of Culture and a representative from an organisation that joined the discussions.

Then, I compared the arguments of stakeholders to the report introduced at the Special Committee. Even though the members did not take a final decision about the report, the document provides relevant information about which stances were taken in account by the rapporteur. The report gives hints about the winners and losers as it allows to verify which interests were satisfied. Measuring influence is a common challenge in researching lobbying (Klüver 2013). Jesus (2010) and Klüver (2013) highlight three methodological approaches to deal with this challenge: process-tracing, attributed influence, and preference attainment. The process-tracing approach is related to small cases on which scholars have a profound knowledge of the processes. Whereas the attributed influence draws on the self-evaluation of interest groups, the preference attainment approach compares the policy outcome to the preferences of interest groups to assess winners and losers (Klüver 2013).

I combined process-tracing and preference attainment approaches (Klüver 2013). By tracing the actions of the Special Committee—through analysis of the documents, requirements, and meetings—I identified how interest groups tried to orientate policies. In addition, I assessed the degree of preference attainment by comparing the report to the arguments collected through the discourse analysis. According to Klüver (2013), one of the major problems of the preference attainment approach refers to the measurement of policy positions. I overcame this challenge through the discourse analysis as stakeholders clearly stated their positions during the public hearings. Through the analysis of a varied range of empirical evidence collected mainly through documents and speeches, I tried to map the strategies policy participants employed to achieve their goals. I followed all the negotiation process of the Committee to identify the causal chains linking determinants and policy participant influence.

Although this study does not intend to make strong causal inferences, it gives insights into four important issues. The first one alludes to the very concept of interest groups and their relations with other policy participants. By observing the stakeholders and their actions, I tried to attest the potentials and drawbacks of the definitions exposed in the literature review. The second one consists of the discussion about determinants of interest influence. Combining approaches, I tried to verify the winners and losers of the debate to examine causal mechanisms related to business influence in policymaking. Although success is not influence, it serves as a proxy to

analyse decision-making processes. The third one refers to political disputes over copyright law. By recounting the history of the past copyright reforms in Brazil, the study served the purpose of contextual description (Landman 2008).

Finally, the third one is related to the collection of empirical data on interest organisations. By analysing a varied range of documents, I collected data on interest groups and their positions. Due to the lack of broader quantitative databases in Brazil, the data introduced here will be certainly useful for further compilations. Moreover, the data pointed out the relevance of an organisation whose lobbying activities are often ignored by previous studies: the Ministry of Culture. In studies on lobbying, public bodies are frequently related to the output side of the political process. In this case, the Ministry acted for persuading other public authorities just like any other interest organisation.

## Brazil's context and institutional environment

Brazil shares characteristics with other Latin American countries. It alternated authoritarian and democratic governments, as well as was subject to high levels of government control. Nevertheless, it also has its idiosyncrasies. In contrast to other Latin American countries, Brazil did not achieve its sovereign status through a revolution, but by a pact. The country has declared its independence from Portugal in 1822 establishing a new monarchy under the government of Dom Pedro I. The monarchy lasted until 1889, when members of the Army instituted the First Republic. It passed through two famous authoritarian moments: one with president Getulio Vargas, from 1930 to 1945 and again from 1951 to 1954), and another during the military coup, which led to a twenty-one year dictatorship (Gozetto and Thomas 2014).

Therefore, the Brazilian current regime is young as its formalisation traces back to the 1988 constitution. Brazil is a federal republic with twenty-six states and one federal district. The head of state and government is the president, who is elected for a four-year term (limited to two consecutive terms). The Parliament is bicameral, with a Chamber of Deputies (513 members) and a Senate (81 members) (Gozetto and Thomas 2014). Both chambers encompass standing and temporary committees. Draft bills are discussed at the Chamber of Deputies and the Senate.

At first, bills are discussed by the members of parliament at standing committees. At these committees, a MP is selected to provide a report which will be voted by the other members. Some draft bills are also discussed in plenary (by all MPs) before continuing the process at the other legislative house. The final stage of this process refers to the validation by the head of the government/State.<sup>2</sup> At the Chamber of Deputies, special committees may be installed when draft bills require the report of three or more standing committees (Internal Regulation, article 34). Therefore, it might be a resource to make the legislative process faster as it replaces other committees in the analysis of a draft bill.

<sup>2</sup> More information is available at <https://www.camara.leg.br/> and <https://www12.senado.leg.br/hpsenado> (Last accessed on January 17th, 2023).

The scientific literacy calls the Brazilian system ‘coalitional presidentialism’ as it combines unusual characteristics for a contemporary democracy: presidentialism, federalism, and a fragmented multi-party system. As a result, presidents must negotiate with ideologically diverse parties to approve their policies (Abranches 1988), which might cause bargains and instability. Committee chairs, rapporteurs, and party leaders hold special powers as they perform a key role in the policymaking process. As a legacy of past authoritarian regime, the president also concentrates relevant decisional powers, which explains the predominance of the Executive branch in the most recent democratic period (Figueiredo and Limongi 1998).

The interest group system in Brazil has been evolving since democratisation. The regime change in the final 80 s has increased the relevance of the parliament. Nevertheless, as the interest group system was shaped by the authoritarian experience, it still combines elements from pluralism and corporativism (Gozetto and Thomas 2014; Santos et al. 2019). The lack of regulations reinforces the blurred boundaries between the public and the private (Santos 2007). It poses an additional challenge for researchers as it is difficult to acquire publicly available information. As lobbying activities are not officially regulated in Brazil, the common source of data regarding interest organisations is a public record developed by the Chamber of Deputies. The registration of civil associations and similar organisations allow their representatives to access the facilities of the parliament. Thus, previous studies use the list of registered organisations as a proxy of the interest group system in Brazil (Santos and Baird 2019; Santos et al. 2019). They concluded the number of registered organisations increased over the past years (Santos et al. 2019).

I adopted a different approach to map interest organisation: analysing the list of participants in public hearings. Although this is a common strategy in studies regarding European countries and institutions (Halpin et al. 2012; Coen and Katsaitis 2019; Cross et al. 2021), this effort is unprecedented in Brazil. Therefore, this study tested if theoretical frameworks can ‘travel’ to other contexts, especially beyond the Global North. Brazil is an important case as its history is marked by unequal distribution of resources and the predominance of business interests. The case study reveals that although business groups are successful, public bodies might act as countervailing forces. In addition, the study indicated that the public record of the Chamber of Deputies may be a flawed proxy of the whole interest group system. In the case analysed here, only three organisations were officially registered at the public record in addition to public bodies (list of 2019–2020).

## The debate over copyright law from 2000 to 2020

Since its approval in 1998, the copyright law of Brazil had just one major reform. In 2013, politicians approved the Law no. 12.853, which reintroduced State supervision over collective management.<sup>3</sup> According to this new law, collective management

<sup>3</sup> Collective management of copyright is a type of administration of rights characterised by the activities of collective organisations called ‘CMOs’. In this case, organisations administer the rights of artists, composers, and other right holders. A glossary of terms related to copyright may be found at [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_909\\_2016.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf) (Accessed on May 20, 2021).

organisations (CMOs) must be approved by the Ministry of Culture<sup>4</sup> (MinC) to collect and distribute royalties. In Brazil, public performance rights are collected by a specific private institution: the Central Office of Collection and Distribution (ECAD), which is composed by seven CMOs. ECAD collects performance royalties and then transfers the amounts to the CMOs, which distribute them to their members. This activity is considered a legal monopoly, since the law established ECAD as the only institution entitled to collect performance royalties from users (Law no. 9.610, article 99). Nevertheless, when ECAD was created by law, its activities were subject to the surveillance of the National Council for Copyright (CNDA), extinguished due to an administrative reform in the 90 s (Souza 2005).

ECAD maintained its monopoly status for approximately 20 years until the approval of the new law in 2013 (no. 12.853). Some composers and artists had expressed concerns that the activities played out by ECAD lacked transparency and accountability. These right holders created two interest groups named '*Procurer Saber*' (APS) and '*Grupo de Ação Parlamentar*' (GAP) for persuading the authorities to approve a new law regarding collective management (Valente 2018). After expressing sharp criticism against ECAD, they asked for government intervention. Some of their members had participated in public hearings at a parliamentary committee of inquiry ('CPI')<sup>5</sup> of the Federal Senate, which resulted in the approval of the Law no. 12.853. According to the new piece of legislation, CMOs should pass through a registration process to be entitled to the right of collecting and distributing royalties. Furthermore, they should periodically send documents to the Ministry to prove that their activities were in conformity with the rules regarding transparency, fairness, and accountability.

Not surprisingly, these changes displeased ECAD and its members, which filed a complaint at the Supreme Court (STF). They claimed the new law was unconstitutional insofar as it intervened in the functioning of private institutions (STF). The groups APS and GAP defended the new law alongside MinC. At the time, they disputed against other composers and musicians who defended the status quo of ECAD. The Court's decision was favourable to the stances defended by the Ministry of Culture and the politicians who participated in the process of elaboration and negotiation of the law. In 2015, the Ministry approved new regulations to put the law in practice. Since then, CMOs have been adjusting their activities to the new provisions. Nonetheless, collective management persisted as an important and controversial issue in the political agenda.

<sup>4</sup> Since 2019, the Ministry of Culture is a Secretariat (Decree no. 9.674). It now belongs to the structure of the Ministry of Tourism (Decree no. 10.359).

<sup>5</sup> CPIs are temporary committees at the Chamber of Deputies and the Senate aimed at investigating relevant issues to the public interest. They have powers like those of legal authorities. See at: <https://www2.camara.leg.br/english> (Accessed on May 18th, 2021).

## Case analysis: the special committee on copyright at the chamber of deputies

In 2015, the president of the Chamber of Deputies installed a special committee to discuss 48 draft bills<sup>6</sup> on several items related to copyright and related rights. The official members included deputies from different political parties. Most draft bills addressed two topics: limitations or exceptions and collective management. The term ‘limitation or exceptions’ is employed here in reference to cases in which users do not need to pay for using intellectual works. The Special Committee on Copyright and Related Rights held meetings from 2015 to 2017, when its works were suspended. During this period, the committee organised ten public hearings with several stakeholders from diverse sectors.

Table 1 summarises the position of each participant according to their participation in the public hearings. A list of all organisations is found in the Appendix A. In the table, the number of the public hearing in column 1 refers to the sequence of the meetings ranging from 1 to 10. The column ‘interests’ displays the categories the organisations claim to represent according to their statuses and official webpages. The classification also considers the legal categories in the copyright vocabulary: right holders (those who own the rights), users (those who use intellectual works), and CMOs (institutions responsible for administering the rights). The sector refers to the economic activities of each organisation. Finally, the column ‘position’ is a synthesis of the main claims which were collected through the discourse analysis. The Ministry of Culture (MinC) was represented by the director of the Department of Intellectual Rights, the public body responsible for designing and implementing copyright policies.

In addition to the participants listed above, the Special Committee also received four interlocutors who were not representing any specific institution: a professor, a lawyer, a former member of the Court of Appeal, and a judge from the State of Sao Paulo. The former member of the Court was apparently more esteemed by the MPs, who called him by titles such as ‘doctor’ and ‘minister’. He even exceeded the limit of time determined for the presentations. He strongly supported copyright protection, standing against limitations or exceptions.

According to the concept discussed in the literature review, ABDA, ABERT, ABIH, ABPI, ABRAÇO, ABRASEL, ARPUB, CBL, FECOMÉRCIO, FBHA, FOHB, MPA-AL, and UBV&G might be considered interest organisations as they are membership bodies whose primary goals encompass advocacy. GAP and Procure Saber are interest groups due to their core mission and degree of informality. SICAV is a trade union, whereas CADE and MinC are public bodies. EBC is a public broadcasting organisation, whereas CQS is a private law office. They all are policy participants as they engaged in the discussions regarding copyright policies. The role of policy participants such as UBEM, SOCINPRO, and ECAD is controversial insofar as they are collective management organisations (CMOs).

<sup>6</sup> More draft bills were included later.

**Table 1** External participants at the special committee

Institution	Public hearing	Interests	Sector	Position
ABDA	No. 2—22nd October 2015	Right holders	NA	Against the expansion of limitations and exceptions. In favour of the draft bill proposing penalties to defaulting radio stations
ABERT	No. 5—19th November 2015	Private radio stations (commercial users and holders of related rights)	Broadcasting	In favour of establishing 'reasonable' limitations or exceptions. Against draft bill proposing penalties to defaulting radio stations
ABIH	No. 3—5th November 2015	Hotels and similar establishments (commercial users)	Tourism	In favour of exemptions to copyright related to uses of television and radio at private accommodations of hotels and other similar establishments
ABPI/SICAV	No. 7—10th December 2015	Studios, producers, among others (right holders)	Film, video, and multimedia	In favour of copyright protection for promoting production and investment in creative industries
ABRAÇO	No. 5—19th November 2015	Community radio stations (non-commercial users)	Broadcasting	In favour of protection, but against the criteria employed by ECAD in collecting royalties
ABRASEL	No. 6—26th November 2015	Bars, restaurants, and similar institutions (commercial users)	Tourism and leisure	Against the behaviour of ECAD, especially regarding the collection and its monopoly status in the music sector
ARPUB/EBC	No. 5—19th November 2015	Public radio stations (non-commercial users)	Broadcasting	Against the behaviour of ECAD. The organisation does not defend the exemption, but the adoption of different criteria in collecting royalties
CADE	No. 6—26th November 2015	Public sector (regulation)	NA	The representative from CADE just exposed reflections on the monopoly status of ECAD
CBL	No. 7—10th December 2015	Publishers (right holders)	Publishing sector	The organisation just highlighted the relevance of copyright protection

**Table 1** (continued)

Institution	Public hearing	Interests	Sector	Position
CQS	No. 9—9th June 2016	Law firm (private sector, professionals in law)	Law	Against the expansion of limitations or exceptions
ECAD <sup>a</sup>	No. 6—26th November 2015 / No. 10—24th November 2016	CMOs and right holders (administration of rights)	Music	Against the expansion of limitations or exceptions
EMBRATUR	No. 6—26th November 2015	Public sector	Tourism	Expressed no opinion on the subject
FECOMÉRCIO	No. 3—5th November 2015	Commercial establishments (commercial users)	Commerce	In favour of exemptions to copyright related to uses of television and radio at private accommodations of hotels and other similar establishments
FBHA	No. 9—9th June 2016	Commercial establishments (commercial users)	Commerce	In favour of exemptions to copyright related to uses of television and radio at private accommodations of hotels and other similar establishments
FOHB	No. 3—5th November 2015	Hotels and similar establishments (commercial users)	Tourism	In favour of exemptions to copyright related to uses of television and radio at private accommodations of hotels and other similar establishments
GAP/Procure Saber	No. 4—12th November 2015	Artists and composers (right holders)	Music	Against the expansion of limitations and exceptions (in general). In favour of the draft bill proposing penalties to defaulting radio stations. The two representatives highlighted the relevance of the Law no. 12.853



**Table 1** (continued)

Institution	Public hearing	Interests	Sector	Position
MinC	No. 1—14th October 2015	Public sector (regulation)	NA	In favour of certain limitations or exceptions (for liturgical activities, community radio stations, and people with disabilities). Against other exemptions, such as those aimed at commercial establishments (hotels)
MPA-AL	No. 7—10th December 2015	Hollywood studios (right holders)	Film, video, and multimedia	Against the expansion of limitations or exceptions
SOCINPRO	No. 2—22nd October 2015	CMOs and right holders	Music	Against the expansion of limitations or exceptions. In favour of the draft bill proposing penalties to defaulting radio stations
UBEM	No. 7—10th December 2015	Publishers (right holders)	Music	Against the expansion of limitations or exceptions
UBV&G	No. 7—10th December 2015	Studios (right holders)	Film, video, and multimedia	Against changes to copyright law (participant considers it as 'almost perfect')

<sup>a</sup>Three participants represented ECAD

Source elaboration of the author (based on records of public hearings available at the official page of the Chamber of Deputies)

CMOs act as representatives of artists, composers, and other right holders. Nonetheless, they have their own interests which may differ from those they represent. In the debate over Law no. 12.853, ECAD and other CMOs opposed the new legislation against some of their associates. As formal organisations, CMOs also entail the interests of their specialised bureaucracy, composed by people who work for the organisations. The employees may have interests which differ from those represented by CMOs, which raises questions on representation as the process described by Michels (1959). The primary function of these organisations is not advocating for certain policies, but they do it frequently as they are involved in the most relevant political debates on copyright law. This reinforces the arguments expressed by Jordan et al. (2004): although some organisations are not interest groups by nature, they may act like them in certain situations.

Most invited members represented CMOs, right holders, and commercial users. This reinforces the assumption regarding the political salience of the issue insofar as the debate is focused on specific sectorial organisations. As a low salient issue, copyright law is usually drafted by a restricted group of people, for instance, lawyers representing stakeholders (Yu 2003; Farrand 2015). According to the requirements sent by MPs at the Special Committee, few invitees represented public interest institutions or users. Public interest organisations, such as libraries and museums, were totally excluded from this debate albeit their relevance in making intellectual works accessible to society. As most invitees were members of content industries or commercial establishments, few of them advocated for broader collective interests. The professor and the director of the Ministry were the only interlocutors to speak in favour of broader interests. This is strong evidence that public interest institutions were included in the report only due to the lobbying activities of the Ministry of Culture.

In contrast, several members from different cultural industries joined the discussions. Most of them represented organisations or groups from the audio-visual (film, radio, and television) and music sectors. Only one institution (CBL) came from a different category (books and publishing). It is important to highlight the audio-visual sector also dominated the public arena, as most of the appointees to the higher position at the Department of Intellectual Rights of the Ministry of Culture came from this area (Albrecht 2021).

From 2000 to 2020, institutions and groups from the audio-visual sector were more engaged in discussing copyright policies. Regarding the Special Committee, MPA-AL was one of the few institutions that achieve their goals in the document elaborated by the rapporteur, who affirmed she had encountered its representative in private meetings. Introduced at the Committee in 2017, the report took the suggestion from MPA regarding a mechanism of site blocking to prevent copyright infringements in the digital environment. This is a controversial measure due to the risks to freedom of expression and other fundamental rights.<sup>7</sup> The inclusion of site blocking against the advice of other groups is an evidence of the force of MPA as an

<sup>7</sup> See, for instance: <https://www.openrightsgroup.org/publications/copyright-and-web-blocking-in-the-uk/> (Last accessed on May 20th, 2021).

interest organisation. Furthermore, interpersonal interactions proved that the representative of MPA was already close to some official members of the Special Committee. One of them cited previous collaborative projects with this organisation and insisted on calling the representative by ‘friend’.

The predominance of the audio-visual and music sectors is not surprising as most proposals dealt with issues related to these industries. The last reform changed the whole system of collective management, but organisations in the music sector were more affected. ECAD—which is responsible only for administering performance rights—is one of the main stakeholders in this field. On the one hand, some right holders criticise the institution due to the lack of transparency and fairness of its procedures. On the other hand, users usually complain about the billing criteria adopted by ECAD. Thus, the performance of ECAD is mired down in strong criticisms from both sides of this debate.

In what concerns users, tourism was the most engaged sector in the public hearings. Hotels and similar institutions are some of the most active policy participants in this discussion. Historically, they have opposed collection by ECAD regarding uses made in their guests’ private accommodations. In Brazil, the concept of performing rights is related to music performed in public spaces. By ‘public spaces’, the law means any place which may be accessed by the public. There has been some controversy about whether hotels and other commercial establishments should pay for making TV and radio available in their private accommodations. By assuming that ‘public performance’ does not require ‘simultaneous access’, courts in Brazil and Europe have stated that making the work available to the public is sufficient for charging hotels for communication to the public.

As organisations representing hotels confessed during the hearings, charging these establishments for the use of radio and TV is a common practice worldwide. Nonetheless, they still argued there is no ‘communication to the public’ in private accommodations and asked for new exemptions. They were successful in adding an exemption in the report presented by the rapporteur, who constantly mentioned she had met them in private meetings. Thus, just like MPA, organisations representing hosting services interests attended private reunions with the rapporteur of the Committee, who included their suggestions in her report. Therefore, pushing the members of parliament directly seems to be a more effective strategy than joining public reunions. This is another evidence of the causal mechanism linking political salience and influence. As copyright is a low salient issue, groups and organisations representing business employ inside lobbying strategies, such as private meetings.

Nonetheless, another element might have affected the outcome: the career path of the members of the Committee. Some were owners of hotels or members of other groups advocating for tourism. Three were part of the parliamentary bloc for tourism, a multi-partisan group aiming to defend this sector.<sup>8</sup> These MPs strongly advocated for exemptions for hotels and similar establishments during the hearings.

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<sup>8</sup> Parliamentary blocs are groups composed by members of Parliament from different political parties. The goal is to defend and debate a specific issue. See at <https://www2.camara.leg.br/deputados/frentes-e-grupos-parlamentares> (accessed on May 25th, 2021).

Broadcasting organisations were partially successful in having their demands included in the report as it encompassed an exemption for community and educative radio and TV stations. In this sense, it is important to note that radio stations have an ambiguous position in this debate insofar as they are both users and right holders of intellectual works. In addition to producing original content, broadcasting organisations must negotiate property rights when they diffuse intellectual works created by other holders (Vasconcelos 2010). Phrased differently, they are holders of the related rights of their programming, but also users of content created by others.

The rapporteur had strong personal ties with radio stations. As a former director of a radio station, she mentioned the problems these organisations face several times during the hearings.<sup>9</sup> Indeed, most MPs seemed to defend their own interests in the meetings. Like the rapporteur, many of them were owners of establishments which use intellectual works or are engaged in cultural activities. Surprisingly, the rapporteur did not include private radio stations in her report.<sup>10</sup>

Most of the members at the Special Committee did not have specialised knowledge on the subject, except for Jandira Feghali, who had participated in the negotiation of the most recent laws (no. 9.610 and 12.853). She seemed to be close to artists, composers, and the bureaucrats of the Ministry of Culture. The other members had closer ties with the market as most of them were entrepreneurs. Considering the low electoral salience of the theme (Farrand 2015), these personal relations may have had a higher impact on deputies' opinions. In contrast, ideology (left–right political spectrum) and partisan affiliation did not demonstrate to be significant. Information exchange played a key role in this debate as the rapporteur met the Director of Intellectual Rights several times to discuss the proposals.

According to a former civil servant of the Ministry of Culture, the director of Intellectual Rights met the rapporteur in different occasions to discuss the proposals. He was the first invitee to present his arguments in the public hearings. The informant also affirmed the Ministry had sent the text of its former project to the rapporteur. She used to ask the opinion of the department due to her lack of expertise in copyright and related rights. However, she also included the suggestions of hotel representatives and the MPA against the advice of the Ministry. Thus, the document presented by the rapporteur (2015–2017) met demands from the Ministry of Culture, radio stations (partially), MPA, and the hotel industry. Indeed, the document was almost a copy of a former project of the Ministry to change the copyright law. Nevertheless, the report included specific demands from organisations representing private companies (MPA, FOHB, ABIH, FECOMÉRCIO, among others). The common strategy adopted by these organisations was having private meetings with the rapporteur.

Table 2 summarises the winners of the debate and the potential factors of their influence according to information collected through the discourse analysis, the observation of the meetings, and the interviews. The interest represented referred

<sup>9</sup> Besides, her mother is one of the business partners of a radio station (information is available through search for the enterprise's ID).

<sup>10</sup> The report aimed at replacing the draft bills discussed at the Special Committee.

**Table 2** Winners (report—special committee)

Stakeholders	Interests represented	Potential coalition	Victory	Possible factors of influence
Ministry of Culture	Public sector (non-business)	Fair use	Several provisions regarding flexibilities, reproduction of a former proposal	Private meetings with the rapporteur (inside strategies), expertise (information exchange), public authority
FOHB, ABIH	Hotels and similar establishments (commercial users—business)	Fair use	An exemption for the use of intellectual works through radio or TV in the private accommodations of guests	Private meetings with the rapporteur (inside strategies), convergence with interests defended by members of parliament (owners of hotels and similar establishments)
MPA-AL	Audio-visual sector (right holders—business)	Copyright protection	A provision regarding site blocking	Private meetings with the rapporteur (inside strategies), participation in other forums
ABRACO	Community or education radio stations (non-business)	Fair use	An exemption for the use of musical works by public and education radio stations that do not extract resources from publicity	Partial convergence with the propositions of the Ministry of Culture

*Source* elaboration of the author

to the sectors to which the organisations belong whereas the potential coalition was identified through the general perspective behind the arguments. They do not presuppose, however, a coordinated action. The only coordinated action in this case was made by the representatives of creative industries (MPA-AL and collective management organisations) which opposed a requirement for advancing the debate. It was a public letter against a requirement initiated by MPs to speed the voting process.

There is no evidence that the determinants of influence ‘resources’ and ‘unity’ played a key role in this case. The most resourceful organisations were not the biggest winners in this debate. None of the groups—right holders, users—demonstrated to be united around a single issue as they only defended their sectors’ interests. The evidence points out that the greatest variation between winners and losers is related to their connections to the rapporteur. According to Table 2, the most successful strategy referred to private meetings with powerful decisionmakers. In contrast with the European Union, where outside strategies became more common (De Bruycker and Beyers 2019), the most effective strategy in this case seems to be inside lobbying.

The greatest winner in the report was the Ministry of Culture, but business groups representing hotels and motion picture studios achieved small concessions. They all had private meetings with the rapporteur according to data from the interviews and the recorded public hearings. These connections were also evidence in the discourse analysis. For example, MPs and the representative of MPA-AL constantly treated themselves as close friends. Hence, the evidence partially supports hypotheses 1 and 2 as it emphasises the needs in terms of costs and the relevance of information exchange: the low salience of copyright law partially favoured business groups as they were able to meet the rapporteur privately without drawing too much public attention. The list of invitees to public hearings is an additional evidence: most of the invitees were representatives of public bodies or business organisations (mainly creative industries and commercial establishments). This reinforces the view that copyright is deemed a small niche although policies affect several individuals and groups.

As copyright is a low salient issue, few representatives of the broader public were invited to the public hearings. Then, business groups had the chance to strengthen their relations with powerful members. The institutional venue also played a role as rapporteurs have the power to set the agenda by presenting the report, which the Committee will vote. By conducting surveys with lobbyists, Santos et al. (2019) verified the most effective strategies were contacting the members of parliament directly and monitoring committees. They also concluded rapporteurs are key authorities interest groups aim to reach. The evidence exposed in this paper is compatible with these findings. The most engaged organisations contacted the rapporteur directly through private meetings. The Special Committee was a relevant locus for the lobbying activities of these organisations.

Regarding unity, business groups in the copyright field were convergent around the broader positions: against or in favour of limitations or exceptions. Nonetheless, they only defended their sectorial interests. Likewise, users of intellectual works defend flexibilisation, but they focused on specific exemptions for their sectors. In this sense, the case study also helped to draw relevant insights on the political

mobilisation of members of creative industries. Herman (2013) highlights the force of two coalitions in the United States representing the two poles of the debate: 'strong copyright' (SC) versus 'strong fair use' (SFU). He argues the debate over digital rights strengthened the coalition advocating for fair use, as new technological tools enhanced political mobilisation by agents formerly excluded from the public sphere. Valente (2018) points out a similar movement in Brazil towards open access. Internationally, the greatest conflict has been focused on the dichotomy between technology companies and content industries.

The discussions analysed here show a slightly different panorama. The conflicts over copyright law in Brazil during the past decades had clear protagonists: CMOs (especially ECAD) and commercial users (including technology companies, but not only), which represent powerful economic interests. The 'strong fair use' coalition is composed by a varied range of stakeholders with different levels of resources and diverse missions, from big companies to public institutions. Furthermore, some organisations and individuals may have ambiguous positions insofar as they play different functions in producing and diffusing cultural goods. Broadcasting organisations, for instance, are users, right holders, and distributors (Vasconcelos 2010). Thus, business groups are divided into those representing commercial users and those defending organisations from creative industries. These two groups of business policy participants have antagonistic interests. Hence, representatives of business groups did not adopt a single comprehensive position. Against the theoretical predictions, unity has not played a key role on interest group influence as no coalition advocated for a single unified position.

Even within commercial users or creative industries, business groups did not present a cohesive opinion. Overall, they preferred to maintain the status quo, but each sector has its own demands. Although they agree upon basic premises—regarding the relevance of copyright protection or fair use—they advocated for specific measures to favour their respective sectors. Therefore, unity favours business in debates about general topics—such as limitations and exceptions—but groups usually act alone when dealing with specific measures (for instance, site blocking).

Thus, groups and organisations may belong temporarily to one coalition or another according to the different policy issues at stake. Over the past 20 years, artists and composers have been divided into those who asked for changes in collective management and those who defended the status quo of ECAD. The first gave rise to the interest groups APS and GAP. The others were not collectively organised through specific groups. In 2020,<sup>11</sup> CMOs, APS, MPA, and UBV&G signed a public letter against accelerating the analysis of the draft bill no. 3.968, which was the object of the Special Committee. This was the only coordinated activity from a coalition observed during the negotiation process under analysis. These organisations opposed creating more limitations or exceptions. Again, they did not present a cohesive unified proposal, but only a general dissatisfaction with the broader theme of the Committee and the draft bills discussed. Thus, organisations representing business interests were not more cohesive or unified than the other policy participants.

<sup>11</sup> Despite the suspension of the Special Committee, the draft bills continued to be discussed.



Furthermore, this demonstrates different types of organisations may join forces against certain measures. Thus, it is important to bear in mind the fluidity of these alliances insofar as some interest groups may align with one or another coalition according to the issue.

The trajectories of MPs may also give some hints about what reasons are behind their stances and decisions. As some MPs had former experience in this field, they were closer to certain policy participants. Whereas some of them had ties with artists and creators, others were more familiar with commercial users. This was reflected in their discourses. Owners of commercial establishments directly impacted by copyright policies defended more flexibilities. In addition, they demonstrated to have little technical knowledge on copyright and related rights. As a low salient issue, disputes over copyright are mired in a vibrant environment for interest organisations. This lack of general knowledge and the low electoral salience<sup>12</sup> gave room for the actions of the Ministry of Culture, the greatest winner in the report. Nevertheless, certain business groups still achieved their goals. Whereas a former proposal of the Ministry shaped the new report, the rapporteur made certain concessions to organisations representing audio-visual studios, hotels, and certain types of radio stations.

The reasons for the inclusion of community or education radio stations in the report remain unclear. During the presentation of the director of the Department of Intellectual Rights (MinC) in the first public hearing, he declared to be favourable to an exemption for community radio stations but did not mention education. Surprisingly, private radio stations were not included, although they were personally close to the rapporteur. In contrast, ECAD was the greatest loser insofar as the report included several exemptions to copyright against the interests of this organisation. Possible explanations for this performance are related to the negative perception of ECAD by MPs, users, and certain right holders, as well as the personal connections between the members of parliament and commercial users of intellectual works.

Albeit underrepresented, public institutions' interests were included in the report due to the intervention of the Ministry. The discussion was led by the Department of Intellectual Rights, composed by officers who historically defended a broader access to intellectual works. Thus, the profile of the high-level bureaucrats may have affected the position and actions of the Ministry (Albrecht 2021). Even though the public space was dominated by the representatives of corporations, the Ministry of Culture was an important countervailing force at the Committee. Nonetheless, commercial establishments, such as hotels and audio-visual studios, achieved some of their goals through the action of their associations. Previous studies had demonstrated that government officials can be recruited as proponents of their positions (Mahoney and Baumgartner 2015). There is not enough data, however, on this case to explore this issue deeper.

The Special Committee did not approve any outcome as its works were suspended in 2017. As the report was not officially approved, there was no concrete political outcome, and the status quo was maintained—therefore, a temporary victory for business (technology companies against site blocking and right holders who

<sup>12</sup> It is not mentioned in presidential campaigns, for instance.

wanted to avoid the new-established limitations and exceptions). According to an informant, the reason refers to conflicts over the provision regarding the site blocking suggested by MPA. The informant mentioned technology companies contacted the members of parliament against this provision. They did not participate in public hearings though. Copyright protection in the digital environment was a theme frequently mentioned during the reunions of the Special Committee, although it was not part of the draft bills discussed at the Committee. The matter has been raised in other forums, such as the Court of Appeal (STJ) of Brazil and the Standing Committee of Copyright and Related Rights of the World Intellectual Property Organisation (SCCR/WIPO). The Ministry of Culture also realised a series of meetings with different stakeholders in 2015. The reunions resulted in two internal regulations about collective management in the digital environment (Albrecht 2021).

Digital rights have been an important part of the copyright debate over the past years (Herman 2013). In the United States, the Digital Millennium Copyright Act (DMCA), which establishes rules related to copyright protection in the digital environment, resulted from advocacy activities of technology companies and representatives of copyright industries (Fisher 2004; Herman 2013). Some years later, the debate over digital copyright gave rise to a coalition defending more limited copyright (Herman 2013). In Europe, the debate about the new directive on copyright and related rights in the Digital Single Market (2019/790) was temporarily blocked due to a conflict between big tech companies and right holders.<sup>13</sup> As digital technologies affect several countries at the same time, digital copyright must be discussed internationally. Nevertheless, this topic did not advance much in WIPO's agenda, probably because discussions have been still focused on a new treaty for broadcasting organisations.<sup>14</sup>

In Brazil, the government launched a new public consultation about reforming the copyright law in 2019. However, there was no political outcome. In this sense, it is important to investigate the last transformations in the structure of the Ministry of Culture. In 2019, the Ministry was transformed in a Secretariat under the direction of the newly structured Ministry of Citizenship. The former Department of Intellectual Rights became the National Secretariat for Copyright and Intellectual Property (SDAPI) in 2018 and it maintained its structure under the Secretariat of Culture. Later, the Secretariat of Culture became part of the Ministry of Tourism. The higher bureaucratic position of SDAPI had many holders over the past years. The high turnover at SDAPI must have impacted the policies concerning copyright and related rights, as changes may contribute to stall workflows. Moreover, bureaucrats and their ideologies may also affect public policies. This is an issue which must be deeper addressed in further studies.

<sup>13</sup> See at <https://phys.org/news/2018-08-brussels-lobbying-war-copyright-law.html> (Last accessed on 31st May 2021).

<sup>14</sup> I have been following SCCR discussions through webcasting since 2014. All documents are available at WIPO's webpage: <https://www.wipo.int/policy/en/sccr/> (Last accessed on 26th May 2021).

## Concluding remarks

Albeit focused on Brazil, this paper sheds light on a series of common challenges to empirical research in lobbying. It confirmed the relevance of adopting a more inclusive framework on lobbying and interest organisations encompassing all policy participants involved. Framing lobbying as an action or a process rather than an actor helps us to identify other types of stakeholders who may make use of lobbying activities to achieve their goals. Different types of organisations may act as an interest group in certain situations, including even State actors. Furthermore, lobbying may be also part of a diverse array of strategies insofar as it may be combined with other repertoires.

In the case of copyright law, the case revealed private meetings with the members of parliament are an effective strategy since organisations employing it were successful in including their demands in the political agenda. This is a partial evidence of causal mechanisms linking political salience, exchange information, and institutional venue to influence. In the case under analysis, most successful organisations encountered the rapporteur privately. Nonetheless, differently from the initial theoretical assumptions, issue salience favoured the Ministry of Culture against business interests. The case also points out the traditional division of policy participants might be more complex in some fields. Regarding copyright, business groups belong to two opposing poles in the debates: copyright protection (right holders) and exemptions (users). Furthermore, there are crucial differences within these two coalitions: for instance, the term ‘user’ may refer to both commercial users (resourceful establishments) and public interest institutions (museums and libraries, among others). Although excluded from the debate, the latter were represented by the Ministry of Culture.

The Ministry of Culture has played a major role in many debates related to copyright reform over the past 20 years. The performance of the Ministry in several processes—the approval of Law no. 12.853, the debates at the superior courts, and the Special Committee—has proved the relevance of its lobbying activities (Albrecht 2021), especially for including underrepresented policy participants. This brings contributions to understanding political contexts beyond the Global North. The study demonstrated the prevalence of inside strategies—other determinants of influence held constant—and the blurred borders between the State and civil society.

Several determinants are related to degree of influence of interest groups (Jesus 2010). In addition to the determinants of influence cited by previous studies—issue characteristics (salience), resources, political venues, strategies (Jesus 2010; Rasmussen 2015)—this case reinforced the relevance of personal connections and the portraits of public authorities. Both personal networks and the biographies of policymakers are underexplored by the research literature on determinants of interest group influence.

The future of the politics of copyright law in Brazil rests unknown as the political system passed through major changes over the past 5 years. In 2019, the Ministry of Culture was transformed into a Secretariat. It belonged to the structure of

the Ministry of Tourism, which represented one of the main stakeholders in this area (hotels and similar institutions). In 2023, the Ministry was restored under Lula administration. The most recent administrative reforms will certainly have impacts on the relationship between interest groups and public authorities. In this sense, further questions to this research agenda include the role of bureaucrats in elaborating and implementing public policies, as well as the force of lobbying groups in the deliberative forums made available within the Executive Branch.

Researching lobbying in Brazil faces additional challenges due to the lack of regulations and publicly available data. Thus, whereas concepts can ‘travel’ to different contexts, it is important to further address research strategies and measures to deal with this challenging context. By mapping policy participants engaged in the copyright debate, this paper was an initial effort to gather information on interest groups in Brazil.

**Supplementary Information** The online version contains supplementary material available at <https://doi.org/10.1007/s43545-023-00662-2>.

**Funding** A research project partially related to this paper received funding from the Sao Paulo Research Foundation through two fellowships (Process No. 2019/19570-8 and 2021/13021-2).

**Data availability** The datasets generated during and/or analysed during the current study are available from the corresponding author on reasonable request.

## Declarations

**Conflict of interest** The corresponding author states that there is no conflict of interest.

**Informed consent** Informed consent was obtained from all participants for the study where applicable.

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