

CitizenCentral CHAPTER 6 transcripts

Greta Thunberg [00:00:06] We have been sacrificing our education to protest against your inaction.

Speaker 2 [00:00:12] Ask the EU to stop caging animals.

Speaker 3 [00:00:15] To reconcile the economy with our planet.

Speaker 1 [00:00:18] Set a timeline for fossil fuel phase-out.

Speaker 3 [00:00:21] To master the challenges of the digital age.

Speaker 2 [00:00:24] None of the European nations will be part of the G8.

Speaker 1 [00:00:28] It is about where we want to go and who we want to be.

Méabh Mc Mahon [00:00:39]: Hello there, welcome to CitizenCentral, a podcast series all about the first transnational democracy instrument in the world, the European Citizens' Initiative (ECI). Brought about back in the Lisbon Treaty, the ECI gives people the chance to pitch their own EU policies to the European Commission by gathering one million signatures from seven EU states. My name is Méabh Mc Mahon. I'm an Irish reporter in Brussels, and on CitizenCentral I'll be finding out what exactly the ECI is, how you can launch or support one and what drives people to give up their time and energy for a cause they care deeply about. Ours is the century of intellectual property. We create more than ever, but we don't get paid fairly. This is probably one of the reasons our next guest is asking the European Commission to amend copyright law in the EU. Gregory, first tell us more about yourself and your involvement in the ECI 'Freedom to Share.'

Gregory Engels [00:02:02]: My name is Gregory Engels. I live in Germany, and I am 45 years old. I am a business professional; I'm a manager in IT projects, and I am also involved in the Pirate Party of Germany and have been running as a candidate of the Bundestag in the European elections. I have also served on the city council, and I am involved in the international network of pirate parties worldwide, serving on the board of the Pirate Parties International. I got in contact with people organising the 'Freedom to Share' European Citizens' Initiative back in 2019. We have agreed to try and collect one million signatures to change the current copyright law to allow the private sharing of copyrighted materials and at the same time create provisions to fairly reimburse content creators.

Méabh Mc Mahon [00:02:58]: What is the objective of your campaign? And how does it differ from current copyright law?

Gregory Engels [00:03:02]: The question that we are asking is if people would like to change the current copyright law in a way that the downloading of copyrighted materials for private reasons would be legal, and at the same time have the European Commission create provisions to reimburse content creators in a fair way. Basically, that's how the internet has been operating since the '90s. Content distributors call those internet users 'pirates.' So, I can buy a book and I can give it to friends to read, but if I buy a movie on Amazon via digital download, I am not allowed to give it to friends. There's a contradiction regarding what people expect from property and how people feel, and we just want to reinstate the rules for normal people to use the internet in a way that they like to use it. At the same time, there would be no provision for or information about the upload filters that

would install severe surveillance as well as methods of censorship on everything you ever uploaded to the internet, something that has now been legitimised by the claim that you are not allowed to upload anything that contains copyrighted material that you do not own. And if there was a blanket provision that said everything is allowed, that there is no copyrighted material that you're not allowed to upload because there are other ways for creators to get paid, then there would be no need to monitor all the uploads. There would be no need to create censorship, and we want a free internet without censorship and without filters.

Méabh Mc Mahon [00:04:40]: Who do the current copyright laws benefit?

Gregory Engels [00:04:43]: It's complicated, but I think the people who benefit the most are the big companies, like Hollywood or news corporations, and they are also the ones who have to spend a lot of lobbying money to try to push new legislation, as we saw with the Digital Services Act, article 13 and article 11. Or news corporations like Rupert Murdoch or Time Warner Fox; these are the biggest players, and also Disney, of course. I think some of the network platforms like Netflix are on the verge of getting the bigger piece of the pie and becoming established. If you are a musician, you have to be on Spotify otherwise nobody will ever know you. But the money of the subscriptions goes to Spotify, it doesn't really go to the musicians. So, it is more like a promoting channel for them, rather than a way of making money.

Méabh Mc Mahon [00:05:48]: Do you want to abolish copyright law?

Gregory Engels: [00:05:50] No, not at all. I think that the current copyright law is unfair, and I invite people to go and sign the petition, the ECI, in order to change that law. As we saw in 2019, when we had the big street protests against the upload filters, this is a topic that interests a lot of people because it is happening at the core of their lives. A lot of people consider the internet a part of their digital persona; it's where they live. And so, the rules that invade what they can do and how they can express themselves on the internet are really being perceived as life-threatening for some. Therefore, I'm not saying that those rules are unfair in a way that we should not obey them; I'm saying that we have a great interest in making the rules right. I'm saying we should make copyright right again.

Méabh Mc Mahon [00:06:49]: Have you thought about the compensation system?

Gregory Engels [00:06:52]: Our proposal doesn't have a specific provision for what this compensation should look like. We just asked the European Commission to create such a proposal that would compensate content creators in a fair manner. Since this is a complicated matter, and it's a complicated law and there are a lot of proposals on the table, you don't want to favour any one of them specifically. My personal favourite would be an internet advertisement tax because that's where the money is, and it is clear that that's where the money is made from. This wouldn't lead to things becoming more expensive. But the Commission could decide otherwise and create something different.

Méabh Mc Mahon [00:07:34]: Thank you so much for joining us.

Gregory Engels [00:07:36]: Thank you for your time.

Méabh Mc Mahon [00:07:41]: Copyright is a pretty complex topic, but it's also a fascinating one. To get more information from an expert on copyright, we're off now to Madrid to meet Javier de la Cueva, a lawyer and Doctor of Philosophy, but also a professor of intellectual property at the Instituto Empresa or the Spanish Institute of Business. Javier, thanks for joining us here on CitizenCentral.

Javier de la Cueva [00:08:03]: It's an honour to be able to participate.

Méabh Mc Mahon [00:08:05]: First, tell us more about yourself.

Javier de la Cueva [00:08:07]: Well, I am a Spanish intellectual property lawyer, but as law didn't give me the possibility of asking proper questions, what I did was obtain a PhD in philosophy and everything related to cultural knowledge, technology, the digital and all these new things that we have to reframe, to rethink and to reconsider.

Méabh Mc Mahon [00:08:31]: Where does copyright come from?

Javier de la Cueva [00:08:34]: We have a big branch that is called 'intellectual property.' There was this question that was posed in the era of John Locke: do we have the right to be the owners of the sweat of the brow? And the answer was, 'Well, when you work for the common good, and you go and harvest, and you are sweating because you harvest, then you are entitled to make the object that is the product of your work yours. So, then the question was, 'Can we do exactly the same with non-material things?' This notion appeared when the printing press was invented, allowing us to create books. From there emerged two main fields of intellectual property: one was the right over the inventions, and the second was the right over the copies we make of something that we invented, we thought we discovered or we drafted. That, we could say, is where the right to own not ideas but the things that you do with ideas came from.

Méabh Mc Mahon [00:09:32]: When speaking about cultural copyright, whose brow is sweating? Is it the publishers', the distributors' or the creators'?

Javier de la Cueva [00:09:39]: If there is a constant nowadays, it is that we are entering into a non-logical world. For example, here we are doing an interview. We are both creating a copyrighted work, and it is a collaborative work between you and me. We are creating the questions, we are having this dialogue, etc. Let's say I am then interviewed by a newspaper; I give them the whole part of the content, and then the newspaper puts a pay wall and owns the content, but the content was mine. The internet becomes rich by obtaining visitors. We are selling attention. So, the one to pay for that attention is the one who sends you the attention, that is to say Google News. We are asking people for money for something that we should be paying for. We should be paying for the attention!

Méabh Mc Mahon [00:10:27]: How does the copyright business really work?

Javier de la Cueva [00:10:29]: Intellectual property is not a matter of how much the authors make or don't make; journalists hardly make anything, and the same goes for scientists, actors, etc. Publishers, on the other hand, receive a lot of money. And there is, of course, a very interesting group who do not create anything related to intellectual property, but they are the managers of intellectual property. And that is an inequality problem.

Méabh Mc Mahon [00:10:59]: What is your take on this ECI?

Javier de la Cueva [00:11:01]: If you want to find certain films, you're not going to be able to find them in those commercial platforms. They are not on HBO, they are not on Netflix. So, I then go to peer-to-peer networks, and I am able to find them there. In that sense, they are not on the other platforms because they do not make money as nobody is interested in certain types of films. So, nowadays most part of culture is not producing any kind of commercial revenue, and there is the second aspect related to sharing activities. This kind of technology that is bait to piracy promotes

technological advances in order to give the user a better experience. The legal offer comes because there was a non-legal offer. Netflix would never have appeared if peer-to-peer networks hadn't existed. So, the whole history of intellectual property is full of waves of piracy, creating the machine as well as the counter machine.

Méabh Mc Mahon [00:12:06]: That's mind-blowing.

Javier de la Cueva [00:12:07]: If I have a stone, and there is an enemy present, I know that certain uses of the stone on that enemy are going to be a crime. The law is clear, and it is deeply rooted in my human instinct. But when I visit a website, I do not know whether I am infringing law or not because I am unable to know the law and to understand it; it is absolutely complicated. Can we live in a world where we do not know as citizens if the tools we have are making us delinquents, criminals or infringers of something? This directly attacks what a legal norm should be because your norm must be general, and it must be understandable by a normal citizen. Otherwise, you do not know if you are living legally or not.

Méabh Mc Mahon [00:13:09]: Will you be signing this ECI?

Javier de la Cueva [00:13:12]: I cannot say whether I'm going to sign it or not because as an academic, I also have the obligation to ask a lot of questions. Nevertheless, they do have all my sympathy. I am going to read it in full, and then I will decide if I will sign it or not.

Méabh Mc Mahon [00:13:28]: OK, Javier, thank you so much for joining us here on CitizenCentral.

Javier de la Cueva [00:13:31]: Thank you for such interesting conversation. It really was a pleasure.

Méabh Mc Mahon [00:13:39]: COVID-19 has turned our world upside down, and vaccination campaigns must be widely spread in order to be effective. This was probably one of the reasons behind our next guest's ECI. Julie, thank you so much for joining us.

Julie Steendam [00:13:50]: Nice to meet you. Thanks for inviting me.

Méabh Mc Mahon [00:13:53]: First, tell us more about the 'Right to Cure.'

Julie Steendam [00:13:55]: The 'Right to Cure' ECI or, as we also call it, the 'No Profit on Pandemic' citizens' initiative has the ambition to force the European Commission to make sure that all vaccines and treatments that have been developed to protect ourselves against the coronavirus are available to everyone on the whole planet at a low cost.

Méabh Mc Mahon [00:14:17]: Can you tell us what the four key points that you're asking from the Commission are?

Julie Steendam [00:14:21]: Well, first of all, we are asking the European Commission to do something about intellectual property rights because now the situation is that vaccines and some treatments have been developed by private companies like Pfizer and Moderna, ones we all know, which also have full control over how many are being produced, at which price they are being sold, who gets them and when. This is because they have a monopoly of rights, and this has to be changed in order to increase global production. So, first we should make sure that intellectual property rights are not an obstacle for the global distribution of vaccines. Second, we want to do something about the lack of transparency in the ongoing negotiations between pharmaceutical

companies and the European Commission because, actually, it was only due to the leakage of some news that we became aware of the price that we're actually paying for these vaccines. Moreover, there are some conditions in the contracts between those companies and our own governments that we are not aware of, which from a democratic point of view should be public and not be considered as secrets. So, we want full transparency on those negotiations, on those contracts and on the pricing. Thirdly, of course we also need those vaccines to be not only available but also affordable; societies, families, economies have lost billions to this pandemic. So, we really need to make sure that all the money that we have is available to get back on track with our lives. At the current time, it has been calculated that we are actually paying five times the price of the actual production cost of the vaccines. During a pandemic and during one of the biggest economical crises that we have seen in the last decades, this is unacceptable. So, we also want some conditions on the affordability and the pricing of the vaccines. And, of course, we also want the European Commission to defend all these positions in international bodies, such as the World Health Organization (WHO) and the World Trade Organization (WTO).

Méabh Mc Mahon [00:16:27]: I imagine that when you launched the ECI, the reaction must have been instant. Have you had any feedback from the institutions or from politicians themselves?

Julie Steendam [00:16:36]: Well, that is what you would expect. If you launch an initiative that says everyone should have access to COVID-19 vaccines or treatments, the reaction would be, 'Yes, you're right.' This is actually one of our basic human rights, but it wasn't quite what we had hoped for, and it was something that would surprise us a bit. We know what the current situation is, we know how to treat people, how to protect people. We now have a solution. We have well-functioning vaccines available. We know how to make them. So, wouldn't it be the most logical thing to make sure that this technology, these products, are available in the fastest way and at the lowest price possible to the rest of the population? This is not the case, however. We can see that the European Commission is actually just taking over the discourse provided by pharmaceutical companies defending their right to make profits and to keep full control over these products. And this is quite disturbing. So, we are now at a point in a pandemic that the European population has been almost fully vaccinated and protected, at least the people that agreed to get the vaccine. But the greater part of the world – especially low-income countries – does not have access to the vaccine. This doesn't make any sense because the vaccine can only work if a large part, say at least 70 % of the population, has got the chance to get a shot. So, we can actually stop the spreading of the virus, but we have a completely unequal distribution of this vaccine, a real 'vaccine apartheid' as even the director of the World Health Organization called it, and this is a disturbing reality.

Méabh Mc Mahon [00:18:21]: The urgency to produce the vaccines required so much public investment. Do you think those IP rights should be public?

Julie Steendam [00:18:27]: Big parts of the entire process around the vaccine, its development, the research, the production capacity, have actually been funded by public money. The European Commission as well as scientists made a call for the Baker pharmaceutical company to get ready because a new coronavirus might pop up and might be even more threatening than the ones we have known before such as SARS or MERS, which are from the same family. Until one and a half years ago, it was clear: OK, we have this COVID-19 spreading fast; we need to have a vaccine. There was a sense of urgency, and public institutions like the European Commission and governments provided lots of public funding to pharmaceutical companies, saying to them, 'OK, now you have to prioritise making a vaccine so we can get out of this as soon as we can.' BioINTEC, which had or still has a collaboration with Pfizer, received EUR 375 million from the German government to create a vaccine. So, it is all public money, taxpayers' money, that has been invested in this vaccine; this vaccine has already been paid for by us. Therefore, it should also be owned by us. We should have the full control of it, but the reality nowadays is that we are actually paying two to three times

more for it. We paid for the research that has often already been done at public universities. We paid for the development in the last month. And we're actually also paying for the risks because the contracts say that if something happens, if the vaccines have any kind of hidden effects, then the cost of any claims would have to be covered by ourselves. We're actually paying all the costs possible connected to the vaccine, but the possibility of profits lies fully in the hands of the pharmaceutical companies. This is a completely unbalanced situation.

Méabh Mc Mahon [00:20:17]: Your ECI is so topical that reading the COVID-19 headlines every day must be quite a job. How do you cope with this evolving situation?

Julie Steendam [00:20:24]: The process has been a roller coaster of emotions, to say the least. There was optimism when we started. When we began raising our demands, we were quite prepared for any possible scenario because we're not only asking the European Commission to make sure that every European gets vaccinated or has access to protection, to treatments; we're also asking this for the whole planet, but at the same time we are still being plundered by pharmaceutical companies because they are actually increasing our social security taxes as the pandemic goes on. We're also still asking for more transparency on those contracts. So, it is, of course, very motivating that even during our campaign, even before we have those one million signatures, we already have some small victories.

Méabh Mc Mahon [00:21:12]: Has the press reacted to your ECI?

Julie Steendam [00:21:14]: Yes. I believe one of the biggest challenges for any campaign is to do the agenda setting. The change that you want to see is also an issue for the general public: people should be talking about it, they should be aware of it and they, of course, should also be triggered to do something about it. In our case, the pandemic was all over the news. It was on everyone's mind. But it was evident that we had to get our campaign or our call to action to sign our petition in the press. This is an extra challenge; you can have the press talking about vaccine rollouts and the profits that have been made. But what we really want to do is also have the press saying, 'Hey, you are a European citizen. There's actually something you can do. There's a petition that you can sign.' We are still trying to find new ways, new actors, new hooks to talk about it. And the big thing that we're focusing on now is actually the possibility to have physical gatherings, physical meetings.

Méabh Mc Mahon [00:22:17]: What have you learned in the process?

Julie Steendam [00:22:19]: We learned a lot about online campaigning, trying to be creative, trying to have a person-to-person approach even in an online modus, which can get quite interesting. But I think one of the most surprising things for me was that I learned more about how European politics and European democracy work. A resolution was adopted in the European Parliament stating that the majority of its elected members are in favour of lifting intellectual property rights on COVID-19 vaccines, and this is amazing because it means that we already have democracy on our side. However, we saw in practice that there wasn't any change in the position of the European Commission. This shows that we need some more power, and this is where the ECI comes in because this tool really shows people the power that we have as well as the fact that the majority or a big part of the European population is also in favour of this. The European Parliament has played its role; they will stay our ally for sure. We also need to put extra pressure by engaging citizens and making sure that this ECI is successful.

Méabh Mc Mahon [00:23:37]: Thank you for joining us.

Julie Steendam [00:23:39]: Thank you. It was a pleasure talking to you.

Méabh Mc Mahon [00:23:47]: To get more information on this, we will head now to Geneva to meet the Counsellor of the World Trade Organization Roger Kampf, who specialises in health and intellectual property. In the last month he has been working on the front line of the vaccine trade and distribution. Roger, could you first explain to us who developed the vaccines and with what financial support?

Roger Kampf [00:24:05]: Today we see a situation of about 20 to 25 companies that are active in vaccine development. There is a strong concentration in the United States, in the EU, India and China. In terms of financial support, it's probably fair to say that the US and Germany were by far the largest investors in vaccine R&D. If you think of the so-called advanced purchase agreements, for example as a government you buy a vaccine which has not even been approved for human consumption, you can also consider this to be an investment in R&D. And if you do take this into account, we are actually entering slightly different configurations and numbers, where the US and the EU certainly account for the majority of the funding. So, there are USD 40 billion coming from those sources. Now, the funding went primarily to private companies, recipients of R&D investments. COVID-19 vaccines are concentrated in a relatively small number of high-income countries, with Western European countries, the US and Canada probably ranking first. Most countries have invested, interestingly, in companies or research institutions from their own countries. In the case of the EU, for example, we can see that investments were mostly made in European institutions, as well as in France and Germany.

Méabh Mc Mahon [00:25:34]: How do you see the role of intellectual property rights regarding the development of and access to vaccines and other critical COVID-19 health technologies? Do you think that they represent an enabling factor or rather a barrier to developing, manufacturing and distributing these products in a timely and equitable manner?

Roger Kampf [00:25:50]: The intellectual property system as such is part of the broader infrastructure for innovation in health technology, in the management of collaborations and also in the integration of diverse inputs to produce the final vaccine or other soft technology. The COVID-19 pandemic has brought into sharp relief the need for a strong and balanced link between the support for innovation and partnerships, on the one hand, and the self-assurance of swift and equitable access to the outcome of those actions. I would also say that certainly the collaboration among health organisations, technology developers, governments and other key stakeholders, including the sharing and pooling of technology and know-how, is key to addressing the pandemic. Moreover, the need for partnership and collaboration has been repeatedly referred to, including by manufacturers from developing countries. I think the idea of collaboration and sharing is also deeply rooted in the objectives of the agreement we are administering at the WTO, the TRIPS Agreement, according to which IP protection should contribute to the promotion of technological innovation on the one hand, but also to the transfer and dissemination of technology. Also, on a company-to-company basis, for example, Johnson & Johnson has concluded an agreement with Aspen in South Africa to provide for end-to-end manufacturing in South Africa for the entire African continent. There is also the conclusion of a licencing agreement between the WHO and the Spanish National Research Council regarding the COVID-19 technology access pool and the medicines patent pool for the non-exclusive royalty-free use of COVID-19 serological antibody technology. The licence interestingly also provides technology transfer and know-how to the medicines patent pool as well as training for the use of those technologies. There may indeed be situations where there is a need to deal with intellectual property rights, which would otherwise present a barrier to access, and to do so in a number of policy options, or if you want to call them flexibilities, available to WTO members under the TRIPS Agreement. For example, when it comes to patent rights, members can issue the licences which would allow the use of the protected invention by a third party or by the government without the owner of that right authorising this use. So, you have this and other exceptions and limitations to existing rights enshrined in the agreement.

Now, I think it is important that countries look into streamlining the use of those flexibilities. Equally important is the implementation of the flexibilities in national law, which will allow their easy use because otherwise we can have the nicest policy options in the TRIPS Agreement, but they won't serve any purpose at national level if they are not properly implemented. Maybe there are also situations in which intellectual property rights do not cause a barrier because collaboration is simply not needed as the originator company, for example, has declared that it will not enforce its existing patent rights during the pandemic, and the technology needed is in the public domain. A concrete example of this, also from South Africa, is that of the company called Afrigen Biologics Vaccines in Cape Town, who have clearly said, 'Well, we can actually produce a copy of the Moderna vaccine without collaborating with the company. Why? Because all the technical information we need is actually in the public domain; we can access it, and therefore collaboration is not needed.'

Méabh Mc Mahon [00:30:07]: Can you tell us about the work being carried out by the WTO to provide a credible response to the pandemic?

Roger Kampf [00:30:12]: I think there's a convergence among the WTO members that we need a credible and meaningful response by the WTO to the pandemic, and this as soon as possible. The work being done among members to come up with a response to the pandemic includes a political declaration on the WTO's response to the pandemic as well as an action plan in terms of pandemic preparedness. Why did intellectual property not find its way into this political declaration so far? Because we had the process of the TRIPS council, which is the body administering the agreement on trade-related intellectual property rights, heavily engaged in the discussion on the two proposals, and one proposal was initially coming from India and South Africa. And that was essentially to waive certain TRIPS obligations in the context of the COVID-19 pandemic. On the other hand, you have a European Union proposal, which suggests not only reaffirming that members are free to use existing flexibilities but also clarifying certain TRIPS flexibilities. Now, while members share the common goal of providing timely and equitable access to needed counter measures, they continue to disagree. And here we come to the heart of the discussion, the disagreement on which of the proposals or possibly even a combination of those proposals is the most effective way to address inequitable distribution of vaccines and other COVID-19 products. I believe this is deeply rooted in different views regarding the role of the IP system. While vaccine equity should first and foremost be seen as a public health objective, it is also a prerequisite for strong and sustained economic recovery, and this explains why the WTO DG and the Secretariat's work has focused on an integrated approach to secure the development, manufacturing and timely, equitable distribution of COVID-19 vaccines. In doing so, we have, however, encountered a number of challenges, including supply-chain bottlenecks, where things are not working. So, the trade flow is not as it should be. We are actually facing problems in identifying what the critical inputs for vaccine manufacturing are. And that is critical for customs to know because, for example, if you want to use green lanes for a quick importations procedure, you will have to know which products are actually needed for vaccine production. Of course, transparency is a big issue, as are production and delivery schedules, because very often there's been reporting in Nigeria about the country not being able to absorb the vaccines they've been receiving, but one of the problems was the very short expiry dates. So, the better we know about vaccine production and delivery schedules, the better we can coordinate them and make sure that the recipient countries get the vaccines at a moment in time when they can actually then distribute them to the population. Therefore, in cooperation with the World Customs Organization and the private sector, we have made a compilation of trade-related bottlenecks and trade-facilitating measures, essentially to assist our members to see what could be done in order to ensure that trade flows are as smooth as possible.

Méabh Mc Mahon [00:33:56]: Had you ever heard of the ECI before we called you?

Roger Kampf [00:34:00]: The answer, to be frank, is yes. Because as a good European lawyer, you follow years of legal developments, and I think that the Lisbon Treaty has been one of the most important milestones by which this initiative was first introduced. So, the mechanism or the instrument as such was known to me.

Méabh Mc Mahon [00:34:23]: What have we all learned from this pandemic?

Roger Kampf [00:34:25]: There's never been such a spirit of collaboration, be it between international organisations, be it among private sector actors and whoever else is involved in this. I think there is a huge willingness to work in teams in order to face this pandemic and put an end to it.

Méabh Mc Mahon [00:34:45]: Thank you so much for your time, Roger, and for sharing your knowledge here on CitizenCentral.

Roger Kampf [00:34:49]: Great. Thank you so much.

Méabh Mc Mahon [00:34:55]: That brings this edition of CitizenCentral to an end. A massive thank you to our guests and of course to you for listening. And if you fancy finding out a little bit more about any of these ECIs, check out our show notes. You can also take a look at the ECI website or follow the ECIs' individual social media channels. Of course, if you want to propose your very own ECI, you can head over to the ECI forum to learn about how to get started. I'm Méabh Mc Mahon, and you've been listening to CitizenCentral.