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Intellectual Property Law versus Customs and Values of the Internet Community

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Abstract

The emergence of the Internet has not only enabled widespread copying of digitized music, videos and information but has also facilitated sharing of these resources. Despite the fact that international conventions grant authors and other right holders a number of exclusive rights including the right of reproduction and the right of distribution of their works, Internet community seems to follow a distinct set of norms.

The objective of this paper is to present the examples of common practices developed by Internet companies and users in the area of intellectual property. The norms of Internet users are so widespread in the international electronic commerce that they could serve as the basis for adjudicating disputes in the online world and be regarded as reflecting the values of Internet community.

Governments could utilize the knowledge of Internet practices to supplement national and international regulation of electronic commerce. The knowledge of electronic commerce customs could thus enhance Internet-related legislation and make it better adjusted to the needs of the knowledge-based economy.

Keywords: *electronic commerce law, intellectual property, custom, e-Commerce, e-Government, e-Culture, e-Society, Internet regulation, alternative dispute resolution (ADR), custom, Law Merchant, Internet practices, security*

1. Introduction

International community did not manage to devise a global framework for the Internet (COM(2003) 702 final, 21.11.2003). With the exception of the latest Convention on the Use of Electronic Communication in International Contracts adopted in November 2005, which is not binding yet, there are no international treaties designed specifically for Internet commerce. On the other hand, contracts are insufficient as a regulatory tool because they can only be treated as "a law between the parties" and hence cannot bind non-parties to a contract.

It is argued that the focus on written regulations has resulted in a failure to observe that the Internet community managed to develop its own, distinct norms. These norms are embedded in common practices of Internet users. There are numerous usages that have emerged in electronic commerce, particularly in the area of Internet security and online contracting. For instance, it is customary for merchants to ensure strong encryption of transactions or confirm orders placed immediately and by electronic means (Polanski, 6-8 June 2005). These practices propagate over the network through the bottom-up process of conscious or unconscious following of what others do rather than through some top-down regulation. In this sense, these norms emerged as a result of particular needs of the Internet community and the lack of clear guidance from other normative systems such as international law.

Internet users follow certain unwritten practices that reflect their understanding of what is good and desirable. These norms are peculiar the global medium of human interaction and sometimes contradict those encountered in the traditional world. This opposition is clearly visible in conflicts between widespread Internet practices and existing legal regimes such as intellectual property law. At the same time, it underlines the uniqueness of the Internet culture.

The objective of this paper is to uncover and discuss some of the most important customary norms or eValues as reflected in the customary practices of the Internet community. However, it is outside the scope of this paper to formally prove the existence of these customs. The paper draws on earlier research on customary practices (Polanski and Johnston, 7-10 January 2002; Polanski, 2002; Polanski and Johnston, 2002; Polanski, July 2003).

The paper is based on the analysis of practices of Internet users as evidenced by recent legal disputes. The data about potential Internet customs was collected through the observation of Internet participants. The scope of the paper will be limited to international electronic commerce, despite potential application to non-commercial sphere.

2. Internet Customs

It is important to stress that customs are recognized as the source of international law and are binding all states (Bernhardt, 1992). Trade usages are also very important source of international commercial law and are expected to be followed in multinational transactions (Berman and Kaufman, 1978). It is argued that similar role could be attached to customs of Internet merchants.

Customs are common practices that possess certain characteristics. “An international electronic commerce custom (e-custom) can be defined as a legally relevant practice of trading on the Internet, which is sufficiently widespread within a given timeframe as to justify the expectation that it should be observed” (Polanski, July 2003).

Based on the above definition one can identify several important elements of Internet customs, of which the most important one is the requirement of sufficiently widespread practice. The requirement means that a given practice is widely followed in space and time. The practice is widespread if it has a global, regional or even a local character (widespread in space) and if it is followed intensively in time (widespread in time). In e-commerce, the practice has a global character if it is observed by the Internet participants of all sizes across all or the majority of industries in the world. It can also exhibit a particular character if it is peculiar to a number of companies exhibiting some commonality e.g. companies that are confined to one or several industries or to one or several geographical regions as indicated by the country-level domain names. The practice has local scope if it occurs between two or only a few trading participants (Polanski, July 2003).

The objective of this part of the article is to identify some of the most important Internet practices as the first step in the process of "uncovery" of Internet customs and the values they reflect. Such list of potential customs has already been offered (Polanski, 6-8 June 2005; Polanski and Johnston, 7-10 January 2002; Polanski, 12 May 2005). It is again important to stress that this paper does not attempt to attach to the norms embedded in these practices a legally binding force. Instead, the aim is to signal the emergence of potential practices that might turn out to be as widespread as to justify the expectation that they should be observed. But this can only be ascertained using empirical tests, described elsewhere (Polanski, July 2003).

2.1 Right to Copy

Unrestricted copying of information enabled by the Internet continues to be one of the most controversial issues in the Information Age. Can one state that it is customary to freely copy information on the Internet? And if yes, does this give the right to freely copy information on the Internet, based on Internet custom? The answers to these fundamental questions involve an in-depth assessment of copying, which can occur both automatically and by human effort. Furthermore, one would have to distinguish between various levels on which electronic copying occurs, i.e. the Internet infrastructure level and the application level. The following discussion will only set the scene for a detailed analysis of this potential customary freedom.

With respect to information exchanges at the Internet infrastructure level, one can clearly state that the very architecture of the Internet is based on the concept of copying information. It is done automatically by computers - not by humans. For instance, in case of the WWW it is the copy of the website that is sent to the requesting browser – not the original. Before it is received by the requesting browser it may also be filed or cached by a proxy server, in order to speed up future retrieval of the information. As one can see the concept of copying is embedded in the very architecture of the Web and hence one cannot speak of any violations of national or international copyright laws (OJ L 167/10, 22.06.2001). To do that would be to question the legality of the Internet itself. Therefore, there exists a right to copy information at the infrastructural level, provided that it is done for the purpose of enabling or making more efficient the transfer of data.

One cannot say the same, however, with respect to the right to copy the electronic content. As opposed to copying at the infrastructural level, which is done by computers rather done human beings, the copying of content is usually done by humans. Furthermore, it usually does not aim at enabling functioning or faster performance of the Internet. As a result, the issues raised by the practices of copying of content, be it text or multimedia files, have different intensities at various Internet application levels. Therefore, the scope of the potential customary freedom of copying content would have to be clearly delineated. The following discussion will be limited to email, www and peer-to-peer networks.

2.2 E-mail Copying

Email is one of the oldest and the most widely used Internet applications. Since conveying electronic messages over the Internet has created a new potential for unauthorised copying, the common practice of doing so has raised legal controversies. As early as 1996, Trotter Hardy described the customary norm of forwarding emails without the consent of the original author:

"we can look at the well recognized cyberspace custom of copying e-mail messages and forwarding them to others. In real space, this might be a clear copyright violation, but if everyone in cyberspace "does it all the time," and knows that others do it all the time,

might not some sort of estoppel or implied waiver of copyright rights arise?" (Hardy, Summer 1994)

The observation shows that email forwarding without authorisation is still a common practice among Internet users and no one considers himself or herself in breach of copyright laws. This practice enables better communication as the addressee knows better what point the sender tries to make. Despite the fact that such practice might be considered illegal in some countries with respect to traditional letters, it is legal in cyberspace. Again, one can see how Internet customary norm changes the traditional legal paradigms.

2.3 WWW Copying

As opposed to email, website copying without authorisation would in most instances infringe author's copyrights. It has been considered illegal to copy someone's content and present it as one's own (plagiarism), unless the use is partial and done in the context of, say, critical analysis or news reporting. On the other hand, news syndication technologies such as RSS feeds are examples of copying information with the consent of authors, because providers themselves agree to display their information on any webpage capable of handling RSS feeds.

However, there are instances where website content copying without authorial consent has been widely practiced. The most important exception to the general prohibition of content copying without authorisation is the activity of search engines. It goes without saying that web crawlers continue to copy some or all of a website in order to index and classify it. The content of an indexed website would not be fully revealed – only an excerpt of it will be presented to a person searching for information. Most search engines only reveal the content of the so-called "metatags," which are invisible to a person viewing a website. The metatag "description" will usually be displayed, together with a link to a resource. But this is not always the case, because some search engines (such as Google) seem to present a different description of content to that found in metatags.

Nevertheless, it seems to be a customary practice to copy a website in order to analyse it as well as to present only a small portion of it to a user without authorisation. To claim otherwise would be to hinder the evolution of the World Wide Web and to ignore widely accepted practice.

Furthermore, this contention extends to multimedia search engines. Nearly all major search engines, such as Google, AltaVista, Yahoo AskJeeves or DogPile, have provided options to search not only textual information but also pictures, videos, music and so on. It has become a widely accepted practice to display thumbnail images of third party artwork without authorisation, in order to provide visual linking capabilities. Thumbnails are small versions of original images, compressed to the extent that their commercial or even private use is very limited. The aim is to use thumbnails as visual links to the author's original images located on the website of the copyright holder. Search engines usually provide not only explicit links to original resources but also a description of the picture. Therefore, this practice seems to be morally justified, or at least indifferent, provided that images are cut down versions of original artwork used as a link to original resources. As a result, given more extensive proof, it could be argued that there exists a customary right to display thumbnails of third party artwork without authorisation.

However, image search capabilities have created legal challenges as some copyright holders have argued that display of their images has infringed their copyrights. In *Kelly v. Arriba Soft Corp* (1999) Arriba used thumbnails in their search engine but displayed a complete picture within the Arriba website and not as a link to the original resource. The American District Court and the appeal court have confirmed that thumbnails were legal on the basis of the doctrine of fair use.

In summary, one can argue that there exists a customary right to copy some or all of a website in order to index it and provide better search capabilities. This does not mean that one can legally copy and paste the whole content of a website. It only means that search engines are customarily entitled to copy content in order to provide better search capabilities. Furthermore, search engines are customarily entitled to copy and display a small portion of an indexed website in order to give informational clues about the website. This seems to extend not only to content of metatags but also to the content of a visible part of a website. Finally, there seems to exist a customary right to display thumbnails in order to provide links to original images. All these exceptions to a general prohibition of copying without consent might be regarded as a fair use.

2.4 P2P Copying

The most controversial legal issue surrounding copying is associated with the emergence of peer-to-peer networks such as BitTorrent or FastTrack and programs such as Kazaa or eMule that enable file-sharing between all the users connected to a given network. The peculiar feature of file-sharing networks is that there is no central server that stores files to be exchanged. Instead, these files reside on users' computers, so the exchange takes place between peers. However, servers are still utilized by the majority of P2P networks in order to index information about the location of resources.

File swapping is a very widespread practice and one of the hallmarks of the Information Age. One of the most perplexing questions is whether file swappers can legitimately exchange copyrighted works for personal use or whether such behaviour is illegal. Opinions are greatly divided. Large corporations tend to fight peer-to-peer networks on the grounds that they enable piracy. In the already famous judgment *Metro-Goldwyn-Mayer Studios, Inc v. Grokster Ltd* (2005) the U.S. Supreme Court found Grokster and StreamCast Networks liable on the grounds that Grokster and StreamCast distrubted their software with the object of promoting its use to infringe copyrights. As a result, the development of peer-to-peer software is still legal under U.S. law, provided that it is not distributed with a clear intention to be used to infringe copyrights.

In *Universal Music Australia v. Sharman Licence Holding* (2005) the High Court of Australia went even further and forced Kazaa to modify its software in such a way that finding infringing materials would not be possible. The Court ordered that continuation of Kazaa is possible provided the software contains non-optional keyword filter technology that excludes all copyrighted work. Conformance with the decision might be very difficult or even impossible. In short, courts around the world began to send a clear message to file-sharing companies to the effect that, from 2005, production and dissemination of P2P software might be illegal if coupled with reckless marketing.

However, the opposite trend is also noticeable. It is fair to say that there is a growing understanding of political, social and economic benefits of peer-to-peer networks. Furthermore, not all uses of peer-to-peer networks is legally dubious (Lessig, 2004). Some judges started to defend the emerging culture: “We are in the process of creating a cultural rupture between a younger generation that uses the technologies that companies and societies have made available, such as the iPod, file download software, peer-to-peer networks, etc.” (Gain, 23 May 2005). In the latest ruling *Societe Civile de Producteurs Phonographiques (S.C.P.P.) v. Anthony G.* (8 December 2005), the French court did not find a file swapper guilty of copyright infringement on the grounds that it constituted a fair use.

Furthermore, in December 2005 the lower house of the French Parliament voted to legalise free sharing of files for private use. Under the amendment that is still during the legislative process: “(…) authors cannot forbid the reproduction of works that are made on any format from an online communications service when they are intended to be used

privately" (Viscusi, 22 December 2005). If French Parliament accepts this proposal, France would become the first country to officially legalise file sharing on the Internet.

Regardless of the legal standpoint, observation shows that file-sharing is so widespread, and so intensive in terms of number of transactions and in terms of time that one could argue that it has become a custom. The controversial question is whether such practice is part of a customary law of the Internet or not. Is it permissible to freely exchange information on peer-to-peer networks for private use or not? In many jurisdictions a positive answer may sound revolutionary, as it is highly debatable whether custom can abolish existing law. But one thing is certain: if the law prohibits file-sharing then the law has been totally ineffective for many years. A recent report from the Electronic Frontier Foundation titled "RIAA v. the People: Two years later" shows that despite a lawsuits campaign, the recording industry failed to change the behaviour of Internet users and file sharing is now more popular than ever (Electronic Frontiers Foundation, 2005). Would not it be more reasonable to accept a long and widespread practice, which has some merits as a legal right? In any case, one may expect the proliferation of new business models (Gartner G2 and the Berkman Centre for Internet & Society, January 2005) such as iTunes that will change the way entertainment content is distributed.

2.5 Summary

Summing up, there is a widespread practice of copying information on the Internet. This is clearly visible at the infrastructural level as well as at the application level. This allows the formulation of a generalised statement that it is very likely that there exists a customary right to copy information without authorisation at the infrastructural level, as well as, in some instances, on the application level, such as email forwarding or the display of image thumbnails. The question of legality of file-sharing for private use is very difficult and requires further research.

2.6 Freedom of Linking

Another common practice on the Web is the tradition of linking to any online resource without seeking authorisation. Observations seem to confirm that the majority of designers link to resources on the WWW without asking for permission. One can state that this practice is certainly in line with the nature of the medium. However, one of the major uncertainties surrounding the use of Web resources is whether it is permissible to link to any website without authorisation from the author or website administrator. Copyright laws give the author the exclusive right to control the way in which his or her work is used.

At this point, one should clearly differentiate between various practices that have been established in this area. Firstly, one should discuss the concept of simple linking or linking to a home page of another Internet user. Secondly, one should investigate the issue of deep linking or linking to web pages other than the home page. Thirdly, it is important to discuss the problem of frames and displaying the deep content of third party website within someone else's frame.

With respect to the problem of simple linking, observation shows that there is a widespread practice of Internet website designers to provide links to any website they want, without any agreement or consent of the author of the resource. This seems to be a common practice. This is especially so with respect to search engines, whose job is to index all the resources on the Web and display links to them. However, this may not always be as simple as it sounds. Recently Perfect 10 brought a suit against Google, alleging copyright infringement for the display of photos of their works through Google's images feature, which presents graphical links to other websites (Kawamoto, 26 August

2005). Nevertheless, considering the history of the development of the Internet and the way search engines have been functioning so far, it is strange to even consider the possibility of requiring permission to link to electronic resources.

Furthermore, there are companies that demand formal permission to link to their websites (Manjoo, 6 December 2001). To illustrate the deeply embedded feeling of freedom of linking on the Web it is mandatory to point to David Sorkin's "Don't Link to Us!" website which "links to sites that attempt to impose substantial restrictions on other sites that link to them" (Sorkin, 2002). The aim of the website is to ridicule the "stupid linking policies" of many websites including that of law.com, Sonic Foundry, Nikon Precision Inc., The International Trademark Association and numerous others in order to "encourage some of these sites to move forward into the twentieth century."

At the same time, however, sites such as those listed on Sorkin's website show that there is opposition against freedom of linking. The debate is especially hot in regards to the second area of our interest - the so-called "deep linking," or linking to a page other than the front page. Some courts have started to recognise, although prematurely, claims in this regard. For instance, the Danish court prevented Newsbooster from deep linking to the Danish Newspaper Publishers Association's sites (Bowman, 8 July 2002).

However, this practice is in line with the spirit of WWW, which is to allow for a wide dissemination of knowledge through linking. Linking is the essence of the Web, and the essence of the HTML language. One could argue that if someone does not want his or her resource to be linked to, then he or she should consider either securing access to its content or removing it from the Internet. Furthermore, there are technical measures, which automatically take the reader to the home page if he or she visits the deeper content bypassing the home page. Therefore, one could argue that if someone does not use these measures then he or she cannot complain about linking to deep resources.

For many authors, the most problematic area is the so-called “framing” where a webpage of company X may be displayed within a frame or a portion company's Y webpage. In this case, a linked resource might lead to confusion about who has created a given site. One should stress here, however, that these arguments are not always well founded because the linked resource will usually look different, with the other company's logos, colours, and fonts, which should seriously reduce the chance of confusion. More importantly, it is possible to program a website in such a manner that frames of the calling website will be ignored and a linked website will always display in a separate window. Therefore, it is only a matter of choice and skills of a web designer. Finally, the use of frames is no longer recommended as a good web design practice, and therefore the problem of deep linking is gradually disappearing from the Web.

Finally, one should make it clear that although linking is customarily permitted, it should not be confused with potential liability for content, which is an entirely separate issue. Every author of a website should remain liable for the content he or she disseminates. Therefore, if a link points to a resource which turns out to infringe third party rights or is in contravention of the laws of a given country, only the author of that resource should be held liable. A website operator that includes a link to such a resource shall, as a rule of thumb, be exempted from liability, because they cannot guarantee the content of a resource being linked to.

In summary, the practice of linking to a publicly available resource without permission seems to be adhered to by a vast majority of users and hence it seems to be a well established right on the Internet. And there are very strong reasons for defending this basic freedom. However, there are companies that try to enforce their own policies in this respect and demand permission to do this. In order to ascertain whether such a custom exists one has to measure how widespread the practice actually is. Only then will one be able to definitely state, in the absence of any higher written law governing a given case,

what a majority of Internet users actually do, and hence, what the prevailing norm on the Internet is.

2.7 Freedom of Registration of a Domain Name

One of the most fundamental principles of the domain name registration is a customary norm according to which a given domain name is registered to an applicant on a first-come first-served principle for a fee and for a limited period of time. The process is not governed by any international convention nor national statute. It is regulated in policies developed by Internet organizations. As a result, the norms governing the process have anational origin.

Registration practice is usually free from any formal checks as to the potential conflict of the domain name with, for example, locally registered trademarks. The informal procedure was used on a global level (gTLDs) and in many countries (cTLDs), including the United States, the United Kingdom, Switzerland, Denmark, Austria, Belgium and Poland. However, there is also a more restricted registration approach, particularly on ccTLD level, which customarily is in hands of a given country. However, it does not seem to alter the nature of the first-in first-served principle.

The registration process can take many forms. In countries such as Bolivia a private person cannot register a domain name, whereas in Brazil, the owner of the domain is required to be a citizen or resident of the country (BNA Int'l Bus. & Fin. Daily, 5 July 2005). Many countries require a local business presence or a local trade mark. Such restrictions exist in Australia, Sweden, Finland, the Netherlands, Germany, France, Portugal, Greece, Italy, Spain and Luxembourg. However, many countries such as Australia have since relaxed their registration procedures (Quirk and Forder, 2003), therefore it remains to be established which countries follow which model. On the other hand, the new European domain .eu was launched in two phases: the Sunrise period, during which only the holders of certain “prior rights” were allowed to register their names; and the Land Rush period, where registrations would be open to everyone on a first-in, first-served basis. Furthermore, with generic top-level domains such as .edu one can expect more stringent requirements to be fulfilled by an applicant. Finally, one would also have to investigate policies and practices that have emerged in the new generic top-level domains such as .biz, .info or .name.

Like every freedom, freedom of registration has also its limitations. These exceptions have been established not by national courts but by anational arbitration panels that have developed concepts such as as cybersquatting or registration of offensive domains. There are numerous domain names that have been registered in bad faith for the sole purpose of reselling by so-called cybersquatters. The hottest disputes have concerned the validity of registering names of famous people, businesses or products, especially when there was a clear conflict with a registered trademark. However, these cases are not as simple as they may sound because a domain name and a trademark are entirely different concepts. In the majority of Western legal traditions intellectual property rights have to be expressly provided for in a national law (the *numerous clausus* principle). With the exception of few countries such as the U.S., no such rights have been created for defending interests in a domain name. Therefore, there seems to be no basis for claiming the right to something that is not "a right" in a legal sense. It is thus essential to present evidence of countries that have adopted some regulatory framework in this regard. Furthermore, "cybersquatting" is unclear, as is its scope. In one recent example, the Scotland Law Society paid £10,000 to an alleged cybersquatter for the lawscot.co.uk domain (McCarthy, 13 June 2003). Clearly Lawscot is a generic name that could have been registered by anyone wishing to run a service about Scottish law. Therefore, it is important to clearly delineate what constitutes cybersquatting by research of the relevant

decisions of domain name arbitrage and the relevant case law. Finally, there are many examples of registering offensive domain names that contain vulgar or controversial words, often in conjunction with a globally recognised brand. Domain names such as airfrancesucks.com may clearly affect the perception of well-known brands (WIPO Arbitration and Mediation Centre, 24 May 2005). At this stage, it is unclear whether such practices have been widely recognised by domain name arbitration as exceptions to the general freedom of registration (WIPO, 2005).

In summary, freedom of registration of domain name can be argued to constitute a customary principle of the Internet, having a global scope. It is especially so with respect to generic TLDs. It is therefore one of the values of the Internet community to permit registrations of domain names on first-in first-served principle and fight the abuse of this principle. The customary nature of this principle also means that exceptions to this freedom should be interpreted strictly by arbitral panels and judicial tribunals. It is especially so, given the number of different types of domain names that have recently became available.

3. Summary

The present contribution discussed three unique norms that were developed and widely accepted by the Internet community. These practices include the right to copy certain information without authorization, the right to link to resources on the Web without asking for authorization and the right to register domain name based on first-come first-served principle. Each of these practices has very rich content and generates serious issues particularly in confrontation with national legal systems.

Users who follow these norms are often called into question by national legal systems that try to impose their own norms on the behavior in cyberspace. However, these practices are so widespread that it could be argued that they reflect the values of the Internet community. These values form the basis of the supranational order in cyberspace.

Governments should therefore recognize the values of the Internet community and give effect to them in legal codes. Imposition of old rules and concepts developed in a pre-Internet era to the new environment has turned out futile and can only weaken the function of law. In consequence, international intellectual property law requires a serious revision if it is to remain vital in the Information Age.

References

(8 December 2005): Societe Civile de Producteurs Phonographiques (S.C.P.P.) v. Anthony G., Tribunal de Grande Instance de Paris. Case No 0504090091.

(1999): Leslie A. Kelly, *at al* v. Arriba Soft Corp., *at al*. Case No. SA CV 99-560 GLT[JW], U.S. District Court.

(2005): Metro-Goldwyn-Mayer Studios, Inc v. Grokster Ltd. WL 1499402, S.Ct.

(2005): Universal Music Australia Pty Ltd v Sharman License Holdings Ltd. FCA 1242 (5 September 2005), Federal Court of Australia.

Berman, H. and C. Kaufman (1978): The law of international commercial transactions (lex mercatoria), Harvard International Law Journal, Vol. 19 (No: 221 - 277.

Bernhardt, R. (1992): Customary International Law, Encyclopedia of Public International Law: published under the auspices of the Max Planck Institute for Comparative Public Law and International Law under the direction of Rudolf Bernhardt, R. Bernhardt, Amsterdam, London, New York, Tokyo, North-Holland. 1**:** 898-905.

BNA Int'l Bus. & Fin. Daily (5 July 2005): U.S. States Internet Principles: No Change For ICANN, No Support for New Global Body., BNA Int'l Bus. & Fin. Daily.

Bowman, L. M. (8 July 2002): Court: Hands off that hyperlink, CNet News.com.

COM(2003) 702 final (21.11.2003): First Report on the application of Directive 2003/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular, electronic commerce, in the Internal Market (Directive on electronic commerce). Brussels**:** 1-25.

Electronic Frontiers Foundation (2005): RIAA v. the People: Two Years Later.

Gain, B. (23 May 2005): Volez ce MP3!, Wired.com.

Gartner G2 and the Berkman Centre for Internet & Society (January 2005): Copyright and Digital Media in a post-Napster world. Version 2, The Berkman Centre for Internet & Society at Harvard Law School.

Hardy, I. T. (Summer 1994): The Proper Legal Regime For Cyberspace, University of Pittsburgh Law Review, Vol. 55 (No: 993-1054.

Kawamoto, D. (26 August 2005): Adult-site publisher takes action against Google.

Lessig, L. (2004): Free culture, New York, The Penguin Press.

Manjoo, F. (6 December 2001): Big Stink Over a Simple Link, Wired.com.

McCarthy, K. (13 June 2003): Law Society of Scotland pays Ł10K to 'cybersquatter' for domain, The Register.

OJ L 167/10 (22.06.2001): Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. OJ L 167/10.

Polanski, P. P. (6-8 June 2005): Common practices in the electronic commerce and their legal significance, Proceedings of the 18th Bled eCommerce Conference "eIntegration in Action", Bled, Slovenia, Vol. (No.

Polanski, P. P. (12 May 2005), W poszukiwaniu autonomicznego prawa Internetu. Proceedings of the Conference "Prawo E-Biznesu" organised by Fundacja Wspierania Edukacji Informatycznej PROIDEA, Kraków, Poland.

Polanski, P. P. (2002): A New Approach to Regulating Internet Commerce: Custom as a Source of Electronic Commerce Law, Electronic Communications Law Review, Vol. 9 (No 6): 165-205.

Polanski, P. P. (July 2003): Custom as a Source of Supranational Internet Commerce Law (PhD Thesis), The University of Melbourne.

Polanski, P. P. and R. B. Johnston (7-10 January 2002): International Custom as a Source of Law in Global Electronic Commerce, Proceedings of the 35th Hawaii International Conference on System Sciences, Big Island, Hawaii, Vol. (No.

Polanski, P. P. and R. B. Johnston (2002): Potential of Custom in Overcoming Legal Uncertainty in Global Electronic Commerce, Journal of Information Technology Theory and Application, Vol. 4 (No 2): 1- 16.

Quirk, P. and J. Forder (2003): Electronic commerce and the law, Singapore, John Wiley & Sons Australia, Ltd.

Sorkin, D. E. (2002): Don't link to us: Stupid linking policies.

Viscusi, G. (22 December 2005): French Parliament Votes to Allow Web File Sharing (Update1), Bloomberg.com.

WIPO (2005): WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Arbitration and Mediation Centre.

WIPO Arbitration and Mediation Centre (24 May 2005): Societe Air France v. Virtual Dates, Inc. Case No. D2005-0168, Administrative Panel Decision.