COPYRIGHT LAW IN TRANSITION

Culture versus social norms and perceptions

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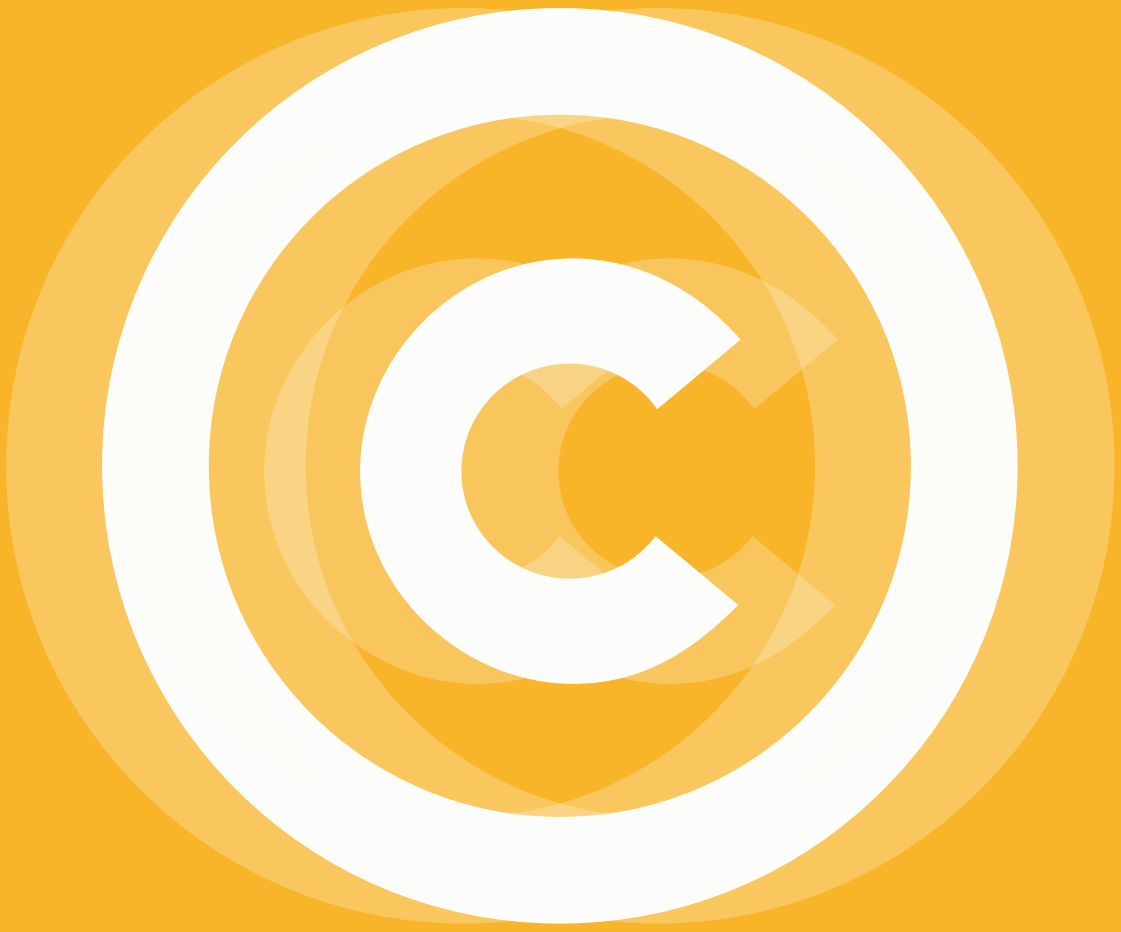

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“Copyright Law in Transition. Culture Versus Social Norms And Perceptions.”

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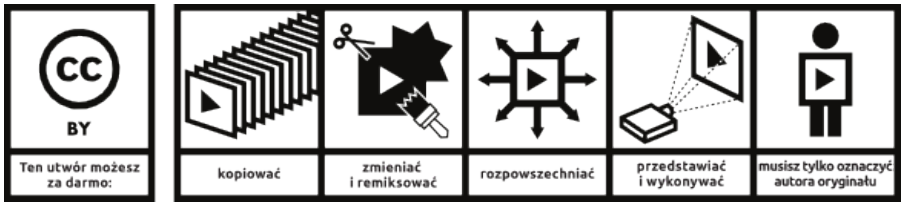

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CONTENTS

1. Report summary

For over a decade, we have been witnessing massive changes of social behaviours regulated by copyright law. At the same time we've also witnessed the emergence of new forms of expression, new channels of content distribution and a growing sphere of informal, unauthorized exchange of content. Each of these is a case of democratisation – or rather popularisation – of practices regulated by copyright law, which until recently applied to only a small group of professional creators and intermediaries.

Changes to ways of enjoying and using culture (and other content regulated by copyright law) are so vast and common, and so far removed from the law currently in force, that keeping it in its present form is becoming increasingly difficult – especially if we recognise the fact that social reality and the law should be coherent with one another. We face a serious risk: the new copyright law, instead of addressing the situation, may become a new system for digitally controlling citizens. It may also create a justification for attempts to invigilate society. Such solutions have been at the core of international agreements such as ACTA or TPP. New attempts to tune network space with the realities of politics will no doubt be made, and today the danger of limiting citizens' freedom is very real.

The matter of the unavoidable copyright law reform is too vital and concerns too many people – more than 10 million Polish Internet users – to be left in the hands of a narrow group of stakeholders and lawyers

representing the interests of creative sector businesses. It is not relevant whether those businesses operate within the old or the new economy. It is crucial to include the users of content in the public debate and allow the interests of this keygroup to be represented. At present this group remains absent from the public debate: it has no representation, no voice.

Our report is an attempt to give it a voice. We describe the dominating norms and perceptions that function in Polish society and that revolve around the issue of content usage constituting intellectual property, mostly in the digital environment. What is permitted, and what is not? What is right, and what is wrong? By defining the subject of our study in this way we can widen its scope beyond merely assessing a general awareness of copyright regulations currently in force. Instead, we aim to provide a framework for reconstructing norms, on which reformed copyright law can be based.

Today, copyright is being breached on an immense scale; due to technological progress, the conditions and ways of interacting with content have changed. New copyright law will either take the evolution of cultural behaviours, norms and beliefs into account, and be a law which "the people can obey," or it will have to be based on new, digital tools designed to successfully discipline Internet users. The latter means creating a rigid system of repression tailored to the digital era.

The core of today's problems with copyright and intellectual property is ***anomie*** – an imbalance in the system of norms and values which have dominated until now; a situation where these norms cannot be upheld any longer because of a change of social conditions in which they used to function. According to sociologist Jerzy Szacki[1], social organisa-

1. Szacki, J., *Historia myśli społecznej*. Wydawnictwo Naukowe PWN, Warsaw 2002, p. 391

tion and moral awareness don't keep up with a dynamically progressing social transformation. The study we undertook allowed us to see serious discrepancies between common behaviours and the law; and also between common behaviours and social norms.

A study of Poles' common practical knowledge of copyright regulations has revealed the following:

— The general level of social knowledge about what is permitted by current copyright regulations is low. Most of our respondents have accurately qualified the legality of only 5 out of 12 test scenarios.

— Surprisingly, most respondents view the law as more restrictive than it actually is. Legal actions have been deemed illegal by our respondents more often than the other way round.

— Poles are best at recognising the legal status of practices associated with commercial exchange of content. In these cases, the rules have not become outdated.

— It is most difficult to categorise purely network practices, those which happen without any material medium and are not performed with financial gain in mind. In these situations our internal right-versus-wrong compass seems to malfunction.

Social behaviours are, however, influenced most not by legal paragraphs in legal documents but by commonly shared convictions about what is "right" and "wrong". In everyday practice, social attitudes towards creativity and different forms of content usage are key to the functioning (or non-functioning) of copyright regulations.

This study of attitudes has shown, among other things, that:

— In the common view, "intellectual property" is equal to property as such. 63% of our respondents believe that the ownership of a creative work has the same kind of property status as the ownership of a physical object. Only 23% notice the metaphorical nature of "owning" intellectual creations.

— Deeply ingrained convictions about the necessity to respect intellectual property go hand in hand with comfortably using what can be found on the Internet. 80% of respondents admit that, if they look for something online, they usually mean to find it there, read it, watch it, look at it, listen to it or download it. As much as 91% believe that practically unrestricted access to films, music or books on the Internet has become a significant element of their daily lives.

— There are many more contradictions like this. Most respondents believe that downloading music and films from the Internet is wrong (52%). At the same time, the majority also believe that downloading isn't theft (75%). Almost the same percentage of respondents think that if the Internet enables people to copy and use content, then reusing it for non-commercial purposes isn't wrong and shouldn't be penalised (72%).

— There is significant support for solutions that would introduce a new balance. 82% believe that the law should protect the interests of creators. 48% declare their support for an Internet license fee which would serve to legalise the informal circulations of content online (41% say no). If we consider that we are in fact asking for a green light for a new fee, this result should be perceived as optimistic and treated as a practical indicator of openness to change.

The above results are not a symptom of social hypocrisy but of confusion and disorientation. Socially shared values have increasingly little in common with commonplace behaviours; they have ceased to function as a handy compass in everyday life. This situation results partly from the sudden widening of the group to which copyright regulations apply, now embracing masses of Internet users, for whom these regulations are both unintelligible and inconsistent with norms and accepted practices. The effect of anomie within the circulation of creative works exists because, as a society, we still claim to maintain the values and rules adopted in the industrial era and in the twentieth-century age of mass media – while in the present day we move around in a networked ecosystem. Conflict between the legal order and the normative order may generate considerable tensions, which was evident last year during the protest related to the ACTA agreement.

We still lack both appropriate language and a set of shared and tested values to which we could turn when discussing contemporary forms of using content. We also observe budding common norms governing sharing and using culture. Every recent study – in Poland carried out, among others, by CBOS[2], the initiative "Legalna Kultura" (Legal Culture)[3], PISF[4] and Centrum Cyfrowe – shows that the majority of Poles do not think that downloading music or films for private use is wrong. In spite of this, people who perform these actions are publicly labelled thieves.

The main drawback of the ongoing debate on regulating the circulations of content is its one-sided character. It seems, however, that as a society we are slowly getting ready to progress from the phase of stigmatising new,

2. CBOS, Opinia publiczna o ACTA. BS/32/2012, p.15

3. See: http://legalnakultura.pl/pl/czytelnia-kulturalna/badania-i-raporty/news/53,sciaganie-dobr-kultury-z-nielegalnych-zrodel [Access: 8 November 2013]

4. ARC Rynek i Opinia, Badanie korzystania z aktualnego repertuaru kinowego. 09.2012, p. 18. Online: http://www.e-polskiekino.pl/Raport1.pdf [Access: 8 November 2013]

mostly informal, unauthorised or unregulated phenomena into the phase of searching for constructive solutions. Our study indicates that the situation is complicated, marked by a deep dissonance between conflicting norms, new templates of behaviour and old, traditional perceptions and values.

On the one hand, an understanding and acceptance of freely using content online dominates. On the other, social perceptions of creativity and intellectual property are still a monument to the heritage of the industrial era. Another aspect of this matter is a prevailing acceptance for the need to offer payment to people involved in the creative process, even if the fruit of their labour should be available online for the taking.

The primary goal of the report is delivering sound knowledge about the convictions of Poles regarding copyright law and their perceptions of it. While sketching legal alterations on the intersection of law and culture, one cannot continue to ignore general changes to ways of accessing and using content regulated by copyright law. We will also try to demonstrate that the social norms existing today – and the behaviours based on these norms – should not be seen in a negative light, exclusively as proof of Poles' supposed demoralisation. They can instead be treated as potential keys to a legal reform that might produce conditions under which the law may be more easily followed. We hope that this knowledge will become a significant preparatory element for meeting the challenges posed by online circulations of culture.

Copyright should not be a tool of obstruction and control, but something that enables.

– Neelie Kroes, Vice-President of the European Commission

2. Introduction

2.1. Today, copyright law applies to everyone

Copyright law isn't keeping up with technological progress. This statement has been repeated so often that we have grown accustomed to hearing it. After all, the progress of technology seems to leave everything and everyone behind – why should copyright law keep up? Its regulations have never quite suited what happens in the real world.

Right now, the discrepancy between the letter of the law and the reality of daily social activities is extensive. At the same time, many agree that losses caused by end users are modest and – even if no one would openly say so – admissible on a macrosocial scale. On one side stand the alleged offenders, a handful of whom have their equipment confiscated, are obliged to pay fines or branded with a court-order stigma. On the other side, the creators of content – the culture and entertainment conglomerate, headed by producers and publishers – express feelings of harm.

This, in short, is the picture of the currentsituation – a tenuous balance, an attempt to disregard under-the-table circulations of content, which have grown in scale way beyond the official circulation.[5] This discrepancy between social practice and the law is caused by the evolution of new ways to participate in culture, triggered – among other factors – by the

5. Filiciak, J., Hofmokl, J., Tarkowski, A., *The Circulations of Culture. On Social Distribution of Content*, Centrum Cyfrowe Projekt: Polska 2012, p.33. Online: http://creativecommons.pl/wp-content/uploads/2012/01/raport_obiegi_kultury.pdf [Access: November 8, 2013]

emergence of new digital technologies. The surge of digital technologies' popularity in the last decade resulted in a sudden and immense increase of the number of individuals directly subjected to copyright regulations. In the analogue era, the costs of content production and distribution restricted this group to professionals and the available everyday forms of using content (such as copying it or making it available to others) were limited in scale, location and invisible to copyright owners. Digital technologies have enabled those everyday forms of using content to become ubiquitous, potentially global and visible on the Web. **These changes to the manner of enjoying culture are so vast and ubiquitous – and so far removed from the current copyright law – that its functioning in the present shape has ceased to be beneficial to anyone.** Jessica Litman, Professor of Law at the University of Michigan, makes this point very articulately: "The trouble with the plan is that the only people who appear to actually believe that the current copyright rules apply as writ to every person on the planet are members of the copyright bar. Representatives of current stakeholders, discussing within a closed circle, have persuaded one another that this must be true, but that's a far cry from persuading the ten or twenty million new printers and reprinters."[6]

QUALITATIVE RESEARCH STUDY

- *24 October – 9 November 2012*
- *18 group interviews*
- *54 hours of recordings*
- *Over 140 interviewees*
- *Age range: 15–60*

This is why – despite the complexity of the matter, which seems to be causing the current reform inertia – we should prepare for far-reaching changes to the law; changes needed partly in order to take into account the perspective of new interested parties.

6. Litman, Jessica, *Copyright Noncompliance (or why we can't «Just say yes» to licensing)*. 29 New York University Journal of International Law and Policy 237, New York 1997. Online: http://www-personal.umich.edu/~jdlitman/papers/no.htm [Access: November 8, 2013]

For all the reasons detailed above we believe that this matter – the unavoidable reform of copyright law – is too vital to be left in the hands of a narrow group of stakeholders and lawyers representing the interests of creative sector businesses – whether they operate within the old or the new economy. It is crucial to include the users of content in the public debate and allow the interests of this key group to be represented.

At present this group remains absent from the public debate: it has no representation, no voice. The usual, "official" explanation for this situation is the fact that it lacks formal representation – to use Litman's expression, the established participants of this debate want the new participants (a group larger than any other) to conform to the previously accepted discourse and shape of the debate. And as they do not, from its perspective they remain silent and additionally stigmatized as immoral pirates and thieves of intellectual property.

QUANTITATIVE RESEARCH STUDY

Computer-Assisted Web Interview (CAWI)

- *8–17 May 2013*
- *1316 Polish Internet users from varied locations*
- *Age range: 15–65*

Computer-Assisted Personal Interview (CAPI)

- *21 June – 2 July 2013*
- *1000 Poles*
- *Age range: 15–75*

The primary purpose of this study is to articulate the opinions of Polish citizens who are users of content. It is not our goal to validate certain behaviours, but to attempt to objectively describe and understand social norms which enter into complex relations with the current legal system. We do not want to limit ourselves to just verifying the extent to which Poles know, or don't know, copyright law – even though the lack of knowledge does have a significant influence on the de facto socially adopted legal order. We assume that describing users' views on the legal regulations governing the creation and use of content has considerable value and is indispensable for constructing an adequate public policy.

The above applies to the alterations in the Polish copyright act and in relevant EU directives, but also to back-door solutions introduced by means of trade agreements, which interfere profoundly in these regulations. The main drawback of the ongoing debate on regulating the circulations of content is its one-sided character, as it is being shaped almost exclusively from the point of view of the market, the point of view of existing, "traditional" interest groups. We offer a social perspective instead, giving voice to a new group of interested individuals: citizens. This is why, in this study, we decided to concentrate on the social dimension of how copyright law functions. To quote Litman once more: "If we are committed to the course of applying a single set of rules to both commercial film studios and high school students, though, we can't assess the feasibility of doing so merely by asking what the commercial film studios think of the idea - there are, after all, far more high school students than film studios out there."[7]

7. Ibidem

2.2. About the project: what we studied, why and how we studied it

Along with the development of communication technologies, the capacity to distribute all kinds of content – from the point of view of law and economics constituting intellectual property – has become available on an unprecedented scale. The individual Internet user has thus become subject to copyright law and the informal circulations of content have flourished. The scale of social involvement in those informal circulations (62% of Internet users) was presented in the "Circulations of Culture" research report prepared by Centrum Cyfrowe in December 2011. This time, we wanted to look at the changing views and attitudes which shape social beliefs and practices related to the acquiring and processing of content.

For the purpose of this study we adopted a simplified analytical scheme proposed by sociologists William Thomas and Florian Znaniecki. In order to describe the dynamics of social change, we apply the key concepts of attitudes and values. In social psychology, attitudes are subjective sociopsychological elements of reality. Values are objective elements of social reality imposed on the individual and interacting with specific individual attitudes. The crucial difference between approaches and values is that the former are more susceptible to change – despite their being immersed in a specific social environment, everyone arrives at them individually, for their personal benefit. Values, on the other hand, are strictly a group product and as such are far less adaptable; they are backed up by mass authority and thus more permanent.

From a social perspective – the point of view of everyday life – copyright law should be treated not as an element of the legal system (as it is

seen by the stakeholders: lawyers and experts), but as a certain common perception. It is important to underline here that we are dealing not just with rational ideas, rooted in the legal system; we're also dealing with more subjective and expressive ideas which also play an important role in the process of constructing a social reality – including the law. Marci A. Hamilton, Professor of Law at Yeshiva University in New York, suggests that we should treat intellectual property as "nothing more than a socially-recognized, but imaginary, set of fences and gates. People must believe in it for it to be effective."[8] In our report, we will therefore also sometimes talk about "beliefs" when describing perceptions of copyright law.

It also seems important to differentiate between the legal system currently in force and the current social norms (in other words, the values). Using the sociological category of social norms allows for a neutral description of rules governing the behaviours of Internet users, which is a good alternative to treating those behaviours only as an emblem of demoralization or lack of respect for the law. It might be a good idea to begin by acknowledging that the aforementioned widening of the circle of individuals subjected to copyright law has created a new situation of choice for every individual. Previously, the possibility now provided by the Internet to copy, edit or publish content simply wasn't there. With it comes a new potential risk of breaking the law.

Mark F. Schultz, Professor of Law at Southern Illinois University, uses the term "Copynorms" to describe the norms which are "essential to understanding copyright, but remain largely invisible."[9] These norms

8. Hamilton, Marci A., *The TRIPS Agreement: Imperialistic, Outdated, and Overprotective.* 29 VAND. J. TRANSNAT'L L. 613, 619, Nashville 1996

9. Schultz, Mark F., *Copynorms: Copyright and Social Norms.* Southern Illinois University School of

are, in part, constructed socially and influenced by new, common practices of using content – and the speed at which those norms become adopted can be surprising. They are also partly rooted in social experiences from the past: for example, users of the chomikuj.pl file-sharing service commonly believe that using the service is legal since they paid a fee to use it; and the rule seems to be that the market-based circulation of content is the legal one. Another important factor influencing the emergence of social norms which differ from regulation is excessive legal complexity: it is difficult to comply with regulations one does not understand (which is, in fact, the case in Poland, as this study documents).

We believe that **the discussion about how to change the current copyright system should be preceded by considering what type of law is viable in the current conditions.** These conditions are today shaped mainly by online technologies, the rising popularity of new content-related activities and changing social norms.

We have concentrated, particularly in the quantitative research stage of our project, on studying the beliefs and views of Internet users, because their activities pose the greatest challenge for the current copyright system. **In short, the Web has transformed the users of digital technologies into the most numerous group subjected to copyright regulations. At the same time, the Internet users who create and participate in new circulations of content have become the main threat to the twentieth-century model of creating and distributing content and related copyright regulations.** People who do not use the Internet, as evidenced by the "Circulations of Culture" report, limit their intake of culture almost

Law, Carbondale 2006. Online: http://ssrn.com/abstract=933656 or http://dx.doi.org/10.2139/ssrn.933656 [Access: November 8, 2013]

exclusively to mass media – consequently, from the legal perspective, they fit into the established paradigm.

In view of the complexity of the subject matter, we have decided to utilize triangulation – that is, to diversify our research methods. We first applied qualitative research methods in order to better understand our subject and carry out a deeper analysis; then we applied quantitative methods which served to verify the initial results on a representative scale. The primary goal of our research into common beliefs and attitudes towards copyright law in Poland has been to deliver material for reflection on widely understood social factors interacting with how copyright law works (or doesn't work).

The question that arises at this point is whether (and in what way) access to tools that allow to one produce, reproduce and distribute content (and other related practices) are subjected to social internalization. In other words – to what extent the users who have access to digital technologies notice this fact and how it influences their perceptions of copyright regulations. We assumed that our respondents are capable, at least to a certain degree, of reflection on the role of copyright law in their daily lives.

However, we decided not to concentrate on the question of legal knowledge, but on daily life issues and socially accepted values, which are an important (even if currently disregarded) point of reference for the copyright system. The general knowledge of copyright law in our society is predictably low, which should hardly come as a surprise, given the generally poor knowledge of legal regulations and the exceptional complexity of this area of law. **Stating that the general knowledge of copyright law in our society is poor would be a banal conclusion hardly worth a research project**.

Exploring this complex subject – social perception of the copyright system – brings truly interesting results if we examine the motives underlying the attitudes and beliefs about the matter (rather than assess the very limited formal knowledge of it). This is why, to put it in simple terms, we began by asking what individuals say and think when copyright law is mentioned, rather than asking what people say or think about specific articles of copyright law.

The research study consists of two parts: the qualitative component and the quantitative component. The qualitative component comprised 18 focus-group interviews carried out in the period October 24 to November 9, 2012. We conducted a total of 54 hours of group interviews with over 140 respondents whose age ranged from 15 to 60. Our respondents were recruited from the following groups: high school students, university students, schoolteachers and academic lecturers, librarians and bloggers. This specific choice of respondents at this stage was dictated by a wish to explore, within the general theme of copyright law, the subject of fair use – a set of provisions allowing specific uses of otherwise copyrighted content. For this reason, we talked to people who could potentially benefit from fair use in libraries, educational or academic institutions. However, the focus group interviews were mainly devoted to universal aspects of copyright awareness on a level to which any average Internet user can relate.

During the group interviews we explored subjects such as the interrelations of common and formal knowledge about copyright law; opinions on matters regulated by copyright law; relations between specific copyright regulations and declared everyday attitudes and actions. Group discussions were moderated by experienced researchers – Michał Danielewicz

and Marta Olcoń-Kubicka, who then wrote an internal report detailing the results at this stage.

This initial exploration of common thought patterns and beliefs about copyright law gave us an initial view and an ability to frame more specific questions in the quantitative study. It has allowed us, for example, to formulate questionnaire topics adequate to the level of reflection and language used in discourse about the matter in Polish society. Thanks to this, it was possible to probe social attitudes and beliefs more accurately and from multiple points of view.

2.3. A note on methodology

The core of the quantitative component was the Internet user survey conducted in Poland between May 8 and May 17, 2013 using the CAWI (Computer-Assisted Web Interview) method. Participants of the study went through a preliminary offline process of panel recruitment and identity verification. The study was conducted on a random representative sample of 1316 Internet users preserving the demographic structure of the Polish Internet users' population regarding age (15-65), sex, level of education and location. Between June 21 and July 07, based on selected 8 questionnaire questions, we carried out an additional verification study using the CAPI (Computer-Assisted Personal Interview) method: a representative group of 1000 Poles aged 15 to 75, encompassing both Internet users and non-users, participated. This two-stage procedure was adopted in order to verify the reliability of previously acquired results – and delivering certain background knowledge on whether being an active Internet user is a significant factor shaping the attitudes we study. The quantitative component has been completed by the Millward Brown company.

To briefly summarize the verification process, it should first be noted that the results acquired among Internet users by means of the CAWI method and the CAPI method are consistent: for 8 questions offering a total of 41 answers, the percentage difference between the answers given has exceeded 10 percent in only 4 cases. Differences emerge chiefly in the form of a higher occurrence of "strongly agree" answers in CAWI compared to CAPI, where there were more "agree" or "I don't know" answers. It seems that these few differences originate mostly from the respondents' greater immersion in the process and subject matter. While answering over 40 questions related to copyright law during the CAWI study, the respondents

had an opportunity to consider their views and express them better than in the case of the CAPI survey, where the 8 questions regarding copyright law were among several various other theme modules.

Secondly, although the differences of opinion between the Internet users and non-users are noticeable, they are in fact limited to the degree of consistence and decisiveness, and similar general tendencies can be observed in both groups. This difference – namely a greater percentage of "I don't know" responses and fewer "strongly disagree" answers among respondents not using the Internet – is understandable since most of our questions are closely related to Internet practices. For example, when presented with the statement "If someone uses films or music on the Internet for their own pleasure and does not profit from them financially, it is not theft", the majority of both groups have agreed with it, but those respondents not using the Internet have chosen the "I don't know" option three times more frequently than Internet users. In this report we concentrate predominantly on discussing the CAWI study results due to its more more detailed character, but even more so because it is the convictions, attitudes, and actions of Internet users that currently pose a challenge for the existing copyright system.

The above methodological note is a framework description and is provided to offer our readers some context of the research environment.

3. Knowledge and perceptions of copyright law

3.1. What we know and what we don't know

In our attempt to diagnose how Polish society sees copyright law we decided to concentrate not on the knowledge of legal articles, but on social perceptions of those articles' practical consequences. **Social perceptions of the law – commonly shared beliefs about what is permitted and what is prohibited by the law – shape our behaviours and actions more than the exact contents of legal paragraphs.** In the context of society, what everybody believes carries more weight than what has been inscribed in legal acts; at least this appears to hold in the case of network practices related to "intellectual property". Keeping in mind the final objectives of our research, we realized that more useful information can be acquired by attempting to decipher people's opinions than by asking them to refer to the letter of legal paragraphs.

Moreover, expecting specific legal knowledge is, in our opinion, somewhat unrealistic and bound to garner very predictable results: people usually don't know the specifics of legal regulations, let alone those of copyright law. This is why, instead, we concentrated on asking our respondents to assess the legality of certain actions or scenarios, and then checked the extent to which the respondents' answers correspond with the law – in other words, we attempted to assess which digital content-related behaviours are, in popular belief, permitted by the law, and which are not.

The table below features a list of scenarios presented to our respondents whose task was to determine whether they are legal. The results are interesting, even surprising.

Firstly, the general level of knowledge of what is permitted and prohibited by copyright law is low. Out of 12 everyday scenarios presented to them, most respondents have accurately qualified only 5. Applying a measure allowing one to pass a test if more than half of the questions have been answered correctly (50%+1), then – as a society – we fail this test. Interestingly, detailed statistical analysis shows no significant correlations between the number of correct answers and factors such as education level, location, age or frequency of Internet usage. (In the case of the last two factors, slightly "worse" average results were achieved by the group of respondents above 50 years of age and using the Internet once a week or less). People who describe themselves as creators don't stand out in terms of the level of knowledge, despite the stereotypical statement that creators tend to be aware of how the copyright system works. A similar lack of knowledge about copyright law can be observed among different types of Internet users. The lack of diversification related to age seems particularly telling. Intense Internet presence and participation in unofficial circulations of content does not translate – among the young generation – into a better knowledge of legal regulations, or into specific opinions about the legality of certain Web-related behaviours.

However, it is interesting to look at where and in what way our respondents were "wrong". As part of the study, we asked the respondents to assess the legality of several actions taken from everyday life. (Importantly, the legality of some of the scenarios is currently a subject of debate, as it is in the case of downloading movies from the Chomikuj.pl file-sharing service;

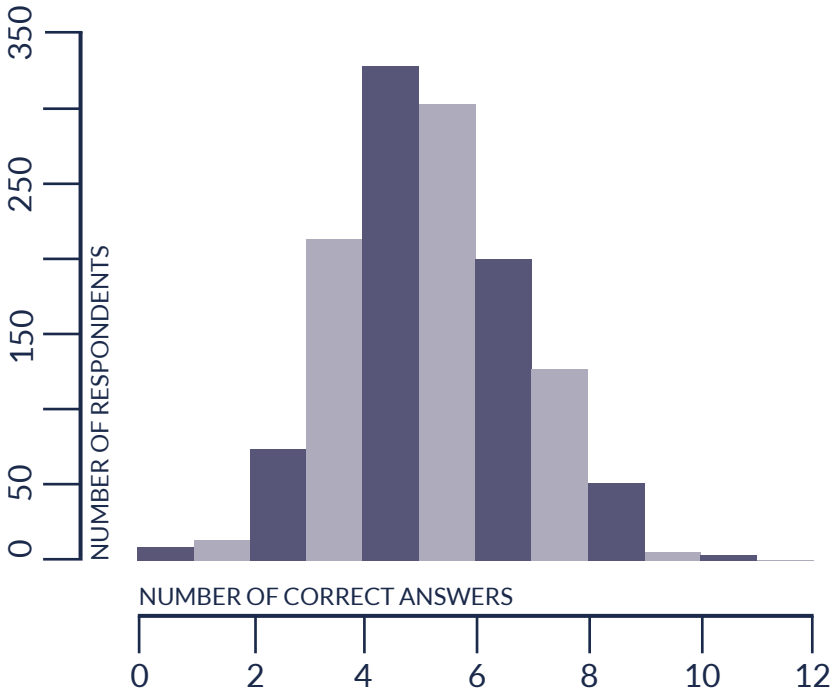
we adopted the answers corresponding with the prevalent interpretations as proposed by legal experts). The mistakes which dominate here reveal interesting tendencies.

"What is permitted by Polish copyright law?" – test results

		THIS ACTION IS LEGAL	THIS ACTION IS ILLEGAL	I DON'T KNOW
L	Tomasz downloads films from Chomikuj.pl, a file-sharing service	40.3%	36.6%	23.1%
L	Jan made a copy of a DVD TV series he owned and gave it to his colleague at work	20.9%	64.9%	14.2%
IL	Mateusz downloads films from the Web and burns them onto DVDs which he sells in a street market	3.4%	93.9%	2.7%
IL	Ewa uses a torrent service to download films onto her computer. She allows other users to download films from her computer	15.6%	63.5%	20.9%
L	Agnieszka made a xerox copy of a book she borrowed from the library	35.3%	46.9%	17.8%
L	Marta used an online auction site Allegro to sell an original film DVD she had bought in a shop	87.9%	5.8%	6.3%
L	Maciek lends DVDs from his personal collection to his friends	84.6%	7.4%	8.0%
L	Mariusz bought a DVD movie on a street stall	31.6%	45.9%	22.5%
L	Krzysztof copies his film DVDs and shares them with his friends on a password-protected account on the Chomikuj.pl file-sharing service	20.6%	60.8%	18.6%
IL	Krystyna uses the Chomikuj.pl file-sharing service to publicly share (and allow others to download) her collection of music albums	35.1%	46.0%	18.9%
IL	Witek makes funny video mash-ups of films and posts them on YouTube	64.3%	12.6%	23.0%
L	Teresa, a schoolteacher, showed her students a historical film she had downloaded from the Web	25.8%	51.2%	23.0%

L - LEGAL IL - ILLEGAL

LEGAL KNOWLEDGE INDEX



The comparison of perceptions of what is legal and illegal with the status quo reveals that **most respondents believe the law to be more restrictive than it actually is**. Our respondents have more frequently assessed actions in given scenarios as prohibited – while they are in fact legal – than the other way round. Copyright is not breached due to insufficient knowledge of what's allowed. **Copyright is breached in spite of the conviction that many practices are illegal** (and an exaggerated conviction, at that). So although the knowledge of copyright regulations is low, legal education alone will not solve the problem of not abiding by the law; it might even aggravate it. This might be illustrated by the statements of high school students – all they remembered from classes on copyright was that downloading files for one's private use is completely legal – which they told the interviewers during the focus group interviews. (Classes of this type are organised in some schools by creators' associations). **This apparent state of legal awareness poses the question of whether it is a good strategy to further tighten legal regulations** which already seem strict enough to most people.

Given the considerable confusion about what is allowed and what is not, it seems worthwhile to look at the few well-categorized scenarios. The least doubts and the most correct answers were generated by questions about market-related circulations of content. In such situations, the majority of respondents are able to correctly pinpoint what is allowed by the law and what is prohibited. The situation "Mateusz downloads films from the Web and burns them onto DVDs which he sells in a street market" was seen as illegal by 94% of respondents; the scenario "Marta used an online auction site Allegro to sell an original film DVD she had bought in a shop" was deemed legal by 88% of respondents. These results correspond with the division between commercial and noncommercial use of original content, which is clearly present in social awareness (more on that subject in the next chapter). **This suggests that the rules governing the circulation of intellectual property have not become outdated. People know that one is allowed to resell a previously purchased DVD and that it is forbidden to sell a DVD one has burned at home.** This is consistent with the results of the qualitative study: unauthorized profiting from copying and reselling the work of others was, next to plagiarism, the only type of practice which respondents have clearly condemned. Whether this type of situation takes place online or offline, the need for restricting commercial use is still clear for the vast majority of respondents.

A high percentage of correct answers was observed also in the two questions about situations related to circulating content recorded on physical media: 1. reselling an original CD or DVD on an auction service, and 2. lending DVDs to friends. In both cases over 80% of the answers were correct. Both situations, even if taking place in a digital setting, are in fact rooted in the analogue world because they involve physical media. This seems to help the respondents categorize these actions

correctly. In these cases, the percentage of respondents who say they don't know drops radically – in most cases approaching about 20%. To compare, sharing films with friends on a password-protected account – a network equivalent of lending someone a DVD – has been correctly categorised as legal by only 20% of respondents (!). **Strictly Web-based activities, performed without any material medium and not linked to commercial operations, seem to confuse our internal compass about what is right and wrong.**

A strong sense of confusion was also visible during the group interviews. One of the discussion participants described it thus: "We are balancing between legal and illegal behaviour without knowing where we are. Things seem available, but are really unavailable, something seems legal, but is illegal. I don't know which is which"[10]. At the end of the 19th century, sociologist Emile Durkheim described the tensions linked to the transformation from traditional society into an industrial one: **"The limits are unknown between the possible and the impossible, what is just and what is unjust, legitimate claims and hopes and those which are immoderate"[11]. Durkheim called this phenomenon *anomie*. This phenomenon, described over a hundred years ago, bears many similarities to the situation in which we find ourselves today while we try to maintain the rigid "intellectual property" system from a gone-by era.** The anomic situation has its influence on whether or not citizens obey the law. Jessica Litman underlines that the citizens believe in and abide by only the laws that make sense to them. Disobeying a law perceived as disconnected from reality can be rationalised by stating that "this is not really how it works", "it is obsolete" or "it is all right to ignore it" [12].

10. FGI no. 9, 30.10.2012, 15.30, high school students

11. Durkheim, E., *Suicide, a study in sociology*, 1987. Online: https://archive.org/details/suicidestudyinso00durk

12. Litman, J., *The Exclusive Right to Read*. Online: http://www-personal.umich.edu/~jdlitman/papers/

Correctness of the answers aside, the information we gathered reveals the emergence of some generally adopted norms; there are correlations between answers to questions relating to similar problems – which means that our respondents have applied certain general templates to the assessment of specific behaviours. The strongest correlation emerges in the group of questions related to downloading content ("Tomasz downloads films from the Chomikuj.pl file-sharing service…", "Ewa uses a torrent service…", "Krzysztof shares with his friends on the Chomikuj file-sharing service…", "Krystyna uses the service to share publicly…"). There are also connections between questions concerning the circulation of DVDs, and between questions concerning amateur creative activities (such as making compilation videos).

read.htm [Access: November 8, 2013]

3.2. Whom copyright regulations serve and whom they should serve

The influence of legal regulations on general social behaviours is, to a significant degree, a derivative of beliefs about what the letter of the law is. In the case of copyright law, expectations about whose interests this law protects seem important as well. The perceived hierarchy of beneficiaries of copyright law looks as follows: producers – creators – users of content. But the socially-desirable hierarchy looks different, where producers are at the bottom of the pyramid. In other words, the socially dominant view is that copyright law is excessively tailored to the interests of producers.

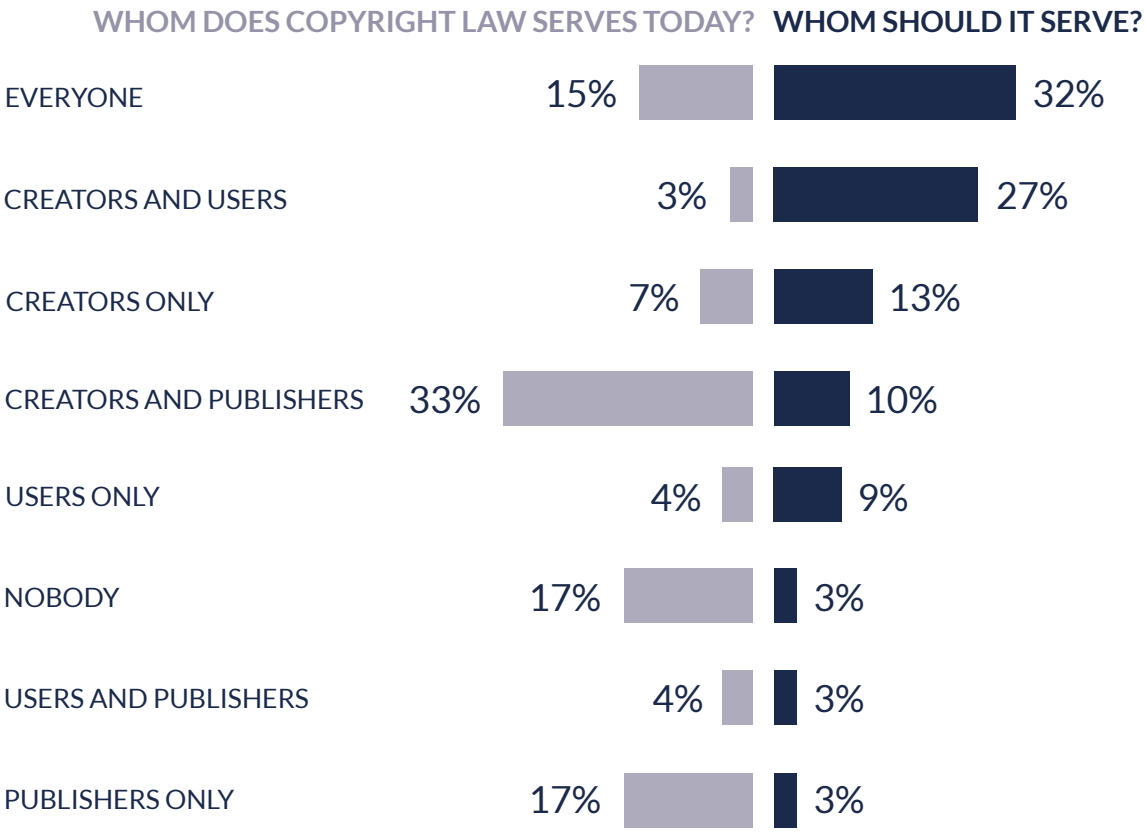
An interesting insight can be gained from accumulating the respondents' answers to questions about the protection of specific groups (creators, publishers and users). Most people would expect the law to protect members of each group equaly (32%); slightly fewer respondents are in favour of protecting creators and users (28%), while the third largest group opt for protecting only the creators (13%). Asked about who the law serves at the moment, the respondents identify publishers and creators (33%), and then the respondents answer, in equal proportions, that the law is protecting currently only the publishers or that it doesn't serve anyone's interests (17% of respondents respectively).

The author's share rarely exceeds 10 percent of a book's retail price.

– Olga Tokarczuk, writer

There is a clear, if not decisive, gulf between who, in the social view, the law serves and who it should serve. It is also noteworthy that a significant number of respondents are convinced that copyright law today is indeed serving everyone's interests (15%).

HOW THINGS ARE AND HOW THEY SHOULD BE



In the context of the popular belief that "people simply want to get everything for free", **the high level of social acceptance for looking after the creators' interests should be noted**. Over 80% of respondents believe that the law should protect creators above all others – 24% more than respondents who agree that the interests of creators are already being protected at present. At least on a declarative level, Poles express concern for the rights and interests of creators, which has also been confirmed by the results of focus groups studies.

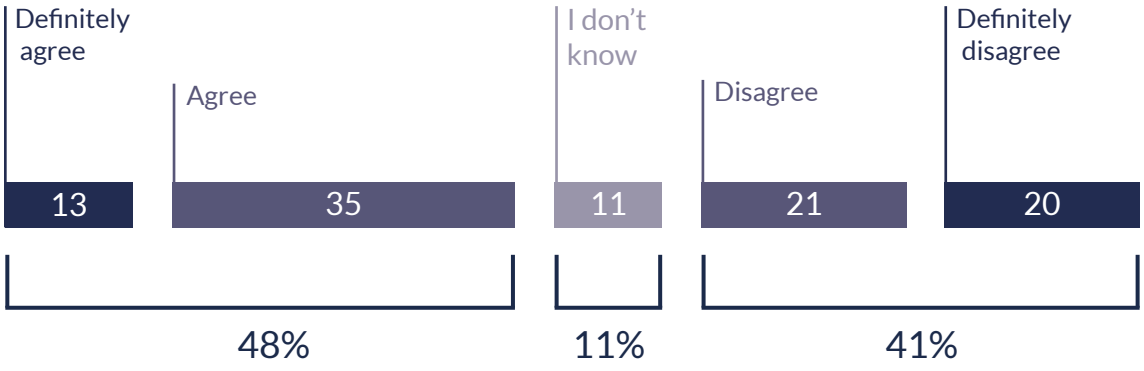
Such an approach is confirmed by opinions about the introduction of a license fee legitimizing free circulation of digital content on the Internet. **48% of respondents declare their support for an Internet license fee, which would legitimize the informal circulation of content online.**

If we exclude the undecided respondents (11%), it turns out that there are more people supporting the Internet license fee than those rejecting it.

Considering that in practice we are asking respondents to accept a new payment, the percentage of people declaring preliminary support for this idea has to be considered high. For the sake of comparison, in the 2012 CBOS study on public media, support for a TV and radio license fee was expressed by only 25% respondents[13]. In this context, 48% of respondents giving positive answers should be treated as a powerful signifier of social attitudes, or even as a sign of greater openness to changes to the copyright system, changes which would hopefully restore the currently disturbed balance. Social confusion should not be equated with demoralisation.

SUPPORT FOR AN INTERNET LICENSE FEE

Would you support the introdution of an internet license fee enabling users to legally download and share content (music films, tv series) on the web?



13. CBOS, *Opinie o finansowaniu mediów publicznych*, BS/120/2012, s. 1

3.3. Derailed regulations

Before we conclude the chapter on knowledge and perceptions of copyright law, we would like to consider opinions which shape the image of how "good" current legal solutions are. Can we talk about social legitimization of the existing legal order as it applies to copyright, or not? Are the regulations of copyright law consistent with social norms?

According to the 2013 CBOS report on social attitudes towards the law, the majority of Poles believe that following current laws is generally more important to us than changing them. "Every other adult Pole (50%) believes that at the moment it is more important to act more decisively towards respecting the law as it is than changing it". With this as background information, social perception of copyright law's ineffectiveness and inadequacy is clear. In the case of copyright law, the Poles openly express a necessity for change.

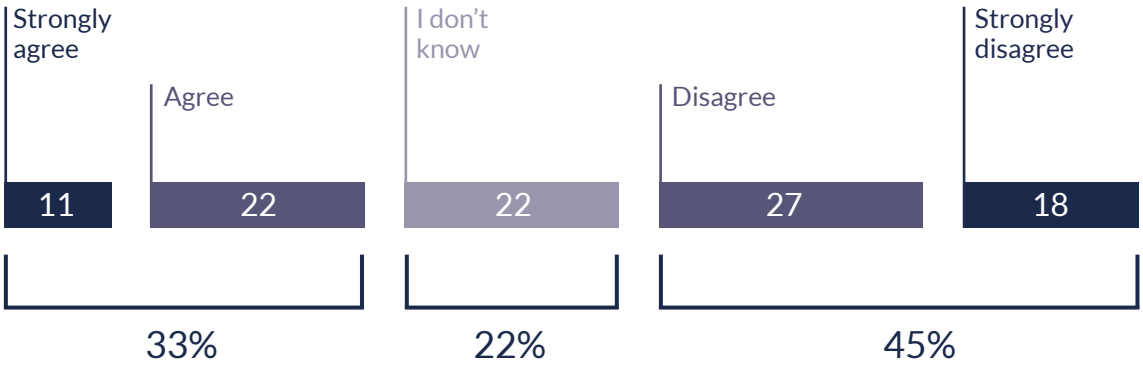
We do not see sense in adhering to copyright law: 45% don't agree with the statement that it would improve our daily lives if everyone complied with copyright regulations. Only 33% believe that a world in which everyone acted according to copyright laws would be better. The feeling of scepticism increases if we ask about the clarity and efficiency of current regulations: 76% declare it is unclear and 78% state it is ineffective. **We do not believe in this law as it is and we are even more doubtful that it could function in the future:** 87% cannot imagine the situation improving in the future without the law changing – which is one of the most salient results in the entire study. Similarly, 87% agree that it is increasingly hard to imagine current copyright regulations being universally followed. There appears to be a consensus that change is the only viable solution.

One could of course say that people who don't know the law should not assess whether it accommodates itself to a surrounding reality. Still, in the context of social perceptions of the law, it is definitely possible. Even without expert knowledge of the law, people have an idea about the rules which they believe to be in place.

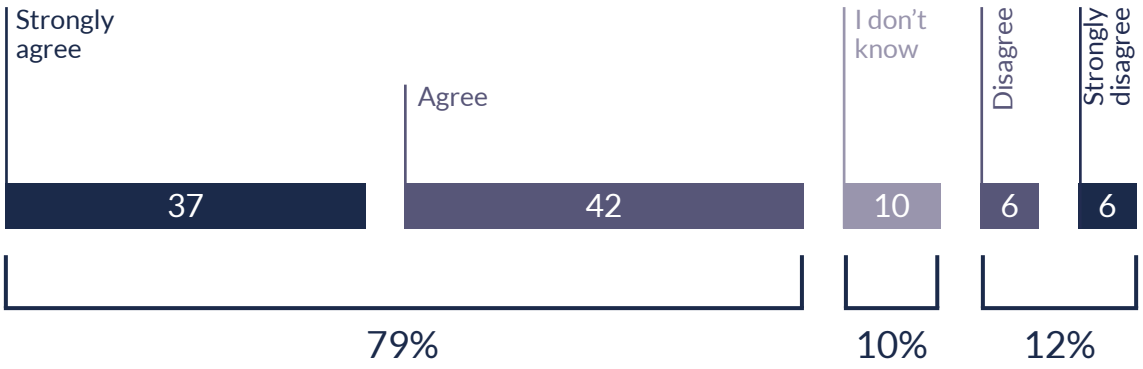
In the next chapter we try to point to the elements which should be taken into account when redesigning the system, in which – currently – few people believe.

SOCIAL LEGITIMISATION OF COPYRIGHT LAW

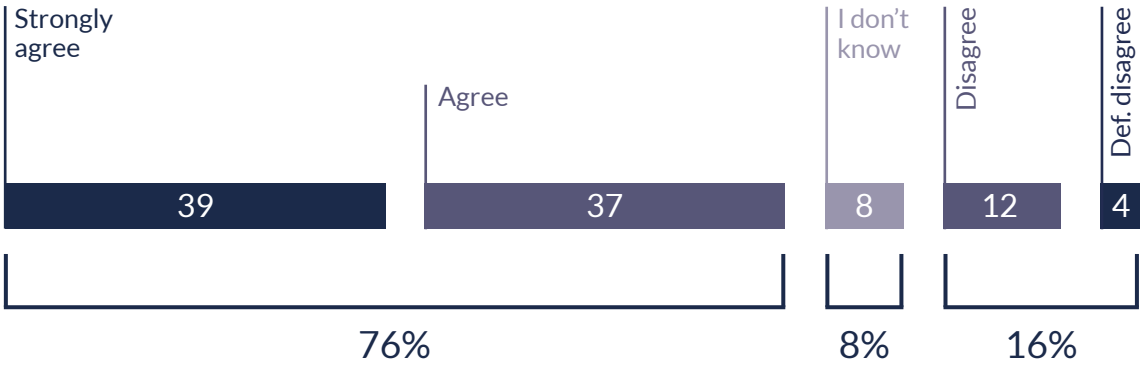
If everyone followed copyright regulations, we would be all better off



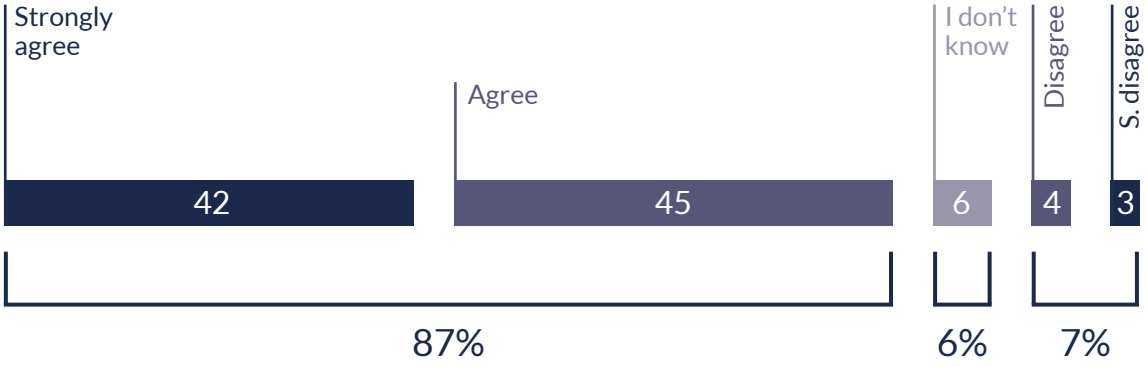
The current copyright regulations are ineffective, it is impossible to fully follow them



Copyright regulations are unclear. No one is sure what is permitted, and what is not



It is increasingly hard to imagine that people will begin to fully comply with copyright regulations



4. Attitudes, values and copyright law

4.1. Moral ambivalence

The central goal of our project was to determine Poles' social attitudes towards the law. Inspecting popular views has allowed us to understand the process whereby changes of technology affect the mentality and everyday actions of members of society. Mental changes are far more significant than the technical changes of content distribution channels, even if the latter are given more attention.

Responsible thinking about the reform of copyright law must consider changing social norms and beliefs about intellectual creations, which have been locked into the concept of "intellectual property". Otherwise the reform will rely on recreating the order lost in the last twenty years and applying it to the Web. That order is well-known and beneficial for the key copyright stakeholders, who would be likely not to benefit from changes of current regulations. According to Peter K. Yu, Professor of Law at the Drake University Law School in Iowa, copyright law only appears to apply to everyone in equal measure – in actuality we are facing a "copyright divide" between the stakeholders of the copyright system as it is today (major copyright owners) and the rest of us who don't benefit from it. Yu's argument explains the current copyright system's beneficiaries' reluctance for change. He also believes

MP3 is illegal. This wasn't a joke, but the official standpoint of big record companies at the beginning of the 21st century, when the number of Napster's users reached 25 million.

– Bartek Chaciński, music critic

that the only solution is to get rid of this divide, which means taking into account the perspective and norms of the content users, and that, in turn, means changing the law.

There are many reasons why such a copyright "counter-reformation" might be unhealthy from the point of view of social interest. It would entail losses incurred by limiting access to education, culture and knowledge. Furthermore – for a legal change of this type to be effective – it would have to incorporate tools designed to curb network activities and discipline Internet users. **Attempts to solve problems related to commercial aspects of culture might bring about a more serious problem – legal foundations for developing an apparatus of digital invigilation and control in the name of protecting the copyright system.** Internet sites are already being blocked in the name of that protection, which might restrict free speech. The page-blocking system has been implemented in the UK, is being introduced in the United States, has until recently functioned in France, and has on several occasions been proposed in Poland.

If an update of the copyright system is not to usher in a new system of repressions, it must to some extent be guided by what people think and believe about the issues that constitute a key challenge for this law: using digital content on the Web (and the informal, unauthorised circulation of that content). Let's look at a diagnosis formulated by the founding fathers of practical sociology, William Thomas and Florian Znaniecki, during their research into "the evolution of the Polish peasant". Their description of a society in transition sounds familiar: "New attitudes develop in the members of the group which cannot be adequately controlled by the old social organization because they cannot find an adequate expression in the old institutions. The group tries to defend itself against this disorganization

by methods consciously tending to strengthen the influence of the traditional rules of behaviour; but this endeavour (..) loses more and more of its effectiveness (...). The problem is then no longer how to suppress the new attitudes, but how to find institutional expression for them, how to utilize them for socially productive purposes (...). This problem is evidently common to all societies in periods of rapid change. We find it in a savage group brought into contact with western civilization, and in the most extensive and highly complicated modern national group where the rapid growth of new attitudes is no longer the effect of external influences but of the internal complexity of social activities"[14].

The results of our study are quite clear, but far from straightforward. The analysis of attitudes reveals the aforementioned anomie – a state of social confusion and uncertainty caused by quick transformation, and accompanied by fragmentation of a previously stable system of norms and values. In short, **the main source of the *anomie* described above is a clash of the logic of values with the logic of everyday network practice.**

This exploratory qualitative study demonstrates that as a society, in our perceptions about creativity, we are still attached to the values of the analogue era, but at the same time we are adopting new approaches to using content, especially online.

14. Thomas W. I., Znaniecki F., *The Polish peasant in Europe and America: monograph of an immigrant group: Volume IV. Disorganization and Reorganization in Poland*, Boston: The Gorham Press, 1918-1920; Ithaca, New York: Cornell University, Mann Library, p. 11. Online: http://chla.library.cornell.edu/cgi/t/text/text-idx?c=chla;idno=3074959_2387 [Access: November 8, 2013]

4.2. The Romantic creator and the ownership trap

If we examine the beliefs that dominate among Poles, we find out that they see creativity as an individual struggle inspired by a divine spark. The respondents who participated in group discussions have most often referred, more or less directly, to a Romantic vision of a lone artist-creator. Discussions about how to support creativity turn again and again to the idea of nurturing an autonomous act of creation – and the respondents seldom describe the creative process as a matter of reusing other works or as a collaboration with others. We find out that values related to creativity, that definitions of a creator, and that justifications for creative works' importance are derived directly from the Polish school education programme.

To a degree, this is understandable – we may experience culture throughout our entire lives, but for many people school remains the only place where they have participated in discussions about art, analysed various types of creation or learned about artists and their works. This is probably the reason for the elevated status and idealised image of creativity and creators. At the same time – or perhaps consequently – many people who do create don't always describe themselves as creators.

We asked the respondents to specify the type of material they had created in the previous year and whether they would call themselves creators. 50% of respondents claim not to have created anything in that period – none of the 10 types of creative works specified in the survey. Out of the other 50%, 40% took photographs, 18% wrote short posts on blogs or social network sites, 14% created and submitted videos and 12% wrote long texts. But only 33% out of those call themselves creators (28% describe themselves as amateur creators and 5% as professional creative artists).

Notably, young people are much more active creators – 60% of the group of respondents aged 15-19 take photos, 30% make videos, and 24% post on blogs and other sites. In the youngest group of respondents the percentage of creators reaches 72%, among those aged 20–24 it reaches 58%, while less than 30% of respondents above 40 describe themselves as creators. We have asked exclusively about forms of creativity requiring some degree of competence in digital-technology usage. We don't know whether this particular result reflects a greater cultural activity of the "digital generations", or whether it results from the specificity of young people's activities.

We have also disproved the theory according to which creators have a special attitude to copyright – not just as users of content, but also as copyright owners. There were no statistically significant differences between people who create and describe themselves as creators, those who create but don't think of themselves as creators and those who claim not to create anything.

Nonetheless, during the group interviews we often heard such statements as "If I had created something, then it is mine and that's that"[15]. Most of our respondents believe that creative works can and should be owned. This direction of thinking was also confirmed by the survey results. As little as 23% of respondents believe that ownership of a creative work is different from owning a physical object, and the majority of respondents see them as identical (63%). 51% of respondents are convinced that copying a film or music from the Internet is akin to stealing a bicycle (this particular analogy is almost a verse in

Ownership is usually defined as permission to do with the given object anything that's not forbidden by a given legal system. Early on, however, common law commenced to differentiate between material and immaterial things.

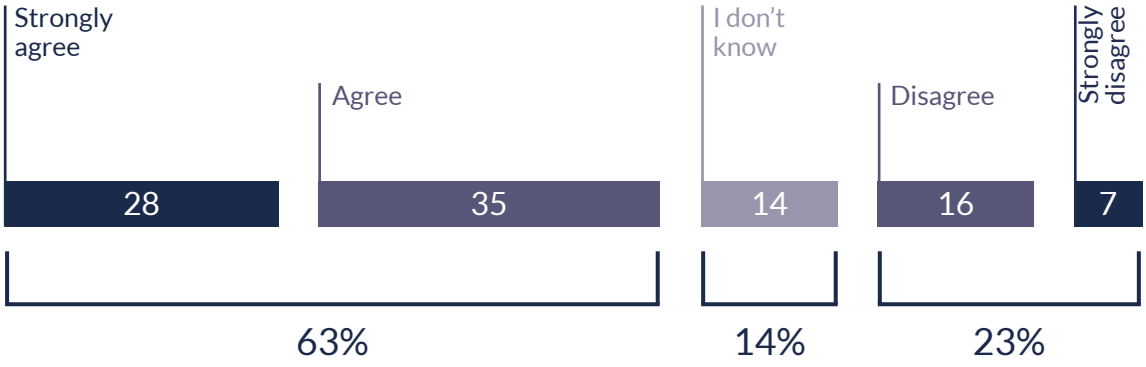
– Michał Kaczmarczyk

15. FGI no 2, 25.10.2012, 18.45, schoolteachers

public debate – the object in question being a bicycle or, in another case, a car). The qualitative study has shown that we cling to a literal understanding of ownership of intellectual property, and ignore the metaphorical nature of "owning" creations of the mind. This strong social conviction about the necessity to respect ownership – without differentiating ownership of goods from intellectual property – leads to deadlock. The situation could be viewed as a symptom of copyright anomie: on the one hand, traditional thinking, the old ownership formula dominates, while on the other we're dealing with common practices that deny it. This is not an expression of hypocrisy, but of confusion. It is illustrated by responses to questions about legal regulations based on specific example scenarios: despite the common belief that bicycles don't differ from creative works as subjects of ownership, the respondents were lost when asked about the circulation of digital creative works: it was easier for them to categorise the scenarios which involved physical media.

OWNERSHIP IS OWNERSHIP

Ownership of creative work is just like ownership of goods



Age-related differences are also interesting, seeming to confirm the stereotypical difference between "digital" and "analogue" generations. Older respondents state much more frequently that there is little difference between owning physical and non-physical things, or they compare downloading files to stealing bikes. But there are no particular differences between age groups when asked about their attitude towards these

statements: “If someone uses films or music on the Internet for their own pleasure and does not profit from them financially, it is not theft” and “On the Internet the rules are more liberal. If the Internet allows copying and using content, then using it for noncommercial purposes isn’t wrong and should not be penalised”. There doesn’t appear to be any significant connection between backing the above statements and convictions about the similarity of ownership forms. This confirms our hypothesis about ‘anomie’ – respondents may declare that they treat the Internet as some “analogue” reality and apply the same rules to both, but when asked about specific forms of participating in informal circulations, they frequently apply and express different principles.

During the group interviews we asked participants to create a set of commandments which could be used as the basis of “new and improved copyright law”. Even though the participants postulated a need to liberalise present regulations, their conviction that “ownership is ownership” leads them to the design of a system much more restrictive than the one currently in force. For example: if property can be owned, and inherited indefinitely, so should “intellectual property”. “One can inherit buildings, or a factory, but not intellectual ideas?”[16] ; “A person can inherit from someone else and this is right.”[17] Another example: creators should have every right to decide about the ways in which their work is being used. If creative works are subject to ownership, then even citing or satirising them without the author’s permission constitute a breach of copyright (and the author’s rights of ownership). Going further down this road, the respondents ended up creating a set of rules which increasingly limited the freedoms of users and of content usage, and actually did so against their own intentions. This shows how

16.FGI no. 5, 27.10,2012, 14.15, academic lecturers
17.FGI no. 2, 25.10.2012, 18.45, high school and middle school teachers

much the terms and language of discourse itself determines a specific direction of thinking. So, is reform really possible if copyright is to be based on the category of "intellectual property"?

The trap of thinking about creative works in terms of ownership is based on reasoning by analogy to owning material goods, which in turn leads us towards absurd solutions and tempts us to see an "unjust" breach of individual rights even in the concept of a public domain. Naturally, attempts to appropriate what cannot, by its nature, be appropriated, could only lead to a paralysis of social communication. In fact, what in legal discourse is called "intellectual property" refers to forms of usage, not terms of ownership. At the level of social perception such nuances do not exist, and so it seems that the first step should be changing the language of discourse into one more adequate to reality. **This change may soon enough be brought about by the technology itself, as it increasingly often allows users only to view content, not to own it – as in streaming services, for example.**

For now, socially shared values in this area remain bound by the constraints of outdated language. As a result, deeply ingrained convictions about the necessity to respect intellectual property go hand in hand with comfortably using what can be found on the Internet. In this clearly anomic situation, the values upheld have less and less in common with the sphere of common behaviours and cease to function as a practical moral compass.

4.3. A general confusion

If the language describing values is bound by the rhetoric of another age, we seem to be better equipped to describe our present, day-to-day activities. The participants of group interviews have frequently expressed conflicting views. "Downloading is theft" but also "copyright does not exist online, everything can be downloaded"[18]. The statements' permissive or restrictive tone seemed to depend on whether the question concerned moral issues (a discussion about what is "good and just") or practical matters (a discussion about the things we do online). Inconsistence and unclarity in expressed views are hardly rare, but in this study they were exceptionally noticeable. Additionally, the respondents themselves talked about ambivalence and observed it everywhere.

The chaotic nature of individual responses isn't the end of the problem: a similar confusion is visible on an institutional level. At the focus group interview with librarians it turned out that alm+ost every library has adopted different rules for copying books, ranging from "one can make as many copies as are necessary", through "the number of pages copied is up to the librarian performing the copying" or "people are allowed to copy up to 15 pages" or "it is permitted to copy up to 50 pages" to "It is only permitted to scan books" (an action prohibited in another library).

"The limits are unknown between the possible and the impossible, what is just and what is unjust, legitimate claims and hopes and those which are immoderate"[19] – rights of the library visitor depend increasingly on the individual choices of whoever happens to be in charge of that particular library. We are long accustomed to a reality where the warning on a book's

18. FGI no. 1, 24.10.2012, 18.45, high school and middle school teachers

19. Durkheim, E., *Suicide, a study in sociology*, 1987. Online: https://archive.org/details/suicidestudyinso00durk

dust jacket says "All rights reserved (...). Copying this book without written consent of the publisher is prohibited", but also where we can use a xerox machine in almost every library. The facade-like character of copyright regulations has become a natural, expected element of everyday life.

School is another significant sphere of problems related to complicated copyright regulations – at least according to teachers and students. Both groups download content from the Web. "When I show films in class, I pay no attention to copyright", a teacher told us, and most other teachers present agreed. "I will download whatever I can from the Internet and show it in class, so that I can make the children see what I'm talking about and so that more of it gets permanently stuck in their heads"[20], another declared. "I've seen good films on National Geographic. I wanted to buy a DVD, but it is unavailable, so I downloaded it from a file-sharing site", said a third.

Interestingly, a rule of fair use for educational purposes exists in Polish law that allows such actions to be performed legally, but the teachers interviewed had never heard about it. So, in their own and their students' opinion, they regularly break the law in front of the class. They have largely stopped worrying about it, although embarrassing situations do crop up. "I wanted the class to watch Antoni Kruze's «Czarny czwartek». One of the students told me «I have already downloaded it», so I said «OK, let's watch it then». But another said «But isn't this a breach of copyright law?». I felt embarrassed. «Yes, Ola, I'm afraid you are right», I said".

Coming back to the survey results, most respondents declare that it matters to them if the content was placed on the Internet legally (53%). Does this law-abiding spirit translate into actions? Not impressively so, if at the same time 80% of respondents admit that if they look for something on the Web,

20. FGI no. 1, 24.10.2012, 18.45, high school and middle school teachers

they simply want to find it to read it, watch it, listen to it or download it. This could be seen as a symptom of social hypocrisy (people say one thing and do another) but society should perhaps be viewed as a living organism undergoing transformations. The symptoms of those transformations can be ambiguous (the way we think stretches between the industrial age, which is familiar to us, and the network age, which we don't understand yet). The former approach is unproductive, as it offers evaluation upfront. It might be more constructive to see the intersection of conflicting perceptions, norms and behaviours as a symptom of social changes taking place away from public attention – but in public space. **As a society, we are experiencing a clash between the logic of values developed in the industrial age with that of everyday practices developing in the Internet age.**

On the one hand, "everyone who has any common sense knows that if you put something on the Internet, you lose control over it"[21] . On the other hand, "I am breaking this law and I am not completely comfortable with that"[22]. Moral and practical complications faced by the respondents have also been confirmed by the survey results: most respondents believe that downloading films and music from the Web is wrong (53%). But the majority have also decided that downloading isn't theft if it is for personal use (74%) – despite their perception of music copying as a close cousin of bicycle theft. A similar number of people think that if the Internet allows one to freely copy and use content, then using it for noncommercial purposes isn't wrong and shouldn't be penalised (71%). In conclusion, the respondents may consider material and immaterial goods as similar – both are property and taking either without consent is larceny – but in practice, they do not regard the copying of those goods for private and noncommercial purposes, for education or

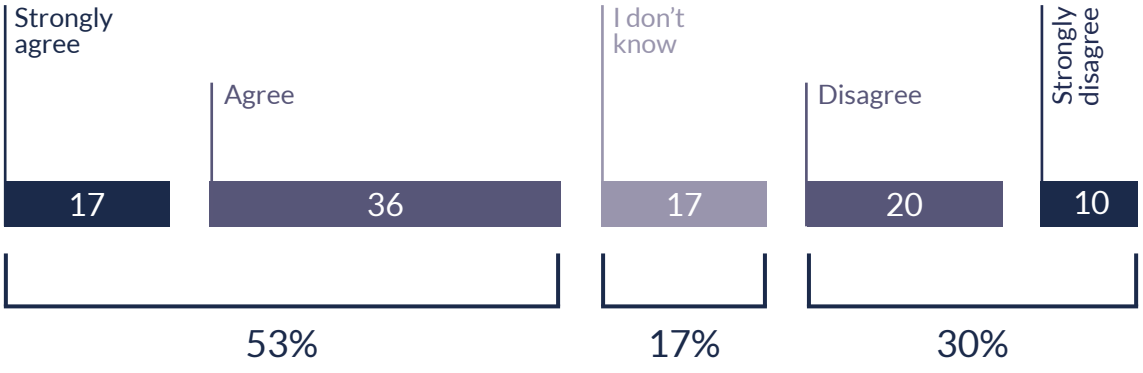
21. FGI no. 2, 25.10.2012, 18.45, high school and middle school teachers
22. FGI no. 2, 15.10.2012, 18.45, high school and middle school teachers

the dissemination of culture, as theft. **The commonly shared conviction about the essentially harmless nature of unauthorised, noncommercial circulations of content should be taken into consideration in the process of designing legislative changes.**

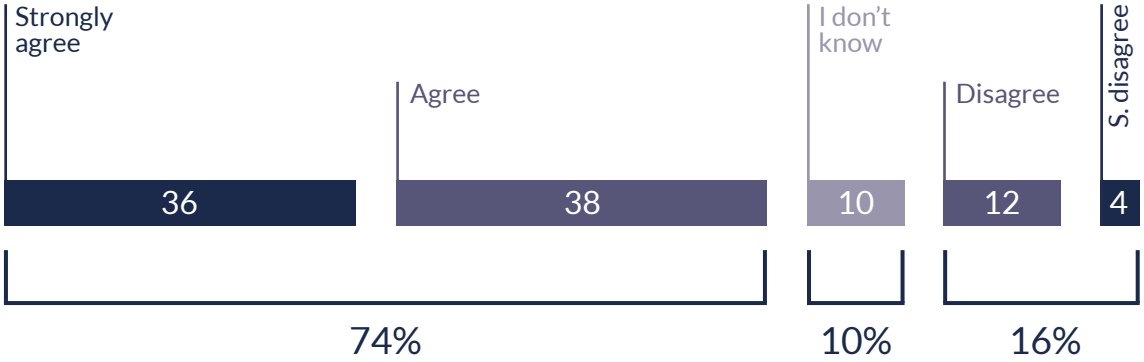
Even if practical situations to digital-content usage in schools or libraries are often a source of confusion, the respondents had quite defined opinions about the importance of access to culture and education. 54% of respondents agree with the statement that free access to culture is more important than the creators' rights to financial profit, and this figure rises to 66% if the content is to be used for educational purposes. This considerable support for what, from a legal perspective, translates into fair use, should not be ignored.

WHAT WE THINK IS RIGHT, WHAT WE THINK IS WRONG

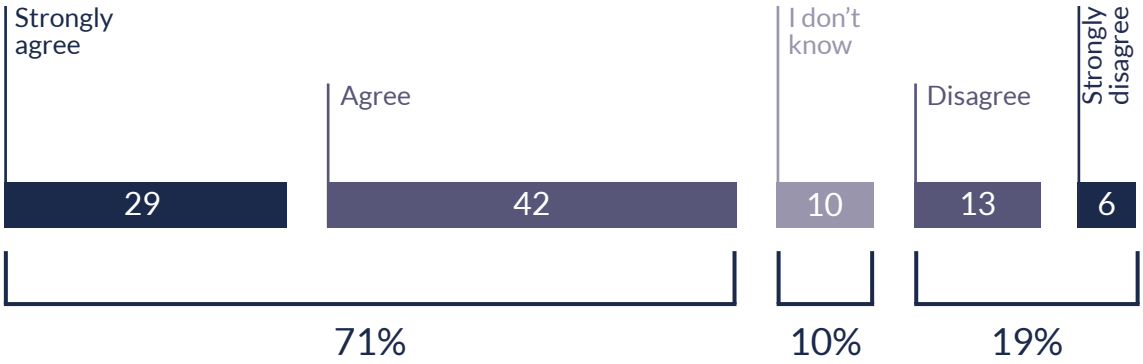
Someone who downloads music and films from the Internet and disregards the law is doing something wrong



If I download music and films from the Web for personal use, without profiting financially, this isn't theft



The Internet is more liberal. If the Internet enables people to copy and use content, then reusing it for non-commercial purposes isn't wrong and shouldn't be penalised



It might be worthwhile to attend to the question concerning unrestricted access to content on the Web. 91% of respondents claim that free access to films, music or books on the Internet has already become a significant element of their everyday life. This is the highest figure in our entire study. It clearly indicates what has already become a social fact (despite its absence from public discourse; Olympic champion Tomasz Majewski's unfortunate declaration about downloading music generated stormy media reactions and ended with his retracting the statement).

As a relatively egotistic individual, a writer above all expects his books to be read. His worst nightmare isn't a lack of fresh payments from the publisher, but an image of books on the way to the recycling facility.
The publisher frequently takes advantage of this and offers the author ridiculous and symbolic payment.

– Olga Tokarczuk, writer

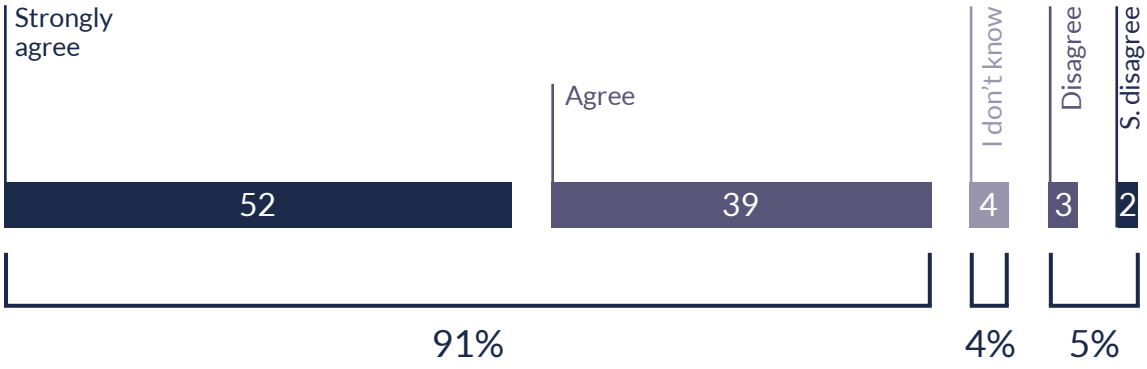
Add to this the finding that 70% of respondents believe that creators' financial profit should not mean restricting access to content on the Internet – even though, as related above, a high percentage of respondents are convinced that the law should protect creators. 54% declare that unlimited access to culture is more important than creators' rights to profit from their work. This figure is even higher if digital content is to be used for educational purposes – a cause of major importance to 66% of respondents.

One can of course interpret these results as an expression of the users' wish to "get everything for free". In our opinion, the image emerging from

the survey results isn't that simple. The respondents are aware of the connections between the circulations of content and the financial situation of its creators; they also believe that the law should protect creators. But they strongly indicate that the interests of creators must be weighed against the interests of the public in the form of access to education and culture. It can be said that in the common view, creators' rights should be reconciled (after introducing appropriate reforms) with a general right to access culture and education. Interestingly the respondents who supported the statement that the law should protect creators' rights (69%) also agree that creators' right to profit should not be a reason to limit access to online content (64% – a percentage greater than for other groups of respondents). **A general social recognition of the need for unrestricted access to content should be – next to the loss of confidence in current copyright regulations – a key message for those making decisions on their potential changes.**

UNRESTRICTED ACCESS

Unrestricted access to content on the Web (films, music, books) has become a significant element of everyday life



4.4. An uncomfortable subject

It seems that copyright regulations as they are today have, essentially, two major effects on society. Firstly, copyright law deepens negative self-perception and strengthens the general conviction that people do not obey the law (82% of respondents believe that more than half of the population break the regulations). Secondly, present regulations conserve social convictions about "owning" intellectual creations (while at the same time this conviction is being questioned by commonplace online content-related practices). Copyright law has ceased to effectively regulate the practices of using creative works, while the commonly shared perceptions and values related to creative activity have ceased to correspond to the reality of the present day.

During group interviews about copyright law the conversation circled more frequently around subjects such as artists' incomes than around the users' standards of behaviour and their ways of interacting with cultural content. If the latter had been mentioned, it was mainly in the context of traditional, analogue activities: going to the cinema, buying books or records. This signifies helplessness and reluctance to tackle the subject, rather than attachment to the analogue modes of participation in culture – our respondents do sometimes go to the cinema or buy books, but buying records on CD or DVD media often turns out to be their reminiscence of years gone by rather than a current experience. The respondents themselves don't have many opportunities to profit from creative work themselves, yet still declare they would like other creators' rights to be respected.

The survey question asking whether Internet users should be punished for downloading from unauthorised sources has generated only 28% negative responses. It is, however, another matter whom specifically to penalise and in what way. The majority (68%) opt for a symbolic punishment (such as

a formal warning). In the light of the entire study, we are inclined to interpret this as helplessness in a perplexing situation. Only 18% of respondents would support monetary fines and 13% – limiting Internet access. Blocking Internet access altogether – a penalty employed briefly in France – is supported by as little as 2% of respondents. These results illustrate attempts to find a way forward in a situation, where on the one hand unrestricted use of content comes naturally, on the other there's a strong conviction that content creators should be paid. Additionally, Poles still think that there is an element of wrongdoing in copying. We would like to support the above interpretation with the respondents' responses discussed in chapter 3., indicating significant support for a potential introduction of an Internet license fee (48% of respondents were in favour of such a solution, 41% disagreed), which can be treated as an expression of the general conviction that "we owe something to the creators".

It seems that **we are bound to remain in an impasse for as long as we cling to the paradigm of "intellectual property" and its remunerations, which accentuates the "ownership" of creative works more than the creative work process.** People want the creators to be paid, but having unrestricted access to creative works is their priority. For this reason, regulating methods of remunerating the widely understood content creators should not rely on rationing access (this particular concept emerged from the high costs of mass reproduction in the industrial era). Today, when costs of content reproduction have dropped to almost zero, those rules have lost their power. "I have a sense that if I find something on the Internet (...), it somehow does not belong to just one person"[23] – **the ease of content multiplication on the Web creates a sense of non-exclusivity of intellectual creations, just**

23. FGI no. 2, 25.10.2012, 18.45, high school and middle school teachers

as previously the complex process of their reproduction used to build a sense of ownership.

Therefore the aim is to create regulations which people could willingly submit to. A question we asked to the respondents towards the end of the interview process yields revealing results: the participants had been asked to imagine that they immediately begin to follow copyright regulations to the letter and describe how that decision would influence their life. This made our respondents reflect on social aspects of the law, and was a point at which they have articulated their critical approach most vocally. "If everything was prohibited, then why use the Internet?". "We would see less, know less". "It would be the shortest way to feeling excluded". "I would be impoverished culturally if I couldn't use P2P (...). I wouldn't have seen many films, heard many musical pieces, I wouldn't have read many books. So, really, I would have been much poorer"[24].

Although our respondents declare a respect for the law, they don't see reasons to comply with regulations which seem to be working against them, causing material losses, intellectual losses, limiting access to knowledge and in effect engendering exclusion. The same conclusion emerges from the survey results: even among the respondents who declare that even an unjust law should be respected, the majority admits to using the Internet in order to search for content to read, watch, listen to or download (80%).

Along with the popularisation and stabilisation of network practices, the users' convictions gradually develop. Dysfunctional views on the publicly accepted ways to use digital content begin to change. "It's automatic, somehow I don't feel bad about it (...), it doesn't stir my moral sense,

24. Quotes from FGI 18, FGI 18, FGI 12, FGI 12

I just don't worry about it"[25]. Opinions like these are still rarely openly expressed, but nevertheless – as study results illustrate – they have already got embedded in most people's mentality. A new, socially shared system of values sanctioning unrestricted use of content has not yet formed, but the perceptions born in the industrial era are increasingly scrutinized.

These are not the sole indications of this process. In the CBOS survey conducted in 2012, only 25% of respondents agreed with the view that "exchanging materials such as music, films, books, or computer software should be prohibited in order to protect intellectual property". 55% claimed that "people should be allowed to freely exchange music, films, books and computer software even if this might breach intellectual property rights to these materials"[26]. Additionally, according to a PISF survey, also conducted in 2012, 63% of Internet users declare they download films from the Web[27]. As individuals, most of us have already got accustomed to the change of intellectual property's status. As a society, we still prefer to avoid the subject. Another interpretation is that the change has occurred in the private sphere, but remains largely unexpressed in the public sphere – although it is definitely visible and demonstrated by usage statistics of unauthorized content exchange services and densely packed content databases maintained by these services. **It is worthwhile to remember that one of the factors which strengthen social norms is a possibility to see that those around us accept them as well.**

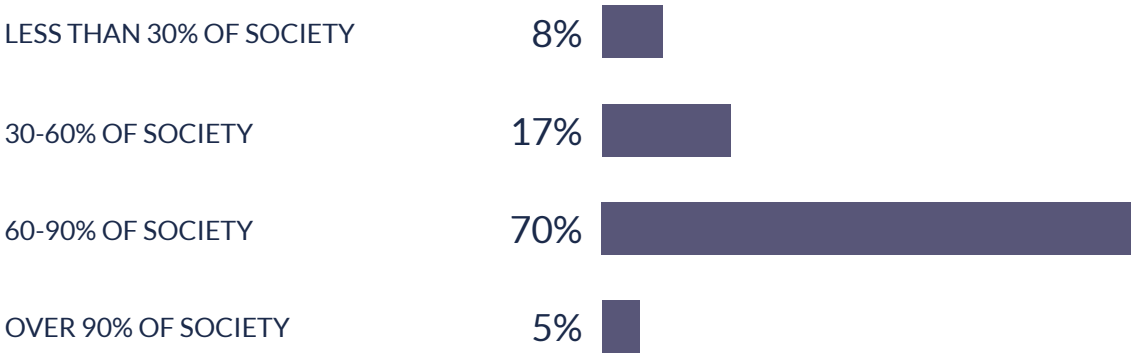
25.FGI no. 7, 24.10.2012, g. 15.30, high school students

26.CBOS, Opinia publiczna o ACTA, BS/32/2012 p.. 15

27. ARC Rynek i Opinia, Badanie korzystania z aktualnego repertuaru kinowego. 09.2012 p. 12. Online: http://www.e-polskiekino.pl/ [Access: November 8, 2013]

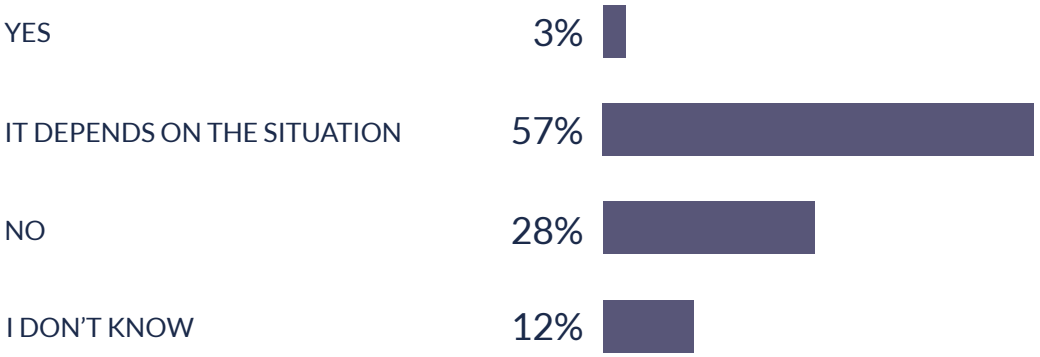
A SOCIETY OUTSIDE THE LAW

How many poles break copyright law?

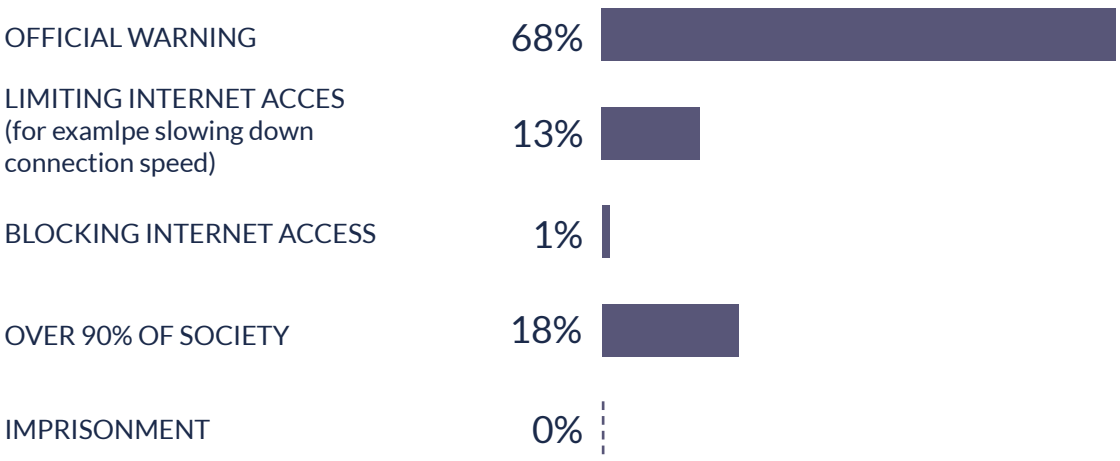


SHOULD PEOPLE BE PENALISED FOR BREAKING COPYRIGHT REGULATIONS?

Should internet users be punished for downloading music, films, TV series or books from unauthorised sources: websites or file-sharing services ?



What kind of punishment is appropriate for breaching copyright?



5. The future of copyright law

In the previous chapters we have gathered and quoted data which demonstrates the archaic nature of Polish copyright law and a shared social conviction that it is increasingly difficult to follow its regulations in their current form. We therefore asked the respondents what should, in their opinion, be done so that the law is obeyed. 13% opt for enforcing current regulations more effectively, 12% believe there's no need to act, because the law is already followed to a sufficient degree, and 6% are in favour of introducing more severe penalties. The answer chosen most frequently (48%) was: the current law should be changed.

5.1. No sense of shame, but some sense of blame

Effectiveness of the law is frequently associated with severity of penalties and their efficient enforcement. There's a widespread belief that certainty of punishment, rather than its severity, is what endows the law with preventative power. This is not entirely true – and nor is it correct the other way round. Tom Tyler, Professor of Law and Psychology at Yale University, a specialist in issues of public legal order, argues that all our behaviours – including ones regulated by codified legal rules – result above all from our sense of morality, an individual sense of what is right and wrong. It appears that severity and probability of punishment influence illegal behaviors to

a very limited degree[28]. "Most people give little or no consideration to the possible gains and losses associated with illegal behavior. Instead, they simply engage in the behavior that they think is morally right"[29]. We refrain from wrongdoing mostly because we consider it wrong, not because we fear impending punishment.

If we speak about factors that influence whether people obey copyright law, we should consider the structural factor, which Tyler describes as follows: "People have greater opportunities to break rules in certain situations. For example, people who are self-employed have greater opportunities to cheat on their taxes than people whose income is primarily in the form of wages. Unfortunately,intellectual property is an area in which the opportunities for cheating are widespread"[30]. Thus, if we consider the combination of factors relevant to copyright law, the only constructive solution seems to be "to have a situation in which citizens voluntarily obey the law"[31]. At this point it is perhaps worthwhile to remember that a situation in which citizens have the choice to perform actions which violate copyright is new. Twenty years ago, everyday modes of using content did not offer any such potential for breaching copyright or ownership, and were almost completely uncontroversial.

Meanwhile, members of society are interacting with content on the Web in a multitude of ways, including downloading films or music for their private use. They do not puroin from others, nor do they gain any financial benefits. They engage in this activity mainly for personal pleasure: to watch a film at home, to check if a new TV series is good, or to

28. Tyler T. R., Why People Obey the Law. Yale University Press, Yale 1990

29. Tyler T. R., "Compliance with Intellectual Property Laws: A Psychological Perspective": 29 New York University Journal of International Law and Politics 219-236 (1997), p. 225

30. Ibid., p.. 223

31. Ibid., p. 224

relax while listening to favourite music. **Every recent study – carried out in Poland by, among others, CBOS[32], the "Legalna Kultura" (Legal Culture) initiative[33], PISF[34] and Centrum Cyfrowe – shows that the majority of Poles do not think that downloading music or films for private use is wrong. Most don't feel guilty, even if in the current atmosphere they choose not to admit so openly; in public they are often still called pirates or thieves.**

"Files circulating online have often been created as commodities and protected as commodities, so their use or reuse, unauthorized by producers and distributors, is associated with economic losses for copyright owners. This commodity status is not, however, an intrinsic feature. Being a commodity is, instead, a phase, situation or position in the given creation's life-cycle and circulation, dependent upon the context", comments Mateusz Halawa in a report describing the activities of people engaged in informal online circulations of culture[35]. Tensions and misunderstandings which often arise in the process of defending the commodity status of culture have their source partly in a natural difference of perspectives and interests, which, unfortunately, have not been openly articulated. Accepting the necessity for change depends on an understanding that the Internet has enabled certain circulations, where cultural content can function away from the market and ceases to be a commodity.

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32. CBOS, *Opinia publiczna o ACTA*. BS/32/2012, p.15

33.See: http://legalnakultura.pl/pl/czytelnia-kulturalna/badania-i-raporty/news/53,sciaganie-do-br-kultury-z-nielegalnych-zrodel [Access: 8 November 2013]

34. ARC Rynek i Opinia, Badanie korzystania z aktualnego repertuaru kinowego. 09.2012, p. 18. Online: http://www.e-polskiekino.pl/Raport1.pdf [Access: 8 November 2013]

35. Centrum Cyfrowe, *Tajni kulturalni. Obiegi kultury z perspektywy twórców sieciowych węzłów wymiany treści*. Warsaw 2012, Online: http://centrumcyfrowe.pl/czytelnia/ [Access: November 8, 2013]

5.2. Digital oppression

Despite recurring warnings about the developing invigilation, which technically is not only possible, but also quite real, in day-to-day life we experience rather an increase of freedoms than their limitation. IT technologies have rooted themselves in contemporary life both deeply and widely; the world surrounding us is woven out of atoms and bytes. Changing social customs and the disintegration of the subtle regime of mass culture has enabled us – perhaps for the first time in history – to enjoy conditions in which we can find our niche and live in tune with ourselves.

In this context, bleak Big-Brother visions and questions asking where it all might end up are easy to dismiss as pessimistic complaints. Still, the tools of disciplining people en masse can significantly improve the effectiveness of legal solutions – over a decade ago Lawrence Lessig claimed that in the Web environment, the programming code becomes the law[36]. Employing this type of tools would not be difficult – structured network control already exists and functions; today, mostly serving the marketing sector.

We are being tempted and entangled in many different ways, but we retain the freedom to decide "to buy or not to buy". If automatic network procedures of identifying and penalising are initiated, the apparatus of consumer invigilation will transform into an apparatus of social control. It would be naive to assume that such an apparatus would not be used for purposes other than protecting copyright owners.

Acquiring insights is very different from systematic control requiring technical and legal tools of disciplining individuals. This is why probably every copyright reform proposal willsimultaneously be proposing new methods of enforcing

36. Lessig L., *Code*, New York 2006.

the law (as in the case of ACTA and SOPA agreements). Those methods will be tailored to the contemporary age and will employ the capabilities of modern technology. Extensive control frameworks are the only hope for those who would like to tame the Internet element. **The risk that powerful tools of social control might be deployed in the name of protecting a large, but particular economic interest, is real and imminent. If culture is to be more than just a set of commodities, it cannot be subjected to total control.**

5.3. Gross Cultural Product?

The results of this study can be used as a point of reference for designing the reform of copyright law, which – for reasons previously enumerated – should be a law people can obey. However, though legal norms should reflect prevailing attitudes and social behaviours, they should not be subject to them. The issue of copyright is now pressing due to the proliferation of downloading content from the Web. But **the legislative reform will at the same time be a decision about the model of culture promoted and supported by the state.**

We are facing two visions of culture situated at two opposed ends. One is a vision of culture as a commodity, the production of which is based on pure economic calculation; from this perspective, culture becomes justified through the extent to which it contributes to GDP growth. The other is a concept of culture as a domain located, ultimately, outside the market; a sphere of activities key to the well-being of citizens. In this latter sense, culture is a space of expression and cognition rather than a way to grab consumers' attention. It forms the building blocks for social relations, group and individual identities. The entanglement of economy and cultural production does not have to mean that the evaluation of creativity should be directly proportional to its market potential. It would seem that people and groups involved in creative production understand this truth very well, but in discussions about culture as a subject of copyright they tend to dismiss it, instead choosing to think about culture solely as a set of products that can be monetized. Creative work is a specific kind of production, fuelled sometimes equally by financial need and by a desire for expression, communication or recognition.

A cover is the highest form of flattery.

– Paula Bialska, musician. Online talk: http://youtu.be/UYuOfelw1rU

The reform of copyright law will look for a model of culture somewhere between the two poles described above. Before once more weighing up interests, it is worthwhile asking a few questions. Where in this continuum is the vision of culture that corresponds to the current legal order? Is our society suffering from a deficit of commodification, or a deficit of socialisation? Should culture be more dynamic or more profitable?

We are not trying to disregard the commercial aspects of culture. Nevertheless, we are convinced that at present, simple commercial rationales have dominated thinking about culture. This is certainly a hard fact in other spheres of public life, such as education, for instance[37]. Public debate about the availability of educational resources is dominated by voices asking questions solely about what will happen to publishers who sell educational materials. Culture designed to generate quick revenue will in the long run prove relatively valueless. If we think about constructive ways to shape the cultural ecosystem, there is a distinct need for the state to play a more active role; all its widely discussed shortcomings notwithstanding, the state has the greatest capacity to initiate actions that transcend purely financial calculation. An illustration of such action is the support given to Polish cinematography by PISF, a public institution; meanwhile, the interest of the commercial market is limited only to the narrow field of popular romantic comedies.

37. Sadura P., *Szkoła i nierówności społeczne*. Warsaw 2012, Raport Fundacji Amicus Europae, p. 9

5.4. Creators, owners, guardians

This study is, among other matters, an inquiry into social knowledge of copyright law – but the problem isn't limited to people at the receiving end. Olga Tokarczuk points out that gaps in knowledge can be much more distressing for the creators; treated as if they were "naive beadwork artisans", having signed the contract they lose all influence on the creative work. **The Polish term for copyright law, "prawo autorskie", literally translates as "authors' law". This might suggest that the author is in the centre of attention, but in reality that place is occupied by those who manage the creative work. Remunerating creators for their work and protecting copyright owners are two different issues – joining them a priori only complicates the search for effective solutions.**

In the current configuration, the author is most frequently cast in the role of a hired hand who, in the face of legal intricacies feels as helpless as everyone else – as the recordings of conversations with artists demonstrate[38]. The system is based on rules that promote investing in creativity rather than creating something. Until recently, these things seemed to complement each other quite well. Now, along with the growing range of possibilities to create, and especially to distribute creative work, the investment possibilities have shrunk. Those who lost out react defensively and attempt to cover their losses. This is what underlies the visibly destructive escalation of market logic in the field of publishing or press. Tokarczuk notes: "The publisher used to search for new talent, invest in people, sometimes playing the part of motivator or guardian. By functioning in this way she strengthened the publishing house's prestige and guaranteed high quality. A good publisher was ready to operate in a way which would occasionally

38. Online: http://kulturaponadprawem.pl [Access: November 8, 2013]

enable her to publish works which did not guarantee financial success. What mattered was the reputation of the publishing house and promoting good literature, as naive as that may sound today".

Redefining formal rules in the field of culture should support the publishers in the role of guardians than that of investors. The problem, however, is that the official national priority – to "legalise culture" – means primarily supporting big entities built mostly on effective market strategies than on active engagement in culture. Before, the situation favoured the accumulation of intellectual property and applying corporate solutions to cultural business; the current situation offers a structural chance to develop smaller enterprises or projects. For example, the music industry observes a proliferation of independent labels who are more capable of reaching foreign audiences than large commercial corporations. **Supporting artists and independent publishers is a chance for this area's development, but to take this chance, in place of waving the flag for "legal culture" we need actions promoting "cultural law".**

For most people at the receiving end, copyright law means mainly regulating access to content, but another vital issue is the terms of use – a culturally crucial matter. **Complicated and restrictive copyright regulations are a handicap to creators. Considering how many creative works today rely on travesty, association or reference to other existing works, copyright has become yet another filter which lets through only those artists who enjoy considerable financial (and legal) support.** The story one of the interview participants told us might serve to illustrate this point. Our respondent had decided to include the use of cultural content – the works of Maria Kownacka – in the budget of a library performance for children. "I wanted to be perfectly honest, so I contacted the ZAIKS association to

learn in what way I could use those literary works", she said. After contacting the association she was directed to an employee whose task it was to assess the costs. The employee needed specific information on which literary works would be used. "I couldn't answer this question. I said that we were about to start writing the screenplay, that it was going to be a performance for children dedicated to Kownacka's work; 45 minutes, fragments of several fables, a few verses each. I expected someone to tell me approximately what the costs would be, but I was told «in this situation it is difficult to say». I didn't receive any indications of potential license costs for people who want to organise a performance for children in a library"[39]. This demonstrates how the current system places copyright management in the hands of administrative employees who treat all inquiries in the same bureaucratic manner, regardless of whether they are dealing with a big production company or a librarian working on a performance for children. This is as compliant with the law as it is socially harmful.

A vision of culture must incorporate the permitted and supported ways to participate in that culture. The common understanding of culture's availability means a possibility to consume it; for culture's vitality, however, its availability for reuse is essential. One might at this point imagine a world in which anybody can, for example, watch pre-war Polish cinematography online; or, better still, a world where these films are legally and technically adapted for reuse, alive and present in people's minds.

39. FGI no. 14, 06.11.2013, 18.45, librarians employed in public libraries

5.5. The order of disorganisation

This research project has been an opportunity to deliver sound knowledge on what Poles really think about issues surrounding copyright law. On the one hand, understanding and acceptance of the unrestricted use of content online dominates. On the other, social perceptions of creativity and intellectual property are still a monument to the heritage of the industrial era. Yet another aspect of the matter is a consensus about the necessity to remunerate those people involved in the creative process, even if the results of their work should be available online for the taking. The situation is complicated, marked by a deep dissonance between conflicting norms, new templates of behaviour and old, traditional perceptions and values.

Social and technological changes have left behind the general public's capacity to reflect on the matter. Critical opinions about a digital sphere that is part of today's reality are still most often formulated using the categories of the industrial era, which results in less accurate diagnoses.

Let's take another look at Thomas and Znaniecki's reflections on the process of social change. "When the disorganization of a social group becomes the object-matter of reflective attention on the part of its members, the spontaneous tendency immediately arising is that of strengthening the social system against the process of decadence. The phenomena of disorganization appear at first as mere negation of the traditional order, and the problem which faces the group seems to be a simple alternative – either the old order or complete chaos"[40]. One should begin by noticing

40. Thomas W. I., Znaniecki F., "The Polish peasant in Europe and America: monograph of an immigrant group: Volume IV. Disorganization and Reorganization in Poland", Boston: The Gorham Press, 1918-1920; Ithaca, New York: Cornell University, Mann Library, p.87. Online: http://chla.library.cornell.edu/cgi/t/text/text-idx?c=chla;idno=3074959_2387 [Access: November 8, 2013]

not only threats, but also opportunities in the ongoing changes. It seems that this is indeed already happening. “Noticing the opportunities” sounds simple enough, but it is actually a considerable challenge. “As long as they are viewed exclusively with reference to the existing system which is being disorganized, the phenomena of disorganization are judged to be the real and important matter, the social evil which it is the chief task of society to overcome (...). **It is only later, when, as a consequence of (...) the growing realization of new forms of social life, a different social order appears as possible, that the problem loses its seeming simplicity and discloses itself as a very complex and very difficult problem of social evolution, offering an indefinite variety of more or less satisfactory solutions”**[41]. This isn’t a momentary upset of the balance, but a considerable change of social order. To tackle this change we need openness and the courage to look for new solutions, not adherence to oversimplified analogies from the past.

41. Ibidem

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