

Copyright Law in Transition.

On Social Norms
related to Content Usage

A research note, December 2013

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Centrum Cyfrowe is a Polish think-and-do tank focusing on issues related to openness and copyright reform. We are the affiliate institution of Creative Commons in Poland (which we have been running since 2005). Since 2012, we are strongly involved in the copyright reform debate in Poland as one of key public interest organizations. We work on open policy - and helped launch a proposal for a Bill on the Openness of Public Resources in Poland - as well as outreach and training for open education and open science. Our research team is conducting a long-term investigation into social, cultural and legal aspects of new circulations of content - of which this study is a part. Find more about our work at <http://centrumcyfrowe.pl/english/>



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This note is a summary of a research project on popular perceptions and understanding of copyright in Poland, conducted by Centrum Cyfrowe in 2012 and 2013. A full version of the report, together with an online mashup, will be made available in January 2014.

Time for copyright to be an enabler, not an obstacle.

Neelie Kroes,
Vice-President of the European Commission

Report Summary

For over a decade, we have been witnessing massive changes of social behaviors regulated by copyright law. 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 recognize 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 limit cultural creation, education and research, free expression – and become a new system for digitally controlling citizens. Such solutions have been at the core of international agreements such as ACTA or TPP.

The matter of the unavoidable copyright law reform is too vital and concerns too many people – more than 18 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 crucial to include the people who are 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. 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 content usage and its regulation, 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.

Based on the research data we believe that the core of today's problems with copyright in a broad social context 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. Anomie is one of the oldest sociological concepts describing a state in which social organization 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 behaviors and the law; and also between common behaviors and social norms.

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

- 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.
- 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 penalized (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 legalize 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.

A more detailed presentation of key results follows.

The results demonstrated by our study are not a symptom of social hypocrisy but of confusion and disorientation. Socially shared values have increasingly little in common with commonplace behaviors; they have ceased to function as a handy compass in everyday life.

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 carried out in Poland – among others, by CBOS¹, foundation Legalna Kultura (Legal Culture)², Polish Film Institute (PISF)³ 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 labeled as thieves.

The primary goal of the report is delivering sound knowledge about the convictions of Poles regarding copyright law and their perceptions of it. We also try to demonstrate that the social norms existing today – and the behaviors based on these norms – should not be seen in a negative light, exclusively as proof of Poles' supposed demoralization. They can instead be treated as potential keys to a legal reform. One that might produce conditions under which the law may be more easily followed.

General level of knowledge about copyright

The table below features a list of scenarios presented to our respondents whose task was to determine whether they are legal. 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. Interestingly, detailed statistical analysis shows no significant correlations between the number of correct answers and factors such as education level, location, age, frequency of Internet usage or even conducting creative activity.

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

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

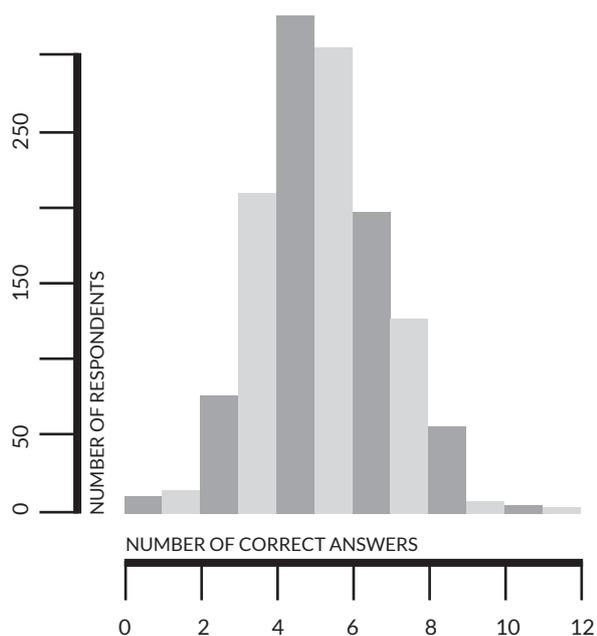
3. ARC Rynek i Opinia, Badanie korzystania z aktualnego repertuaru kinowego. 09.2012, p. 18. Online: <http://www.e-polskiekino.pl/Raport1.pdf> [Access: 8 November 2013]

“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 everyday practices are illegal (and an exaggerated conviction, at that).

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. 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. A high percentage of correct answers was observed also in the two questions about situations related to circulating content recorded on physical media. 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”⁴.

Whom copyright regulations serve and whom they should serve



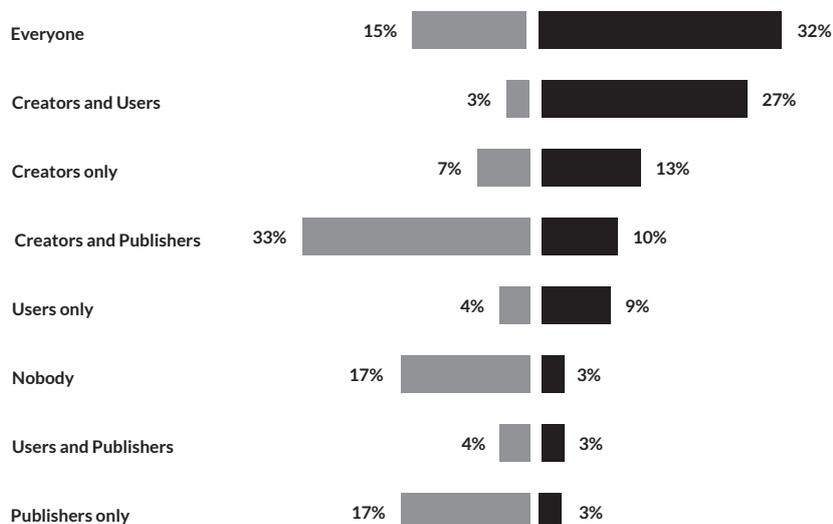
There is a clear, if not decisive, gulf between beliefs as to who, in the public's view, the law serves and who it should serve. It is also noteworthy that a significant number of respondents are convinced that copyright law today is indeed serving everyone's interests (15%).

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.

⁴. FGI no. 9, 30.10.2012, 15.30, high school students

HOW THINGS ARE AND HOW THEY SHOULD BE

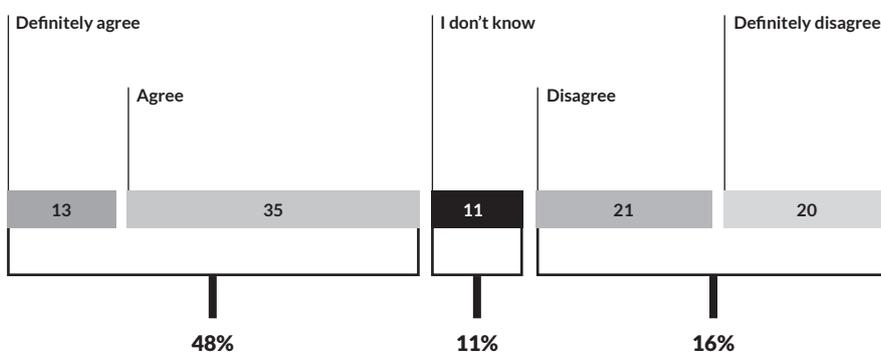
WHOM DOES COPYRIGHT LAW SERVE TODAY?



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. 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% respondents⁵.

SUPPORT FOR AN INTERNET LICENSE FEE

WOULD YOU SUPPORT THE INTRODUCTION OF AN INTERNET LICENSE FEE ENABLING USERS TO LEGALLY DOWNLOAD AND SHARE CONTENT (MUSIC, FILMS, TV SERIES) ON THE WEB?

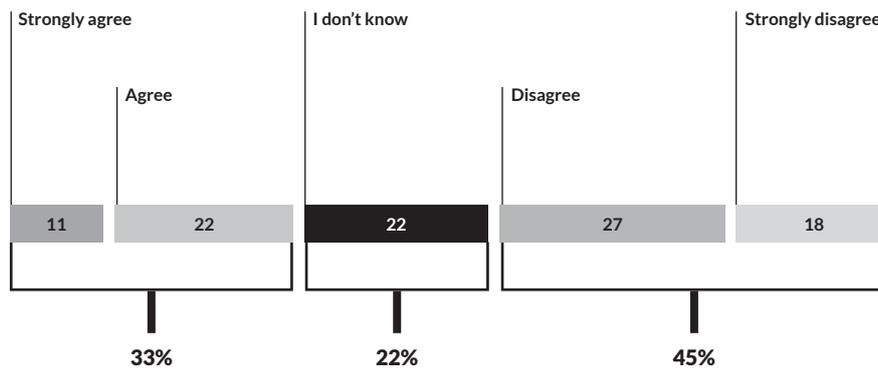


5. CBOS, „Opinie o finansowaniu mediów publicznych”. BS/120/2012, s. 1

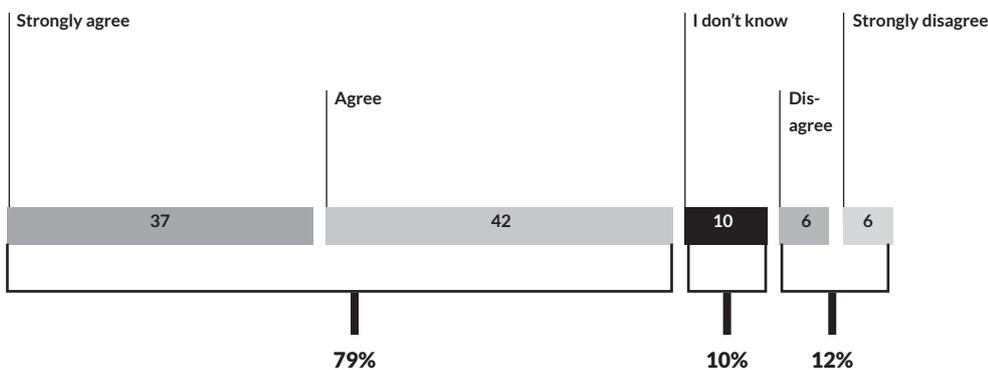
Derailed regulations

Poles 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 skepticism 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.

SOCIAL LEGITIMISATION OF COPYRIGHT LAW



THE CURRENT COPYRIGHT REGULATIONS ARE INEFFECTIVE, IT IS IMPOSSIBLE TO FULLY FOLLOW THEM



The views of creators

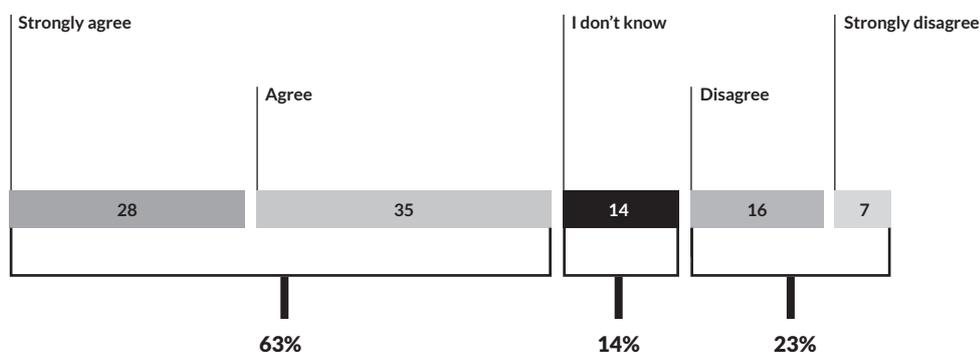
We asked the respondents to specify the type of material they had created in the previous year and whether they would call themselves creators. 50% of respondents claim not to have created anything in that period – none of the 10 types of creative works specified in the survey. Out of the other 50%, only 33% call themselves creators (28% describe themselves as amateur creators and 5% as professional creative artists). This is itself interesting and significant – as it provides a viewpoint on creation different from the typical romantic rhetoric of the creator.

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”⁶. 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 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.

OWNERSHIP IS OWNERSHIP

OWNERSHIP OF A CREATIVE WORK IS JUST LIKE OWNERSHIP OF GOODS



6. FGI no 2, 25.10.2012, 18.45, schoolteachers

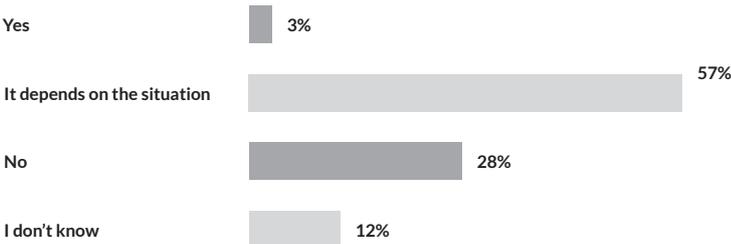
Moral and practical complications faced by the respondents have also been confirmed by the survey results: most respondents believe that downloading films and music from the Web is wrong (53%). But the majority have also decided that downloading isn't theft if it is for personal use (74%) – despite their 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 penalized (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 the dissemination of culture, as theft. The commonly shared conviction about the essentially harmless nature of unauthorized, noncommercial circulations of content should be taken into consideration in the process of designing legislative changes.

Penalization: an uncomfortable subject

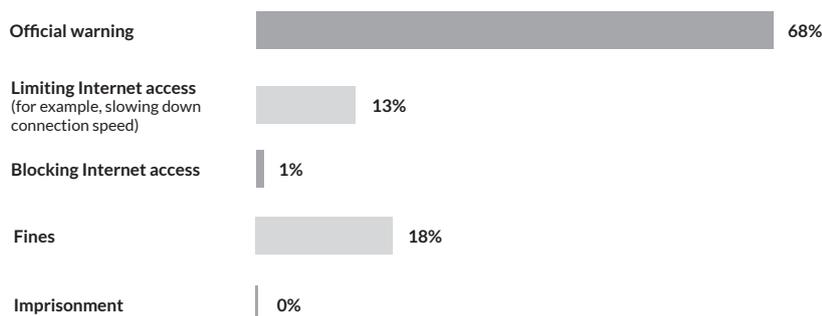
The survey question asking whether Internet users should be punished for downloading from unauthorized sources has generated only 28% negative responses. It is, however, another matter whom specifically to penalize and in what way. The majority (68%) opt for a symbolic punishment (such as a formal warning).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

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?



Final remarks

Along with the popularization and stabilization 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, I just don't worry about it"⁷. 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"⁸. Additionally, according to a PISF survey, also conducted in 2012, 63% of Internet users declare they download films from the Web⁹. 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.**

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

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

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

Let's take at the end a 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".

One should begin by noticing 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". 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.