[US] Preparation of a project on the creation of a Virtual Magistrate

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On 25th October 1995 a workshop organised by the National Center for Automated Information Research and the Cyberspace Law Institute proposed the creation of a Virtual Magistrate. The purpose of this pilot project is to set up a structure offering players on the Internet swift arbitration and provisional decisions providing a solution to conflicts involving these same players. The idea of arbitration, which is specific to the Internet, arose from the realisation that the traditional legal system is too slow, too expensive and too difficult of access for it to be able to respond appropriately to the problems raised by the Internet. In that networks are interconnected and enable different players to act mainly without consideration of frontiers, remedies based on domestic legal systems alone seem difficult to apply.

The Virtual Magistrate project is an attempt, therefore, to respond to the need for a global and immediate settlement of conflicts arising on the Internet. However, it is in no way a substitute for traditional legal solutions and parties to the conflict under consideration may also bring proceedings based on traditional procedures. The scope of competence of the Virtual Magistrate should include messages, applications or files deemed defamatory, obscene or in violation of copyright, privacy, manufacturing secrecy, etc. Once a matter is referred, the Virtual Magistrate must decide to what extent an operator may reasonably prohibit or restrict access to the litigious file or service. An extreme solution would involve prohibiting access of a person to an on-line service. On the other hand the competence of the Virtual Magistrate would not include problems involving invoicing or financial obligations binding users to the operators. The "magistrates" making up this arbitration structure would be designated jointly by the American Arbitration Association and by the members of a sub-committee of the Cyber Law Institute.These "magistrates" must be familiar with on-line services and have command of the relevant legal principles. Although the means and methods of appointing the magistrates have not yet been fixed precisely it would seem that these posts will not just be open to lawyers. The structure is to be independent of political power and of the operators on Internet; it is not a real court but it hopes to operate as such in the network.

Matters can only be referred to it if the parties concerned are bound by a contract authorising them to submit their conflict to the authority of the Virtual Magistrate.

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Proceedings brought before this arbitration structure are purely voluntary and are only binding for those parties who have decided to submit to its authority. The appeal, if deemed admissible, must be dealt with rapidly and, if possible, within forty eight hours. The complaint may only be made public after the decision has been pronounced and, if necessary, if the circumstances and the situation justify it, the decision may remain confidential. In any case, the decisions adopted by this new arbitration body will only be guidelines to which the parties may or may not submit. The Virtual Magistrate will have neither the authority nor the means to oblige the parties to comply with the position it adopts.

The main purpose is that this arbitration jurisprudence may, in the future, form an informal code of conduct governing relations between the different players on the Internet.

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http://www.ll.georgetown.edu/lc/cli.html#VMTop

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