In Supreme Court Opinions, Web Links That Go Nowhere

By ADAM LIPTAK
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WASHINGTON — Supreme Court opinions have come down with a bad case of link rot. According to a new study, 49 percent of the hyperlinks in Supreme Court decisions no longer work.

This can sometimes be amusing. A link in a 2011 Supreme Court opinion about violent video games by Justice Samuel A. Alito Jr. now leads to a mischievous error message.

“Aren’t you glad you didn’t cite to this Web page?” it asks. “If you had, like Justice Alito did, the original content would have long since disappeared and someone else might have come along and purchased the domain in order to make a comment about the transience of linked information in the Internet age.”

The prankster has a point. The modern Supreme Court opinion is increasingly built on sand.

Hyperlinks are a huge and welcome convenience, of course, said Jonathan Zittrain, who teaches law and computer science at Harvard and who prepared the study with Kendra Albert, a law student there. “Things are readily accessible,” he said, “until they aren’t.”

What is lost, Professor Zittrain said, can be crucial. “Often the footnotes and citations,” he said, “are where the action is.”

For most of the Supreme Court’s history, its citations have been to static, permanent sources, typically books. Those citations allowed lawyers and scholars to find, understand and assess the court’s evidence and reasoning.

Since 1996, though, justices have cited materials found on the Internet 555 times, the study found. Those citations are very often ephemeral.

“It is disturbing that even at the Supreme Court, where creating and citing precedent is of the utmost importance, citations often fail to point the researcher to the authority on which the court based its decision,” Raizel Liebler and June Liebert, librarians at the John Marshall Law School in Chicago, wrote in a second recent look at the topic, “Something Rotten in the State of Legal Citation.” It was published in The Yale Journal of Law and Technology.
Even links to the Supreme Court’s own Web site have stopped working. One is to a video of what Justice Antonin Scalia called “the scariest chase I ever saw since ‘The French Connection.'”

The chase ended when a police car rammed the vehicle of a fleeing suspect, leaving him paralyzed. The driver sued, saying the police had used excessive force, and in 2007 the Supreme Court ruled against him.

The court posted the video. “I suggest that the interested reader take advantage of the link in the court’s opinion, and watch it,” Justice Stephen G. Breyer wrote in a concurrence.

Good luck: the link does not work. “The fact that the Supreme Court itself has links to its own Web site that no longer function shows the depth of the link rot problem,” Ms. Liebler and Ms. Liebert wrote, noting that the video could still be found with a little hunting around.

There were scores of links in the term that ended in June. For proof that many dog owners use six-foot leashes, for instance, Justice Alito included a link to About.com.

(Should justices conduct independent Internet research of the sort that might appear in a high school research paper? In an article last year in The Virginia Law Review, Allison Orr Larsen, a professor at William & Mary Law School, called the trend worrisome. Judge Richard A. Posner of the federal appeals court in Chicago defended the practice in a new book, “Reflections on Judging,” saying that “the Web is an incredible compendium of data and a potentially invaluable resource for lawyers and judges.”)

Links in Supreme Court opinions are less likely to work as they get older. But even some recent links are broken. A decision from February, for instance, included a citation to statistics from the Ohio court system; the link leads to a dead end.

Even working links may be problematic, as many Web sites are routinely altered. In April 2008, for instance, the court issued an important decision in a case concerning the lethal chemicals used to execute inmates, linking to a draft article. The link now delivers the reader to an article that indicates it was last revised in August 2008.

The Supreme Court has taken modest steps to address the matter. Its opinions note the date each site was last visited, and its clerk keeps a hard copy of those materials. In an interview, Ms. Liebler said the court should do more.

“It’s a half measure to put a piece of paper in a court file,” she said. “This is the Supreme Court, and it’s their responsibility to make these things available.”

The United States Court of Appeals for the Ninth Circuit, in San Francisco, could serve as a model. It maintains an electronic archive of what it calls “webscites” in the PDF format.

Professor Zittrain and his colleagues are at work on a more ambitious solution, Perma.cc, a platform built and run by a consortium of law libraries. It allows writers and editors to capture and fix transient information on the Web with a new, permanent link.

The project is initially focused on legal scholarship. And there is no reason, Professor Zittrain said, why it could not also work for the Supreme Court.
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