[SE] Accused File-Sharer Acquitted by Court of Appeal

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On 2 October 2006, the first man ever convicted of file-sharing in Sweden was acquitted by *Svea Hovrätt* (the Svea Court of Appeal) due to faulty technical evidence.

According to the charge, the defendant had committed an offence pursuant to the provisions contained in *upphovsrättslagen* (the Copyright Act) when from his computer and by making use of a file-sharing programme he had made the Swedish film “Hip Hip Hora” available to the public on the internet. The defendant had disputed the claim. The court of first instance, *Västmanlands tingsrätt* (the District Court of Västmanland), had convicted and fined the man.

According to the applicable rules of the Copyright Act, a film may not be reproduced or made available to the public without the authorisation of the producer. Infringement of these rules constitutes a criminal offence which may be punished by a fine or imprisonment for a maximum of two years.

Svenska Antipiratbyrån (the Swedish Antipiracy Agency) had reported the offence to the police. The Agency had via computerised means traced the IP address to the defendant and got access to a download of the film and a screen dump from the computer of the defendant. During the preliminary investigation the defendant admitted that he had downloaded films from the internet.

The district court found that there was proof supporting the fact that the download had been made from the defendant’s computer based on the technical evidence and the information the defendant had given the police during the preliminary investigation. The court then came to the conclusion that the defendant had made the film available to the public when he made it accessible through the file-sharing programme.

The Svea Court of Appeal did however not go that far in its argumentation since it rejected the technical evidence. The court noted that there was no indication of time on the screen dump and that the time that the Agency had registered for the download could not be verified. Since, according to the internet supplier, an IP address may belong to different internet users during the course of a day, the court also held that it was not certain that the file-sharing had been made from the defendant’s computer, nor could it be excluded that someone else had used the defendant’s computer at the relevant time.

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This ruling indicates that comprehensive evidence is required in order to prove file-sharing. This may necessitate a search of the premises of the suspect. A warrant may however only be ordered if there is reason to believe that the offence is punishable by imprisonment. So far, the seven file-sharers that have been convicted by district courts in Sweden all have been fined, but the charges have concerned few shared files. Hence, the extent of the file-sharing should reach a more considerable extent in order to allow for a warrant.

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