[SE] The Pirate Bay Case

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On 17 April 2009, *Stockholms tingsrätt* (the District Court of Stockholm) delivered its judgment regarding four people behind the well-known file-sharing site "The Pirate Bay", hereinafter jointly referred to as the accused.

The case concerns the question of criminal liability for acting as an accessory to and for the preparation of a crime against the Copyright Act.

The Pirate Bay uses so-called BitTorrent technology, which makes it possible for people to share data files with each other. Through The Pirate Bay it is possible for internet users to upload and store so-called torrent files on The Pirate Bay website, as well as to search for such files. The torrent files can refer to specific data files, for example a music album. By means of a so-called tracker, a user may find a person with that music album. The actual file-sharing, however, occurs between users within the framework of a so-called swarm (a group of users in the course of sharing files).

The court found that file-sharing of music, films and computer games had occurred by means of the use of the Pirate Bay's services. This file-sharing constituted an unlawful transmission to the public of copyright-protected material. Therefore, objectively speaking, file-sharers who were engaged in such activities using The Pirate Bay's services had infringed the copyright of the rightsholders in question. This issue was of crucial importance, since the existence of a principal crime is essential in order to establish the liability of accomplices. In this context, the court stated that it is not mandatory to identify or to hold the actual perpetrator liable, but it is enough that a principal crime was objectively committed.

During the proceedings it was alleged that some infringements had occurred outside Sweden by file-sharers who were established abroad. Therefore, Swedish courts should be found to lack jurisdiction. Nevertheless, the court held that, since the material was made available and had effects in Sweden, strong arguments suggested that an infringement should be deemed to have occurred within the country. The court continued, arguing that the Pirate Bay is available in Swedish and that its servers had previously been situated in Sweden. Accordingly, the court established that infringements had occurred in Sweden.

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Copyright infringement may be a crime under the Copyright Act, if it is committed with negligence or intent.

By providing a website with sophisticated search functions, easy upload and storage functionalities, as well as the website-linked tracker, the accused had promoted the crimes that file-sharers committed in an objective sense, the court stated. The fact that torrents may have been available on other websites, as well before or at the same time as they were made available on The Pirate Bay did not change the court’s view.

Furthermore, according to the court, the accused had cooperated with each other and had been acting as a "team" for the operation and development of The Pirate Bay. Thus, the court did not make any differentiation as regards individual liability between the four accused, although they had arguably taken part in the Pirate Bay in different ways. The accused had also been aware of the fact that copyright materials had been shared by use of the Pirate Bay. Hence, the accused had intentionally promoted copyright infringement. As a result, they were accessories to criminal activity in breach of the Copyright Act.

However, the court did not find the accused guilty of preparation of criminal activity in breach of the Copyright Act, given that this crime was concurrent with the above-mentioned one.

Given that the accused had acted with intent, they could not be released from liability under the “safe harbour” provisions applicable to the providers of services in the information society.

The court sentenced each of the accused to serve one year in prison. The sentence was determined on the basis of the fact that their actions resulted in a large amount of copyright-protected material being made available to the public. Moreover, the court considered that the activities were carried out commercially and in an organised manner.

Additionally, the court established that the four persons are jointly liable to jointly pay damages to those record and film companies which were plaintiffs in the case and whose rights had been illegally exploited. The claims of the companies were based on both reasonable compensation for unlawful use of copyright-protected material, as well as compensation for certain loss of sales and market damage. The plaintiffs were awarded damages amounting to approximately MSEK 30 altogether.

The judgment has already been appealed.

In the aftermath of the court’s decision, the head judge has been accused of a conflict of interest in relation to the accused. The ground for this accusation is the fact that the judge, who specialises in intellectual property matters, is a member

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of *Svenska Föreningen för Upphovsrätt* (the Swedish Association for Copyright) and a board member of *Svenska Föreningen för Industriellt Rättsskydd* (the Swedish Association for the Protection of Industrial Property). Counsel for the plaintiffs are also members of these organisations. These associations are not open to the industry, but only to legal professionals. The chairman has rejected the charges of conflict of interest, claiming that his membership makes it possible for him to keep up to date in the field. The issue has caused much debate as to whether, on the one hand, it is proper for a judge to be a member of such organisations and, on the other hand, whether this constitutes a conflict of interest in the legal sense. A formal complaint has been lodged. The issue will now be decided by the court of appeals. If that court should find a conflict of interest, a retrial may have to be ordered.

Stockholms tingsrätts avgörande den 17 april 2009 i mål nr B 13301-06

Judgment of the District Court of Stockholm of 17 April 2009 in case No. B 13301-06

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