[SE] Head Judge in the Pirate Bay Case Was Not Biased

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In the aftermath of the Pirate Bay court decision, the head judge of the *Stockholms tingsrätt* (the District Court of Stockholm) was accused of conflict of interest in that case (see IRIS 2009-6: 17). Accordingly, a formal complaint was lodged on several grounds by the defendants' counsel, in which they argued that the District Court of Stockholm should declare a mistrial.

Svea Hovrätt (the Svea Court of Appeal) has now delivered its judgment on this issue.

The head judge as well as the president of the District Court of Stockholm disputed that there were any conflicts of interests present.

The head judge is a member of *Svenska Föreningen för Upphovsrätt* (the Swedish Association for Copyright - SFU) and a board member of *Svenska Föreningen för Industriellt Rättsskydd* (the Swedish Association for the Protection of Industrial Property - SFIR). The plaintiffs' counsel are also members of these organisations. Moreover, the head judge, as well as one of the plaintiff's attorneys, are sometimes engaged as arbitrators in domain name disputes by the same foundation (.SE).

The defendants argued, inter alia, that the head judge had a conflict of interest due to his links to SFU, which is affiliated with the Association Littéraire et Artistique, and SFIR, as well his commitment to the above-mentioned foundation. Furthermore, it was claimed that he should have informed the parties of these circumstances before hearing the case.

The Svea Court of Appeal found that there was no conflict of interest where a judge is merely a member of an organisation whose primary objective is to organise discussions and seminars on certain legal issues. Thus, the head judge's membership of SFU did not constitute a conflict of interest.

The Svea Court of Appeal stated that SFIR had a closer connection to rightsholders than SFU. In this context the court acknowledged that memberships of associations may constitute a conflict of interest if the association in question has a direct interest in the outcome of a case. Additionally, a conflict of interest may arise if the judge is particularly committed to a certain cause. There was, however, no concrete evidence that SFIR had a particular stake in the Pirate Bay

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case. SFIR's general interest in acting against intellectual property infringements was also considered to be in line with Swedish constitutional law and other relevant laws in this area. Consequently, the Svea Court of Appeal did not find the head judge's engagement in SFIR to constitute a conflict of interest either.

Nevertheless, the Svea Court of Appeal considered that the head judge should have informed the parties of the abovementioned engagements, although this was not considered reason enough to declare a mistrial.

Finally, the Svea Court of Appeal held that judges and counsel must normally be allowed to serve side by side on e.g., arbitration boards, without this amounting to a conflict of interest in future cases where they act in their respective professional roles.

Consequently, the Svea Court of Appeal ruled against the defendants' plea that the head judge had had a conflict of interest when trying the Pirate Bay case. The decision of the Svea Court of Appeal is final and not subject to appeal.

Having settled this issue, the Svea Court of Appeal now has to try the material parts of the Pirate Bay case.

Svea Hovrätts beslut den 24 juni 2009 i mål nr B 4041-09

Decision of the Svea Court of Appeal of 24 June 2009 in case No. B 4041-09

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