[SE] Domain names can be classified as property that can be seized

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On 22 December 2017, the Swedish Supreme Court announced that the appeal on the decision to seize The Pirate Bays ("TPB") Swedish domain names would not be granted a probationary permit, meaning that the Swedish Court of Appeal's decision would remain unchanged.

The legal proceeding against the Swedish domain organisation Punkt SE (ISS) was initiated in April 2015, when the Swedish prosecutor filed a complaint with the objective of hindering access to TPB through their Swedish domain names. "Thepiratebay.se" and "Piratebay.se" were both used for the illegal file sharing of copyright-protected works.

The prosecutor argued that the domain names constituted means or tools which facilitate copyright infringement. According to the Swedish Copyright Act, property that is used for crime, such as copyright infringement, may be seized by the Swedish State with the purpose of preventing further infringements.

The Stockholm District Court, which is the first instance in Sweden, and the Swedish Court of Appeal held that the TPB domain name constitutes property than can be seized by the Swedish State. According to the Swedish Court of Appeal, the following features of the domain name constitute strong grounds which indicate that it can be regarded as a property right: an exclusive right; an asset of an economic value; can be transferred; and in some respects, has functions which are similar to the functions of a trademark.

Hence, it is now no longer possible to access TPB via their Swedish domain, but the seizure as such does not hinder TPB from using other domain names. The judgment, as such, extends the possibility to prosecute against online copyright infringement through the seizure of domain names.

Högsta domstolen, Mål nr B 2787-17, 22 december 2017

http://www.hogstadomstolen.se/Domstolar/hogstadomstolen/Avgoranden/2017/2017-12-22%20B%202787-16%20Dom.pdf

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