

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301

SPECIAL MENTION

SWEDEN

Internet Piracy: Significant Internet source piracy infrastructure and group membership have flourished in Sweden due to this country's notoriety as a piracy safe haven (pirates have even established a Political Party (the "Piratpartiet"), which plans to participate in the general election later this year on a platform demanding the removal of national copyright laws). Topsites, highly specialized types of pirate servers with massive storage and extremely high bandwidth, are used by Encoding/Release Groups for the first release of pirated content on the Internet. This source content is then passed down using a series of couriers from Topsites to IRC (Internet Relay Chat), Newsgroups and P2P (peer-to-peer) networks. Although the total number of Topsites in the world is difficult to determine due to their highly compartmentalized and secretive nature, MPA estimates there are approximately 200 of them in the world and that some 52, more than 40% of the European sites of this type, are hosted in Sweden. The country has the largest number of Direct Connect hubs (P2P facilitators) and the most DirectConnect users in the world. Finally, Sweden is home to Rizon, one of the largest IRC networks in the world.

Sweden is also the host country to ThePirateBay.org, the world's largest BitTorrent tracker and one of Sweden's largest web sites. The site has over 785,000 registered users, between 1.7 and 1.9 million peers, with 120,000 indexed torrents. Operators of the site proudly flaunt their role in facilitating infringements, often taking pot shots at rights holders from whom they receive notices of infringing activity. Some copyright holders have had success with ISPs with respect to taking down sites that advertise pirated hard goods for sale, but other forms of Internet piracy remain the primary concern in Sweden.

Other Forms of Piracy: MPA reports that illegal decoders and smart cards used to descramble encrypted satellite signals are sold in shops and via the Internet. Pursuant to the European Commission's Conditional Access Directive, commercial possession or import of decoding devices is illegal. However, the private possession of illegal descrambling devices and the unauthorized reception of encrypted signals are not covered by the legislation. According to the Business Software Alliance (BSA), reducing the business software piracy levels in Sweden could generate significant contributions to the Swedish economy.¹

¹ BSA and International Data Corporation (IDC) released a new study on December 8, 2005, which illustrates global economic gains from reducing software piracy. This report, [Expanding the Frontiers of Our Digital Future: Reducing Software Piracy to Accelerate Global IT Benefits](http://www.bsa.org/idcstudy/pdfs/Sweden.pdf), using 2004 data, found the following: cutting Sweden's piracy rate from 26% to 16% could add nearly \$3 billion to its economy, increase local industry revenues by roughly \$2.5 billion, and generate an additional \$1.5 billion in tax revenues. Piracy cuts would also create nearly 6,000 new jobs in Sweden, which, combined with an already growing IT sector, means 21,000 more IT jobs in the next four years. See <http://www.bsa.org/idcstudy/pdfs/Sweden.pdf>.

Enforcement: The industries report that the legislative and enforcement framework in Sweden is generally effective against conventional hard goods piracy, but requires vast improvement related to Internet and smart card piracy.

Rights holders contemplating legal action against Internet pirates in Sweden face difficulties in identifying infringers due to restrictions imposed by the Electronic Communication Act. Rights holders cannot obtain from Internet Service Providers (ISPs), via a civil procedure, the identity of an infringing end user upon communication to the ISP of an IP address. Such information may, however, be obtained by a public prosecutor or the police in the course of a criminal investigation, although it appears that this is only the case with regard to infringements on a particularly large scale.

Police and prosecutors have generally failed to act on complaints of Internet piracy made on behalf of the film and games industries by the Swedish Anti-Piracy Bureau (SAB), putting in question the government's willingness to comply with its WTO TRIPS Agreement enforcement obligations. SAB (Swedish Anti-piracy Bureau) and APB (AntiPiratByran) are the same entity, that is, the umbrella organization for anti-piracy operations carried out on behalf of the film and games industries. SAB had to find alternative enforcement solutions on the civil side. For example, in March 2005 a successful raid was executed on Bahnhof AB, the country's oldest and largest private ISP located in Stockholm, which had been a source for top-level piracy for several years, hosting some of the biggest and fastest servers in Europe. This was the first time the Swedish courts gave permission for a raid of this kind, directed at the offices of a major ISP with no prior notice. The raid was undertaken by the Special Enforcement Unit of the Stockholm Enforcement Authority, assisted by local law enforcement authorities and conducted in close cooperation with rightsholders. The police were called to assist in the raid when the full extent of the material available on the servers was realized. The raid resulted in the seizure of four servers containing a total of 1,800 movie files, 5,000 software application files, and 450,000 MP3 files, which is enough for up to three and a half years of uninterrupted play. A total of 23 terabytes of data were seized. The servers seized by the police were staging grounds for a large portion of the pirate content on the Internet and one server in particular ("ECD") was reputed to be the biggest pirate server in Europe. After the raid, industry sources noted that other ISPs hosting suspected illegal file-sharing sites did remove them after being contacted by SAB.

During 2005, the Ministry of Justice tasked the Swedish Prosecution Authority, the Swedish Economic Crime Bureau and the National Police Board to review official enforcement of the law on intellectual property. Its report, published in September 2005, recommended the establishment of specialized units of prosecutors and police officers with information technology knowledge and the right for rights holders to gain information, such as Internet protocol (IP) addresses, from the ISP in "small" cases. A slight cause for optimism was the conviction on October 25, 2005, on a complaint by the SAB, of a 28 year-old man from Västerås for the offense of distributing a single Swedish film using the DC++ file-sharing hub, Walhall. The defendant was ordered to pay a substantial fine (16,000 kronor, US\$2,055) and costs. This first conviction suggests that if the authorities acquire the will to prosecute Internet piracy cases, the courts may be prepared to apply the law appropriately.

Legislation: Various law reform efforts took place in the last year and are underway in Sweden.

EU Conditional Access Directive: Although it is illegal to sell or repair pirate smart cards, it is nevertheless legally permissible to possess them, insofar as the police believe that the

quantity indicates no intent to sell. Despite industry complaints, the Swedish government has failed to close this loophole for piracy.

EU Copyright Directive: The new law implementing Sweden's obligations under the EU Copyright Directive entered into force on July 1, 2005 (Law 2005:360 amending the Act on Copyright in Literary and Artistic Works, Law 1960:729). Particularly disappointing are the inadequate provisions regarding the protection of technological measures and the lack of a specific injunctive remedy against ISPs. At least, however, unauthorized downloading of protected works is now clearly illegal, even if the lack of a right to obtain user information from Internet service providers deprives rights holders of any civil remedy for such infringement.

EU Enforcement Directive: The EU adopted the Directive for the Enforcement of Intellectual Property Rights in April 2004, and member states have two years to implement the text into national law. The Directive provides a number of benefits for civil action against piracy, in particular with regard to the obtaining of information about infringers and the grant of injunctions against intermediaries. So far the government has not published any proposals for implementing this much-needed Directive and there must be concern that it will not comply with the deadline for implementation of April 29, 2006.

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