

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2007 SPECIAL 301 REPORT

### SPECIAL MENTION

# SWEDEN

IIPA specially mentions Sweden due to widespread internet piracy (downloading and file-sharing) and difficulties in achieving effective enforcement against criminal copyright infringement. The situation is further complicated by society's high acceptance of filesharing which is echoed in the media and from the general public. Furthermore, there is little, albeit increasing, knowledge among politicians about the scope of the filesharing problem. The Minister of Justice has declared that she is against illegal filesharing. Copyright groups have held numerous meetings with local enforcement authorities and the industries look forward to working with the new Administration on ways to improve anti-piracy efforts and strengthen public awareness.

**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.<sup>1</sup> There has been an increase in users with access to broadband connection but the number of people downloading seems to stay relatively stable, albeit still quite high. There were 490,000 illegal movie downloads in the third quarter of 2006; up from 468,000 in the third quarter of 2005. After the first trial against an uploader went to court in Sweden (with significant media coverage), there was a measurable drop in people downloading according to a local study.

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 perhaps around 40% of the European sites of this type, are hosted in Sweden. The local Swedish anti-piracy group, APB (AntiPiratByran) claims it is aware of 26 topsites in Sweden. The country has the largest number of DirectConnect 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 also is 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. ThePirateBay was raided in mid-2006 by the Swedish police, and although the site is back up and running, it is expected that its prosecution will take place in the middle of 2007 (see discussion, below).

Although most ISPs used to forward cease and desist letters to alleged infringers, most of them ceased doing so after the public debate about peer-to-peer (P2P) piracy rose, claiming that that they are not obligated to do so by law. MPA reports that, according to two market research studies, there are approximately 12-15 million movies illegally downloaded every year in Sweden.

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<sup>1</sup> Pirates have even established a political party, The Pirate Party ("Piratpartiet"), which had about 0.63 percent of the votes in the September 2006 elections (much less than was expected).

**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.

**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. Local right holders have been tireless in presenting counter arguments to P2P 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.

In 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. The FBI, MPA, and AntiPiratByran (the umbrella organization for anti-piracy operations carried out on behalf of the film and games industries) participated in a training seminar for police on January 24, 2007. APB has continuously pressed for a special copyright unit to be created within law enforcement. This unit will be established in early 2007 and a special training will be provided on source piracy. The industries plan additional training and educational work with police officers and prosecutors in 2007.

During 2006, however, police and prosecutors generally failed to act effectively on the numerous complaints of Internet piracy made on behalf of the film and games industries by the Swedish Anti-Piracy Bureau (SAB) and APB. Although the Swedish police have occasionally proceeded with a criminal complaint, that has been only after tremendous pushing by local rightholders. The police take no *ex officio* action at all, even though they have the authority to do so. MPA reports that about 150 police reports have been filed against filesharers in Sweden, and of those, only eight have gone to trial so far --- seven were convicted and one acquitted. These few notable exceptions of concrete action also resulted in public backlash.

In June 2006, the Swedish police acted decisively against the PirateBay (which was created by "Piratbyrån" in 2003), the notorious BitTorrent facilitator of internet piracy whose prominence grew dramatically after successful actions were taken in 2005 to take down other popular pirate search engines (SuprNova, LokiTorrent). The PirateBay operators countered with their own public relations campaign and resurrected their service, by turning initially to a host site in Holland. A new political party, Piratpartiet (the Pirate Party) gathered sufficient support to be on the September 2006 ballot. In the fall of 2006, Swedish politicians from the ruling party and main opposition party openly supported the idea of a compulsory license to address unauthorized internet file sharing. This is a political response to the backlash against the recent raids of the PirateBay BitTorrent

tracker site in Sweden.<sup>2</sup> No concrete legislative proposals have been advanced to date. The copyright industries are deeply concerned about the potential of any compulsory license initiative, and are monitoring the situation closely.

On October 19, 2006, a Swedish court imposed the first fine on an individual for illegal music uploading. IFPI, representing the international recording industry, had reported 30 individuals to the Swedish police for making available large quantities of music to the general public through file-sharing via the internet without the consent of the rightsholders. On the date on which the report was made, IFPI had no knowledge of the people involved or where in Sweden they lived. In response to the first of IFPI's reports, the prosecutor decided to prosecute one person for making available four music files. That case was heard before Borås District Court on October 4, 2006, and the verdict was handed down two weeks later. An income-based fine of SEK 20,000 (US\$2,850) was imposed. The District Court wrote that the accused "shall now be sentenced for, on one occasion, having made four sound recordings available to the general public via the internet. This did not involve a commercial operation. He is sentenced to a substantial fine." However, the prosecutor and the convicted man are both appealing this decision; the prosecutor is seeking jail time. In January 2007, IFPI filed an additional complaint with the prosecutor's office against Pirate Bay for its ongoing activities.

**Legislation:** Various law reform efforts took place in the past two years, and more are underway in Sweden. Below is a summary reported by IIPA members.

EU Copyright Directive: The 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 had 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 Swedish 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. Proposed legislation from the Government might surface in the next few months. According to a statement from the Swedish under-secretary of State, the first step to a proposed legislation will not come until later this spring (industry guesses suggest late April 2007).

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.

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<sup>2</sup> Also apparently in reaction to the PirateBay action, another Swedish organization launched a "darknet" for 5 Euros a month to enable large scale piracy and file sharing. In August 2006, press reports indicated that the Swedish Pirate Party launched a new Internet service that lets anybody send and receive files and information over the Internet without fear of being monitored or logged. This "darknet" service allows people to use an untraceable address, where they cannot be personally identified. This gives users the advantage of a Swedish IP address from anywhere in the world. Reportedly, a portion of the subscription fees goes to support the Pirate Party's work in changing the copyright and privacy laws. See "Relakks: Swedish Piracy party Launches Massive Darknet," RealTechNews, August 14, 2006, posted at <http://www.realtechnews.com/posts/3376>.