

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2008 SPECIAL 301 REPORT

SWEDEN

Special 301 Recommendation: IIPA recommends that Sweden be placed on the Watch List in 2008.

EXECUTIVE SUMMARY

In 2007, IIPA requested, through a “Special Mention” filing, that USTR devote special attention to the severe problems of Internet piracy and Sweden’s underlying legal and enforcement framework to combat it. These problems are sufficiently serious, and the solutions sufficiently distant, to warrant a Watch List placement in 2008.

INTERNET PIRACY

Significant Internet source piracy infrastructure and group membership have flourished in Sweden. Sweden is a notorious Internet piracy safe haven.¹ Illegal file-sharing is widespread and growing, and there are a number of deficiencies in Sweden’s legal infrastructure and enforcement system. The insufficiency of resources applied to Internet enforcement exacerbates the situation. Illegal file-sharing has, according to a recent study, grown by 49% from 2002 to 2007, and with a few exceptions noted below, is generally unhindered by Swedish enforcement authorities.

Topsites, highly specialized pirate servers with massive storage and high bandwidth, are used by Encoding/Release Groups for the first release of pirated content on the Internet (the same releases often fuel hard disc piracy as well). This source content is then passed down using a series of couriers from Topsites to IRC (Internet Relay Chat) sites, 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, it is estimated that there are approximately 300 and that an estimated 65 of them (22%) are located in Sweden, making it one of the most active countries in the world for organized release groups. The country ranks among the top three countries globally in the number of DirectConnect hubs (P2P facilitators) and the largest percent of DirectConnect users per inhabitants in the world. Finally, Sweden is home to *Rizon*, one of the world’s largest IRC networks.

Sweden is also host to *ThePirateBay.org*, one of the world’s largest BitTorrent tracker sites and one of Sweden’s largest web sites (it currently ranks 144 on the Alexa ranking). The site reportedly has over 10 million users and is financed through advertising revenues. It has been translated into over 30 languages, impacting legitimate markets around the world. The owners of the site boast that it is the biggest tracker of its kind and for years have mocked right holders in their efforts to take actions against the site. The site was finally raided in mid-2006 by the Swedish police and servers were seized, but the site and its tracker were quickly up and running soon thereafter. MPA estimates that 95% of the material transmitted over ThePirateBay is infringing.

We can report a welcome development, however, that on January 31, 2008, after an 18 month investigation of ThePirateBay, the four site owners were indicted for criminal copyright infringement. Despite the indictments, the site continues to operate and prosecution will only cover the time period up until the raid in 2006.

Swedish ISPs have the dubious honor of being well known for their lack of cooperation with right holders in taking down infringing content upon receiving cease and desist letters. Although most ISPs had

¹ 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 (fortunately less than was expected).

been forwarding these letters to alleged infringers, most ceased doing even this after the public debate about peer-to-peer (P2P) piracy arose, claiming that they are not obligated to do so by law. MPA reports that, according to two market research studies, there are approximately 15-24 million movies illegally downloaded every year in Sweden. The entertainment software industry reports that Sweden is typically among the top ten countries for which online infringements are consistently high, on a number of protocols (be it BitTorrent, other P2P networks or websites). For example, with respect to four top game titles monitored, Sweden typically accounted for 1-2% of the total number of global downloads monitored on the BitTorrent and eDonkey network. For one popular PC game, Sweden accounted for 6% of the monitored downloads – more than 30,000 downloads in an 8-week period after launch.

INTERNET ENFORCEMENT

Although movie right holders have brought around 170 cases to the police, the vast majority are not pursued. Only nine cases have actually gone to court and the very few convictions received have resulted in a severe public backlash. IFPI Sweden has brought around 35 cases to the police against up-loaders, but only three cases have been tried so far, all leading to convictions. In addition, IFPI Sweden has brought around ten criminal cases to the police against DC-hub operators, but none of these have been tried yet. Some of these cases were brought to the police as early as November 2005 and April 2006. Lack of police and prosecutorial seems to be the main reason for the delays in moving these cases ahead. In June 2007, the Swedish Court of Appeals upheld the very first conviction for Internet piracy which, however, only involved four songs and a total fine of about \$2000.

Law enforcement officials do not undertake *ex officio* actions even though they have the power to do so. In 2005, the Ministry of Justice tasked the Swedish Prosecution Authority, the Swedish Economic Crime Bureau and the National Police Board to review enforcement against Internet piracy. 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 right holders to gain information, such as Internet protocol (IP) addresses, from the ISP in “small” cases. The copyright industries have continuously pressed for the creation of this unit, which still has not been constituted.

Right holders contemplating legal action against Internet pirates in Sweden face difficulties in identifying infringers due to restrictions imposed by the Electronic Communication Act. Right 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, which is critical to effective Internet enforcement, can only be obtained by a public prosecutor or the police in the course of a criminal investigation, although it appears that even this is only the case with regard to infringements on a particularly large scale.

Though internet piracy is rampant in Sweden, it is not completely without a hard goods piracy problem either. Pirated and counterfeit Nintendo products continue to be available in the market, but there have been no enforcement actions by police or the customs authorities. Sales of mod chips for the *Wii* console and DS game copiers via the Internet have also increased. The piracy level for entertainment software products is at 53%, for PC, console and handheld games.

COPYRIGHT AND ENFORCEMENT LEGISLATION

A number of legislative deficiencies have contributed to the growth of Internet piracy in Sweden and to the growth of a general “lawless” attitude toward illegal file-sharing among the populace.

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 relief remedy against ISPs, both required under the EU Directive. The Swedish authorities appear to consider a civil damages action for contributory infringement as a sufficient tool to fight Internet piracy, but civil litigation, without preliminary injunctive relief, is just too slow to act as a deterrent. At least, however, unauthorized downloading of

protected works is now clearly illegal, though without the ability to easily obtain user information from ISPs, right holders are deprived of any meaningful remedy in Sweden. Sweden needs to provide these laws and remedies to effectively combat Internet piracy.

EU Enforcement Directive: Sweden has not implemented the EU Enforcement Directive, although we understand that a proposal has been drafted and is expected to be introduced later this year. This proposal is said to contain a provision on the important right to obtain IP addresses from ISPs in the context of civil proceedings. It is critical that such a provision be adopted as soon as possible. Unfortunately, we have also heard that the present draft proposal does not contain a right to injunctive relief in a civil case against ISPs, and that it therefore fails to cure Sweden's inconsistency with Article 11 of the Enforcement Directive and Article 8(3) of the Copyright Directive. In September 2007, a report was issued by Swedish Chief Judge, Cecilia Renfors ("Renfors Report"), recommending that the upcoming legislation contain provisions requiring ISPs to take action to terminate the contracts of certain users who repeatedly use the Internet to infringe copyright. The report called for a new task force to discuss legal reforms in the area of enforcement and also to make legal services easier and more plentiful in Sweden. While this report and, in particular, the suggestions regarding disconnection of repeat infringers is welcome, it does not go far enough to bring Sweden's legal and enforcement regime into harmony with international trends even assuming that the proposed legislation is adopted in its present form.