

File-sharing trial against The Pirate Bay has wide-ranging implications

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What the *Times* of London described as the “internet piracy trial of the decade” is under way in a courtroom in Stockholm, Sweden, with protesters with megaphones camped outside the building. The trial of file-sharing site thepiratebay.org for copyright infringement is being followed by legal and technology experts all over the world.

The trial, though brought by the Stockholm district prosecutor, Håkan Roswall, is the latest attempt by music and movie industry giants to prevent online distribution of copyrighted material. The criminal charges against the provocatively named file-sharing site are directly supported by the IFPI (International Federation of the Phonographic Industry) representing Sony BMG, EMI, Universal and Warner Bros. Music Sweden, Playground Music Scandinavia and the Bonnier Amigo Music Group.

Support from the movie industry includes MGM Pictures, Warner Bros. Entertainment, Columbia Pictures and 20th Century Fox. They are joined by the computer gaming company Blizzard Entertainment. These companies are the plaintiffs in a claim for compensation that is being heard together with the criminal prosecution. Also supporting the trial is the Swedish Anti Piracy Bureau (Svenska antipiratbyrån), a lobby group formed in 2001.

The trial is the long awaited outcome of a raid by Swedish police of the offices of thepiratebay.org in May 2006. Police seized servers and detained three men in June 2006, forcing the site to close down temporarily. A spokesperson for the Motion Picture Association of America (MPAA) said at the time, “Pirate Bay was a huge source of pirated films for people around the world, and today they are no longer.” But the site, which he described as “one of our number-one targets,” was up and running again within days.

Four men associated with the site were charged with facilitating the distribution of copyrighted material. Almost three years after the 2006 raid, the four, Fredrik Neij,

Gottfrid Svartholm Wang, Peter Sunde Kolmisoppi and Carl Lundström, were brought to trial and face up to two years in prison and fines of hundreds of thousands of dollars. Estimates of the compensation claims of the record and film industries run as high as \$13 million.

The trial was set to be highly political from the outset. The Pirate Bay web site was founded by the Swedish advocacy group Piratbyran (The Piracy Bureau) in 2003. Though run independently since 2004, the political origins of the site remain clearly visible.

Unlike other sites offering similar services, The Pirate Bay has never taken defensive precautions against potential lawsuits for copyright infringements. The popular file-sharing site limewire.com, for example, has an option to filter out some copyright protected content from search results. On initial set-up, the Limewire software also asks users if they intend to use it to download copyright-protected content.

No such defensive actions are taken by The Pirate Bay. The “About” page of the site declares, “Only torrent files are saved at the server. That means no copyrighted and/or illegal material[s] are stored by us. It is therefore not possible to hold the people behind The Pirate Bay responsible for the material that is being spread using the tracker. Any complaints from copyright and/or lobby organizations will be ridiculed and published at the site.”

A link on the site labeled “Legal Threats” takes the reader to a selection of emails received from a variety of companies including Microsoft, Dreamworks and Sega, together with highly provocative replies to some, which seem to be aimed at inviting the type of legal action the site now faces.

The Pirate Bay site uses a technology called BitTorrent, a distributed file-sharing protocol that allows large files to be shared in a fast and reliable way. BitTorrent works by

allowing large files to be split into many smaller chunks. These chunks are then scattered across large numbers of host computers, potentially millions, across the Internet. Sites like The Pirate Bay track the torrent files that allow these bits to be downloaded and reassembled by a user.

The fact that The Pirate Bay does not host copyrighted content forms the bedrock of the legal defense in the Stockholm trial. By the second day of the trial, one of the two charges against the four was dropped. Prosecutors were forced to acknowledge that the site did not copy files, so all charges of copying and producing copyrighted material were removed.

Against the initial claims of prosecutors, the court acknowledged that pointing to infringing material made available by someone else is not the same as producing copyrighted material. While the defendants and their supporters welcomed this as an unprecedented defeat for the prosecution, lawyers for the plaintiffs dismissed it as a mere technicality. Peter Danowsky, legal council for the music companies, said, "It's a largely technical issue that changes nothing in terms of our compensation claims and has no bearing whatsoever on the main case against The Pirate Bay. In fact it simplifies the prosecutor's case by allowing him to focus on the main issue, which is the making available of copyrighted works."

Following the presentation of the new reduced charges on Wednesday, Jonas Nilsson, representing Neij, emphasized that it is the individual user, and not The Pirate Bay, which is in possession of a copyrighted work. Again pointing out that there is no copyrighted material on The Pirate Bay servers, he said, "We don't know who the uploaders are. We don't know how the uploaders came to possess the material, that is to say, the protected material. We don't know how Fredrik Neij may have influenced the uploader."

Nilsson asked, "Perhaps more importantly, how did he promote this, other than that he, via The Pirate Bay, provided a legal function and technology?" pointing out that BitTorrent technology in and of itself is not illegal and that to carry out the file transfers, users need to have software on their computers to which The Pirate Bay has no connection.

"It's not some sort of special software," Nilsson said, arguing that The Pirate Bay is simply a specialized search engine. "I submit that the torrent files one finds on The Pirate Bay can also be found by other search engines, like Google," he said.

A google search for "Torrent Sites" renders 5,580,000 results. A search for "Torrent Files" gives 19,000,000. Torrent files can be found for anything imaginable. While the music and film companies insist that they are not attacking the BitTorrent technology itself, only those that use the technology illegally, there is a basic conflict between the emergence of this technology and the interests of copyright holders.

The proliferation of torrent files has challenged the control of these corporations over the distribution channels for music, film and any other form of digital media. In some cases movies are available on the Internet before they are even officially released. Music by artists such as the Beatles, which is not yet available on legal music sites like iTunes, is readily available for free through torrent files.

Since the shutting down of Napster seven years ago, copyright holders have engaged in a series of unsuccessful attempts to shut down alternative channels of distribution. Even if they are successful in the case against The Pirate Bay, it will do nothing to halt the availability of copyrighted material on the Internet.

The significance of the case goes beyond its impact on distribution channels. If the legal arguments advanced by the defense are rejected and the claims of the prosecution upheld, it would require an interpretation of the law in which a web site can be held liable for content hosted elsewhere, simply because it contains a link to it. This would potentially make search sites such as Google legally accountable for anything published on the Internet. Upholding the arguments of the prosecution would change the conception of hyper links as simply a connection with no implicit endorsement, into an assumption of legal responsibility. This could have huge implications for the future development of the Internet.



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