



Petter Rindforth

Don't "copy wrong" in Sweden

Petter Rindforth from Fenix legal investigates Swedish copyright laws by considering some of the major judgements and law progresses in recent years.

In January last year, the Swedish government ordered an investigation into "Penalty scales for certain serious infringements of intellectual property". Supreme Court Justice Mr. Dag Mattson was appointed as a special investigator to consider the need for stricter sentencing for the most serious cases of copyright and trademark infringement. Today, copyright and/or trademark infringement in Sweden normally results in a fine, but in the most serious cases the infringer can be sentenced to imprisonment for up to two years.

On February 15, 2018, Mr. Mattson presented his proposal (SOU 2018:6). It consists of introducing two new criminal denominations: gross copyright infringement and gross trademark infringement. Failing one of the new crimes can be sentenced to imprisonment for six months up to six years.

"Today there is an organized online piracy that has major consequences for the whole community. Therefore, it is good that the rate of punishment for these crimes have been reviewed as the sanction should be proportional to the seriousness of the crime", said

the Deputy Minister of justice, Ms. Heléne Fritzon in a press release on the new legislation.

The police will also have access to more tools for investigating copyright or trademark infringement. A crime can be classified as serious if it "caused particularly significant damage, caused significant gain, or otherwise been of a particularly dangerous nature."

Finally, Mr. Mattson proposes that any property – not just objects – can be confiscated, such as domain names that have been used as copyright infringement or trademark infringement. This means that the continued crime during the investigation period will be more complicated. This is indeed appreciated by the Swedish police, as "so far, the infringing web site normally is active during our whole investigation, even if we have physically confiscated all the infringers computers", according to the police coordinator Mr. Paul Pintér, interviewed in the Swedish newspaper Ny Teknik.

The legislative amendments will come into force on July 1, 2019.

However, the Swedish police and courts are not just waiting for change of legislation in order to act. The last 6 months have been very active when it comes to stopping IP infringement on the Internet, especially copyright infringement online.

Undertexter.se

In 2004, "Undertexter.se" ("Subtitles.se") started its online service of publishing Swedish-language subtitles for feature movies, so-called "text dividing". The site offered – for free – millions of subtitles.

The commercial part of the site was closed by the Swedish police on July 9, 2013. However (see above

Résumé

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regarding the upcoming confiscating possibilities), the site as such was still online, and the founder used it to publish this statement the same day: “Undertexter.se has had a police raid this morning and servers and computers have been seized, and therefore, the site is down. We who work on the site don’t consider an interpretation of dialog to be something illegal, especially not when sharing it for free”.

This was also the argument the founder of Undertexter.se used when the case was dealt with at the Attunda District Court (case B 5465-13) last year. He claimed that the subtitles were

not infringing since movies are made up of video and sound, with subtitles being an extra, also arguing that the service provided was free of charge.

The prosecutor decided to specifically refer to 74 of the movies, identified as pirated copies of the originals, claiming that the founder had indirectly earned money on other people’s copyrighted material. It was also noted, by an expert witness, that some of the subtitles were not only badly translated, but virtually incomprehensible.

In its judgment in September 2017, the court found that subtitles are part of the movie as a creative work and that publishing non-authorized subtitles therefore constitutes copyright infringement. The founder was sentenced to probation and to forfeit 217 000 SEK (26 000 USD) identified as the profit made from the infringement.

The founder appealed to Svea Hovrätt (Svea Court of Appeal), claiming that the subtitles were creative work to which the founder had its own copyright. The court found that the translations themselves depended on the rights connected to the original work, which were entirely held by the relevant copyright holders. While paraphrasing and parody might be allowed, pure translations are completely covered by the rights in the original and cannot be seen as new and independent works, the court found, further concluding

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that the founder had acted intentionally, noting that in addition to administering the site and doing some translating work himself, it was “inconceivable” that he did not know that the subtitles made available related to copyrighted dialog found in movies. In its judgment in February 2018, the court only changed the prior judgment from probation to two months suspended sentence.

The website Undertexter.se is, however, still online, not providing any translation services but with the message:

“We have released subtitles since 2004!

Help us with the fines that Undertexter.se received and show your support for all subtitles we have released during all these years! Donate any amount by swish to... or bank...

Write your email as a message, everyone who donates becomes VIP in upcoming projects!

We do not give up and we have a new project going on!”



Swefilmer

Another recent case is the Hovrätten för Västra Sverige (Court of Appeal for Western Sweden) decision on March 28, 2018, regarding Swefilmer.

Also, Swefilmer provided streaming services of films and TV shows with Swedish subtitles. It started February 13, 2011 and soon become the most popular streaming portal, serving up to 25% of all online video streaming in Sweden. However, the service was of course provided without the permission of the copyright owners or movie companies...

After four years, the business was finally stopped. A 23-year-old operator of the site was raided by the local Swedish police and arrested. His 26-year-old colleague, described as leading a luxury lifestyle, was later arrested in Germany, accused of receiving donations from users and setting up Swefilmer's deals with advertisers. The prosecutor described the site as "organized crime", referring to the fact that more than 1,400 copyrighted movies had been made available through the Swefilmer's site.

In January 2017, Varbergs Tingsrätt (Varberg District Court) the court ruled the older man was guilty of 1 044 copyright infringement cases, as well as serious money laundering offenses. He was sentenced to three years in prison for the combined copyright infringement and money laundering and ordered to forfeit 14 000 000 SEK to the state (1,675 million USD). His colleague, "the operator", was given probation and ordered to complete 120 hours of community service.

The district court's judgment was appealed to Hovrätten för Västra Sverige (the Court of Appeal for Western Sweden).

On March 28, 2018, the Court of Appeal made its decision (Case B 3143-17). The Court of Appeal changed to amount to be forfeited from 14 million SEK to 4 million SEK but extended the prison sentence from three to four years for the 26-year-old man. His colleague was

sentenced to conditional sentences and fines instead of conditional sentence and community service, and an amount of 10 000 SEK (1 200 USD) was declared forfeited from him.

Both men shall also jointly pay damages of 2,2 million SEK (263 000 USD) plus interest to the Danish company Nordisk Film A/S for copyright infringement of 1 (one) of the movies that was provided at the site.

This could have been the end of the story, but the attorney for the 26-year-old man immediately stated in an interview at the Swedish television (SVT) that "I have informed my client about the content of the judgment and it is highly likely that he will turn to the Supreme Court".

At the same time, the Swedish company Bonnier Broadcasting, through its pay TV company C More, has initiated a case to claim 24 million SEK (2,9 million USD) of the 26-year-old man for distributing 4 movies in the series of police commissioner Martin Beck.

"This is about organized crime and grossly criminal individuals who earned huge sums on ours and others' content. We want to take every opportunity to take advantage of our rights" Mr Johan Gustafsson, Head of Corporate Communications at Bonnier Broadcasting, stated in an interview to Breakit News on January 6, 2018.

It therefore seems that the final decisions on Swefilmer's copyright infringement will not be made until the new penalty scales for certain serious infringements of intellectual property had come into force: extending the time in prison for gross copyright infringement to up to six years.

As stated by the Swedish Minister for Justice and Migration, Morgan Johansson, in May 2016: "Let me be very clear: we believe that theft is theft, even if it is about intellectual property rights."