

STOCKHOLM DISTRICT COURT

Division 5

Unit 52

VERDICT B 13301-06

17 April 2009

handed down in Stockholm

Case no B 13301-06**PARTIES** (Number of defendants: 4)**Prosecutor**

District Prosecutor Håkan Roswall

The International Public Prosecution Office in Stockholm

Plaintiffs

Plaintiffs, see Appendix 1.

Defendant

Hans FREDRIK Lennart Neij, 780427-2636

Östgötagatan 72 A, Lgh 1022

116 64 Stockholm

Defence counsel appointed by the court:

Jonas Nilsson, Attorney-at-Law

Hamilton Advokatbyrå Göteborg AB

Stora Nygatan 33

411 08 Göteborg

VERDICT**Crimes committed**

Complicity in breach of the Copyright Act

Statutes involved

§§ 1, 2, 46, 53, 57 of the Copyright Act

(1960:729) and Chapter 23 § 4 of the Penal Code

Sanctions etc.

1 year's imprisonment

The following indictment is dismissed

Preparation for breach of the Copyright Act in accordance with the 2nd count of the indictment.

1

Damages

Fredrik Neij will, jointly with the other defendants, pay compensation to

- Sony Music Entertainment (Sweden) AB of EUR 41,467,
 - Universal Music Aktiebolag of EUR 73,782,
 - Playground Music Scandinavia AB of EUR 28,159,
 - Bonnier Amigo Music Group AB of EUR 4,290,
 - EMI Music Sweden Aktiebolag of EUR 162,988,
 - Warner Music Sweden Aktiebolag of EUR 146,484,
 - Yellow Bird Films AB of SEK 3,150,000,
 - Nordisk Film Valby A/S of SEK 225,000,
 - Warner Bros Entertainment Inc of SEK 2,484,225,
 - Metro-Goldwyn-Mayer Pictures Inc and Columbia Pictures Industries Inc of SEK 5,579,325 in total, 25 percent of which is payable to Metro-Goldwyn-Mayer Pictures Inc and 75 percent of which is payable to Columbia Pictures Industries,
 - Twentieth Century Fox Film Corporation of SEK 10,822,500,
 - Warner Bros Entertainment Inc of SEK 414,000 and
 - Twentieth Century Fox Film Corporation and Mars Media Meteiligungs GmbH & Co Film Productions of SEK 4,495,950 in total, 1 percent of which is payable to Twentieth Century Fox Film Corporation and 99 percent of which is payable to Mars Media Beteiligungs GmbH & Co Film Productions,
- as well as interest in accordance with § 6 of the Interest Act (1975:635) from 31 May 2006 until payment is made.

Forfeiture and confiscations

1. Claims for forfeiture of value – jointly with the other defendants – are dismissed.
2. The confiscated computer and communications equipment is declared forfeit. The confiscation shall remain in place (BLG 0240-06-587 paragraphs 17, 18, 22, 24, 26, 28-34).
3. The confiscated computers found at the site of the operation of The Pirate Bay will remain confiscated until the sentence has become legally binding (BLG 0240-06-587 paragraphs 1-16 and 23).
4. The confiscated written documents will remain confiscated until the sentence has become legally binding (BLG 0240-06-590 paragraphs 2 and 7; BLG 0240-06-591 paragraphs 1-10; BLG 0240-06-595 paragraph 28; BLG 0240-06-596 paragraph 3; BLG 0240-06-598 paragraphs 4 and 6).

Criminal victims fund

The defendant is ordered to pay a fee of SEK 500 in accordance with the Criminal Victims Fund Act (1994:419).

Compensation

1. Fredrik Neij will, jointly with the other defendants, pay compensation for legal costs to
 - Sony Music Entertainment (Sweden) AB of SEK 468,000,
 - Universal Music Aktiebolag of SEK 156,000,
 - Playground Music Scandinavia AB of SEK 156,000,
 - Bonnier Amigo Music Group AB of SEK 102,000,
 - EMI Music Sweden Aktiebolag of SEK 264,000,

- Warner Music Sweden Aktiebolag of SEK 54,000, all of which refers to counsel fees,
- Yellow Bird Films AB of SEK 484,920, of which SEK 440,640 refers to counsel fees,
- Nordisk Film Valby A/S of SEK 53,880, of which SEK 48,960 refers to counsel fees,
- Warner Bros Entertainment Inc of SEK 592,000, of which SEK 504,500 refers to counsel fees,
- Columbia Pictures Industries Inc of SEK 333,500, of which SEK 246.000 refers to counsel fees,
- Twentieth Century Fox Film Corporation of SEK 333,500, of which SEK 246,000 refers to counsel fees,
- Mars Media Meteiligungs GmbH & Co Film Productions of SEK 333,500, of which 246 000 refers to counsel fees,
- ,
- Blizzard Entertainment Inc of SEK 25,000 in counsel feels,
- and
- Activision Publishing Inc of SEK 12,500 in counsel feels,

as well as interest on these amounts in accordance with § 6 of the Interest Act (1975:635) from the date of this verdict until payment is made.

2. Fredrik Neij's claim for compensation for appearance in accordance with Chapter 31 § 2 second paragraph of the Code of Judicial Procedure is dismissed.

3. The District Court awards Jonas Nilsson payment from public funds of SEK 949,025 for his work as counsel appointed by the Court. Of this sum, SEK 656,880 refers to work, SEK 35,525 to time wasted, SEK 66,815 to expenses and SEK 189,805 to VAT.

The cost of the defence will remain with the state.

STOCKHOLM DISTRICT COURT

Division 5

Unit 52

VERDICT B 13301-06

17 April 2009

handed down in Stockholm

Case no B 13301-06**PARTIES** (Number of defendants: 4)**Prosecutor**

District Prosecutor Håkan Roswall

The International Public Prosecution Office in Stockholm

Plaintiffs

Plaintiffs, see Appendix 1.

Defendant

Gottfrid Svartholm Warg, 841017-0537

Box 1206

114 79 Stockholm

Defence counsel appointed by the court:

Ola Salomonsson, Attorney-at-Law

Advokatfirman Salomonsson & Liljekvist HB

Kornhamnstorg 55

111 27 Stockholm

VERDICT**Crimes committed**

1. Complicity in breach of the Copyright Act
2. Breach of the Prohibition of Certain Hazardous Goods Act

Statutes involved

§§ 1, 2, 46, 53, 57 of the Copyright Act

(1960:729) and Chapter 23 § 4 of the Penal Code

§ 3 paragraph 6 and § 4 of the Prohibition of Certain Health-Impairing Goods Act

Sanctions etc.

1 year's imprisonment

The following indictments are dismissed

1. Preparation for breach of the Copyright Act in accordance with the 2nd count of the indictment.

2. Breach of the Prohibition of Certain Health-Impairing Goods Act in accordance with the summons of 14 February 2008, indictment item 1.
3. Breach of the Prohibition of Certain Doping agents Act in accordance with the summons of 14 February 2008, indictment item 2
4. Drug offences in accordance with the summons of 14 February 2008, indictment item 3.

Damages

Gottfrid Svartholm Warg will, jointly with the other defendants, pay compensation to

- Sony Music Entertainment (Sweden) AB of EUR 41,467,
 - Universal Music Aktiebolag of EUR 73,782 ,
 - Playground Music Scandinavia AB of EUR 28,159 ,
 - Bonnier Amigo Music Group AB of EUR 4,290 ,
 - EMI Music Sweden Aktiebolag of EUR 162,988 ,
 - Warner Music Sweden Aktiebolag of EUR 146,484 ,
 - Yellow Bird Films AB of SEK 3,150,000 ,
 - Nordisk Film Valby A/S of SEK 225,000 ,
 - Warner Bros Entertainment Inc of SEK 2,484,225 ,
 - Metro-Goldwyn-Mayer Pictures Inc and Columbia Pictures Industries Inc of SEK 5,579,325 in total, 25 percent of which is payable to Metro-Goldwyn-Mayer Pictures Inc and 75 percent of which is payable to Columbia Pictures Industries,
 - Twentieth Century Fox Film Corporation of SEK 10,822,500 ,
 - Warner Bros Entertainment Inc of SEK 414,000 and
 - Twentieth Century Fox Film Corporation and Mars Media Meteiligungs GmbH & Co Film Productions of SEK 4,495,950 in total, 1 percent of which is payable to Twentieth Century Fox Film Corporation and of 99 percent of which is payable to Mars Media Beteiligungs GmbH & Co Film Productions,
- as well as interest in accordance with § 6 of the Interest Act (1975:635) from 31 May 2006 until payment is made

Forfeiture and confiscations

1. Claims for forfeiture of value – jointly with the other defendants – are dismissed.
2. The confiscated computers found at the site of the operation of The Pirate Bay will remain confiscated until the sentence has become legally binding (BLG 0240-06-587 paragraphs 1-16 and 23).
3. The confiscated written documents will remain confiscated until the sentence has become legally binding (BLG 0240-06-590 paragraphs 2 and 7; BLG 0240-06-591 paragraphs 1-10; BLG 0240-06-595 paragraph 28; BLG 0240-06-596 paragraph 3; BLG 0240-06-598 paragraphs 4 and 6).
4. The confiscated computers will remain confiscated until the sentence has become legally binding (BLG 0240-06-595 paragraphs 3, 8, 9 and 10).
5. The confiscated health-impairing goods are declared forfeit. The confiscation will remain in force (BLG 0240-06-609 paragraphs 1, 2, 3, 4 and BLG 0240-06-610 paragraphs 2, 4, 7, 8, 10, 11, 15-20, 23-26, 30).
6. The 3 confiscated tablets of Klomifen are declared forfeit. The confiscation will remain in force (BLG 0240-06-610 paragraph 6).
7. The confiscated narcotic drugs are declared forfeit. The confiscation will remain in force (BLG 0240-06-610 paragraphs 3, 13, 14, 21).

8. The confiscated spoon containing traces of amphetamine is declared forfeit. The confiscation will remain in force (BLG 0240-06-610 paragraph 5).
9. The confiscated health-impairing goods are declared forfeit. The confiscation will remain in force (BLG 2007-0201-BG1034 paragraphs 6-8, 14, 17, 18, 20-25).

Criminal victims fund

The defendant is ordered to pay a fee of SEK 500 in accordance with the Criminal Victims Fund Act (1994:419).

Compensation

1. Gottfrid Svartholm Warg will, jointly with the other defendants, pay compensation for legal costs to
 - Sony Music Entertainment (Sweden) AB of SEK 468,000 ,
 - Universal Music Aktiebolag of SEK 156,000 ,
 - Playground Music Scandinavia AB of SEK 156,000 ,
 - Bonnier Amigo Music Group AB of SEK 102,000 ,
 - EMI Music Sweden Aktiebolag of SEK 264,000 ,
 - Warner Music Sweden Aktiebolag of SEK 54,000 , all of which refers to counsel fees,
 - Yellow Bird Films AB of SEK 484,920 , of which SEK 440,640 refers to counsel fees,
 - Nordisk Film Valby A/S of SEK 53,880 , of which SEK 48,960 refers to counsel fees,
 - Warner Bros Entertainment Inc of SEK 592,000, of which SEK 504,500 refers to counsel fees,
 - Columbia Pictures Industries Inc of SEK 333,500, of which SEK 246,000 refers to counsel fees,
 - Twentieth Century Fox Film Corporation of SEK 333,500, of which SEK 246,000 refers to counsel fees,
 - Mars Media Meteiligungs GmbH & Co Film Productions of SEK 333,50, of which SEK 246 000 refers to counsel fees,
 - Blizzard Entertainment Inc of SEK 25,000 for counsel fees and
 - Activision Publishing Inc of SEK 12,500 for counsel fees

as well as interest on these amounts in accordance with § 6 of the Interest Act (1975:635) from the date of this verdict until payment is made.

2. The District Court awards Ola Salomonsson payment from public funds of SEK 801,825 for his work as counsel appointed by the Court. Of this sum, SEK 629,280 refers to work, SEK 2,180 to time wasted and SEK 160,365 to VAT.
The cost of the defence will remain with the state.

STOCKHOLM DISTRICT COURT

Division 5

Unit 52

VERDICT B 13301-06

17 April 2009

handed down in Stockholm

Case no B 13301-06

PARTIES (Number of defendants: 4)

Prosecutor

District Prosecutor Håkan Roswall

The International Public Prosecution Office in Stockholm

Plaintiffs

Plaintiffs, see Appendix 1.

Defendant

Peter Sunde Kolmisoppi, 780913-4815

Älgatan 29

216 15 Limhamn

Defence counsel appointed by the court:

Peter Althin, Attorney-at-Law

Advokatfirman Althin

Skeppsbron 28, 3 tr

111 30 Stockholm

VERDICT**Crimes committed**

Complicity in breach of the Copyright Act

Statutes involved

§§ 1, 2, 46, 53, 57 of the Copyright Act

(1960:729) and Chapter 23 § 4 of the Penal Code

Sanctions etc.

1 year's imprisonment

The following indictment is dismissed

Preparation for breach of the Copyright Act in accordance with the 2nd count of the indictment.

Damages

Peter Sunde Kolmisoppi will, jointly with the other defendants, pay compensation to
- Sony Music Entertainment (Sweden) AB of EUR 41,467,

- Universal Music Aktiebolag of EUR 73,782,
- Playground Music Scandinavia AB of EUR 28,159,
- Bonnier Amigo Music Group AB of EUR 4,290,
- EMI Music Sweden Aktiebolag of EUR 162,988,
- Warner Music Sweden Aktiebolag of EUR 146,484,
- Yellow Bird Films AB of SEK 3,150,000,
- Nordisk Film Valby A/S of SEK 225,000,
- Warner Bros Entertainment Inc of SEK 2,484,225,
- Metro-Goldwyn-Mayer Pictures Inc and Columbia Pictures Industries Inc of SEK 5,579,325 in total, 25 percent of which is payable to Metro-Goldwyn-Mayer Pictures Inc and 75 percent of which is payable to Columbia Pictures Industries,
- Twentieth Century Fox Film Corporation of SEK 10,822,500,
- Warner Bros Entertainment Inc of SEK 414,000 and
- Twentieth Century Fox Film Corporation and Mars Media Meteiligungs GmbH & Co Film Productions SEK 4,495,950 in total, 1 percent of which is payable to Twentieth Century Fox Film Corporation and 99 percent of which is payable to Mars Media Beteiligungs GmbH & Co Film Productions,

as well as interest in accordance with § 6 of the Interest Act (1975:635) from 31 May 2006 until payment is made.

Forfeiture and confiscations

1. Claims for forfeiture of value – jointly with the other defendants – are dismissed.
2. The confiscated computers found at the site of the operation of The Pirate Bay will remain confiscated until the sentence has become legally binding (BLG 0240-06-587 paragraphs 1-16 and 23).
3. The confiscated written documents will remain confiscated until the sentence has become legally binding (BLG 0240-06-590 paragraphs 2 and 7; BLG 0240-06-591 paragraphs 1-10; BLG 0240-06-595 paragraph 28; BLG 0240-06-596 paragraph 3; BLG 0240-06-598 paragraphs 4 and 6).

Criminal victims fund

The defendant is ordered to pay a fee of SEK 500 in accordance with the Criminal Victims Fund Act (1994:419).

Compensation

1. Peter Sunde Kolmisoppi will, jointly with the other defendants, pay compensation for legal costs to
 - Sony Music Entertainment (Sweden) AB of SEK 468,000 ,
 - Universal Music Aktiebolag of SEK 156,000 ,
 - Playground Music Scandinavia AB of SEK 156,000 ,
 - Bonnier Amigo Music Group AB of SEK 102,000 ,
 - EMI Music Sweden Aktiebolag of SEK 264,000 ,
 - Warner Music Sweden Aktiebolag of SEK 54,000 , all of which refers to counsel fees,
 - Yellow Bird Films AB of SEK 484,920 , of which SEK 440,640 refers to counsel fees,
 - Nordisk Film Valby A/S of SEK 53,880 , of which SEK 48,960 refers to counsel fees,
 - Warner Bros Entertainment Inc of SEK 592,000, of which SEK 504,500 refers to counsel fees,

- Columbia Pictures Industries Inc of SEK 333,500, of which SEK 246,000 refers to counsel fees,
- Twentieth Century Fox Film Corporation of SEK 333,500, of which SEK 246,000 refers to counsel fees,
- Mars Media Meteiligungs GmbH & Co Film Productions of SEK 333,500 , of which SEK 246,000 refers to counsel fees,
- Blizzard Entertainment Inc of SEK 25,000 in counsel fees and
- Activision Publishing Inc of SEK 12,500 in counsel fees

as well as interest on these amounts in accordance with § 6 of the Interest Act (1975:635) from the date of this verdict until payment is made.

2. The District Court awards Peter Althin payment from public funds of SEK 708,054 for his work as counsel appointed by the Court. Of this sum, SEK 540,960 refers to work, SEK 21,315 to time wasted and SEK 4,168 to expenses and SEK 141,611 to VAT.

The cost of the defence will remain with the state.

STOCKHOLM DISTRICT COURT
Division 5
Unit 52

VERDICT B 13301-06
17 April 2009
handed down in Stockholm

Case no B 13301-06

PARTIES (Number of defendants: 4)

Prosecutor

District Prosecutor Håkan Roswall
The International Public Prosecution Office in Stockholm

Plaintiffs

Plaintiffs, see Appendix 1.

Defendant

Carl Ulf Sture Lundström, 600413-6377
Vorderfuchsloch 1
CH 8496 Steg
Switzerland

Defence counsel:

Stefan Jevinger, Attorney-at-Law
Rosengrens Advokatbyrå i Göteborg AB
Box 2523
403 178 Göteborg

VERDICT

Crimes committed

Complicity in breach of the Copyright Act

Statutes involved

§§ 1, 2, 46, 53, 57 of the Copyright Act
(1960:729) and Chapter 23 § 4 of the Penal Code

Sanctions etc.

1 year's imprisonment

The following indictment is dismissed

Preparation for breach of the Copyright Act in accordance with the 2nd count of the indictment.

Damages

Carl Lundström will, jointly with the other defendants, pay compensation to

- Sony Music Entertainment (Sweden) AB of EUR 41,467,
- Universal Music Aktiebolag of EUR 73,782,
- Playground Music Scandinavia AB of EUR 28,159,
- Bonnier Amigo Music Group AB of EUR 4,290,
- EMI Music Sweden Aktiebolag of EUR 162,988,
- Warner Music Sweden Aktiebolag of EUR 146,484,
- Yellow Bird Films AB of SEK 3,150,000,
- Nordisk Film Valby A/S of SEK 225,000,
- Warner Bros Entertainment Inc of SEK 2,484,225,
- Metro-Goldwyn-Mayer Pictures Inc and Columbia Pictures Industries Inc of SEK 5,579,325 in total, 25 percent of which is payable to Metro-Goldwyn-Mayer Pictures Inc and 75 percent of which is payable to Columbia Pictures Industries,
- Twentieth Century Fox Film Corporation of SEK 10,822,500,
- Warner Bros Entertainment Inc of SEK 414,000 and
- Twentieth Century Fox Film Corporation and Mars Media Meteiligungs GmbH & Co Film Productions SEK 4,495,950 in total, 1 percent of which is payable to Twentieth Century Fox Film Corporation and 99 percent of which is payable to Mars Media Beteiligungs GmbH & Co Film Productions,

as well as interest in accordance with § 6 of the Interest Act (1975:635) from 31 May 2006 until payment is made.

Forfeiture and confiscations

1. Claims for forfeiture of value – jointly with the other defendants – are dismissed. The confiscated computer is declared forfeit. It will remain confiscated (BLG 0240-06-587 paragraph 7).
2. The confiscated computers found at the site of the operation of The Pirate Bay will remain confiscated until the sentence has become legally binding (BLG 0240-06-587 paragraphs 1-16 and 23).
3. The confiscated written documents will remain confiscated until the sentence has become legally binding (BLG 0240-06-590 paragraphs 2 and 7; BLG 0240-06-591 paragraphs 1-10; BLG 0240-06-595 paragraph 28; BLG 0240-06-596 paragraph 3; BLG 0240-06-598 paragraphs 4 and 6).

Criminal victims fund

The defendant is ordered to pay a fee of SEK 500 in accordance with the Criminal Victims Fund Act (1994:419).

Compensation

1. Carl Lundström will, jointly with the other defendants, pay compensation for legal costs to
 - Sony Music Entertainment (Sweden) AB of SEK 468,000 ,
 - Universal Music Aktiebolag of SEK 156,000 ,
 - Playground Music Scandinavia AB of SEK 156,000 ,
 - Bonnier Amigo Music Group AB of SEK 102,000 ,
 - EMI Music Sweden Aktiebolag of SEK 264,000 ,
 - Warner Music Sweden Aktiebolag of SEK 54,000 , all of which refers to counsel fees,
 - Yellow Bird Films AB of SEK 484,920 , of which SEK 440,640 refers to counsel fees,
 - Nordisk Film Valby A/S of SEK 53,880 , of which SEK 48,960 refers to counsel fees,

- Warner Bros Entertainment Inc of SEK 592,000, of which SEK 504,500 refers to counsel fees,
- Columbia Pictures Industries Inc of SEK 333,500, of which SEK 246,000 refers to counsel fees,
- Twentieth Century Fox Film Corporation of SEK 333,500, of which SEK 246,000 refers to counsel fees,
- Mars Media Meteiligungs GmbH & Co Film Productions of SEK 333,500, of which SEK 246,000 refers to counsel fees,
- Blizzard Entertainment Inc of SEK 25,000 in counsel fees and
- Activision Publishing Inc of SEK 12,500 in counsel fees

as well as interest on these amounts in accordance with § 6 of the Interest Act (1975:635) from the date of this verdict until payment is made.

2. Carl Lundström's claims for compensation for legal costs and cost of appearance are dismissed.
3. Carl Lundström will refund the state the sum of SEK 175,663 which, in accordance with the court's decision, was paid from public funds to Stefan Jevinger on 2 September 2008 in his previous role as defence appointed by the court. 1.

Other

Carl Lundström's request that the District Court obtain a preliminary ruling from the European Court of Justice.

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STOCKHOLM DISTRICT COURT

Division 5

Unit 52

VERDICT

17 April 2009

B13301-06

THE CASE

A file is a collection of data which may contain music, films or other types of data, such as computer games. The file can be stored on the computer hard disk, but also on CDs or DVDs for example.

The term filesharing means that a person makes the files on a computer available to other computer users (other computers) who/which form part of a computer network, such as the Internet.

A number of different filesharing programs and technologies have been developed over the years. There have been or are two main types of filesharing systems.

The client-server structure can be described as an older system, which involves a network with a central computer (host computer) which serves users by allowing them to store (upload) or collect (download) files. The drawbacks of this system are reputed to be its capacity (bandwidth) and vulnerability. Napster was one example of this type of system.

Later on, filesharing software based on peer-to-peer technology was developed. This technology means that files can be transferred between communicating computers which are on an equal footing with each other, i.e. neither has the role of client or host computer. There is no central computer in a network based on this technology. Filesharing software which uses this technology includes Direct Connect, which acts as an intermediary for contacts between individual computers connected to hubs. Another peer-to-peer technology used for filesharing, is the software and file transfer protocol called BitTorrent. BitTorrent software is used to divide a digital file into different segments and give them a mathematical number (known as a hash total), and to create a torrent file. A torrent file is a file which, in principle, contains only data which identifies the components the digital file has been divided into. To facilitate distribution of the digital file, an address for one or more trackers is, as a rule, specified in a torrent file.

The purpose of a tracker is to inform users of a specific torrent files which other users share precisely that digital file. The torrent file can be uploaded to a web server which stores the torrent file for downloading by users.

Between 1 July 2005 and 31 May 2006 – the period this case refers to - The Pirate Bay website provided a filesharing service which used the BitTorrent protocol.

In January 2008, the District Prosecutor indicted Fredrik Neij, Gottfrid Swartholm Warg, Peter Sunde Kolmisoppi and Carl Lundström for complicity in breach of the Copyright Act (1960:729), since, jointly and in collusion with each other and another person, they had been responsible for the operation of the filesharing service The Pirate Bay and, through this, aided and abetted other individuals who, through transfer via the Internet of files containing certain named copyright-protected recordings of sound and moving pictures, as well as computer software (computer games), had made the recordings and software available to the general public on certain specified dates and, on a certain date, also aided and abetted others in the production of copies of the recordings and computer software. According to the District Prosecutor, the aiding and abetting referred to the fact that the defendants, through the filesharing service, provided others with the opportunity to upload torrent files to the service, provided others with a database linked to a catalogue of torrent files, provided the opportunity for others to search for and download torrent files and also provided the functionality with the assistance of which individuals wishing to share files with each other could contact each other through the filesharing service's tracker function.

The District Prosecutor also alleged that the defendants were guilty of preparation for breach of the Copyright Act, during the period 1 July 2005 to 31 May 2006, in that, in connection with the operation and through the functionality of the filesharing service, in a specially prepared database with associated catalogue, they received and stored the torrent files which related to the copyright-protected rights and works. The torrent files were specifically intended to be used as an aid in breach of the Copyright Act.

The District Prosecutor subsequently also indicted Gottfrid Svartholm Warg for breach of the Prohibition of Certain Health-Impairing Goods Act.

The District Prosecutor later withdrew the indictment as far as it concerned the use of a file containing Max Peezay's record "Diskokommittén".

Of the plaintiff companies listed in Appendix 1, 14 – six Swedish record companies, two Nordic film companies and six American film companies – brought individual claims against the defendants, on grounds of breach of the Copyright Act, for the joint and several payment of damages for utilisation of rights and works, as well as damages for losses other than utilisation. The claims totalled significant amounts. The District Court decided that the claims would be heard in connection with the indictment. On a number of occasions during the pre-trial conference, the Court dismissed requests from the defendants that the claims should be heard as a separate case, under civil law.

During the main hearing in the case, the District Prosecutor initially changed the indictment for complicity by dropping from the indictment the charge that the defendants, on certain given dates, also aided and abetted other individuals in producing copies of the recordings and computer games. The defendants objected that the change by the District Prosecutor was

not a permitted adjustment of the indictment, but that the indictment had, in fact, been revoked on the issue of aiding and abetting the production of copies. They therefore moved that a verdict of not guilty in that part of the indictment which referred to aiding and abetting the production of copies be returned. The District Court found, in a decision during the trial, that the District Prosecutor's change to the indictment represented the kind of change to an indictment covered by chapter 45 § 5 third paragraph of the Criminal Code and was, therefore, a permitted change to the indictment.

During the main hearing, the District Prosecutor subsequently adjusted the indictment in the following respects as well.

On the issue of the offences of complicity he no longer alleged that the components an index portal in the form of a website with search function, a database with catalogues containing torrent files and a tracker function were essential to allow users of the filesharing service to share files with each other. The District Prosecutor also alleged that the aiding and abetting consisted not only of the provision of an opportunity for others to upload, but also to store torrent files to the service.

On the issue of the offence of preparation, the District Prosecutor alleged that it had been committed only on 31 May 2006 and only in Stockholm and, consequently, not during the period of time previously stated.

Consequently, this case concerns the issue of criminal complicity in the infringement of copyright by individuals who are alleged to have provided a filesharing service within a computer network, and of the liability of those involved to pay damages under the terms of the Copyright Act.

CLAIMS AND POSITIONS

The indictments

The District Prosecutor demanded the conviction of the defendants for complicity in breach of the Copyright Act and for preparation for breach of the Act, and set out the special motions listed in *Appendix 2*.

All plaintiffs have supported the indictment for breach of the Copyright Act. With reference to the indictment for preparation, the plaintiffs have, secondly, supported the indictment covering the period 1 July 2005 to 31 May 2006.

Fredrik Neij, Gottfrid Svartholm Warg, Peter Sunde Kolmisoppi and Carl Lundström have all denied liability for complicity in and preparation for breach of the Copyright Act respectively.

The defendants have disputed the special motions aimed at them collectively or individually, apart from the motion under e) which none of the defendants has had any objection to.

The defendants have cited the following circumstances in support for their positions.

Fredrik Neij:

The filesharing service The Pirate Bay was not illegal, so no criminal complicity can be asserted simply on the basis that the service has been supplied with and provided information on torrent files. Nor is there any evidence that a principal offence has taken place.

The Pirate Bay has only used information on torrent files from Internet users without The Pirate Bay or any of its representatives having acquainted themselves with any copyright-protected material or actively referred to such material. The production of copies has taken place on the users' computers without the recordings and computer programs covered by the indictment having passed through The Pirate Bay's computers.

He has not intentionally been complicit in the infringement of copyright in accordance with indictment count 1, since he has not been aware of the existence of the files specified in the count. It is the users of The Pirate Bay who have been responsible for the files they have supplied and shared with others.

Fredrik Neij has agreed with the District Prosecutor's allegation that The Pirate Bay is an Internet filesharing service which uses the BitTorrent protocol and that the service consists of three sub-components (indictment count 1, description of the act, first paragraph, first to third sentences). He has agreed that the operation of the service has, to some extent, been financed by advertising revenue. He has also agreed that, in accordance with the allegations, he has been involved in the operation of the filesharing service on the dates and from the locations specified in the description of the act (third paragraph). He has confirmed the District Prosecutor's allegation that the filesharing service provided the opportunity for others to upload and store torrent files, for others to search for and download torrent files, and that the service had a tracker function which made it possible for individuals who wanted to share files to contact each other (description of the act, second-last paragraph), but has argued that this is a widely-used, conventional filesharing technology and should, therefore, not be regarded as aiding and abetting an infringement.

Preparation for breach of the Copyright Act has not taken place for the same reasons cited in support of the fact that no complicity took place, and the torrent files have not been specifically dedicated to be used as an aid in the offences.

Gottfrid Svartholm Warg:

He has cited the same circumstances as Fredrik Neij in support for his denials.

He has agreed that the tracker function – which he created – has resulted in a peer-to-peer network. He has also agreed that the filesharing service has, to some extent, been financed by advertising revenue, and that he has handled most of the operational aspects of the service (indictment count 1, description of the act, third paragraph). He has emphasised that he, jointly and in collusion with Fredrik Neij only – not the other defendants – has been responsible for the measures involved in the operation of the filesharing service.

Peter Sunde Kolmisoppi:

He has not jointly and in collusion with the other defendants been responsible for the measures involved in the operation of the filesharing service and, therefore, not provided the opportunities which facilitated filesharing from The Pirate Bay.

He has, in addition, cited the same circumstances as Fredrik Neij in support of his denials.

Carl Lundström:

It is not an offence per se to provide a filesharing service which can be used for both legal and illegal purposes.

The indictment refers to responsibility for collective complicity, which is not an offence covered by Swedish law. Carl Lundström – who has not been involved with the website The Pirate Bay – can only answer for his own actions.

He has owned the companies Rix Telecom AB and Rix Port 80 AB. The companies have hired out computers and provided broadband space on market terms for the company PRQ Internet Kommanditbolag, which was the owner of the domain names associated with The Pirate Bay's website. The companies were paid by PRQ Internet for services provided, just as it is by the company's other 50 – 100 customers.

He has had no intention of committing an infringement of copyright. The purpose of the company's contacts with the customer, PRQ Internet, was to earn money.

The indictment for preparation for breach of the Copyright Act is not fully framed. In addition, previous circumstances are cited in support for the denial of the indictment for preparation.

He has also cited the same circumstances put forward by Fredrik Neij in support of his denials.

The District Prosecutor has also charged Gottfrid Svartholm Warg with breach of the Prohibition of Certain Health-Impairing Goods Act (1999:42), of the Prohibition of Certain Doping Agents Act (1991:1969) and for narcotics offences and put forward special motions in connection with these indictments in the manner described in Appendix 3.

Gottfrid Svartholm Warg has denied the acts. He has admitted the special motions.

Gottfrid Svartholm Warg, as a result of being suspected of an offence on 23 June 2007, was arrested and held in custody during the period 23 – 25 June 2007.

The arguments put forward by the parties with reference to the indictment will be examined later by the District Court in a separate section of the verdict.

The individual claims

The plaintiff companies – apart from Blizzard Entertainment Inc, Warner Bros Entertainment Inc for that part which refers to the computer game F.E.A.R., which the company is the rights-owner for (count 3 C of the indictment for complicity) and Activision Publishing Inc – have moved that the defendants jointly and severally pay damages to each of the plaintiffs both for the utilisation of their rights or works, and for losses other than those stemming from the utilisation.

The six Swedish record companies have claimed damages of a total of EUR 2,118,071, in accordance with the following:

- Sony Music Entertainment of EUR 165,964 (55,321 + 110,643) for utilisation of sound recordings specified in indictment counts 1 A, C, H, I, L and U,
- Universal Music of EUR 384,365 (98,393 + 285,972) for utilisation of sound recordings specified in indictment counts 1 B, D and N,
- Playground Music Scandinavia of EUR 115,572 (37,556 + 78,016) for unlawful utilisation of sound recordings specified in indictment counts 1 E, M and R,
- Bonnier Amigo Music Group of EUR 23,849 (5,733 + 18,116) for unlawful utilisation of sound recordings specified in indictment counts 1 F and O,
- EMI Music Sweden of EUR 912,366 (217,334 + 695,032) for unlawful utilisation of sound recordings specified in indictment counts 1 G, K, P, Q and T, and
- Warner Music Sweden of EUR 585,956 (195,319 + 390,637) for unlawful utilisation of sound recordings specified in indictment count 1 S

as well as interest in accordance with § 6 of the Interest Act (1975:635) on the amounts from 31 May 2006 until payment is made.

The Nordic film companies have claimed damages of, firstly, a total of SEK

6,750,000:

- Yellow Bird Films, firstly, of SEK 6,300,000 (2,100,000 + 4,200,000) or alternatively of SEK 6,233,616 (2,033,616 + 4,200,000) for utilisation of picture recordings specified in indictment counts 2 A, B and D, as well as

- Nordisk Film Valby, firstly, of SEK 450,000 (150,000 + 300,000) or alternatively of SEK 327,080 (27,080 + 300,000) for utilisation of picture recordings specified in indictment count 2 C

as well as interest in accordance with § 6 of the Interest Act (1975:635) on the amounts from 31 May 2006 until payment is made.

The American film companies have claimed damages of a total of SEK 93,050,080 in accordance with the following:

- Warner Bros of SEK 11,547,638 (5,773,819 + 5,773,819) for utilisation of picture recordings specified in indictment count 2 E,
- Metro-Goldwyn-Mayer and Columbia Pictures of SEK 22,073,458 (11,036,729 + 11,036,729) for utilisation of a picture recording specified in indictment count 2 F, 25 percent of which is to be paid to Metro-Goldwyn-Mayer and 75 percent of which is to be paid to Columbia Pictures,
- Twentieth Century Fox of SEK 40,003,824 (20,001,912 + 20,001,912) for utilisation of a picture recording specified in indictment count 2 G,
- Warner Bros of SEK 1,637,494 (818,747 + 818,747) for utilisation of picture recording specified in indictment count 2 H, and
- Twentieth Century Fox and Mars Media Beteiligungs of SEK 17,787,666 (8,893,833 + 8,893,833) for picture recording specified in indictment count. 2 I, 1 percent of which is to be paid to Twentieth Century Fox and 99 percent of which is to be paid to Mars Media, as well as interest in accordance with § 6 of the Interest Act (1975:635) on the amounts from 31 May 2006 until payment is made.

The plaintiff companies have, as a basis for their claims, cited that the criminal acts under indictment counts 1 and 2 mean that the defendants intentionally were complicit in and prepared infringements of copyright which have involved making available to the general public copyright-protected sound and picture recording and works, or that they have, alternatively, been negligent in their obligations concerning copyright infringement. The making available of the recordings, which has occurred to a significant extent, involves liability to pay damages for the utilisation of the recordings. The making available has, in addition, resulted in losses for the rights-owners.

Fredrik Neij, Gottfrid Svartholm Warg, Peter Sunde Kolmisoppi and Carl Lundström have disputed the individual claims. They do not in any part agree that the damages are reasonable. They have agreed to the calculation of interest.

As grounds for their objections, the defendants have cited the same objections they have cited in their denial of the indictments. They have, in addition, cited that they have not acted

negligently (carelessly) and have, in addition, cited the following grounds for disputing the claims for damages.

The plaintiff companies have not suffered any injury since their sales of sound and picture recordings have not fallen as a result of the alleged infringements. The making available of the recordings has not led to those who have downloaded the recordings (produced copies) having, consequently, failed to purchase the equivalent copies from the rights-owners. Nor is there any other adequate causality between the specified injuries and the actions of the defendants.

The number of downloaded torrent files has not corresponded to the number of downloaded works. Nor is there any evidence that the downloads only involve unlawful originals.

Damages can only be paid for infringements committed in Sweden. Despite this, the plaintiffs have presented their claims for damages in a way which does not show where the infringement was committed.

Accomplices in breaches of the Copyright Act cannot be held liable to pay damages, since the Act prescribes liability to pay compensation for “the person” who unlawfully utilises a right, i.e. the perpetrator himself. Accomplices to offences cannot, in any case, be held liable for the whole injury.

A case like that of the filesharing service The Pirate Bay, which involves a service provider under the terms of the Electronic Commerce and Other Information Society Services Act (2002:562), does not provide grounds for a liability to pay damages since The Pirate Bay did not initiate the transfer of the information provided by a person using the filesharing service, did not select the recipient of the information and did not select or alter the information.

Any liability to pay compensation shall, in any case, be adjusted with respect to the defendants’ financial circumstances and the plaintiff companies’ need for compensation. Nor shall joint and several liability be imposed.

Carl Lundström has claimed that the design of the filesharing service The Pirate Bay, including its sub-components, and the fact that the tracker function has created a peer-to-peer network means that the Electronic Commerce Act is applicable to the operation. He has argued that the wording of the Act in comparison with the EU directive on which the Act is based is unclear and that the District Court has reason – for hearing the parts relating to liability and damages – to obtain a preliminary ruling by the European Court of Justice, and that the parties should be given the opportunity to comment in greater detail on which issues should be put to the Court.

The plaintiff companies have claimed compensation for legal costs.

Fredrik Neij has, in the event of an acquittal, claimed additional compensation for appearing before the Court.

Carl Lundström has, in the event of an acquittal, claimed compensation for the fees of his legal representative and for appearing before the Court.

ARGUMENTS BY THE PARTIES ETC.

The indictments

The District Prosecutor:

The filesharing service The Pirate Bay used BitTorrent technology in its operation.

The method for sharing a file containing, for example, a music recording, with others using the filesharing service was, therefore, as follows.

The computer user who wanted to make a file available (the seeder) owned or produce a copy of the recording on his or her computer.

The production of a torrent file which referred to the recording required a BitTorrent client, such as Maketorrent or Azareus, i.e. a program which could divide the file into various sections and then allocate it a hash total. To facilitate the making available of the work which the torrent file related to, it was, in addition, necessary to add the Internet address of a tracker. One option was to refer to several different trackers, not only the tracker provided by the filesharing service The Pirate Bay. When the torrent file was created, the user would also specify the designation (name/title) of the file.

The torrent file could then be uploaded to The Pirate Bay's website and stored there by the user, who had previously registered with the website, logging on to the website. The torrent file could also be distributed in other ways, e.g. through the user's own e-mail service, via various chat programs or by uploading it to the user's own website.

If another computer user subsequently wanted access to, for example, the music recording to which the torrent file related, this user would visit The Pirate Bay's website, search for the torrent file in a catalogue of such files available on the website, and download the torrent file to his or her computer. To access the actual music recording, the user who wanted access to the recording (a leecher) would then have to open his or her BitTorrent program, which would read the information on the torrent file regarding the tracker(s) specified. On contacting the tracker, the tracker transferred information to the user's computer about which other users were connected and involved in sharing the relevant recording. The software would also transfer various segments of the recording from each of these other users, until the recording was downloaded to the user who wanted access to the recording.

One prerequisite for the execution of the filesharing was that the BitTorrent clients of both the seeder and the user who wanted access were open (active).

The Pirate Bay's website contained several web pages. The first contained a logo, search box and links to other pages on The Pirate Bay.

By navigating to the page Bläddra bland torrenter [Browse torrents], a user would arrive at specific categories – e.g. music, films, TV and games – from which they could obtain a search result for torrent files named after, for example, films.

Clicking on a torrent file revealed information on, for example, when it had been uploaded, by what user name (the uploader) and how many times it had been downloaded. The information also included details of the content of the file the torrent file referred to, as well as details of the size of the file and certain comments about it.

By navigating to the Nya torrenter [New torrents] page, a user could obtain information on when different torrent files had been uploaded, listed by date and time.

By clicking on the page Topp 100 [Top 100] on the first page, the user could access popular torrent files.

From the first page, a user could also go to a page entitled Hur gör jag för att ladda ner [How do I download?]. This page provided details of how to download the BitTorrent software required for filesharing using the technology.

By clicking on Logga in [Log on] on the first page, a user could enter a user name and a password, which was a prerequisite for downloading a torrent file.

The page entitled Registrera [Register] was used to register new users of the filesharing service. They were asked to state, inter alia, a user name, e-mail address and password.

The page entitled Om [About] contained a presentation of the filesharing service The Pirate Bay and the technology used by the service. In addition, the page carried the following information on copyright-protected material:

“The members of The Pirate Bay represent a broad filesharing audience. Offensive material may, therefore, be available. Do not e-mail us if you find something unpleasant, but instead focus on the material you find enjoyable. The only time The Pirate Bay will remove torrents is if the name does not reflect the content. Users should be aware of what they are downloading.

The server contains only torrent files. This means that no copyright-protected and/or illegal material is stored by us. The persons behind The Pirate Bay cannot, therefore, be held responsible for the material distributed via the tracker. Any complaints from copyright individuals and/or lobby organisations will be ridiculed and displayed on the website.”

The page entitled Juridisk korrespondens [Legal correspondence] shows the correspondence “The Pirate Bay” has engaged in with various organisations or representatives of rights-owners.

Once a torrent file had been created and addressed to The Pirate Bay’s tracker, users could, on The Pirate Bay’s website, go to the page entitled Ladda upp torrent [Upload torrent] and there upload the created torrent file to the filessharing service. This was done by browsing for the created torrent file, changing its name, if necessary, categorising it and writing a description of the torrent file. Finally, a code would be used to upload the file to the filessharing service.

The website The Pirate Bay started operating in the middle of 2004 when Fredrik Neij and Gottfrid Svartholm Warg, who took over the operation from another person, allowed the company, PRQ Internet Kommanditbolag, to register the name of the website in the top domains .org, .com and .net. They were partners in the limited partnership company.

Initially, the operation was of relatively limited scope and primarily aimed at Swedish users. In October 2004, Fredrik Neij established contacts with Carl Lundström who, at the time, represented Rix Telecom AB. Carl Lundström offered the opportunity to obtain increased computing power at Rix Telecom’s premises in Gothenburg, through the provision of two servers (computers). These two servers, which were later seized, do not appear in the accounts of Rix Telecom.

In early January 2005, Carl Lundström discussed an international launch of the website with Fredrik Neij and Gottfrid Svartholm Warg. The opinion was that this would require other languages to be used on the website, as well as an increase in computing power. Carl Lundström, Fredrik Neij and Gottfrid Svartholm Warg agreed to establish a collaboration on a company basis. The agreement was for Carl Lundström to supply additional computers and operating capital, and to continue to provide Internet access. The intention was for Carl Lundström to own 40 percent of the company, with the other two shareholders owning 30 percent each.

The international launch required, inter alia, the rewriting of the tracker function. This was done by Gottfrid Svartholm Warg, who created a program for the tracker which would allow an increase in the number of users. In addition, the website was changed to suit a more international audience. It was also altered in a commercial sense, to allow it to accept larger quantities of advertising.

At this point, Gottfrid Svartholm Warg established contacts with Oded Daniel in Israel, who turned out to be a keen seller of advertisements and who also commented on the graphical design of the website.

During this period, Peter Sunde Kolmisoppi entered the picture for the purpose of designing the new website. He – who owned his own company, HAIQ Sweden AB – was also asked to

design the search function. For this purpose, the programming was carried out by certain other individuals, but under the general supervision of Peter Sunde Kolmisoppi.

In spring 2005, additional computers were purchased for the operation. The purchases were made by Rix Telecom, but one of the computers was posted on a clearing account which Carl Lundström had set up with the company, i.e. this is his computer. The other computers purchased were entered in the accounts of the company.

The Pirate Bay's new website was ready in June 2005.

In March 2005, Carl Lundström had expressed concern about changes to the Copyright Act due on 1 July 2005, which could mean that The Pirate Bay's operations could be rendered unlawful. Carl Lundström contacted a lawyer. Following discussions with his legal representative, he e-mailed Gottfrid Svartholm Warg and mentioned that as of 1 July 2005, the operation would be unlawful and that they should, therefore, consider relocating the operation to another country.

E-mails were exchanged between Carl Lundström and Gottfrid Svartholm Warg, discussing the possibility of moving to Russia or Argentina. A request by Carl Lundström to the Swedish Embassy in Argentina for assistance in relocating the operation there, since the situation vis a vis copyright in Argentina could be assumed to be more user-friendly than in Europe was turned down by the Embassy. Carl Lundström then contacted an Argentinean lawyer with the aim of ascertaining the cost of establishing the operation as a company in Argentina. The reply, which was received in July 2005, was forwarded to Gottfrid Svartholm Warg, with a query about whether to proceed.

In August 2005, Oded Daniel increased his efforts to sell advertising space. Peter Sunde Kolmisoppi was involved in the advertising sales operation.

Oded Daniel then came up with the idea the company Transworld Advertising Corporation, which he represented, as well as himself, Fredrik Neij, Gottfrid Svartholm Warg and Peter Sunde Kolmisoppi should form a company called Random Media to run the operations of The Pirate Bay. Transworld Advertising would invest USD 40,000 in the new company, while Fredrik Neij and Gottfrid Svartholm Warg would contribute the websites they owned. The articles of partnership – which were signed in September 2005 – show that in addition to the company promoters, an external party – also designated the hoster – would be given 920 shares corresponding to 8.25 percent of the shares. The external party was Carl Lundström who, at the time, was unaware of this fact but later became aware of it and acted accordingly.

Later, in autumn 2005 and early 2006, the filesharing operation was moved to Stockholm. In September 2005, an agreement was signed by PRQ Internet and Rix Port 80 AB on space for the computers (servers) and Internet access. The agreement meant that PRQ Internet, from January up to and including May 2006, would pay SEK 17,000 per month for services provided by Rix Port 80.

In early 2006, Fredrik Neij reminded the other partners to the Transworld Advertising agreement (Random Media) that Carl Lundström was to be paid. In the reminder, Fredrik Neij wrote that Carl Lundström's share was "8.5 %". In April 2006, Transworld Advertising transferred USD 2,500 (just over SEK 18,000) to the company Morca AG, a company wholly-owned by Carl Lundström. Documentation relating to the transfer states that it was for "Purchase of Media".

In autumn 2005 and in 2006, Gottfrid Svartholm Warg also received payments from Transworld Advertising for advertising space (purchase of media) on The Pirate Bay's website. Fredrik Neij received three such payments in 2006. The payments, which related to purchase of advertising space (purchase of media) amounted to SEK 1,200,000 in total.

In spring 2006, Carl Lundström also acquainted himself with the accounts from Oded Daniel to the partners to the Transworld Advertising agreement on the advertising space sold, which must be regarded as evidence that Carl Lundström was involved in the financing of the operations carried on by The Pirate Bay. In April 2006, Carl Lundström sent an e-mail to Oded Daniel with proposals for new services in the form of a pooling of The Pirate Bay's website and a digital television receiver, i.e. a strategic expansion of the filesharing service.

In May 2006, Peter Sunde Kolmisoppi travelled to Israel to meet Oded Daniel, and to discuss agreements with advertisers on the website.

Oded Daniel mainly involved himself in the selling of advertising space for advertisers outside the Nordic region. The right to sell advertising to advertisers within the Nordic region had been granted to the companies Crystone AB and Eastpoint Media AB. The contact person for these was Peter Sunde Kolmisoppi. He sent – via his own company, HAIQ Sweden AB – invoices to these advertising brokers for the concession of advertising space on The Pirate Bay. Payment was made to HAIQ Sweden.

The making available – in the form of transfer to the general public – of the sound and picture recordings and computer games included in the indictment for complicity occurred on the dates specified in each indictment count.

The filesharing service's website Detaljer för denna torrent [Details of this torrent], shows, for every individual sound or picture recording or computer game, when the torrent file was uploaded to The Pirate Bay.

Some time before The Pirate Bay's server and other equipment was seized on 31 May 2006, the plaintiff companies, through the staff of the International Federation of the Phonographic Industry, IFPI, (Sweden) and the Anti-piracy Agency, had, at certain times, downloaded (produced copies) of recordings by downloading torrent files relating to the recordings from The Pirate Bay. The plaintiff companies could then, by using the torrent files and a BitTorrent client, download a file containing the recordings from seeders and from others who had not downloaded the whole file but who shared the file at the same time as, within

the framework for a file-share taking place at the time, they downloaded the file. The downloads produced fully-functional copies. It was also possible, on this occasion, to see how many times the file had been downloaded, according to information shown on the page entitled Detaljer för denna torrent [Details of this torrent].

When the servers were seized on 31 May 2006, it became clear that in all but three cases, the number of downloads had increased in relation to the number at the time of the downloads made by the plaintiff companies.

Sony Music Entertainment et al (the six Swedish record companies):

In January 2006, the record companies reported certain individuals associated with The Pirate Bay as suspected of having committed offences. At this time, The Pirate Bay had over 700,000 registered users, and the website was, in addition to Swedish, available in 20 other languages. The Pirate Bay's operations meant that the individuals responsible for the operations were in any case guilty of complicity in an infringement through the actions described by the District Prosecutor.

Certain web pages on The Pirate Bay's website also made clear the views on the use of other people's copyright-protected rights or works of the representatives of the filesharing service. The page entitled Juridisk korrespondens [Legal correspondence] showed that significant amounts of information had been provided regarding the fact that uploading and downloading of torrent files which referred to copyright-protected rights or works were taking place on The Pirate Bay without the consent of the rights-owners. The presentation of the filesharing service on the website (on the page entitled Om [About]) also showed that the attitude of the representatives of The Pirate Bay was to ignore warnings of the use of copyright-protected material via the operation of the filesharing service.

Warner Bros et al (the American film and computer games companies):

In addition to the allegations by the District Prosecutor on the issue of complicity, it should be stressed that the representatives of The Pirate Bay have stated that they had the facilities for removing torrent files from the filesharing service, e.g. if the name did not correspond to the content of the file to which the torrent file referred.

Fredrik Neij:

In the presentation of The Pirate Bay on the website (the page entitled Om [About]), it was also stated that The Pirate Bay had an open tracker, where anyone could upload or download torrent files and write comments, as long as that individual was registered, and that no charge was made for this. The website was, therefore, based on the users' material – a user-generated site. It was made clear to every user that the filesharing service did not contain any copyright-protected material. A number of individuals were involved in The Pirate Bay's operations, and it is impossible to specify who wrote the presentation of the filesharing service.

The making available of a sound or picture recording or a work did not start automatically as a torrent file was uploaded. This required the uploader to keep his/her Internet access switched on and the BitTorrent software open.

There is some uncertainty about the information relating to the number of downloads displayed for the torrent files, since the counter, which noted the number of downloads of the material described by the torrent file, was not completely reliable.

The link between the making available copyright-protected recordings or works and the alleged complicit actions is unclear on several points. It is not known who the uploader was, where he was based, or how he had obtained the original of the file he was sharing. Nor has there been any concrete indication of how the uploader and downloader were influenced by the operations of The Pirate Bay or by Fredrik Neij, other than that the filesharing service provided a filesharing model which is, in fact, legal.

Fredrik Neij was not involved in the initial operation of The Pirate Bay. In 2004, he was asked to assist with the technical aspects of the operation. The grounds for his involvement in the operation were neither financial nor ideological, and the work was carried out free of charge.

The Pirate Bay was not run as a commercial project for the purpose of generating an income for the individuals behind the operation. To finance the operation, which was relatively expensive, the website did, however, accept advertising.

The Pirate Bay did not contain any copyright-protected material, and the individuals in the operation were not aware that such material was included in that which was file-shared, since this was outside The Pirate Bay's control.

The Pirate Bay was – as stated previously – an open search service. Fredrik Neij could not, therefore, be responsible for the material referred to by the users via the torrent files and even less so if the material was protected by copyright. He has, therefore, had no knowledge of the principal offence.

In the hearing of the case, it is also important that the fundamental idea behind the Internet is to refer to various documents, which would also suggest a right to refer to torrent files. The BitTorrent technology is also one of the most commonly-used filesharing technologies.

The Pirate Bay must be regarded as a service provider in accordance with the Electronic Commerce Act, i.e. a “person” who provides one of the services of the information society. Such services are those which are provided at a distance, electronically and at the individual request of the service recipient. A service provider who supplies information cannot, under the provisions of the Act, be held liable for an offence which relates to the content of the information. The purpose of the Act is, instead, to place the burden of responsibility on the person who provides the information, and not on the person who simply supplies a route by which the information can be transferred.

Gottfrid Svartholm Warg:

He set up The Pirate Bay's operation in 2003 with a small single computer. The operation was, eventually, named, but the name was in no way symbolic. He had the decision-making power in the operation and made the necessary decisions. After Fredrik Neij entered the operation, all decisions were made in consultation with him.

He created the tracker software. In doing so, he did not provide the copyright-protected performances, nor did he urge the users to infringe copyright. Nor did the majority of files shared contain copyright-protected material.

The agreement entered into with, inter alia, Transworld Advertising, was certainly signed, but never resulted in any operation within the framework of the planned company, Random Media.

It is correct that he received payments from abroad, but these did not always relate to payment for advertising space on The Pirate Bay's website.

Peter Sunde Kolmisoppi:

He was not responsible for the actions relating to the running of the operation, as alleged by the District Prosecutor. The payments which have allegedly involved him have been made to his company. In the agreement signed with, inter alia, Transworld Advertising, he was not listed as a promoter. He did not, consequently, hold any position in The Pirate Bay's operation which could lead to him being regarded as responsible for it.

Most of the files made available for filesharing via The Pirate Bay did not contain copyright-protected material. Only a very small proportion of the files related to copyright-protected performances.

Carl Lundström:

The indictment for breach of the Copyright Act is aimed at intermediaries. The Pirate Bay's filesharing service is based on information transferred between computer users. According to the Electronic Commerce Act – and EU directive 2003/31/EC on which the Act is based – a service provider who supplies information but who has not initiated the transfer, which The Pirate Bay has not done, cannot be held responsible for an offence, nor found liable to pay damages.

Carl Lundström has not been involved with The Pirate Bay website. He could certainly, like others, log on to the website and browse through it, but this does not mean that he played an active part in the operation.

He was – and still is – a businessman involved in the financing of the operations of inventors. He set up the company Rix Telecom in the late 1990s. This was a traditional broadband company with several employees. He was not involved in its day-to-day operations, but dealt with general issues.

In 2004, he met Fredrik Neij at an exhibition and invited him to come and work for Rix Telecom. Through the auspices of Fredrik Neij, a meeting with Gottfrid Svartholm Warg was arranged at the end of 2004, when The Pirate Bay had already started to operate a filesharing service. At this meeting, he was shown how the filesharing service worked. Rix Telecom – and its subsidiary in Stockholm, Stockholm Rix Port 80 – had, at this time, expanded their operations to include co-location, i.e. to let offices/premises for installing computers. As early as October 2004, Rix Port 80 signed an agreement with PRQ Internet – the legal entity which owned the website The Pirate Bay – on the installation of PRQ's computers in the premises of the joint stock company. This agreement was drawn up before Rix Telecom had acquired Rix Port 80.

Rix Telecom had, as part of its operations, bought and sold computers to its customers. The computers would be purchased by one of the company's employees, and it is impossible to know why some of them were found in the computer cabinet where the servers (computers) involved in The Pirate Bay's operations were later seized. In early 2005, two computers purchased on behalf of Carl Lundström were delivered to Rix Telecom. He purchased these computers for further forwarding to PRQ Internet.

Carl Lundström became interested in PRQ Internet for two reasons. He saw PRQ as a future customer for Rix Telecom's co-location operations. In early 2005, he also took an interest in The Pirate Bay's operations and suggested becoming a shareholder in PRQ.

Later in the spring of 2005, he found out that the Copyright Act was about to be changed on 1 July 2005, and that this change could lead to The Pirate Bay's filesharing operation being regarded as infringing copyright. He therefore sought legal advice. He also investigated – at the request of Fredrik Neij and Gottfrid Svartholm Warg – the opportunities for the operation on foreign soil, including Russia or Argentina. The responses were, however, wholly negative. In August/September 2005, he therefore backed out of the planned business relationship with PRQ Internet or with representatives of The Pirate Bay.

Rix Telecom – and the subsidiary Rix Port 80 – still maintained business relations with PRQ Internet for co-location services, as is shown, inter alia, by agreements from April, July and September 2005.

The agreement from September involved Rix Port 80 letting a computer cabinet (rack cabinet) at the company's premises and providing broadband space (traffic and connection) to PRQ Internet. Another agreement was signed between Rix Port 80 and PRQ Internet in February 2006, relating to co-location (hosting of server) in a computer cabinet which Carl Lundström, in capacity of manager of the company, was unaware of. In spring 2006, Rix Telecom purchased additional computers which were, subsequently, sold on to PRQ Internet. Since Rix Telecom was able to obtain a better price for the purchases for later sale to PRQ, this made the company money.

In April 2006, Rix Port 80 sent an invoice to PRQ Internet not only for co-location but also for other telecoms-related services provided on commercial terms. Carl Lundström was not involved in the invoicing process.

He was not aware of the agreement with, inter alia, Transworld Advertising, signed in September 2005, until it was shown to him as part of the preliminary investigation. The payment from Transworld Advertising received by him in April 2006 appears to have been executed by Oded Daniel, whom Carl Lundström has never previously met. They only met at a later date in April. In late May 2006, Oded Daniel contacted Carl Lundström, since they had got to know each other after a meeting in the USA in April 2006, outside the framework of The Pirate Bay's operations.

The individual claims

The individual claims cited by the parties will be considered by the District Court in a later section of this verdict.

EXAMINATION ETC. OF THE DEFENDANTS

Fredrik Neij has primarily stated the following. He has a long-standing interest in computers and technology, and this was why he became involved with The Pirate Bay. The name had already been established when he joined the operation. He did not join The Pirate Bay on any political or ideological grounds. To him, The Pirate Bay simply represented a technical challenge. He would be involved in the operation of a major website and a tracker. He would get access to computers which he would not otherwise be able to use. He came into contact with Gottfrid Svartholm Warg at some point in 2004. At this point, he purchased four computers on behalf of The Pirate Bay. After he started working for Carl Lundström, they agreed that he could store the computers at the premises which belonged to Carl Lundström's company, and that he would also be provided with bandwidth free of charge. He would pay for this by working at a reduced salary. He handled the registration of the domain names and, this is why he is specified as the contact person on the registration documents.

The Pirate Bay grew by itself. He and Gottfrid Svartholm Warg did not market the website. He is aware that Piratbyrå had a link to the website. The Pirate Bay was, initially, in Swedish. They then discovered that around 50 percent of visitors were foreign users. For this reason, the website was "translated" into other languages as well. A group of graphic designers, coders and moderators were involved in the work on the website. No-one had any specific decision-making powers. Everyone did whatever they, individually, felt was necessary.

He is aware that the website contained torrent files linked to films, music and games. He is also aware that a tab on The Pirate Bay contained letters and complaints from rights-owners. He did not, however, think that the operation was illegal, since he had checked this with

various legal experts. One of these was a law student who, in turn, checked this with his teachers and professors.

The Pirate Bay's tracker is an open tracker, which means that anyone can refer to it. The Pirate Bay contained around 700,000 torrent files. A manual examination of every one of these files would have been impossible. For this reason, the users were themselves held responsible for what was on the site. Torrent files were sometimes removed from the website. The Pirate Bay moderator would do this if someone complained that the description of a torrent file did not accurately reflect the content.

He knows Oded Daniel. They got to know each other sometime in 2004, when The Pirate Bay started carrying advertising in the form of banners on its website. It was Oded Daniel who got in touch with them. Not all of his contacts with Oded Daniel have involved The Pirate Bay. He has worked with Oded Daniel on around ten different websites. The money he was paid by Oded Daniel's company, Transworld Advertising, was probably remuneration for the work he had carried out on behalf of Oded Daniel.

He gave a speech at Mynttorget after the seizure of equipment etc. from The Pirate Bay. Piratbyrå had asked him to give the speech since he was one of the representatives of The Pirate Bay. He did not write the speech.

Gottfrid Svartholm Warg has, primarily, stated the following. Some individuals at Piratbyrå wanted to set up a BitTorrent tracker. This was at some point in the middle of 2003. He does not remember who came up with the name The Pirate Bay. He purchased additional memory for the computer and started experimenting since he was interested in the technology. At that time, he was working in Mexico. He did, however, need more server space and this was when he came into contact with Fredrik Neij. It was also then that the operation was relocated to Sweden. They regarded this as a fun project. The website started to grow immediately. New hardware was purchased continuously. They financed the operation with their own money and through donations. They started selling advertising space on the website when it became necessary for the running of the operation. They signed an agreement with Oded Daniel in October 2004. An improved version of The Pirate Bay was launched in spring 2005. The new version involved the site being made available in several languages, with a new design and much better technology.

He was not aware that the operation carried on by The Pirate Bay was illegal. He received complaints from various rights-owners. He also responded to some of them. The Pirate Bay's policy was – and still is – that it is the users who utilise the torrent files on the website. This is not something which the representatives of The Pirate Bay involve themselves with. The only things removed from The Pirate Bay have been torrent files which users have complained contain material which does not correspond to the description. This was done by the moderators of The Pirate Bay. Material featuring child pornography was also removed from the website. They would always report the matter to the police first, and, if the police later ordered them to remove the material, they would do so. There was also an automatic process for removing torrent files which were not downloaded.

The partnership agreement for Random Media was drawn up by Oded Daniel, since it was he who had a financial stake in The Pirate Bay. This was only one of several proposed agreements. No company was ever registered and no shares were allocated to the partners. The agreement came to nothing.

Carl Lundström has not been involved in The Pirate Bay's operations. Carl Lundström has no association with The Pirate Bay other than through the provision of Internet connection and the purchase of computers on behalf of The Pirate Bay by Rix Telecom AB.

Peter Sunde Kolmisoppi became involved when they needed a media spokesman.

Peter Sunde Kolmisoppi has, primarily, stated the following. He got to know Fredrik Neij and Gottfrid Svartholm Warg via the Internet. He became the media spokesman for The Pirate Bay since no-one else wanted to do the job. He does not remember when he became involved with The Pirate Bay. He was not involved in the operations carried on. He did not develop the layout or the categories on The Pirate Bay. He did not work on The Pirate Bay's database.

He did, however, suggest that The Pirate Bay should extract statistics from the website and that The Pirate Bay should introduce a support hotline. He did not purchase any computers on behalf of The Pirate Bay. He did purchase a computer on behalf of Piratbyrå, and this was the reason that this computer was located among The Pirate Bay computers.

The e-mail he received from Oded Daniel with proposals for measures which could be adopted by the website The Pirate Bay was forwarded by him to another person, who was to carry out the work. Oded Daniel often turned to him when Fredrik Neij and Gottfrid Svartholm Warg were not getting things done. He would then help out by "pulling some strings" with Fredrik Neij and Gottfrid Svartholm Warg, and otherwise "push" people into getting things done. He does not know why he has received revenue reports from Oded Daniel. Oded Daniel is a strange person, and he often received unsolicited e-mails from Oded Daniel. He was in contact with Eastpoint, one of The Pirate Bay's advertisers. He helped Oded Daniel with some invoicing issues by issuing invoices through his own company.

He later started to act as an intermediary in contacts between Eastpoint and Oded Daniel, since Eastpoint refused to speak to Oded Daniel. He met with Oded Daniel on many occasions. He was also involved in several other business deals with him.

He was aware of the e-mails and responses published on the web page entitled Juridisk korrespondens [Legal correspondence].

He signed the partnership agreement on the formation of Random Media. The purpose of the agreement was not to expand The Pirate Bay. Random Media was to earn money from advertising sales on The Pirate Bay. Another idea behind Random Media was to develop new services, e.g. Video Bay which was to be a competitor to YouTube. He only "skimmed" through the agreement. He did not understand everything contained therein. Random Media did not, however, start to operate.

Carl Lundström has, primarily, stated the following. He was the CEO of Rix Telecom AB during the period covered by the case. He met Fredrik Neij for the first time at an exhibition in Jönköping in autumn 2004. During this meeting, Fredrik Neij told him that he and another person had developed a filesharing service. The files shared could, according to Fredrik Neij, contain copyright-protected material, but the filesharing service itself was legal. Gottfrid Svartholm Warg demonstrated The Pirate Bay to him. At this point, Carl Lundström noticed that it contained torrent files which referred to protected works.

Fredrik Neij suggested that he would take a job with Rix Telecom at a reduced salary. In return, The Pirate Bay would be provided with free bandwidth and they would be allowed to store their computers at the company's premises. Part of the agreement was also that the computers would remain there even after The Pirate Bay started to "generate" money. He also purchased two new computers on behalf of The Pirate Bay.

He asked several legal experts whether or not the operation was legal. His statement to one of the legal experts, in an e-mails dated March 2005, that the purpose of The Pirate Bay was "pirate copying" was intended as a slight exaggeration. He wanted a reply to precisely this question, since he did not want to take any risks in this context.

He received a negative response which he forwarded to Fredrik Neij and Gottfrid Svartholm Warg. After receiving this message, he was no longer interested in becoming a shareholder in "The Pirate Bay". He did, however, later contact various people in Argentina and Russia to ascertain whether it would be possible to set up the operation there. He tried to help out after being asked for assistance either by Fredrik Neij or Gottfrid Svartholm Warg. He used the personal pronoun "we" in the email, since he represented The Pirate Bay, as one of his customers, when he made the enquiries. He met Oded Daniel at a conference in San Francisco at some point in April 2006. He does not know why Oded Daniel had set aside money on his behalf. Oded Daniel probably did not understand how matters stood. It cannot have been a question of a dividend. He was interested in The Pirate Bay, which is probably why he also received statistics on The Pirate Bay from Oded Daniel.

The parties have adduced written evidence.

At the request of the District Prosecutor, Magnus Mårtensson of IFPI Sweden and Anders Nilsson of the Antipiracy Agency have been examined as witnesses.

At the request of the plaintiff companies, John Kennedy, IFPI, Ludvig Werner, IFPI Sweden, Per Sundin, Universal Music, Bertil Sandgren and Per Ekengren, and

Grant Thornton, who have all submitted opinions, have been examined as witnesses.

Tobias Andersson and Kristoffer Schollin, LLD, who have also submitted opinions, have been examined at the request of Fredrik Neij and, with reference to Kristoffer Schollin, also at the request of Carl Lundström.

At the request of Peter Sunde Kolmisoppi, Professor Roger Wallis has been examined as a witness.

FINDINGS OF THE COURT

Indictments for breach of the Copyright Act

Comments on liability for breach of the Copyright Act

The Copyright Act distinguishes between copyright and certain rights associated with copyright. Copyright belongs to the person who has created a literary or artistic work, such as a film or a computer program. A right associated with copyright belongs to a producer of a sound recording or a recording of moving pictures, e.g. a record company (phonogram producer) which records an artist's music on a certain medium, and a film producer who records a film. The indictments for breach of the Copyright Act are based on an allegation of infringement of both associated rights and actual copyright, which belong to certain US film and computer game companies.

Under the provisions of §§ 2 and 46 of the Copyright Act, copyright protection is the exclusive (sole) right of the rightsholder to dispose of the work or produce copies and so make the work or right available to the general public. The indictment for complicity in breaches of the Copyright Act, as it is finally worded, is based only on allegations of infringement of the right to make a work or a right available to the general public.

Under the Copyright Act, a work or a right is made available to the general public when, inter alia, it is broadcast to the general public. All the charges brought by the District Prosecutor are to the effect that files containing copyright-protected performances have been made available to the general public through Internet transfers. Such a making available occurs when a work or a right, either by way of a wired or wireless connection, is made available to the general public from a place other than where the public can enjoy the work. In addition, broadcasting to the general public includes a transfer which takes place in such a way that individuals can gain access to the work or right from a place and at a time of their own choosing

If such performances are made available through widely available filesharing services which use peer-to-peer technology, it is, typically, a matter of a broadcast to the general public (c.f. Bill 2004/05:110 s. 70).

The Copyright Act includes a number of restrictions to the sole right which belongs to the owner of the copyright to a specific work or a right. With reference to certain works and rights, and under the provisions of § 12 of the Copyright Act, it is, inter alia, permitted to produce copies for private use. Such a copy may not be used for any purpose other than private use, i.e. it may not be made available to the general public. An important exception to the right to produce copies for private use is when the original itself has been produced or made available in contravention of § 2 of the Copyright Act.

§ 53 of the Copyright Act regulates the sanctions applicable to infringement of copyright. This statute shall, according to § 57 of the Act, also apply in cases of infringement of the rights associated with copyright. Infringement of copyright also covers, inter alia, infringement of associated rights, unless otherwise stated.

Under § 53 of the Copyright Act, anyone who takes actions which involves infringement of the copyright associated with the work can be sentenced to a fine or imprisonment for a maximum of two years, provided that the infringement was intentional or the result of gross negligence.

The indictments cover both allegations of complicity in breaches of the Copyright Act, and allegations of preparation of breaches of the Copyright Act. § 53 paragraph 5 of the Copyright Act states that an attempted breach or preparation of breach of the Copyright Act is punishable pursuant to Chapter 23 of the Criminal Code. Provisions for sentencing a person for complicity in breach of copyright are included in Chapter 23 § 4 of the Criminal Code, which states not only the person who committed the act can be found liable, but so too can a person who aided and abetted the act in word or deed. The Code also prescribes that this shall apply to any action for which a prison sentence can be imposed under other laws or statutes.

Comments on the questions at issue in the case

Count 1 of the indictment refers to complicity in breaches of the Copyright Act. For the defendants to be convicted in accordance with the indictment, the District Prosecutor must prove that others, via Internet transfer of a file containing, for example, a sound recording, have unlawfully made a copyright-protected phonogram available to the general public (i.e. that a “principal offence” has been committed), and prove that the defendants have encouraged the principal offence in such a way that they can be held criminally responsible for their complicity.

In the opinion of the District Court, the natural course of action would be to examine the principal offence first, and then move on to examining any complicity on the part of the defendants.

The issue of whether the District Prosecutor has proved that the alleged principal offence has been committed raises a number of different questions, including whether copyright protection exists in the sense alleged, whether the District Prosecutor has demonstrated that the making available has occurred during all or part of the time periods the District Prosecutor alleges, whether it is a matter of unlawful making available and whether the principal offence can be regarded as having been committed.

The issue of whether the District Prosecutor has succeeded in proving that the defendants have aided the principal offence in such a way that they can be held legally responsible for their complicity also raises a number of questions. The first question is whether the District Prosecutor has demonstrated that all the defendants can be regarded as having acted together

and in collusion, as has been alleged. In addition, there is the issue of how the offence of complicity relates to the principal offence, with reference to the extent to which or in what way the offence of complicity may have encouraged the principal offence. In this context, the time of the complicity in relation to the time of the principal offence should be analysed more closely. The latter issues are significant when it comes to determine whether the actions of which the defendants are accused objectively can be regarded as of sufficient to reach a verdict on criminal complicity. To this can be added the question of intent and negligence.

The issues mentioned largely cover all the allegations found in count 1 of the indictment. The indictment for complicity also includes other allegations which the District Court must examine: whether the majority of the films made available for filesharing through The Pirate Bay contain works and performances protected by copyright, and whether, and to what extent, it is a question of commercial use of the said works and performances.

Count 2 of the indictment – preparation of breach of the Copyright Act – raises the question of whether the defendants, if they convicted of complicity in breaches of the Copyright Act, can also be convicted of preparation in accordance with the criminal allegations.

The indictment brings the Electronic Commerce and Other Information Society Services Act to the fore. If the District Court should conclude that any of the defendants should be convicted in accordance with the indictment – and, as a result of this, pay damages and compensation to the plaintiff companies – the question arises if any of the grounds for freedom from liability which can be found in the Electronic Commerce Act are applicable. A particular issue in this context is whether the District Court should – as claimed by Carl Lundström – obtain a preliminary ruling from the EU court.

Findings of the Court, continued

From here on, the findings of the Court will, by way of introduction, include a review of the design and function of the filesharing service The Pirate Bay, which is material to the judgement.

The District Court will then examine the issue of liability. The indictment for complicity in breach of the Copyright Act will be examined under two main headings. The first will cover the alleged principal offences, and the second the acts of complicity.

The District Court will then examine the issue of liability for preparation of breach of the Copyright Act (count 2 of the indictment).

Following the issues of liability, the District Court will continue to examine whether there may be freedom from liability in accordance with the Electronic Commerce Act. In this part of its findings, the District Court will explain its decision on whether a preliminary ruling should be obtained from the EU court.

The District Court will then consider sanctions and the separate motions by the District Prosecutor.

Finally, the individual claims will be examined.

The filesharing service The Pirate Bay

The investigation into the case makes it clear that the file sharing service – which used BitTorrent technology – had a website to which a computer user could upload and store torrent files, that the website had a database which enabled another computer user to search for torrent files with the aim of downloading these to his or her own computer, and that there was a tracker which enabled computer users who wanted to share files to contact each other for filesharing.

The tracker function was used to create a peer-to-peer network which, in turn, meant that an indeterminate number of individuals – not a completely closed circle – could be provided with the recording or the work a torrent file referred to.

To upload and store a torrent file, the computer user who wanted to make a file available (the original seeder) had, or made, a copy of the file (the principal file) on his or her hard disc. A torrent file, which referred to the principal file, was produced through the use of special software intended for the creation of torrent files.

A number of different programs were available for this purpose. Many of them were available on the Internet free of charge. The torrent file created contained information on the principal file, including the number of logic segments the principal file had been divided into, as well as the file's hash total. The hash total was a mathematical figure, the purpose of which was to check that every principal file was put together correctly. The seeder frequently included certain additional information in the torrent file, including a reference to the Internet address(es) of one or more trackers.

The purpose of the tracker was to provide the computer user with information on which other users were, at any given time, involved in sharing the principal file the torrent file referred to. Since the user had created the torrent file, he could – according to what has emerged during the trial – use it in a variety of ways for the purpose of sharing the principal file to which the torrent file referred.

One way was to upload it to The Pirate Bay's website, where it was stored and could be searched for by other users.

According to what has been shown by the investigation, the process of downloading a principal file via The Pirate Bay involved a computer user searching for the torrent file he was interested in. Normally, the name of the torrent file would correspond to the name of the principal file. The torrent file selected by the user could be opened using BitTorrent software. The tracker would then be contacted and would inform the user of which other users were, at that moment, involved in filesharing the principal file the torrent referred to. A "handshake" would be performed, and the user would be accepted into the swarm of users involved in filesharing. Once the "handshake" had been performed, filesharing with the other users in the swarm would commence. A swarm could include a user designated a "seeder", i.e. the user in

possession of the whole principal file the swarm was sharing. The designation “leecher” was applied to users who were in process of downloading a file to their computers. The segments of a principal file a user downloaded were made available to other individuals in the swarm. This speeded up the filesharing process.

The filesharing service did, consequently, mean that actual making available to the general public of principal files containing, for example, copyright-protected sound or picture recordings, films or computer software, was carried out by the computer users to an indeterminate number of individuals and not, therefore, a closed circle.

The principal offences according to the indictment for complicity

For someone to be convicted of complicity in a specific offence requires the execution of a punishable offence (the principal offence). The fact that the perpetrator cannot be punished due to lack of intent, for example, does not preclude complicity.

The fact that the offence described, the actual principal offence, has objectively taken place is sufficient ground for conviction.

According to § 2 of the Copyright Act, copyright to a work includes the exclusive right to dispose of the work in such a way that it is made available to the general public. The same applies to rights associated with copyright. According to what has been argued above, the indictment refers to the type of making available which is involved in transferring the work to the general public. To prove a breach of the Copyright Act first requires the sound and picture recording and the works to be protected in accordance with the Copyright Act, and that the alleged infringement has been unlawful in the sense that the rightsholders have not given their consent. The District Prosecutor must then prove that it is a matter of making available in the sense of the Copyright Act, that the making available has taken place during the periods claimed, and that the making available is punishable under Swedish law.

- Are the rights and works protected under the terms of the Copyright Act?

For a product to enjoy copyright protection, it must be a work. The work concept means that the product must be the result of labour and that it must contain a certain amount of independence and originality. The term usually used is a requirement for distinctiveness. § 46 of the Copyright Act does, however, make it clear that the requirement for distinctiveness does not apply to sound and picture recordings. For these works, it is sufficient that they are, in fact, recordings of sound and moving pictures respectively. The District Prosecutor has divided the indictment for complicity in an offence into a number of sub-paragraphs.

Each sub-paragraph contains a claim of unlawful making available with reference to a right or a work specified in greater detail. Paragraphs 1 A – 1 I and 1 K – 1 U refer to records containing music, i.e. the type of production of sound recordings which enjoy rights associated with copyright and which are protected under § 46 of the Copyright Act, as compared with § 61 of the Act and § 1, second paragraph, of the International Copyright Statute (1994:193).

The producers of the films listed in paragraphs 2 A – 2 D enjoy rights associated with copyright with respect to recordings of moving pictures, the copyright of which is protected under § 46 of the Copyright Act. Paragraphs 2 E and 2 I refer to films which enjoy both copyright protection and protection as associated rights, since they involve recordings of moving pictures.

Paragraphs 2 F, 2 G and 2 H refer to films which enjoy actual copyright protection. The reason that the works listed under 2 E – 2 I are claimed to be covered by actual copyright is that these are American films.

Film recordings are – as is generally recognised – multifaceted, resource-demanding and complicated projects, which typically result in films and, therefore, enjoy copyright protection. Considering this, and since the defendants have not objected to this, it is, therefore, regarded as established that these are films in the sense of the Copyright Act.

Paragraphs 3 A – 3 D refer to computer games (computer software). The defendants, who have been given the opportunity to examine the computer games, have confirmed that they possess distinctiveness. In addition, the witness Anders Nilsson, who downloaded the computer games in question via The Pirate Bay's website, has confirmed that the process involves relatively advanced computer software.

In the opinion of the District Court, it has, therefore, been established that the computer games meet the requirements for distinctiveness and are, therefore, copyright-protected.

- Who owns the rights and the works?

For the making available of a copyright-protected work or a right to be regarded as unlawful, the making available must have occurred without the consent of the rightsholder. In the event of an alleged copyright infringement, it may, therefore, be necessary to investigate who the rightsholder is and obtain the rightsholder's views on the making available.

The defendants have not questioned the plaintiff companies' ownership of the rights and works which have allegedly been made available unlawfully. This applies to the copyright of the American film companies with respect to the American films. Irrespective of the defendants' views, the evidence in the form of DVD covers submitted by the American film companies is, in the District Court's view, sufficient proof of the companies' rights as rightsholders. The American companies have, however, also produced investigative material in the form of copies of agreements between the companies and the originators, who have contributed their creative efforts to the films, on the transfer of copyright to the companies.

It is, in the opinion of the District Court, clear that the plaintiff companies own the rights and works, and that the rightsholders have not consented to these being used in the way cited in the indictment.

- Is this a matter of making available in accordance with the Copyright Act?

All counts of the indictment relating to complicity in an offence cover descriptions which are, by and large, the same with reference to the alleged actual making available. According to the definition in the Copyright Act of what making something available to the general public entails, the indictment relates to the type of making available which takes place when the work is transferred to the general public.

The issue examined by the District Court in this context is whether the way in which the specified files were processed may be regarded as involving broadcasting to the general public.

In accordance with § 2 of the Copyright Act, a broadcast to the general public takes place when the work, by wired or wireless methods, is made available to the public in a location other than that in which the general public can enjoy the work. Broadcasting to the general public was introduced as a new category in the concept of making available on 1 July 2005.

Examples of cases of making available to the general public quoted in the preamble include a work transmitted on radio or television, either by traditional methods or via the Internet, or a work being posted on an Internet website (Bill 2004/05:110, p. 378). § 2 also states that broadcasting to the general public includes transfer which takes place in such a way that individuals gain access to the work in a location and at a time of their own choosing. Examples of this type of use, i.e. on-demand availability, is when a musical work or a film is featured on a network such as the Internet, where individuals can enjoy the work at a time of their own choosing (Bill 2004/05:110, p. 379).

Those of the District Prosecutor's claims about the act which are of relevance here include both the original seeder's and the subsequent filesharer's making available of the files covered by the indictment.

A common factor for the named users is that they have all or parts of the relevant file stored on their computer (hard drive). By connecting to the Internet and activating their BitTorrent software – which is a necessary condition – they are making it possible for other Internet users to acquaint themselves of the content of and, therefore, produce copies of the relevant file themselves. As far as accessibility for other Internet users is concerned, the procedure is, in principle, the same as when a work is made available by downloading it to an open Internet website. Provided that a seeder is connected to the Internet, another Internet user, a leecher, can gain access to the work from a place and at a time of his or her own choosing. The way in which the specified files are processed by an original seeder and the users who, through filesharing, have obtained all or segments of the current files does, in District Court's view, constitute the type of making available which, according to the Copyright Act, would be regarded as making available to the general public.

- During what time periods has the making available occurred?

All counts of the indictment contain a time period during which the defendants are alleged to have aided other individuals to make the files containing the copyright-protected performances available via Internet transfers.

For the indictment to succeed with reference to the actual time periods, the District Prosecutor must demonstrate that the rights and the works were actually available during these periods.

The start of all time periods is the date on which the torrent file associated with the right or the work the time-period in question refers to was uploaded to The Pirate Bay's website. The end date refers to the date on which the torrent file was removed from the website. For most of the counts of the indictment, the latter date is 31 May 2006, i.e. the date on which The Pirate Bay's servers, within the framework of the preliminary investigation which resulted in the current indictment, were seized.

Witnesses Magnus Mårtensson and Anders Nilsson have, with reference to each work and during the respective time periods the claim refers to, downloaded these by going on to The Pirate Bay's website, searching for the torrent files associated with the works and finally downloading the latter. The purpose of these actions was to collect evidence in preparation for reporting the site to the police, as the plaintiffs intended to do. The District Prosecutor has adduced written evidence relating to the downloads Magnus Mårtensson and Anders Nilsson performed. The said evidence shows, inter alia, the date on which the downloads took place, how many downloads had been made of each work up to the date on which the witnesses carried out their downloads, as well as, for most works, subsequent downloads up to and including 31 May 2006. These details are shown in the following table:

Count in the indictment	Work	Date on which evidence was secured	Number of downloads at the date on which evidence was secured	Number of downloads 31 May 2006
1A	Backyard Babies, "Stockholm Syndrome"	2006-02-28	780	1 123
1B	Joakim Thåström, "Skebok-varnsv 209"	2006-02-28	13 721	-
1C	Sophi Zelmani, "A Decade of Dreams"	2006-02-28	2 665	3 126
1D	Emilia De Porets, "A Lifetime In A	2006-02-28	1 198	1 217

	moment”			
1E	Advance Patrol, “Aposteln”	2006-02-28	1 349	1 816
1F	Amy Diamond, “This Is Me Now”	2006-02-28	341	-
1G	Håkan Hellström, “Nåt gammalt, nåt nytt, nåt lånat, nåt blått”	2006-02-28	5 213	6 158
1H	Kent, “The Hjärta & Smärta EP”	2006-02-27	2 111	3 748
1I	Lena Philipsson, “Han jobbar i affär”	2006-02-27	1 128	1 382
1K	Per Gessle, “Son Of A Plummer”	2006-02-28	3 821	5 559
1L	Petter, “Mitt sjätte sinne”, “Ronin”, “Bananrepubliken” och “Petter”	2006-02-28	443	-
1M	Snook, “Snook, Svett och Tårar”	2006-02-27	1 283	4 149
1N	Cardigans, “Don’t Blame Your Daughter”	2006-02-27	380	617
1O	Cornelis Wreewijks, “Till Sist”	2006-03-02	1	545
1P	Robbie Williams, “Intensive Care”	2006-03-01	3 416	5 660
1Q	Beatles, “Let It Be”	2006-03-01	4 838	5 007

1R	Rasmus, "Hide From The Sun"	2006-03-01	2 895	3 515
1S	James Blunt, "Back To Bedlam"	2006-03-01	15 152	30 049
1T	Coldplay, "X&Y"	2006-03-01	3 828	11 052
1U	David Bowie, "Reality"	2006-03-02	8	323
2A	"Den svaga punkten"	2006-04-04	15 689	16 482
2B	"Afrikanen"	2006-04-04	12 267	12 484
2C	"Pusher 3"	2006-03-29	406	894
2D	"Mastermind"	2006-03-30	2 533	4 137
2E	"Harry Potter & The Goblet of Fire"	2006-03-28	21 426	22 082
2F	"The Pink Panther"	2006-03-29	48 596	49 593
2G	"Prison Break, Season 1"	2006-04-06	46 356	48 104
2H	"Syriana"	2006-04-03	3 311	3 679
2I	"Walk The Line"	2006-03-28	39 964	-
3A	"Diablo 2"	2006-04-10	16 559	16 568
3B	"World of Warcraft -Invasion"	2006-04-06	26 773	26 915
3C	"F.E.A.R"	2006-04-10	47 931	49 641
3D	"Call of Duty 2"	2006-04-10	75 276	76 518

Examination of Magnus Mårtensson and Anders Nilsson has, firstly, ascertained that the torrent files have indicated precisely the rights and works specified in the summons application. It has already been concluded that the works enjoy protection under the Copyright Act.

The downloads carried out by the witnesses were successful in that they obtained their own copy of the work. The examination of Magnus Mårtensson and Anders Nilsson has, therefore,

established that the current rights and works were, in each case, available for transfer via the Internet at the time they carried out the downloads (see dates listed in the table).

The question is then whether the district attorney has succeeded in proving that, as alleged, the works have been available on other dates.

The District Prosecutor's indictment, as far as it refers to time periods, cannot be understood as stating that the work must have been made available at every precise minute or second within the stated period, i.e. on a continuous basis.

In the opinion of the District Court, for the allegations to remain as a basis for the verdict, it must be sufficient that the District Prosecutor has been able to prove that the works have, in each case, been available to a significant degree during the relevant time period.

The Pirate Bay's website contained information on the number of downloads for each torrent file, i.e. a type of counter which showed how many users had downloaded the principal file in question. A statement from Statens Kriminaltekniska Laboratorium (the Swedish Forensics Laboratory) states that a user who downloads the full content from a torrent file sends a signal to The Pirate Bay's tracker that the download is completed. The tracker notes this and increases the number of downloads for that torrent file in the database which, subsequently, is also shown on the website. The figure specified is based on the number of complete downloads of the material the torrent file refers to, in this case the actual music albums, songs, films or computer games.

The statement does, however, indicate that there is a certain discrepancy in the counter, which led to an overestimate of the number of downloads. The information given should, therefore, be regarded with some caution, and cannot, by itself, be regarded as of decisive significance to the question of whether the District Prosecutor can be regarded as having proved his allegations.

The counter was linked to The Pirate Bay's tracker. The investigation into the case has shown that torrent files uploaded to sites other than The Pirate Bay's website sometimes referred to The Pirate Bay's tracker. It is, consequently, possible that a certain number of the downloads specified for each individual work referred to downloads which have come about after a user has downloaded a torrent file from a website other than The Pirate Bay. In the view of the District Court, the making available carried out by these users can also be considered within the framework of the principal offence which this case refers to, since it is The Pirate Bay's tracker which has been used. Another issue of relevance to the act of complicity is the defendants' insight/intention regarding precisely this making available.

The number of downloads registered by the counter is shown in the table. The table shows that certain works, e.g. 2A "Den svaga punkten" and 3A "Diablo 2", were downloaded a considerable number of times in the time period during which the making available is alleged to have taken place. The equivalent figure for other works, e.g. 1 D Emilia De Porets "A Lifetime In A moment", is lower.

A large number of downloads during a shorter period of time do, obviously, indicate that the right or work in question has been available for most of the time period stated in the indictment. The large number of downloads registered for the less popular works, as well, indicate that the making available has taken place to the extent claimed for all the works. Further evidence of this is the fact that the number of registered downloads increased between the date on which the evidence was secured and the date on which the equipment was seized, by what Gottfrid Svartholm Warg has said about unused torrent files being removed through an automatic process, shows that it is exclusively a question of known works and, not least, the large number of users who visited The Pirate Bay's website.

Based on the successful downloads undertaken by the witnesses and with reference to the reasons stated above, it is, in the view of the District Court, proven that the making available of each individual work has taken place during the time period alleged by the District Prosecutor.

- Is the making available an offence under Swedish law?

The investigation into the case has revealed that some of The Pirate Bay's users, whose making available is the subject of the action, have been located outside Sweden when they made the works available to the general public.

Under Chapter 2, § 1 of the Criminal Code, Swedish law applies when an offence has been committed in Sweden. The same applies if it is uncertain where the offence was committed but there is reason to assume that it was committed in Sweden. Under § 4, an offence is regarded as having been committed where the criminal act was committed, as well as where the infringement took place. One issue in the case is where the principal offence should be regarded as having taken place.

According to the District Court, there is strong reason to regard an offence which involves the making available of something on the Internet as having been committed in a country where the Internet user can obtain the information which has been made available, provided that the making available has legal implications in the country (c.f. Schønning, *Ophavsretsloven* with commentary, 3rd edition, p. 686). This applies not least when the information – as in this case – is published in a language spoken in that country. This suggests that all principal offences, even those committed by persons located outside Sweden, should be regarded as having been committed in Sweden. This conclusion is further reinforced by the fact that the servers (computers) hosting The Pirate Bay's website and the tracker were located in Sweden.

In conclusion, in consequence of what has been said above, all the principal offences alleged by the District Prosecutor must be regarded as having been committed in Sweden and being offences in Sweden.

Acts of complicity

- Complicity – objectively

In accordance with what has been stated earlier, and under the terms of Chapter 23, § 4 of the Criminal Code, not only the person who has committed the act (principal offence), but also other persons who have aided and abetted this person in word and deed (act of complicity), will be held liable for a specific act. This rule is applicable to all individual criminal offences for which a sentence of imprisonment may be imposed. Criminal liability rests also with anyone who has aided and abetted the act in a physical or psychological sense. The accomplice must have facilitated the execution of the principal offence. There is no requirement for the accomplice's actions having been a precondition for the accomplishment of the principal offence. Liability for complicity can apply even to someone who has contributed only insignificantly to the principal offence.

The District Court has already concluded that punishable offences have been committed in accordance with the District Prosecutor's indictment. The issue which the District Court now must decide on is whether Fredrik Neij, Gottfrid Svartholm Warg, Peter Sunde Kolmisoppi and Carl Lundström have aided and abetted the principal offence by enabling users to upload and store torrent files for the filesharing service The Pirate Bay, by providing a database linked to a catalogue of torrent files, by enabling users to search for and download torrent files and by providing the functionality with which users who wished to share files could contact each other through the filesharing service's tracker function.

The defendants have, inter alia, argued that liability for complicity is out of the question since the principal offences, and how the defendants have influenced these offences, are not sufficiently precise, bearing in mind that the perpetrators are not known. The District Court has concluded that the District Prosecutor has succeeded in proving that the alleged principal offence has taken place in the way claimed. There is no requirement for the perpetrators to be known for liability for complicity to be considered. The District Court has already stated that it is sufficient for the District Prosecutor to prove that the objective requisites for the principal offences have been fulfilled. If a certain action is regarded as having aided and abetted the principal offence, liability for complicity comes into play.

The investigation into the case has shown that, during the time period specified in the indictment, The Pirate Bay was a popular website with a large number of users around the world. The purpose of The Pirate Bay was to create a meeting place for filesharers.

The website was, according to details which have emerged during the examination of Fredrik Neij and Gottfrid Svartholm Warg, under constant development. New hardware was purchased continuously, and improvements made to the search functions and tracker, all with the aim of providing efficient access to, and transfer of, uploaded material. Some users of the website used it and the functions mentioned in such a way that the users committed a breach of the Copyright Act in the manner alleged in the indictment (the principal offences). In accordance with what will be further demonstrated below, all the defendants were aware that

a large number of the website's users were engaged in the unlawful disposal of copyright-protected material. By providing a website with advanced search functions and easy uploading and downloading facilities, and by putting individual files sharers in touch with one other through the tracker linked to the site, the operation run via The Pirate Bay has, in the opinion of the District Court, facilitated and, consequently, aided and abetted these offences (c.f. Ds 2007:29, p. 323 and Rosén in NIR 2008 p. 101).

Liability for complicity does not require The Pirate Bay's operation to be essential to the making available to the public of rights or works. The fact that the copyright-protected works may possibly have been made available to the general public on other websites before they were made available on The Pirate Bay, or that they may possibly have been made available on other websites at the same time as they were made available on The Pirate Bay, is, in the opinion of the District Court, irrelevant to any liability for complicity which may fall on the defendants as a result of their actions.

The defendants have argued that any complicity on their part has not taken place before the completion of the principal offence. Some offences, continuous offences, are regarded as taking place throughout the duration of a certain circumstance. One example of a continuous offence is unlawful deprivation of liberty. The offence comes to an end only when the circumstance which occasioned the commission of the offence ceases. The making available which constitutes the principal offence in the indictment is, as far as the original seeder is concerned, completed once he/she uploads the torrent file to The Pirate Bay's website and then starts making the work available to others. Other seeders have completed their individual offences when, after downloading segments of the protected work, they have made it available to others. Nor does anyone have to make available a whole work to be in breach of the Copyright Act. The making available of a segment of a work is sufficient for the offence to be completed (c.f., for example Ds 2007:29, p. 338). The offence continues for the full duration of the making available. The criminal action – aiding and abetting a crime – for which the defendants have been indicted refers, in each case, to the time before the principal offences were completed.

In summary, the operation carried on by The Pirate Bay does, objectively, constitute complicity in breach of the Copyright Act. The question is then whether the defendants can be held responsible for this complicity. This would, firstly, require them to be in a position where they can be held responsible for what took place within the framework of The Pirate Bay's operations. Secondly, their intent must cover all the objective circumstances on which the offences are based.

- Collective liability

The District Prosecutor has claimed that the defendants, jointly and in collusion, have been responsible for the organisation, administration, programming, financing and operation of The Pirate Bay, and that they should, consequently, be held responsible for aiding and abetting the infringements of the Copyright Act which have taken place. When several individuals are involved in the execution of a criminal offence, it can be difficult to ascertain

whose action has caused the criminal effect. Sometime, a single person has not, by himself, met all the *res gestae*, but the offence has been completed by several individuals acting together. In this event, each and every one of the participants can, under certain circumstances, be punished as a perpetrator. The individuals involved are then said to have acted jointly and in, silent or expressed, collusion. Complicity is not excluded by the fact that some participants have played a more central role and have been more active than others. One condition is, however, that it can be proven that each individual has been involved in the execution of the offence and that he has been aware of the others' actions.

A starting point for several individuals to be sentenced for complicity must, however, be that it requires such individual evidence that it can be clearly established that each and every one of those involved is to be regarded as a co-defendant (NJA 2006 p. 535). In this case, a more accurate description would be accessory rather than co-defendant, since the indictment concerns complicity in a breach of the Copyright Act. The principles which apply to perpetrators are, however, in the current context, the same for accomplices.

Fredrik Neij and Gottfrid Svartholm Warg were, according to their own information, involved in the initial operations of The Pirate Bay. They were also, according to their own information, principally responsible for technical operations and for the technical and functional development of the website.

The information provided by Fredrik Neij and Gottfrid Svartholm Warg is supported by the written facts of the case and by the information provided by Peter Sunde Kolmisoppi and Carl Lundström.

Peter Sunde Kolmisoppi and Carl Lundström have, on the other hand, stated that they have not been involved in The Pirate Bay's operations in such a way that they can be held responsible for this, as alleged by the District Prosecutor.

Peter Sunde has, according to his own information, which has been confirmed by Fredrik Neij and Gottfrid Svartholm Warg, acted as media spokesman for The Pirate Bay. Peter Sunde has, in addition, stated that he had no other function at The Pirate Bay. However, the written evidence presented by the District Prosecutor, consisting of, inter alia, extensive e-mail correspondence between the defendants and Oded Daniel, as well as various payment streams to and from Peter Sunde Kolmisoppi's company, HAIQ Sweden AB, shows that he was in relatively regular contact with Oded Daniel regarding both The Pirate Bay's advertising operations and the technical development of the website. The claim that Peter Sunde Kolmisoppi has carried out some invoicing in the name of HAIQ Sweden AB but on behalf of The Pirate Bay solely for the purpose of providing help to Oded Daniel appears, in the opinion of the District Court, to be a reconstruction after the event.

The action is, rather, proof that Peter Sunde Kolmisoppi was involved in The Pirate Bay's advertising sales. Peter Sunde Kolmisoppi has, according to his own information, also suggested measures which, in his opinion, ought to be taken to make The Pirate Bay website even more popular and profitable. He also signed the agreement aimed at setting up the

company, Random Media, the principal task of which would have been to operate and develop The Pirate Bay's operations.

Carl Lundström was a representative of, inter alia, Rix Telecom AB. He has, according to his own information, which is confirmed by Fredrik Neij and Gottfrid Svartholm Warg, only provided broadband and a "filing cabinet" for The Pirate Bay on business terms. The written evidence quoted in the case shows that Rix Telecom AB purchased, and still owns, a number of the computers used by The Pirate Bay in its operations.

Carl Lundström has confirmed that he, initially, was interested in becoming a shareholder in companies associated with The Pirate Bay and that he, on his own account, offered a couple of computers, valued at approximately SEK 40,000, free of charge to The Pirate Bay with the intention of recovering some revenue at a later stage.

These transactions, and the fact that Rix Telecom AB owned the computers used in The Pirate Bay's operations, suggest that Carl Lundström had a significant stake in The Pirate Bay and was working in collaboration with Fredrik Neij and Gottfrid Svartholm Warg.

According to Carl Lundström, he decided to pull out of the plans for a shareholding in The Pirate Bay when, after discussions with legal representatives, he became aware that the operation was illegal.

Since then, he has, however, been in contact with the authorities and lawyers in Russia and Argentina, among others, to investigate whether it would be possible to relocate the operation there. During these contacts, he has, according to the e-mail correspondence presented by the District Prosecutor, claimed to represent The Pirate Bay. Carl Lundström has explained the contacts specified above by saying that he was assisting a client of Rix Telecom AB, which is something he does regularly. In the opinion of the District Court, his actions do, however, suggest that he had a more significant interest in The Pirate Bay than he has been willing to admit. As a consequence of the e-mail correspondence mentioned, Carl Lundström was in contact with Gottfrid Svartholm Warg and Fredrik Neij, and this correspondence indicates that Carl Lundström was in a position of influence with respect to the future of the filesharing service.

The written evidence also shows that Carl Lundström was in direct contact with med Oded Daniel who, inter alia, sent e-mails to Carl Lundström and the other three defendants regarding advertising sales on The Pirate Bay. In the opinion of the District Court, an image of the team behind The Pirate Bay is emerging; the four defendants and Oded Daniel. This image is further reinforced by the agreement signed by all but Carl Lundström. Under the agreement, a host owner/external partner would obtain the equivalent of 8.25 percent of the shares in the newly-formed company. Additional e-mail correspondence cited by the District Prosecutor shows that Fredrik Neij notified Oded Daniel, Peter Sunde Kolmisoppi and

Gottfrid Svartholm Warg that "Kalle" ought to be given his share, and that they had discussed 8.5 percent. This cannot, in the opinion of the District Court, be interpreted in any way other

than that Carl Lundström is the host owner/external partner who would own a certain proportion of the newly-formed company.

The payments made to Carl Lundström also show that the person who effected these payments specified “Purchase of Media” as a message to the payment recipient. It is difficult to interpret the message in any way other than that the payments were for revenue generated by advertising sales rather than payment for the computers purchased by Carl Lundström on behalf of The Pirate Bay. Another e-mail sent by Carl Lundström to Oded Daniel shows that he involved himself in the actual operation by making proposals for the development of new services within the framework of The Pirate Bay.

It is, in the opinion of the District Court, clear that Fredrik Neij and Gottfrid Svartholm Warg have played leading roles in the technical operation of The Pirate Bay. It has, however, also been shown that Peter Sunde Kolmisoppi and Carl Lundström have had a sufficiently direct or indirect influence over the technical development and functionality of the website that they can be regarded as also having been responsible for it. As stated above, the written evidence in the case has also demonstrated that the defendants have been in direct and relatively regular contact with Oded Daniel and, consequently, have been jointly responsible for advertising on and, therefore, also the financing of, The Pirate Bay’s operations. Carl Lundström has, in addition, made a financial contribution through the provision of server space and free broadband. The fact that this constituted an investment in The Pirate Bay is already clear from the fact that he expected to earn money from the website in the future. The actions of the defendants are characterised by a collaboration in which every person was aware of the involvement and roles of the others. They have acted and, in other respects, worked as a team, with the common purpose of expanding further both the technical and business aspects of The Pirate Bay. Taking account of all the facts, the District Courts finds that Peter Sunde Kolmisoppi and Carl Lundström have also participated in The Pirate Bay’s operations to such an extent that they, alongside Fredrik Neij and Gottfrid Svartholm Warg, must be regarded as responsible for the organisation, administration, programming, financing and operation of the filesharing service in the manner alleged by the District Prosecutor.

- Participation – subjective

A requirement for the conviction of the defendants is that they have deliberately infringed the copyright protection enjoyed by the rights and works. The subjective prerequisite must be fulfilled, not only with respect to the aiding and abetting itself, i.e. co-perpetration, but also with respect to the act which constitutes the principal offence. Complete agreement between an accomplice’s view of the course of events and the actual course of events is not, however, a requirement. In assessing the level of intent which must be present, each individual principal offence should be considered (c.f. NJA 2007 p. 929).

The fact that the defendants intentionally brought about the actual circumstances which constituted aiding and abetting must be regarded as established. The defendants have, however, argued that they should not be held liable since they have had no knowledge of the existence of the rights or works specified in the indictment and, therefore, have not

intentionally committed the principal offences. It has not been demonstrated that the defendants knew that the specific works listed in the indictment had been made available via The Pirate Bay. The defendants intent does not, however, have to cover the specific works which it is alleged have been made available. It is, rather, sufficient for them to have had the intent to bring about the existence of copyright-protected material on the website (c.f. NJA 2007 p. 929). The examination of the defendants, the letters from rightsholders published on the website, The Pirate Bay, and the e-mail correspondence indicating that the operation involved pirate copying make it clear that the defendants have been aware that copyright-protected works were available via the website, and were shared via the tracker embedded within the framework of The Pirate Bay's operation. Despite this knowledge, they have elected to take no action to prevent the infringement of copyright. Based on their positions in relation to the filesharing service, The Pirate Bay, they have, in the opinion of the District Court, together and in collusion knowingly aided and abetted infringements of the Copyright Act by the individual users.

Other allegations in the indictment of complicity in breach of the Copyright Act

According to the indictment, the majority of the files made available for filesharing via The Pirate Bay contained copyright-protected performances or works. The District Prosecutor has also alleged that the operation of The Pirate Bay was financed by advertising revenue, and that this constitutes a commercial use of copyright-protected performances and works.

- The majority of the files made available were protected by copyright

The indictment concerns The Pirate Bay's operations and the use of certain copyrights, in the form of the making available to the general public, during the latter part of 2005 up to and including 31 May 2006. It is, consequently, for this time period that the District Court must judge whether the majority of the files made available for filesharing via The Pirate Bay contained copyright-protected performances and works.

In support of his allegations, the District Prosecutor called as a witness Anders Nilsson, who had the following to say. In his capacity as investigator for the Anti-piracy Agency, he became interested in The Pirate Bay as early as 2004. In 2005, The Pirate Bay's operation grew and there was a rise in the number of users. The Anti-piracy Agency started to check the torrent files uploaded to The Pirate Bay, and concluded that most of these related to pirated material. On one occasion in 2006, he checked the list of the 100 most popular/downloaded films published on The Pirate Bay. This showed that 96 of the films on the list were protected by copyright. There was no way to check any copyright-protection for the remaining four films, since the originators of these films were unknown. The Anti-piracy Agency carried out similar checks on other occasions, and always obtained the same result. He has never, however, checked all the torrent files uploaded to the website. Since the Anti-piracy Agency became aware of The Pirate Bay, he visited the website every week and, during these visits, noticed that a very large number of copyright-protected works were made available via the website.

Peter Sunde Kolmisoppi has, during examination, reported on an investigation undertaken with the aim of establishing how large a proportion of the material made available for filesharing via The Pirate Bay contained copyright-protected works. The fact that this investigation was undertaken in October and November 2008 does, however, mean that it is of no relevance in this context.

According to what has emerged during the investigation into the case, there were a very large number of torrent files uploaded to The Pirate Bay's website during the time period of interest to this case. Confirmation of the allegation that the majority of these torrent files related to copyright-protected rights and works requires a reliable investigation of all, or at least a large number, of these. The District Prosecutor has not, however, referred to any such investigation, so the allegation cannot, consequently, be regarded as confirmed. The examination of Anders Nilsson has, however, shown that the most popular torrent files, at least with reference to films, in principle related exclusively to copyright-protected works.

Carl Lundström has confirmed that The Pirate Bay's website attracts visitors because it offers the opportunity to utilize copyright-protected works free of charge. In an e-mail sent by him to his legal representative, he wrote that the purpose of the website was pirate copying, and he stated, during the main hearing, that the purpose of the website was, *inter alia*, pirate copying. The 33 works which are the subject of the indictment, and the extent to which these have been downloaded, indicate that the torrent files which relate to copyright-protected works were extremely popular and generated numerous visits and a great deal of activity on The Pirate Bay's website. Although the District Prosecutor has not been able to prove his general allegation that "most of the files which are made available for filesharing via The Pirate Bay contain copyright-protected works and performances", it has, for the reasons specified above, been established that the torrent files on the website related to a significant extent to copyright-protected material.

- Financing

The fact that the operation of The Pirate Bay has, at least to some extent, been financed through advertising revenue has been confirmed by the defendants. The written evidence, in the form of invoices and information on payment transfers, submitted by the District Prosecutor, shows that a total of at least SEK 1,200,000 has been paid to the defendants for advertising space on The Pirate Bay's website. The utilization of the copyright-protected performances and works must therefore, in the opinion of the District Court, be regarded as having taken place within the framework of a commercial purpose.

Preparation of breach of the Copyright Act

The indictment for preparation of breach of the Copyright Act is based on the defendants, through their involvement with The Pirate Bay's operation, having supplied a functionality in a database prepared specifically for the purpose, with which it has been possible to receive (upload) and store the torrent files which related to the copyright-protected performances and works covered by the indictment for complicity in breach of the Copyright Act. According to

the District Prosecutor, the torrent files were specifically intended to be used as aids in the infringement of the Copyright Act.

Chapter 23 § 2 of the Criminal Code states that anyone who, with the deliberate intent, *inter alia*, to aid and abet an offence, has received or stored something which is specifically intended to be used as an aid in the execution of an offence shall, in the cases specifically mentioned, be sentenced for preparation of an offence, provided that he has not been found guilty of completing the offence.

From what has been stated by the District Court on the issue of indictment for complicity in breach of the Copyright Act, follows that the court has found that the torrent files which relate to protected rights and works which are the subject of the indictment, have been used for unlawful making available to the general public of the works during the times alleged by the District Prosecutor. As such, the torrent files can be regarded as intended for use as aids in the offence. The offences mentioned, i.e. making available, have, however, taken place (been completed). The defendants have, through their involvement with The Pirate Bay's operations, aided and abetted the unlawful making available which has occurred.

In the opinion of the District Court, the torrent files received and stored between 1 July 2005 and 31 May 2006, have, consequently, been used to complete the offence which – in accordance with the hierarchical relationship between preparation of, attempt to commit and the completion of an offence – has resulted in liability for the preparations for breach of the Copyright Act being consummated by the commission of the offence of complicity.

Any liability for preparation of an offence during the period 1 July 2005 and 31 May 2006 – in the sense claimed by the plaintiff companies – does not, in accordance with what has been said above, exist.

The District Prosecutor's indictment for this offence does, however, mean – after adjustment of the indictment – that the dealings with torrent files which occurred on 31 May 2006 only constituted preparation of an offence. For reasons just specified, no liability for preparation is regarding as existing.

On 31 May 2006, the computers (servers) containing the website The Pirate Bay during the time covered by the indictment were seized. The filesharing operations from these servers ceased in connection with this, or at least no information to the contrary has been presented in the case. The risk that the preparation offence claimed by the District Prosecutor would be completed must, therefore, in each case be regarded as negligible.

The indictment for preparation – as it has been drawn up by the District Prosecutor and the plaintiff companies – is, therefore, dismissed.

Freedom from liability under the Electronic Commerce Act?

The District Court's assessment of the indictment for complicity in breach of the Copyright Act means that the defendants are liable for the offence. The question is then whether the

freedom from liability provisions relating to punishment – but also to the liability to pay damages – of a “service provider” contained in the Electronic Commerce Act are applicable.

The Electronic Commerce and Other Information Society Services Act contains, for example, provisions relating to freedom from liability for a service provider, with reference to issues of both a legal and compensatory nature. The Act was adopted in response to the implementation of the European Parliament and Council’s directive 2000/31/EC on certain legal aspects of information society services, specifically electronic commerce, on the internal market (the e-commerce directive).

The initial issue on this point is whether The Pirate Bay is a service provider which provides any of the services of an information society? A service provider, under the terms of the Electronic Commerce Act, is a physical or legal entity which provides any of the services found in an information society. The defendants’ involvement in the operation of the filesharing service must be regarded as such that they can be considered service providers. In § 2 of the Services Act, information society services are specified as services which are normally provided against payment, and which are supplied at a distance, electronically and at the individual request of a service receiver (the user of the services). The service offered by the filesharing service The Pirate Bay includes enabling users to upload or download torrent files on The Pirate Bay’s website and, via The Pirate Bay’s tracker, establish contacts with other users who have/would like the file the torrent file relates to. In the opinion of the District Court, it is, therefore, clear that the services from The Pirate Bay website have been supplied at a distance, electronically and at the individual requests of the users. Even if the users have not paid for the services, the requirement for compensation has still been met since the operation of The Pirate Bay has, at least to some extent, been financed by advertising revenue (Bill 2001/02:150, p. 56 f.). The Electronic Commerce Act is, consequently, applicable to the filesharing services supplied from The Pirate Bay website.

The grounds for freedom from liability for service providers are found in §§ 16-19 of the Electronic Commerce Act. The provisions correspond to articles 12-14 of the e-commerce directive.

While articles 12-14 of the e-commerce directive refer to all types of liability in all legal areas, §§ 16-18 of the Electronic Commerce Act focuses specifically on, inter alia, liability for compensation and § 19 on legal liability (Bill 2001/02:150, p. 87). The content of §§ 16 – 19 §§ of the Act does, however, correspond to articles 12-14 of the e-commerce directive.

The grounds for freedom from liability in § 16 of the Electronic Commerce Act covers solely service providers who only transfer information provided by a service receiver in a communications network, or provides access to such a net, and where the storage of information is carried out purely for the purpose of the transfer and does not continue longer than required by the transfer. The provisions of § 17 cover the type of transfer where information is stored for the specific purpose of making the transfer of information more efficient. The provisions of § 18 cover a service provider who stores information provided by a service receiver. § 19 cover both types – transfer and storage – by the service provider.

The purpose of the Pirate Bay's services was, inter alia, to provide server space so that users could upload and store torrent files on the website. This storage means that § 16 – which covers only services where some form of automatic and temporary intermediate storage takes place as a result of a particular transfer – and § 17 – which covers only storage carried out for the explicit purpose of improving the efficiency of the transfer of certain information (cacheing) – do not apply. The fact that The Pirate Bay offered a service where the user could upload and store torrent files on the website means, instead, that it is a matter of the type of storage service covered by the provisions of § 18 of the Electronic Commerce Act (Bill 2001/02:150, p. 21).

According to § 18, a service provider who stores information provided by a service receiver is not, as a result of the content of the information, liable to pay compensation for injury, provided that the supplier was not aware of the existence of the illegal information or operation, and was not aware of facts or circumstances which made it obvious that the illegal information or operation existed or who, as soon as he received knowledge about or became aware of this, prevented the spread of the information without delay.

The case has demonstrated that the filesharing service The Pirate Bay was, inter alia, used to provide the opportunity to make available copyright-protected works. It must have been obvious to the defendants that the website contained torrent files which related to protected works. None of them did, however, take any action to remove the torrent files in question, despite being urged to do so. The prerequisites for freedom from liability under § 18 have, consequently, not been fulfilled.

§ 19 of the Electronic Commerce Act is also applicable to service providers who store information. Under § 19, a service provider who stores information on behalf of others can only be held liable for an offence relating to the content of the information if the offence was a deliberate act. The District Court has previously concluded that all the defendants were aware that copyright-protected works were being made available through torrent files uploaded to The Pirate Bay, and that they deliberately chose to ignore this fact. Even if the defendants were not aware of precisely those works covered by the indictment, they have, according to the previous findings of the District Court, at least been indifferent to the fact that it was copyright-protected works which were the subject of filesharing activities via The Pirate Bay. Considering that it is a matter of deliberate offences, the actions of the defendants do not enjoy immunity from prosecution under § 19 of the Electronic Commerce Act.

- Should a preliminary ruling be obtained from the European Court of Justice?

Carl Lundström has requested that the District Court, in the event that the court should arrive at the conclusion that the defendants are guilty of offences in accordance with the indictment, should obtain a preliminary ruling from the European Court of Justice. He has not stated any views on what issues the District Court should raise with the court, but has, instead, requested that the District Court, if the request is granted, provide the parties with the opportunity to comment on any questions.

In its judgement above, the District Court has concluded that the Electronic Commerce Act does, in fact, apply to the filesharing operations carried out via The Pirate Bay, the provisions of the Act on freedom from liability do, as a result of this, become an issue.

The provisions on freedom from liability in §§ 16 and 17, which correspond to the provisions in the EU directives on solely the transfer of information and cacheing respectively have, for reasons stated above, not been regarded as applicable to The Pirate Bay's operations.

The District Court has, however, found that The Pirate Bay's filesharing operations involved the type of storage of information covered by the provisions the EU directive under article 14 on hosting services, but that the provision – through the introduction of the corresponding legal provision – does not, in this case, offer grounds for freedom from liability.

In the opinion of the District Court, the provisions of the e-commerce directive correspond to the provisions in the Electronic Commerce Act, both with reference to the categorisation of various types of services and the scope of freedom from liability. The scope of freedom from liability in accordance with article 14 is, with consideration of the ingress to the directive, at least no greater than the corresponding area in §§ 18 and 19 of the Electronic Commerce Act. Considering that there is no ambiguity regarding how the text of the law or directive itself should be interpreted, the District Court does not find it necessary to obtain a preliminary ruling from the European Court of Justice. Carl Lundström's request for a preliminary ruling is, therefore, dismissed.

Sanctions etc.

The defendants are now convicted of aiding and abetting breaches of the Copyright Act. The verdict on Gottfrid Svartholm Warg on other charges offences is given in a later section of the verdict.

Gottfrid Svartholm Warg has, according to the extracts from the register, no previous convictions. The previous convictions of Fredrik Neij and Carl Lundström are of no relevance in the determination of the sentence imposed by the District Court. On 10 February 2009, the Court of Appeal of Skåne and Blekinge convicted Peter Sunder Kolmisoppi of accounting offences. He was given a suspended sentence combined with a fine determined on the basis of his daily income.

No special considerations regarding the defendants personal circumstances have been presented.

- Sanctions

The District Court will, initially, determine the appropriate penalty for the offences committed by the defendants. The District Court has already concluded that the defendants acted as a team in the operation of The Pirate Bay. They have, in a variety of ways,

contributed to the operation of the service and have, at the same time, been aware of the roles played by the others. There has been a common purpose to run and develop the service. Considering these circumstances, the appropriate penalty for the offence of complicity for which the defendants have been convicted should be the same for all the defendants.

Under § 53 of the Copyright Act, the range of penalties is a fine or imprisonment for a maximum of two years. Under chapter 29, § 1, second paragraph of the Criminal Code, the damage, infringement or hazard involved in an action, what the defendant has realised or should have realised regarding this, as well as his intention or motive, must be given special consideration when establishing the appropriate penalty.

When the maximum sanction for infringement of rights under the Copyright Act were increased in the early 1980s, from six months to two years, the preamble (Bill 1981/82:152 p. 18) stated that conduct involving infringement of copyright and associated rights should be considered serious, and that there should be the opportunity, in particularly serious cases, to impose a substantial term of imprisonment. It was also stated that it is, primarily, in cases involving extensive commercial unlawful use of protected works and performances that the ability to impose the more serious sentences provided by the new provisions should be used, and that the purpose of the amendment to the Act was not to increase the sentences for minor infringements of copyright legislation (a. Bill p. 19).

There have been few cases in this area. Case no. RH 2002:69 does, however, show that the District Court regarded the appropriate penalty as up to one year's imprisonment for a person who, over a period of one year and eight months, had supplied copies of computer software and computer games which were copyright-protected, unlawfully produced and sold a large number of copies of the works throughout Sweden and, without the permission of the originator, made phonograms available to the general public by offering them for sale, reproducing and selling them and, through these actions, earned at least SEK 1,600,000.

The making available of copyright-protected works and rights which the defendants have aided and abetted is extensive. It involves a total of 33 protected works which, in the majority of cases, have been made available for a number of months. The damage caused by the making available is, of course, linked to the fact that the making available took place on a popular website with many users. Although a certain degree of caution should be exercised with respect to the statistics produced by the counter linked to each right or work, it is clear that the making available which has taken place has also resulted in extensive production of copies of the rights and works. The substantial extent scope of the making available, and the corresponding losses caused, indicate, in the opinion of the District Court, that the penalty should be more severe.

It has been confirmed that the operation of The Pirate Bay has generated advertising revenue which, during the period indicated in the indictment, has amounted to at least SEK 1,200,000. On this basis alone, the District Court can conclude that the operation was carried on as a commercial project. This conclusion is confirmed by the correspondence between the defendants and the fact that the defendants have investigated and discussed various corporate

forms which may have been applicable to the continued operation of The Pirate Bay. It has, consequently, been a question of an operation carried on in organised form. The circumstances mentioned here also indicate that an increase in the penalty may be appropriate.

In many cases, the appropriate penalty for aiding and abetting is lower than the penalty for the principal offence itself. In practice, there are, however, examples of complicity in breach of the Copyright Act being regarded as equally culpable as the principal offence itself (Svea Court of Appeal, verdict no. DB 191 on 13 December 1985 in case no. B 1858/84). In the current case, the defendants have not themselves used the rights or works. The defendants have, however, in a commercial manner, provided others with the opportunity to make available and use copyright-protected material. This separates the defendants from the users of The Pirate Bay who make available copyright-protected works and, therefore, are to be regarded as perpetrators. The perpetrators do not, in fact, enjoy any financial benefits from their making available via The Pirate Bay. Given this and the fact that the website constituted a prerequisite for the principal offence having such a widespread effect, there is no reason to take a more lenient view of the actions of the defendants on the basis that it is an issue of liability for complicity.

Considering the circumstances reported above, the District Court is of the opinion that the appropriate penalty for complicity in breach of the Copyright Act for which each of the defendants has now been convicted is one year's imprisonment.

Under chapter 30, § 4 of the Criminal Code, the Court must, when setting a penalty, pay particular attention to any mitigating circumstances which would suggest a more lenient sentence than imprisonment. As a reason for imprisonment, the court can, in addition to the appropriate penalty and nature of the offence, take into account whether the defendant has any previous convictions. The statements in the preliminary work, as well as the practice explained above, can be interpreted as stating that breach of copyright can, in certain cases, be regarded as the type of offence where imprisonment would constitute the standard sentence. With respect to the breach of the Copyright Act which the defendants have now been convicted of, the high appropriate sentence itself excludes any sentence other than imprisonment.

The offences of which Gottfrid Svartholm Warg, in accordance with what is stated in a later section of this verdict, has been found guilty in addition to the offence dealt with here does not affect his term of imprisonment.

Peter Sunde Kolmisoppi, who has, in the past, been found guilty of an offence, the sentence for which has not yet been executed, should now be sentenced separately for his complicity in breach of the Copyright Act.

The sanction for each of the defendants is, therefore, set at one year's imprisonment.

- The separate motions

The proceeds, which also includes gains, of crime must, under § 53 a of the Copyright Act, be declared forfeit, unless this is obviously unreasonable. Instead of what has actually been received, its value may be declared forfeit. When assessing whether it is obviously unreasonable to declare the proceeds of crime forfeit, circumstances such as whether there is reason to assume that an obligation to pay damages as a result of the crime may be imposed must be taken into account. With respect to breach of the Copyright Act, in contrast to a case of forfeiture in the event of a crime which involves the transfer of wealth, the circumstance that the person convicted of infringement of copyright will also be liable to pay compensation does not automatically mean that forfeiture will be not be imposed or will be modified. Any liability to pay compensation, including the reasonable compensation (reasonable damages) which the person who has infringed a copyright must pay to the rightsholder, should, however, be taken into consideration when determining whether forfeiture would be obviously unreasonable (for information on what has been said here, see Bill 2004/05:135, pp. 168 f, 171 f. and 118).

As stated initially, the plaintiff companies have lodged compensation claims against the defendants for the criminal act for which they have now been convicted. Later sections of the verdict will show that District Court has found that the defendants are liable to compensate the plaintiff companies for the unlawful making available to the general public of rights and works at an amount which exceeds the profit from the crime by a considerable margin. It does, therefore, appear unreasonable in this case to declare forfeit the proceeds of the crime stated by the District Prosecutor, SEK 1,200,000.

The District Prosecutor's special motion for joint forfeiture of value (special motion a) is, therefore, dismissed.

As part of the preliminary investigation into the case, a computer (server) used in the operation of The Pirate Bay was seized from Carl Lundström on 31 May 2006. The District Prosecutor has moved (motion b) that the computer be forfeited. The computer has, in the opinion of the District Court, been used as an aid in the crime Carl Lundström has now been convicted of. The property should, therefore, be declared forfeit.

On 31 May 2006, certain computer and communications equipment was also seized from Fredrik Neij. The equipment was found in a computer cabinet at Rix Port 80, which housed servers for The Pirate Bay's operations, but the seized equipment was not part of the network which constituted the filesharing service. The District Prosecutor has moved (motion c) that the equipment be declared forfeit.

Considering what has emerged about the equipment, particularly the location in which it was found, it must be considered that, due to the nature of the equipment and the circumstances in general, there is reason to believe that the equipment may be used for criminal purposes. This property should, therefore, also be declared forfeit.

Within the framework of the investigation, further computers and written documentation were seized on 31 May 2006, since they could be assumed to be significant to the

investigation into the case. The District Prosecutor has moved (motions d – f) that these items should remain held until the verdict in the case has gained legal force.

The defendants have argued that the seizures should be annulled, since the District Prosecutor has had reasonable time to secure evidence through examination of the property.

The District Court shares the view of the District Prosecutor that it is important that the seizure remains in force, since there may be reason to carry out further examination of the property at a later stage, to establish circumstances of significance to the investigation. The District Prosecutor's special motion that the property should remain confiscated is therefore upheld.

Indictment for breach of the Prohibition of Certain Health-Impairing Goods Act.
(Gottfrid Svartholm Warg)

The District Prosecutor's motions are shown in Appendix 3.

Gottfrid Svartholm Warg has, as already mentioned in previous sections, denied the actions, but has admitted the special motions.

Indictment counts 1-3

The investigation into the case reveals the following. In connection with the start of the preliminary investigation into complicity in breach of the Copyright Act on 31 May 2006, the police carried out a house search at an apartment at Framnäsbacken in Solna. The preparations specified under indictment counts 1-3 were found in the apartment. The preparations were kept in a drawer unit and in a cupboard at the desk. Some of the preparations were included in a postal item addressed to Gottfrid Svartholm Warg's company, PRQ Internet.

Gottfrid Svartholm Warg has stated that the apartment belongs to his parents and that, on the date stated in the indictment, it had been let to other individuals. He did not know that the preparations in question were kept at the apartment.

In the opinion of the District Court, the case has not proven that the apartment was used by Gottfrid Svartholm Warg on the date specified in the indictment. Nor has any other evidence been presented which shows that the preparations belonged to Gottfrid Svartholm Warg. The circumstances that some of the preparations have been found in a postal item addressed to PRQ is not sufficient for Gottfrid Svartholm Warg to be found guilty of the offences. The indictment is, therefore, dismissed with respect to indictment counts 1-3.

Indictment count 4

The investigation into the case reveals the following. A police patrol was called to Essinge Brogata on 23 June 2007. In an adjacent apartment, a backpack was found in which the preparations listed in the indictment count were kept. The backpack also contained a

registration certificate for Gottfrid Svartholm Warg's company, PRQ. Gottfrid Svartholm Warg, among others, was found at the apartment. He was heavily intoxicated.

Gottfrid Svartholm Warg has stated that, despite being intoxicated, he can remember the event. He has also stated that the backpack was his, but that he, at some point during the evening, had lent it to some individuals at the party. He knows "approximately" who he lent the backpack to, but he does not want to reveal the names of these individuals.

The information provided by Gottfrid Svartholm Warg himself shows that the backpack in which the preparations were found belonged to Gottfrid Svartholm Warg. What Gottfrid Svartholm Warg has claimed, i.e. that he, in the course of the evening, lent the backpack to other individuals who he does not wish to name, is regarded by the District Court as a reconstruction of events. It has, therefore, been proven beyond reasonable doubt that Gottfrid Svartholm Warg has been in possession of the preparations in question, and that he should, therefore, be sentenced for breach of the Prohibition of Certain Health-Impairing Goods Act.

The special motions are based in law and admitted, and will, therefore, be upheld.

The individual claims

Initial starting point

The District Court has, in the section giving its verdict, found that the defendants were intentionally complicit in breach of the Copyright Act, i.e. acted as accomplices in the infringement of copyright-protected rights and works in the form of the unlawful making available of the rights. Anyone who has caused solely a loss of wealth – a financial injury which arises without associated injury to person or property – through the perpetration of a crime must pay compensation for the loss. Under the general principles governing the law of torts, there is no obstacle to ordering each and every one complicit in the infringement of a copyright to pay compensation for this under the provisions of the Copyright Act regarding liability to pay compensation (c.f. the dissenting opinion in the Supreme Court verdict on 20 November 2008 in case no. T 4998-06).

§ 54, first paragraph of the Copyright Act (c.f. § 57) states that anyone who, in contravention of the Act, utilises an associated right or a work, i.e. uses the right or work contrary to § 2 of the Act, shall pay damages, constituting reasonable compensation for the use, to the rightsholder. The second paragraph of § 54 states that if this has been done intentionally, damages shall also be paid, inter alia, for losses other than loss of royalties. The Act states, therefore, that the provisions relating to damages for infringement in the Copyright Act mean that anyone who intentionally infringes a copyright shall pay not only damages for the use of the sole right, but also compensation for other financial loss caused thereby. The preamble (SOU 1956:25 p. 429) to the provisions for damages also states this means that anyone who intentionally infringes a copyright must pay compensation for all financial losses caused thereby, and that one element of the provision for damages means that, when a copyright performance has been used in contravention of the Act, the guilty party must always pay

reasonable compensation even if the rightsholder has not suffered any injury as a result of the unlawful use.

The plaintiffs' claims

The compensation claims of the plaintiff companies have been reported in the section Claims and Positions. This report shows that the claims involve considerable amounts of money, and that the companies have demanded that the defendants be held jointly and severally liable to pay compensation.

The six Swedish record companies – Sony Music Entertainment, Universal Music, Playground Music Scandinavia, Bonnier Amigo Music Group, EMI Music Sweden and Warner Music Sweden – have demanded compensation for a total of EUR 2,188,071 excl. interest.

The Nordic film companies – Yellow Bird Films and Nordisk Film Valby – claims are, in the first instance, a total of SEK 6,750,000 excl. interest.

The American film companies – Warner Bros, Metro Goldwyn-Mayer, Columbia Pictures, Twentieth Century Fox and Mars Media Beteiligungs – have demanded compensation of a total of SEK 93,050,080 excl. interest.

All the plaintiff companies have claimed that the defendants, intentionally or through negligence, have been complicit in a breach of the Copyright Act which means that copyright-protected rights and works have unlawfully been made available to the general public.

The making available means, in addition to a liability to pay damages for the use of the rights or works, also a liability to pay compensation for other losses which have arisen as a result of the unlawful making available.

Summary of the plaintiff's arguments

- The six Swedish record companies

The defendant's involvement with the filesharing service The Pirate Bay during the period specified in the indictment resulted in the sound recording (copyright-protected phonograms) specified in indictment counts 1 A – I and K – U being made available to the general public which, in turn, meant that they could be downloaded by others, i.e. copies of the sound recordings could be produced.

There is no licensing market or any other calculation method in the record company sector which can be used to calculate the cost involved in lawfully making available sound recordings. One way to calculate reasonable compensation for the use of recordings is, instead, to calculate what the rightsholder would have been paid for a legal downloading

from an Internet service which supplies music files. The payment for individual downloads is then multiplied by the number of unlawful downloads of a sound recording.

The approximate cost of lawfully downloading a copyright-protected sound recording from an Internet service was, according to information produced by the companies, EUR 10. Of this amount, EUR 6.50 went to the record companies (the rightsholder for the sound recording). The cost of downloading individual songs, not whole albums, was EUR 0.70.

Information obtained from The Pirate Bay's websites shows that it was possible, for each sound recording, to see when the torrent file which related to the sound recording was uploaded to the website and the right was, consequently, made available to the general public. This is the starting point of the making available, and is shown for each recording in indictment counts 1 A –I and K –U.

The website also contained numerical information – based on a counter – which showed how many times a sound recording had been utilised for downloading. This numerical information – which has been reported previously by the public prosecutor and included in the table shown in the section “During what time periods has the making available occurred?” – shows the number of downloads of the sound recordings up to 31 May 2006. In three cases – indictment counts 1 B, F and L – the information refers to the number of downloads up to the day when representatives of the record companies made a download.

The record companies have used the information on the number of downloads for each sound recording and multiplied these by EUR 6.50 to calculate the reasonable compensation. For sound recordings with the artists Lena Philipson (indictment count 1 I) which refers to one song, The Cardigans (indictment count 1 N), which refers to three songs, and Snook (indictment point I M), which refers to one song, the respective companies have multiplied the number of downloads by EUR 0.70.

In addition, the illegal making available of sound recordings has also led to other injuries, since the alternative of downloading sound recordings free of charge via The Pirate Bay created an insurmountable competitive situation. One such injury is the loss of CD sales. But other losses, including a reduced interest in records and reduced opportunities to create and sell via on-line services, have also been suffered. Injuries related to making available are extensive.

To estimate the compensation for such other injuries, the record companies have used a model which is dependent on whether the sound recording unlawfully made available was available for legal downloading at the time the recordings were made available via the website The Pirate Bay.

For those sound recordings which were available for legal downloading – which included most of the record companies' sound recordings – the companies have calculated the compensation for other losses at an amount equivalent to twice the reasonable compensation for utilisation.

Certain sound recordings were, however, made available via The Pirate Bay before they were available for legal downloading which – in addition to affecting future CD sales – also had a detrimental effect on the online sales which had been expected through the future downloading service. Depending on how far in advance the unlawful making available via The Pirate Bay occurred, the companies have estimated the damages for other losses using a higher multiplication factor.

Playground Music Scandinavia's sound recording, Snook, Svett & Tårar (indictment count 1 M), was available on The Pirate Bay between 1 and 10 days before it was available for legal downloading. For this recording, the company has, therefore, estimated the damages for other losses at three times the reasonable compensation. The company's recording Aposteln (indictment count 1 E) was available between 11 and 40 days before it was available for legal downloading. The damages for other losses for this recording have, therefore, been estimated at four times the reasonable compensation.

Bonnier Amigo's recording, 'This is Me Now' (indictment count 1 F) was available for 41 and 90 days before it was available for legal downloading. The company has therefore estimated the damages for other losses at five times the reasonable compensation.

Universal Music's recording Don't Blame your Daughter (indictment count 1 N) was available via The Pirate Bay between 91 and 130 days before it was available for legal downloading. The damages for other losses have, therefore, been estimated at six times the reasonable compensation.

EMI Music's recording of Let it Be (indictment count 1 Q) – a Beatle record – involved a recording which it was, in fact, impossible to download legally since the artists had not granted permission for this. The company has, therefore, estimated the damages for other losses at ten times the reasonable compensation.

In accordance with what has been stated here, the record companies have estimated their individual damages for the recordings made available unlawfully at the amounts shown in *Appendix 4*.

- The Nordic film companies

Yellow Bird owns the rights to the three films, Den svaga punkten, Afrikanen and Mastermind. Nordisk Film was the rightsholder of the film Pusher 3.

The films were made available unlawfully via the filesharing service The Pirate Bay, one (Afrikanen) in November 2005 and the others in March 2006. The film Den svaga punkten was at this time not available as a DVD recording. The films Afrikanen and Pusher 3, had not been released.

The films were downloaded – as a result of being made available via The Pirate Bay's website – in accordance with details obtained from the website: Den svaga punkten 15,689 times, Afrikanen 12,267 times, Mastermind 2,533 times and the Pusher film 406 times.

The company's claims for reasonable compensation for the utilisation (making available) of the films which has occurred refers to a hypothetical negotiated amount at which the rightsholder would have granted a license to make the films available for free downloading on a filesharing service. These damages can be estimated at SEK 700,000 for each of the films apart from Pusher 3, for which the estimated fee is SEK 150,000.

Alternatively, the reasonable damages for utilisation of the films can be calculated on the basis on the number of downloads recently specified multiplied by that part of the average price for a legal download of a film, which would have accrued to the rightsholder. The average price for a legal download was, at the time covered by the indictment, SEK 139. Of this income, at least sixty percent would accrue to the rightsholder. The income for the rightsholder would, therefore, be SEK 66.70, excl. VAT.

In line with what the record companies have already stated, the unlawful making available of films also meant that the film companies suffered losses other than a loss of royalties. The making available also gave the general public the opportunity to download the films, i.e. to produce copies of these, which, in turn, led to a fall in sale of film recordings, as well as a fall in the demand for rental films. The companies have, consequently, suffered potential market losses.

The unlawful making available has, in addition, impacted on the marketing campaigns planned for the films. The knowledge alone that "pirate copies" of the films were available on the market had a detrimental effect on the planned or implemented marketing campaigns for the films.

The unlawful making available via The Pirate Bay also meant that the films were not launched as the rightsholders had intended. In addition, the films were used to mock the rightsholders, which means that the making available also resulted in a loss of goodwill.

The film companies have estimated the size of the damages to rectify these injuries at twice the amount payable in reasonable damages for the use of the films.

- The American film companies

Since the defendants acted in consultation with each other, they are jointly responsible for paying damages for infringement of copyright.

The film Harry Potter (indictment count 2 E) premiered in the cinemas in the USA and Sweden in 2005. It was made available via The Pirate Bay on 11 February 2006. In that year, it was also released as a DVD recording. The film was downloaded via The Pirate Bay 22,082 times according to the figures given on the website, which indicate how many times a work has been downloaded.

The film The Pink Panther (indictment count 2 F) premiered in the cinemas in the USA on 10 February 2006. It was available via The Pirate Bay from 16 February. It was released as a DVD recording in June 2006. The film was downloaded 49,593 times via The Pirate Bay.

The television series *The Prison Break* (indictment count 2 G) premiered on television in August 2005, and was shown as one episode per week until the end of November 2005. The series was available via The Pirate Bay from 3 December 2005. A DVD recording of the series was not made available until May 2006 in Europe and August 2006 in the USA. The number of downloads via The Pirate Bay totalled 48,104.

”*Syriana*” was available via The Pirate Bay from 3 January 2006, but premiered in cinemas in Sweden only on 10 March 2006. The film was available as a DVD recording from June 2006 in the USA and from July in Sweden. It was downloaded 3,679 times.

The film *Walk the Line* premiered in the cinemas in early February 2006, and was available via The Pirate Bay from 15 February. It was released on DVD on 22 May 2006. The film was the subject of 39,964 downloads via The Pirate Bay.

The film companies’ estimates of reasonable damages for utilisation is based on the number of downloads which have taken place according to the figures given on the website, which show how many times a work has been downloaded.

On the basis of an analysis carried out by a firm of auditors, the film companies have estimated the price each film would have generated had it been legally downloaded. The calculation of this price is based on the fact that none of the films were available for legal downloading during the time they were made available via The Pirate Bay. The fact that utilisation involved a preview license should, therefore, be taken into account. The price has also been estimated on the basis that just over 90 percent of the individuals who downloaded the films via The Pirate Bay were located in countries in Europe and in the USA. The fact that the film companies did not market copies of their films without copying protecting must also be taken into consideration, since users of The Pirate Bay, by carrying out downloads, obtained copies which could be replicated freely. The price of each film did, in addition, depend on whether it was a blockbuster such as *Harry Potter*, which have commanded a higher price.

The companies have, therefore, estimated the price of a legal downloading for their respective film(s) at:

- SEK 261.47 for *Harry Potter*,
- SEK 255.55 for *The Pink Panther*,
- SEK 415.81 for *Prison Break* (a television series),
- SEK 222.55 for *Syriana* and
- SEK 222.55 for *Walk the Line*.

With respect to other losses, the effects for the film companies are the same as those described for the record companies. The film companies have estimated the size of these damages at the same amount as the reasonable damages for the utilisation of the films.

- The Defendants

Fredrik Neij, Gottfrid Svartholm Warg, Peter Sunde Kolmisoppi and Carl Lundström

Have, according to what has been reported previously, contested the claims. In support of this, they have – as has also been reported previously – adduced, in addition to the objections they have quoted when contesting the indictment, that they have not acted negligently, that the plaintiff companies have not suffered any losses in the form of reduced sales and that sufficient causality does not otherwise exist, that the information on the number of downloads does not correspond to the number of downloaded rights or works, that damages should only be payable for infringements committed in Sweden, that the originals were not illegal, that accessories to an offence cannot, under the provisions in the Copyright Act regarding damages, be held liable for the whole injury, and that they, as service providers, cannot be held liable for damages under the provisions of the Electronic Commerce Act. They are of the opinion that any liability to pay damages should be modified.

The verdict of the District Court

It follows from what the District Court initially cited about the defendants intentionally committing an offence that they have, therefore, also acted negligently and that their complicity makes them liable to pay damages. Their objections to the individual claims on these grounds do not, therefore, stand up to scrutiny.

The District Court has previously in the section on liability found that the plaintiff companies enjoy the sole right to the rights and works, and that the companies have not agreed to them being made available via The Pirate Bay. Their defendants objection that the originals – i.e. the computer files which one user wished to make available to others – were legal do not, therefore, stand up to scrutiny either. In this context, it can also be argued that even if the user's computer file had, originally, been produced as a copy for private use, this does not mean that the copy could be used for purposes other than, specifically, private use (§ 12 of the Copyright Act). A making available of the file via The Pirate Bay's filesharing service, which involved making available to the general public, is outside the boundaries of private use.

The District Court has already commented on the fact that the defendants cannot avoid liability for damages as a result of the provisions for freedom from liability for service providers which apply in certain cases under the terms of the Electronic Commerce Act in the section on liability.

The defendants' additional objections to the individual claims will be discussed by the District Court in connection with the court's assessment of reasonable damages for utilisation of rights and works, and damages for other losses. The District Court will then decide on whether the liability to pay compensation will be joint and several and whether it should be modified.

- Reasonable compensation for utilisation

As the District Court touched on by way of introduction, the payment of reasonable compensation for unlawful utilisation of a copyright-protected performance is based on the provision that, under no circumstance, must a right be utilised without consent without the rightsholder being paid reasonable compensation. The right to such damages is not, therefore, dependent on whether it can be proved that the plaintiff companies have suffered any actual injury, and that the injury caused was the result of the unlawful utilisation.

In order to determine the size of the damages, it is generally accepted that tariffs, collective agreements or similar, or alternatively the basic rules and conditions applicable to the industry or market where the utilisation has taken place, can be used as a guide. It is, consequently, a matter of trying to establish a hypothetical license fee for the utilisation. In the opinion of the District Court, the meaning of the rule on damages currently under discussion cannot, however, be that reasonable damages should be withheld if tariffs or similar fail to provide guidance. In this case it is – as a last resort – incumbent upon the Court to determine what constitutes reasonable damages.

All the plaintiff companies have, in this case, used the unlawful making available which has occurred, in the form of transfer to the general public, as the basis for their claims for reasonable damages.

The plaintiff companies have used various methods to estimate the damages.

Yellow Bird Films and Nordisk Film Valby (the Nordic film companies) have used just such a hypothetical license fee for the right to permit the making available by others of the films for free downloading.

The six Swedish record companies and the American film companies have, on the other hand, used a calculation method based on individual downloads of a right or a work multiplied by the price a legal downloading of the right or work would generate.

The Nordic film companies' estimation method appears, in relation to the cited grounds for claims for damages, as an applicable method for determining the size of the damages.

In support for their claims, the Nordic film companies have referred to an expert assessment carried out by Bertil Sandgren, whose experience is based on many years of working in leading positions in the Swedish film industry. According to this assessment, the imaginary license fee is based on the fact that a film rightsholder, who has negotiated the making available of the film via The Pirate Bay would have taken into consideration the fact that the film was being made available without copy protection in a market consisting of six million Swedish Internet users and about the same number of Internet users in the immediate area around Sweden. In addition, the fact that there would have been a substantial reduction in income from the purchasing and rental video markets as a result of a license being issued to The Pirate Bay, as well as the fact that the legal online market for the film would have ceased to exist should be taken into account. The expected number of downloads of a film via The

Pirate Bay would also have been taken into consideration. According to the assessment made by Bertil Sandgren, a license for the three Wallander films (indictment counts 2 A, B and D) would have been SEK 700,000, while the Pusher film would have commanded a price of SEK 150,000 for a license for free downloading.

The District Court finds that the analysis of reasonable damages for the unlawful utilisation of the companies' films carried out by the Nordic film companies provides a basis for setting the damages at sums motioned by the companies. In addition, the damages in themselves, for each individual right, appear to be reasonable.

The estimation methods employed by the six Swedish record companies and the American film companies are, as stated before, based on a different concept which in the opinion of the District Court, reflects more an unlawful use of copyright to produce copies than an unlawful making available to the general public. In support of the method used, the record companies have argued that there is no license market or other method used by the industry which would demonstrate what the cost would be to make sound recordings available for legal downloading. The American film companies have not reported the reasons behind their selected estimation method.

It cannot be considered the intention of the damages provisions of the Copyright Act to prevent the record companies from obtaining damages as a result of not being able to relate their claims for damages for unlawful making available to a license market or similar within the industry. One method for estimating reasonable damages could be to, instead, base the estimations on what the rightsholders should have been paid for the downloading of a copyright-protected performance, particularly since the purpose behind the filesharing service The Pirate Bay was to enable users, via the service, to download (produce copies of) music and film recordings. By applying the equivalent approach, the American film companies would also be considered entitled to reasonable damages.

When using this method to estimate reasonable damages, it must also be considered that, as mentioned previously, the record companies and the American film companies have worded their claims in such a way that they involve precisely the unlawful making available, but that they have used an estimation method which is, more specifically, aimed at a different type of copyright utilisation.

The estimation method used by the companies must, therefore, be treated with some caution. To this must be added the fact that the making available – as discussed by the District Court in the section on liability – took place in Sweden, while any production of copies which may have occurred as a result of the making available, would, according to the findings of what the investigation into the case, have taken place outside Sweden as well. The information on the number of downloads of the rights and works on which the companies have based their claims is information provided by The Pirate Bay's website and which has been based on a counter linked to the filesharing service. The investigation into the case has, however, shown that the information on the number of downloads may have been overstated and that there is some uncertainty regarding the figures specified for the number of downloads. This also

suggests that some degree of caution must be exercised in using the information on the number of downloads specified by the companies as a basis for their estimates.

Taking these arguments into account, the District Court finds that when the reasonable damages payable to the record companies and the American film companies are determined, the initial starting point must be that this estimation should be based on half the number of downloads specified by the companies.

The record companies have stated that when a music file is legally downloaded, they are, on average, entitled to compensation of EUR 6.50 for a music album and EUR 0.70 for individual songs. This information has been confirmed to the District Court by John Kennedy, the Chairman of the Board of Directors of the International Federation of the Phonographic Industry (IFPI), by Ludvig Werner, Chairman of IFPI Sweden, and by Per Sundin from Universal Music. The District Court therefore finds that the price information shall be accepted in the estimation of reasonable damages.

The American film companies have estimated the price of a legal download of the companies' individual films at varying amounts, and have allocated a separate price to the television series. The film companies' own information shows that these prices are estimated, inter alia, on the basis of the price trend not only in Sweden, but in other European countries as well, and that certain additions have been made in the form of a preview supplement and for the lack of protection against the manufacture of copies.

The price of every film has also been determined on the basis of whether or not a film was a blockbuster. In the District Court's understanding, the film companies' price information is, consequently, based on several unknown variables which show what the price of the production of copies of a film via The Pirate Bay would have been, rather than the price commanded by a possible legal download. For the purpose of estimating reasonable damages for the utilisation of the company's films, the District Court, therefore, finds that the prices which are to be used in such estimates should be set lower than those quoted by the companies. After a careful assessment, the Court finds that these prices should be set at SEK 150 for the films and SEK 300 for the television series.

The plaintiff companies' right to reasonable damages for the unlawful utilisation of the companies' rights and works will, therefore, be determined on the basis of the principles reported here. For the Nordic companies, the damages will be set at the requested amounts, while the damages for the remaining companies are set at a reduced level.

- Damages for other losses

If a right or a work has been intentionally used without permission, not only reasonable damages for the utilisation will be paid, but also damages for, for example, losses other than loss of royalties. This may include compensation, for example, for a fall in sales of performances made legally available, a loss of orders or loss of the opportunity to use the performance in other ways.

A common factor for all the plaintiff companies is that they claim to have suffered losses in the form of distribution losses, market damage, some internal losses and injury to goodwill. Distribution losses have consisted of a reduced opportunity to sell individual performances, not only as a result of a drop in the online sale of legal downloads, but also as a result in a fall in the sale – or, in the case of films, the renting - of physical copies of the performances, i.e. CDs and DVDs.

Market-related injuries have been sustained in the sense that access to illegal copies has had a negative impact on the value of performances made legally available. Marketing campaigns, which have been implemented before the launch of musical records and films, have been rendered useless by the fact that the performances frequently have been available via The Pirate Bay before they have been made legally available to the general public. In many instances, primarily with reference to films, the making available via The Pirate Bay has involved a drop in sound or picture quality and also in a context in which the rightsholders have no desire to participate.

The defendants have argued that no evidence has been submitted which shows that the plaintiff companies have suffered any injuries in the form of falling sales of their equivalent, protected performances, and that, in other respects no adequate causal relationship has been shown between the making available via The Pirate Bay and the losses stated by the companies.

The copyright infringements which have occurred according to the indictment have been of significant scope, and it has – in the opinion of the District Court – already been demonstrated that, as a result of this, other losses of a not insignificant nature have been suffered by the rightsholders. In legal practice (c.f. RH 2002:69) it has been deemed that no special investigation into this issue is required. In this case, however, the plaintiff companies, through opinions given by and the examination of individual experts in the industry, are regarded as having proved that compensatable losses have arisen as a result of the infringement of copyright of which the District Court has found the defendants guilty.

On the issue of determining the size of the damages for other losses, the plaintiff companies have argued that they should be determined on the basis of the reasonable damages for utilisation and, subsequently, estimated the losses at twice the reasonable damages (the record companies and the Nordic film companies) or at the same amount as the reasonable compensation (the American film companies). The record companies' claims have also been determined in the light of the fact that certain sound recordings were available via The Pirate Bay before they were available for legal downloading.

In connection with the passing of the Copyright Act (c.f. SOU 1956:25 p. 430, Bill 1960:17 p. 294), it was already argued that it is important that the party who has suffered an injury is fully compensated for his injury in a financial sense. This view has been emphasised in subsequent legislation (Bill 1981/82:152 p. 22), in which it was stated that it is important that damages for infringement are payable at an amount which fully covers the injury suffered. Assessing the size of damages in a case involving infringement of intellectual rights does,

however, frequently present significant difficulties due, inter alia, to the fact that the actual circumstances, and the impact they have, are often complex and hard to ascertain with any great degree of accuracy.

It is, therefore, in many cases necessary to estimate the size of the damages at a reasonable amount.

As recently mentioned, the plaintiff companies have demonstrated that the copyright infringement has caused other losses. The analysis of the scope of the scope and value of the injuries is based on estimates. The analyses which form the basis of these estimates appear, in part, to take into account the general effects of filesharing services, where copyright-protected material is unlawfully made available to the general public. The task of the District Court is, however, to estimate the losses suffered by the plaintiff companies purely on the basis of the illegal making available of the rights and works to which the indictment refers. Caution must, therefore, be exercised in assessing the plaintiff companies' claims for damages for other losses.

In the light of what has been stated here, the District Court finds, taking all factors into account within the framework of this trial, that a reasonable estimate of damages for other losses is half of the reasonable damages claimed.

- Summary

In view of the analyses reported herein on the determination of reasonable damages and damages for other losses, the District Court finds the plaintiff companies entitled to damages as follows:

- Sony Music Entertainment of EUR 41,467 (27,645 + 13,822),
- Universal Music of EUR 73 782 (49,188 + 24,594),
- Playground Music Scandinavia of EUR 28,159 (18,773 + 9,386),
- Bonnier Amigo Music Group of EUR 4,290 (2,860 + 1,430),
- EMI Music Sweden of EUR 162,988 (108,659 + 54,329),
- Warner Music Sweden of EUR 146,484 (97,656 + 48,828)

and

- Yellow Bird Films of SEK 3,150,000 (2,100,000 + 1,050,000) and
- Nordisk Film valby of SEK 225,000 (150,000 + 75,000),

as well as

- Warner Bros (on behalf of Palatex Productions) of SEK 2,484,225 (1,656,150 + 828,075),

- Metro-Goldwyn-Mayer and Columbia Pictures of SEK 5,579,325 in total (3,719,550 + 1,859,775),
- Twentieth Century Fox of SEK 10,822,500 (7,215,000 + 3,607,500),
- Warner Bros of SEK 414,000 (276,000 + 138,000) and
- Twentieth Century Fox and Mars Media of SEK 4,495,950 in total (2,997,300 + 1,498,650).

Interest in accordance with § 6 of the Interest Act will be paid on these amounts - in accordance with what has been claimed and confirmed – from 31 May 2006.

- Joint and several liability to pay damages

The District Court has, in the section on liability, found that the defendants, together and in collusion, are guilty of complicity in breach of the Copyright Act. As a result of this offence, they will pay damages to the plaintiff companies.

If two or more parties are to pay damages for the same injury, they are, according to a generally accepted principle in tort, jointly and severally liable for the damages. The principle applies even if no conscious cooperation has existed between those responsible and if, as in this case, the issue relates to the same damages.

- Modification of liability for damages

The Copyright Act does not make any provisions for modifying the damages payable under the Act for infringement of copyright.

General tort rules do, however, state that damages can be adjusted if the liability to pay is unreasonably onerous due to the financial situation of the person liable to pay damages.

The scope of the tort rules on modification should, however, be limited. With reference to intentional offences, the principal rule is that no modification will be made, although such adjustment is not out of the question.

The size of the compensation for damages payable by the defendants is certainly considerable. The copyright infringements of which the defendants, in the view of the District Court, have been found guilty, were, however, undertaken intentionally and in a commercial manner. The obligation to pay compensation should not, therefore, be modified.

Legal costs etc.

Claims for costs by the plaintiff companies

As a result of the District Court's verdict on the issues of guilt and liability to pay damages, the defendants are liable to compensate the plaintiffs for their legal costs. The defendants have been indicted for several counts of breach of the Copyright Act. The District Court has, however, dismissed one of the indictments; the indictment for preparation of breach of the Copyright Act. In the opinion of the District Court, this suspected offence must, however, be regarded as having such associations with the act of complicity in an offence and being of such minor significance in the context that it does not affect the plaintiff companies' right to damages.

The six Swedish record companies have claimed compensation for legal costs amounting to SEK 1,200,000 in total, for fees to legal representatives, to be divided among the companies on the basis of the number of record albums and single tunes relating to each of the plaintiff companies in accordance with what has been stated in the verdict. The costs refer both to actions resulting from the indictment and the preliminary investigation, as well as measures involved in implementing the individual claims.

The Nordic film companies have claimed compensation of SEK 538,800 in total, SEK 489,600 of which covers fees to representatives and the remainder the cost of obtaining an expert opinion. This request also refers to costs incurred in connection with the indictment and during the preliminary investigation, as well as measures involved in implementing the individual claims.

The American film and computer games companies have claimed compensation of SEK 1,630,000 in total, SEK 1,200,000 of which covers fees to representatives and SEK 350,000 the cost of an expert opinion, to be paid by each of the companies with the distribution stated in the verdict.

The defendants have left it to the District Court to decide the reasonableness of their requests for compensation.

For the plaintiff companies' legal costs to be eligible for compensation requires that the costs have been reasonably required to safeguard the rights of the plaintiffs.

In this case, the District Prosecutor has stated that, after the plaintiff companies' reported the suspected breach of the Copyright Act in early 2006, he urged the plaintiffs, by way of securing evidence, to provide proof that filesharing was taking place and that torrent files could be linked to individual copyright-protected performances. Against this background, the District Court finds that the plaintiffs have had good reason for the actions taken in connection with the reporting of a suspected offence and during the preliminary investigation, and which resulted in the costs associated with the investigation. Costs of this kind are, in this context, to be regarded as legal costs.

The plaintiff companies' claims for damages as a result of the crimes of which the defendants have now been convicted have not been approved in full. The issue of liability to pay damages has, however, been dependent on the outcome of the section on liability, on certain actual circumstances relating to the unlawful utilisation which has occurred, to certain fundamental information on the price of legal use, and to the obligation to prove that losses have been incurred. The issue of the size of the damages, which was based on estimates, should not affect the legal costs to any significant degree.

In the light of this, and taking account of the significance of the outcome of the case for the plaintiff companies, the District Court finds that the claims for legal costs are reasonable.

For the Nordic film companies, the District Court finds that the compensation to each of the companies shall be distributed in accordance with the verdict.

Other compensation

The fact that the charge of preparation of breach of the Copyright Act has been dismissed does not mean, in line with what the District Court has pronounced on the issue of the cost claims by the plaintiffs, that Carl Lundström should be entitled to compensation for this particular part.

The outcome and this judgement also mean that Fredrik Neij and Carl Lundström should not be granted compensation for the costs of appearing before the District Court.

The legal counsel appointed by the Court have claimed payment for their assignments based on time spent on work amounting to between 595 and 470 hours. They have, in addition, claimed compensation for time wasted and expenses.

Jonas Nilsson (legal counsel appointed by the Court for Fredrik Neij) has, inter alia, claimed compensation for SEK 36,000 in costs for engaging Kristoffer Schollin LLD as an expert witness in the case. In doing so, Jonas Nilsson has stated that the assistance of the expert witness – which involved an investigation into the responsibilities of communications network operations and the implications of this on the case – was necessary to safeguard the interest of the client and has resulted in a reduction in time spent on work.

Considering the nature and scope of the case, the District Court finds that the legal counsel appointed by the Court are entitled to payment of the amounts claimed. The cost of the expert witness investigation incurred by Jonas Nilsson is considered eligible for compensation.

Taking account of the evidence submitted during the case regarding the incomes of Fredrik Neij, Gottfrid Svartholm Warg and Peter Sunde Kolmisoppi, they will not have to reimburse the state for the cost of their legal representation.

Stefan Jevinger, who acted as the legal counsel appointed by the Court for Carl Lundström was dismissed from his assignment on 5 September 2008. In connection therewith, Stefan Jevinger was awarded compensation of SEK 175,663 for work carried out.

Carl Lundström has now been sentenced for an offence in a case where Stefan Jevinger previously acted as legal counsel appointed by the Court and was paid for his assignment. Carl Lundström will, therefore, reimburse the state for the sum paid from public funds as compensation to the legal counsel. Carl Lundström's income is such that the liability to pay compensation cannot be limited.

HOW TO APPEAL (see Appendix DV 400)

An appeal must be lodged with the Svea Court of Appeal no later than 8 May 2009.

On behalf of the District Court

Tomas Norström

Per Claréus

Settlement documentation, see Appendix 5