

# CYBERSPACE PIRATES WALK THE PLANK

## SOME COMMENTS ON THE SWEDISH JUDGMENT IN THE PIRATE BAY CASE\*

by

MICHAEL BOGDAN\*\*

*The article describes, explains and comments on the Swedish judgment in the notorious case of Pirate Bay, concerning massive illegal file-sharing with the help of torrent-tracking technology on the Internet. It also discusses the strong reactions met by the judgment and possible alternative means of fighting copyright infringements in Cyberspace.*

### KEYWORDS

*Copyright, file-sharing, infringements, Pirate Bay, Sweden*

### 1. INTRODUCTION

On 17 April, 2009, the District Court in Stockholm (Stockholms tingsrätt), composed of a professional presiding judge and three elected lay judges, in the case no. B13301-06 unanimously found four Swedish men guilty of assisting and facilitating copyrights infringements committed by the file-sharing users of a website known as “The Pirate Bay” (TPB). This “Gang of Four” consisted of Fredrik (co-founder of the TPB, 30 years old, known on the net as “Tiamo”), Gottfrid (co-founder of the TPB, 24 years old, known on the net as “Anakata”), Peter (the spokesman of the TPB, 30 years old, known on the net as “Brokep”) and Carl (a 49 years old businessman accused of aiding the TPB activities in various ways).

The TPB was until very recently widely used by mostly young people all around the world for the purpose of obtaining access to and further distributing movies, music, computer games and other digital goods, without hav-

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\*\* Professor of Comparative and Private International Law, University of Lund (Sweden).  
E-mail: Michael.Bogdan@jur.lu.se.

ing to pay anything to and without having obtained the permission of the copyright holders. In its letter to the Swedish government of 17 March 2006, complaining about the TPB activities, the American Motion Picture Association called the TPB “probably the world’s most prominent BitTorrent torrent-tracker site specializing in the unlawful distribution of copyrighted material”. There is no need to explain in detail in this paper the fascinating torrent and tracker technology behind the site. Even though it amounts to some oversimplification, it suffices to say that the site did not copy or preserve the shared digital goods but merely enabled its users to search for and download data files from other users. On the TPB site, the usage policy of the system was explained in the following manner:

*Only torrent files are saved at the server. That means no copyrighted and/or illegal materials are stored by us. It is therefore not possible to hold the people behind The Pirate Bay responsible for the material that is being spread using the tracker.*

Nevertheless, the District Court of Stockholm obviously did not share this interpretation of the law, as it sentenced each of the four defendants to one year of imprisonment and ordered them to pay, jointly and severally, damages in the amount of thirty million Swedish kronor (corresponding roughly to 3 million EUR). This gave rise to innumerable comments in the media and provoked a vehement reaction among the TPB users in many countries. Just minutes after the judgment became public, e-mails and other statements supporting the defendants started to appear and within hours their number reached thousands. Judging by these world-wide reactions, many people have misunderstood the court’s decision, for example by confusing damages with fines and copyright issues with issues of personal integrity, but the intensity of their indignation cannot be denied. The judgment has obviously not merely a legal dimension concerning a relatively technical area of the law, but has important ethical and political aspects as well. This is the main reason why the judgment deserves to be discussed, even though its importance from a strictly legal point of view is very limited as the defendants almost immediately lodged appeals against it. The hearings in the Svea Court of Appeal were supposed to begin on Friday the 13th (!) of November 2009 but were postponed until some time next year due to the need to investigate and rule on accusations of partiality raised by defense counsel against two of the appellate judges. We shall probably have to wait a considerable time, perhaps years, for the final word to be

said by the higher courts; it is a reasonable guess that the future decision of the appellate court, regardless of the outcome, will be appealed to the Swedish Supreme Court and that the case may even make a detour to the European Human Rights Court in Strasbourg or/and the Court of Justice of the European Union in Luxembourg. In this paper I shall try to provide a summary presentation of the case and its background and submit some comments regarding its outcome and consequences. The time and space constraints force me to omit a number of details and to make some simplifications, hopefully without affecting negatively the discussion of the principal issues.

## **2. THE BACKGROUND OF THE CASE**

As mentioned above, TPB is a website, well-known among millions of users all over the world, that indexes and tracks files facilitating free peer-to-peer sharing of digital goods such as movies, music or games. The website was founded in 2003 and became soon available in some twenty languages. It was funded mainly by advertising. The speculations about how much income it generated vary; whereas the lawyers for the site's operators admitted the 2006 revenue to be about 100,000 USD, the court estimated it to be about 150,000 USD. In addition to the earning of income from advertising, the TPB is rumored to have received financial support from one of the defendants, who happens to be an extremely wealthy heir to the Wasabröd crispbread company and is, incidentally, known for his support to several far-right and nationalist political movements.

The TPB has received numerous cease-and-desist letters from copyright holders or their representatives demanding that it prevent the use of the site for the purpose of unauthorized spreading of their copyrighted files, but the TPB operators refused always to do so. They consistently held that the TPB did not violate Swedish copyright legislation, as the TPB provided merely information about where copyrighted material could be found. As put by one of the defendants, outlawing the TPB would be similar to outlawing a map showing where you can find a library or the local video-rental store. It was, however, rare that the defendants bothered to answer the cease-and-desist letters using such rational arguments. Instead, they made it a habit to publish the complaints on the TPB site, together with their responses full of mockery and scorn. In a provocative show of defiance against the protests of the International Olympic Committee against the unauthorized showing of videos from the Beijing Olympics, the site was temporarily renamed to "The Beijing

Bay". It must be said to the credit of the people behind the TPB that on their site they openly warned potential complainers that "any complaints from copyright and/or lobby organizations will be ridiculed and published at the site". In many of their "answers", they made fun of and humiliated the copyright holders in an extremely vulgar language. In order to provide a sample, I quote from the response mailed to a California law firm in response to a very polite letter urging the TPB to stop the unauthorized distribution of the "Shrek 2" movie:

*It is the opinion of us and our lawyers that you are morons, and that you should please go sodomize yourself with retractable batons.*

Threats of legal action on behalf of the copyright owners were met by statements such as "I am running out of toilet paper, so please send lots of legal documents". Some answers showed disregard and contempt for women and homosexuals. The probably most shocking episode demonstrating the character of the people behind the TPB was, however, unrelated to copyright. The father of two small murdered children called repeatedly on the TPB to stop the distribution to the public of sensitive photographs from their *post mortem* autopsy, but his request was refused with a disdainful comment about his "tedious whining". The defendants are obviously not very nice people, and their popular image of a sort of 21st century "digital Robin Hood", stealing from rich media corporations in order to help the poor consumers, is in my opinion fundamentally incorrect.

Seeing that any normal dialogue with the TPB was impossible, in 2004 and 2005 several copyright holders denounced the TPB to the Swedish police. Their action was supported by the U.S. Embassy, which turned to the Swedish government urging it to take steps against Internet sites such as the TPB. On 17 March 2006, The Motion Picture Association of America, a California-based organization of the leading movie companies, sent a letter to the Swedish government deploring the lack of action by Swedish law enforcement authorities against the TPB, which, as mentioned before, was referred to in the letter as probably the world's most prominent site specializing in the unlawful distribution of copyrighted material. The letter pointed out that it was certainly not in Sweden's best interests to earn a reputation among other nations and trading partners as a place where utter lawlessness with respect to intellectual property rights is tolerated. The Swedish government replied on 10 April 2006 that according to the Swedish Constitution it is not possible for the Government to intervene in a specific case, but it assured the Motion Picture Association that Sweden, being a high-

technological country with a more and more knowledge-based economy, realizes the value of intellectual property and that the enforcement of intellectual property rights is a high Swedish priority. The Government added that its most recent step in this direction was a decision made on 2 March 2006 (*i.e.*, shortly before the receipt of the Motion Picture Association's letter), whereby the Prosecutor-General and the police had been instructed to take further measures to achieve a more effective enforcement of intellectual property rights, "especially concerning infringements of such rights in connection with the use of Internet".

The efforts of the Swedish authorities ultimately resulted in the above-mentioned judgment of 17 April 2009. Because of practical reasons, the prosecution was limited to the defendants' conduct during a relatively short period of time, namely the eleven months between 1 July 2005 and 31 May 2006.

### 3. THE JUDGMENT

To summarize and analyze the 107 pages of the unusually long judgment is not quite easy. The principal legal basis of the decision is the Swedish Copyright Act (1960:729, as amended). Pursuant to sections 2 and 46 of this Act, the copyright owner has, *inter alia*, the exclusive right to use the work by making copies of it or "by making it accessible for the public". This means, for example, that no other person is permitted to distribute the work to the public without the copyright owner's permission. While copying for strictly private use is in principle not unlawful, there are a number of exceptions, such as when the copying is done from a copy that was made accessible to the public in violation of section 2. Pursuant to section 53 of the Copyright Act, infringements of copyright, if intentional or carried out by gross negligence, are punishable by a fine or by imprisonment for not more than two years. Chapter 23 section 4 of the Swedish Penal Code states that the prescribed punishment is to be imposed not only on the person who committed the criminal act but also on anyone who furthered it "by advice or deed".

The legal core of the judgment is that, according to the court, making a copyright-protected work available for peer-to-peer file-sharing without the permission of the copyright owner amounts typically to a violation of section 2 of the Copyright Act. This violation was committed primarily by those who engaged in unauthorized file-sharing transactions (due to the bit-torrent technique, even those users, who were interested merely in receiving files, were engaged in sending them as well). However, by providing a website containing highly-developed search functions and simple uploading and downloading procedures linked to the tracker function, the defend-

ants furthered the offences of the file-sharers. The defendants knew that files of copyright-protected material were being illegally shared. Thus, the court concluded that the defendants were guilty as accessories to the file-sharers' offences.

One of the defendants relied in his defence on certain Swedish provisions based on Articles 12-14 of the EC Directive No 2000/31 on Electronic Commerce, but because of various reasons the court did not find these provisions to be relevant for the outcome of the case. As the court did not have any doubts in this respect, it dismissed the defendant's request that the interpretation of the Directive be submitted to the EC Court in Luxemburg for a preliminary ruling.

The court had also to deal with the question of the territorial scope of application of Swedish criminal law, as some – in fact the majority – of the TPB users resided in, and accessed the TPB site from, other countries than Sweden. It can also be noted that among the injured copyright owners claiming damages there were both Swedish recording companies and foreign (mainly American) movie industries. The cease-and-desist letters from American copyright owners usually did not make any references to Swedish law, but invoked rather American law, in particular the Digital Millennium Copyright Act. Pursuant to Chapter 2, section 1 of the Swedish Penal Code, crimes committed in Sweden are adjudicated in accordance with Swedish law and at a Swedish court. Section 4 of the same Chapter clarifies that a crime is committed both at the place where the criminal conduct is undertaken and at the place where the crime is completed. It is sufficient for Swedish jurisdiction and the application of Swedish penal law that a part of the conduct takes place or that only a part of the crime is completed in Sweden and, as far as accessories to a crime are concerned, that the principal offence, or a part of it, is committed in Sweden. With all this in mind, the court concluded that Swedish penal law was to be applied in the case.

In view of the fact that the defendants' involvement was extensive, carried out on a commercial basis and in an organized form, the imprisonment for one year cannot be said to be a particularly severe punishment, considering that the maximum penalty prescribed by law is two years and that Swedish law allows great possibilities of parole before the full sentence is served. Nevertheless, some critics of the judgment argue, in my view wrongly, that an accessory should never be punished more severely than the main perpetrators (who were not identified and charged at all).

The determination of the applicable legal system with regard to the civil claims for damages was not discussed by the court, but it is clear that the

court applied Swedish law there too. It should be noted that pursuant to Article 8 of the new EC Regulation No 864/2007 on the Law Applicable to Non-Contractual Obligations (the so-called Rome II Regulation), the law applicable to a non-contractual obligation arising from an infringement of an intellectual property right is the law of the country for which protection is claimed, which will lead to the application in Sweden of American compensation rules if the defendant, albeit acting in Sweden, takes part in violations of the plaintiff's copyright in the American market. However, the Rome II Regulation was not applicable in the case at hand, which concerned events occurring before its entry into force.

The manner in which the amount of damages was determined in the judgment cannot be explained here in full, as it was not a simple matter. Under Swedish law, the copyright infringer is normally required to pay "appropriate compensation" corresponding in practice to the going market price of an imaginary licence granted by the copyright holders, but it was clear that a licence permitting the liberties taken by the TPB would have never been granted. To sum up the "legal" market value of every downloading of individual movies and recordings was not a proper alternative, as it was hardly realistic to believe that the same number of copies would have been distributed even if the users had to pay for them. The court finally made a qualified guess and based the damages on half of the number of file-sharings asserted by the plaintiff companies. It estimated their value rather conservatively, for example 150 Swedish kronor (about 15 EUR) per downloading of a movie. It is more important to mention that the court considered the four defendants to be a "team" working together in collusion with each other, which enabled the court to make them all jointly and severally liable to compensate the victims. This means that if the judgment survives the appellate procedure, the victims will be entitled to claim the whole sum from any defendant, who will then have to reclaim parts of that amount from his three co-debtors.

The judgment was almost immediately appealed against by all four defendants. The appeal will in due course be decided by the Svea Court of Appeal in Stockholm, whose decision can be further reviewed by the Swedish Supreme Court. The Supreme Court will, however, deal with the merits of the case only if it grants a leave to appeal. Such leave is in principle granted only if the Supreme Court finds it important to establish a (non-binding) precedent that may provide guidance for the lower courts.

#### 4. THE REACTIONS

The fact that the defendants were found guilty did not come as a surprise for most Swedish lawyers, even though some of them expected a more lenient sentence than a one-year imprisonment or found the calculation of damages debatable.

Perhaps the most remarkable and typical was the reaction of the defendants themselves. They claimed that they were surprised by the verdict, which they characterized as “unreal”. In addition to lodging appeals against the judgment, they immediately assured their sympathizers that the TPB would continue to function thanks to servers situated abroad. With regard to the damages they were ordered to pay to the copyright owners, one of the defendants declared:

*We can't pay and we wouldn't pay if we could. If I would have money I would rather burn everything I owned.*

The matter is not that simple though. As pointed out above, the four defendants were obligated to pay compensation jointly and severally, which means that the victims can claim the full amount from any of them. As one of them is a billionaire who is hardly disposed to burn all his assets, the victims' chances of obtaining payment are relatively good provided the defendants' appeal is unsuccessful. Some may even suspect that this is the reason why the billionaire, as a “deep pocket defendant”, was dragged into the trial in the first place, as his involvement in the TPB was of a totally different kind than that of the other three defendants. Due to the EC Regulation Brussels I, a Swedish judgment concerning damages will in principle be recognized and enforceable in the whole European Union, so that keeping the assets outside Sweden would not necessarily save them from judgment execution. It can be added that the domain name of the TPB, which turned out to be owned by a company in the Seychelles, was in August 2009 to be sold for 30 million Swedish crowns in cash plus 30 million in shares to a Swedish company called GGF (Global Gaming Factory X), operating networks of Internet cafés and gaming centers, but according to the TPB site this money was not to be used to pay the damages imposed by the judgment, but rather would be put into a foundation supporting projects concerning the freedom of expression and the freedom on the Internet. The GGF declared it was their intention to preserve the TPB concept while making it lawful, but the sale was not carried through, because it turned out that the GGF was unable to raise the necessary funds and was, in fact, insolvent.



Immediately after the April judgment became public, there was a huge world-wide outcry among the sympathizers of the defendants, mainly in the form of angry correspondence on the Web but also in other forms. Over one thousand protesters demonstrated in the streets of Stockholm on the following day, where the protest leaders made statements such as this:

*We young people have our whole platform on the Internet, where we have all our social contacts – it is there that we live. The State is trying to control the Internet and, by extension, our private lives... The establishment and the politicians have declared war on our whole generation.*

Similar demonstrations have taken place also in some other Swedish cities. In my own city of Lund, the demonstration assembled several hundred protesters. Hundreds of thousands of sympathizers have joined a support group on Facebook. As far as the written protests are concerned, the few mails supporting the judgment drowned in the ocean of mails expressing shock and disbelief and seeing the defendants as innocent victims of big corporations. Many letters demonstrate a complete lack of understanding of the nature and the very purpose of copyright, for example the following:

*They didn't rob anyone. They didn't break into anyone's home. They didn't hold anyone at gunpoint. They didn't even smack anyone around. This is a gross miscarriage of justice and abuse of corporate power and I am fucking outraged.*

A similar denial of the legitimacy of copyright is found in the following statement:

*Everyone would love to sit at home and get paid for something they did months and years ago. Do you make a product that people use? Do you get paid every time someone uses a product you make? What makes them better than you?*

Another letter of a similar kind says the following:

*I found this [i.e. the judgment] disgusting! If these people have such a problem with torrents then stop putting your movies out there. In my opinion once you release something to the public, it belongs to the public... What is the big deal, they still make money, right?!*

A peculiarly extensive interpretation of the judgment and of the copyright law was voiced in a mail in which its author takes it that sex has now become illegal since pornographic movies are copyright-protected.

In the incoming mails, a lot of anger was directed against Sweden and the Swedish legal system, which was accused of having folded under intense political pressure coming from the USA. Some mails are convinced that the Swedish system of justice has been harassed by Hollywood, which is suspected of wanting to send the people behind The Pirate Bay to the Guantanamo Bay. Some think that the guilty verdict has de-legitimized the Swedish judicial system and regret that Sweden did not have more of a commitment to common sense and less to appeasing bully corporations. Some state that the court and the Swedish politicians have officially erased Sweden as an independent country. Some mails promise that their author will no longer buy anything that has anything to do whatsoever with Sweden and/or that he will never visit Sweden in the future. Less understandable is one mail in which the author, who probably missed a geography class at school, wishes to punish Sweden by making unfavourable comments about "their stupid Swiss army knives". There is even a mail calling on the world to wage a war against Sweden, while another mail is less extreme and proposes merely that the Supreme Court building in Stockholm be vandalized.

While the threats of the last-mentioned type are probably not serious, some of the reactions on the net have very nasty features, confirming the old wisdom that a group of angry people, if allowed to act anonymously, can easily degenerate into a mob, irrespective of whether they act in the streets or in Cyberspace. Some mail authors use this occasion to spread their anti-Semitic nonsense about the Jewish lobby that in their view governs the world and wants to take over the Internet as well. Another rather unpleasant feature of some mails is that they contain explicit or implicit threats against the Swedish judge presiding at the trial. Some seem to respect the appearance of the rule of law by suggesting moderately that the judge should be put in prison for life, while others dispense with such legal formalities and hope that "someone's gonna shoot that corrupt judge". Still others express the opinion that the judge should be sodomized. Some ask politely for the judge's address, probably not in order to send him flowers. In many mails, the judge is called "a coward and puppet" and is accused of ignorance regarding the new technology and of corruption. In the view of some writers, the judge had obviously no Internet experience and they believe that the verdict would have been different if there was a "tech savvy" court. Some assume or even "know" from some undisclosed source that the judge and the Swedish politicians have been paid "mega money" in bribes.

There are unsubstantiated allegations about the judge's shiny new yacht and his very secret offshore accounts.

A few days after the judgment, it was revealed by the Swedish media that the presiding judge was a member of some non-profit associations of jurists interested in studying and discussing intellectual property law issues and that some of the attorneys representing the victims were members too, which gave the defendants' lawyers the opportunity to accuse the judge of a pro-copyright bias and request a re-trial. Even though these and other similar accusations of bias were hardly of a kind that could constitute a legal ground for a re-trial, and were duly rejected by the Svea Court of Appeal in June 2009, they were certainly very welcome by the critics of the judgment, because they added fuel and appearance of credibility to their attacks and weakened the persuasive authority of the judgment. Some commentators, even though agreeing with the appellate court's decision on the bias issue, are of the view that the bias debate should have been anticipated and avoided by appointing a different judge, but this has given rise to the objection that it might be difficult to find a Swedish judge who is an expert on copyright law while not being a member of any of the above-mentioned associations.

Among the relatively few mails critical of the defendants, some do not condemn their illegal activities but rather their arrogant attitude, juvenile manners and high profile that drew too much attention to them and brought them into the spotlight. As one mail put it,

*I love smoking pot and I know it's illegal. That doesn't mean I get to brag about it and smoke it in front of the police. Good riddance, idiots.*

Finally, some writers consider the judgment to be a *de facto* victory for the defendants, as it gave them an enormous amount of free publicity, leading to a huge increase of both file-sharing and their income from advertising. According to some sources, after the verdict the number of people using the TPB has gone up by about 1.5 million. Swedish political life has been affected too. Within days after the judgment, the number of members of the previously totally obscure Swedish "Pirate Party" (*Piratpartiet*), having free file-sharing as the main item in its political programme, increased from 15,000 to 34,000. Less than two months thereafter, in the Swedish elections to the European Parliament on 7 June 2009, the same party received more than 7 per cent of the votes, enabling it to send two representatives to that venerable institution.

## 5. CONCLUDING REMARKS

The conspicuous incompatibility of the judgment with the values prevailing today among the young generation has several reasons. It must be recalled that the four defendants were not sentenced as the principal perpetrators of the copyright infringements that have taken place with the assistance of the TPB site, but merely as accessories promoting other people's infringements of the copyright rules. The principal perpetrators are the millions of persons using the site in order to share their files. The principal perpetrators are too many, and the crime committed by each and one of them is by itself too insignificant, to make it realistic to prosecute. The principal perpetrators are our own children, grandchildren and our own students; according to a survey published in a Swedish on-line newspaper on 12 October 2009, about half of the Swedish population has been involved in unlawful file-sharing! Among the university students, including the students of law, the figure is probably much higher.

There is also a wide-spread view that the legal monopoly created by copyright has been "kidnapped" by the big movie and record companies and other exploiters who are the real economic actors in the copyright system and abuse their superior bargaining power to set exorbitant prices and make huge profits which they only to a very small extent share with those who were the originally intended beneficiaries of copyright, namely the authors and performing artists. Regardless of whether this argument is true or not, it is commonly used by those involved in file-sharing in order to legitimize their activities, not merely in the eyes of the public but also, and maybe primarily, in their own conscience, as many users may find it difficult to admit to themselves that they are actually stealing from their beloved stars and idols. I have strong doubts, however, that the unlawful sharing would substantially decrease if prices of digital goods on the official market went down; paying ten percent of today's prices would still be more expensive than the free sharing that would continue to be the preferred choice of the school kid with limited weekly allowance, the student with a small scholarship or burdened with a study loan, or a struggling young family facing bills for expensive day-care for their children (which will grow up even less inclined to pay for something they can get for free). A test carried out in a Swedish school in the late Spring of 2009 disclosed that while almost all pupils aged fifteen years had downloaded music without paying, only about half of them would consider paying 0.10 EUR per recording. After a whole generation has learned that digital goods are free, it is very difficult to make them pay.

It is worth noting that the public debate following the judgment, both in Sweden and on the Internet, tends to see copyright as an obstacle standing in the way of the full exercise of certain human rights such as the freedom of expression or the right to participate in the cultural life and enjoy the arts, while relatively little attention is paid to the fact that copyright itself may be a generally recognized human right too, even though perhaps not in all its legal technicalities which differ legitimately from country to country. Both Article 27(2) of the Universal Declaration of Human Rights from 1948 and Article 15(1)(c) of the International Covenant on Economic, Social and Cultural Rights from 1966 stipulate that everyone has the right to benefit from

*the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*

The European Convention for the Protection of Human Rights and Fundamental Freedoms from 1950 contains no corresponding provision, but the protection of property in Article 1 of the First Additional Protocol to this convention extends to intellectual property as well.

According to a Swedish comedian, it is difficult to make predictions, in particular about the future. Nevertheless, I venture to submit that file-sharing cannot be stopped by legal threats. The law loses always its battles against technical progress and economic realities. In my view the judgment in the TPB case is in principle correct and in accordance with today's law, but it should not create the illusion that the courts are a particularly efficient instrument to stop file-sharing. It is not possible to turn back the tide. Attempts to rely on the law to put the end to unauthorized file-sharing may, furthermore, necessitate serious encroachments upon the privacy of the Internet users, as is demonstrated by the EC IPRED Directive No 2004/48 obliging commercial providers of services used in infringing activities, such as Internet providers, to disclose the identity of their customers (IPRED is an acronym for "Intellectual Property Rights Enforcement Directive").

The only realistic way of making people file-share lawfully is to make file-sharing lawful. The interests of copyright holders must be protected by instruments other than criminal law. One possibility is to develop new models for creating revenue from the Internet services providers rather than from the individual consumers of the digital products (perhaps some compulsory licence fees, or collective settlements such as the Google Book Search Copyright Class Action Settlement dated 28 October 2008 and preliminarily approved by the U.S. District Court for the Southern District of New York). An attractive alternative to illegal file-sharing could be the use

of the Swedish-developed technology employed by Spotify, which is a kind of virtual juke-box permitting its users to listen to music directly streaming from Cyberspace without its copying and further distribution. Spotify was created in Sweden as late as in 2006 and is currently available in selected countries only, but its users can already choose among more than six million music recordings. According to newspaper reports, Spotify is a profitable venture despite the fact that it is lawful and pays royalties to copyright owners. It is financed by advertising and by subscriber fees (in Sweden approximately 10 EUR per month) paid by those listeners who prefer not to have their listening pleasure interrupted by commercial messages.

Technological progress making file-sharing obsolete and/or technical measures making the “stealing” in Cyberspace technically impossible (or at least very difficult) are probably more efficient than legal restraints. This is nothing new. I recall that as a young law student in Prague, I listened to a lecture of a professor of criminal law who commented on a campaign launched by the then ruling Communist Party against petty crimes such as thefts of bicycles. After delivering the mandatory praise of the socialist legislation against such crimes, he added, with a twinkle in his eyes, that the fight against bicycle thefts might become even more efficient if the socialist shops started selling good bicycle locks. I have strong doubts, however, about the appropriateness of technologically protecting copyright by hiring hackers to launch attacks against the TPB website’s servers, which has actually been tried by an anti-piracy company.

In mid-November 2009, the TPB announced that they were closing down their tracker, allegedly not in order to abide by the court order instructing them to do so but rather because the tracker technology had become obsolete and would be replaced by new techniques, such as the DHT (Distributed Hash Table).

Regardless of the outcome of the appeal proceedings, the future of the four TPB defendants does not appear to be particularly bright. I have been told that the Swedish tax authorities have become interested in the substantial undeclared income allegedly earned by the TPB from advertising. It is possible that the Gang of Four will have to face the same fate as the famous gangster Al Capone did in Chicago many years ago, when the State, unable to get Al Capone convicted of his notorious violent crimes, ultimately succeeded in putting him in jail for tax evasion. But that is another story.