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# The Google Police: How the Indictment of The Pirate Bay Presents a New Solution to Internet Piracy

Bernard A. Mantel

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**THE GOOGLE POLICE: HOW THE INDICTMENT OF  
THE PIRATE BAY PRESENTS A NEW SOLUTION TO  
INTERNET PIRACY**

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## I. INTRODUCTION

“We are living in a world where ‘free’ is decimating the music industry, and is starting to do the same for film, TV and books.”<sup>1</sup> It is no secret that Internet piracy has become a global epidemic.<sup>2</sup> Yet we have become desensitized to this sort of complaint, having heard it for over ten years,<sup>3</sup> ever since Napster first showed the world how to acquire music from millions of users free of charge.<sup>4</sup> However, the problem continues to linger due to a global inability to thwart Internet piracy and peer-to-peer file sharing.<sup>5</sup> Every victory over Internet pirates is almost immediately followed by the development of new technologies that perpetuate the ability to illegally access copyright-protected content without the consent or compensation of its owners.<sup>6</sup> The seemingly endless growth of cyberspace and its trademark characteristic of user anonymity play a significant role in making Internet piracy such an elusive enterprise.<sup>7</sup> As the world increases its efforts to eliminate Internet piracy, pirates become more elusive in circumventing copyright laws and their enforcement.<sup>8</sup>

This is not to say that law enforcement efforts are without merit or have been fruitless. To the contrary, in 2009, the Stockholm District Court in Sweden convicted the creators of thepiratebay.org (“The Pirate Bay”), one of the largest file-sharing websites in the world for numerous violations of national and international copyright laws.<sup>9</sup> While the decision may at first appear as a small victory over Internet pirates, a close analysis of the Swedish Court’s ruling reflects new and intricate solutions to the world’s Internet piracy problem.

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<sup>1</sup> Paul McGinness, *How to Save the Music Business*, ROLLING STONE, Sept. 30, 2010, at 43. Paul McGinness is the manager of world-renowned band, U2.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See Annemarie Bridy, *Why Pirates (Still) Won't Behave: Regulating P2P in the Decade After Napster*, 40 RUTGERS L.J. 565, 565–84 (2009) (discussing the birth and legal demise of Napster).

<sup>5</sup> *Id.* at 566.

<sup>6</sup> *Id.* at 582.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Tingsrätt [TR] [Stockholm District Court] 2009-04-17 p. 1 B 13301-06 at 24 (Swed.) [hereinafter, Tingsrätt]. This opinion was delivered in Swedish and translated by the IFPI (International Federation of the Phonographic Industry), which is an international organization that promotes the value of recorded music, safeguards the rights of record producers, and aims to expand the commercial uses of recorded music in over 100 countries (including the US and Sweden). IFPI, [http://www.ifpi.org/content/section\\_about/index.html](http://www.ifpi.org/content/section_about/index.html) (last visited Jan. 22, 2011).

This note will demonstrate how the Stockholm District Court's reasoning in *Sweden v. The Pirate Bay*<sup>10</sup> reflects modern search engines' unique capability to police the World Wide Web by preventing users from illegally accessing copyright-protected material via BitTorrent technology. Part II will provide a brief history of illegal file sharing and the evolution of the technologies that perpetuate its staggering existence. Part II will also discuss the current popular technology that millions of users access on a daily basis to exchange pirated material all over the world and briefly explain how this technology works. Part III will outline the criminal and civil charges brought against the creators of The Pirate Bay, and will thoroughly analyze the Stockholm District Court's decision in *The Pirate Bay* and its reasoning. Part IV will then demonstrate the numerous similarities between torrent websites and major search engines. Applying the Court's logic in *Sweden v. The Pirate Bay* to modern search engines will also reveal new ways of thinking about Internet piracy and the measures that national governments and corporations can take to combat its devastating financial damages. Specifically, the Court's reasoning demonstrates that major search engines such as Google and Yahoo! share unique abilities to prevent anonymous users from accessing the necessary technology to engage in illegal copying of copyright-protected content. As a matter of public policy, major search engines ought to share some responsibility in a collective effort to monitor and police the World Wide Web. Part IV will also discuss two newly proposed pieces of legislation in the United States that aim to enforce this policy. Part V will conclude with a thought on the limitations of this solution and possible remedies to restore the various entertainment industries that have suffered substantial economic losses due to the global rise of Internet piracy.

## II. BACKGROUND: THE EVOLUTION OF FILE SHARING TECHNOLOGY AND THE HISTORY OF THE PIRATE BAY

### A. *A Brief History of File-Sharing*

In 1987, the Moving Pictures Experts Group created a standard file format for storing digital audio and video on a computer's hard drive.<sup>11</sup> These formats were referred to as MPEG for video and MPEG-3 for

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<sup>10</sup> No formal case name exists for the Stockholm District Court's decision against the creators of The Pirate Bay. This note will hereinafter refer to the case and opinion as *Sweden v. The Pirate Bay*.

<sup>11</sup> See *A&M Records, Inc. v. Napster*, 239 F.3d 1004, 1011 (9th Cir. 2001).

audio, and were later abbreviated as “mpg” and “mp3,” respectively.<sup>12</sup> The introduction of these technologies made it possible to transfer and share music and video media without requiring the media to be stored on a tangible disc.<sup>13</sup> However, the potential dangers of this technology did not manifest themselves until more than a decade later, when Napster launched in 1999.<sup>14</sup> Napster was the first grand-scale peer-to-peer file-sharing program to allow the transmission of mp3 files from one computer to another.<sup>15</sup> When a user connected to the Napster server via Napster software, the server would scan the user’s computer and record the title of every available mp3 song on the user’s hard drive.<sup>16</sup> Napster compiled this information in one massive catalog of music, thus allowing other Napster users to search for particular song titles to download.<sup>17</sup> Once another user selected a title, the Napster server would then facilitate what is commonly referred to as a “peer-to-peer” connection between the “host” user who already had the file stored on his or her computer, and the user who wanted to download that file.<sup>18</sup> In the years following the notorious copyright litigation against Napster, a number of new peer-to-peer clients entered into the mainstream. These included programs such as Morpheus, Limewire, and Kazaa.<sup>19</sup> With these programs, users were able to directly request files from other computers, rather than accessing a central server in order to facilitate such a connection.<sup>20</sup> As a result, there was no longer a central point of interception between those who were sharing copyrighted material, and those who were downloading it.

The preceding software was limited in its capability because it could only facilitate the transfer of small files.<sup>21</sup> As a result, Napster, Kazaa, and the like were mainly used to exchange single mp3 files.<sup>22</sup> However, BitTorrent, a new kind of model for peer-to-peer file-sharing allowed users to upload and download much larger files, thus enabling users to

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 1012.

<sup>18</sup> *Id.*

<sup>19</sup> See Ulric M. Lewen, *Internet File-sharing: Swedish Pirates Challenge the U.S.*, 16 CARDOZO J. INT’L & COMP. L. 173, 177 (2008).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

share entire albums, films, television episodes, video games, and computer software at much faster speeds than ever before.<sup>23</sup>

Under the old file-sharing model,<sup>24</sup> files could only be transferred between one single “seeder”<sup>25</sup> and one “leecher.”<sup>26</sup> BitTorrent technology changed this by dividing shared files into millions of small pieces of information and allowing multiple seeders to share those pieces at a given time.<sup>27</sup> Using this new technology, a single leecher can now download a file from multiple users at a given time by collecting different pieces of that file from a number of distinct users.<sup>28</sup> Additionally, the more users that seed the same file, the faster other users can download that file.<sup>29</sup>

Before BitTorrent, many users would download files but refuse to upload those files once the download had completed. Now, users can share incomplete portions of a file while they wait for their computers to complete a download of that same file.<sup>30</sup> Once a user receives one of the millions of divided pieces of information that collectively form the file, that piece can be shared as the user simultaneously collects the remaining pieces to form the completed file.<sup>31</sup>

### B. *How to Be a Pirate*

These new innovations in file-sharing software have made illegal sharing of copyright-protected material faster, easier, and much more elusive than ever before. The Swedish District Court’s decision in *Sweden v. The Pirate Bay* demonstrates that these changes in technology substantially affect how many countries adapt their policing techniques to combat Internet piracy. As a result, the process of downloading in and of itself has significant implications on how the world ought to prevent and

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<sup>23</sup> *Id.*

<sup>24</sup> Examples of software using peer-to-peer software include Napster, Kazaa, and Limewire.

<sup>25</sup> For the purposes of this note, a seeder is defined as a user who has a complete file stored on his or her hard drive for the purposes of sharing that file. A leecher is defined as a user who does not have the file, or only has a portion of it. A seeder will only upload and share content because that user already has the complete file. A leecher will continue to download the file until that user has a completed copy of the file. If that leecher continues to share the file, the leecher becomes a seeder. For more information on BitTorrent technology, see Carmen Carmack, *How BitTorrent Works*, HOW STUFF WORKS, <http://computer.howstuffworks.com/bittorrent.htm> <http://saguide.wordpress.com/2008/10/19/how-bittorrent-works/> (last visited Jan. 18 2012).

<sup>26</sup> See *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1012 (2001).

<sup>27</sup> See Tingsrätt, *supra* note 9, at 14.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 39.

<sup>30</sup> *Id.* at 38.

<sup>31</sup> *Id.*

eliminate illegal downloading. The necessary steps to download a copyrighted work, paired with the Swedish District Court's reasoning in its conviction of the creators of The Pirate Bay, suggest that major search engines such as Google and Yahoo! are able to play a significant role in protecting against copyright infringement at a very low cost.

To download files using BitTorrent technology, a user must install a BitTorrent client on his or her personal computer.<sup>32</sup> Examples of BitTorrent clients include Transmission<sup>33</sup>, Azureus<sup>34</sup>, and uTorrent.<sup>35</sup> This software is easily accessible and can often be downloaded free of charge.<sup>36</sup> This software is what facilitates the connections between users who are looking to share files.<sup>37</sup> Once a user obtains a client, the user must then search the Internet for a specific file to download.<sup>38</sup>

Users are able to perform these searches on a number of existing torrent websites to which seeders post the individual files that they are looking to share.<sup>39</sup> For example, if a user is looking to seed an mpg copy of the film *Inception*, that user would post a link on a torrent website that would directly connect other users (leechers) to the user's computer, allowing those leechers to download the film. Users establish this connection by clicking on the link, which automatically initiates the download of a very small torrent file.<sup>40</sup> It is important to note that it is the seeder (the person that is sharing the film) who creates the small torrent file, not the torrent search engine.<sup>41</sup> When the user opens the file, the torrent client software directly connects to the seeding user's computer,<sup>42</sup> and the download commences.<sup>43</sup> Once the leecher successfully completes the download, he or she can then seed the file to any other users that are looking for their own free copy of the film.<sup>44</sup>

The torrent search engines also use technology that is commonly referred to as a tracker.<sup>45</sup> The purpose of a tracker is to "provide the

<sup>32</sup> *Id.*

<sup>33</sup> TRANSMISSION, [www.transmissionbt.com](http://www.transmissionbt.com), (last visited Jan. 22, 2011).

<sup>34</sup> AZUREUS, [azureus.sourceforge.net](http://azureus.sourceforge.net), (last visited Jan. 22, 2011).

<sup>35</sup> UTORRENT, [www.utorrent.com](http://www.utorrent.com), (last visited Jan. 22, 2011).

<sup>36</sup> Tingsrätt, *supra* note 9, at 38.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> This connection is commonly referred to as a "handshake." *See Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 39.

<sup>45</sup> *Id.* at 38.

computer user with information on which other users [are], at any given time, involved in sharing the principle file [that] the torrent file [refers] to.”<sup>46</sup> It is also important to remember that trackers are created by the administrators of torrent websites for the convenience of its users.<sup>47</sup>

### C. *The History of The Pirate Bay*

The Pirate Bay was born out of a Swedish organization called Piratbyran (which in English means “The Pirate Bureau”).<sup>48</sup> In the Summer of 2003, Gottfrid Svartholm Warg, a member of Piratbyran working as a programmer for a security consultancy in Mexico, volunteered to create the BitTorrent tracker that would bring the file-sharing website to life.<sup>49</sup> Shortly after, the site became over-saturated with users, and Warg decided to move its base to Sweden, with the help of Frederik Neij and Peter Sunde.<sup>50</sup> Neij and Sunde were responsible for improving the site’s technology and upkeep in order to compensate for its ever-growing user base.<sup>51</sup> By 2004, The Pirate Bay had separated from Piratbyran and was independently owned by the four administrators, Lundström, Warg, Neij, and Sunde.<sup>52</sup>

At the time, Sweden was the perfect base for a website like The Pirate Bay because file sharing was practically legal and deeply rooted in popular culture to download copyright-protected material.<sup>53</sup> Until 2005, Swedish law only deemed the uploading of such material to be illegal, while downloading was as a crime.<sup>54</sup> Since the administrators of sites like The Pirate Bay technically do not upload the downloadable content via, creating and maintaining these torrent sites was also legal, provided that the site’s domain was based in Sweden.<sup>55</sup> Furthermore, Sweden is home to one of the largest anti-copyright movements in the world.<sup>56</sup> Shortly

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 17.

<sup>48</sup> See Quinn Norton, *A Nation Divided Over Piracy*, WIRED MAG. Aug. 17, 2006, available at <http://www.wired.com/science/discoveries/news/2006/08/71544>.

<sup>49</sup> See Tingsrätt, *supra* note 9, at 32.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See THE PIRATE BAY, <http://thepiratebay.org/about> (last visited Jan. 22, 2011).

<sup>53</sup> See Norton, *supra* note 48.

<sup>54</sup> See Bruce Gain, *Europe Goes Gently on P2P Piracy*, WIRED MAG., July 9, 2005, available at <http://www.wired.com/entertainment/music/news/2005/07/68109>.

<sup>55</sup> *Id.*

<sup>56</sup> Norton, *supra* note 48.



after The Pirate Bay's move, a technician named Carl Lundström joined Sunde, Neij, and Warg to prepare for the international launch<sup>57</sup> of The Pirate Bay.<sup>58</sup>

In 2005, Sweden amended its Copyright Act, making it illegal to download material from the Internet that has been posted without permission of its owner.<sup>59</sup> This essentially criminalized both directions of traffic (uploading and downloading) in the transfer of copyright-protected material.<sup>60</sup> Any act of transferring copyrighted material, regardless of direction, was deemed illegal.<sup>61</sup>

The amended Copyright Act defines copyright protection as "the exclusive (sole) right of the rights-holder to dispose of the work or produce copies and so make the work or right available to the general public."<sup>62</sup> Under the Act, a work is made available when it is "broadcast to the general public." Broadcasting constitutes "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."<sup>63</sup> At trial, the Stockholm District Court noted that the making available of material via peer-to-peer sharing constitutes a broadcast.<sup>64</sup> The penalty for copyright infringement under the Act is a fine and/or imprisonment of up to two years, provided that the infringement was intentional or the result of gross negligence on the part of the defendant.<sup>65</sup>

Lundström voiced his concern to his peers that the changes to the Copyright Act would render their operation as unlawful.<sup>66</sup> Nevertheless, the domain and base of operations remained in Sweden.<sup>67</sup> To fund its expansion, The Pirate Bay creators sold advertising space on their website.<sup>68</sup> In court, Lundström, Warg, Neij, and Sunde claimed that the

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<sup>57</sup> Lundström's role aided the expansion of the website by supplying "additional computers and operating capital, and to continue to provide Internet access." Tingsrätt *supra* note 9, at 24.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 25.

<sup>60</sup> *See id.*

<sup>61</sup> *See id.*

<sup>62</sup> *Id.* at 35.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 36, (citing 7 ch. 53 § LAG OM UPPHOVSRÄTT TILL LITTERÄRA OCH KONSTNÄRLIGA VERK (Svenskförfattningssamling [SFS] 2005:729) (Swed.) (the Swedish Copyright Act).

<sup>66</sup> *Id.* at 25.

<sup>67</sup> *See id.*

<sup>68</sup> *Id.*

revenue that they collected was used solely to maintain the operation of the website, denying that they kept any of the money as personal profit.<sup>69</sup>

By 2006, The Pirate Bay boasted over 700,000 registered users and had been translated in over twenty languages.<sup>70</sup> In addition, The Pirate Bay creators received numerous complaints that the website's users were uploading and downloading copyright-protected works.<sup>71</sup> The creators responded by publicly announcing that they would only remove torrent files if the name of the torrent did not accurately correspond with its associated file.<sup>72</sup> Their response reflected that the creators had the ability to remove torrent files that allowed users to download pirated material, but chose not to do so.<sup>73</sup>

In February 2006, Swedish District Prosecutors began to download a number of files using The Pirate Bay in order to collect evidence in preparation of criminally charging Lundström, Warg, Neij, and Sunde, recording the dates and the number of downloads<sup>74</sup> of each file that had occurred to date.<sup>75</sup> This information was gathered via The Pirate Bay's tracker and openly available on the website.<sup>76</sup> After obtaining enough evidence, Swedish police raided The Pirate Bay's offices, confiscating all of its computers, servers, and hard drives.<sup>77</sup>

### III. THE TRIAL

#### A. *The Charges*

In January 2008, the Stockholm District Prosecutor indicted Neij, Warg, Sunde, and Lundström for "complicity" in breaches of the Swedish Copyright Act by making available copyright-protected works for download without the permission or compensation of that material's owners.<sup>78</sup> The Court explained that,

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<sup>69</sup> *Id.* at 28.

<sup>70</sup> *Id.* at 27.

<sup>71</sup> *See id.* at 23.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 27.

<sup>74</sup> *Id.* at 42-44. For the list of the files downloaded that was introduced into evidence during trial, see Appendix A. These files include full-length feature films, computer games, and albums. *Id.*

<sup>75</sup> *See* Tingsrätt *supra* note 9, at 42-44.

<sup>76</sup> *Id.* at 45.

<sup>77</sup> *Id.* at 60-61.

<sup>78</sup> *Id.* at 15.

“[f]or 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.”<sup>79</sup>

An act of complicity under Swedish law occurs when an individual commits a principal criminal offense and a defendant commits a secondary act of encouraging the commission of the principle offence.<sup>80</sup>

In addition to the criminal charges, six Swedish record companies, two Nordic film companies, and six American film companies filed claims for damages,<sup>81</sup> alleging that Lundström, Sunde, Neij, and Warg<sup>82</sup> intentionally infringed their copyrights.<sup>83</sup> The companies also charged that the defendants were alternatively, “negligent in their obligations concerning copyright infringement,” as the various protected works had been illegally uploaded and downloaded via The Pirate Bay’s peer-to-peer network.<sup>84</sup> Over the defendants’ objection, the Swedish District Court decided that these civil claims would be heard and decided in conjunction with the criminal charges.<sup>85</sup> The prosecutor also noted in agreement with the plaintiff companies that The Pirate Bay’s operations were largely funded by advertising revenue, citing this as a criminal commercial use of copyright-protected material.<sup>86</sup>

The Pirate Bay creators responded by asserting that The Pirate Bay was never involved in any illegal activity.<sup>87</sup> Rather, they argued that The Pirate Bay had only replicated information on torrent files provided by Internet users “without The Pirate Bay or any of its representatives having acquainted themselves with any copyright-protected material or actively

<sup>79</sup> *Id.* at 36 (emphasis added).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 19; For a complete list of damage claims from each respective company, see Appendix B. See Appendix B for a complete list of damage claims from each respective company. *Id.* at 19.

<sup>82</sup> [hereinafter, “Pirate Bay creators”]

<sup>83</sup> Tingsrätt *supra* note 9 at 20.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 15.

<sup>86</sup> *Id.* at 52.

<sup>87</sup> *Id.* at 17.

referred to such material.<sup>88</sup> In addition, the defendants claimed that the evidence failed to support a conviction because the prosecution was unable to produce the identities of the principal offenders (the specific users who illegally uploaded and downloaded copyrighted material via The Pirate Bay).<sup>89</sup> The defendants further noted that they never initiated the actual copying of the files in question, arguing that the copying took place on users' computers without those files having ever passed through The Pirate Bay's computers.<sup>90</sup> Therefore, they could not have intentionally been complicit in copyright infringement, nor were they ever aware of such illegal activity.<sup>91</sup> Rather, it was the users who illegally supplied and shared the files.<sup>92</sup> Finally, the Pirate Bay creators argued that the act of providing a file-sharing service, by itself, is not an offence per se because such a service can be used for both legal and illegal purposes.<sup>93</sup> They added that file-sharing technology is widely used and conventional, and thus should not be regarded as aiding and abetting copyright infringement.<sup>94</sup>

### B. *The Issues*

Before announcing a verdict, the Stockholm District Court cited a number of issues that would determine whether Lundström, Warg, Neij, and Sunde committed an act of complicity under Swedish common law. The first of these issues was whether a principal offense had occurred, and if so, whether it occurred in Sweden.<sup>95</sup> At trial, The Pirate Bay creators argued that because the prosecution failed to provide the identities of the principal offenders<sup>96</sup>, it failed to demonstrate that a principal offence occurred.<sup>97</sup> While the Court agreed that The Pirate Bay's users were the principal offenders, it nevertheless ruled that the prosecution was not required to produce the identities of those users in order to sufficiently demonstrate that The Pirate Bay creators committed an act of

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 47.

<sup>90</sup> *Id.* at 17.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 18.

<sup>94</sup> *Id.* at 17.

<sup>95</sup> *See id.* at 39.

<sup>96</sup> The users of the pirate bay were the individuals who actually illegally copied copyrighted material and thus committed the principal offense of copyright infringement

<sup>97</sup> Tingsrätt, *supra* note 9, at 47.

complicity.<sup>98</sup> The Court concluded that the prosecution sufficiently demonstrated that at least some of The Pirate Bay's users committed principal offenses, regardless of their identities, thus satisfying the first element of the prosecution's complicity charge.<sup>99</sup> However, while it was clear that The Pirate Bay's users violated the Swedish Copyright Act, those users were located in many different countries, thus placing the principal offenders outside of the Swedish Court's jurisdiction.<sup>100</sup> Nevertheless, the Court noted that Internet users could obtain the works in Sweden, adding that The Pirate Bay's website was available in Swedish.<sup>101</sup> The Court also noted that the base computers that kept the network running were located in Sweden.<sup>102</sup> From this, the Court concluded that it would consider all of the principle offenses, even those committed by users outside of Sweden, as having occurred in Sweden.<sup>103</sup>

Another important issue was "whether the majority of the films made available for file sharing 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."<sup>104</sup> The Court determined that because The Pirate Bay creators accepted substantial amounts of money in advertising revenue, with the amounts increasing over time, The Pirate Bay's use of copyrighted works necessarily constituted a commercial use of those works.<sup>105</sup> This rationale was significant because it correlated The Pirate Bay's use of the works with its financial income, while bolstering the plaintiff companies' claims for monetary damages.

The third issue was whether the defendants, in creating a peer-to-peer file-sharing network, aided and abetted the perpetrators in committing the principal offences.<sup>106</sup> In answering this question, the Court asserted that, "[l]iability for complicity can apply even to someone who has contributed only insignificantly to the principal offense."<sup>107</sup> Citing The Pirate Bay's popularity, as reflected by its large and ever-growing user-base, the Court decided that the main purpose of The Pirate Bay was to create a vast

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<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 46.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 37.

<sup>105</sup> *Id.* at 53.

<sup>106</sup> *Id.* at 51.

<sup>107</sup> *Id.*

meeting place for file sharers.<sup>108</sup> The Court also noted the frequency with which the defendants updated and upgraded the computers, which was done in order to maintain the efficiency at which users could upload and download material.<sup>109</sup> From this, the Court concluded that, “[b]y providing a website with advanced search functions and easy uploading and downloading facilities, and by putting individual file-sharers in touch with one another...the operation run via The Pirate Bay...facilitated and, consequently, aided and abetted these [principal] offences.”<sup>110</sup>

The fourth and final issue was whether The Pirate Bay creators intentionally or negligently aided and abetted others to violate the Copyright Act.<sup>111</sup> In ruling on this issue, the Court determined that the prosecution failed to prove that Lundström, Warg, Neij, and Sunde knew that the specific works listed by the prosecution were made available via The Pirate Bay.<sup>112</sup> However, the Court ruled that knowledge of the specific works that were exchanged was not necessary to prove the defendants’ intent to aid and abet the principal offense.<sup>113</sup> Rather, the Court reasoned, it was sufficient to demonstrate that the defendants intentionally created the conditions that led to the violation of the plaintiff companies’ copyrights.<sup>114</sup> To establish the defendants’ intent, the Court cited numerous letters and emails that the defendants received providing them with notice that their website was facilitating the illegal exchange of copyright-protected material.<sup>115</sup> In fact, the defendants even posted a number of these letters on the website, without taking any measures to remove the content that those letters discussed.<sup>116</sup> Convinced that the four defendants had prior knowledge of the illegal activity that occurred via their peer-to-peer network, the Court concluded that Lundström, Warg, Neij, and Sunde knowingly aided and abetted infringements of the Copyright Act.<sup>117</sup>

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<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 47.

<sup>110</sup> *Id.* at 48.

<sup>111</sup> *Id.* at 6851.

<sup>112</sup> *Id.* at 52.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

### C. *The Verdict*

Having concluded that the prosecution had sufficiently established all four elements of complicity, the Court found Lundström, Warg, Neij, and Sunde guilty of complicity to breach the Swedish Copyright Act.<sup>118</sup> The Court found that each work downloaded as evidence of this complicity was protected under copyright,<sup>119</sup> The Pirate Bay creators intentionally aided and abetted the infringement of those copyrights.<sup>120</sup>

In determining appropriate sentences for the four defendants, the Court considered a number of factors.<sup>121</sup> The Court began by stating that since the defendants acted with a common purpose, each contributing to that purpose in a variety of ways, each defendant was entitled to the same sentence.<sup>122</sup> The Court then noted that, “in many cases, the appropriate penalty for aiding and abetting is lower than the penalty for the principal offence itself.”<sup>123</sup> However, the Court continued by confirming that The Pirate Bay generated a significant amount of revenue<sup>124</sup> from advertising during the period that Swedish police monitored the website.<sup>125</sup> Because the principal offenders in this case “did not enjoy any financial benefit from their making available via The Pirate Bay,”<sup>126</sup> the Court decided that it would refrain from taking such a lenient view.<sup>127</sup> However, this conclusion is somewhat inaccurate. While it is technically true that uploading by itself might not have led to any direct financial gain on the part of the seeder, other users and principal offenders did enjoy some form of financial gain in obtaining the pirated works for free. This must be true if the Court accepts the plaintiff companies’ allegations that The Pirate Bay’s operations resulted in a loss of revenue that would have otherwise been earned. The Court’s logic assumes that every user who stole a work would have paid for that work had the work not been readily available to steal. Nevertheless, the Court sentenced each of the four

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<sup>118</sup> *Id.* at 57.

<sup>119</sup> *Id.* at 53.

<sup>120</sup> *Id.* at 57.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 57, 58.

<sup>123</sup> *Id.* at 59.

<sup>124</sup> The Court determined that the revenue earned during the period indicated in the indictment amounted to at least SEK 1,200,000, which is roughly \$175,400 U.S.

<sup>125</sup> *Id.* at 58.

<sup>126</sup> *Id.* at 59.

<sup>127</sup> *Id.*

defendants to one year in prison.<sup>128</sup> The Court ordered the confiscation of The Pirate Bay's computer equipment due to the fact that it could and likely would be used for criminal purposes.<sup>129</sup>

The Court then moved to address the damage claims filed by local and international music, film, and videogame companies.<sup>130</sup> Addressing the incorporation of both civil and criminal charges in the same trial, the Court declared that “[a]nyone 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.”<sup>131</sup> The Court supported its decision by citing section 54 of the Swedish Copyright Act, which states that anyone who uses the right or work in violation of the Act must pay damages to the rights holder in order to compensate for this use.<sup>132</sup> This means that under the Swedish Copyright Act, if a defendant is found guilty of criminal charges of copyright infringement resulting in the financial loss of a plaintiff, that defendant is automatically held liable for the financial loss, without a separate civil hearing or trial.<sup>133</sup> As a result, the Court ordered the four defendants to pay a combined \$4.3 million<sup>134</sup> in damages to the companies, after adjusting the damage awards “with respect to the defendants’ financial circumstances and the plaintiff companies’ need for compensation.”<sup>135</sup>

#### IV. GOOGLE VS. THE PIRATE BAY

##### A. *Just Another Search Engine?*

The Stockholm District Court’s decision against Lundström, Warg, Neij, and Sunde has a number of startling implications on how many countries ought to view and police the Internet, piracy, and copyright infringement. By 2008, The Pirate Bay alone had over twenty-five million active users.<sup>136</sup> A new subculture based on free content has caused

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<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 60.

<sup>130</sup> *Id.* at 62.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> See *Court Jails Pirate Bay Founders*, BBC NEWS, <http://news.bbc.co.uk/2/hi/8003799.stm> (last updated Apr. 17, 2009, 14:29 GMT).

<sup>135</sup> Tingsrätt, *supra* note 9, at 21.

<sup>136</sup> THE PIRATE BAY, <http://thepiratebay.se/blog/138> (last visited Feb. 22, 2012).



devastating financial losses in the music, film, television, and literary industries.<sup>137</sup>

A number of striking similarities emerge between BitTorrent websites and major search engines when focusing on the structure of the websites themselves, apart from the underlying peer-to-peer networks. Some argue that torrent websites are nothing more than search engines that return more concentrated and refined results.<sup>138</sup> This begs the question as to what, if any, responsibilities the larger and more generic search engines may or ought to bear in terms of filtering accessible illegal content on the Internet. Applying the Court's logic in *Sweden v. The Pirate Bay* to generic search engines such as Google and Yahoo! reveals that they can, and perhaps should, play a significant role in policing Internet piracy. As the most widely used search engine in the world,<sup>139</sup> Google is in a unique position to help monitor and filter the public's access to illegal material online.<sup>140</sup> The *Pirate Bay* ruling also suggests a possibility that the world's leading search engines have a legal obligation to do so.

A search engine is defined as, "a program for the retrieval of data from a database or network, especially the Internet."<sup>141</sup> The *Pirate Bay*, along with every other torrent website in the world, perfectly fits this definition. Peter Sunde even defined The *Pirate Bay* as such: "We get legal threats every day, or we used to... But we don't have a problem with them – we're just a search engine."<sup>142</sup> When searching for particular works, users enter phrases corresponding to the specific torrent files desired, and The *Pirate Bay* website retrieves this information by finding any existing torrent files that match those phrases.<sup>143</sup> Once this information is retrieved, users are directed to connections and content that is "away" from The *Pirate Bay*'s website.<sup>144</sup>

<sup>137</sup> McGinness, *supra* note 1, at 43.

<sup>138</sup> Nate Anderson, "Pirate Google" Sets Sail to Show Copyright Hypocrisy, ARS TECHNICA (April 29, 2009 10:40 AM), <http://arstechnica.com/tech-policy/news/2009/04/pirate-google-sets-sail-to-show-copyright-hypocrisy.ars>.

<sup>139</sup> *comScore Reports Global Search Market Growth of 46 Percent in 2009*, COMSCORE, (Jan. 22, 2010) [http://www.comscore.com/Press\\_Events/Press\\_Releases/2010/7/comScore\\_Releases\\_June\\_2010\\_U.S.\\_Search\\_Engine\\_Rankings](http://www.comscore.com/Press_Events/Press_Releases/2010/7/comScore_Releases_June_2010_U.S._Search_Engine_Rankings) - comScore is the leading measurer of online activity (reporting Google possesses 62.6% of the search market share).

<sup>140</sup> Because of Google's worldwide use and obvious popularity, Google will serve as a general representative model for all major search engines when compared torrent websites.

<sup>141</sup> *Search Engine Definition* OXFORD ENGLISH DICTIONARY, [www.oed.com](http://www.oed.com).

<sup>142</sup> Bobbie Johnson, *How Three Swedish Geeks Became Hollywood's Number One Enemy*, THE GUARDIAN, Aug. 25, 2007, at 9, available at <http://www.guardian.co.uk/technology/2007/aug/25/piratebay>.

<sup>143</sup> See THE PIRATE BAY, <http://thepiratebay.se> (last visited Feb. 22, 2012).

<sup>144</sup> See *id.* This is to say that users establish a connection via torrent downloading clients, rather than

Similarly, users of conventional search engines such as Google or Yahoo! are able to enter phrases corresponding to specifically desired documents. The search engines also retrieve documents based on relevance and relation to the entered phrases. Once a user finds the desired content, the user is directed away from the search engine itself, and becomes a visitor and user of a specific website, electronic publication, downloading service, etc.

Another noteworthy similarity between Google and The Pirate Bay is that both are generally known and accessible across the globe.<sup>145</sup> Both websites have been translated into dozens of different languages, and both adapt and reflect nuanced differences based on the country in which users access them.<sup>146</sup> As a result, both have the remarkable potential to influence the behavior of millions of users.

Finally, another key similarity is that both Google and The Pirate Bay are able to block and remove content from their websites.<sup>147</sup> The Pirate Bay creators conceded this capability during trial<sup>148</sup>, and Google's automated search mechanisms share this ability.<sup>149</sup> Google also provides its users with a form to request removal of content from its search results.<sup>150</sup> Still, only The Pirate Bay has been held responsible for failure to remove illegal content from its website.

### B. The Pirate Google

To demonstrate the similarities of both search engines, promote personal views of net neutrality, and stimulate debate on the issue of Internet piracy, one anonymous user created a website called "The Pirate Google," which exclusively searches for torrent files using Google's engine.<sup>151</sup> While The Pirate Bay is exclusively used to provide access to

directly drawing material from the website itself.

<sup>145</sup> GOOGLE, <http://www.google.com/intl/en/options/> (last visited Jan. 22, 2011).

<sup>146</sup> For example, accessing Google in Spain will launch GOOGLE ESPAÑA, at <http://www.google.es> (last visited Sept. 15, 2011). Similarly, launching The Pirate Bay in Spain will launch The Pirate Bay with every word translated in Spanish. See PIRATE BAY, <http://thepiratebay.org/language> (last visited Sept. 15, 2011).

<sup>147</sup> *Remove a page or site from Google's search results*, GOOGLE, <http://www.google.com/support/webmasters/bin/answer.py?hl=en&answer=164734> (describing the necessary measures to remove a url from Google search results) (last visited Jan. 22, 2011).

<sup>148</sup> Tingsrätt, *supra* note 9, at 27.

<sup>149</sup> See Steve Lohr, *Google Schools its Algorithm*, N.Y. TIMES (Mar. 5, 2011), <http://www.nytimes.com/2011/03/06/weekinreview/06lohr.html?pagewanted=1&r=1>. For further discussion of these capabilities, see *infra* § IV.E.

<sup>150</sup> GOOGLE, *supra* note 147.

<sup>151</sup> Anderson, *supra* note 138.

music, video, and other forms of entertainment, other major search engines also provide access to similar content. Obviously the comparison between The Pirate Bay and Google is more nuanced, but it nevertheless remains true that both search engines can and do provide users with the means to access copyright-protected material free of charge. There have also been instances in which the legality of Google's search results was called into question.<sup>152</sup> Furthermore, Google provides access to torrent files in its search results, sometimes even when torrent files have not specifically been requested.<sup>153</sup> In essence, the one noticeable difference between searching for a torrent on Google and searching for a torrent on any other website like The Pirate Bay is that searching for a torrent on Google requires one extra step of clicking on a link to move from Google to another torrent website.<sup>154</sup>

According to The Pirate Google creator, the site, "simply makes use of Google Custom Search to restrict your searches to Torrent files. [A user] can do this with any regular Google search by appending [a] query with filetype:torrent. This technique can be used for any type of file supported by Google."<sup>155</sup> The creator continues by arguing that the Swedish Court's decision in the case against The Pirate Bay reflects a double standard between large media conglomerates and small independent websites.<sup>156</sup> He states, "sites such as Google offer much the same functionality as The Pirate Bay and other Bit Torrent sites but are not targeted by media conglomerates...as they have the political and legal clout to defend themselves unlike these small independent sites."<sup>157</sup> While there are clear differences in intended use between Google and The Pirate Bay, this site demonstrates Google's functional ability to perform searches for free copyrighted material, should a Google user desire such content.<sup>158</sup> However, this anonymous protestor ironically failed to recognize the most significant implication of this comparison: that applying the Swedish

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<sup>152</sup> See *Perfect 10 v. Google, Inc.*, 416 F. Supp. 2d 828, 844 (C.D. Cal. 2006) (finding Google liable for infringement by providing thumbnail images from Perfect 10's website in its image searches), *rev'd in part by Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F. 3d 1146, 1177 (9th Cir. 2007).

<sup>153</sup> See *infra* Appendix C for screenshots of Google searches returning torrent links in search results. INCEPTION TORRENT, <http://www.google.com/intl/en/options/> (last visited Jan. 22, 2011); DOWNLOAD ONLY BY THE NIGHT, <http://www.google.com/intl/en/options/> (last visited Jan. 22, 2011).

<sup>154</sup> See *infra* Appendix C.

<sup>155</sup> THE PIRATE GOOGLE, <http://www.thepirategoogle.com> (last visited Jan. 22, 2011).

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

Court's standards and codes of conduct to Google would actually result in a practical and efficient method of combating Internet piracy.

### C. *The Google Police*

It is important to note that while the decision against The Pirate Bay only carries the force of law in Sweden, copyright law as it pertains to Internet piracy is constantly changing as technologies evolve.<sup>159</sup> Furthermore, copyright laws and their enforcement greatly differ between national governments. For example, while copyright laws in the United States and England are far more rigid and heavily enforced than those in Sweden.<sup>160</sup> In addition, even the most stringent copyright provisions in the United States have faced heavy criticism calling for major legal reformation.<sup>161</sup> This wide demonstrates that copyright infringement, as a global issue, is part of an ever-changing legal landscape. Thus, to apply a Swedish Court's decision to a global web-based company for the purposes of exploring its implications on how the world ought to fight a global epidemic is certainly not without merit.

In *Sweden v. The Pirate Bay*, the Court determined that the defendants' knowledge of illegal activity that occurred via their website, paired with their failure to regulate this activity by removing copyright-protected content, constituted an intentional promotion of illegal activity.<sup>162</sup> While it is a stretch to argue that major search engines like Google intentionally create similar conditions, this reasoning does suggest that search engines do have some degree of responsibility to monitor the content that the general public may access. One key aspect about search engines that supports this proposition is that search engines are physically capable of removing content from their websites.

In 2009, YouTube reported that over one hundred million users had viewed nearly fifteen billion videos on its website, dwarfing The Pirate Bay's user base at the time of the creators' convictions.<sup>163</sup> However, there

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<sup>159</sup> See e.g. *United States Copyright Office: A Brief Introduction and History*, U.S. COPYRIGHT OFFICE, <http://www.copyright.gov/circs/circ1a.html> (last visited, Mar. 11, 2011)

<sup>160</sup> See Gain, *supra* note 54 (comparing Sweden's maximum two-year prison sentence for illegal uploading and downloading with England and the United States' maximum sentences of ten years).

<sup>161</sup> See Robert X. Cringely, *Steal This Column: Criticism Won't Change the DMCA, but Breaking the Law Will, I Cringely: The pulpit*, PBS.COM, (Sept. 26, 2002) [http://www.pbs.org/cringely/pulpit/2002/pulpit\\_20020926\\_000436.html](http://www.pbs.org/cringely/pulpit/2002/pulpit_20020926_000436.html).

<sup>162</sup> See Tingsrätt, *supra* note 9, at 52.

<sup>163</sup> *YouTube Surpasses 100 Million U.S. Viewers for the First Time*, COMSCORE, [http://www.comscore.com/Press\\_Events/Press\\_Releases/2009/3/YouTube\\_Surpasses\\_100\\_Million\\_US\\_View](http://www.comscore.com/Press_Events/Press_Releases/2009/3/YouTube_Surpasses_100_Million_US_View)

is evidence that the Google-owned video search engine may have similarly turned a blind eye to copyright infringement, just as the convicted Pirate Bay creators had done. In *The Football Ass'n Premier League Ltd. v. YouTube, Inc.*<sup>164</sup>, a group of major news and entertainment conglomerates (including Cherry Lane Music Publishing, Los Angeles News Service, and Viacom) filed a class-action lawsuit against YouTube in the United States, for streaming numerous foreign copyright-protected videos and broadcasts on YouTube's website.<sup>165</sup> The Plaintiffs submitted a number of emails authored by YouTube founder Steve Chen as evidence that YouTube executives deliberately refrained from removing copyright-protected material.<sup>166</sup> One email stated: "[if we] remove all that content, [the site would] go from 100,000 views a day down to about 20,000 views or maybe even lower...the perception is that we are concerned about this type of material and we're actively monitoring it. [But the] actual removal of this content will be in varying degrees...That way...you can find truckloads of ... copyrighted content ... [if] you [are] actively searching for it."<sup>167</sup> Just like the creators of The Pirate Bay, Chen received notification that YouTube aided the illegal display of copyrighted material.<sup>168</sup> Despite the fact that Chen ignored this notification, the Court ruled in favor of YouTube, asserting that the Digital Millennium Copyright Act did not allow copyright owners to collect statutory or punitive damages for foreign works that had not been registered in the United States.<sup>169</sup>

On the other hand, The Pirate Bay's failure to filter its content and remove copyright-protected material resulted in criminal charges against its creators.<sup>170</sup> Furthermore, a significant number of the plaintiffs in The Pirate Bay litigation were companies that were based in the United States.<sup>171</sup> The Stockholm District Court chose to take action to protect its local and international copyright holders, while the United States Court in the class action against Google did not, arguing that it was bound by the

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ers (Mar. 4, 2009).

<sup>164</sup> 633 F. Supp. 2d 159 (S.D.N.Y. Jul. 23, 2009).

<sup>165</sup> *Id.* at 166.

<sup>166</sup> Charles S. Simms, *YouTube, Google Find Safe Harbor in New York Court*, 27-SEP COMM. LAW. 3, 2010 (citing *Football Ass'n Premier League Ltd. v. YouTube, Inc.*, No. 07-cv-3582 (LLS) (S.D.N.Y. May 4, 2007) (Docket Entry No. 166, Figueira declaration exhibits 47, 63)).

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Football Ass'n Premier League Ltd.*, 633 F. Supp. 2d at 162, 167.

<sup>170</sup> Tingsrätt, *supra* note 9, at 52.

<sup>171</sup> *Id.* at 2.

United States Digital Millennium Copyright Act (“DMCA”).<sup>172</sup> However, both cases demonstrate that all search engines have the means and the technology to monitor the content that they provide. The Court’s decision in *Sweden v. The Pirate Bay* suggests that as a matter of policy, search engines ought to take proactive measures to protect copyright owners from illegal theft of their works. However, the case against Google reflects that such a policy in the United States can only be enforced by means of government legislation. The fact that search engines’ legal obligations to remove certain content can change depending on the countries in which that content is accessible further demonstrates that the war against Internet piracy requires collective global enforcement.

In reality, imposing and enforcing such obligations would likely be a far more efficient step towards solving the world’s Internet piracy problem with respect to BitTorrent technology than sentencing four men to a year in prison and fining them a few million dollars – a minute amount when compared to the total losses suffered in today’s entertainment industries. Market statistics reflect that Google and Yahoo! dominate the market for search engines.<sup>173</sup> A majority of the online community use these search engines to find information that they do not already have.<sup>174</sup> Thus, removing torrent websites from search results will effectively prevent users who are unfamiliar with BitTorrent technology from discovering and eventually using such software to acquire free access to copyright-protected material. In addition, Google’s reported earnings<sup>175</sup> further reflect that it has an abundance of resources that it can use to carry out such preventative measures. While it is true that these search engines are one more step removed from the process of finding an illegal file (since users have to click on one additional link using these search engines than they would if they used The Pirate Bay),<sup>176</sup> huge conglomerates like Google are nevertheless in the best position to help solve the problem.

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<sup>172</sup> *Football Ass’n*, 633 F. Supp. 2d 159, 162, 167.

<sup>173</sup> See *comScore Releases November 2009 U.S. Search Engine Rankings*, COMSCORE, (Dec. 16, 2009), [http://www.comscore.com/Press\\_Events/Press\\_Releases/2009/12/comScore\\_Releases\\_November\\_2009\\_U.S.\\_Search\\_Engine\\_Rankings](http://www.comscore.com/Press_Events/Press_Releases/2009/12/comScore_Releases_November_2009_U.S._Search_Engine_Rankings) (reporting Google and Yahoo! as having a combined 83.4% of the world’s Internet searches in 2009)

<sup>174</sup> *Id.*

<sup>175</sup> See *2011 Financial Tables*, GOOGLE INVESTOR RELATIONS, <http://investor.google.com/financial/tables.html> (last visited Jan. 22, 2011)

<sup>176</sup> See Appendix C.

*D. Policing the Internet in the United States*

Today, the same charges as those against The Pirate Bay creators would not likely survive against Google in the United States.<sup>177</sup> This is largely due to the fact that the DMCA exempts “service providers”<sup>178</sup> from liability “for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider-

(A)(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing...

(B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(C)<sup>179</sup> upon notification of the claimed infringement...responds expeditiously to remove...the material that is claimed to be infringing or to be the subject of infringing activity.”<sup>180</sup>

These safe harbor provisions reflect Congress’s intent to balance the interests of copyright holders in a digital age where copyright infringement has developed into a serious problem with other concerns including avoidance overzealous monitoring and protecting the First Amendment.<sup>181</sup> Nevertheless, the DMCA creates a number of issues that would hinder the ability of United States courts and legislatures to conscript major search engines to monitor content in their search indexes. Some courts have recently applied these provisions to search engines in copyright infringement suits, only to exculpate the search engines from liability.

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<sup>177</sup> See *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007); see also *Viacom International Inc. v. YouTube Inc.*, 07 N.Y. Civ. Ct. 2013 (S. D. N. Y. 2010).

<sup>178</sup> In recent cases, search engines such as Google and YouTube have been held to qualify as “service providers.” *Id.*

<sup>179</sup> United States Digital Millennium Copyright Act, 17 U.S.C. § 512 (c)(1)(C) (2010) (This section is commonly referred to as the “notice and takedown” provision of the DMCA).

<sup>180</sup> United States Digital Millennium Copyright Act, 17 U.S.C. § 512 (c) (2010).

<sup>181</sup> See generally Craig W. Walker, *Application of the DMCA Safe Harbor Provisions to Search Engines*, 9 VA. J.L. & TECH. 2 (2004).

For example, in *Viacom International Inc. v. YouTube Inc.*<sup>182</sup>, a New York District Court ruled that although YouTube undeniably knew that its users uploaded a great number of Viacom's copyright-protected video clips to its site, YouTube could not ascertain which specific clips were uploaded with permission and which were not<sup>183</sup> (an excuse that was expressly rejected by the Stockholm District Court in *The Pirate Bay*<sup>184</sup>). Interestingly, the Court noted that although this alone exempted YouTube from financial liability as a service provider, YouTube also complied with Viacom's request to remove its video clips almost immediately.<sup>185</sup> This demonstrates that although major search engines likely have the ability to identify, isolate, and block at least the most popular websites that gratuitously allow users to access pirated content on a grand scale, the DMCA exculpates search engines who fail to do so simply due to the mere size of their search indices.

This inconsistency reflects that even if a search engine is aware that its site hosts or allows users to access to illegally pirated content, US law shields that search engine from liability despite this knowledge.<sup>186</sup> This, of course, would not apply to smaller search engines like *The Pirate Bay*, because the illegal content is much easier to identify in a smaller compilation of data. Nevertheless, it seems counter-intuitive to hold smaller search engines financially responsible for copyright infringement and not the most popular and frequently used search engines. The similarities between torrent websites and other major search engines ought to be taken into consideration by enforcing a policy that those who are equipped to combat Internet piracy at least make some effort to do so. The best and most efficient resources must be allocated towards a global effort to suppress the rampant growth of Internet piracy. If major search engines were held to the same standards as Lundström, Warg, Neij, and Sunde in *The Pirate Bay*, those search engines would suddenly have significant financial incentives to protect the valuable copyrights that allow the world's modern entertainment and artistic industries to thrive.<sup>187</sup>

In response to this very issue, the Congress began to evaluate two newly proposed bills [the Stop Online Piracy Act (SOPA), and the Protect

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<sup>182</sup> 07 N.Y. Civ. Ct. 2013 (So. Dist. 2010)

<sup>183</sup> *Id.* at 528-29.

<sup>184</sup> Tingsrätt, *supra* note 9, at 52

<sup>185</sup> See *Viacom*, 718 F. Supp. at 524.

<sup>186</sup> See Simms, *supra* note 166 at 4-5.

<sup>187</sup> See Craig W. Walker, *Application of the DMCA Safe Harbor Provisions to Search Engines*, 9 VA. J.L. & TECH. 2 (2004).



IP Act (PIPA)] that would allow the Department of Justice to seek court orders against websites accused of enabling or facilitating copyright infringement.<sup>188</sup> Such orders would require “online advertising networks, payment processors and other organizations to cease payments to websites and web-based service providers who are accused of copyright infringement.”<sup>189</sup> In addition The DOJ can also bar search engines from displaying to the allegedly infringing sites, order the removal of those websites from domain registrars, and require Internet service providers to prevent subscribers from accessing such sites.<sup>190</sup> Copyright holders could also take matters into their own hands, as they too would be authorized to obtain court orders that block funding to infringing sites if those sites refuse to comply with the copyright owners’ initial cease and desist requests.<sup>191</sup>

Proponents of the bills argue that the bills will protect both copyright holders and consumers if passed.<sup>192</sup> In addition to torrent sites like The Pirate Bay, the legislation would also apply to foreign websites that sell counterfeit products such as pharmaceuticals, DVDs, and beauty products.<sup>193</sup> Washington State Attorney General Rob McKenna also warned, “[t]he sale of counterfeit products and piracy of copyrighted content online not only undermines our nation’s economy [but also] robs state and local governments of much-needed tax revenue and jobs...Even worse, some counterfeit goods can pose serious health and safety hazards to consumers. Rogue sites legislation seeks to clamp down on this scourge.”<sup>194</sup>

Opponents of the laws include free-speech advocates, companies in Silicon Valley, venture-capital investors, public interest groups, and of course, major search engines.<sup>195</sup> Many have argued that the bills are so overbroad, strict, and harsh that they unduly sensor the Internet.<sup>196</sup> They

<sup>188</sup> Edward Wyatt, *Lines Drawn on Antipiracy Bills*, N.Y. TIMES (Dec. 14, 2011), [http://www.nytimes.com/2011/12/15/technology/lines-are-drawn-on-legislation-against-internet-piracy.html?\\_r=1&pagewanted=all](http://www.nytimes.com/2011/12/15/technology/lines-are-drawn-on-legislation-against-internet-piracy.html?_r=1&pagewanted=all).

<sup>189</sup> Grant Gross, *The US Stop Antipiracy Act: A Primer*, PC WORLD (Nov. 16, 2011, 3:30 PM), [http://www.pcworld.com/businesscenter/article/244011/the\\_us\\_stop\\_online\\_piracy\\_act\\_a\\_primer.html](http://www.pcworld.com/businesscenter/article/244011/the_us_stop_online_piracy_act_a_primer.html).

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> Jared Newman, *SOPA and PIPA: Just the Facts*, PC WORLD (Jan. 17, 2012, 6:00 PM), [http://www.pcworld.com/article/248298/sopa\\_and\\_pipa\\_just\\_the\\_facts.html](http://www.pcworld.com/article/248298/sopa_and_pipa_just_the_facts.html).

<sup>193</sup> *Id.*

<sup>194</sup> Gross, *supra* note 189.

<sup>195</sup> Wyatt, *supra* note 188.

<sup>196</sup> *Id.*

add that the bills threaten to close a number of web-based companies and Internet service providers forcing these websites to face new and uncertain liabilities.<sup>197</sup> This, they argue, would unduly sensor the Internet and eliminate thousands of jobs in America.<sup>198</sup> Others argue that the bills will allow individuals to abuse the legal system and impose undue burdens on foreign and domestic websites that have not committed infringement.<sup>199</sup> Not surprisingly, Google is among the many popular websites that have rallied support against the bills. In an act of protest, the search engine covered its recognizable logo with a black bar as a symbol of its opposition to censorship of the Internet.<sup>200</sup> Mozilla, creator of the popular web browser Firefox, has included a link on its homepage to a petition against the bills with a warning that reads, "Congress is trying to censor the Internet."<sup>201</sup> Two days after these protests, Senate Democratic leader Harry Reid announced that he would postpone a vote on the bills in light of the protests.<sup>202</sup> Lamar Smith, the Republican chairman of the House of Representatives Judiciary Committee, added that his panel would delay action on similar legislation until a more general consensus on the issue had been reached.<sup>203</sup>

While undue restrictions on innovation and job production should be avoided at all costs, SOPA and PIPA would mark a positive step towards solving the global Internet piracy epidemic. Contrary to popular belief, the bills would not necessarily ignite an overreaching regime that hinders the Internet's growth and enrichment. Rather, the legislation would provide the necessary tools for enforcement of copyright infringement claims against sites like The Pirate Bay. SOPA and PIPA will also give conglomerates like Google the necessary incentives to combat Internet Piracy by assigning them the due responsibility and liability for complacently aiding and abetting copyright infringement (just as the

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<sup>197</sup> Gross, *supra* note 189.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> See *End Piracy, Not Liberty*, GOOGLE, <https://www.google.com/landing/takeaction/> (last visited Jan. 18 2012); See also Hayley Tsukayama & Sarah Halzack, *Web Sites Go Dark in SOPA Protest Against Plans to Ban Online Piracy*, WASH. POST, (Jan. 18, 2012), [http://www.washingtonpost.com/business/technology/web-sites-go-dark-in-sopa-protest-against-plans-to-ban-online-piracy/2012/01/18/gIQAkWfD8P\\_story.html?tid=pm\\_business\\_pop](http://www.washingtonpost.com/business/technology/web-sites-go-dark-in-sopa-protest-against-plans-to-ban-online-piracy/2012/01/18/gIQAkWfD8P_story.html?tid=pm_business_pop) (last visited Jan. 18, 2012).

<sup>201</sup> Wyatt, *supra* note 188.

<sup>202</sup> Jasmin Melvin, *Congress Withdraws SOPA, PIPA Anti-Piracy Measures*, MSNBC, (Jan 20, 2012, 2:37 PM), [http://www.msnbc.msn.com/id/46072484/ns/technology\\_and\\_science-security/#.TxnDUBxQl8k](http://www.msnbc.msn.com/id/46072484/ns/technology_and_science-security/#.TxnDUBxQl8k).

<sup>203</sup> *Id.*

Stockholm District Court held Lundström, Warg, Neij, and Sunde responsible for the same offense).

Skeptics should remember that a court must first find a website or company liable for copyright infringement before issuing any mandate to withhold its funding. Many arguments opposing the SOPA and PIPA fail to address the fact that the courts remain the gatekeepers in determining and assigning legal liability. This is a major protection against false and unsubstantiated claims against smaller businesses. The legislation authorizes only the courts to issue mandates withholding funding.<sup>204</sup> Therefore, any claim against any website, great or small, public or private, must be deemed meritorious before that website temporarily loses its funding until it is in compliance with the law. The bills do not change the standard of what constitutes infringement, nor do they purport to automatically assign liability. Rather, they provide a means of enforcement by creating a penalty for those who previously had no incentive to uphold the law. Furthermore, had a similar law been in effect at the time of The Pirate Bay's launch, the site might have never survived, as the creators funded the site with advertising revenue. Finally, a major issue in *The Pirate Bay* that still exists today is assigning accountability when an anonymous user uploads illegal content to a website that merely hosts such content. SOPA and PIPA correctly assign that liability to host sites and search engines because they profit directly from the content they host. They are also in a unique position to police that content and to individually prosecute each individual who uploads illegal content would be nearly impossible.

Nevertheless, the concern that these laws may lead to a litigation explosion that would hinder economic growth and the rich flow of online information and content should not be disregarded. As President Obama's administration recently noted, "[a]ny effort to combat online piracy must guard against the risk of online censorship of lawful activity and must not inhibit innovation by our dynamic businesses large and small."<sup>205</sup> Furthermore, the US Supreme Court has long supported the principle that restrictions on free speech are unacceptable if less restrictive means would be at least as effective in achieving a significant government

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<sup>204</sup> Newman, *supra* note 192.

<sup>205</sup> Victoria Espinel, Aneesh Chopra, & Howard Schmidt, THE WHITE HOUSE BLOG, *Obama Administration Responds to We the People Petitions on SOPA and Online Piracy*, (Jan. 14, 2012, 8:09 AM), <http://www.whitehouse.gov/blog/2012/01/14/obama-administration-responds-we-people-petitions-sopa-and-online-piracy>.

interest.<sup>206</sup> With this in mind, lawmakers must implement a system that will not be subject to abuse and unnecessary censorship of legitimate content in order to protect the infrastructure of the Internet as we know it.

### *E. The Efficiency and Feasibility of Search Engine Monitoring*

Today it is easy to take a website like Google for granted. Studies indicate that Internet users conducted close to eighty-eight billion searches using Google sites in December 2008 alone.<sup>207</sup> In 2006, the Oxford English Dictionary added Google as a verb meaning “to use the Google search engine to find information on the Internet.”<sup>208</sup> With Google becoming an integral part of the lives of billions of users, it is important for users across the globe to remember that Google is primarily a business rather than a free utility.

One major difference between search engines like Google and The Pirate Bay is the amount of revenue that each website generates, and the ways in which that revenue is distributed. In *Sweden v. The Pirate Bay*, the Stockholm District Court declared that it would refrain from granting the creators a lenient sentence because they received revenue for advertisements on The Pirate Bay website.<sup>209</sup> However, Lundström, Warg, Neij, and Sunde argued that although they did accept money in exchange for advertising space on their website, they personally did not record any net profit from this revenue, as all of the funds were used to maintain and run the website.<sup>210</sup> By contrast, Google receives significant profits from advertising revenue.<sup>211</sup> In 2009, Google reported earning nearly twenty-three billion dollars in advertising revenue alone.<sup>212</sup> Furthermore, Google CEO Eric Schmidt received one hundred million dollars as a “parting gift” upon resigning in 2011<sup>213</sup>, and earned another 1.5

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<sup>206</sup> See generally *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997).

<sup>207</sup> Press Release, comScore Inc., comScore Reports Global Search Market Growth of 46 Percent in 2009, (Jan. 22, 2010).

<sup>208</sup> See, Candace Lombardi, *Google joins Xerox as a verb*, CNET News (July 6, 2006), [http://news.cnet.com/Google-joins-Xerox-as-a-verb/2100-1025\\_3-6091289.html](http://news.cnet.com/Google-joins-Xerox-as-a-verb/2100-1025_3-6091289.html).

<sup>209</sup> Tingsrätt, *supra* note 9, at 59.

<sup>210</sup> Tingsrätt, *supra* note 9, at 28.

<sup>211</sup> See GOOGLE, <http://investor.google.com/financial/tables.html> (last visited Jan. 22, 2011).

<sup>212</sup> *Id.*

<sup>213</sup> See *Google to Give Outgoing CEO Schmidt \$100 Million*, REUTERS (Jan. 23, 2011), <http://www.reuters.com/article/2011/01/23/us-google-schmidt-idUSTRE70M1V120110123>.

billion dollars by selling his remaining shares of Google stock.<sup>214</sup> Ironically, a ruling against Google in the Stockholm District Court would likely result in a far more severe sentence against Schmidt than that against The Pirate Bay Creators.

Despite this disparity, the plaintiff companies in *The Pirate Bay* (a number of which were based in the United States<sup>215</sup>) successfully pressed civil and criminal charges against the creators of a website that recorded zero net profits for allowing users to illegally share copyrighted content.<sup>216</sup> This suggests that major search engines, which also direct users towards illegal torrent websites and torrent files, ought to at the very least be forced to remove torrent websites from their search results.

Another significant issue is that Google indexes a far greater amount of information than BitTorrent websites like The Pirate Bay. While searches on The Pirate Bay will only deliver links to download torrent files, Google on the other hand is used to retrieve information from the billions of pages that comprise the World Wide Web.<sup>217</sup> From this, it may appear as though Google would experience greater difficulties in removing copyrighted material from its search results. However, this process is actually quite feasible.

Comprising a list of search results is a fully automated process that involves ranking web pages based on their relevance to the terms entered in any given query.<sup>218</sup> This apparatus demonstrates that Google's technology is capable of removing links to illegal torrent files from its search results because it is capable of distinguishing, sorting, including,

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<sup>214</sup> Eric Schmidt, *Google's Executive Chairman, Plans To Sell \$1.5 Billion In Shares*, THE HUFFINGTON POST, (Feb. 17, 2012), [http://www.huffingtonpost.com/2012/02/18/eric-schmidt-google\\_n\\_1286406.html?ref=technology](http://www.huffingtonpost.com/2012/02/18/eric-schmidt-google_n_1286406.html?ref=technology).

<sup>215</sup> See Appendix B.

<sup>216</sup> Tingsrätt, *supra* note 9, at 47.

<sup>217</sup> See *Technology Overview*, GOOGLE, <http://www.google.com/corporate/tech.html> (Mar. 9, 2011).

<sup>218</sup> This is achieved via a "crawler" program known as Googlebot. Google explains precisely how the Googlebot works on its website: "Google is continuously traversing the web in real time with software programs called crawlers, or "Googlebots." A crawler visits a page, copies the content and follows the links from that page to the pages linked to it, repeating this process over and over until it has crawled billions of pages on the web. Next Google processes these pages and creates an index, much like the index in the back of a book...The index is parceled into manageable sections and stored across a large network of computers around the world." *Id.* When a user enters a query into Google's search engine, that query is sent to Google's computers, which use a "pagerank" algorithm to identify the most relevant matches to the query. *Id.* For a more detailed explanation of this process, see *How Does Google Collect and Rank Results?*, GOOGLE, [http://www.google.com/librariancenter/articles/0512\\_01.html](http://www.google.com/librariancenter/articles/0512_01.html) (last visited Mar. 9, 2011).

and excluding websites as a function of the words they contain.<sup>219</sup> Thus, Google's computers could, for example, exclude all websites that contain the word, "torrent" or the phrase, "free torrent download." In addition, individual Google users can exclude particular websites from Google search results based on their personal preferences.<sup>220</sup> The users' ability to remove and filter the contents of their personal Google searches further demonstrates Google's ability to adjust its default search results for all users in order to exclude websites that contain pirated material.

Google has also recently revealed that its search index apparatus is capable of differentiating websites based on factors other than the words that they contain.<sup>221</sup> By adjusting its pagerank algorithm, Google has begun to remove what it refers to as "low quality"<sup>222</sup> websites from its search results.<sup>223</sup> This raises a number of striking implications. First, this process suggests that Google is now in a position to make a subjective judgment on the quality of any given website, which will affect how the majority of users experience the Internet. Second, it further demonstrates that Google has the capability to isolate and suppress websites that illegally facilitate the exchange and copying of copyrighted material as it currently does so based on the quality of web content.<sup>224</sup> The system is currently equipped to filter websites based on the words they display,<sup>225</sup> and the quality of content that they host.<sup>226</sup> From this, it seems perfectly feasible and practical for that same system to filter websites based on their compliance with U.S. and international laws.

One danger under this model is that not all material exchanged on torrent websites is illegal, and as such, some content that is legally exchanged via BitTorrent technology will likely be suppressed.<sup>227</sup> Thus,

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<sup>219</sup> See *Technology Overview*, GOOGLE, <http://www.google.com/corporate/tech.html> (last visited, Mar. 9, 2011).

<sup>220</sup> See *How Can I Exclude Sites and Pages?*, GOOGLE, <http://www.google.com/support/customsearch/bin/answer.py?hl=en&answer=70323> (last visited, Mar. 9, 2011).

<sup>221</sup> See Steve Lohr, *Google Schools its Algorithm*, N.Y. TIMES (Mar. 5, 2011), [http://www.nytimes.com/2011/03/06/weekinreview/06lohr.html?pagewanted=1&\\_r=1](http://www.nytimes.com/2011/03/06/weekinreview/06lohr.html?pagewanted=1&_r=1).

<sup>222</sup> Low quality websites include pages that displays various videos from YouTube relies on YouTube for its content, and is thus of lower quality, because a user can find the same content on YouTube. Low quality websites also include pages that are designed to lure traffic from Google's search engine and generate advertising revenue.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> See GOOGLE, *supra* note 219.

<sup>226</sup> See Steve Lohr, *supra* note 221.

<sup>227</sup> A fully automated computer system will not always identify certain nuances and background knowledge about general information in the physical world. *Id.* Thus, it is likely that the automated system

blocking access to all torrent files would likely raise a number of issues pertaining to freedom of speech and equal protection under the law.<sup>228</sup> However, there is a simple solution to these important problems: place the burden of authenticating the legality of legitimate torrent files on the users who decide to share them.

In *The Pirate Bay*, the Stockholm District Court acknowledged that it was The Pirate Bay's users that were the principal offenders who illegally copied and distributed copyrighted material.<sup>229</sup> The users illegally copy content; while the creators of BitTorrent websites aid and abet this theft. Therefore, as a matter of policy, the burden of proving that the files exchanged via BitTorrent clients, trackers, and websites ought to shift to the users of this technology. Because the majority of BitTorrent users have abused this system of file sharing,<sup>230</sup> they too share the responsibility to help legitimize this form of communication.

In the interest of protecting the legitimate uses of BitTorrent software, users and websites could provide some form of certification that each file that they personally upload is legally exchanged via those websites. An individual user could upload a file to a torrent website, subject to the approval of that website's moderator or creator.<sup>231</sup> Alternatively, the website as a whole could be monitored by a third party, perhaps a government agency, as a requirement to allow that site to be indexed on every major search engine. Once the third party provides certification, crawler programs and indexing servers could allow those websites to be viewed via their respective search engines. Finally, users could also be required to provide their personal information in order to

would unduly suppress some content under the proposed model.

<sup>228</sup> See *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) (invalidating the Communications Decency Act, which criminalized the transmission of "obscene or indecent" material via a telecommunications device to persons under the age of eighteen).

<sup>229</sup> Tingsrätt, *supra* note 9, at 47.

<sup>230</sup> See Robert Layton, Paul A. Watters, Richard Dazeley, *How Much Material on BitTorrent Networks is Infringing Content? A Validation Study*, THE UNIVERSITY OF BALLARAT (Nov. 2010) [http://www.ballarat.edu.au/ard/itms/research/researchGroups/ICSL/wordpress/files/validation\\_study\\_nov\\_2010.pdf](http://www.ballarat.edu.au/ard/itms/research/researchGroups/ICSL/wordpress/files/validation_study_nov_2010.pdf) (A study at The University of Ballarat confirming that at least 89% of torrent files contained content that infringed copyrights).

<sup>231</sup> A similar system was implemented by Vimeo.com, a video site that launched in the Fall of 2004. See Daniel A. Can Communities Better Police Copyright?, YALE LAW & TECH (Feb. 16, 2011), <http://www.yalelawtech.org/uncategorized/can-communities-better-police-copyright/>. Unlike YouTube, which at the time was also in its beginning stages, Vimeo required that only original videos be uploaded to its site. *Id.* YouTube declined to impose this restriction, believing that doing so would diminish its number of daily users, distribution, and notoriety. *Id.* As a result, Vimeo successfully created "a community that was much smaller but also much less inclined to share copyrighted content." *Id.*

share the file, so that they can be easily located and notified if the content they upload infringes a particular copyright. This system would create an efficient means of monitoring BitTorrent files without unduly preventing legitimate forms and copies of art from being shared via torrents. It would also minimize the burden on search engines like Google to identify and eliminate illegal content by preventing it from surfacing on the web, thereby creating a significant incentive to cooperate in the implementation of the system.

## V. CONCLUSION

The Court's decision in the case against The Pirate Bay reflects how stringent requirements of our most relied-upon sources of information could forever change the Internet for the better. National and international legislatures and courts collectively need to decide how we ought to govern cyberspace before the music, film, and television industries fall victims to this elusive black market. If the arts are no longer able to generate substantial revenue, their quality will undoubtedly suffer. Concededly, while an effective method of policing the Internet could potentially stop the economic bleeding of the world's entertainment industries, this solution fails to account for how we ought to repair the damage that these industries have already suffered. The music business in particular has suffered the greatest losses as a result of illegal downloads, and while effective enforcement of copyright laws would certainly help the situation, it will by no means return the industry to what it once was.<sup>232</sup> Some have even argued that the music business ought to receive subsidies from Internet service providers who have enjoyed significant profits by offering services that increase download speeds in recent years.<sup>233</sup> Furthermore, if an efficient and effective means of enforcement is not implemented in the near future, the film, television, software, and literary industries will inevitably suffer the same fate. In order to maintain a profitable entertainment industry that produces rich, enjoyable, and sophisticated art, we must first defend the rights of those who work tirelessly to make it so.

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<sup>232</sup> See Paul McGinness, *How to Save the Music Business*, ROLLING STONE, Sept. 30, 2010, at 46.

<sup>233</sup> McGinness believes that Internet service providers have directly profited from the rise of peer-to-peer file sharing by advertising faster download speeds to their customers. Faster download speeds make illegal file-sharing easier and more convenient to users, thus exacerbating losses suffered as a result of Internet piracy. *Id.*



## Appendix A

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, May 31, 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 Moment"	2006-02-28	1,198	1,217
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 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	49,539
2G	"Prison Break, Season 1"	2006-04-06	46,356	48,104
2H	"Syria"	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

Appendix B

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 utilization 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 utilization 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 utilization 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 utilization of sound recordings specified in indictment counts 1 F and O,
- EMI Music Sweden of EUR 912,366 (217,334 + 695,032) for unlawful utilization 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 utilization 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 utilization 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 utilization 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 utilization 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 utilization 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 utilization of a picture recording specified in indictment count 2 G,
- Warner Bros of SEK 1,637,494 (818,747 + 818,747) for utilization 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.

Appendix C



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Instant is off

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