



To the Swedish Ministry of Justice

Protection of intellectual property rights - a key to growth

The American Chamber of Commerce in Sweden (AmCham Sweden) and the Swedish National Committee of the International Chamber of Commerce (ICC Sweden) respectfully submit the following comments on protection of intellectual property rights in general and specifically on illegal file sharing of digital material.

International phenomena

A persistent topic in almost all political or economical summits nowadays is the protection of intellectual property. Rules and enforcement in this area have become a benchmark of development of a country's legal infrastructure for economic activity. Effective and enforceable protection of intellectual property has become a requirement for preferential treatment or acceptance in international forum, such as the WTO.

Each year the International Chamber of Commerce (ICC) gets the opportunity to present the top priorities of world business to the host of the G8 Summit. For the last three years protection of intellectual property rights has been among the three issues put forward.

One of the most burning issues with intellectual property is the problem of counterfeit, piracy and file sharing. These are problems that no country has been able to solve yet. But intellectual property theft has to be fought continuously as it easily spirals out of control, which it indeed has in many countries.

The drain which counterfeit and piracy causes businesses and the global economy is now significant. It has resulted in the widespread loss of lawful employment and a massive reduction of tax revenues. The creative community is robbed of reward for effort and innovation. The incentive to invest is reduced. Consumers are increasingly being harmed by unsafe counterfeit products. All signals also point to linkages with organized crime.

Substantive economic losses

Intellectual property theft affects virtually all sectors and all regions of the globe at an annual cost of approximately \$650 billion. In addition to the more obvious societal costs, piracy and counterfeiting also undermine creativity, innovation and investment.

For example, creative industries, such as publishing, music, film, software and arts, are a powerful generator of economic growth and employment in both the developed and developing world. These industries alone are heavily reliant on copyright protection – and in EU they employed 5.2 million persons in 2000 while contributing more than €1.2 trillion to the EU's economy.

In the United States studies in the past decade have estimated that over 50 percent of U.S. exports now depend on some form of intellectual property protection, compared to less than 10 percent 50 years ago. For Sweden no such statistics are available but a rough estimate indicates that the reliance of Swedish exports on intellectual property is in the same range as U.S. exports.

Thus, counterfeit and piracy is an economic problem. But it also has a social and developmental dimension. In fact, this is the root of the misconception about counterfeiting and piracy: The costs are not just economic -- they include dramatic social and developmental costs.

Beyond making it possible for innovators and artists to be compensated fairly and for countries to attract foreign investment and technology, intellectual property protection is critical to consumers. The most advanced innovations in transportation, communications, agriculture, food industry, biotechnology, renewable energy, health care and entertainment industry would not exist without strong IP support.

Stable copyright legislation and effective enforcement

No doubt, the general public's perception of the views of politicians has a great importance in the development of accepted paths conducive to legal access to protected goods. If good and solid legislation is perceived as not having the backing of leading politicians it will neither be observed, nor enforced.

The Swedish legislation on copyright protection was revised in 2005. The law was an implementation of a common EU position as laid down in the InfoSoc Directive, which in its turn implemented the 1996 WIPO Treaties. Industries with the capability of delivering their products and services in digital form are restructuring and retooling to meet future demands. It is imperative that this process of restructuring with large investments in research and development can take place in a robust and predictable legal environment. The present Swedish copyright legislation provides such an environment.

The entertainment industry is a growing sector of Swedish industry – both export of film and music is supported by the Swedish government. To manifest Swedish film with high quality the Swedish government has signed an agreement – Filmavtalet – with the Swedish Film Industry, TV- producers, cinema theatres with the purpose to promote and develop Swedish film production as a dynamic sector of industry. The agreement also stresses that the partners should fight illegal down loading and pirate distribution. Through Filmavtalet the Government has committed itself not only to defend the IPR-legislation but also that offenders will be prosecuted.

Sweden is considered to be one of the leading countries in IT – and telecommunications with a very high penetration among the public. This position has so far attracted foreign investments in Sweden in a large scale. As a result of this most new jobs will be created in this sector. However, an unclear political attitude to the copyright legislation will be an obstacle to new jobs and a widespread illegal downloading will be a threat to new businesses. Media – tv, film, music are the most popular professions in the business sector among youth and students.

Development of a legal market

Parallel to the illegal file sharing activities a legal market is quickly developing. The legal downloading of music is increasing. Many of those who today illegally download are moving to legal downloading. The supply of legal alternatives is increasing, not only on Internet but also over mobile networks. Both the film and music industries are constantly looking for services that are in demand. There are already enormous opportunities for legally downloading, including agreements with those who own the rights to the music or films. File sharing techniques are increasingly being used for legal distribution.

However, the development of the legal market is very much dependent on the protection of intellectual property rights. All parties involved, e.g. composers, artists, music companies, web stores and consumers will hesitate to take part in the development of new markets in a situation where the rules may change in a foreseeable future.

The market for digital delivery of music, entertainment, education and games develops very strongly and has already surpassed the physical delivery in volume, however not yet in value. Public opinion in this area is also developing as new modes of access are emerging. Sweden, together with all members of EU, is playing an important role in shaping the future legal market with consumer acceptance and proper tax revenue collection while protecting the creative industry.

International reputation

The benefit of the intellectual property systems is under discussion, especially within the field of patents and copyrights. The recent forming of a political party advocating abolition of intellectual property protection and the debate following the crackdown on Pirate Bay received great attention far beyond Sweden's borders. There is a growing concern that Sweden will weaken copyright laws and roll back government legislation on intellectual property more generally.

This development is worrying. International business leaders do not perceive Sweden as a country with very favourable IPR environment and many right holders have serious concerns about the state of Internet piracy in Sweden. It would be unfortunate if Sweden were to be regarded as a "pirate's paradise".

It is important that Sweden apply national and international rules and conventions, while effectively fighting against breaches of intellectual property rights, including copyright. One obvious enforcement aspect, which would strengthen rights holders possibilities to obtain evidence of on-line piracy, is to provide more effective rules on how rights holders and law official can obtain sufficient evidence of infringement. Another welcome aspect would be the allocation of sufficient resources for criminal enforcement in order to suppress illegal file sharing, especially such file sharing which is connected with organized crime. Sweden should, primarily within the EU, be at the forefront of enforcing intellectual property law on the Internet.

Summary

Until recently the attitude to intellectual property in general and to copyright in particular has been prevalingly positive in Sweden. It is important to keep this positive consensus, also the political, against the different threats that the copyright system is meeting. The importance of copyright must be communicated more effectively to policy makers and, above all, to the general public.

Swedish copyright legislation has recently implemented the requirements of international conventions and regional directives, and must thus be considered of international high standard. There are no sufficient reasons to make any fundamental changes to the present law. The stakeholders should be given time to develop the necessary techniques and deploy popular business models in a sufficiently stable legal environment.

Certain aspects of the enforcement of protected copyrights have been criticized and should be reviewed. This especially applies to the requirements necessary for rightsholders and law enforcements officers to obtain sufficient evidence.

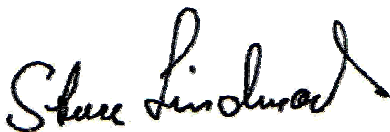
Sufficient monetary resources should be allocated for criminal enforcement in order to suppress serious cases of file sharing, especially those with implication to organized crime.

For further, more detailed, information on counterfeiting and piracy, please visit ICC's site on Business Action to Stop Counterfeiting and Piracy (BASCAP):

<http://www.iccwbo.org/bascap/id1127/index.html>


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