

## ***Memorandum: Effects of IPRED law on illegal file sharing and film sales***

The IPRED law took effect on April 1st 2009. The law is based on an EU directive<sup>1</sup> that aims to strengthen protection for intellectual property rights within the EU. The focus of the debate surrounding the law's enactment and application has mainly concerned the changes to copyright law that afford copyright holders the option of seeking access to subscriber information for suspected file sharers through the courts.

The following is a review of the effects of the law during its first year of implementation, in particular concerning illegal file sharing and the legal sale of films.

### **Effect on illegal file sharing**

- Immediately following the law's enactment, a 30-40 per cent drop in internet traffic was recorded<sup>1</sup>, by all accounts due to a drop in illegal file sharing. Since then and based on this lower level, the total amount of traffic has resumed its underlying growth trend.
- IT company Procera studied the internet traffic of 400,000 Swedes one week prior to, one week after and on the day of IPRED's enactment. Based on internet traffic data, they concluded that the proportion of Swedish internet users that shared files illegally during the period decreased by 23 per cent and that the amount of shared data fell by half after the law's enactment.
- Analysis firm Mediavision continuously monitors consumer behaviour on the media market. Their figures for Q4 2009 show, among other things, that:
  - The proportion of 15-74 year olds who illegally download films dropped 20-25 per cent as compared to the same quarter in 2008.
  - Those who scaled back – or completely stopped – illegal file sharing activities during the last 6 months of 2009 state that the perceived risk of being discovered and the related sanctions are by far the predominant factors behind their changed behaviour.
  - Over one-third of 15-24 year olds respond that they increased their use of legal services as a result of the IPRED law.
  - Awareness of IPRED remains high: 97 per cent of respondents are familiar with the law and 55 per cent say that they know what the law entails. Only three per cent state that they have never heard of the law.

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<sup>1</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

## Effect on film sales and rentals

### *DVD sales*<sup>2</sup>

- During the first quarter of 2009 – *prior to IPRED's enactment* – DVD sales fell slightly as compared to the same period in 2008.
- In April 2009, just after the law's enactment, DVD sales increased 26 per cent in value compared to the same month in 2008.
- During the remainder of 2009, April-December, DVD sales increased by more than 12 per cent – a clear trend reversal compared to the first quarter.

### *Rental films*

- The rental film market also developed strongly, growing 15 per cent in the second six months of 2009 following a drop earlier in the year.

### *Digital sales*

- There are no comprehensive figures available for digital sales, though leading companies such as Film2Home state that their sales more than doubled following the introduction of IPRED (from, however, comparatively low initial levels).

## Summary

- The IPRED law has had a dampening effect on illegal file sharing. The effect has been notably persistent over time. The degree to which this effect will be sustained may be impacted by, among other things, the decisions in the IPRED cases currently under the court's review and the resulting changes in practice.
- Impact on sales: In terms of DVD sales and rentals, a distinct turning point is discernible as of the date of the law's introduction – the slight decline in sales as compared to the corresponding month in the previous year was replaced with strong growth.

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<sup>2</sup> Data from GFK and the Association of Swedish Video Distributors.

### *Appendix 1: What is IPRED?*

The legislation affords authors and copyright owners the opportunity to use the courts to seek subscriber information for particular IP numbers. The copyright owner must present evidence of probable cause that copyright infringement was committed by the IP address at issue. The court weighs the copyright holder's demand for information against opposing interests such as individual privacy. Thus, copyright infringement of some significance must occur in order for the court to order the disclosure of subscriber information. Internet service providers are obliged to follow the court's decision and risk sanctions for noncompliance.

A copyright holder who is granted access to subscriber information may make a claim directly against the subscriber (e.g. via a civil law suit). At trial, the copyright holder must prove that the actual subscriber as charged caused the copyright infringement. An internet service provider which discloses subscriber information must inform the subscriber of such disclosure within three months.

### *Appendix 2: Current cases*

Since the IPRED law came into effect, a number of law suits have been initiated to seek information on subscribers suspected of uploading copyrighted material. These cases consistently deal with copyright infringement to a very large extent. Two cases have received particular attention – one was filed on the actual day of enactment (April 1st).

Five audio book publishers (Bonnier Audio, Earbooks, Norstedts, Piratförlaget and Storyside) filed a request for information at the Solna district court. The publishers had identified a large number of audio books on a server whose IP address belonged to a client of internet operator EPhone. The Solna district held in favour of the publishers on June 25th and EPhones appealed the decision. On October 13th, the appellate court denied the audio book publishers' request for subscriber information. The publishers have been granted leave to appeal to the Supreme Court.

The second case deals with the file sharing service Swetorrents. On August 3rd of this year four Swedish film companies applied to the court to request information on the subscriber behind Swetorrents, alleged to be running a server which made hundreds of pirated films available. The Södertörn district court allowed the claim; TeliaSonera has appealed to the Stockholm Court of Appeal.