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The American Chamber of Commerce in Sweden (AmCham Sweden) has some 250 members, many of whom are affected by current intellectual property legislation. These members include companies such as GE, Microsoft, IBM, Universal Studios, Warner, Disney, TeliaSonera and MTG. In a letter dated 18 September 2007, AmCham was given an opportunity to make a statement regarding the department memorandum *Music and Film on the Internet – Threat or Opportunity?* Ds 2007:29.

In view of this, AmCham would like to state the following.

Summary

AmCham welcomes the memorandum, which describes both threats and opportunities well. The entertainment industry itself has an interest in developing new consumer-friendly legal alternatives that provide good value for money. This takes place continually via new business models and new modern, user-friendly websites tailored to customer demands. To attract new investment, however, a reliable and secure legal environment is needed where the parties involved compete on equal terms. No company will invest in a country or an environment where society quietly accepts violations of copyright law. To encourage companies to offer consumer-friendly legal alternatives that provide good value for money, violations of copyright law on the Internet constitute must be dealt with forcefully. The government, parliament and judicial bodies have the ultimate responsibility for combating pirate copying and ensuring that existing laws are complied with. Widespread pirating of music and films, as well as books and software, harms not only individual companies, but also consumers – and taxpayers in the form of lower tax revenues to the state.

AmCham is alarmed by the fact that copyright law is being called into question by representatives of the governing parties. Defending illegal file-sharing is ultimately an acceptance of theft which will inevitably and seriously harm human and financial investment in creativity in our country. In plain language, widespread file-sharing is “theft of other people’s products”. Websites that offer a platform for illegal downloading generate significant income by distributing stolen products. According to a Dutch study, The Pirate Bay generates approximately SEK 120 million annually in advertising income and donations from those who support “free content providers”. The number may be even greater.

AmCham welcomes the memorandum.

Background

An ever-growing share of the world’s total assets are now intangible assets. This applies particularly to highly industrialised countries like the USA and Sweden. The entertainment industry accounts for a large share of the export income generated by industrialised countries. This applies to music, film, literature, software, games, plastic and figurative arts, and so on. At the same time, these industries are more or less entirely dependent on adequate copyright

legislation. According to the *Institute For Policy Innovation, (IPI)* (September 2006) American businesses lose more than USD 20 billion annually to pirating. The same report emphasises that “government must play a crucial role in combating piracy and counterfeiting, and insisting on the enforcement of intellectual property rights as part of agreements with our trading partners”.

A German study, “*Consumer File-sharing of Motion Pictures in Germany*” (Henning – Thureau et al: *Journal of Marketing*, Vol. 71 October 2007), argues that cinemas and companies that sell and rent DVDs lost more than EUR 200 million during 2006 because of piracy. This refers only to piracy on peer-to-peer file-sharing networks; the figure for overall piracy is higher.

The entertainment industry is a growing sector in Sweden, and one that is generating considerable export incomes. To support high-quality Swedish film production the Swedish government has an agreement – the Film Agreement – with the Swedish film industry, television producers, cinemas and the community centre movement to promote Swedish film production and help make it a dynamic industry. The agreement also states that the parties – including the state – are to combat illegal downloading of copyrighted material.

Protecting IP is also part of Sweden’s commitment to Europe. In this regard, AmCham wishes to underscore that a key aim of the so-called Infosoc Directive, which went into effect on 1 July 2005, was to promote employment, growth and greater competitiveness in the cultural sector, among others. “A high level of protection is considered to be crucial for intellectual creativity, and benefits both the originator, associated copyright-holders, consumers and the general public.” AmCham is in complete agreement with this view. Theft of copyrighted material threatens jobs and growth.

Widespread illegal copying of films, music and literature impoverishes quality culture and threatens diversity. It also reduces tax revenues. Figures from the U.S. Chamber of Commerce show that every dollar spent on effective monitoring of copyrighted material generates four to five dollars in tax revenue for the United States treasury. There is no reason to believe the situation in Sweden is any different.

Although the department memorandum deals only with film and music, the problem of internet piracy is now affecting , software, computer games, audiobooks and, increasingly, ordinary books. According to a report from the Swedish Agency for Administrative Development, 36 per cent of public authorities asked admitted they have used unlicensed software. Audio books, which are the fastest-growing segment in the publishing business (accounting for eight per cent of all book sales in 2006), are being pirated just days after—and in some cases before—the audio books have hit the bookshop. Illegal downloading harms authors, speakers and publishers. If copyright protection is weakened, it will also have serious consequences for textbooks and, ultimately, schools, universities and, by implication, academic and scientific research.

The internet offers enormous potential for communication and acquiring knowledge, but it must not be turned into a free-zone for illegality. The internet provides opportunities – including opportunities for criminality. Society must therefore establish rules that prevent/reduce different threats. This involves not only dealing with pornography, racism, violence and paedophilia, but also trade in counterfeit medicine, illegal gambling, and, in the case of copyright, illegal sharing of films, software, music and literature.

Kommentar [PL1]: Vi har utgått att "pedofobi" i svenskan är felaktigt och att det borde vara "pedofili" istället.

Copyright law

The crackdown on The Pirate Bay attracted considerable attention far beyond Sweden's borders. A number of newspapers and magazines have presented Sweden as a "wild west" for copyright pirates. The Office of the United States Trade Representative: *2006 National Trade Estimate Report* writes: "The international view of Sweden is that Sweden is a piracy haven, i.e. a haven for unlawful file-sharing".

As Sweden is described in international media as a haven for pirates it is important to demonstrate that Sweden as a nation does not accept piracy and is prepared to take steps to combat all kind of piracy. The Nordic neighbouring countries have been more efficient in this field. The department memorandum is a step in the right direction both in terms of the analysis of the problem and of the various parties positions and in terms of some of the solutions it suggests, which can be further developed.

Other Governments are also reflecting on how to tackle the issue of copyright infringement on the internet. In France, President Sarkozy appointed a task force (the so called Olivennes task force) which recently achieved the signature of a landmark agreement between public authorities, content owners and ISPs. Parties agreed to implement a system of graduated response and to deploy content filtering technology. Under a graduated response system, an ISP sends a warning to a subscriber who infringes copyright using its services. Thereafter, escalating penalties are imposed for repeat infringements, ranging from temporary suspension to termination of the subscriber's internet account. Content filtering technology scans uploaded content for matches to a database of identifiers of copyrighted content. Uploads of pirated content are blocked so it cannot be illegally downloaded. This combination of approaches educates the public through warnings and helps reduce internet piracy at its source, so less individual penalties are necessary

The commitment of all relevant parties towards creating a "civilized internet space" as President Sarkozy himself put it is something Sweden should also aim for, along with all the necessary legislative changes. The reason why developing legal alternatives is taking so much time and that illegal file-sharing has taken root in Sweden is that the political leaders in charge have not sent a clear message that copyrights will be protected even in digital environments. Such a legislative program would send the necessary message.

AmCham shares the view expressed in the memorandum that the general public needs to be better informed about copyrights and their purpose, and that the responsibility for providing this information rests with industry players and society's various institutions. AmCham thus supports the proposal for special information and educational campaigns, but would emphasise that such efforts can only be effective if there is a clear political message backed by a strong legislative program.

Legal alternatives

The music and film industries and broadband service providers are working actively to come up with new legal and consumer-friendly alternatives to illegal downloading of music, films and literature. Successful Swedish companies offer platforms for legal downloading that include agreements with those who own the rights to the music or films. Film2home e. g. is

investing heavily in creating attractive legal alternatives so that consumers can find any film they like as soon as it's available on the Swedish market.

However, the legal net-based services being offered today are working against the wind, and cannot possibly compete with free downloads or, much less, be persuaded to invest in new business models or technologies as long as illegal file-sharing is not being combated actively. If society fails to act, the handful of legal alternatives to downloading film will probably disappear. That's why the main task should be to come up with a set of rules that protect and stimulate the development of legal, consumer-friendly alternatives.

The cinemas play a key role in promoting interest in films. One threat facing the cinemas involves release dates. If a film is released on DVD or VOD at the same time it is released at the cinemas, it would really harm the cinemas. This is a conflict of interests that the market has to solve.

The consumer's perspective

Intangible rights also protect consumers – not least in terms of the “product security” in the broad sense. As the memorandum points out, the consumer's perspective needs to be emphasised. AmCham shares the view that the same protection should apply to downloading and streaming from net-based services as to the purchase of a physical product.

In February 2007, the commission presented a “green book” on the oversight of consumer regulations in the European Union. The Swedish government has expressed views about the green book, and stated that there is a need for greater clarity about providing digital goods and services to consumers. The government therefore proposes that rules governing consumer purchases are extended to also cover agreements for delivering digital services to consumers..

AmCham proposes that the government continues to work actively within the EU to bring about the desired changes in consumer purchasing legislation. The goal must be to achieve a balance between consumer protection and companies' ability to compete – and thus to help create a genuine internal market.

The integrity principle

AmCham has previously supported the proposals in the department memorandum Civil-law sanctions in the area of intangible rights – implementing the directive 2004/48/EG (Ds 2007:19). As with the current proposal, the legislation proposed in the memorandum has been criticised in the media for posing a threat to personal integrity. Both proposals require the originator to give evidence that an infringement has taken place from a particular internet service account. The courts then decide whether an injunction should be issued. In civil society, the judicial system provides the ultimate guarantee that no one is judged wrongly. People who download copyrighted material must be aware – and in each case be made aware – of their action, and cannot go around feeling their rights have been violated if the rightful owner claims his or her rights. The protection of personal integrity must not be so blind that it protects intentional infringements of other people's rights. An equilibrium between law enforcement and data privacy is possible and must be pursued.

It is appropriate for internet subscribers to take responsibility for ensuring that their internet accounts are used only for legitimate purposes, and that courts be able to apply sanctions if

they fail to do so. AmCham believes this can be done while protecting internet subscribers' integrity. The government can look to both Denmark and France for guidance on structuring a system that fairly balances the rights of rights holders and the rights of internet subscribers. Any conflict can also be resolved through consents in the contract between ISPs and their subscribers, provided that the government gives ISPs the right to process data for purposes of enforcing its contract with a subscriber.

Internet service providers

The memorandum argues that completely voluntary self-regulation has several advantages. However, internet service providers often feel they cannot implement measures to inhibit copyright infringements on a voluntary basis. Given this, the memorandum proposes that internet service providers should be required to help stop copyright infringements. The proposal means that internet service providers are given a legal right and duty to cancel accounts used for systematic infringement of copyright rights, unless this is unreasonable due to special circumstances.

Amcham supports the proposal but would like, in this connection, to point out that the proposed measures can in principle only affect future infringements. Technological developments mean that large amounts of information can now be transferred very quickly over the internet. This makes it imperative that all possible measures are taken to reduce the amount of time it takes to deal with the matters at hand. This applies not least to legal proceedings, where Amcham is of the opinion that the courts should be required to give these cases involving penalties precedence, and that all possibilities for ensuring speedy decisions must be utilised to the full. It is therefore important that, in its further study of the issues, the government considers the demand for expediency and ensures that this is expressed clearly in further legislation.

For this reason, as described above, AmCham supports a graduated response system of the sort agreed to be implemented in France. Warnings and initial penalties, short of account termination (such as account suspension or reduction of internet speed), themselves educate and deter many repeat infringements and others relying on the same internet account. Together with a mandatory system to block pirated material from the internet upon upload, as will be done in France, this would dramatically improve the internet piracy situation in Sweden.

The Copyright Directive

In addition to supporting a graduated response system and mandatory content filtering, AmCham would like to take this opportunity to again urge the government to implement expressly article 8(3) of the EU Copyright Directive. Article 8.3 was adopted with specific reference to internet service providers (ISPs) and recognizes—as does the department memorandum—that ISPs are uniquely situated to prevent internet piracy. The EU concluded that because ISPs can stem internet piracy, they ought to do so. Therefore, Article 8.3 permits rights holders to apply to courts to obtain injunctions requiring intermediaries to prevent their services from being used for copyright infringement, whether or not the intermediary is itself liable for copyright infringement. As such, it encourages creative solutions to internet piracy that leverage developing technologies without undue burden on ISPs or their subscribers.

Such solutions can be cost-effective and, in the case of ISPs, minimally intrusive in the subscriber's internet experience.

Article 8.3 has proved to be an invaluable tool in addressing copyright infringement in Denmark and Belgium. In Belgium, a court recently invoked this provision to require an ISP to adopt content filtering technology, which AmCham suggests be made a requirement in Sweden as it has been in France. In Denmark, courts have relied on this provision to require ISPs to block access to sites that host unauthorized copyrighted content outside Denmark. Such a provision would also provide an incentive to ISPs to work with rightsholders to produce voluntary solutions to internet piracy in Sweden, in addition to those mandated by the government.

It is a matter of urgency that Sweden take a national stance on file-sharing. AmCham supports the adoption of legislation that recognizes ISPs role in reducing piracy on their networks. We support implementation of a graduated response system, together with deployment of content filtering technology, and express implementation of article 8(3) of the Copyright Directive to allow rights holders to petition for additional solutions as they become technically feasible. AmCham thanks the government for the opportunity to submit these comments.

The police and the prosecution service need to be given adequate resources and the conditions necessary for developing a method of working that facilitates better, modern and effective control of such crimes. In this connection, judicial powers need to be increased, and at the same time Sweden should continue and intensify the work it has started to strengthen crime-fighting in the sphere of intellectual property rights. It is a matter of urgency that we take a national stance on file-sharing.

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