



Pirate Bay co-founders' criminal conviction for assisting copyright infringement on the Internet was justified

In its decision in the case of [Neij and Sunde Kolmisoppi v. Sweden](#) (application no. 40397/12) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the complaint by two of the co-founders of "The Pirate Bay", one of the world's largest websites for sharing torrent files, that their conviction for complicity to commit crimes in violation of the Copyright Act had breached their freedom of expression.

The Court held that sharing, or allowing others to share, files of this kind on the Internet, even copyright-protected material and for profit-making purposes, was covered by the right to "receive and impart information" under Article 10 (freedom of expression). However, the Court considered that the domestic courts had rightly balanced the competing interests at stake – i.e. the right of the applicants to receive and impart information and the necessity to protect copyright – when convicting the applicants and therefore rejected their application as manifestly ill-founded.

Principal facts

The first applicant, Fredrik Neij, is a Swedish national who was born in 1978 and lives in Bangkok. The second applicant, Peter Sunde Kolmisoppi, is a Finnish national who was born in 1978 and lives in Berlin.

During 2005 and 2006 they were both involved in the running of the website "The Pirate Bay" (TPB), one of the world's largest file sharing services on the Internet, which allows users to exchange digital material such as music, films and computer games. In January 2008, Mr Neij and Mr Sunde Kolmisoppi were charged with complicity to commit crimes in violation of the Copyright Act. Subsequently, several entertainment companies brought private claims within the proceedings. In April 2009, the Stockholm District Court sentenced Mr Neij and Mr Sunde Kolmisoppi to one year's imprisonment and held them, together with the other defendants, jointly liable for damages of approximately 3.3 million euros. In November 2010, the Svea Court of Appeal reduced their prison sentences but increased the joint liability for damages to approximately 5 million euros. Ultimately, the Supreme Court refused leave to appeal in February 2012.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 20 June 2012.

Mr Neij and Mr Kolmisoppi alleged that they could not be held responsible for other people's use of TPB, the initial purpose of which was merely to facilitate the exchange of data on the Internet. According to them, only those users who had exchanged illegal information on copyright-protected material had committed an offence. Therefore, relying on Article 10, they complained that their conviction for complicity to commit crimes in breach of the Copyright Act had violated their right to freedom of expression.

The decision was given by a Chamber of seven, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Boštjan M. **Zupančič** (Slovenia),
Ann **Power-Forde** (Ireland),
Ganna **Yudkivska** (Ukraine),
Helena **Jäderblom** (Sweden),
Aleš **Pejchal** (the Czech Republic), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 10

The Court reiterated that Article 10 guaranteed the right for everyone to receive and disseminate information on the Internet. Although the aim pursued by Mr Neij and Mr Sunde Kolmisoppi was profit-making, their involvement in a website facilitating the exchange of copyright-protected material was covered by the right under Article 10 to “receive and impart information”. As a result, their conviction had interfered with their right to freedom of expression.

However, since the shared material in respect of which Mr Neij and Mr Sunde Kolmisoppi had been convicted was protected under the Copyright Act, the Court held that the interference of the Swedish authorities had been prescribed by law. It also considered that the conviction of Mr Neij and Mr Sunde Kolmisoppi had pursued the legitimate aim of protecting copyright. Finally, the Court had to balance two competing interests which were both protected by the Convention – i.e. the right of Mr Neij and Mr Sunde Kolmisoppi to facilitate the exchange of information on the Internet and that of the copyright-holders to be protected against copyright infringement.

The Court reiterated that the Swedish authorities had a wide margin of appreciation to decide on such matters – especially since the information at stake was not given the same level of protection as political expression and debate – and that their obligation to protect copyright under both the Copyright Act and the Convention had constituted a weighty reason for the restriction of the applicants’ freedom of expression. Moreover, considering that Mr Neij and Mr Sunde Kolmisoppi had not removed the copyright-protected material from their website despite having been requested to do so, the prison sentence and award of damages could not be regarded as disproportionate.

Therefore, the Court concluded that the interference with the right to freedom of expression of Mr Neij and Mr Sunde Kolmisoppi had been necessary in a democratic society and that their application had therefore to be rejected as manifestly ill-founded.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.