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# THE PIRATE PARTY AND THE PIRATE BAY: HOW THE PIRATE BAY INFLUENCES SWEDEN AND INTERNATIONAL COPYRIGHT RELATIONS

Miaoran Li

## SECTION I

### *Introduction*

The bright white shine of the monitor glares harshly against the dim interior of the room. A man sits in front of his computer. On his browser, a picture of a colorful pirate ship boldly decorates the website. “Download music, movies, games, software,” entices the website. With a few taps on the keyboard and a few clicks, he locates his target, a new movie that only came out in theatres a few days ago. A few more clicks and he’s on his way to downloading the entire thing, while hundreds of people downloading the same file send him small pieces of the movie. In a few hours, the movie sits on his computer, ready for his viewing. This isn’t a rare occurrence. This scene plays out over two million times a day.<sup>1</sup>

Technology has not only made copyright infringement a simple process today, but it has also made it commonplace. Only a little over a decade ago, infringing copyrights on music may have meant that a “mix-tape” from a friend with a cassette deck.<sup>2</sup> Today, with a few well-placed search terms and a few clicks, a world of data is available to anyone anywhere in the world. Any song, no matter how obscure, is available. The Bit-

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<sup>1</sup> The Pirate Bay, proclaimed as the world’s largest bittorrent tracker, boasts over two million users daily. Jeremy Kirk, *Pirate Bay Hopes for Action By Swedish Police*, IDG NEWS SERVICE, Sept. 25, 2007, <http://www.linuxworld.com/news/2007/092507-pirate-bay-hopes-for-action.html>.

<sup>2</sup> Joel Keller, *PCs Killed the Mix-Tape Star*, SALON.COM, Jan. 22, 2004, [http://dir.salon.com/story/tech/feature/2004/01/22/mix\\_tape\\_one/index\\_np.html](http://dir.salon.com/story/tech/feature/2004/01/22/mix_tape_one/index_np.html).

torrent<sup>3</sup> protocol, in particular, has been at the forefront of this revolution. Bittorrent is a protocol for file-sharing where each downloader, as they received the finished pieces of what they are getting, also uploads those pieces they have back to other people, a process known as “data swarming.”<sup>4</sup> Some have estimated that Bittorrent takes up a huge percentage of the internet traffic today, bigger than many popular legitimate internet applications.<sup>5</sup>

While copyright holders attempt battle Bittorrent and other peer to peer applications, often times with technological innovation and stronger digital rights management technology<sup>6</sup> (hereinafter “DRM”), Bittorrent websites continue to spring up. The Pirate Bay of Sweden<sup>7</sup> is one of the largest Bittorrent websites in the world, tracking hundreds of thousands of files being shared by large numbers of people at once. Even as the copyright holders battle the Bittorrent sites with technology and DRM, The Pirate Bay and other piracy application developers also reciprocate with technology,<sup>8</sup> creating a cold-war-like escalation. However, today, modern pirates reciprocate with more than just technology. From the roots of the Pirate Bay came the

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<sup>3</sup> Daniel Roth, *Torrential Reign*, FORTUNE, Oct. 31, 2005, available at [http://money.cnn.com/magazines/fortune/fortune\\_archive/2005/10/31/8359146/index.htm](http://money.cnn.com/magazines/fortune/fortune_archive/2005/10/31/8359146/index.htm).

<sup>4</sup> Michael A. Einhorn, *Digitization and Its Discontents: How Markets are Transforming Copyright*, 54 J. COPYRIGHT SOC'Y U.S.A. 231 (2007).

<sup>5</sup> In fact, some studies claimed that peer-to-peer traffic accounts anywhere from 50 to 90% of all internet traffic today, with Bittorrent at the lead using 50%-75% of all peer-to-peer traffic. Eric Bangeman, *P2P Responsible For As Much As 90 Percent Of All Net traffic*, ARS TECHNICA, Sept. 3, 2007, <http://arstechnica.com/news.ars/post/20070903-p2p-responsible-for-as-much-as-90-percent-of-all-net-traffic.html>.

<sup>6</sup> “Digital Rights Management” is a term used for technologies that control how digital content is used. While copyright holders have exclusive rights of copyright—such as the right to make a copy or the right to distribute a work to the public—thus far they have not had the right to control how works are used (the right to see a work, for example, or to read a work). American Library Association, Digital Rights Management, <http://www.ala.org/ala/aboutala/offices/wo/woissues/copyright/digitalrights/digitalrightsmanagement.cfm> (last visited Feb. 23, 2009).

<sup>7</sup> The Pirate Bay, About the Pirate Bay, <http://thepiratebay.org/about> (last visited Feb. 23, 2009).

<sup>8</sup> The [Pirate Bay] team is currently working on a more efficient Open Source tracker system that, among other things, will guarantee better protection against “anti-piracy outfits.” Torrentfreak.com, The Pirate Bay is Developing a New BitTorrent Tracker, <http://torrentfreak.com/tpb-is-developing-a-new-bittorrent-tracker-071001/> (last visited Feb. 23, 2009).

Piratpartiet<sup>9</sup> (hereinafter “Pirate Party”), a political party within Sweden (and elsewhere) which advocates for reform of copyright laws. The Pirate Bay itself was originally formed from members of the Piratbyran,<sup>10</sup> a think tank devoted to the subject of lax copyrights. These new entities are unprecedented in the history of copyright protection.

The purpose of this Note is to look at the Pirate Bay and the Pirate Party in particular. In the first section, we will look at a history of modern peer-to-peer copyright infringement methods, with particular emphasis on the development of Bittorrent. This section will also expand on the histories and organization of the Pirate Bay and the Pirate Party. In addition, this section describes the relevant Intellectual Property Treaties to which Sweden is a signatory. This section will also describe the role of international organizations such as European Union and the World Trade Organization. In the next section, we will analyze the Pirate Party and the effects within Sweden as well as the effects upon international copyright treaties. Lastly, we will conclude on whether enforcement should be undertaken against the Pirate Party and its affiliated organizations.

## *Background*

### *A Brief History of Digital Copyright Infringement*

Copyright infringement is not new. Even the early Catholic Saints have been known to engage in it. One of the early examples is the Cathach of St. Columba, a work traditionally ascribed to St. Columba, who transcribed it by a miraculous light from a Psalter lent to him by St. Finnian.<sup>11</sup> The invention

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<sup>9</sup> The Piratpartiet states on their website that they “[want] to fundamentally reform copyright law, get rid of the patent system, and ensure that citizens’ rights to privacy are respected.” Piratpartiet, The Pirate Party, <http://www.piratpartiet.se/international/english>. (last visited Feb. 23, 2009).

<sup>10</sup> Piratbyrán, Piratbyrán Start Page, <http://piratbyran.org/> (last visited Feb. 23, 2009).

<sup>11</sup> “A dispute arose about the ownership of the copy and King Diarmait Mac Cerbhaill gave the judgement ‘To every cow belongs her calf, therefore to every book belongs its copy.’ The arbitration failed and the Psalter of St. Columba passed into the hands of the O’Donnells after the battle of Cul Dremhne in A.D. 561.” This dispute could be considered a very early example of copyright infringement litigation. The Royal Irish Academy, Catalogue Entry for The Cathach / The Psalter of St. Columba, <http://www.ria.ie/library/atatalogue/cathach.html> (last visited Feb. 23, 2009).

of the printing press by Johannes Gutenberg in around 1440 A.D. made the copying of written text easier and more available to the public, driving the impetus for establishment of copyright protection.<sup>12</sup>

Similarly, today, technology still drives copyright infringement. The arrival of technology such as the compact cassette enabled piracy to become more widespread than before.<sup>13</sup> Such technologies allowed music to be copied more easily and in smaller packages.<sup>14</sup> Additionally, due to the use of compact cassettes as the storage medium for several forms of computers, it also facilitated the early development of software piracy.<sup>15</sup> Later, the compact cassette was replaced by other means of storage, such as the floppy disk, which served much the same functions as the cassette and were often used to spread games and other software applications.<sup>16</sup>

The next major innovation in copyright infringement methods was the development of the Bulletin Board System ("BBS"). The first, known as the Computerized Bulletin Board System, was created by Randy Seuss and Ward Christensen in 1978.<sup>17</sup> This early bulletin board system allowed users to use it as a "virtual thumb-tack bulletin board" enabling users to post messages to each other.<sup>18</sup> This early innovation led to many groups which also utilized Bulletin Board Systems in order to trade and exchange pirated software. In 1982, the first software "crackers" appeared to spread pirated software all over

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<sup>12</sup> ROBERT P. MERGES, PETER S. MENELL & MARK A. LEMLEY, *INTELLECTUAL PROPERTY IN THE NEW TECHNOLOGICAL AGE* 384 (4th rev. ed. 2007).

<sup>13</sup> Gustav Guldberg & Johannes Sundén, *Pirates & merchants – An ongoing struggle on the high-tech seas* (Nov. 2004) (unpublished Master's Degree thesis, Växjö University) (on file with author), available at <http://vxu.se/msi/utb/exarb/2004/04106.pdf>. The Compact Cassette, introduced by Philips in 1963, is the audio cassette type commonly found during the 70s, 80s, and 90s. The Compact Cassette was a storage medium used by computers during the early days of personal computing. The History of Computing Project, Timeline 1963-1964, <http://www.thocp.net/timeline/1963.htm> (last visited Feb. 23, 2009).

<sup>14</sup> Guldberg, *supra* note 13.

<sup>15</sup> Early computers that used compact cassettes included the "Commodore64, Amstrad and the Commodore Vic20. The software piracy scene flourished at the time and cassettes were swapped and copied, many times because of the prices but also because of the lack of availability from retailers." *Id.*

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

<sup>17</sup> History of the Internet, Chapter 3: What Does a Network Do? 1970-1978, <http://www.historyoftheinternet.com/chap3.html> (last visited Feb. 23, 2009).

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

the world through the Bulletin Board System.<sup>19</sup> By 1986, there were over 20,000 members of these cracking groups and were already forming the beginnings of a piracy culture known as “the Scene.”<sup>20</sup> By the mid-90s, there were over 50,000 members of “the Scene.”<sup>21</sup>

Around the beginning of the 90s, the Internet became extremely popular and the BBS-based pirates began to transition onto the Internet.<sup>22</sup> The period of the early 1990s saw nearly 100% annual growth on the size of the Internet.<sup>23</sup> In 1998, popularity of MP3<sup>24</sup> files for musical downloads began after the release of the WinAmp MP3 player application.<sup>25</sup> The release of the Napster application caused the popularity of MP3 files to go through the roof, becoming the “killer app” of the Internet.<sup>26</sup> Napster was an application which allowed users on the Internet to download MP3 files from each other in an easy way.<sup>27</sup> Napster paved the way for other peer to peer software applications, such as CuteMX, Gnutella, and Macster, all of which increased the amount and prevalence of file-sharing on the internet.<sup>28</sup> The prevalence of file-sharing software on the internet, along with the first broad-band internet connections, worked together make piracy even more widespread and more diverse.<sup>29</sup> Instead

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<sup>19</sup> No Copy – The Movie, Script of the Movie, <http://www.no-copy.net/script.html> (last visited Feb. 23, 2009).

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

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

<sup>22</sup> Guldberg, *supra* note 13.

<sup>23</sup> K. G. Coffman & A. M. Odlyzko, *The Size and Growth Rate Of the Internet*, Oct. 2, 1998, <http://www.dtc.umn.edu/~odlyzko/doc/internet.size.pdf>.

<sup>24</sup> MP3 is short for MPEG Audio Layer 3. It is “an audio compression technology that is part of the MPEG-1 and MPEG-2 specifications. MP3 compresses CD-quality sound by factor twelve, while still maintaining high fidelity. MP3 music files are played via software or a handheld device. MP3 has made it feasible to download quality audio from the Web very quickly.” Iomega, Data Recovery and Storage Glossary, [http://www.iomegadatarecovery.com/glossary\\_m.html](http://www.iomegadatarecovery.com/glossary_m.html) (last visited Feb. 26, 2009).

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

<sup>26</sup> *Id.*

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

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

<sup>29</sup> Warez Encyclopedia II, The History of Warez, [http://www.experiencefestival.com/a/Warez\\_-\\_History\\_of\\_warez/id/5572432](http://www.experiencefestival.com/a/Warez_-_History_of_warez/id/5572432) (last visited Feb. 23, 2009).

of small files, large files such as animation, movies, and large software applications may be downloaded.<sup>30</sup>

### *Bittorrent*

There are several problems with traditional file distribution methods. Traditional point-to-point file distribution, where users download files from a central server, often run the risk of becoming overwhelmed by bandwidth<sup>31</sup> demands when a file is popular or when a server has many users at once.<sup>32</sup> Similarly, peer-to-peer file transfer, such as Napster and Gnutella, also suffer from the issue of bandwidth.<sup>33</sup> The massive amount of bandwidth required to power file transfer often meant frequent connection failures or high bills for bandwidth.<sup>34</sup> The problem was solved by the use of "data-swarming" file-transfer protocols that ultimately were able to solve the problem of bandwidth.<sup>35</sup> Data Swarming is a process where the downloader takes over part of the burden of the uploader by uploading the portions of the files it has received to other downloaders.<sup>36</sup> This allows distribution of large files without the large overhead necessary with point-to-point and peer-to-peer file distribution. One of the most popular data swarming process is Bittorrent, created by Bram Cohen.<sup>37</sup>

Bittorrent operates through a fairly simple process. The initial file sharer generates a metainfo file (usually a file with a

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<sup>30</sup> Around 1997, broadband began to gain popularity due to its greatly increased network speeds. As "large-sized file transfers" problems became less severe, warez became more widespread and began to affect large software files like animations and movies. The next generation of networking is optical fiber network, whose speed can reach up to 1.6 Tb/s in field deployed systems and up to 10 Tb/s in lab systems, with this seemingly unlimited bandwidth it is virtually impossible to imagine a limit as to what could be pirated." *Id.*

<sup>31</sup> Bandwidth is the transmission capacity of an electronic pathway such as a communication line (for example, an Internet connection). Internet connections with higher bandwidths can deliver more information at faster speeds than connections with lower bandwidth. PC Magazine Encyclopedia, Definition of Bandwidth, [http://www.pcmag.com/encyclopedia\\_term/0,2542,t=bandwidth&i=38401,00.asp](http://www.pcmag.com/encyclopedia_term/0,2542,t=bandwidth&i=38401,00.asp) (last visited Feb. 23, 2009).

<sup>32</sup> Warez Encyclopedia II, *supra* note 29.

<sup>33</sup> *Id.*

<sup>34</sup> Roth, *supra* note 3.

<sup>35</sup> Warez Encyclopedia II, *supra* note 29.

<sup>36</sup> *Id.*

<sup>37</sup> Roth, *supra* note 3.

.torrent extension) from the file to be served and the central server's web address.<sup>38</sup> The central server, also known as a tracker, identifies computers which are downloading or have a complete copy of the file (known as the swarm).<sup>39</sup> The central tracker allows computers running the client software and using the metainfo file to trade bits and pieces of the original file with other computers in the swarm.<sup>40</sup> Because the computers within the swarm are uploading to while simultaneously downloading from many sources (known as peers), the effect is that downloads are much faster when many computers are within the swarm.<sup>41</sup> With the Bittorrent system, the central server need not ever have access to the original file being uploaded by the user.

### *The Pirate Bay and The Pirate Party*

The Pirate Bay has its roots in a Swedish organization known as the Piratbyran.<sup>42</sup> The Piratbyran, known also as the Piracy Bureau, was born in the summer of 2003 as a community for the Swedish hacker scene and the integrated Internet Radio broadcasting community.<sup>43</sup> Today, Piratbyran is an organization that "tries to develop and deepen the questions about intellectual property and file sharing" by raising awareness through events, lectures, media appearances and public discussions.<sup>44</sup> The Piratbyran considers itself a think-tank devoted to free-copy culture within Sweden.<sup>45</sup>

The Pirate Bay was born shortly after the Piratbyran was formed, in November of 2003.<sup>46</sup> The founder of the Pirate Bay, Gottfrid Svartholm, was a member of the Piratbyran who was

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<sup>38</sup> Bittorrent.org, The Bittorrent Protocol Specification, [http://www.bittorrent.org/beps/bep\\_0003.html](http://www.bittorrent.org/beps/bep_0003.html) (last visited Feb. 26, 2009).

<sup>39</sup> HowStuffWorks.com, How Bittorrent Works – What Bittorrent Does, <http://computer.howstuffworks.com/bittorrent2.htm> (last visited Feb. 23, 2009).

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

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

<sup>42</sup> Quinn Norton, *Secrets of the Pirate Bay*, WIRED MAGAZINE, Aug. 16, 2006, available at <http://www.wired.com/science/discoveries/news/2006/08/71543?currentPage=all>.

<sup>43</sup> Piratbyran's Speech at Reboot, [http://7thwiki.7thguard.net/index.php?title=Piratbyran\\_Reboot8&printable=yes](http://7thwiki.7thguard.net/index.php?title=Piratbyran_Reboot8&printable=yes) (last visited February 23, 2009).

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

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

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



working in Mexico on assignment for a security consultancy.<sup>47</sup> While in Mexico, Svartholm volunteered to set up a Bittorrent tracker for the Piratbyran, originally intending it to be a purely Swedish tracker.<sup>48</sup> Because of the bandwidth constraints, the tracker was eventually moved to Sweden with the help of Fredrik Neij and Peter Sunde.<sup>49</sup>

It was during this period that media attention finally focused on the issue of digital piracy. In the United States, high profile suits were brought against the major peer-to-peer application developers such as the makers of Grokster and Morpheus in 2003.<sup>50</sup> At around the same time, the Recording Industry Association of America ("RIAA") also filed lawsuits against 261 file-sharers it accused of illegally distributing over 1000 copyrighted files.<sup>51</sup> During this period, many of the other major peer-to-peer applications and Bittorrent trackers folded due to RIAA and Motion Picture Association of America ("MPAA") pressures.<sup>52</sup> The Pirate Bay is one of the last major bittorrent trackers still remaining.<sup>53</sup> Because of the huge growth of the Pirate Bay, the tracker was later branched off as a separate entity.<sup>54</sup>

However, The Pirate Bay's large size does present it as a very tempting target.<sup>55</sup> On May 31, 2006, the Pirate Bay and Piratbyran servers were seized by the Swedish police in a massive raid, partly due to pressures by the United States and the MPA (the International Branch of the MPAA).<sup>56</sup> However, the Pirate Bay reappeared after only three days after the raid, hav-

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<sup>47</sup> Norton, *supra* note 42.

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

<sup>49</sup> *Id.*

<sup>50</sup> See *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005).

<sup>51</sup> Katie Dean, *RIAA Legal Landslide Begins*, WIRED MAGAZINE, Sept. 08, 2003, available at <http://www.wired.com/entertainment/music/news/2003/09/60345>.

<sup>52</sup> Norton, *supra* note 42.

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

<sup>54</sup> Piratbyran's Speech at Reboot, *supra* note 43.

<sup>55</sup> At the time of this writing, The Pirate Bay is ranked as 108 in web traffic. Alexa.com, Traffic Details for The Pirate Bay, [http://www.alexa.com/data/details/traffic\\_details/http://thepiratebay.org](http://www.alexa.com/data/details/traffic_details/http://thepiratebay.org) (last visited Feb. 23, 2009).

<sup>56</sup> Norton, *supra* note 42.

ing relocated its servers to the Netherlands.<sup>57</sup> The aftermath of the raids included many street protests and an increased international attention to the raid.<sup>58</sup> This increased attention doubled the number of user that Pirate Bay had prior to the raid.<sup>59</sup>

The street protests and international attention resulted in more than merely increasing the number of users of the Pirate Bay, however. In the aftermath of the raid, political ramifications were also considerable. The raid propelled the Pirate Party<sup>60</sup> (also known as Piratpartiet in Sweden) to media prominence and boosted their membership by thousands.<sup>61</sup> The international attention of the raids increased Piratpartiet's membership past that of the Swedish Green Party's.<sup>62</sup> However, the increase in membership did not translate into a large number of votes in the elections. In Sweden's 2006 elections, Piratpartiet gained 34,918 votes, or about 0.63% of the voting population, making it the third largest political group not represented within Sweden's parliament.<sup>63</sup> Despite this, it was not enough to gain the 4% necessary to enter parliament.<sup>64</sup>

With the increased membership, the Piratpartiet reiterated three issues as their primary focus: 1) the fundamental reform of the Copyright System, 2) the abolition of the Patent System

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<sup>57</sup> Quinn Norton, *Pirate Bay Bloodied But Unbowed*, WIRED MAGAZINE, June 6, 2006, available at <http://www.wired.com/science/discoveries/news/2006/06/71089>.

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

<sup>59</sup> Norton, *supra* note 42.

<sup>60</sup> The Pirate Party's primary political goals include: "fundamentally reform[ing] copyright law, get rid of the patent system, and . . . [ensuring] . . . that citizens' rights to privacy are respected." Piratpartiet, *The Pirate Party Overview*, <http://www.piratpartiet.se/international/english> (last visited Feb. 23, 2009).

<sup>61</sup> TorrentFreak, *How the Piratebay Raid Changed Sweden*, <http://torrentfreak.com/how-the-piratebay-raid-changed-sweden/>. The Pirate Party was originally started in January of 2006 and gained a great deal of media attention on its first few days of opening. Quinn Norton, *A Nation Divided Over Piracy*, WIRED MAGAZINE, Aug. 17, 2006, available at <http://www.wired.com/science/discoveries/news/2006/08/71544?currentPage=all>.

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

<sup>63</sup> September 17, 2006 Election Results for Parties Not Represented in Swedish Parliament, <http://www.val.se/val/val2006/slutlig/R/riike/ovriga.html> (last visited Feb. 23, 2009).

<sup>64</sup> Ursula Mueller, *A History of the Swedish Greens*, <http://www.greens.org/s-r/13/13-08.html> (last visited Feb. 23, 2009).

and 3) respect for personal privacy.<sup>65</sup> The Piratpartiet believe that the purpose of the Copyright System is to balance the interests of publishers with that of the consumers in order to promote culture.<sup>66</sup> However, they see that such a balance has been destroyed in favor of commercial interests.<sup>67</sup> Consequently, they wish to have all non-commercial uses of copyrighted materials to be free and file-sharing to be decriminalized.<sup>68</sup> The Piratpartiet also believes that the current monopolies given to copyright holders to be far too excessive and wishes to limit the period of copyright to five years.<sup>69</sup> The last major policy reform the Piratpartiet wishes to put in place is the abolition of Data Rights Management (“DRM”) systems and contract-based restrictions designed to limit the rights of consumers to freely use purchased copyrighted materials.<sup>70</sup>

As a single issue party, the rise of the Piratpartiet has mirrored that of the Swedish Green Party. Similar to how the Piratpartiet has expanded due to the rise of popular sentiments on Copyright law, the Green Party of Sweden (“GPSw”) began with the increase in groups advocating for women’s rights, peace, environmentalism, and antinuclear sentiments in the 1970s.<sup>71</sup> In 1981, the GPSw was formally created as recognition that political party is necessary to bring about change.<sup>72</sup> However, despite high initial polling, voter turnout was very low and the GPSw failed to achieve the four percent necessary to gain representation within Parliament.<sup>73</sup> However, in 1988, due to competent media representation and various environmental crises, the GPSw were able to gain representation within the Swedish parliament with 5.5% of the vote.<sup>74</sup> Despite the several troubled years due to stretched resources, the GPSw were able to eventually gain International representation within the European Parliament with 17.2% of all votes within

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<sup>65</sup> Piratpartiet, *supra* note 9.

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

<sup>67</sup> *Id.*

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

<sup>69</sup> Piratpartiet, *supra* note 9.

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

<sup>71</sup> Mueller, *supra* note 64.

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

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

<sup>74</sup> *Id.*

Sweden.<sup>75</sup> Since then, the GPSw has been in place in the Swedish government, acting in coalition with various other parties including the Left Party of Sweden and possibly the Social Democrats.<sup>76</sup>

In addition to the Piratpartiet in Sweden, the Pirate Party has expanded internationally. Including the Swedish Piratpartiet, there are Pirate Parties in twenty nations around the world, including the United States and Germany.<sup>77</sup>

### *International Intellectual Property Treaties and Sweden*

Sweden's Constitution requires that any international agreements approved by the legislative body ("Riksdag") will create a duty to impose legislative revisions to implement those agreements.<sup>78</sup> This has a great deal of relevance for Sweden's Intellectual Property laws, as Sweden has consistently adapted its legislation to meet the requirements of international agreements.<sup>79</sup>

The Berne Convention is one of most important treaties pertaining to International Intellectual Property. First adopted in Berne, Switzerland in 1887 and later adopted in Sweden in 1904,<sup>80</sup> the treaty rested on three basic principles. The first principle is that works originating in one of the Berne Union states must be given the same protections in another Berne Union state as the latter affords to works originating from within that state.<sup>81</sup> Secondly, the Berne Convention also required that Berne Union states must not condition copyright

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<sup>75</sup> *Id.*; The European Parliament MPs are directly elected by the Member Countries every five years. European Parliament, Welcome to the European Parliament, <http://www.europarl.europa.eu/parliament/public.do?language=en> (last visited Jan. 27, 2009).

<sup>76</sup> Sweden's Political Parties (2009), <http://www.nationsencyclopedia.com/Europe/Sweden-POLITICAL-PARTIES.html>.

<sup>77</sup> Piratpartiet, International Information, <http://www.piratpartiet.se/international> (last visited Jan. 27, 2009).

<sup>78</sup> Regeringsformen [RF] [Constitution] 10:9 (Swed.).

<sup>79</sup> Gunnar Karnell, *Sweden*, in INTERNATIONAL COPYRIGHT LAW AND PRACTICE (Paul Edward Geller ed., 2007).

<sup>80</sup> United States Copyright Office, International Copyright Relations of the United States (2007), <http://www.copyright.gov/circs/circ38a.pdf>.

<sup>81</sup> World Intellectual Property Organization, Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886), [http://www.wipo.int/treaties/en/ip/berne/summary\\_berne.html](http://www.wipo.int/treaties/en/ip/berne/summary_berne.html) (last visited Jan. 29, 2009) [hereinafter WIPO].

protection upon compliance of any formalities.<sup>82</sup> Lastly, copyright protection is independent of the existence of protection in the originating country, although if a Berne Union state has a stronger protection period than the country of origin and the protection has elapsed in the country of origin, protection may be denied.<sup>83</sup> Additionally, the Berne Convention also defined subject matter that are copyrightable as well as a series of minimum levels of protection required of each Berne Union state as well as prescribed durations of protection of fifty years after the author's death.<sup>84</sup> These terms were implemented in the Swedish Copyright Act.<sup>85</sup> Special exceptions on minimum levels of protection are available for countries which are considered Developing Countries under the Berne Convention.<sup>86</sup> In case of disputes among nations, a contracting state may bring another before the International Court of Justice.<sup>87</sup> In 1960, Sweden enacted its present Copyright Act as well as a Special Photography Act based upon the Brussels Act of 1948 of the Berne Convention.<sup>88</sup> As previously mentioned, the fifty year terms imposed by the Berne Convention and implemented by the Swedish Copyright Act, is one of the major points of contention for the Piratpartiet.

Following the signing of the Berne Convention, Sweden also was a signatory to the Universal Copyright Conventions ("UCC"). However, the UCC was designed primarily as an alternative to the Berne Convention to non-Berne Convention nations.<sup>89</sup> Due to the fact that the UCC contained much less stringent provisions and is more tolerant than the Berne Convention, it did not change the duties of Sweden much in regards

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

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

<sup>85</sup> Act on Copyright in Artistic and Literary Works (Svensk författningssamling [SFS] 1960:729) (Swed.).

<sup>86</sup> WIPO, *supra* note 81.

<sup>87</sup> Berne Convention for the Protection of Literary and Artistic Works art. 33, Sept. 28, 1979, S. TREATY DOC. NO. 99-27, 1161 U.N.T.S. 3 [hereinafter Berne Convention].

<sup>88</sup> Gunnar Karnell, *Sweden*, in INTERNATIONAL COPYRIGHT LAW AND PRACTICE (Paul Edward Geller ed., 2007).

<sup>89</sup> Stason.org, What International Treaties Exist Governing Copyright, or "What is This Berne Convention I Keep Hearing About?", <http://stason.org/TU-LARC/business/copyright/4-1-What-international-treaties-exist-governing-copyright.html> (last visited Feb. 3, 2009).

to copyright law.<sup>90</sup> Furthermore, later revisions of the UCC included an appendix which placed precedence of the Berne Convention over the UCC.<sup>91</sup> As Sweden is both a signatory to the Berne Convention and the UCC, the Berne Convention preempts the provisions of the UCC.<sup>92</sup>

Several additional features to Sweden's Copyright Laws were added through the TRIPS<sup>93</sup> Treaty. The TRIPS Treaty, which came into effect on January 1, 1995, is administered by the World Trade Organization and is the most comprehensive multilateral Intellectual Property treaty to date.<sup>94</sup> The TRIPS treaty integrated the requirements of the Berne Convention and, in addition, added several new features to International Copyright Protection.<sup>95</sup> In addition to the obligations created under the Berne Convention, TRIPS also granted additional obligations where Berne is silent or inadequate to deal with, such as the issue of computer programs and industrial designs.<sup>96</sup> Two features of TRIPS were especially important. Unlike previous treaties such as Berne Convention and the UCC, the TRIPS agreement prescribes detailed procedures for the enforcement

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<sup>90</sup> *Id.* In contrast, the Berne Conventions grants a duration of 50 years plus the life of the author as its copyright period duration. Universal Copyright Convention (Paris) art. 7, July 24, 1971, 6 U.S.T. 2731, 216 U.N.T.S. 132. The UCC also demands fewer minimum rights granted to the author than the Berne Convention and allows the creation of exceptions to those rights by UCC signatories. *Id.* Additionally the UCC is tolerant of formalities, such as the United States' Copyright Registration System, which were expressly disallowed as a bar to protection within the Berne convention. *Id.*

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

<sup>92</sup> Luis C. Schmidt, *Computer Software and the North American Free Trade Agreement: Will Mexican Law Represent a Trade Barrier?*, 34 IDEA 33, n. 107 (1993).

<sup>93</sup> TRIPS stands for Agreement on Trade Related Aspects of Intellectual Property Rights.

<sup>94</sup> World Trade Organization, Overview: The TRIPS Agreement, [http://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm) (last visited Feb. 3, 2009).

<sup>95</sup> Agreement on the Trade Related Aspects of Intellectual Property Rights art. 9, Jan. 1, 1995, 1869 U.N.T.S. 299, 33 I.L.M. 1197. Because the TRIPS agreement integrated the Berne Convention requirements while adding additional obligations, the TRIPS Agreement is sometimes referred to as the Berne-plus Agreement. World Trade Organization, Overview: the TRIPS Agreement, [http://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm) (last visited Feb. 3, 2009).

<sup>96</sup> See Agreement on the Trade Related Aspects of Intellectual Property Rights arts. 10-24, Jan. 1, 1995, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (creating additional obligations for computer programs, rental rights, industrial designs, and more esoteric rights such as geographic indications for wines and spirits).

of copyright infringement.<sup>97</sup> These enforcement procedures detail principles of copyright enforcement such as equitable conduct, but also define Evidentiary Requirements, Remedies, Injunctive relief, and other enforcement.<sup>98</sup> The TRIPS requirement also set up definite dispute resolution system for nations with disagreements requiring the nations to utilize the World Trade Organization's Dispute Resolution Procedures.<sup>99</sup> Disputes settled under Dispute Resolution may impose sanctions against an infringing country, creating further incentive to comply with World Trade Organization agreements.<sup>100</sup> The TRIPS agreement also imposes a "most-favoured nation" clause upon the contracting nations.<sup>101</sup>

The WIPO Copyright Treaty ("WCT"), adopted on Dec. 20, 1996, added more restrictions on copyrights based upon newer technologies and other neighboring rights.<sup>102</sup> The WCT imposes Berne Convention obligations on its signatory countries, whether they were a signature to the Berne Convention or not.<sup>103</sup> Specifically, the WCT extends its protections to computer programs and compilations of data.<sup>104</sup> The WCT also extends certain rights of the authors, including the right to

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<sup>97</sup> Agreement on the Trade Related Aspects of Intellectual Property Rights arts. 41-60, Jan. 1, 1995, 1869 U.N.T.S. 299, 33 I.L.M. 1197.

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

<sup>99</sup> Agreement on the Trade Related Aspects of Intellectual Property Rights art. 64, Jan. 1, 1995, 1869 U.N.T.S. 299, 33 I.L.M. 1197.

<sup>100</sup> World Trade Organization [hereinafter WTO], Settling Disputes: A Unique Contribution, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/disp1\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm) (last visited Feb. 3, 2009).

<sup>101</sup> Yong-Shik Lee, Facilitating Development in the World Trade Organization: A Proposal for the Council for Trade and Development and the Agreement on Development Facilitation (ADF), 6 *ASPER REV. INT'L BUS. & TRADE L.* 177, 202(2007). Under the WTO agreements, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members. . . . This principle is known as most-favoured-nation (MFN) treatment." WTO, Principles of the Trading System, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm) (last visited Feb. 3, 2009).

<sup>102</sup> WIPO Copyright Treaty, Dec. 23, 2003, S. Treaty Doc. No. 105-17, 36 I.L.M. 65.

<sup>103</sup> WIPO, Summary of the WIPO Copyright Treaty (WCT), [http://www.wipo.int/treaties/en/ip/wct/summary\\_wct.html](http://www.wipo.int/treaties/en/ip/wct/summary_wct.html) (last visited Feb. 3, 2009).

<sup>104</sup> WIPO Copyright Treaty arts. 4-5, Dec. 23, 2003, S. Treaty Doc. No. 105-17, 36 I.L.M. 65.



distribution, rental and public communication.<sup>105</sup> However, the most important features of the WCT are the creation of rights for new technological innovations such as that of encryption and digital rights management technology.<sup>106</sup> The rights create an obligation of remedy for authors against circumvention of technological measures used in the exercise of their rights under WCT and Berne as well as creating remedies against individuals who knowingly alter digital rights management measures.<sup>107</sup> This portion of the WCT has been implemented within the Swedish law and is one of the areas of copyright law that the Piratpartiet especially opposes.<sup>108</sup>

As a member of the European Community, Sweden is also subject to other areas of International Agreements and Decisions. First, it is subject to the Court of Justice of the European Community.<sup>109</sup> It must conform to the case law in which the Court of Justice applies the E.C. Treaty of Rome to copyright and related matters and regulations.<sup>110</sup> Sweden must also implement the European Community directives due to Sweden's entry into the European Union for the purposes of harmonization of European laws.<sup>111</sup> Among these European Community directives pertaining to copyright law include the EU Copyright Directive<sup>112</sup>, which was intended to implement the WCT.<sup>113</sup> Perhaps the most contentious<sup>114</sup> of these EU directives in Sweden is the European Union's Intellectual Property Rights Enforcement Directive ("IPRED").<sup>115</sup> Despite the support of several high profile Swedish entertainment industry officials, public opposition for Sweden's legislation implementing the

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<sup>105</sup> WIPO Copyright Treaty arts. 6-8, Dec. 23, 2003, S. Treaty Doc. No. 105-17, 36 I.L.M. 65.

<sup>106</sup> WIPO Copyright Treaty arts. 11-12, Dec. 23, 2003, S. Treaty Doc. No. 105-17, 36 I.L.M. 65.

<sup>107</sup> WIPO Copyright Treaty arts. 11-12, Dec. 23, 2003, S. Treaty Doc. No. 105-17, 36 I.L.M. 65.

<sup>108</sup> Art. 52 f Act on Copyright in Artistic and Literary Works (Svensk författningssamling [SFS] 1960:729) (Swed.).

<sup>109</sup> Karnell, *supra* note 79.

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

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

<sup>112</sup> Council Directive 2001/29/EC, 2001 O.J. (L 167).

<sup>113</sup> Council Decision 2000/278/EC, 2000 O.J. (L 089).

<sup>114</sup> David Landes, *Lines Drawn in Battle Over File Sharing Bill*, THE LOCAL (Sweden), Nov. 14, 2008, <http://www.thelocal.se/15688/20081114/>.

<sup>115</sup> Council Directive 2004/48/EC, 2004 O.J. (L 157) 45.



IPRED continues to mount.<sup>116</sup> The proposed legislation, which would make it easier for copyright holders to obtain information on copyright infringers, has been denounced by the Pirate Party as well as a number of the center-right youth organizations.<sup>117</sup> Though initially slated for implementation on April 1, 2009, the governing bodies have yet to reach agreement on the bill's final wording.<sup>118</sup>

## SECTION II

### *Out of Step – The Effects of a Successful Pirate Party on an Out of Step Sweden*

Suppose the Pirate Party does accumulate dramatic victories within the next election. What next? Effectuating the platform goals of the Pirate Party could result in a massive transformation of the Copyright laws of Sweden. However, it also raises three distinct effects may result from such a transformation.

#### A. *International Court of Justice Consequences*

The first possible effect is the effect of disputes that it would run afoul of the International Court of Justice decisions. Under both the Berne Convention and the UCC, disputes between nations are to be lodged with the International Court of Justice ("ICJ") for decision.<sup>119</sup> The ICJ is the primary judicial instrument of the United Nations.<sup>120</sup> One of the primary functions of the Court is that it settles legal disputes between member States on various issues according to international law.<sup>121</sup> However, the practical value of a dispute submitted to the ICJ is likely minimal.<sup>122</sup> Though the Berne Convention prescribed the ICJ as an avenue for dispute resolution, Article 33(2) also states that "[e]ach country may . . . declare that it does not con-

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<sup>116</sup> Landes, *supra* note 114.

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

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

<sup>119</sup> Berne Convention, *supra* note 87. See also Universal Copyright Convention (Paris), art. XV, July 24, 1971, 6 U.S.T. 2731, 216 U.N.T.S. 132.

<sup>120</sup> International Court of Justice, About the Court, <http://www.icj-cij.org/court/index.php?p1=1> (last visited Feb. 3, 2009).

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

<sup>122</sup> DAVID J. MOSER, MUSIC COPYRIGHTS FOR THE NEW MILLENIUM 148-49 (2001).

sider itself bound by the provisions” prescribing the ICJ.<sup>123</sup> In addition, among others, the United States has declared that they are not bound by judgments of the International Court of Justice for this matter.<sup>124</sup> While a suit before the ICJ is theoretically possible, no disputes have arisen before the ICJ regarding treaty violations under the Berne Convention.<sup>125</sup> However, should a decision arise, the United Nations (“UN”) charter requires that all member States abide by the decisions of the ICJ.<sup>126</sup> Failure to abide by the decision of the ICJ may result in the matter being taken to the UN Security Council for remedial measures.<sup>127</sup> Though the likelihood of an ICJ suit is unlikely, the results of noncompliance if such a suit is brought and decided upon, is extremely serious and may result in many remedial measures directed by the Security Council itself.

### B. *TRIPS, the WTO, and Possible Sanctions*

The second possible effect is that nonconformity with International Copyright Treaties, especially that of the TRIPS agreement, may result in a dispute that would be brought with the World Trade Organization’s dispute resolution system.<sup>128</sup> Under the TRIPS agreement, any disputes between nations must implement Articles XXII and XXIII of the GATT convention as well as the Dispute Settlement Understanding unless specifically exempted.<sup>129</sup> Dispute Settlement is considered one of the pillar functions of the WTO.<sup>130</sup> Changes to the Swedish Copyright laws could bring the nation out of step with the

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<sup>123</sup> Berne Convention for the Protection of Literary and Artistic Works art. 33(1), Sept. 28, 1979, S. TREATY DOC. NO. 99-27, 1161 U.N.T.S. 3.

<sup>124</sup> MOSER, *supra* note 122.

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

<sup>126</sup> U.N. Charter art. 94, para. 1.

<sup>127</sup> U.N. Charter art. 94, para. 2. The charter states that “[i]f any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.”

<sup>128</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights art. 64, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994).

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

<sup>130</sup> WTO, Understanding the WTO: Settling Disputes, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/1\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/1_e.htm) (last visited Feb. 9, 2009).

TRIPS terms agreed to when Sweden became a signatory.<sup>131</sup> Nations may bring to the WTO a complaint to pressure Sweden to return to its previous copyright regime. If no compliance is met, the WTO may allow trade sanctions on the behalf of complainant nations as an additional leverage tool to encourage compliance.<sup>132</sup>

The WTO dispute settlement system comes in several stages. After the initial complaint is brought to the WTO, a series of initial consultations are set up between party nations.<sup>133</sup> During this period, parties are encouraged to settle the dispute by themselves. Should the consultations fail, parties may request for third party mediation or other help from the WTO director-general.<sup>134</sup> Should this stage fail, the next stage is a series of panels established to help the Dispute Settlement Body make its ruling or recommendations.<sup>135</sup> During this period, several hearings may take place where each country is able to present their views of the dispute.<sup>136</sup> After a series of drafts generated from these hearings, a final report is made which, upon final approval by the panels, will become a ruling or recommendation.<sup>137</sup> Such a decision can only be vetoed by a consensus of app members of the Dispute Settlement Body.<sup>138</sup> All party countries with standing to the dispute may appeal the ruling if they disagree with any provisions of the Dispute Settlement Body's decisions.<sup>139</sup> However, after the appeal, if a country fails to correct the disputed activities, additional penalties may be imposed by the Dispute Settlement Body to give its judgment additional "bite."<sup>140</sup> If the party nation that is the target of the complaint fails to indicate its compliance and subsequently fails to negotiate an adequate compensation, trade sanctions may be imposed as a punitive measure on the non-

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<sup>131</sup> WIPO, Sweden IP Profile, <http://www.wipo.int/about-ip/en/ipworldwide/pdf/se.pdf> (last visited Feb. 9, 2009).

<sup>132</sup> WTO, *supra* note 130.

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

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> WTO, *supra* note 130.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

complying country.<sup>141</sup> Such measures are designed to be temporary until compliance with the Dispute Settlement Body's ruling is made.<sup>142</sup>

Despite the temporary nature of these sanctions, there may be economic and political ramifications upon the target and the complainant countries. Such ramifications could cause problems for all parties involved. Under the WTO, the sanctions usually come in several forms: restriction of access to import and export markets<sup>143</sup> or suspensions of obligations to other members of the WTO.<sup>144</sup> This approach is designed to be seen as a disruption to the economies of the target nation in theory.<sup>145</sup> Assuming the presence of a two state system, the presence of a theoretical sanction between two states would result in economic devastation to a smaller targeted nation.<sup>146</sup> Because smaller nations are less self sufficient and have a more inelastic demand for goods, a sanction that denies a product to a smaller nation exerts enormous pressures upon the targeted nation.<sup>147</sup> Larger nations are less vulnerable to the effects of sanctions.<sup>148</sup> However, such a sanction will also come at a cost to the sanctioning nation.<sup>149</sup> By levying a sanction, the sanctioning nation also imparts an increase on the cost of its own importable goods, and will correspondingly suffer in its trade.<sup>150</sup> In cases where more than one party nation is present, the effects of a sanction is greatly lessened in the target nations because of other sources of importable goods are available.<sup>151</sup>

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<sup>141</sup> *Id.*

<sup>142</sup> Understanding on Rules and Procedures Governing the Settlement of Disputes, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2 art. 22, Legal Instruments – Results of the Uruguay Round, 33 I.L.M. 1125 (1994), [http://www.wto.org/english/tratop\\_e/dispu\\_e/dsu\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm).

<sup>143</sup> WILLIAM H. KAEMPFER & ANTON D. LOWENBERG, INTERNATIONAL ECONOMIC SANCTIONS: A PUBLIC CHOICE PERSPECTIVE 65 (1992).

<sup>144</sup> Steve Charnovitz, *The World Trade Organization: Sanctions for Non-Compliance*, in INTERNATIONAL SANCTIONS: BETWEEN WORDS AND WARS IN THE GLOBAL SYSTEM 159, 160 (Peter Wallensteen et al. eds., 2005).

<sup>145</sup> KAEMPFER, *supra* note 143.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> KAEMPFER, *supra* note 143.

<sup>151</sup> *Id.*

In addition to the issues of cost to both the sanctioning and sanctioned nations, another issue that arises is that of effectiveness.<sup>152</sup> The use of WTO sanctions have only been used sparingly between nations.<sup>153</sup> As of 2005, only three of these WTO approved sanctions were enforced: two by the United States against the European Communities (the Bananas and Meat Hormones cases), and one by Canada against the Community (Meat Hormones).<sup>154</sup> In none of those cases were the sanctions successful in creating near term compliance in the target country.<sup>155</sup> In other cases, where authorization for sanctions by the Dispute Settlement Body is given, countries often decline to exercise the authorization.<sup>156</sup> The disappointing performance of previously used sanctions leads to differing conclusions: 1) the threat of sanctions are no longer enough to enforce compliance and the Dispute Settlement Body functions only as a marginal player in trade policy enforcement, or 2) the sanctions have not been utilized sufficiently to be tested properly.<sup>157</sup> However, it is possible that while these sanctions have no immediate economic effect towards compliance, it will be effective in achieving certain aims of sanctioning countries.<sup>158</sup> Sanctions allow nations to signal its outrage, placate its populace, and create closure for the complainant country.<sup>159</sup> Sanctions also place internal pressures on the sanctioned government to catalyze domestic change within the country, even if the political landscape did not previously allow for it.<sup>160</sup> Perhaps the most important aim is to prevent the unnecessary cost of actual aggression that may break out should economic sanctions not be available as an option.<sup>161</sup>

Should Sweden deviate from the provisions of the TRIPS agreement, its various trading partners use the WTO's Dispute Resolution Body to lodge a complaint. If Sweden does not com-

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<sup>152</sup> Charnovitz, *supra* note 144.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 160.

<sup>155</sup> *Id.*

<sup>156</sup> Steve Charnovitz, *Rethinking WTO Sanctions*, 95 AM. J. INT'L L. 792, 793 (2001).

<sup>157</sup> Chamovitz, *supra* note 144, at 161.

<sup>158</sup> Chamovitz, *supra* note 156, at 804.

<sup>159</sup> *Id.* at 813.

<sup>160</sup> *Id.* at 829.

<sup>161</sup> KAEMPFFER, *supra* note 143, at 75.

ply or chooses to not negotiate for compensation, it is possible that the complainant nations would attempt to request the authority to levy a sanction against Sweden. Because Sweden is a small country and heavily dependent on trade with its international business partners,<sup>162</sup> it is especially vulnerable to the effects of possible economic sanctions. Unlike larger nations, its dependence on trade would make it less likely to be purely self sufficient and would be amplify any effects of a trade tariff or embargo. However, Sweden's small size is offset by the fact that Sweden's economy is heavily oriented towards foreign trade.<sup>163</sup> Sweden's trade partners includes the US, UK, Germany, France, and many other European nations.<sup>164</sup> Any complainant nations that ask for sanctions would have to be multilateral in nature or very little damage would be done to Sweden's economy itself. Any nations that request a sanction would also risk a great deal of damage to itself. However, complainant would likely go ahead with any sanctions in order to satisfy its internal populace. Additionally, it may use the sanctions as a catalyst to Swedish organizations that may pressure the politicians to return laws back to TRIPS compliance. While any sanctions may be unsuccessful, the other aims satisfied by such a sanction may make it a tempting option for complainant countries.

### C. *International Harmonization Pressures*

A third effect may be international pressures towards harmonization of copyright laws. While being out of step is not necessarily an impossibility, it does create, by itself, pressures upon the nation to conform.

A notable example of international pressures to harmonize IP laws can be seen in the case of Switzerland's patent system.<sup>165</sup> In this case, Switzerland harmonized its patent laws to

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<sup>162</sup> Sweden Gateway, Sweden in Brief / An Economic Miracle, [http://www.sweden.se/templates/cs/CommonPage\\_\\_\\_2711.aspx](http://www.sweden.se/templates/cs/CommonPage___2711.aspx) (last visited February 24, 2009).

<sup>163</sup> CIA Factbook, Sweden, <https://www.cia.gov/library/publications/the-world-factbook/geos/sw.html> (last visited Feb. 24, 2009).

<sup>164</sup> Infoplease.com, Sweden, <http://www.infoplease.com/ipa/A0108008.html> (last visited February 24, 2009).

<sup>165</sup> GRAHAM DUTFIELD, INTELLECTUAL PROPERTY RIGHTS AND THE LIFE SCIENCE INDUSTRIES: A TWENTIETH CENTURY HISTORY 83 (2003).

conform with its neighbors due to pressures from Germany.<sup>166</sup> Switzerland's government implemented its national patent laws in 1888 after much public debate.<sup>167</sup> However, unlike other nations of Europe, the Swiss system of patents had a very unique feature: in order to obtain patent protection, it is necessary for inventors to supply the patent office with a model of the invention.<sup>168</sup> Such a requirement limited the scope of Swiss patent protection to mechanical devices, completely excluding protection to chemical and pharmaceutical products, foodstuffs, and stimulants.<sup>169</sup> At the time, one of the main goals of the model requirement was to avoid the opposition of Switzerland's chemical industry, which had objected to all previous versions of the amendment.<sup>170</sup> Though such a move was designed to shield the Swiss chemical industry from the might of Germany's chemical industry, it was also seen as highly hypocritical due to the Swiss chemical industry's increased use of other countries' chemical patent statutes for their benefit.<sup>171</sup> Two major sources of international pressure were instrumental in forcing the Swiss government to amend their patent statute.<sup>172</sup> The United States, in 1897, proposed an amendment to the Paris Convention for the Protection of Industrial Property requiring "any invention that is not patentable in the country of origin, may be excluded from protection in any other Member country that finds it expedient to include it."<sup>173</sup> Additionally, Germany also threatened the use of several retaliatory measures against Switzerland.<sup>174</sup> Specifically, Germany used the threat of customs on Swiss chemical products, such as dye and aniline, if the Swiss does not amend their Patent statute.<sup>175</sup> Additionally, being a natural resource poor country, the Swiss chemical industry was also dependent on the German markets for supplies of

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

<sup>167</sup> Dominique S. Ritter, *Switzerland's Patent Law History*, 14 *FORDHAM INTELL. PROP. MEDIA & ENT. L.J.* 463, 473 (2004).

<sup>168</sup> *Id.* at 477.

<sup>169</sup> *Id.* at 478.

<sup>170</sup> *Id.* at 477.

<sup>171</sup> DUTFIELD, *supra* note 165.

<sup>172</sup> Ritter, *supra* note 167.

<sup>173</sup> *Id.* at 480 (citing ERIC SCHIFF, *INDUSTRIALIZATION WITHOUT NATIONAL PATENTS: THE NETHERLANDS, 1869-1912; SWITZERLAND, 1850-1907*, at 93 (1971)).

<sup>174</sup> Ritter, *supra* note 167 at 480.

<sup>175</sup> *Id.*



raw materials.<sup>176</sup> This American-Germany alliance to pressure Switzerland's patent laws created a "virtual ultimatum" to the Swiss Government.<sup>177</sup> In 1907, Switzerland bowed to international pressure and passed an amended Patent law.<sup>178</sup>

More recently, international pressures have forced India to come into the international mainstream with its patent laws.<sup>179</sup> During much of Indian's colonial days, the Indian market was secured for the English pharmaceutical companies under the colonial patent law of 1911.<sup>180</sup> However, this changed in 1970 when Indian passed the Indian Patents Act.<sup>181</sup> The language of the 1970 Patents Act included a special provision stating "that patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent and not to enable patentees to enjoy a monopoly for the importation."<sup>182</sup> The policy put into place created an Indian generic medication market that flourished in the absence of strong patent protection for pharmaceuticals as foreign pharmaceutical companies pulled out of India.<sup>183</sup> So prevalent was Indian generic medication that much of the world relies on the generic medication exported by India, exceeding the almost \$1.5 billion in 2000.<sup>184</sup> During this period, India was a leader in opposing pharmaceutical patents in a GATT accord during the first three years of the Uruguay Round negotiations for the TRIPS agreement.<sup>185</sup> Bowing to pressures from the international community as India's pharmaceutical industry became a

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<sup>176</sup> DUTFIELD, *supra* note 165.

<sup>177</sup> Ritter, *supra* note 167, at 481

<sup>178</sup> DUTFIELD, *supra* note 165.

<sup>179</sup> Mark Sappenfield, *India Poised for Pharmaceutical Boom*, CHRISTIAN SCIENCE MONITOR, Jan. 2, 2007, available at <http://www.csmonitor.com/2007/0102/p06s01-wosc.html>.

<sup>180</sup> Richard Gerster, *The Success Story of the Indian Pharmaceutical Industry*, MEDICUS MUNDI SWITZERLAND, Apr. 2002, <http://www.medicusmundi.ch/mms/services/bulletin/bulletin200201/kap02/13gerster.html>.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> Janice Mueller, *The Tiger Awakens: The Tumultuous Transformation of India's Patent System and the Rise of Indian Pharmaceutical Innovation*, 68 U. PITT. L. REV. 491, 515 (2007).

<sup>184</sup> "India's drug exports exceeded in the year 2000 for the first time US\$ 1,5 billion." *Supra* note 172.

<sup>185</sup> Mueller, *supra* note 183, at 518.



pariah,<sup>186</sup> India accepted the TRIPS agreement on the provision that it would come into compliance with TRIPS by January 1, 2005.<sup>187</sup> In April of 2005, India's amended patent laws were enacted (with retroactive effects to January 1, 2005).<sup>188</sup>

As can be seen in Switzerland and India's example, international communities can often exert great pressures on nations who are out of step with the international scheme of intellectual property protection. Sweden, having many of its major trade partners being major copyrighted material producing nations,<sup>189</sup> would especially feel both external forces (from both foreign nations and private actors such as Hollywood) and internal forces (for instance, groups within Sweden who wishes for more stringent copyright protections). It is unlikely Sweden will remain out of step for long under such pressures.

### SECTION III

#### *An Alternate Effect: Could the Pirate Party Change International IP?*

As an alternative effect, a question may be asked whether the Pirate Party may actually change International Intellectual Property Law. This area would require a bit more speculation since the Pirate Party is still a very small minority, even within Sweden at the moment. However, several possible scenarios exist where such a result may happen.

In order to effectuate Copyright Reform on an international level, the Piratpartiet must first alter changes within Sweden's political landscape itself. Two possibilities exists for effecting change: 1) the Piratpartiet may act as a direct instrument of copyright reform within Sweden or 2) the Piratpartiet may effectuate reform indirectly.

If the Piratpartiet is successful in gaining representation within the *Riksdag*, it is possible for the party to directly influence copyright policies within Sweden. As noted before, the rise of the Piratpartiet within Sweden has mirrored that of the GPSw in its early years. As with the GPSw, the Piratpartiet

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<sup>186</sup> Sappenfield, *supra* note 179.

<sup>187</sup> Mueller, *supra* note 183 at 518-19.

<sup>188</sup> *Id.* at 529-30.

<sup>189</sup> *See supra* note 157.

was brought about due to awareness of a single issue within national population, in this case, that of copyright and intellectual property reforms. Furthermore, like the GPSw, the Piratpartiet has lost the initial elections despite a promising start. However, the growth of the Piratpartiet has indicated a great deal of promise within the upcoming 2009 European Union representation.<sup>190</sup> Like the GPSw, such a rapid growth and electoral showing would allow a greater voice on an International stage. Additionally, within the 2006 Swedish elections, the ruling coalition at the time, which was known as the Red-Green bloc, lost their majority status to that of the Alliance for Sweden coalition.<sup>191</sup> However, the margin of victory only consisted of five seats difference between the Alliance for Sweden Coalition and the Red-Green bloc.<sup>192</sup> Because of the extremely thin majority, any changes within the Swedish political landscape may mean changes in the makeup of the Swedish Parliament. If the Piratpartiet is capable of making good on its increased membership and generate the votes necessary to gain representation within Parliament, two effects may occur. The Green Party may lose support and possibly lose representation within Parliament from votes that go towards the Piratpartiet. This would have the practical effect of decreasing the power of the minority coalition further. The Piratpartiet may also gain representation within the Parliament and join either one of the two major coalitions. If it joins the Red-Green bloc, it may restore the coalition to power within Sweden. If it joins the Alliance for Sweden, it may further increase the slim majority of the current ruling coalition. In all of these situations, the Piratpartiet has significant leverage over Swedish politics and a valuable tool in influencing the views of other political parties.

The Piratpartiet may also cause copyright reform within Sweden indirectly. Despite the fact that it still is an extremely small party within Sweden and failed to gain representation

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<sup>190</sup> Lawrence Solomon, *A Force for Division*, FINANCIAL POST, Oct. 4, 2007, <http://www.financialpost.com/story.html?id=9fe42daa-c7c0-408a-90c5-eae4e83139da>.

<sup>191</sup> Folkpartiet Liberalerna, Alliance Won Swedish General Election, [http://www.folkpartiet.se/FPTemplates/AreaContentPage\\_\\_\\_7191.aspx](http://www.folkpartiet.se/FPTemplates/AreaContentPage___7191.aspx) (last visited February 24, 2009).

<sup>192</sup> *Id.*

within Parliament in the 2006 elections,<sup>193</sup> the anti-copyright views held by the party has gained significant attention within Sweden, partially fueled by the rapid growth of the party. Other parties within Sweden have adopted many of the issues and views advocated by the Piratpartiet. The GPSw, in particular, has adopted much of the Piratpartiet's copyright reform policy, promising the decriminalization of downloading copyrighted materials for non-commercial uses and decreased penalties for intellectual property related offenses.<sup>194</sup> Additionally, both the Left and Moderate parties have started to reconsider the current copyright policies, which go after private individuals, in favor of copyright laws which primarily target commercial copyright infringement.<sup>195</sup> More recently, thirteen Swedish MPs joined in an article<sup>196</sup> within the Swedish newspaper *Expressen* in declaring that "decriminalizing all non-commercial file sharing and forcing the market to adapt is not just the best solution . . . [i]t's the only solution."<sup>197</sup> Karl Sigfrid, the original drafter of the article, stated that the strict copyright enforcement proposals by copyright lobbyists "make no practical sense" because there is no feasible way of enforcing such a proposal.<sup>198</sup> Though the Piratpartiet still lacks political power within Sweden, the adoption of their platform by many other Swedish politicians indicate that the idea is popular and may result in changes down the road.

Even beyond this, it's possible that the Pirate Party, if successful within Sweden, could stand a chance of influencing International Intellectual Property law and treaties. Specifically, due Sweden's European Union membership, it has a voice in changing the Intellectual Property Laws within states. If the

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<sup>193</sup> Norton, *supra* note 62.

<sup>194</sup> Miljöpartiet de Gröna, Släpp filerna fria!, [http://mp.se/templates/Mct\\_78.aspx?avdnr=5&number=115068](http://mp.se/templates/Mct_78.aspx?avdnr=5&number=115068) (last visited Feb. 24, 2009).

<sup>195</sup> Ted Kudinoff, *Nu vänder v och m i piratfrågan*, *EXPRESSEN*, June 7, 2006, <http://www.expressen.se/1.367477>.

<sup>196</sup> Torrentfreak.com, Swedish Politicians Strike Blows at Copyright Lobby, <http://torrentfreak.com/swedish-politicians-strike-blows-at-copyright-lobby-080110/> (last visited Feb. 24, 2009).

<sup>197</sup> Karl Sigfrid, *Sju moderata riksdagsmän trotsar partipiskan: Att fildela är en rättighet*, *EXPRESSEN*, Jan. 3, 2008, <http://www.expressen.se/debatt/1.988696/>, translated in Karl Sigfried, Decriminalizing File Sharing, <http://sigfrid.wordpress.com/2008/01/07/decriminalize-file-sharing/> (last visited Feb. 24, 2009).

<sup>198</sup> *Supra* note 127.

Piratpartiet is able to gain enough support within the Swedish Parliament itself, it may be able to slowly influence the opinions of its neighbors through the European Union. Alternatively, the Piratpartiet may influence European copyright laws directly if it can, like the GPSw, gain significant representation through direct elections to the European Parliament.<sup>199</sup> Additionally the massive exportation of the Pirate Party to other nations within the European Union could mean that a successful Pirate Party may find support among other nations within the European Union for changing Copyrights laws. The presence of new Pirate Parties within many nations, such as the United States, could indicate an alternate means by which the Piratpartiet can gain international influence.

#### SECTION IV

##### *Conclusion*

Though the Piratpartiet remains a relatively small minority within the Swedish government and society, rapid growth coupled with high visibility within recent times indicates that it might be within distance of generating drastic reform of the Swedish copyright system. However, there appears to be a great deal of pressures exerted upon Sweden to remain in lock-step with the rest of the European Community. In the present situation, these pressures form a self-correcting mechanism that would nullify or hamper any attempt Sweden can make to follow Piratpartiet policies. However, the copyright industries must be aware that though international pressures are present, there are ways the Piratpartiet can circumvent these means. By following a similar history to that of the Swedish Green Party, the Piratpartiet can use its newfound popularity to leverage international representation, bypassing Sweden's political system entirely. Though the party itself is presently small and weak, its global ramifications can be massive.

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<sup>199</sup> Mueller, *supra* note 64.