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# Infringement of radio and television companies' signal rights in Sweden

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- [Introduction](#)
- [Background](#)
- [Facts](#)
- [Decision](#)
- [Comment](#)



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## Introduction

The hijacking and illegal rebroadcast over the internet to internet protocol set-top boxes of radio and television companies' broadcasting signals constitutes a real challenge for the industry, particularly for radio and television companies that commercialise sports broadcasts and other premium content. In Sweden, criminal and civil cases regarding pirated broadcasting signals can often be mired in technical minutiae and complicated legal questions regarding territoriality.

A recent criminal case<sup>(1)</sup> from the Patent and Market Court of Appeal (PMCA) shows that these cases can be assessed in a pragmatic and efficient way. It serves as a reminder to radio and television companies that criminal complaints against the operators of systems with pirated set-top boxes remain a crucial tool in the fight against signal piracy.

## Background

Radio and television companies have certain exclusive rights to their broadcasting signals according to section 48 of the Swedish Copyright Act. It is not what is being broadcast that is protected, it is the broadcasting signals themselves that enjoy protection under this so-called "signal right". The signal right includes the right to:

- record the broadcast on a device from which it can be reproduced;
- make copies of such a recording; and
- distribute copies of such recordings to the public.

With particular relevance to this case, section 48(4) also establishes that radio and television companies have exclusive rights to rebroadcast their broadcasting signals. This rebroadcasting right can, for example, be infringed by someone downloading a television company's broadcasting signals and then rebroadcasting them via the internet to set-top boxes without the television company's consent.

## Facts

The defendant in this criminal case had been selling set-top boxes that gave users access to certain broadcast signals that had been rebroadcast over the internet without the television companies' permission. The set-top boxes had been sold through a webpage which the defendant administrated (and without payment to the television companies). Unbeknown to the defendant, a representative of the television companies had made a straw purchase of an illegal set-top box, which was later analysed and used to report the defendant to the police.

The central question in the case was whether the defendant, by administrating the webpage and selling the internet protocol set-top boxes, had infringed the companies' signal rights – either by violating the television companies' exclusive right to rebroadcasting himself, or by aiding and abetting the infringement of the rebroadcasting right and thus committing contributory infringement) – and could be held criminally liable.

## Decision

Systems with illegal set-top boxes are often a part of a global network where broadcasting signals are decoded and rebroadcast over the internet from different parts of the world to illegal set-top boxes as part of a global criminal enterprise. Such a system often involves many different servers, hosted by different companies all over the world, and agents that sell the set-top boxes on the local market and sometimes even offer illegal monthly subscription plans (to content the agent does not have a right to sell access).

The PMCA quickly disposed of the question of whether the defendant had himself infringed the rebroadcasting right under section 48 of the Copyright Act. There was no evidence of this, and the defendant did not have the technical knowledge or hardware to do so. Instead, the question became whether the defendant's sale of the set-top boxes in itself constituted contributory infringement of the television companies' signal rights.

The PMCA found that in order to find the defendant liable for contributory infringement of the signal right, there must be a "main infringement" for the defendant to contribute to. Under the circumstances in the case, where illegally rebroadcast signals had been proven in court to be available to purchasers of the set-top box in Sweden, the PMCA found that there had prima facie been an illegal rebroadcasting of the television companies' broadcast signals (a "main infringement"). The PMCA found it immaterial to the question of the defendant's subsequent liability for contributory infringement where that illegal rebroadcast actually originated from or who was responsible for the "main infringement".

As to the question of whether the defendant's actions constituted contributory infringement, the PMCA found that since the set-top boxes were the necessary and decisive means of accessing the illegally rebroadcast signals in Sweden, the defendant had aided and abetted in

infringing the television companies' exclusive rights to their broadcasting signals through his sales of the set-top boxes.

The defendant was thus found guilty of criminal copyright infringement and sentenced to probation. The defendant was also sentenced to pay significant damages to the injured television companies.

#### **Comment**

This case represents a small win for radio and television companies and is a good example of a Swedish court assessing complicated technical and legal arguments about broadcast signals, decoding and internet traffic in a straightforward manner and fashioning an effective tool to use against broadcasting pirates.

Even though the criminal penalties for these kinds of infringements are low in Sweden, the broadcasting industry can hope that, as the legal process of stopping an operation of this kind on a distributional level and prosecuting the guilty parties becomes easier and more efficient, these developments will discourage signal hijacking at the source.

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#### **Endnotes**

(1) Patent and Market Court of Appeal, B 12022-21.