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Copyright Piracy Actions vs. Public Interests – A Norwegian Experience

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”The Norwegian attitude”

- On the one hand: The authorities do act against copyright piracy
  - Charges against Jon Johansen in the DeCSS case
  - May 2003: Action against the software company Eterra, seizure of a server containing approx. 1.000 unlawfully downloaded files
  - June 15 2004: Action against the telecom company Netcom, seizure of a server containing approx. 60.000 unlawfully downloaded files

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”The Norwegian attitude”

- On the other hand: Public interests have high priority in Norway
  - Chapter 2 of the Norwegian Copyright Act: Not exceptions that are to be interpreted narrowly, but delimitations rules to be interpreted on equal footing with the exclusive rights provisions
  - ”The DVD Jon case” (DeCSS), decision of December 22 2003 by the Borgarting Court of Appeal – may be seen as a result of giving consumer interests priority

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”The DVD-Jon case”

- The provision in question: Sec. 145 of the Norwegian Copyright Act:
  - Criminal liability for persons that get themselves ”unlawful access to data” or whom contribute to other persons unlawful access to data
- The courts could easily have concluded that Jon Johansen had violated this provision
- However, obvious from the reasoning of the courts that vital consumer interests were considered to be at stake

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The Norwegian (Nordic) draft implementation of Article 6, Infosoc Dir

- Dir. 2001/29/EC Article 6(3):
  - ”the expression ”technological measures” means any technology, device or component that … is designed to prevent acts, in respect of works or other subject matter, which are note authorised by the rightholder of any copyright
- The Norwegian Nordic draft proposal
  - only means that is designed to prevent acts that fall under the scope of copyright law will be protected as ”technological measures”, leaving means designed to prevent the display of copyright material outside the protection
  - implies a distinction between protected copy controls and non-protected access controls
  - Cf. recital 48 of the Directive: The legal protection should not prevent the ”normal operation of electronic equipment”

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The ”Napster.no” case

- Decision of the Eidsivating Court of Appeals, March 3 2004 (appealed to the Supreme Court)
- ”Deep links” to unlawfully downloaded mp3-files were not considered as an act of making available the copyright work to the public (Sec 2 of the Norwegian Copyright Act)
  - The links were considered to be mere references to the work
  - The reasoning resembles that of the Paperboy decision of the German Supreme Court of July 17 2003
  - However: A major difference between the two cases, as the Napster.no case concerned links to copyright pirated material, not to subject matters made available on the net by the author himself

Evaluation

- The DVD-Jon decision, the Norwegian draft implementation of Infosoc art. 6 and the Napster.no decision are questionable from a legal point of view
- However, the positions are understandable as results of the general Norwegian public interest concern

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Concluding remarks

- Cf. The EC Commission's Communication on the Management of Copyright and Related Rights (COM 2004 (261) final):
  - "Both the freedom of choice (for equipment, network, services and content) and at the same time the preservation of privacy (including the ensuring of security) should be maintained as essential elements contributing to consumers' trust" (p. 11)
- The Norwegian experience: The failing to maintain the essential elements contributing to consumers trust is eventually harmful to the interests of the right holder

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