

No presumption of imprisonment for copyright infringement

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Background

Decision

Comment

The Supreme Court recently clarified that copyright infringement is not a crime where the presumed penalty is imprisonment.

Background

The Court of Appeal found B guilty of 30 cases of copyright infringement for making 125 copyright-protected movies and television series available to the public over a period of 20 months. B had also taken part in administrating and developing the file-sharing site used to make the works available to the public. The Court of Appeal sentenced B to eight months' imprisonment.

The Supreme Court granted partial leave to appeal regarding the sentence.

Decision

The relevant questions before the Supreme Court regarded the penal value of the crimes and whether copyright infringement is a crime where the presumed penalty is imprisonment.

Whether a crime should be punished by imprisonment is generally determined based on its penal value. If the penal value is less than one year, imprisonment should be a last resort. However, certain crimes are considered of such a nature that the penalty should be a prison sentence based on general preventive grounds, even if the penal value is less than one year.

In this case, the court found that B's copyright infringement had a penal value of six months. Therefore, there was no presumption for imprisonment based on the penal value alone.

Regarding the nature of the crime, the court stated that there were no legislative indications that the penalty for copyright infringement should be a prison sentence. The court referred to a previous ruling in which it had found that there was no presumption for imprisonment for trademark infringement (for further details please see "[Trademark infringement – presumption of imprisonment?](#)"). It concluded that trademark and copyright infringement are closely related crimes and that it is not uncommon that one act constitutes both trademark and copyright infringement. The court found that the same assessment should be made for both crimes and consequently established that there is no presumption of imprisonment for copyright infringement.

Comment

This decision marks a change in relation to previous case law regarding the penalty for copyright infringement through illegal file sharing. In 2010 the Svea Court of Appeal concluded that the penalty for such crimes should be imprisonment (*Pirate Bay*, RH 2013:26). The Supreme Court did not grant leave to appeal.

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The Supreme Court has now aligned the view on the severity of IP infringements. This is a welcome development, although rights holders may have benefited from a stricter view and a development in the opposite direction.

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