

This unofficial translation is available from www.hssph.net/misc.html#Cases

Court of Appeals

DECISION
9 February 2010

Summary:¹

Appeal in Norwegian Pirate Bay case. Asker and Bærum District Court refused to impose on Telenor to block its subscribers' access to Swedish file-sharing service Pirate Bay. The order has now been confirmed by Borgating Lagmannsretts order of 9 February 2010. The Appeal court like the lower court held that Telenor is not legally be said to contribute to users' copyright infringing acts on Pirate Bay. The Appeal court premises are considerably more nuanced than the lower court's. The Appeal court finds it of particular importance that Telenor's contributions to the users' illegal acts merely is technical and neutral and therefore too distant to legally be characterized as illegal and punishable. The Court also refers to the general illegality-reservation. The court dismissed - particularly in regard to mere-conduit-rule in e-commerce Directive - that the fact that Telenor had been made aware of its network was used for copyright infringing acts, should make Telenor contribution-responsible.

*1² Borgating Court of Appeal³

DECISION⁴

Delivered: 09.02.2010

Case no.: 10-006542ASK-BORG/04

Judges:

Court of appeal judge⁵ Lagdommer Jan-Fredrik
Wilhelmsen
Court of appeal judge Dag A. Minsaas
Court of appeal judge Sveinung Koslung

Appellant Nordic Records Norway AS, Attorney Rune
Ljostad
Appellant Universal Music AS, Attorney Rune Ljostad
Appellant Universal City Studios LLLP, Attorney Rune
Ljostad
Appellant Bonnier Amigo Music Norway AS, Attorney
Rune Ljostad
Appellant Voices Music & Entertainment AS, Attorney
Rune Ljostad
Appellant Sandrew Metronome Norge AS, Attorney
Rune Ljostad
Appellant Playground Music Scandinavia Norge -
Norsk Avdeling Av Utenlandsk Foretak, Attorney
RunLjostad
Appellant Twentieth Century Fox Film Corporation,
Attorney Rune Ljostad
Appellant TONO, Attorney Rune Ljostad
Appellant Friland Produksjon AS, Attorney Rune
Ljostad
Appellant Warner Music Norway AS, Attorney Rune
Ljostad *2
Appellant Steelworks Stein Groven, Attorney Rune
Ljostad
Appellant Warner Bros. Entertainment, Inc, Attorney
Rune Ljostad
Appellant Daworks Music Publishing, Attorney Rune
Ljostad
Appellant Sf Norge AS, Attorney Rune Ljostad

¹ From [www.it-retsforum.dk/index.php?id=39&tx_ttnews\[tt_news\]=177&cHash=287e06a2911](http://www.it-retsforum.dk/index.php?id=39&tx_ttnews[tt_news]=177&cHash=287e06a2911) (visited July 2010).

² Number after a bold “*” state the page of the original decision.

³ In Norwegian: “Borgating Lagmannsrett”.

⁴ Original in Norwegian at www.it-retsforum.dk/uploads/media/Telenor_PB_dom_Borgating_2010.pdf (visited July 2010).

⁵ In Norwegian: “Lagdommer”.

Appellant Nordisk Film Distribusjon AS, Attorney Rune Ljostad
Appellant Dj Beat Records Scandinavia AS, Attorney Rune Ljostad
Appellant Sony Music Norway AS, Attorney Rune Ljostad
Appellant Filmkameratene AS, Attorney Rune Ljostad
Appellant EMI Recorded Music Norway AS, Attorney Rune Ljostad
Appellant The Music Business Organisation (mbo) AS, Attorney Rune Ljostad
Appellant Sony Pictures Entertainment, Inc, Attorney Rune Ljostad
Appellant Paramount Picture Corporation, Attorney Rune Ljostad

Appellee Telenor ASA, Attorney John Steffen Gulbrandsen

***3** The case concerns the request for a temporary court order demanding that Telenor shall be prohibited from contributing to making available to the public and copies via the website The Pirate Bay for copyright-protected works and works.

The request was withdrawn 16 June 2009 at Asker and Bærum District Court of 23 companies and associations, including 12 Norwegian record companies, TONO, five U.S. movie studios, three Norwegian film distributors and two Norwegian film producers (the "licensees"). In all, five trade associations have declared a party assistance in support of the petition, see Disputes Act § 15-7. The purpose of the petition are from licensees side to prevent infringement of copyrighted works over the Internet. Rettighethaverne have copyrights and other related rights in all material respects, the music and film on the Norwegian market.

The Pirate Bay was established as a web service in autumn 2003. The service consists of a web page that can be reached under several addresses on the Internet. The website adds conditions for sharing between users of The Pirate Bay. File sharing does not take place physically through The Pirate Bay, but by the creation of direct contact between end users exchange files. The Pirate Bay is based on the so-called Bit-Torrent technology. The technology works so that the user by downloading from The Pirate Bay and open a so-called torrent file, automatically connects to other users that provides all or part of the

file (usually film, music or software) torrent file refers to the technology provider in this way contact with others who can provide the relevant requested file, and holder at any time track of which users provide the files.

In Norway, Telenor is the largest provider of Internet services and account for approximately 50% of the market. In virtue of being a so-called Internet Service Provider, Telenor provides a service - in the first instance a purely physical infrastructure - which makes it possible for Telenor's Internet customers to visit the pages of The Pirate Bay. Telenor offers in other words, the necessary infrastructure to transmit data traffic, with the consequence that illegal file sharing can take place and to some extent takes place among Telenor customers who visit The Pirate Bay. Telenor makes further actions in terms of operation, maintenance and support as necessary to provide this service to their end users. Telenor is not even the ISP to The Pirate Bay and is in no contractual relationship with the companies or people behind the website.

It is undisputed in the case that users of The Pirate Bay, in many cases using the website of illegal file sharing that may involve a violation of licensees and that this also applies to Telenor's customers, although there is disagreement between the parties regarding the scope of the illegal materials available via The Pirate Bay and the share of Telenor's customers are involved in the illegal file sharing. The court assumed that as much as 90% of ***4** the material that can be offered through The Pirate Bay is illegal fildelt, while Telenor is based on information from The Pirate Bay has entered an illegal ratio of about 20%. The court has further assumed that about 140,000 persons in Norway visit The Pirate Bay every day, while Telenor in its response to the court of appeal - on the basis of information from The Pirate Bay - estimated 12,000 users. The appellate court found no need to go to these evidence questions in the following, but assume that the illegal file sharing via The Pirate Bay takes place in the not insignificant extent, among Telenor customers, and that this represents a serious problem for licensees. The Pirate Bay is undoubtedly one of the sites that are currently the greatest extent facilitates illegal file sharing.

Asker and Bærum District Court rendered 6 November 2009 ruling in the case of such a conclusion:

1. The request is rejected.
2. Case Costs awarded not.

The court based its result not to take the petition to follow, that Telenor's participation in the form of asking its network available to The Pirate Bay, without supervision or control of those sites, did not represent a law unconstitutional participation. The conclusion at this point is in the ruling expressed as follows:

The court concluded that a contribution from Telenor, whether active or passive, can not be regarded as unlawful. As participation is not considered unlawful, it is not necessary for the court to decide whether there is guilt and causality. It is not necessary to decide whether there is a security reason. The request has not brought forward, and accordingly to reject.

The licensees appealed the ruling to the Borgating Court of Appeal 9 December 2009. The appeal deal with court's use the law and evaluation of the facts.

Telenor filed response to the appeal on 8 January 2009. In response, it is stated that Telenor Norway AS has taken over the party post to Telenor Telecom Solutions AS through this company's merger with Telenor Mobil AS, Telenor Privat AS and Telenor Business AS new Telenor Norway AS with the same organization as the former Telenor Telecom Solutions AS. The Court adds that party relationship to reason and Telenor Norway AS is in this award named "Telenor.

The Appellants, The rightholders, has essentially stated the following:

Main arguments

The conditions to determine interim measure are met and the court's ruling is incorrect. *5

Copyright Article 8.3 are fundamental for our understanding of the issues the case raises and the right must be based on this decision of the case.

The Appellants have a claim on other than "money", see Disputes Act § 32-1, third paragraph. The claim is based on the Copyright Act § 2, 42 and 45 for men's exclusive copyrights and performing artists and producers related rights, responsibilities and participation in the Copyright Act § 54 third paragraph, cf § 55 first paragraph. Telenor to contribute physically and passively to the illegal activities carried out by those responsible for The Pirate Bay, as well as the illegal actions of Telenor end users commit when they

upload or download (respectively makes available to the public and to copy) movie and music works the Appellants have rights to. Participation is unlawful.

There is hedging because of both options in Disputes Act § 34-1. In relation to option a, there will not be anticipated consummation of the main claim by providing pursuance of a requirement for a temporary court order.

Copyright Law Directive as the basis for the assessment of court order basis

The licensees shall follow the copyright Directive (2001/29/EF) Article 8.3, have the opportunity to demand measures against intermediaries: "*Member States Shall ensure That rightholders are in a position to apply for an injunction against intermediaries Whose services are exceptional city a third party to infringe a copyright or related right.*" This provision is not considered by the court.

The necessary changes to implement the Copyright Directive within the Norwegian law was made in connection with the amendments of the Copyright Act which came into force on 1 July 2005. In the case of this implementation, "said Culture and Church Affairs in a letter dated 24 September 2007 that the Copyright Directive Article 8.3 did not need a special implementation to be binding internally, as the existing provisions relating to participation in intellectual property law and the injunction in a dispute the law (then the Enforcement Act) was already sufficient to conclude that the Norwegian law was in conformity with the directive. This statement from the ministry and Norway's obligations under the EEA Agreement to bring the Norwegian legislation in accordance with the Copyright Directive is of central importance to the law applying in the case. The result the court has reached inconsistent with Norway's obligations under the EEA Agreement and the contents of the letter from the Ministry of Culture and Church Affairs 24 September 2007, and that no court in its decision neither have commented on the relationship of copyright directive or the Ministry's letter.

The court said in the second paragraph on page 9 in the ruling that there is "*no doubt*" that plaintiffs have a need to stop violations and that it is "*necessary to find a solution to meet this need.*" The court said further that "*the court can not see that this will make *6 Telenor liable, when the other account speaks so strongly against.*" This reasoning shows that the court

has misunderstood the matter. It is not proposed requirement that Telenor will be punishment or liability. It established the doctrine of complicity liability must be interpreted and applied in a manner that is consistent with Norway's obligations under the Copyright Directive, EEA, see also EEA Act § 2 and presumsjons-principle.

In the legal assessment of the conditions for interim measure, it is essential to realize the following point: This is not a case about responsibility for the service provider (Internet provider), whether criminal or liability law. The reason why it mainly criminal law doctrine of participation have received so much attention in this matter, the way Norwegian legislator has chosen to fulfill the obligations of the directive on copyright. When participation doctrine to be applied to the relationship in this case, it essential that Article 8.3 of the Copyright Directive provides a general and unconditional access for licensees to demand measures against intermediaries to prevent third party infringement of copyright or related rights, without regard to the provisions on the responsibility of freedom in commerce law (which explicitly excludes deviation from its scope).

Article 8.3 contains no right against reservation, and makes no demands for the sake of the man (internet provider) page. It is in accordance with the directive enough that it is found that the man's service is used by a third party to infringe a copyright or related rights, eg. in that the illegal material transmitted in the network to the man. Other terms of blocking is not placed. This is of importance for the application of complicity liability in this matter, which is limited to a claim that the Internet provider (Telenor) blocking end users' access to The Pirate Bay to prevent violations from occur through Telenor's network and nothing else.

For the condition that the licensees should have a "claim" against Telenor

The Appellants 'claims "against Telenor is that Telenor contributes to The Pirate Bay and Telenor's end users' illegal actions.

Copyright Act § § 2, 42 and 45 give the Appellants protection for the right to copies (downloads) and accessibility to the public (upload) of titles (music and film work) that is violated by illegal file sharing through Telenor's network. Copyright Act § 54 third paragraph establishes a complicity liability for infringement of the

copyright holders rights. Through § 55 is complicity liability also applies to liability.

The court's ruling is correct when it is on page 8, third paragraph concludes - without doubt - that "*Telenor's current actions in itself implies a physical complicity in violations. It appears that the network is a necessary physical condition for *7 rights violations take place.*" The verdict is not correct when it assumes that Telenor's participation is not unlawful.

It is obvious that the responsibility of freedom of the rules of commerce law is not an obstacle to provide pursuant to a decision on interim measure. On the contrary, speaks of these rules that Telenor may be required to bring the illegal file sharing through Telenor's network to an end or prevent it.

It appears from ecommerce Act § 15 that it is the general rules for penalties and damages applicable, unless otherwise provided in ecommerce law. Electronic Commerce Act exempts only from criminal liability and damages, see § 16 ecommerce law governing the type of transmission services, Telenor delivers. Back Basic law is therefore still relevant to the legal for an injunction to block the Telecom's end users' access to The Pirate Bay.

Electronic Commerce Act § 20 expressly excludes orders from a court or administrative agency to *bring an infringement to an end or prevent it*, from the area of responsible freedom. Preparatory works for the Electronic Commerce Act § 20 states explicitly that "*the right of injunction is not affected by the implementation of articles 12-14, cf. No. 4 (2003-2004)*" Page 34

There is no conflict between the clarification not in § 20 that a service provider independent of any liability of freedom may be required to bring an infringement to an end or prevent it, and clarifying any of § 19 cf. § § 16 to 18 of the service provider does not have a general obligation to control, monitor or investigate the conditions to achieve such potential liability freedom. An interpretation of § 19 that directly or indirectly prevented a court from requiring that the service provider brought an infringement to an end, or hindered, it will however, be directly contrary to the two-track system - where the distinction between criminal and civil liability for violations on the one page (§ § 16 to 18 cf. § 19) and on the other hand, the injunction to bring the infringement to an end or prevent them (§ 20) - as commerce law stipulates.

It is in this case anyway not about a general order to control, monitor or investigate, but to respond to specific, already documented, conditions and prevent such from happening again by blocking certain Internet addresses or use other effective methods. Further reference to the Proposition. No. 4 (2003-2004) Page 32 left-hand column, where it is determined that the service provider is not exempt from such inspection duty if he receives well-documented information. The Appellants leave to Telenor to decide what effective method to be used.

Taking commerce law as evidence that Internet providers should not do anything when it comes to violations that occur in their network, is therefore not correct. It appears directly by paragraphs 40 and preamble to the commerce directive (as ecommerce law is an implementation of) that: "*this Directive should constitute the appropriate basis for the development of rapid and reliable procedures for removing and disabling access to illegal information; such mechanisms could *8 be developed on the basis of voluntary agreements between all parties concerned and should be encouraged by Member States; it is in the interest of all parties involved in the provision of information society services to adopt and implement such procedures.* While Telenor has rejected any attempt at a voluntary arrangement with licensees to prevent access to copyrighted material, partly with reference to "commerce law system", says the commerce directive that encouraged such voluntary arrangements between the parties involved. Whatever does not commerce law no barrier to judicial competence in respect of an interim measure.

Freedom of speech and freedom of information is not an obstacle to take to pursue a petition for injunction in this matter. On the contrary, an order to the Internet provider, in this case, Telenor, to bring violations of copyright and related rights terminated or prevent them, promoting also the freedom of speech and freedom of information.

The court seems to have taken direct position on the importance of freedom of expression has in this case, when the case was settled on a different basis. What court's statement that "*the infringing actions of end users [is] a statement on a website*" which will be restricted by a blockage is not correct, and seems to be cited for a particular legal requirements (unless the court concludes on this issue). The offensive actions from The Pirate Bay and end users are illegal disclosure, and copies of copyrighted film and musical work and contribution to this. Film and music works

are available legally through other channels, and it can not be true that freedom of expression and information freedom can be cited for those who violate the protected rights to provide themselves and others free access to movies and music that is available in trade.

The activity that is conducted through The Pirate Bay is not the freedom of expression and freedom of information core area. The main purpose of The Pirate Bay is facilitating illegal file sharing. This has significance for the balance to be made in accordance with the Constitution § 100, ECHR, Article 10 Refer to the Rt. 2007 p. 404 (Focal Point-case) where it is emphasized that the case came just journalistic freedom of speech utterances in the core area when it was granted a temporary court order to prevent a TV program aired. According to the Constitution § 100 to a possible intervention weighed against freedom of speech grounds in the quest for the truth, democracy and individual free opinion. According to the ECHR, Article 10 paragraph 2 it will also open for intervention by a weighing of interests, see the "protect the rights of others" The trade-off to be made under these provisions, it is a weighty factor that the material in question to block access to copyright-protected material is made available to the public and copies are made without the author's consent.

The Constitution prohibition against "pre-censure" is not to interfere with the interim measure. It appears from NOU 1999:27 paragraph 7.3.5 that: "*There has been no tradition in Norway to treat temporary measures as censorship and it must be assumed that the scheme is not *9 in conflict with [then valid] Grl. § 100, 1 sentence ... The objective of freedom of speech is often cited by the defendant in cases of injunction, but there is no precedence from the Supreme Court that courts should be more reluctant deviation from utterances than otherwise.*"

It is pointed out further on the differences between pre-censorship and the existing injunctions: An interim measure would be specific and not general, it will be imposed by a court, not administrative, and there will be two private parties that are against each other. It may in this connection is pointed out that Telenor has not made any fundamental objections to child pornography filter that is used by Telenor and other Internet providers, although this is to block content without a court is involved. It is solely KRIPOS, without legal trial, which decides which web addresses to be blocked under this scheme.

In this case we are talking about blocking after a court has undertaken a review of the petition for injunction after full contradiction and straight evidence. What court's statement that it is unnatural that private companies will make an assessment of blocking (the ruling page 8, last paragraph), therefore, as without relevance to the facts, as there are courts to consider this question.

By NOU 1999:27 point 7.4.2.2 shows that even after the amendment of the Constitution § 100 should be possible with the existing injunctions to utterances. It stated that *"it should be clarified that the existing injunctions can be used only when it is probable that the disclosure is not satisfactory can be repaired with financial compensation and / or punishment."* The change in the Constitution § 100 does not involve an absolute prohibition on the existing injunctions against speech, even where utterances as opposed to what is the case here would be in the core area of freedom of speech, appears on the St.mld. No. 26 (2003-2004) Section 5.6.2: *"The wording of the constitution Freedom of speech Commission's proposal poses a seemingly absolute prohibition on the use of existing injunctions against speech before they are published. The premise, however, show that the proposal is not intended that way, but a tightening of the current legal state"*.

It is difficult or impossible to prosecute the individual end users, partly because Telenor does not forward or make end users aware of inquiries from licensees to end users with a requirement that the illegal activity ceases. These factors mean that a court order against Internet provider in reality licensees only chance to stop violations of their rights that takes place in a massive scale. This is also the legislative rationale for copyright directive article 8.3 which states that Internet providers in many cases, are best placed to prevent such violations, see section 59 of the preamble. According to the Copyright Directive Article 8.3 should licensees be allowed to claim a court order regardless of whether the activity is internet provider liability covered or not.

***10** Balance the interests of free speech is, in other words, already made by the legislator (the European as well as the Norwegian by the EEA Joint Committee has decided to make the copyright directive, a part of the EEA Agreement and by the Ministry confirmed the harmony of the copyright directive Article 8.3 and internal, Norwegian law) when it is given the right to claim a court order to block access to copyrighted material. None of the freedom of speech arguments

as defined in the Constitution § 100, ECHR Art. 1910 will be an obstacle to an order to block traffic to and from The Pirate Bay. Consideration for the quest for the truth is not threatened, because it primarily forms of expression (a specific movie or musical work) and not their ideological content that is shared by The Pirate Bay and that will be affected by the blockage. The objective of democracy and individual free opinion is not threatened because the sparse legal materials available on The Pirate Bay, are also available elsewhere.

Telenor already performs the blocking of child pornography through the so-called child porn filter. Neither Telenor and Norwegian authorities have raised no objections to this filter (Parliament also spoke positively about the Filter settings. O. No. 66 (2004-2005) page 4 left column), despite the fact that the assessment of the content that is illegal undertaken by KRIPOS, while in this case for review by a court after a contradictories process with immediate evidence.

In particular, the participation and legal dispute that assessment the subject of the injunction

Accomplice liability, see Copyright Act § 54, forms the basis for a "claim" that provides the basis for an interim measure. Although it is a criminal complicity concept that forms the basis of the Copyright Act § 54, applies to this case an interim measure. In other words, no talk of a demand for punishment or compensation.

Copyright Act prohibits complicity in violations of copyrights and related rights, the Copyright Act § 54, third paragraph, see § 55, first paragraph, 2, 42 and 45 Although there is talk of a criminal provision, it is clear that suitable proof of claims with respect to civil matters apply, see Rt. 2005 p. 41 (Napster) Section 59 There is thus a requirement for general probability that there is a requirement and a safety reason.

Participation Addendum the Copyright Act § 54 came after an amendment in 1988. The reason for the amendment was the technical developments that took place in the 80's with regard to the technical possibilities for extensive copying, cf. No. 34 (1987-1988) Page 41: *"The Ministry agrees with the committee that the recent technical developments have led to a need to sharpen and expansion of sanctions policy. With the recent technical advances have been possible for anyone with a relatively modest investment to mass produce items, especially*

audio and video tapes. This has meant that in recent years both internationally and nationally are experiencing a real crime - the so-called piracy. There has been considerable extent of problems with illegal vinyl records and cassette tapes, and the problems have further *11 increased in connection with the growing market for sale and rental of video programs. Both for the sake of rightholders and general cultural and social interests, it is important to intervene against the increasing piracy." In the bill page 42 it is stated that "the introduction of a common responsibility for contributing to the infringement of copyrights and more" is among the measures proposed by the committee, which later was adopted.

The technical development described in the bill has since continued in ever-increasing pace, and the legislative justification for complicity liability strikes with full force in this case. The Pirate Bay is a site that provide contact between users who want to download copyrighted material, and those who provide such material through The Pirate Bay. The Pirate Bay allows these users to establish contact and make up-and-downloads of content. The transmission of the copyrighted material on peer-to-peer, ie directly from user to user.

The Supreme Court ruled in Napster.no case, Rt. 2005 p. 41 that posting links on a website that simplified the process of identifying copyrighted material that was posted without the copyright holders consent, was regarded as liability participation under the Copyright Act § § 55, cf 54 third paragraph. Refer to the Judgement paragraphs 63 and 65-68, see Judgment paragraphs 2-4 that describes the technical process. It is precisely such a function The Pirate Bay has, see page 2 of the fourth paragraph of the things the court's ruling. The service allows users to make available and to identify such illegal material made available. It is irrelevant whether The Pirate Bay is technically involved in the actual data transfer happens between users, see Section 2-4 in Napster.no ruling. In addition to this "contact-building" function similar Napster.no, which alone is sufficient for the Pirate Bay's activities are criminal in Norway, involves the fact that The Pirate Bay also operates a so-called tracker that The Pirate Bay compared to the main action is still closer than was the case in Napster.no-case.

The Pirate Bay's activities are therefore unquestionably criminal in Norway according to Napster.no-judgment. It appears from Napster.no-judgment paragraph 66 that it is irrelevant whether The Pirate Bay's activities are criminal in Sweden

(where those responsible behind The Pirate Bay resident), so long as it is punishable in Norway. In the same way as in Napster.no case, see paragraph 67, it must be assumed that The Pirate Bay's main purpose is to give other access to illegal about such music and film, as did the district court without further assume (the ruling page 8 , third paragraph).

The conditions for viewing the Telenor as a contribute to The Pirate Bay and / or their end users' illegal actions is that there must be a causal relationship between participation action and the main action, and that the contribution action after an overall assessment is considered unlawful. In addition, the fault requirement to be met.

*12 It is not required that the contribution action is the sole cause of the main action, see Rt. 2005, p. 41 (Napster.no) Section 63, which states that it is sufficient that the participation action enhances the effects of uploaders (the main men's) actions. It is only a contributory causes that are required, cf Andenæs, General Criminal Law, page 326 Any opportunity for users to bypass a blockage or use other Internet providers are therefore not relevant for the assessment of Telenor's participation responsibility.

It requires neither the existence of an identifiable main culprit. This follows from the principle that each contributes judged by their own conditions, cf Andenæs, General Criminal Law, page 338, and Napster.no-decision section 66

Furthermore, there is also no requirement that it is a deliberate combination of principal and contribute. This appears from Andenæs, General Criminal Law, page 327 and Section 64 Napster.no decision It is therefore irrelevant whether the main man (The Pirate Bay or Telenor end users) are aware of the complicity's (Telenor) cooperation action.

Final nor is there any requirement that participation in the act itself is illegal. This turns expressly in Napster.no ruling section 63, and any such claim follows as mentioned neither by copyright directive article 8.3 in respect of a claim for court order to prevent or block access to copyrighted material.

Firstly, it is claimed that Telenor contribute actively physically to The Pirate Bay and their end users' illegal actions. At this point, the court's ruling things correctly, as it assumes that (page 8, third paragraph) "Telenor's current actions in itself implies a physical complicity in violations. It appears that the network is a necessary

physical condition for rights violations take place." It is not disputed that the illegal activity taking place in Telenor's network. There are several decisions based on the assumption that to make the infrastructure available to illegal file sharing has been regarded as complicity, cf TOSLO-2005-106005 (VeritasBB) TJARE, 2007-6676 (Stavanger Dragon Hub), TOSLO-2003 -19,164 (Drink or Die) and RG-2005-1627 (Direct Connect). When the Internet provider to the instrumental file sharing network is considered to participate in intellectual property law sense, it's even more reason to consider the Internet provider to end-users to participate in this sense.

Secondly, it is claimed that Telenor contribute passively by failing to intervene in the rights violations in spite of the positive knowledge of this, and despite the fact that such intervention would be technically easy to implement. The court took no position on this question. The condition to establish passive complicity in principle for physical participation, then it must be proven a causal connection between the omission and the main action, cf Husabø, penal-responsibility periphery, page 175 and 460-462. There is no requirement that the alternative action - to block Telecom's end users' access to The Pirate Bay - will be fully effective, it is sufficient that the main action compromised physically or mentally. Telenor has failed both to physically prevent their end users' access to The Pirate Bay and mental *13 counteract this, transmit or otherwise make their end-users aware of licensees requests that the illegal file sharing takes place from end users internet connection. Case law has in many cases assumed that it is regarded as complicity to passively let the action take place, cf Rt. 1999 p. 996 and Rt 1995 p. 820.

What court's decision is based on Telenor's involvement is not unlawful. This is wrong use of the law. The court concludes that Telenor's participation is not illegal because to provide pursuant to a court order will lead to "*a difficult manageable situation in practice.*" The court notes that the content of The Pirate Bay can be changed, and it is pointed out that Telenor and other Internet providers should not have a responsibility to make an assessment as to whether a given site or service will be stopped or not.

From licensees side maintains that the eventuality that The Pirate Bay - who despite repeated front lines to change this, for six years has had the primary purpose of facilitating illegal file sharing - can be changed, as the court holds that justification to conclude that participation is not unlawful, have already been taken

into account in a dispute statutory provision that the Respondent may petition for court order revoked or restricted if there are changes in circumstances, see Disputes Act § 34-5 first paragraph. The fact that conditions may change is also not particularly for cases like this and lead by the Appellants sight not a very difficult situation manageable in practice that the injunction is not an appropriate legal action.

When it comes to things the court's reference to that Internet providers should not have a responsibility to make an assessment as to whether a given site or service will be stopped or not, it appears that in a situation like this is precisely the courts to undertake this review. Such court test of whether a current internet service will be stopped is considered short by the court in the first paragraph on page 9 in the ruling where only referred to that there will be a "*right technical unfortunate situation as it is that many Internet providers in Norway, and a very significant number of sites that may be controversial.*" This is not a correct interpretation of the law contrary to the reservation, and will lead to a very unfortunate legal state.

First place in both commerce Directive (2000/31/EC) Article 12.3 cf section 45 of the Preamble, copyright directive Article 8.3 cf paragraph 59 of preamble and the Norwegian implementation of these in ecommerce Act § 20 and Disputes Act § 32-1 (3) cf Disputes Act, Chapter 34, Copyright Act § 54 third subsection, the Copyright Act § 55 first paragraph of Culture and Church Affairs letter dated 24 September 2007 up to the deviation based on the trial court in cases such as this. Court order based on the court trial has thus been assessed and found suitable by the legislator in both the EU and in Norway in such cases, although it would involve "about a very significant number of sites that may be controversial," see things the court's ruling on page 9. Electronic Commerce Act further states explicitly that the imposition of the violation shall be terminated or prevented, may be granted independently of any immunity from criminal *14 or civil liability and the absence of a general obligation to control, monitor or investigate such matters.

Secondly, it is not correct, as the court seems to assume that there will be many such cases because "*it involves many Internet providers in Norway.*" As outlined in the Post and Telecommunications Authority's report on the Norwegian eco-market - 2008 page 33, the nine largest Internet providers in Norway alone has a market share of approx. 90%. Regardless, it should not be necessary to institute proceedings for

the court to each Internet service provider in each case. Other Internet providers are not legally obligated to continue to contribute to copyright infringement that a court has ordered an Internet provider to block access to. The reason has been stated to continue such participation - that Internet providers do not even want to consider the question of blocking - ceases when the question has been legally tested. They will thus be able to comply with the Court without the issue also be raised against them. This has also been the practice for example. in Denmark.

The court's interpretation of the law contrary to the reservation will mean that a party will be precluded from just injunction or remove the action because the problem the party is trying to prevent too extensive. It recalled that the general provisions on security in Disputes Act § 34-2 and court costs Disputes Act Chapter 20, etc.. To restrict groundless lawsuits, and that there is talk about making responsibilities applicable to Telenor, but only to get a temporary court order that Telenor to block access to a specific service, The Pirate Bay, which has the primary purpose of facilitating illegal file sharing and that such sharing takes place in a massive scale through.

The court's reason for not consider Telecom's participation as unlawful, is not in accordance with Telenor's own party's representative explained at the hearing, namely that in Denmark, where Telenor's sister company has been ordered to block access to The Pirate Bay (cf. ruling from Eastern Division of the Court of Appeals of 26 November 2008), were not encountered any such problems that the court fear.

The court takes its assessment does not take into account option, which is that aggrieved copyright holders, rather than to institute proceedings against one (or at most a few), Internet providers, to institute proceedings before the courts against each of the approx. 140 000 unique Norwegian users each day participating in illegal file sharing via The Pirate Bay. It would really be a straight technical unfortunate situation, and it avoids a requirement for just about blocking instead be directed against the Internet provider in accordance with EU Directives and the Norwegian implementation of the Directives system.

Legal Dispute Reservation is a question whether it should be made a restrictive interpretation in order to prevent any unreasonable results to ascertain complicity liability. Proposition. No. 90 (2003-2004) "The law of punishment" it is stated in the report of the

current law that the question of law violation is a question of exceptions to reach a reasonable outcome. What is *15 unlawful participation is therefore dependent on what is possibly the result of one or the other interpretation. In this case, the question is whether it is reasonable to demand that Telenor is blocking access to The Pirate Bay for their end users. It is therefore important that this is about blocking access to one service which has the main purpose of facilitating illegal file sharing and make available huge amounts of illegal material, and not a demand for punishment or compensation. It is therefore not a question of punishment-worthiness, but about the reasonableness of plaintiffs' claims to block Telecom's end users' access to The Pirate Bay.

The fact that under Norwegian law to be separated in matters like this between on the one hand, criminal and civil liability and, on the other hand, the injunction to bring the infringement to an end or prevent them, provided expressly by the commerce Act § 20 Electronic Commerce Act § 20 states that service providers may be required to bring an infringement to an end or prevent it, even though they may be free from criminal and civil liability for ecommerce Act § § 16 to 18 The service provider can not be imposed criminal or civil liability may thus under Norwegian law is not used as justification for appropriate service provider can not be ordered to bring an infringement to an end or prevent it. That this distinction must also be based on infringement of copyright and related rights are expressly stated in the Ministry of Culture and Church Affairs letter dated 24 September 2007.

The distinction between a possible criminal and civil liability on the one hand and, on the other hand, the injunction to bring an infringement to an end or prevent it follows clearly also of both commerce Directive Article 12.3 cf section 45 of the preamble and the Copyright Directive Article 8.3 cf section 59 in the preamble. Copyright Directive Article 8.3 poses thus no requirement for criminal or liability for the ban to be closed down against the men, and Section 59 of the preamble states explicitly that the possibility to apply to have abandoned such a ban should exist even if the man's actions are covered by an exception according to the Copyright Directive Article 5 (including the exception for making temporary copies in Article 5.1 implemented in Norwegian law, the Copyright Act, § 11a) and liability therefore be unenforceable.

Both system legislator has established the Electronic Commerce Act and reaffirmed that also apply to the infringement of copyright and related rights, and

Norway's obligations under international law, thus implies that there must be a distinction between criminal and civil liability and the injunction to bring an infringement to an end or prevent it. The service provider can not be imposed penalty or liability, may thus under Norwegian law is not used as justification for appropriate service provider can not be ordered to bring an infringement to an end or prevent it.

The steppingstone under Norwegian law is that the technical contributors are contributors in the legal sense, follows implicitly by the special provisions contained therein, we have an exception from liability for such contributors. Without such a basis, would special provisions for an exemption from liability *16 for technical contributors be redundant. An example of such a special provision is Penal Code § 254

NOU 2009:1 "Individual and integrity" on page 121 stated the following: *"To the extent that service providers, web hosts, providers of file sharing services, and second, to facilitate anonymous speech, they should also have the responsibility to prevent such utterances do damage"*. In cases such as in this case, where technical contributors, in this case Internet provider Telenor, to facilitate anonymous speech - the "opposite" of pointing out and identify a responsible entity instance. editor, owner or publisher - so ought the *technical contributors* due to the Privacy Commission's opinion have the responsibility to prevent such utterances do harm, for example. by bringing them to an end or prevent them.

Telenor is notified of the violations take place, and it is presented extensive evidence of violations. That the violations take place, is not disputed by Telenor. Telenor is in other words not required to block on the basis that they are not even investigated or verified the data that is transmitted through its network, but because they have failed to follow up such notice with adequate measures.

Guilt requirement in the Copyright Act § 54, third paragraph, cf § 55 first paragraph of negligence, see § 54 first paragraph. Telenor is notified that it takes place abuses through their networks on several occasions. Telenor dispute does not mean that violations take place. The company has been aware of this illegal, but has not done anything to prevent the violations continue. Guilt requirement is thus fulfilled in this case.

Telenor has a general obligation to control, monitor or investigate the information according to the commerce

Act § 19, is irrelevant for this question. It explicitly stated in § 19 that the provision only regulates a general obligation to control, monitor or investigate matters relating to freedom from criminal and civil liability for ecommerce Act § § 16 to 18 that does not mean that they get such a general study purposes. This provision does not include an order to bring an infringement to an end or preventing it, see e-commerce Act § 20, and any special investigation of duty relating to the basis for such complicity liability, or implementation of such an order.

Culture and Church Affairs concludes in his letter dated 24 September 2007 with the service provider *"at least in response to the request from the licensee alleging / information on third-party infringement - at least what the subsequent violations concern - not [to] be in good faith, and of the basis will then exist."*

Overall, this means that the court should assume that licensees have a claim against Telenor, which should be prohibited from contributing to making available to the public and copies via the website The Pirate Bay for copyright protected works.

***17 For the condition that the licensees must demonstrate a basic safety**

There is hedging because of both options in Disputes Act § 34-1 first paragraph.

There are hedging because the letter ai Disputes Act § 34-1 first paragraph. Telenor's behavior - not to block their end user access to The Pirate Bay - makes it necessary to temporarily fuse. Licensees prosecution and execution of the main claim will otherwise be substantially more difficult, as it accounted for above in reality are no other effective options to prevent violations.

A court order will not include an anticipated execution of the main claim. Supreme Court's decision in Rt. 2003 p. 1165 states that the main requirement in cases of copyright violations, the requirement of respect for copyrights. Court order requirement is in this case, a requirement to ensure the respect of blocking, because it will otherwise be significantly more difficult to pursue or carry out the requirement of respect for copyrights. It appears further from Rognstad, Copyright, page 401-402 that protection because of copyright violations often will be, precisely because the continued intervention - in the form of failure of the block - would impede enforcement of

licensees rights reserved. The same understanding is assumed in the Appeal Court's decision in the LE-2008-48261: *"However, the Court of Appeal holds that the condition in subparagraph a) is fulfilled. As mentioned must Nordby "requirements" means that his ideal due respect for the exclusive right to use its intellectual property available to the public. Then an interim measure in the form of an order to Søby to withdraw his book from sale, to be a measure to ensure the implementation of the underlying claim, not an anticipated consummation of this. "*

An interim measure is necessary because in reality is the only option to prevent the continued infringement of the copyright holders rights. As the court pointed out there is "no doubt" that the Appellants have required that the Plaintiffs have stopped violations, see second paragraph on page 9 in the ruling.

The licensees have been working a long time, both nationally and internationally to stop illegal file sharing in general, and The Pirate Bay - the largest and most well known file sharing network - in particular. The ongoing efforts to halt rights violations have included information work, police and civil enforcement in Norway and other countries. A number of inquiries directly to The Pirate Bay has been harselert with and rejected. In 2006, The Pirate Bay police, and Swedish police took seized the equipment of the service. In 2009, convicted Stockholm tingsrätt men behind The Pirate Bay to long prison sentences and large compensation payouts, and The Pirate Bay's Internet service provider was required to block access to abused film and music work. The consequence has been that The Pirate Bay has moved the service to other Internet providers in different countries. Despite all these measures, thus continuing the extensive violations via The Pirate Bay.

***18** Norway has hundreds of cases of rights violations by The Pirate Bay has been reported to the police since 2006. All but one are dropped. Further, in 2008 directed inquiry to Internet providers about the hundreds of other, similar cases of rights violations by the service. Leading Internet providers, including Telenor, declined through his organization ICT Norway categorically to communicate to affected end users in respect of such notifications. Neither of these measures, in other words brought. It is therefore necessary to have an interim measure.

Although a blocking The Pirate Bay could be possible to work around, it will prevent many from accessing the site. A court order will be effective. The Supreme

Court has held that seizure of the domain name is effective, see Rt. 2009 side1692: *"Even if a website will be available through the IP address even after the domain name has been put out of operation, it follows from the rationale to operate with domain names that availability will be significantly reduced."*

Also the condition in subparagraph b is satisfied. There is a need for a temporary court order to prevent substantial harm or inconvenience. According to the Rt. 2002 Page 108 shall be the assessment of this option made a composite assessment of *"the importance of the disputed legal issues is for the plaintiff, where plaintiff is a great need for interim measure, how radical an interim measure would be, Defendant's behavior, etc."*

It is not disputed that there is extensive rights violations by The Pirate Bay through Telenor's network. These violations result in great economic losses for the Appellants. The Appellants have also an urgent need to stop the violations through an injunction blocking as this in reality is the only option to prevent continued violation of their rights. Subsequent financial responsibility for the violations is not possible due to the Internet provider's exemption from liability for ecommerce Act § 16 and because experience is difficult or impossible to retrospectively document the extent of such violations, challenges that increase the overall extent of violations.

An injunction blocking will not be particularly intrusive for Telenor as the company and end users other services - like e-mail, banking, public services and all other services apart from the illegal file sharing via The Pirate Bay - will be untouched by such a blockage. Furthermore, the same technology already used to block child pornography, could also be used to block Telecom's end users' access to The Pirate Bay. Telenor's standard subscription terms for general access to such blocking to Telenor's end users, an access Telenor uses of other forms of abuse of the Internet link.

The fact that the licensees already suffered significant losses are also not preclude the existence of security reason, see RG 2001 page 253 where it was deemed to be hedging because ***19** although the greatest risk of loss related to the time before the injunction was settled . Violations taking place through Pirate Bay is sustained and is still going on a massive scale, and there is therefore securing due in respect of these violations.

To the balance of interests

An injunction blocking will not be in obvious disproportion to the interests of the Appellants that the measure is approved, cf Disputes Act § 34-2, second paragraph.

It appears from the preparatory works for the Enforcement Act, Proposition. No. 65 (1990-1991) p. 291 that it should be made a weighing of interests: *"The second paragraph stresses that an injunction can not be enforced if the harm or inconvenience to the defendant applied, are in obvious disproportion to the interest the plaintiff has in the court order is decided. The provision clarifies that for the existing injunctions apply a principle of proportionality which is taken into account all the interests involved."*

The wording - "*clear disproportion*" - indicates that there is a high threshold for denying a decision on interim measure. As mentioned above performs already Telenor block other material, and the necessary technology is in place. Blocking will not be in breach of Telenor's standard subscription terms. There is therefore no danger of loss of Telenor if the company is blocking their end users' access to The Pirate Bay. As accounted for above, no freedom of speech and freedom of information preclude a decision about blocking. In balance, it is also important that it is not about blocking end users' access to the Internet - it's just a matter of blocking access to a single service, The Pirate Bay, which is in a unique position with regard to the extent of violations and attitude licensees to attempt to safeguard their rights. If The Pirate Bay was to change dramatically, and put into a system where service rights trusts copyrighted works that are offered via the service, open Disputes Act § 34-5 that it made a renewed assessment.

An injunction blocking will not be in obvious disproportion to the Appellants interest in the court order will be decided.

It is for this abandoned such a claim:

1. Telenor Telecom Solutions AS forbidden to contribute to making available to the public and copies via the website and explained tracker The Pirate Bay for copyright-protected works and works which Plaintiffs have copyright or related rights. *20

2. Telenor Telecom Solutions AS is ordered to make the necessary step that is likely to prevent Telenor Telecom Solutions' customers to access the Internet addresses thepiratebay.org, thepiratebay.com, thepiratebay.net, thepiratebay.se, thepiratebay.nu, piratebay.net, piratebay.org, piratebay.no, piratebay.se and tracker.openbittorrent.com and related sub pages and sub domains.
3. The Appellants awarded costs of the case with the addition of the statutory penalty from the due date and payment is made.

Respondent, Telenor, has essentially stated the following:

Main arguments

It maintains that the Appellants can not substantiate the claim or security reason and Telenor will come out claiming that the appeal is rejected and that awarded legal costs. The claim that the final applying paragraph 1 of the things the court's ruling is correct and the Respondent may substantially joining the court evidence evaluation and rettsanvendelse this point. However, the court noted that things rettsanvendelse concerning Final applying paragraph 2 of the legal expenses are incorrect.

Telenor can not see that the appeal contains new factual or legal arguments. Respondent makes the same assertion current basis and rules of law that the district court. The Appellants claim is completely new in the Norwegian context. Previously, licensees aimed claim against internet customers who have carried out illegal acts on the Internet or against players that have driven illegal web services (such as discussion forums, websites or file sharing services).

Now, the Appellants elected to correct claims against a player who only offer of the Internet infrastructure. Telenor maintains that Internet providers do not have to block its customers access to websites and online services

For the actual basis for the case

The Appellants have the entire case, including in appeal, draws attention to the website The Pirate Bay. The relevance of this is however limited. What is The Pirate Bay Telenor highlights the undisputed fact that

there are no illegal content on The Pirate Bay website. However, The Pirate Bay facilitates that web users can get in direct contact with each other, so that they can share files among themselves. Such sharing may be legal or illegal, depending on user preferences.

The real issue is, however, Telenor's role as Internet service provider. The central question is whether Telenor - in its capacity to provide access to the Internet - can be considered as contributing to copyright infringements taking place using the tools The Pirate Bay offers.

*21 Telenor does not contest that the company has customers using, for example, The Pirate Bay to violate the Appellants rights, but this is just a premise for the question of Telenor's potential liability to block The Pirate Bay. Any blockage of duty can not be dependent on how the site is technically designed or how many users it has. Legal Set would Telenor's role remained the same whether the case was about a different site or another form of copyright infringement. This illustrates that the case is not about The Pirate Bay specifically, but about blocking potentially illegal websites in general.

Telenor's position is that it either is or should be, internet providers task to block sites, thus censoring parts of the Internet, at the request of copyright holders or rights-pretenders. Such a situation could have far-reaching and potentially very adverse consequences for the flow of information on the Internet. A blockage of duty will in practice mean that Internet providers must assume a role that is supposed to be reserved for the prosecuting authority and courts. Therefore, Telenor, as the industry at large, taken a decision in principle to how blocking requests from licensees and rights-pretenders be handled. All requests are handled equally. Telenor takes no position on whether requests are adequately substantiated in fact or law. As an Internet service provider Telenor has not any assumption or the ability to make such assessments of the many thousands of requests are received monthly.

The relationship between Telenor and The Pirate Bay is not described in the appeal. It is an undisputed fact that there is no relationship. Telenor is not The Pirate Bay's ISP, and Telenor have not any other actual or kontraktuelt relationship with The Pirate Bay. In addition to giving its customers access to the Internet, which among other things, can be used to visit the site The Pirate Bay and other similar sites, Telenor does not have any role in the illegal file sharing taking place.

Telenor delivers an entirely generic service. Comparison with other providers of communications and infrastructure services, such as telephone, electricity, logistics, transport, etc., including Post Office and Public Roads Administration, is nearby.

To the condition that the licensees should have a "claim" against Telenor

The Appellants (main) requirements are described as "respect for copyright". The requirement justified in saying that "Telenor contributes to The Pirate bays and Telenor end users' illegal actions." Since The Pirate Bays actions do not constitute direct violations of the law, but any contribution to copyright infringement, the relationship between Telenor and The Pirate Bay that is a question of complicity in contributing to copyright infringement.

Telenor makes primarily argued that the Appellants have not authority for his claim.

*22 The e-Commerce Act gives ISPs unconditionally responsible freedom. Internet providers should therefore not be responsible for the traffic (files) transmitted in their networks, see § 16 The responsibility of freedom is in principle justified, including the protection of freedom of speech and freedom of information. Electronic Commerce Act § 19 confirms that ISPs have no control general obligation or duty investigation with respect to the traffic in their network. Internet providers have no obligation to carry out control, investigation or other action on the request of the licensees. Electronic Commerce Act § 20, that the Appellants believe "establishes" an order blocking (ankens p. 14), contains only one reference to "other legal grounds" and thus not an independent basis for a claim, which the district court correctly pointed out. In any case, not commerce law authorizes a demand for "respect for copyright".

Copyright Act permits any replacement, penalty or forfeiture claim, cf sanctions provisions of §§ 54 - 56 It is undisputed that Telenor can not be imposed on such claims. However, copyright law contains no legal requirement for some respect. Regardless excludes Copyright Act § 11a internet providers actions from the author's exclusive rights, and the Appellants can not pull back in action exclusive sphere by constructing a contribution liability.

Copyright Directive Art. 8.3 provides no independent authority for the Appellants claim. EU-directive does

not have direct effects in the Norwegian law, and the provision was not actively implemented in Norway. Whatever does not give instructions Directive provision in any court order unconditional right. This means that the passive implementation or directive-conform interpretation does not give copyright law or commerce law a meaning that permits licensees requirements.

Culture and Church Affairs letter dated 27 September 2007, that the Appellants ascribe central importance in the interpretation of the Directive, does not imply that the injunction can be enforced in this case. The letter describes a different situation than the present, and the Ministry has nevertheless not express an unqualified right of the court order situation in the letter referred.

Under the assumption that the authority would be, do Telenor subsidiary claims that Telenor does not unlawfully contribute to violations of the Appellants copyright. The Appellants argued both active and passive participation. It went out anyway during the oral hearing for the court that it actually sets are passive complicity refer to. This continued in the appeal statement, in which Telenor's behavior particularly described as to "*refrain from blocking their end users' access to The Pirate Bay*".

For unlawful active participation (if applicable) requires something more than that we only provide a generic, legal service. The court describes Telenor's service as an activity appears to be somewhat oversimplified. Telenor performs no activities specifically related to illegal *23 file sharing (rather the opposite, by enlightening their customers and others that file sharing must be consistent with the author's rights).

It follows, among other things of the Ministry's assessment of the preparatory works for the commerce law, Proposition. No. 4 (2003-2004), that providing access to the Internet, whether access is being used for illegal purposes, as the starting point is valid also without the responsibilities that freedom was legally through ecommerce Act § 16: "*Whoever offers transmission or access services under § 16 is probably already now exempt from liability for the information they transmit only*". This means that such services as a starting point can not be considered illegal participation.

For unlawful passive participation requires a special connection between the principal and contribute, and a particular duty of contribution to act. It can be

determined that there is no connection between Telenor and The Pirate Bay, and that there is no other than a normal connection between Telenor and our customers. It can be further noted that Telenor is not in any case have a duty to act, but rather by the law are given the freedom not to act.

For the active or passive participation shall be unlawful, it must also be expelled sake. Telenor has not acted improper. Because there is no obligation to block the sites before any administrative or judicial decision, it determined that Telenor has not violated any standard care in this matter. On the contrary, considers Telenor and the industry at large that it is not complying with the blocking requests from civil parties are the most attractive/efficient treatment option and also the approach that is consistent with applicable law.

In any case, the main requirement and the court order requirement constitute a violation of freedom of speech and freedom of information, see Constitution § 100, ECHR Art. 10. A blockage of duty will mean that Telenor will have to keep their customers' ability to communicate and receive information on The Pirate Bay. This will also include lawful content indisputable found on The Pirate Bay. For example, use this as a communication channel of political opinion expression. It is not imperative that this legal material can also be acquired through other channels. Freedom of speech and freedom of information a rule prohibiting prior censorship would be violated by a court order in this matter. Freedom of speech and freedom of information must weigh most heavily when the case is not only considered in isolation, but viewed in light of the far-reaching consequences a court order in this case could have, cf Kyrre Eggen “Ytringsfrihet” [“Freedom of Speech”], 2002, page 157 et seq

Should the Court nevertheless finds that infringement of freedom of expression here will be provided after this clear legal authority. As the court in its ruling suggests, there is no clear legal authority for the Appellants claim. It applies a proportionality principle for the infringement of freedom of expression, see ECHR, Art. 10. The same applies a proportionality principle for the limitation of the EEA law's four freedoms, such as commerce directive and ecommerce law is founded on. However, there is no proportionality between the Appellants court-order-requirements and *24 the actual base that is invoked. While the claim is based on some of Telenor's customers have used The Pirate Bay to the illegal file sharing, will require a court order to block all Telenor

customers' permission to use The Pirate Bay to the illegal and legal purposes in the future.

To the condition that the Rightholders must demonstrate a reason

Telenor maintains that there is no security reason.

The Appellants have experienced decline in turnover in recent years. They do claim that this is especially due to illegal file sharing. It is claimed that one loses several hundred million annually, meaning that each month with illegal file-sharing leads to a loss of tens of millions. Against this background, the Appellants argued that because hedge exists by virtue of both Disputes Act § 34-1, first paragraph a and b. Both options poses a necessity demands. Telenor argues that the necessity requirement is not fulfilled in this case. The Appellants argue in the appeals section 7.1 that the injunction is necessary because "*in reality is the only alternative*" to enforce their rights. Particular reference that although the people behind The Pirate Bay is doomed to replacement and imprisonment in Sweden, The Pirate Bay is still available.

It can be determined that it took six years from The Pirate Bay was established in 2003 to the Appellants filed for injunction against Telenor in the summer of 2009. In case there is evidence that the licensees, by IFPI, already in 2004 had set up a global strategy on how to enforce their rights against illegal file sharing. It is also submitted documentation showing that the Appellants counsel over a long period of time has held several lectures where they have advocated licensees the right to demand measures against internet service providers, without the same time have realized this right

The licensees in Denmark took out petition for court order against Internet service providers in 2006 (Tele 2 case, regarding site All of MP3) and 2007 (Sonofon case, concerning the site The Pirate Bay). In Norway, the licensees since 2003 had the opportunity to petition for injunction against The Pirate Bay, covet a temporary court order or take out civil action directly against fildelere or request a temporary court order or take out an ordinary lawsuit against Telenor. During this period, several of the Appellants also discontinued the use of technical protection systems, which is a means to limit illegal file sharing. First, the summer of 2009 was petitioned for a temporary court order against Telenor. Yet is not an ordinary lawsuit against the company was out, even if the petition is based on the disadvantages that the Appellants applied for the

period between a court order ruling and a court ruling. Any necessity of a court order can not be Telenor.

Telenor, however, has long worked on the side of licensees for the establishment of good solutions for the legal sale of music on the Internet. Telenor's position is that such solutions are a necessary prerequisite for online sales, and that they can compete against and thus *25 discourage illegal file sharing. Therefore, Telenor, together with The Record Company and Asono, as recently invested substantial resources to launch a download service and a subscription service for the sale of music. Telenor also offers a service for legitimate online sales of movies.

In case there is presented a survey prepared by Tono Swedish sister organization STIM, which concludes that nine out of ten music users on the Internet are interested in paying for legal online subscription services for music. That good, legal solutions contribute to increased turnover is supported by IFPI's own sales statistics. The statistics show a tremendous increase in legal sales of music via the Internet in 2009.

For Telenor appears the case almost as an ordinary action disguised as a petition for injunction. If the Appellants be granted pursuant to the question whether there is a requirement, they may nevertheless not be granted pursuant to the question whether there is any security reason.

To the district court review of the substantive issues

The court first makes an assessment of Telenor's principal argument in case of virtue. It correctly determined that neither the commerce Act § 20, or copyright directive Article 8.3 provides authority, as they only contain references to other legal grounds. The court then assesses whether the Copyright Act provides authority. It commented that it follows as a necessary consequence of copyright infringement, see Copyright Act § 2, that the licensees must be able to demand that the infringement of exclusive rights is stopped or prevented. Here it may seem that the court has mixed assessment of the main demands and the court order requirements. Although a court order requirements may be that violations be stopped or prevented, must be a main demands established in the Copyright Act's sanctions policy, which only provides instructions on damages, penalties and confiscation, but rather not halt or hindrance.

After expressing uncertainty as to the legal question, considering the court Telenor's subsidiary contention - that Telenor, if authority exists, not negligently or intentionally contributing to copyright infringement. The court found that Telenor's acts constitute physical participation of copyright violations, but because Telenor's actions are the same regardless of network access used for lawful or unlawful purpose, according to the court that participation is not unlawful. The court here has chosen one of two approaches to the concept of participation - an approach that may lead to misunderstandings. The approach the court has chosen is to first decide whether Telecom's business is a fact / technical requirement for the main man's actions and then make an appraisal of the concept of complicity by a court against reservation. It is of course so internet providers' services constitutes a prerequisite for any illegality on the Internet. The same can be argued about the suppliers of PCs and other forms of technical equipment and services. Such participation actually referred to as "technical cooperation".

***26** Being offers services that are a physical condition for an illegal act is not sufficient to be considered complicit in the legal sense.

The more common approach, the court did not choose, is to make these two steps in one process, ie to understand and interpret a law against reservation in the term "participation". The fact that the court based its legal battle on the reservation - that it is about a legal service which is used by some for illegal purposes - used in theory and practice as a normal circumstance that makes the plot falls completely outside the concept of participation. This has been done already in the preparatory works for the Criminal Act of 1902: "*As illegal accomplice to unlawful conditions should be considered namely never acts, which in itself pursues a legitimate conditions, they end implicate also provide accommodation for anything illegal.*"

As the result of the two approaches is the same, it is still not decisive how one chooses to attack the understanding of the concept of participation. Having established that Telenor's legal service does not constitute unlawful participation based on the fact that Telenor's service is the same regardless of network access used for lawful or unlawful purposes, the court further in the assessment of the legal battle reservation. It appears somewhat unclear why the court continues the assessment of the legal battle after

having concluded that the legal battle does not exist, and statements, therefore, almost as an obiter dictum.

This assessment takes the court first position on the practical and fundamental consequences that a court order will be eligible for Telenor and other Internet providers. Then considered the Appellants needed to stop violations. Telenor believes that the starting point for the latter assessment is something wrongful. Legal Dispute Reservation is intended to prevent actions that it would not be reasonable that is affected by the legal wording is considered illegal. The basis for this assessment must be the action itself (here: whether it is reasonable that internet providers otherwise legal services shall be considered an illegal contribution to cyber crime). It is of course not the case that the degree of licensees need for a court order makes internet providers' services more or less illegal. Even the Appellants arguments about the right against the reservation takes improper basis of the "*reasonableness of the plaintiffs' claims.*"

To the Appellants' arguments and claims in the appeal

The Appellants have laid claim that Telenor is forbidden to contribute to actions that occur "*through the site and explained tracker The Pirate Bay*". "Website" and "track explained" are two slightly different conditions. As far as Telenor does not understand The Pirate Bay longer a tracker. This means that the statement on this point can not be taken into account.

A tracker can simplified be described as an electronic directory of contact information used to establish contact between your users. This connector can be used for a variety of purposes, legal and illegal, depending on the users' choice. Among other things, the contact is used ***27** for file sharing without the licensee's consent. File sharing can also happen without the tracker, by the contact established between network users by other means (eg, via e-mail).

A tracker has no necessary connection with a website. There are a number of trackers on the Internet. Earlier The Pirate Bay a tracker. This was the domain tracker.thepiratebay.org. This tracker is now closed.

As far as Telenor understand, on the file sharing that is currently associated with The Pirate Bay, using a variety of trackers, or it happens without the help of tracker. The above also illustrates with clarity the

messy consequences will be if Internet providers ordered to block websites and services. The Internet is highly dynamic and decentralized. Websites and web services change, established, closed down and linked continuously. Internet providers have no way of keeping up to date on any such change, a blocker of duty requires.

Before Telenor received the required blocking The Pirate Bay, one had received requests from licensees to disclose clients' identities to the licensees and to pass on to their customers a notice letter from licensees. The Appellants point out that Telenor has not complied with such requests. Telenor guess this is done to try to establish the guilt of Telenor. It is undisputed that Telenor has no obligation to comply with such requests. Telenor considers also that it is not right for this, see Act § 2-9. Telenor's opinion is supported by the Norwegian Post and Telecommunications Authority's letter, see their letter of 14 April 2009: "*distribution [is] a breach of confidentiality Internet providers have for [e-commerce Act] § 2-9.*"

The Appellants points to the copyright directive which case the basic starting point. The extension added to the Ministry of Culture and Church Affairs letter dated 27 September 2007 decisive weight in support of the Appellants understanding of the directive. The Appellants claim that the Copyright Directive and the Ministry's letters, "*the head is not [is] considered by the court*" (the appeals section 5.1 and 5.3). What the court premises imply, however, no such conclusion. What the court premises imply only that the letter and the directive is not given decisive weight. This is in line with Telenor's vision.

The appeal argued that "*the Copyright Directive provides a general and unconditional access for licensees to demand measures against intermediaries to prevent third party infringement...*". This is simplistic and gives a false understanding of the directive provision. It follows from the wording of the directive that only provided instructions for each Member State to set the rights holders "*in a position to apply [petition] for an injunction [court order].*" According to the teeth's 59 points left it to each Member State to determine the specifics "*conditions and modalities*" for this. The Directive can hardly be understood as a "*general and unconditional access (...) to require deviation.*"

***28** In the appeal it is argued further that the Copyright Directive does not contain any right against reservation and does not require the fault. It is unclear

what the Appellants here allege, as it is recognized that the Copyright Act sets out terms of guilt and that there is a law against reservation. Whatever is left is referred to the individual member states to establish criteria. Guilt condition and the right against the reservation is not in any way contrary to the directive. For this reason, Telenor also difficult to understand how any directive conform interpretation of Norwegian legislation will provide a different result than a general interpretation.

The appeal argued that "*Culture and Church Affairs has assumed that the licensees have such a 'claim' against the Internet providers (...) and that this requirement can form the basis for an interim measure.*" The Appellants have here plus a ministry position that the letter does not justify. The letter mentioned the Danish TDC case, the ISP TDC was required to block an illegal file-sharing service that had its Internet access subscription with TDC. It is clear that The Pirate Bay does not have internet access at Telenor, but as a subscriber of another Internet service provider. Regardless of the Ministry's letter can not be understood to mean that permission oceans have a claim in such cases, a subscriber, but as an expression of the licensees, depending on the circumstances, could have a claim, but that it is up to the courts to consider. The inaccurate perception of the letter meaning entails a wrongful conclusion that "*the court's ruling is inconsistent with the Ministry of Culture and Church Affairs letter.*"

The court in its decision laid emphasis on the principle worrying by the fact that ISPs incur a responsibility to consider the legality of websites that rigtjippers' desire stopped. As mentioned in previous process-brief Telenor receives monthly about 14,000 such requests. If Telenor imposed a duty of blocking the present case, Telenor must continuously assess whether the same obligation applies to all other requests received. The Appellants argue that the court review at this point is wrong. It appears that it is the courts, not Internet service providers, which should make this assessment.

Telenor has difficulty understanding the Appellants argument on this point. The Appellants submit that Telenor has blocked a liability, not an obligation only triggered by a judicial decision. The legal requirement to have to depend on that Telenor has acted in violation of a statutory obligation that exists independently of a subsequent judicial decision. If the Appellants be granted pursuant to that Telenor has a blocking duty, will mean that Telenor and other

Internet service providers are committed to continuously consider licensees require blocking - ahead of a judicial decision. This will mean that ISPs themselves must act as police and courts.

The Appellants have made claims that Telenor has demonstrated guilt because you have not done anything to prevent illegal file-sharing. As part of this argument shows the Appellants to the commerce law preparatory work. In the appeal pronounced it: "*It appears further to the Proposition. No. 4 (2003-2004) *29 page 32 left-hand column where it is determined that the service provider is not exempt from such inspection duty if he receives well-documented information*". The Appellants have here referred to the Ministry's account of the previous consultation paper, without disclosing this. Ministry's subsequent assessment on the next page (p. 33, Section 10.3) specifies that the consultation note ty statements regarding exploration obligation only applies to providers of storage services, known as web hosts, but that is not Internet service providers like Telenor.

Although the Appellants should be granted in accordance with the existence of claims and safety reasons, can not turn right following the statement that is closed. The claim gives little indication of specific actions are required based on general legal characteristics. It is thus not suited to provide precise legal effects like Telenor with sufficient degree of predictability can relate to.

To the question of legal costs

Although the court gave Telenor virtue, was not awarded Telenor legal expenses. The court referred to the Disputes Act § 20-2, third paragraph, which permits exceptions to the event "*substantial reasons make it reasonable. Particular emphasis is placed on a) whether there was good reason to have the case tried because it was questionable...*". The exception to the general rule was justified in saying that "*the matter has been questionable as it raises fundamental issues and that it therefore had good reason to have the case tried.*"

Telenor can not see that the court has expressed some doubt. The court has not even gone into the other legal submissions including the issue of security reason. Off the court premises may therefore not derived any doubt about these matters. The fact that the case raises questions of principle does not in itself matter questionable. The fundamental question

should, in Telenor's opinion also addressed to the legislator. Telenor can not see that there is enough substantial reasons to request a temporary court order that would justify the exception to the general rule that Telenor shall be awarded legal expenses. Telenor also can not see that exception to the general rule can be justified in § 20-2 third paragraph b or c. In pursuance of Disputes Act § 20-9 requires Telenor things the court case cost the decision reversed.

Telenor maintains also that the company is not responsible for the Appellants legal expenses in the event those granted pursuant of its claim. Electronic Commerce Act § 20 gives Telenor responsible freedom with respect to claims by other laws. Thus not obliged Telenor to replace the Appellants legal expenses for Disputes Act Chapter 20

It is for this abandoned such a claim:

1. The appeal is rejected
2. The Appellants jointly pay in Norway, Telenor AS's legal costs for court and court of appeal, with the addition of the statutory penalty from the due date for payment is made.

***30 The appellate court** has the following views on the matter:

The licensees have in its request for interim measure requested that Telenor shall be prohibited from contributing to publication/accessibility and copies of copyrighted material via the website The Pirate Bay. Furthermore, licensees are requested that Telenor shall impose to prevent Telenor customers can access a range of Internet addresses such as The Pirate Bay can be reached at. The request is designed in accordance with the Disputes Act § 34-3, first paragraph, which generally states that an injunction may be that the defendant may be ordered to refrain or to take any action.

The petition shall be granted pursuant to, licensees must have a claim against Telenor as a court order is likely to secure (Disputes Act § 34-1, first paragraph a), or as a court order can serve as a temporary arrangement for the dispute of the claim (civil code [tvisteloven] § 34-1, first paragraph b). It follows from the Disputes Act § 34-2, first paragraph, the licensees should probably do as well claim that security reason. It follows from the Disputes Act § 34-1, second paragraph, that a court order is subject to the disadvantages suffered by Telenor is the court order,

not in an obvious disproportion to the licensees have an interest in the court order enforced.

The appellate court will first decide the basic condition that licensees will likely do have a claim against Telenor.

The claim must in the present case be based on the exclusive licensees of the Copyright Act § 2:

Copyright gives within the limits specified in this Act, the exclusive right to dispose of intellectual property by designing permanent or temporary copy of it and make it available to the public, in original or modified form, in translation or adaptation, in other literature - or art or other techniques,

in combination with the statutory criminal justice and compensation legal liability for complicity, see Copyright Act § 54 and 55 The real issue point is about Telenor in the legal sense - objectively and with the necessary degree of subjective fault - can be considered to contribute to copyright infringement that takes place among Telenor customers via The Pirate Bay at that Telenor has made its network available and failed to comply with licensees request to block The Pirate Bay from their networks.

The peculiar to just the application in this case is that the legislator through e-commerce Act § 16 third paragraph expressly exempted from Telenor in its capacity as provider of transmission and access services of their potential compensation or criminal liability under copyright law. Meanwhile, lawmakers in e-commerce Act § 20 provided that this responsibility freedom should not *31 be an obstacle "to the court or administrative authority in any other legal basis than the law requires that the service provider brings a violation to an end or prevent it." In the preparatory works for this provision shows that the legislator has provided that Telenor is exposed to claims for temporary deviation regardless of the responsibilities of freedom, cf Ot.prp.nr 4 (2003-2004) p. 34:

Bill § § 16-18 should therefore not prevent the courts or administrative authorities to require that a service provider brings a violation to an end in accordance with national legislation. They will not prevent a member state's ability to determine the procedure to remove any information or block access to it. This appears from the bill's § 20 Under Norwegian law, a party get injunction (temporary protection).

This is done usually to make a claim when the plaintiff still has no enforceable. The right of injunction is not affected by the implementation of articles 12-14. including seizures.

The Norwegian law shall provide such access to the temporary deviation to the intermediary services that contribute to copyright infringement is also provided in the Copyright Directive Article 8.3.

The appellate court can not see that the conditions expressed in connection with the commerce law and copyright directive that the right to claim a temporary deviation from the technical service intermediaries continue to be open, in themselves provide authority for a claim against licensees. In the preamble to the Copyright Directive Section 59, it is expressly provided that it is up to Member States to formulate the detailed terms of the existing injunctions:

In the digital environment, in Particular, the services of intermediaries May increasingly ask exceptionally by third parties for infringing activities. In Many Cases Such intermediaries are best placed to generate such infringing activities to possible end. There Request, without prejudice to Delhi Other Sanction and Remedies available, rightholders Islands garden the Possibility of applying for an injunction against an Intermediary Who carrier a third party's infringement of a protected work or subject-matter Brandbu in a network. This Possibility Hubble available even ask Where the acts carried out by the Intermediary are exempted under Article 5 The conditions and modalities relating to Such injunctions Hubble ask to left the national law of the Member States.

The appellate court is on this basis agree with licensees argument that copyright directive does not lay down conditions other than that for blocking "between the man's service is used by a third party to infringe a copyright or related rights". Copyright Law Directive formulates no conditions for the temporary court order licensees have requested in the case. The general interpretation principle that use of the law to choose the outcome that is best in accordance with the international law rule, and thus "the interpretation option that allows blocking access", can not the Court of Appeal put any weight on in the following.

***32** Neither the wording or the preparatory works for the commerce law, changing the law which implemented the Copyright Directive, the Copyright Act or the Ministry of Culture and Church Affairs letter of 27 September 2007, provides special guidance for the question the court faced in the case. All sources hold true opportunity for requirements and temporary deviation from technical intermediaries open, but says little about how far the complicity charge yesterday. The Court assumes that this is part of the reason that the Ministry of Culture and Church Affairs in Prop. 1 S (2009-2010) has announced a review of the Copyright Act, among other things, in order to concretize complicit responsibility for illegal file sharing.

This condition may leave questions about the limit of middleman service contributes responsibility - and thus the possibility that the licensees have a claim against Telenor - to be withheld. The issue is discussed at Rognstad/Lassen, Copyright (2009) p. 227:

Although the responsibilities of freedom rules of ecommerce law is applicable, it is nevertheless a matter between the joints may be ordered measures to prevent and counter that their services are used as means of copyright infringement. The Copyright Directive Article 8 (3), it is assumed that the licensees may require legal court order (injunction) against intermediaries whose services are used for copyright infringement. In the Danish case law exists for each number of decisions where access providers ordered to block access to illegal material. In the Danish Supreme Court's ruling UFR 2006 p. 391 telecommunications company TDC was required to close the network connection to the holders of two servers that contained illegal music files. The decision was based on the TDC obtained temporary copies of his transfer of files (from provider to recipient), and that temporary copies of illegally copying a basis in violation of the Danish Ohl. § 11 paragraph 3 As long as the TDC thus violated copyright act, and other requirements for temporary court order after the Danish law was fulfilled, the basis for ruling on cutting-of the network connection. On similar grounds, the Danish Telenor, Sonofon, of Eastern Division of Court of Appeals in 2008 ordered to close the network connection to their customers visit the web site Pirate Bay.

In Norwegian law to similar decisions are not taken on the same basis. The right to temporary copies during network transactions are with us not dependent on the copy basis is valid, cf “åvl.” Act § 11, a first paragraph, letter b). However, it is worth noting that the liability rules of freedom of commerce no law "is an obstacle to a court ... on other legal grounds ... requires that the service provider brings a violation to an end or prevent it", cf e-commerce Act § 20 If the service provider can be said to *contribute* to unlawful acts in violation of “åvl.” Act § 54, see § 55, it will therefore be the basis for the prohibition and temporary deviation even if the rules of responsible freedom of commerce law applies and the terms of punishment or compensation *of that reason* are not satisfied. Whether this is sufficient to ensure the fulfillment of the requirement in the copyright Directive Article 8 (3) is another matter.

***33** The appellate court said, in line with the views expressed above that the proper basis under current law, must be to think of responsible freedom of Telenor gone. Only if Telenor's position as a provider of Internet services or had fallen under the Copyright Act's criminal provision on complicity in copyright infringement, the licensees could conceivably have a claim against Telenor. Addendum about participation came in the Copyright Act by amending 23 December 1988 No. 101 Preparatory work to change the law provides no evidence other than that contributory-rule's range will be determined on the basis of the general background law of complicity, see NOU 1983:35 p. 120 and Proposition. No. 34 (1987-1988) Page 55 As it has already presented gone, can not find the Court of Appeal that such an approach might lead to results that are in conflict with Norway's obligations under the EEA Agreement, or which are not in accordance with legislative requirements in connection with the liability exemption for commerce law was given .

On the basis of its starting point is the Court of Appeal concluded that the licensees have no claim against Telenor. It is not natural to Telenor's activities as a provider of a network that criminal complicity in some of Telenor's customers via The Pirate Bay directly with each upload or download copyrighted material. Telenor's neutral and technical contributions to these actions is clear that those in the legal sense treat have been characterized as illegal and criminal actions. The appellate court on this point found support in the

preparatory works to change the law to introduce commerce Act concerning the responsibility of freedom, cf Ot.prp.nr. 4 (2003-2004) Page 15:

The implementation of Article 12 [equivalent to ecommerce Act § 16] are not expected to involve any substantive change in existing law for these service providers ... Those who offer transmission and access services under § 16 is probably already currently exempt from liability for the information they just transfer.

A certain amount of transfer value for the interpretation of the Copyright Act's contribution provision, the contents of the Penal Code § 254 relating to liability for defamation forøvd in printed text. Those who have only participated in the technical production or distribution of the paper can not be punished for defamation. The exception is justified by the desire to make participation in charge a reasonable range and is considered to be the result of a generally accepted modification of complicity doctrine, cf Andenæs/Bratholm, Special Criminal Law page 188:

The exceptions in § 254 is justified by the desire to make a reasonable contribution liability range. It would in most cases seem completely alien to people's right feeling about it was made criminal responsibility applicable to the aforementioned groups. It was not done in practice before 1973 when the provision was adopted, and the Ministry stressed that the amendment would have a more symbolic one actually real significance.

***34** The appellate court's view that Telecom's contribution liability under copyright law - though not without the express exception for responsible freedom in commerce law - would not have stretched as far as to make Telenor jointly responsible for criminal offenses Telenor's end customers have to make via the website The Pirate Bay can also justified on the basis of the general law against reservation. In the so-called Napster ruling, the Supreme Court stated the following, see Rt. 2005 page 41 paragraph 65:

Whether or no link to be assessed as an liability-participation, must depend on an assessment of the circumstances. There must be a limit based on a general right against reservation. I refer to Andenæs p. 154 ff, and mentions briefly that there is said that the term illegal often can be translated as "improper",

"irresponsible", "load-worthy" or similar characteristics.

The rightowners have claimed the result of this ruling, which went on the laying of the links on the Internet to the protected music files were reviewed being a liability, in support of his motion, including his quotation of having a claim against Telenor. The appellate court can not see that the sentence can be cited for such an analogical inference: In the Napster case was the music directly available online via the links that were uploaded to the Napster website. It became known liability was the same who had organized the illegal uploading. Saks relationship in the present case is different. The Pirate Bay provides a tool for those who visit the site to find files with copyrighted material, and the site manager in the sense that online users can get in direct contact with each other, so that they can share files directly among themselves. Such sharing may be legal or illegal, depending on the users' choice. Telenor has a completely different role in the illegal file sharing taking place through Pirate Bay, than was the case for the person responsible in the Napster case. Unlike the Napster case is not basis to conclude that Telenor as a provider of technical infrastructure is guilty of "willful and very wrongful acts of complicity, cf section 67 of the verdict. It is difficult to characterize Telenor's contribution to that illegal file sharing takes place among Telenor's Internet customers via The Pirate Bay, inappropriate, irresponsible or download worthy.

The appellate court can not see that Telenor's role as passive participation by not blocking the site despite repeated requests and his knowledge that any illegal actions taking place through Pirate Bay, change the legal assessment that Telenor does not contribute. The crucial remains that licensees on the basis of copyright law has required that Telenor to block The Pirate Bay. In this context, it is also important that commerce law in relation to Telenor's position as a provider of transmission and access services under the Act § 16, does not impose on Telenor any action required to remove or block the illegal content that may be transferred in the network. Such an action is obliged by law ecommerce system reserved for those who offer storage services under the Act § § 17 and 18, cf Ot.prp.nr.4 (2003-2004) Page 33:

***35** What happens if a service provider receives a message that he saves the illegal information? How detailed should a message be before the service provider liable to end up

in a situation where he may lose his freedom of responsibility pursuant to law if he does not further investigate whether the information in the message is correct or not? These questions are relevant to the service provider that offers storage pursuant to § 18 Only those service providers who must decide whether the information they store is illegal or not.

The appellate court is accordingly concluded that the basic requirement for licensees to petition for a temporary motion to follow - that there is a requirement that court order can be safe or serve as a temporary arrangement for a dispute about the claim - is not met. It claims that court order is based on deficiencies pursuant to Norwegian law. Telenor to participate in intellectual property law sense, not to staff only or liability actions among their end users by making its network available to the public without blocking The Pirate Bay.

The appellate court need not thereafter go to the other requirements to take the petition to follow, and the parties' submissions in this regard. The appellate court chooses, however briefly, to affirm that it has not found the condition that the licensees will likely make a fuse because the requirement met.

The requirements that licensees have based his motion on, raises a fundamentally legal issues with major consequences for ISPs to the Internet. The question kind of range in itself speaks against it shall be decided temporarily to secure a claim which in reality is identical with the court order requirement.

A temporary court order intended to serve as security or as a temporary arrangement in a dispute about the claim. Despite the dispute between the parties has passed several years, licensees have not yet raised an action to determine his claim that Telenor will shut The Pirate Bay out of its network. The appellate court can not see that the time had to go forward to a court ruling, qualifies for the persecutions and the implementation of the requirement will be significantly more difficult or does it require a court order to "prevent a substantial harm or inconvenience". Telenor is not liable and licensees are in any case referred to seek compensation for their losses from those who make the illegal file sharing. The major losses of licensees in that Telenor is not immediately on the basis of a petition for a temporary court order is required to block The Pirate Bay, is the Supreme Court's opinion is not an adequate safety basis for the claims rightowners made applicable to the Telenor.

The appeal is accordingly to reject.

***36** Telenor has won the appeal and shall following the main rule in Disputes Act § 20-2, first paragraph, to have full compensation for his legal costs in the appeal round from licensees. The decision by the licensees appeal has not been accompanied by such a question makes it reasonable to exempt licensees from their normal responsibilities for case costs that the losing party, see Disputes Act § 20-2 third clad letter a. The appellate court can not see that there is other "weighty reasons" that make it reasonable to exempt rightowners from his liability for Telenor's legal expenses.

Telenor has its equivalent in particular requested that the Court of Appeal to overrule court cases cost a decision that went out on sharing, see Disputes Act § 20-9. Although the court of appeal of this over the test should put their results as a basis, the court remained, do not change things the court's decision. The court's decision is a manifestation of that believes the matter has been so fundamental for the Licensees and that it has gone as far as difficult legal questions, that the licensees had adequate reason to test his claim in the body, cf Disputes Act § 20-2, subsection a. licensees should, however, have akkviert the things the court's ruling as sufficiently clarify the dispute between the parties. What court's result was the same as the Court of Appeal has come to - and with that in all essentials the same reason.

The Court of Appeal, Telenor presented a case cost task that sounds 252.625 million excluding VAT, of which all forms of legal fees. The Court assumes that VAT will not be replaced in the Telenor has less input tax. Licensees have not come forward with any objections to the task, and the Court of Appeal put the stated amount to reason that Telenor's necessary costs in the appeal, see Disputes Act § 20-5 first paragraph.

When it comes to Telenor's claim for penalty shows the Court of Appeal of the Enforcement Act § 4-1 third paragraph.

The verdict is unanimous.

***37 CONCLUSION**

1. The appeal is rejected.
2. The Appellants paid jointly 252,625 –
to hundred and fifty thousand six hundred twenty five
NOK to Telenor Norway AS in legal
expenses before the Court of Appeal within 2 -
two - weeks from the announcement of the
verdict.
3. Costs before lower court is not awarded.

Jan-Fredrik Wilhelmsen Dag A. Minsaas
Sveinung Koslung

Confirmed
the first man: