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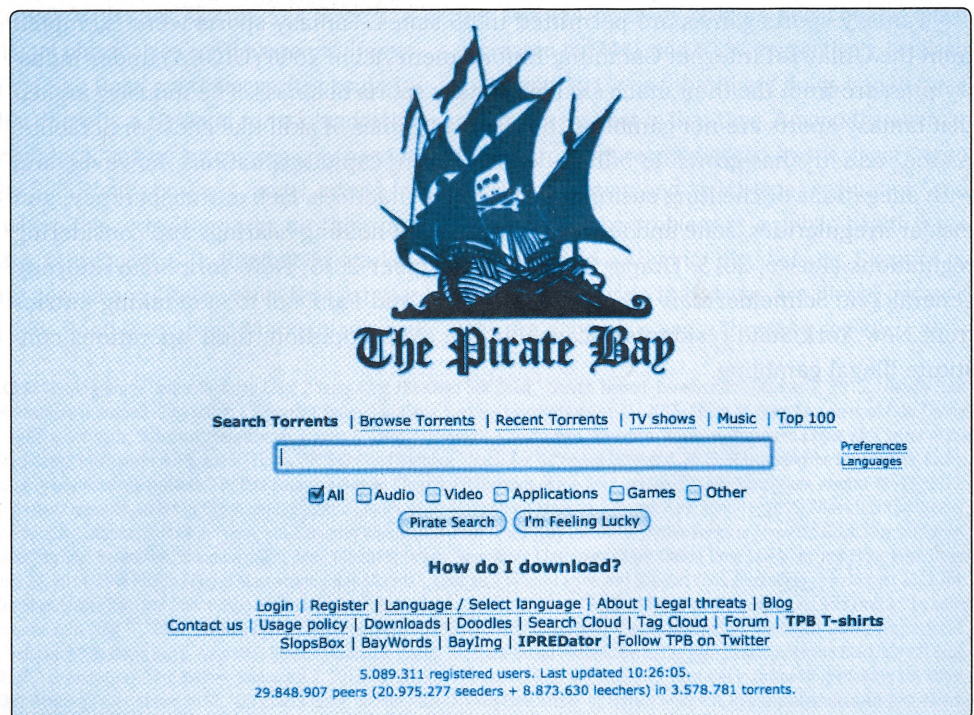
CASE STUDY

The Pirate Bay:

Searching for a Safe Haven

The Pirate Bay (TPB), for years, has been one of the world's best-known and most popular pirated music and content sites, offering free access to millions of copyrighted songs and thousands of copyrighted Hollywood movies, television shows, and video games. This despite the fact that TPB has been subjected to repeated legal efforts to shut it down. In fact, the authorities pursuing TPB must feel as if they are engaged in a never-ending game of Whack-a-mole, as each time they "whack" TPB, it somehow manages to reappear. But the battle is far from over, and for the first time, it appears possible that the "good guys" are actually winning. The Internet is becoming a tough place for music and video pirates to make a living in part because of enforcement actions, but more importantly because of new mobile and wireless technologies that enable high-quality content to be streamed for just a small fee.

TPB is part of a European social and political movement that opposes copyrighted content and demands that music, videos, TV shows, and other digital content be free and unrestricted. TPB does not operate a database of copyrighted content. Neither



does it operate a network of computers owned by "members" who store the content, nor does it create, own, or distribute software (like BitTorrent and most other so-called P2P networks) that permits such networks to exist in the first place. Instead, TPB simply provides a search engine that responds to user queries for music tracks, or specific movie titles, and generates a list of search results that include P2P networks around the world where the titles can be found. By clicking on a selected link, users gain access to the copyrighted content, but only after downloading software and other files from that P2P network.

TPB claims it is merely a search engine providing pointers to existing P2P networks that it does not itself control. It says that it cannot control what content users ultimately find on those P2P networks, and that it is no different from any other search engine, such as Google or Bing, which are not held responsible for the content found on sites listed in search results. From a broader standpoint, TPB's founders also claim that copyright laws in general unjustly interfere with the free flow of information on the Internet, and that in any event, they were not violating Swedish copyright law, which they felt should be the only law that applied. And they further claimed they did not encourage, incite, or enable illegal downloading. Nevertheless, the defendants have never denied that theirs was a commercial enterprise. Despite all the talk calling for the free, unfettered spread of culture, TPB was a money-making operation from the beginning, designed to produce profits for its founders, with advertising as the primary source of revenue.

However, the First Swedish Court in Stockholm declared TPB's four founders guilty of violating Swedish copyright law, and sentenced each to one year in prison and payment of \$3.5 million in restitution to the plaintiffs, all Swedish divisions of the major record firms (Warner Music, Sony, and EMI Group among them). The court found that the defendants had incited copyright infringement by providing a Web site with search functions, easy uploading and storage possibilities, and a tracker. The court also said that the four defendants had been aware of the fact that copyrighted material was shared with the help of their site and that the defendants were engaged in a commercial enterprise, the basis of which was encouraging visitors to violate the copyrights of owners. In fact, the primary purpose of TPB was to violate copyrights in order to make money for the owners (commercial intent).

Meanwhile, the U.S. government pressured the Swedish government to strengthen its copyright laws to discourage rampant downloading. In Sweden, downloading music and videos from illegal sites was very popular, engaged in by 43% of the Swedish Internet population. To strengthen its laws, Sweden adopted the European Union convention on copyrights, which allows content owners to receive from Internet providers the names and addresses of people suspected of sharing pirated files. In France, participating in these pirate sites will result in banishment from the Internet for up to three years. As a result, Internet traffic in Sweden declined by 40%, and has stayed there.

TPB has appealed the court judgment and has not paid any fines. That doesn't mean that TPB has not been affected by the lawsuits, however. In 2011, the firm moved its servers into caves in Sweden, and dispersed multiple copies of its program to other countries. In response to the lawsuits, police raids, and confiscation of servers, TPB has had stints in France, Finland, Italy, Germany, Denmark, Ireland, the U.K., and Greece

SOURCES: "Don't Trust The Pirate Bay: Movie Torrent Site Down Again, Amid Growing Skepticism and More Malware," by Jeff Stone, *Ibetimes.com*, October 2, 2015; "Last Pirate Bay Co-Founder Released from Prison," by Alex Hern, *Theguardian.com*, September 29, 2015; "Peter Sunde: The Pirate Bay Should Stay Down," by Ernesto, *Torrentfreak.com*, December 14, 2014; "Pirate Bay Co-Founder Peter Sunde Arrested Years After Conviction," by Natasha Lomas, *Techcrunch.com*, June 1, 2014; "The Pirate Bay and the Business of Piracy," by Leo Sun, *Fool.com*, May 21, 2014; "Google Asked to Censor Two Million Pirate Bay URLs," by Ernesto, *Torrentfreak.com*, April 20, 2014; "Singapore Proposes Law to Block Sites Such as Pirate Bay," by Aloysius Low, *Cnet.com*, April 7, 2014; "MPAA Still Hunting for Cash as Pirate Bay Financier Set to Go Bankrupt," by Andy, *Torrentfreak.com*, June 10, 2013; "Pirate Bay Founder Submits Emotional Plea for Pardon," by Ernesto, *Torrentfreak.com*, July 7, 2012; "The Pirate Bay Evades ISP Blockade with IPv6, Can Do It 18 Quintillion More Times," by Sebastian Anthony, *Extremetech.com*, June 8, 2012; "World's Biggest Ad Agency Keelhauls 2,000 Pirate Sites," by Natalie Apostolou, *The Register*, June 14, 2011; "Internet Piracy and How to Stop It," *New York Times*, June 8, 2011; "The Pirate Bay: Five Years After the Raid," by Ernesto, *Torrentfreak.com*, May 31, 2011; "The Protect IP Act: COICA Redux," by Abigail Phillips, *Electronic Frontier Foundation*, May 12, 2011; "Pirate Bay Keeps Sinking: Another Lawsuit Coming," by Stan Schroeder, *Mashable.com*, June 22, 2010; "Pirate Bay Sunk by Hollywood Injunction for Now," by Charles Arthur, *The Guardian*, May 17, 2010; "British Put Teeth in Anti-Piracy Proposal," by Eric Pfanner, *New York Times*, March 14, 2010.

within the last few years. These countries have in some cases refused to allow Internet service providers in their countries to host or link to TPB, no matter where in the world its servers are located. In 2013, authorities shut down TPB's top-level domains in Sweden, Greenland, and Iceland, but TPB has continued to try to operate by hopping from country to country, moving to Sint Maarten, to tiny Ascension Island, to Peru, and back again to Sweden. In 2014, TPB proved as elusive as ever for law enforcement, although co-founder Gottfrid Svartholm Warg began serving a 42-month term in prison in Denmark for both copyright infringement and computer crimes unrelated to TPB, co-founder Peter Sunde was arrested after years on the run, and served a five-month prison term for copyright violation, and Fredrik Neij, another co-founder, was arrested in Thailand, then transferred to Swedish custody to serve a 10-month prison sentence. In 2014, the company's financial resources also began to run dry. As interest continued to accrue on financial penalties previously levied on TPB, Carl Lundstrom, the site's primary financial backer, declared bankruptcy.

However, TPB continued to operate in 2014, until December 9th, when Swedish police again raided the site and shut it down. The site remained offline for seven weeks, until January 2015, the longest period of time it had ever been shut down. Members of the hacker group Anonymous claim it is now in fact an FBI honeypot designed to trap the unwary, and its number of visitors has dropped precipitously. Even if rumors about the FBI are not true, many believe that it is not a good idea to use TPB anymore for other reasons: the site is now riddled with ads containing malware and it frequently goes offline. Even one of its original co-founders, Peter Sunde, has recommended that the site shut down once and for all. Nonetheless, TPB lives on.

TPB has caused a number of countries, including England, France, Malaysia, Finland, and the United States, to consider strong intellectual property protection laws that will prevent domestic search engines and ISPs from linking to infringing sites, or resolving their domain names. In addition, the world's largest advertising agency, GroupM, has put TPB and 2,000 other sites on its blacklist of copyright infringing sites on which it will not buy advertising space.

The record industry's struggle against TPB is just part of the battle that it has been waging for some time. In 2005, the Supreme Court ruled in the ground-breaking *Metro-Goldwyn Mayer v. Grokster, et al.* case that the original peer-to-peer file sharing services, such as Grokster, Kazaa, and StreamCast, could be held liable for copyright infringement, because they had intentionally sought to encourage users to share copyrighted material. All of these services have since gone out of business. But these legal victories, and stronger government enforcement of copyright laws, have not proven to be the magic bullet that miraculously solves all the problems facing the music industry. The music industry has had to drastically change its business model and decisively move toward digital distribution platforms. They have made striking progress, and sales of music in a purely digital format now account for more revenue than sales of music in a physical format. To do so, the music industry has employed a number of different business models and online delivery platforms, including Apple's iTunes pay-per-download model, subscription models, and cloud-based streaming models.

In each of these new media delivery platforms, the copyright owners—record companies, artists, and Hollywood studios—have struck licensing deals with the tech-

nology platform owners and distributors (Apple, Amazon, and Google). These new platforms offer a win-win solution. Consumers benefit by having near instant access to high-quality music tracks and videos without the hassle of P2P software downloads. Content owners get a growing revenue stream and protection for their copyrighted content. And the pirates? TPB and other pirate sites may not be able to compete with new and better ways to listen to music and view videos. Like the real pirates of the Caribbean, who are now just a footnote in history books, technology and consumer preference for ease of use may leave them behind.