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VINGE

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Technology, Media & Telecommunications

NEWSLETTER FROM VINGE

This newsletter is of a general, informational nature. The content does not purport to be exhaustive and should not be relied upon as a substitute or replacement for individual legal advice on any specific matter. If you have a specific legal question you are welcome to address it to one of our lawyers.

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Sweden

Current issues

Spectrum auction on licenses for broadband wireless access in the 3.6-3.8 GHz band

On 19 November 2007, the Swedish National Post and Telecom Agency (PTS) completed an auction on 1,160 local licenses for broadband wireless access in the 3.6-3.8 GHz band (four licenses per each of the 290 municipals in Sweden). The licenses will enable operators to set up broadband networks, which may increase competition in the broadband sector with the long-term objective to provide more consumers with access to broadband services. TeliaSonera Mobile Networks AB, Telge Nät AB, and B2 Bredband AB are among the 44 licensees. B2 Bredband AB is, however, the only operator which obtained licenses in all 290 municipals of Sweden, i.e. national coverage. The licenses are technology and service neutral and are valid for 15 years.

For further information, please refer to <http://www.pts.se/Nyheter/pressmeddelande.asp?Itemid=7387> (in Swedish)

Proposal on mandatory data retention for operators

On 7 November 2007, the Swedish Ministry of Justice presented a proposal for new legislation regarding retention of traffic data. The proposal is based on the EC directive 2006/24/EC on telecoms data retention. Pursuant to the proposal, operators shall be obliged to retain certain traffic data for investigation, detection and prosecution of serious crime. Operators shall further be obliged to disclose the traffic data to public authorities combating crime.

The proposed legislation shall apply to traffic data that is generated or handled in connection with a communication by fixed, mobile or Internet telephony, Internet access or e-mail. The traffic data to be retained shall identify the communicating parties, the time and place of the communication, and what type of equipment that is used for the communication. The retention requirement shall, however, not apply to the actual content of the communication. Pursuant to the proposal, the traffic data shall be retained for one year from the date of the communication.

The new legislation is proposed to come into force on 1 January 2009.

For further information, please refer to <http://www.regeringen.se/sb/d/108/a/91521> (in Swedish)

Pirate Bay Attack

The Swedish website www.thepiratebay.org is as famous among file sharers around the world as it is infamous among copyright holders. The Pirate Bay does not store any copyright-protected material on its servers, but instead users can search and download BitTorrent files saved on its servers which contain the information needed to download copyright-protected material – divided into small segments – from other users.

Between February and May 2006 several reports of copyright infringement were filed against The Pirate Bay and in April 2006 a district prosecutor decided to initiate a preliminary investigation regarding copyright infringement and numerous objects were seized, most of which have thereafter been released.

Although The Pirate Bay obviously facilitates illegal file-sharing, the primary criminal offence is committed by individual users. Thus, the individuals behind The Pirate Bay may only be held liable for contributory copyright infringement. Furthermore, proving the actual copyright infringement is difficult in Sweden due to personal privacy legislation which makes it difficult to access and process information about an individual who controls a particular Internet Protocol address.

The preliminary investigation was finally completed in the beginning of December 2007, and charges are expected to be brought by the district prosecutor in the middle of January 2008.

Proposal on mandatory obligations for ISP's regarding illegal file sharing on the Internet

On 3 September 2007, the Swedish Ministry of Justice published a report containing proposed legislative measures to stimulate the development of legal and consumer favourable alternatives for access to, in particular, music and film on the Internet.

Pursuant to the report, Internet service providers (ISP) shall be obliged to terminate a subscription for Internet access if the subscriber repeatedly has conducted certain copyright infringing activities and is likely to continue with such infringing activities. The ISP's obligation to take measures against copyright infringement may be subject to a court order combined with a default fine. The ISP's obligation to terminate a subscription shall, however, not apply if such measure should be considered unreasonable with respect to the subscriber's interest of further access to the provided Internet access services. Hence, if an ISP's decision to terminate a subscription is considered to be unfounded, the ISP could be liable for breach of the agreement with the subscriber.

The Government is currently reviewing the proposal.

For further information, please refer to <http://www.regeringen.se/sb/d/108/a/86944> (in Swedish)

Legislation and case law

A more efficient Electronic Communications Act

The Swedish Parliament decided on 31 October 2007 that the Government's proposed changes to the Electronic Communications Act (ECA) shall come into force on 1 January 2008.

The objective of the changes is, inter alia, to achieve more efficient judicial proceedings and to speed up the proceedings of cases under the ECA. For this purpose, the number of appeal instances is reduced so that the Administrative Court of Appeal will be the court of final instance. Furthermore, the opportunities to cite new circumstances and evidence in the courts will be limited, and the scope for ordering a stay of enforcement in decisions under the ECA will be somewhat reduced.

For further information, please refer to <http://www.regeringen.se/sb/d/108/a/89754>

Administrative Court of Appeal denies appeals to SMP decisions

On 6 July 2004, PTS identified Tele2, Telenor (former Vodafone), TeliaSonera, Telenor Mobile and Hi3G Access as having significant market power (SMP) status in the market for mobile termination. In addition, PTS imposed certain obligations to the operators such as cost-oriented pricing etc. All operators appealed to the County Administrative Court. The County Administrative Court decided to uphold the SMP decisions on 1 December 2006 as regards Tele2, Telenor, Telenor Mobile and Hi3G Access and on 23 March 2007 as regards TeliaSonera. All operators appealed to the Administrative Court of Appeal.

On 5 November 2007, the Administrative Court of Appeal decided to uphold PTS' SMP decisions against Tele2 and Telenor. Moreover, on 16 November 2007, the Administrative Court of Appeal decided not to grant review dispensation as regards PTS' SMP decisions against TeliaSonera, Telenor Mobile, and Hi3G Access.

Thus, all issued SMP decisions in the market for mobile termination shall remain according to the County Administrative Court and the Administrative Court of Appeal. However, Tele2 and Telenor have during December 2007 appealed to the Supreme Administrative Court and Telenor Mobile, Hi3G Access and TeliaSonera may still file an appeal. The validity of the SMP decisions is thus yet uncertain.

For further information, please refer to <http://www.pts.se/Sidor/sida.asp?SectionId=2320> (in Swedish)

EU

Proposal for reformed EU telecoms legislation

The European Commission presented on 13 November 2007 proposals for a reform of the EU telecoms legislation. The objective of the reform is to enable consumers to benefit from better and cheaper communications services, irrespective of where they live or travel within the EU.

For this purpose, the Commission proposes to, inter alia, strengthen consumer rights e.g. as regards the right to transparent and comparable price information, to promote competition by giving national authorities powers to impose vertical separation of dominant operators, and to promote investments into new communication infrastructures, in particular by freeing radio spectrum for wireless broadband services.

In order to efficiently implement the reform, the Commission further proposes the establishing of a European Telecom Market Authority to ensure that market rules and consumer regulations are applied consistently, independently and without protectionism in all 27 EU member states.

The Commission proposals are expected to be approved by the European Parliament and the EU Council of Ministers during 2009.

For further information, please refer to

<http://europa.eu/rapid/pressReleases.Action.do?reference=IP071677&format=HTML&aged=0&language=EN&guiLanguage=en>