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Abstract

The current study empirically demonstrates the widely discussed gap between copyright law and social norms. Theoretically founded in the sociology of law, the study uses a well-defined concept of norms to quantitatively measure changes in the strength of social norms before and after the implementation of legislation. The 'IPRED law' was implemented in Sweden on 1 April 2009, as a result of the EU IPR Enforcement Directive 2004/48/EC. It aims at enforcing copyright, as well as other IP rights, when they are violated, especially online. A survey was conducted three months before the IPRED law came into force, and it was repeated six months later. The approximately one thousand respondents between fifteen and twenty-five years-of-age showed, among other things, that although actual file-sharing behaviour had to some extent decreased in frequency, social norms remained unaffected by the law.

Keywords

Copyright, enforcement, file sharing, intellectual property, internet, IPR enforcement directive, law, law and society, social norms, sociology of law

Introduction

The sharing of computer programs, movies and music via the internet marks an *all-time-high* in the persistent controversy between intellectual property owners and the users of different reproduction technologies. The gap between law and norms has in this field been widely discussed (see, e.g., Altschuller and Benbunan-Fich, 2009; Feldman and

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Nadler, 2006: 589–591; Jensen, 2003; Lessig, 2008; Moohr, 2003; Schultz, 2006, 2007; Strahilevitz, 2003a, 2003b; Svensson and Larsson, 2009; Tehranian, 2007; and Wingrove et al., 2010). Among a large segment of the population of Europe, illegal file sharing via the internet has gradually become a natural element of everyday life. People who would never otherwise engage in criminal activities, for some reason find it acceptable to violate intellectual property rights (see Goodenough and Decker, 2008).

In this article, we argue that dealing with legal compliance is beneficially examined in a cognitive perspective, and more specifically, where cognition is seen as situated. In this instance, one adopts the view that knowledge is inseparable from social, cultural and physical contexts (Suchman, 1987; and also pioneers in this area, e.g., Brown et al., 1989; Greeno, 1989; Greeno and Moore, 1993; Lave, 1988 and Suchman, 2006). The cognitive processes are therefore seen as highly dependent on shared expectations, social norms and social control (both formal and informal). A situated-cognition approach emphasizes the sociology of law¹ and social psychology (rather than neuroscience, as do Goodenough and Decker in their above-mentioned work) and also group norms rather than functional neurological structures. In order to understand situated cognition in relation to illegal file sharing, we examine social control through the dynamics between formal (legal) and informal (social) norms. We focus on socio-legal developments in Europe and the current trend towards greater use of surveillance and sanctions in cases of the file sharing of copyright protected material via the internet (Larsson, 2011a, 2011b; Vincents, 2007). Our ambition is to compare this legal trend with current changes in corresponding social norms. Central questions in this study are the extent to which social norms relating to file sharing support the current legal trend in this field, and the extent to which legal change and law enforcement strategies influence social norms.

The trend in Europe with regard to copyright during the last decade has been ‘path dependent’ in that it is following a set of key conceptions of creativity, property and incentives and applying them to a digital context (Jensen, 2003; Larsson, 2011a, 2011b; Litman, 2001). This comes with some rather repressive consequences in terms of adding centrally located control of data in order to make individuals and their online actions more traceable (Larsson and Svensson, 2010; Svensson and Larsson, 2009). In a global perspective, the European Union has played a leading role in creating stronger copyright protection. Key regulatory initiatives in this area within the European Union are INFOSOC (Directive 2001/29/EC, 2001) and IPRED (Directive 2004/48/EC, 2004). However, other legislation also affects the enforcement of copyright, such as the Data Retention Directive (Directive 2006/24/EC, 2006), while copyright is also involved in different legislative procedures such as the European Telecoms Reform Package and the Anti-Counterfeit Trade Agreement, ACTA (Larsson, 2011b). The overarching goal within the EU is to harmonize the national legislation of the different EU Member States with regard to Information and Communications Technology (ICT), thereby achieving greater control over the use of the internet. This is considered to be essential, if the objective is to support copyright owners in their fight against illegal file sharing. In addition, copyright holders’ representatives are being given legal tools that allow violators to be identified. There is also a trend towards allocating greater responsibility to internet service providers for the type of content that is transmitted through their infrastructure.²

The role of social norms in relation to copyright and online behaviour has been discussed and analysed from different perspectives. Jensen (2003) states that the copyright

industries have developed strategies to tie copyright protection to tangible property norms. He concludes that these rhetorical strategies are likely to widen existing gaps between legal rules governing copyright and social norms, thereby reinforcing already significant barriers to collective action that obstruct efforts to construct a self-enforcing digital 'copyright norm'. Moohr (2003) speaks of a 'competing social norm' and Schultz (2007) advocates the use of the concept of 'copynorms' to analyse social norms in relation to copyright, as they 'moderate, extend, and undermine the effect of copyright law'. Strahilevitz (2003a) analyses the influence of social norms in loose-knit groups or in situations where interactions are anonymous. Strahilevitz (2003b) also analyses the ability of file-sharing software to reinforce descriptive norms in themselves, as this creates the perception that unauthorized file sharing and distribution is common behaviour, and one even more prevalent than it actually is. Strahilevitz made his claim in 2003, and file sharing has subsequently increased and developed in terms of technology and techniques.

Feldman and Nadler (2006) undertook an experimental study of the influence of law on social norms relating to the file sharing of copyrighted content. They surveyed a group of college students who proved to believe that peer-to-peer file sharing is common practice and who thought that this practice would become less socially acceptable if violators were subject to shaming penalties. The students also expressed less willingness to engage in file sharing if violators were subject to the revocation of university network privileges. Interestingly enough, the law did not influence perceptions of file-sharing norms in the absence of sanctions, nor did the moral justifications affect the practice of unlawful file sharing.

It is well known that social norms and law impact on each other; sometimes the law can be a strong influence for change in social norms 'by forcing a change in conduct that gradually becomes accepted throughout society or by inducing a change in the perception of the propriety of certain conduct' (Drobak, 2006: 1). However, even though there are examples of such influences, it is rare that law in itself can initiate significant changes in social norms. The influence in the other direction is far more obvious, since law is shaped by, and dependent on, the social and economic structures of society (Drobak, 2006; Ellickson, 1991, 1998, 2001; Hydén, 2002; Morales, 2003; Svensson, 2008; Vago, 2009). Any attempt to legislate in opposition to current social norms is highly hazardous, especially since failure to achieve legal compliance undermines public confidence in the legal system. If the law prohibits behaviours that are widely known to be common, it may lose legitimacy or credibility (Feldman and Nadler, 2006: 590; Hamilton and Rytina, 1980; Polinsky and Shavell, 2000).

In order to study the relationships between social norms in this area and the legal trend, we examine the situation in Sweden, focusing on the implementation of IPRED (Directive 2004/48/EC, 2004) on 1 April 2009. For many reasons, Sweden is an interesting example, which has been reported in the international media for several years. Some of the most popular file-sharing technologies have been developed in Sweden, and one of the most notorious file-sharing services on the internet, The Pirate Bay, has been hosted within the country. In April 2009, a Swedish court convicted four men linked to this service, each of whom were sentenced to a year in prison and ordered to jointly pay \$3.6m in damages to leading entertainment companies. In the 2009 European Parliament elections, the Swedish pro-file sharing Pirate Party secured more than 7 per cent of the

votes and thus won two seats. At the same time, Swedish enterprises such as the legal music-sharing website Spotify challenge conventional media economics.

In principle, copyright in Sweden has always meant that it was forbidden to share protected material on the internet without the consent of the rights holder. However, it has been very difficult to punish those who engaged in this kind of activity, since in practice it has not proved possible to identify individual file-sharers. The absence of functioning legal tools, surveillance and sanctions has contributed to the development within society of a large measure of acceptance of this type of crime, and, quite simply, people have not taken the law seriously. However, on 1 April 2009, the IPRED law came into force in Sweden.

In theory, the implementation of IPRED in Sweden means that intellectual property rights holders can, whenever they assume that their rights have been violated online, present their complaints to a court, which will then examine the evidence and extent of file sharing, in order to establish whether or not the internet service providers should release the IP address (IPRED, Article 6.1). In practice the IPRED law, as it is called in Sweden, has not been actively used so far, since Swedish internet service providers (ISPs) have chosen to challenge it in court. Representatives of intellectual property rights holders say that they are waiting for the final legal decisions on the first cases before acting on a wider scale.

However, today file-sharers theoretically run a risk of being identified and may face high levels of damages, fines and, in serious cases, imprisonment. In popular parlance, this change in the law has been described in terms of file sharing of copyrighted content being forbidden, when in fact it was the basis of law enforcement that changed. *Netnod Internet Exchange in Sweden*, a neutral and independent organization for the establishment and operation of the national internet exchange points, reported an almost 40 per cent drop in the volume of Swedish internet traffic on 1 April, 2009, the day on which IPRED was implemented. Barely a year later, internet traffic was back at roughly the same level as before the IPRED law was passed. However, much of this recovery seems to be a result of a dramatic increase in streamed traffic, such as YouTube, Spotify and various film-on-demand services.

There are examples of experimental attempts at the measurement of social norms in relation to illegal file sharing, such as those mentioned by Feldman and Nadler (2006). Even if the issue of whether the law has the potential to affect social norms is frequently discussed in the sociology of law, few empirical surveys in this field have previously been undertaken. This study therefore constitutes a rare attempt to use defined concepts and a developed research model to measure changes in the strength of social norms before and after a new law is passed. This article describes the results of two surveys of the strength of the social norms that condemn the file sharing of copyright material via the internet. The first one was conducted three months prior to the implementation of IPRED and the second six months afterwards. The measurement method applied to social norms in relation to the legal regulations used in this study was developed within the authors' Department (Svensson, 2008), and it was influenced by a model developed by the two social psychologists Icek Ajzen and Martin Fishbein (1980), and, in particular, by their theory of planned behaviour (TPB) as described by Ajzen (2005) and Fishbein and Ajzen (2009). The method is a socio-legal one that has previously been

used, for example, in order to measure social norms in relation to traffic safety laws and regulations (Svensson, 2008). In that particular study, the method proved capable of describing the differences in strength among the social norms that relate to speeding, seat belt use and drunk driving. On a scale ranging from 1–7, the Social Norm Strength (SNS) supporting legal compliance with regard to speeding measured 3.76; to seat belt use, 4.38 and to drunk driving, 4.80. That study is directly comparable to this one on file-sharing norms and we shall revert to it in the analysis section.

Theoretical framework

The concept of norms

The socio-legal definition of norms used in this article is based on their having three essential attributes (Hydén and Svensson, 2008; Larsson, 2011a; Svensson, 2008).³ The first is that norms are individuals' perception of surrounding expectations regarding their own behaviour; the second one tells us that norms also are materialized expressions that are socially reproduced and thus can be studied empirically; while the third one states that norms are carriers of normative messages. Hence, norms have an 'ought' dimension and constitute imperatives (directions for action). These three essential attributes reflect three different paths in the scientific study of norms: social psychology, inspired by Muzafer Sherif (1966), social science, inspired by Émile Durkheim (1982), and legal science inspired by Hans Kelsen (1967).

Norms – an aspect of situated cognition

In the very title of one of his most renowned essays, Georg Simmel poses the question '*Wie ist Gesellschaft möglich?*' (How is society possible?) (Simmel, 1995). His answer is founded on the premise that there must be harmony between societal development, on the one hand, and individual human characteristics and impulses, on the other. In other words, every human being is part of the social context and influences other individuals, whilst simultaneously being an individual influenced and shaped by the social environment. Interaction between individuals allows for mutual/shared decision-making: a simple thesis that could be stated in order to define the very essence of large bodies of social theory. What separates different orientations within social theory from each other is predominantly the viewpoint of the processes underlying mutual decision-making. From a functionalist sociology of law perspective that follows the tradition of Émile Durkheim, it is mainly through norms in society (both legal and social) that mutual decision-making arises. Norms, in turn, constitute social controls, which are decisive for shared expectations, and from the individuals' perspective, for part of their situated cognition.

Law and social norms

The concept of social control was introduced into sociological literature by Small and Vincent (1894), but originated in theories developed by Auguste Comte [1798–1857], who stressed the connection of every single individual with all others through a

multitude of links, by means of which human beings live naturally in a connected feeling of solidarity (Comte and Mannheim, 1979: 61). These links involve, in particular, a common view of moral issues. In relation to the law, one often discusses common and collective viewpoints on moral issues on the basis of 'the public sense of justice': a sense of justice that results in informal social control and social norms.

Robert C. Ellickson, a professor at Yale Law School, was one of the first legal scholars to fully recognize the importance of socially enforced norms. He states that 'much of the glue of a society comes not from law enforcement, as the classicists would have it, but rather from the informal enforcement of social norms by acquaintances, bystanders, trading partners, and others'; and he continues 'informal systems of external social control are far more important than law in many contexts, especially ones where interacting parties have a continuing relationship and little at stake' (Ellickson, 1998: 540).

Social norms guide people's actions and social interaction to a greater degree than does the law (Drobak, 2006). In organization theory and economics, in particular, it has been possible to demonstrate the importance of informal norms in human behaviour. The law and the social norms act in tandem in that they have an effect on the behaviour of society, while it is also known that they have an effect on each other. Furthermore, the social norms have a powerful effect on the wording of laws in that the way that this is often done deliberately reflects society's morals and values. However, the opposite effect also plays an important role in society, as when the law compels a change in behaviour, which sometimes leads to changes in social norms (Drobak, 2006). In such cases, people tend to revise their view of what is right and wrong in such a manner that these values change in the direction of the behaviour that they have been compelled to adopt. People also tend to make demands of others in a manner that agrees with these altered values. It may be that this is a matter of people not seeing any reason why others should continue to behave in a manner that they themselves have been forced to change, and so they give others directives to act and comply with the rules in the same way that they have done.

Legal changes initiate processes that in the course of time result in changed social norms. This relates in particular to such changes that include strong signals in the form of extensive surveillance and severe sanctions. In that the law has elicited changed behaviour through coercive structures and, by extension, paved the way for social norm formation processes, social control has also been activated. People now have to relate, not only to the risk of being caught, convicted and punished that has arisen because of the law, but also to the risk of being condemned by their peers. The sanctions that can be associated with social control can be very severe and may involve anything from a loss of respect to financial losses in the form of difficulties on the labour market or of lost business.

Feldman and Nadler (2006: 591) divide the law and economics of norms (LEN) into three groups. The first category argues that using law to shape social norms is likely to disrupt the desirable functions of those norms; the second group argues that law is unlikely to lead to any change in the functioning of norms; the third group views laws as an important tool that could move social norms in the direction desired by policy makers.

Research questions

To what extent do social norms of society support a legal trend towards more repressive enforcement strategies when dealing with illegal file sharing? If there is in fact a discrepancy between legal and informal social control, can legal change contribute to a change in social norms and behaviour? In this study, we measure changes in the strength of social norms before and after the implementation of copyright enforcement legislation in Sweden. We also measure effects in terms of changes in legal obedience.

Methodology – measuring social norms

Departure from the theory of planned behaviour

The method of measuring Social Norm Strength (SNS) in this study is closely linked to the theory of planned behaviour (TPB) developed by Icek Ajzen (2005) and Martin Fishbein and Icek Ajzen (2009). This theory explains how subjective norms play a crucial role when people form intentions. In the following, we show how the model for calculating subjective norms developed by Ajzen and Fishbein can be used together with the socio-legal definition of norms described above, in order to calculate the strength of social norms.

Research model step-by-step

The first task is to identify categories of people who are of importance to the respondents from a social control point of view (normative referents). Nine normative referents of potential importance to copyright law compliance were identified during research preparations: (a) mother, (b) father, (c) other close relatives, (d) partner, (e) friends, (f) internet acquaintances, (g) teachers/bosses, (h) neighbours and (i) casual acquaintances. With respect to each of these nine referents, two aspects were assessed: normative belief strength and the motivation to comply with each respective normative belief. For example, the question ‘To what extent is it your mother’s opinion that you should not download copyright-protected movies and music from the Internet?’ was rated on a seven-point scale (1 = *she does not mind*, 7 = *it is very important to her*) to produce a measure of normative belief strength. To assess motivation to comply, respondents rated, on a similar seven-point scale (1 = *it is not important to me*, 7 = *It is very important to me*), the question, ‘To what extent do you consider your mother’s opinion of file sharing to be important when you choose whether or not to download copyright-protected files?’

Each survey respondent rated on the seven-point scales both normative belief strength and motivation to comply with the respective normative belief, for each of the nine normative referents. Hence, we are able to calculate the mean (among all respondents) normative belief strength for each important referent, and in the same way, the mean motivations to comply. In order to translate these data into general social norm strength on a seven-point scale, they were processed in the following stages:⁴

1. The results of the first question 'To what extent is it referent (a-i)'s opinion that you should not download copyright-protected movies and music from the Internet?' were compiled.
2. The results were processed in order to show a mean value for question 1 (on a scale of 1-7) for each category of normative referents. This value represents the strength of normative belief (n).
3. The results of the second question 'To what extent do you consider referent (a-i)'s opinion of file sharing to be important when you choose whether or not to download copyright-protected files?' were compiled.
4. The results were processed in order to show a mean value for question 2 (on a scale of 1-7) for each category of normative referents. This value represents motivation to comply (m).
5. The mean values for question 1 were weighed against those for question 2 for each normative referent. The weighed value represents the Social Norm Strength (SNS) and shows the social norm's capacity to influence the respondents' behaviour. 1 = no SNS and 7 = maximum SNS. If the result is SNS = 7 it means that all respondents have indicated a 7 (it is very important to them) in question 1 for all nine referents; and all respondents have indicated a 7 (it is very important to me) in question 2 for all nine referents. A low mean value in question 1 (e.g. 1 = *they do not mind*) weighed against a low mean value in question 2 (e.g. 1 = *it is not important to me*) can mathematically result in a value below 1 (the respondents do not care about the opinion of the referent, who in turn does not care about the action of the respondent). For example, if the motivation to comply (m) is 4, it represents 4/7 of maximum motivation to comply (max = 7/7); and if the strength of the normative belief is very low (1); it results in $(4/7) \times 1 = <1$. However, these results will then count as 1 = *no social norm strength*.

Identifying the normativity of the norm

One of the essential attributes forming the socio-legal concept of norms is the behavioural instruction in itself (the imperative), which could be described as the normativity of the norm. This attribute is in accord with 'Kelsen's legal norms' and *The Pure Theory of Law*. Kelsen views the legal system as a system of 'oughts', and for Kelsen it is as if norms become norms precisely because they are action instructive. The physical dimension of the norm is, in Kelsen's mind, of no analytical interest whatsoever. The wording of copyright legislation varies to a certain extent from one country to another, while at the same time it is tightly controlled by international agreements, which limits its variation. For this survey, we have proceeded on the basis of Swedish law, where the Act on Copyright in literary and artistic works (SFS 1960: 729) is the governing law. The normative basic message (the fundamental 'ought') is most easily found by means of the special penal regulation in the Act on Copyright in literary and artistic works, Chapter 7, Article 53, first paragraph. This stipulates that anyone who, in relation to a literary or artistic work, commits an act which infringes the copyright enjoyed in the work under the provisions of Chapters 1 and 2 or which violates directions given under Article 41, second paragraph, or Article 50, shall, where the act is committed wilfully or with gross

negligence, be punished by fines or imprisonment for a maximum of two years. It is, in other words, forbidden to commit copyright infringement (and violations are punished by the state).

However, even if the normative message of the law is most easily identified by means of its penal wording, it is in the field of civil law and thanks to the right to damages that the law acquires its greatest weight. The situation here is more complicated and is described by reference to such things as the rights of the author of the work and the user's limited scope to act, in combination with the general right to damages. However, in essence the normative message of civil law is the same as that of criminal law: that it is forbidden to commit copyright infringement (and violations entitle the copyright holders to damages).

In translating the legal 'ought' (that it is forbidden to commit copyright infringement) into a social 'ought' (linked to file sharing of movies and music via the internet), we obtain a social normative sentence that expresses the following: one should not engage in illegal file sharing of music and movies via the internet. The question that this study raises is whether the above social normative sentence corresponds to a social norm and if so, how strong that norm is. We will also examine how norm strength has been affected by the implementation of IPRED.

About the surveys

We conducted two surveys of approximately one thousand Swedish internet users between fifteen and twenty-five years of age. The first survey was conducted in January and February 2009 and the repeat study in October 2009, during which period IPRED was implemented in Sweden (on 1 April 2009). The surveys allow us to analyse some of the consequences of IPRED's implementation. The first survey was emailed to 1400 recipients, of whom 1047 responded, generating a response frequency of 74.8%. For the second survey 1477 participants were emailed, and once again 1047 responded, which gave a slightly lower response frequency rate of 70.9%. The selection was made randomly for the age group, from the CINT⁵ panel exchange register that contains details of 250,000 individuals in Sweden (a country with nine million inhabitants), and that represents a national average of the population. The fact that the respondents are on this register means that they have agreed in advance to participate in online self-administered questionnaires (SAQ), and receive a small fee for taking part in a survey. The fact that the surveys were SAQ is of great relevance in this context, as it has been shown that respondents are more likely 'to report sensitive or illegal behaviour when they are allowed to use the SAQ format than during a personal interview over the telephone or in person' (Wolf, 2008). When conducting web-based surveys there can be no ongoing feedback from interviewers, which is why special attention must be paid to how the questions are formulated, as well as to how the questionnaire is formatted, in order to avoid measurement errors (Dillman, 2000; Wolf, 2008). However, web-based SAQs are especially suitable when addressing online behaviour, since this method targets individuals who have access to and use the internet.

We chose not to use the same respondents for the repeat study. In fact, we made sure that none of the initial respondents were addressed in the second survey. The reason for

this is that we are conducting studies of individuals' beliefs and in doing so there is a risk that the answers in the repeat study will be influenced by the respondents' participation in the first study (Dahmström, 2011: 330).

Of the 1047 respondents in the first survey, 59% (619) were female and 41% (427), male. Their mean age was 20.9 years. More than 99% stated that they had access to a computer with an internet connection at home. More than 75% of the respondents spent at least two hours a day at an internet-connected computer at home, and about 23% more than six hours. About 6% spent less than an hour a day online.

Of the 1047 respondents in the second survey, 60% (624) were female and 40 percent (418), male. Their mean age was 19.9 years. More than 98% percent stated that they had access to a computer with an internet connection at home, and slightly more than 70% spent at least two hours a day online, and about 21% more than six hours per day.

Empirical findings

Table 1 shows the respondents' reports on how often they file-share – both in the survey conducted before the implementation of IPRED and the one conducted afterwards. The data in this table therefore can be regarded as a self-reported effect study. The changes are statistically significant.

Before the implementation of IPRED, 21.6% of the respondents reported that they never file-share, and six months after IPRED this figure was almost 38.9%. At the same time, the percentage of respondents who claimed to be file sharing on a daily basis decreased from 10.6% to 6.4%. Both the increased number of those who never file-share and the decrease in those who reported file sharing on a daily basis are statistically significant. The group that file-share once a month increased from 24.0 to 26.1%; while the group that file-share once a week at a maximum decreased from 22.0 to 16.1%; and the group that file-share more than once a week decreased from 21.6 to 12.5%. In conclusion, Table 1 suggests that IPRED has had an effect on file sharing around the time of the implementation.

In the following section we show the SNS-data collected before and after the implementation of IPRED. Firstly, the respondents' perceptions of important referents are presented in terms of the *strength of normative belief* (n) and the *motivation to comply* (m), and then the Social Norm Strength (SNS) is calculated, which represents the capacity of a social norm to influence behaviour towards legal compliance. All SNS data are

Table 1. How often the respondents illegally download copyright-protected material.

	Study 1 (before IPRED)	Study 2 (after IPRED)
Never	21.6% (217 persons)	38.9% (383 persons)
Once a month at a maximum	24.0% (242 persons)	26.1% (258 persons)
Once a week at a maximum	22.0% (222 persons)	16.1% (158 persons)
More than once a week	21.6% (218 persons)	12.5% (124 persons)
Daily	10.6% (107 persons)	6.4% (63 persons)

Chi-Square Tests: Asymp. Sig. (2-sided) .000.

Table 2. Strength of normative belief (n) and motivation to comply (m) resulting in Social Norm Strength (SNS) before and after the implementation of IPRED.

Important referents	Study 1 (before IPRED)		Study 2 (after IPRED)	
	Strength of normative belief (n)	Motivation to comply (m)	Strength of normative belief (n)	Motivation to comply (m)
(a) Mother	2.42	2.97	2.95	3.22
(b) Father	2.28	2.96	2.82	3.20
(c) Other close relatives	2.06	2.23	2.26	2.42
(d) Partner	1.57	3.29	1.97	3.46
(e) Friends	1.53	2.96	1.86	3.03
(f) Internet acquaintances	1.44	1.88	1.75	2.04
(g) Teacher/bosses	2.62	2.11	2.98	2.24
(h) Neighbours	1.72	1.50	1.98	1.74
(i) Casual acquaintances	1.64	1.55	1.86	1.72
Mean	1.92	2.39	2.27	2.56
Statistically significant change (2-tailed)			no ($p = 0.135$)	no ($p = 0.580$)
Social Norm Strength	<1		<1	

presented on a scale from 1 to 7. SNS values below 1 indicate that there is no significant Social Norm Strength. The following table shows the SNS-data for all the respondents before and after IPRED.

Table 2 shows that in general there are only very weak social norms promoting compliance with the law in the case of file sharing. In fact, the respondents feel no substantial social pressure from any of the important referents, and furthermore, the respondents claim that they only care slightly about the opinion of any of the important referents with regard to file sharing. Furthermore, it is of significance that there is no major change in social norm strength between Study 1 prior to IPRED and Study 2 after IPRED.

When analysing the results we can see that neither of the two extremes (file sharing daily and never file sharing) experiences any social control influencing their decision on whether or not to file-share. Even those who never file-share report a minimal Social Norm Strength of 1.04 on a scale from 1–7, and there is no statistically significant increase after the implementation of IPRED. The respondents are all young people between fifteen and twenty-five years old and there are no indications in the data that the society is applying any social pressure to them to comply with the law. Those who choose to never file-share obviously do so for reasons other than social norms.

The survey also included questions on whether the respondents themselves believe that enforcement has a potential influence on them in favour of compliance in the case of file sharing. With regard to whether the respondents think that copyright enforcement laws will stop them or others from file sharing illegally, 28.5% thought they would, and 71.5% did not think they would, in the first pre-IPRED study. This can be compared to the slightly increased figure of 38.1% who responded yes, and hence the slightly

decreased figure of 61.9%, who stated no, respectively, in the second, post-IPRED study. As to the question whether the respondents think that it is wrong to file-share merely because it is illegal, 24.0% answered 'yes', and 76.0%, 'no' in the first study. In the second study, 30.1% answered 'yes' to that question and 69.9%, 'no'. These changes in beliefs and opinions are statistically significant ($p < 5\%$) and could be an indication that norms will gain acceptance over time if legal pressure is continuously applied.

Discussion and conclusions

This study takes its departure from a situated cognitive perspective on legal compliance and thereby theoretically focuses on the sociology of law and on social psychology. More precisely, it focuses on norm research within those two disciplines. Furthermore, a quantitative model for measuring social norm strength in comparison with legal norms has been used. One can pose the question as to why it is important to acquire knowledge about whether the social norms of society support the legal trend when it comes to copyright in relation to file sharing. One answer is that people in general do not obey the law but rather they abide by the informal social control, and the law has very little chance of bringing about general compliance without the support of the social norms. Our results indicate that the implementation of enforcement strategies in Sweden has at least not triggered any sudden changes in the strength of social norms relating to illegal file sharing, thus supporting the claims of the second LEN category presented by Feldman and Nadler (2006: 591), stating that law is unlikely to lead to any change in the functioning of norms. However, the fact that IPRED actually changed people's behaviour with regard to compliance contradicts that conclusion. We know that behavioural change sometimes leads to changes in the social norm structures, even when the former has occurred as a result of enforcement strategies.

Our survey shows that one possible cause why people in common ignore copyright online is the lack of social norms that reinforce the legal framework (compare with Goodenough and Decker, 2008). Generally, people observe informal social control, and when the law, as in this instance, lacks a social equivalent, there are only weak incentives for them to comply with it. As stated by Feldman and Nadler (2006), there are a number of laws that are widely ignored, including traffic laws (Cheng, 2006) and tax laws (Braithwaite, 2003). When it comes to traffic laws, the recent study described in the introduction above is comparable to our study of norms (Svensson, 2008). The traffic safety study used the SNS-model when examining the strength of the social norms that correspond to the three road traffic regulations applying to speeding, seat-belt use and sobriety. It showed stronger social norms in respect of the regulations on drinking and driving, less strong norms when it comes to rules on seat-belt use and relatively weak social norms with respect to regulations on speeding. However, even in comparison to the speeding regulation, the legal provisions applying to illegal file sharing are particularly poorly anchored in the social norms of society, and they show a weak SNS.

The empirical answer to the question whether the implementation of IPRED in Swedish legislation on April 1 2009 was able to influence social norms is an interesting one. This influence is marginal and thus the pedagogical effect of the law does not come into play. By contrast, it can be seen that considerably more respondents state that they

never file-share in Study 2 than is the case in Study 1 (see Table 1). This means that the implementation of IPRED actually has had an effect on file sharing as such, but this is a purely deterrent effect rather than a change of social norms. In other words, it was due to the fear of being punished by the state that some individuals chose to stop file sharing and not because they themselves or people in their lives have changed their minds on the issue itself. They stop as a result of a fear of getting caught and being punished and not because the social landscape has altered. Young people do not subscribe to the arguments on which the law rests and neither do those people who are close to them. However, some young people do submit to the authorities and the threat of punishment.

Given the gap shown to exist between copyright law and social norms, there are likely negative and unconsidered consequences of the enforcement strategies. Legal enforcement of a copyright regulation that does not correspond with social norms risks working as a stimulus to counter-measures. Given the generativity of the technologies of online communication in networks, these counter-measures may imply an increased diffusion of techniques of online anonymization. This means that the legal enforcement of copyright not only risks undermining public confidence in the legal system in general, but also facilitates the diffusion of technological knowledge that will undermine legal enforcement in general when it comes to computer-mediated crime (Larsson and Svensson, 2010).

The laws of society comprise and rest upon the social norms that we as a collective express through our actions. This does not necessarily imply that the law must be preceded by social norms that already exist. Legal history offers many good examples of laws that eventually proved successful but were passed in opposition to the prevailing opinion of the times. The ideas upon which these laws were based gained a foothold in the public debate and in time changed the social norms. The prohibition in the Parental Code in Swedish law against the corporal punishment of children by their parents is one such example, while the same applies to the view of homosexuality in many countries, where the legislation leads the way.

One of the points of this study has been to provide information as to whether legislators have been able to narrow the gap between legal and social norms through a variety of (legal) measures. Considering the results of our study from their perspective, the results have been disheartening. Despite the intensive efforts of the government during the six-month duration of the survey period after the implementation of the law, social support for copyright with respect to file sharing is, at the time of Study 2, still remarkably low. The young people who participated in the study do not feel any significant social pressure to abstain from file sharing, from either the adult world or their peers. As mentioned, the quantitative approach of this study gives an opportunity to discuss the file-sharing and copyright issue from a macro perspective, to describe the socio-legal landscape, and to undertake, for example, before/after studies such as this one. There are, nonetheless, limitations inherent in the quantitative approach that suggest a need for future qualitative research that complements the understanding of file sharing and legal compliance from a situated-cognitive perspective. This could include the impact of other factors such as the media's role in communicating legal revisions, or a more language and conceptual metaphor-based approach to copyright formulations and functions in comparison with a digitalized society (Larsson, 2011a). Furthermore, a follow up-study

of the same survey as in this study might prove useful in confirming, refuting or nuancing the long-time effects of IPRED's implementation that are suggested here.

The struggle over illegal file sharing and its survival or demise is the obvious indication in the media that a serious chasm is truly opening up between the legal system and the social norms of society. The inability of legislators to induce people to fall in line shows the strength of the social changes now under way. There is evidence that the internet and new technologies are changing society in a radical way, and that copyright and the dilemma of unauthorized file sharing may represent a socio-legal challenge that is greater than the one that merely indicates copyright regulation in a digital context. This highlights the importance of understanding the issue, since it could be crucial for questions of the social, economic and technological structures of the future as well as inter-related issues of privacy in a connected world.

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Notes

1. The sociology of law studies matters that pertain to the interplay between legal rules and decisions, on the one hand, and other aspects of society, on the other hand. See e.g. Aubert (1972); Hydén (1978); Mathiesen and Berg (2005); Stjernquist and Widerberg (1989).
2. One example of this is the proposed plurilateral trade agreement Anti-Counterfeiting Trade Agreement (ACTA), another is the aforementioned Telecom Reforms Package. See also the French development with regard to HADOPI.
3. The definition of norm that is used in this study is a result of an ontological analysis following the *Essence and Accident* model created by Irving M. Copi (1954), who in his turn based the model on Aristotle's work.
4. For the exact formula, see Svensson and Larsson (2009).
5. See: <http://www.cint.com/explore/opinionhub>

References

- Ajzen I (2005) *Attitudes, Personality and Behavior*. Maidenhead: Open University Press.
- Ajzen I and Fishbein M (1980) *Understanding Attitudes and Predicting Social Behavior*. Englewood Cliffs, NJ: Prentice Hall.
- Altschuller S and Benbunan-Fich R (2009) Is music downloading the new prohibition? What students reveal through an ethical dilemma. *Ethics and Information Technology* 11: 49–56.
- Aubert V (1972) *Rättssociologi*. Stockholm: Aldus/Bonnier.
- Braithwaite V (2003) Dancing with tax authorities: Motivational postures and non-compliant actions. In: Braithwaite V (ed.) *Taxing Democracy: Understanding Tax Avoidance and Evasion*. Aldershot: Ashgate Publishing, 15–39.
- Brown JS, Collins A and Duguid P (1989) Situated cognition and the culture of learning. *Educational Researcher* 18(1): 32–42.
- Cheng E (2006) Structural laws and the puzzle of regulating behavior. *Northwestern University Law Review* 100(2): 655–718.
- Comte A and Mannheim O (1979) *Om positivismen*. Göteborg: Korpen.

- Copi IM (1954) Essence and accident. *The Journal of Philosophy* 51: 706–719.
- Dahmström K (2011) *Från datainsamling till rapport*. Lund: Studentlitteratur.
- Dillman DA (2000) *Mail and Internet Surveys: The Tailored Design Method*. New York: Wiley.
- Directive 2001/29/EC (2001) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. *Official Journal of the European Communities* 167, 22.6.2001: 10–19.
- Directive 2004/48/EC (2006) Directive 2004/48/EC of The European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights. *Official Journal of the European Communities* 157: 30.4.2004: 45–86.
- Directive 2006/24/EC (2006) Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC. *Official Journal of the European Communities* 105: 13.4.2006: 54–63.
- Drobak JN (2006) *Norms and the Law*. Cambridge: Cambridge University Press.
- Durkheim É (1982) *The Rules of Sociological Method* (ed. Lukes S; trans. Halls WD). New York: Free Press.
- Ellickson RC (1991) *Order without Law: How Neighbors Settle Disputes*. Cambridge, MA: Harvard University Press.
- Ellickson RC (1998) Law and economics discovers social norms. *The Journal of Legal Studies* 27: 537–552.
- Ellickson RC (2001) The evolution of social norms: A perspective from the legal academy. In: Hechter M and Opp K-D (eds) *Social Norms*. New York: Russell Sage, 35–75.
- Feldman Y and Nadler J (2006) The law and norms of file sharing. *The San Diego Law Review* 43: 577–618.
- Fishbein M and Ajzen I (2009) *Predicting and Changing Behavior: The Reasoned Action Approach*. New York: Psychology Press.
- Goodenough OR and Decker GJ (2008) Why do good people steal intellectual property? In: Freeman M and Goodenough OR (eds) *Law, Mind and Brain*. Aldershot: Ashgate, Berkman Center Research Publication No. 2008-2, 345–372.
- Greeno JG (1989) A perspective on thinking. *The American Psychologist* 44: 134–141.
- Greeno JG and Moore JL (1993) Situativity and symbols: Response to Vera and Simon. *Cognitive Science* 17: 49–59.
- Hamilton VL and Rytina S (1980) Social consensus on norms of justice: Should the punishment fit the crime? *The American Journal of Sociology* 85: 1117–1144.
- Hydén H (1978) *Rättens samhällseliga funktioner*. Lund: Studentlitteratur.
- Hydén H (2002) *Normvetenskap*. Lund: Lund Studies in Sociology of Law, Lund University.
- Hydén H and Svensson M (2008) The concept of norms in sociology of law. In: Wahlgren P (ed.) *Scandinavian Studies in Law*. Stockholm: Law and Society, 15–33.
- Jensen C (2003) The more things change, the more they stay the same: Copyright, digital technology, and social norms. *Stanford Law Review* 56: 531–570.
- Kelsen H (1967) *Pure Theory of Law*. Berkeley: University of California Press.
- Larsson S (2011a) *Metaphors and Norms: Understanding Copyright Law in a Digital Society*. PhD Thesis, Vol. 36, Lund Studies in Sociology of Law, Lund University, Sweden.
- Larsson S (2011b) The path dependence of European copyright. *SCRIPTed. A Journal of Law, Technology & Society* 8(1): 8–31.
- Larsson S and Svensson M (2010) Compliance or obscurity? Online anonymity as a consequence of fighting unauthorised file-sharing. *Policy and Internet* 2(4): 77–105.

- Lave J (1988) *Cognition in Practice: Mind, Mathematics and Culture in Everyday Life*. Cambridge: Cambridge University Press.
- Lessig L (2008) *Remix: Making Art and Commerce Thrive in the Hybrid Economy*. New York: Penguin Press.
- Litman J (2001) *Digital Copyright*. Amherst, NY: Prometheus Books.
- Mathiesen T and Berg M-L (2005) *Rätten i samhället: [en introduktion till rättssociologin]*. Lund: Studentlitteratur.
- Moohr GS (2003) The crime of copyright infringement: An inquiry based on morality, harm, and criminal theory. *Boston University Law Review* 83(4): 731–783.
- Morales A (2003) *Renascent Pragmatism: Studies in Law and Social Science*. Aldershot: Ashgate.
- Polinsky AM and Shavell S (2000) The fairness of sanctions: Some implications for optimal enforcement policy. *American Law and Economics Review* 2(1): 223–237.
- Schultz MF (2006) Fear and norms and rock & roll: What jambands can teach us about persuading people to obey copyright law. *Berkeley Technology Law Journal* 21(651): 651–728.
- Schultz MF (2007) Copynorms: copyright and social norms. In: Yu PK (ed.) *Intellectual Property and Information Wealth: Issues and Practices in the Digital Age*. Greenwood: Praeger Publishers, 651–728.
- SFS 1960:729 Lag om upphovsrätt till litterära och konstnärliga verk (Swedish Law). Stockholm.
- Sherif M (1966) *The Psychology of Social Norms*. New York: Harper and Row.
- Simmel G (1995) *Hur är samhället möjligt? – och andra essäer*, (Edholm Ea, selection, translation, introduction). Göteborg: Korpen.
- Small AW and Vincent GE (1894) *An Introduction to the Study of Society*. New York: American Book Co.
- Stjernquist P and Widerberg K (1989) *Rätten i samhällsbyggandet*. Stockholm: Norstedt.
- Strahilevitz LJ (2003a) Charismatic code, social norms, and the emergence of cooperation on the file-swapping networks. *Virginia Law Review* 89(3): 505–595.
- Strahilevitz LJ (2003b) Social norms from close-knit groups to loose-knit groups. *The University of Chicago Law Review* 70(1): 359–372.
- Suchman LA (1987) *Plans and Situated Actions: The Problem of Human–Machine Communication*. Cambridge: Cambridge University Press.
- Suchman LA (2006) *Human–Machine Reconfigurations: Plans and Situated Actions*. Cambridge: Cambridge University Press.
- Svensson M (2008) *Sociala normer och regelefterlevnad: Trafiksäkerhetsfrågor ur ett rättssociologiskt perspektiv*. Lund: Lund Studies in Sociology of Law 28, Lund University.
- Svensson M and Larsson S (2009) *Social norms and intellectual property: Online norms and the European legal development*. Research Report in Sociology of Law, 2009:1. Lund: Lund University
- Tehrani J (2007) Infringement nation: Copyright reform and the law/norm gap. *Utah Law Review* 2007(3): 537–551.
- Vago S (2009) *Law and Society*. Upper Saddle River, NJ: Pearson Prentice Hall.
- Vincent OB (2007) When rights clash online: The tracking of P2P copyright infringements vs. the EC personal data directive. *International Journal of Law and Information Technology* 16(3): 270–296.
- Wingrove T, Korpas AL and Weisz V (2010) Why were millions of people *not* obeying the law? Motivational influences on non-compliance with the law in the case of music piracy. *Psychology, Crime & Law* 17(3): 261–276.
- Wolf J (2008) *Self-administered Questionnaire: Encyclopedia of Survey Research Methods*. London: Sage.

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