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Technology for Facilitating Humanity and Combating Social Deviations:

Interdisciplinary Perspectives

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Chapter 11
Law, Deviation and Paradigmatic Change:
Copyright and its Metaphors

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ABSTRACT

Drawing on debates in Sweden about Internet freedom, particularly those connected to copyright and file-sharing, and on the European legislative trend of amending copyright, this chapter analyses metaphors and conceptions in terms of a societal paradigmatic shift and the collision of mentalities. Kuhnian paradigms are wedded with the mentalities of the French Annales school of historic research. The chapter argues that the "building blocks" of these mentalities and paradigms can be studied in metaphors, in public debates or in legislation, which may reveal the conceptions they emanate from. This chapter touches upon ethical, moral and legal issues related to the digitisation of society. The relevancy of this chapter in relation to the theme of the book is found in the problematisation of "deviancy". One has to ask from what perspective or paradigm the judgment of the behaviour takes place, and in what historical context it is made.

INTRODUCTION

Somewhat more than one hundred years ago, labour strikes were still illegal in most European countries. Labour unions had no right to represent their members and negotiate with employers. Collective agreements were not formally accepted in Sweden until 1928. These legal instruments had quite a dramatic history before they became the leading mechanisms (especially in Sweden) for regulating the labour market. Indeed, less than 80 years ago, workers were killed in Sweden when taking part in a demonstration for labour rights (Ådalen 1931). Those supporting collective labour rights were united in their opposition to the prevailing logic of production within the guild system in the handicraft and agricultural sectors. Despite the fact that the large-scale conditions of industrial production had long been present in their sectors, it took some time before these

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instruments were accepted. Today, however, they are widely cherished in the industrialised world. Now, as we transition from an industrial society to more of an information society based on digital technology, we have reason to bring with us the experiences from earlier and similar periods of transition in industrial history.

The relevancy of this chapter in relation to the theme of the book is that it examines the question of what perspective or paradigm one is judging "deviant behaviour" from, and in what historical context it takes place. Part of what is considered deviant behaviour online is, rather, a consequence of the new system's expectations and conditions around the social norms and behaviours that the digital context offers. An understanding of this is required to effectively regulate any behaviour connected to this emerging context. If, for example, a legislator chooses the wrong battles on this issue, there are clear negative consequences for the overall respect for and legitimacy of laws and the legal system.

Ulrich Beck claims that sociology needs to change if it is to understand and explain the changing needs of a transitional society (Beck 1995, p. 231). Social science cannot rest too rigorously upon the "truths" related to the structures of the industrial age. Take copyright law as an example—it is developed in industrial society as a means of stimulating creativity and ensuring a return in profit for investments in intellectual products such as literature, music, film and other media. The "risk society", in Beck's terminology, is seen here as a label for the transitional society, since that society is still in conflict over the new practices, which are not yet legally codified. The focal point is shifted from a purely hierarchical, top-down structure towards an increasingly local influence facilitated by networking. The transition towards a new society is initiated by an unregulated bottom via an emerging core technology and its initial drivers. We can only learn how to cope with these changes in society and law by comparing them with corresponding shifts in the past. It is in times like these that labels used for describing key conceptions can be questioned and renamed. The labels used to describe phenomena in the digitised milieu online, which are often metaphorical in nature, are quite naturally borrowed from the analogue context that created them. We point out a few metaphors or conceptions that have been the subject of particularly heated debate.

This chapter touches upon ethical, moral and legal issues of the digitisation of society. A few of the illustrations used are connected to the debate in Sweden around Internet regulation, such as the copy-based formulations of the Swedish Copyright Act, the rise of a Pirate Party successful enough to win two seats in the European Parliament in 2009, and the rise of a blogosphere with political ambitions strong enough to affect the implementation of surveillance laws and other legislation. To a certain extent, we will use file-sharing as an example of deviation from copyright regulation (making it be regarded as illegal). The example is interesting from a historical perspective since Svensson and Larsson's study (2009) shows that among Swedish 15- to 25-year-olds, the file-sharing of copyrighted content is not perceived to be a deviation from social norms, despite being a deviation from legal norms. Furthermore, the debate around file-sharing and privacy has also been going on in relation to European legal trends connected to the creation and implementation of directives expanding copyright legislation (INFOSOC), its enforcement (IPRED), and the internal market (Telecom Reforms Package). These legal initiatives amend copyright or affect its enforcement, meaning that the metaphors embedded in copyright and the conceptions behind it are of interest if one seeks to understand the overarching paradigmatic battle or incompatible mentalities.

THEORETICAL BACKGROUND

Mentalities and Paradigms

Historically, research stemming from the famous Annales school has often used the term "mental-

ity" to describe different mindsets in different cultures or historical times.[1] The journal *Annales d'histoire économique et social* was founded in 1929, marking the starting point of the Annales school. It also came to mark a turning point in French historical research. Lucien Febvre and Marc Bloch criticised contemporary historical science for focusing too much on details and events, becoming exceedingly specific, and losing its grip on the bigger, explanatory contexts and its connection to other social scientific research (Burke 1992). The focus then shifted towards unspoken or unconscious assumptions and the structure of beliefs over longer periods of time, the so-called *long durée*.[2] We can talk here about civilisations, which Wallerstein (1974) argues have a history of development that consists of periodic cycles "such as switching between growth and stagnation, and the alternation between hegemonic power and rivalry, and related long-term trends such as increasing commoditisation and commercialisation, and increasing polarisation between the privileged and non-favoured."

Every society has its own set of core "mentalities" or belief systems that define it (Burke 1986). Using the language of the Annales school, we can talk about *la moyenne durée*, a kind of middle-to-long period of mentality dominance. We will introduce the paradigm concept in order to describe this phenomenon and what characterises a transition from one type of society to another over time.

The long historical lines of mentalities, as with any ideas of consistency, are slightly problematic as an explanatory instrument for societal change. When—and why—would there be a break in something that has persisted throughout the ages? The explanation and description of change when it comes to mentalities lies close to Kuhn's description of paradigmatic shifts. The anthropologist Robin Horton, elaborating the ideas of Evans-Pritchard and Popper, has sketched a general picture of change in modes of thought, emphasising the importance of awareness of alternatives to a given intellectual system or, as he now puts it, the relative importance of competition between theories in different societies (Horton 1982). Burke approaches the problem of explaining change with the "history of mentalities" and the passage from one system to another by stating that there is an obvious case for taking up the paradigmatic shifts of Thomas Kuhn:

"If the great stumbling block for the history of mentalities is, as suggested earlier, 'the reasons for and the modalities of the passage from one system to another', then there is an obvious case for taking up Thomas Kuhn's notion of an intellectual tradition or 'paradigm' which may absorb or resist change for long periods thanks to relatively minor 'adjustments', but will finally crack and allow a 'Gestalt switch' or intellectual 'revolution' (Burke 1986: 446).

The concept of a paradigm was developed in relation to changes in science. Classic examples are Isaac Newton (1643–1727) and his theory of gravitational force, and Noble Prize winner Albert Einstein (1879–1955) and his theory of relativity. The theory of paradigms, however, has mainly been developed over the last 40 years. The starting point is Thomas Kuhn's well-known book about *The Structure of Scientific Revolutions*, first published in 1962. When Kuhn refers to scientific revolutions he primarily uses empirical examples from the natural sciences. A classic example is how physics was established during the seventeenth century when Galileo Galilei rejected the hitherto dominant paradigm of Aristotelian physics and created a new conceptual system that made it possible to construct new objects for scientific knowledge. Galilei found certain anomalies in the way the motion of material things was explained within Aristotelian physics. This is often the starting point for paradigmatic change—when anomalies occur there is a risk of a crisis of legitimacy within science. The crisis might then cause some kind of revolution in the way things are perceived, which initiates searches for other explanations in

relation to relevant phenomena: "The weight of anomalies leads to a cumulative switch to other exemplars and, ultimately, to logical incompatibility between disciplinary matrices, differences in prediction, differences in vocabulary, and to an argument over competing world views and competing ways of doing science" (Fine 2002, p. 2061). It starts with the emergence of a kind of pre-paradigmatic stage of scientific development, later followed by a stage of multi-paradigmatic science. Different scientific explanations compete in relation to being the bearer of scientific truth vis-à-vis the actual problems. After some time, one of the contenders among the multiple paradigms will be regarded as more adequate than the others and thereby "wins". We then reach a stage that Kuhn calls normal science.

Different aspects dominate each of these different phases of scientific development. One of Kuhn's most important contributions in relation to understanding science is that he raised awareness of the fact that science is not only a question of cognition and theoretical aspects (see Brante 1980); what is equally important to science is the structure of the group, which collectively holds a paradigm (Kuhn 1970, pp. 176–181). A paradigm presupposes an integrated community of practitioners that shares a consistent body of belief such that a consensus emerges with regard to the phenomena one investigates, the methods one uses, and so on (Eckberg and Hill 1979, p. 928). Science is not composed of a specific type of cognitive framework alone, but is also related to psychological and sociological factors. Thus, according to Kuhn, science can be characterised as systematised and institutionalised cognitive systems. It can also be characterised as structured and institutionalised social relationships—that it is something practiced in certain institutions in society, representing the sociological dimension. Finally, science can be regarded as connected to structured and institutionalised subjects; in other words, not everyone can claim to be a scientist, only those who are accepted as scientists by belonging to certain institutions (Brante 1980, pp. 24–31).

These different dimensions alternately play a dominant role during the different stages of development within science, as mentioned above. Thus, the theoretical part dominates the normal science stage, the psychological dominates when new perspectives are developed in the pre-paradigmatic phase, and the sociological/institutional dimension dominates in the multi-paradigmatic stage, when different paradigms compete to be the one and only "truth". In these phases, metaphors and conceptions play an important rhetorical role in the development of social sciences, see more below.

As mentioned above, the theories about paradigms have been developed in relation to the natural sciences. Since nature can be regarded as fairly stable, the development of science is related to cognitive progress in understanding the way physical and biological systems are functioning. Many have tried to relate paradigm theories to sociology and social sciences.[3] Martin has argued that there is a difference between the natural and social sciences in relation to paradigms (Martin 1972, p. 54). Whereas Kuhn's natural science paradigms relate to segments of disciplines, paradigms in sociology seem to be discipline-wide or even, as in the case of historical materialism, behaviorism or action theory. While sociology lacks a clear-cut puzzle-solving tradition (Eckberg and Hill 1979, p. 925), still more important seems to be the difference in the role of science in relation to nature, compared to society. While science in relation to nature has mostly been about accumulating knowledge to help mankind exploit nature for production, science in relation to society is more a question of mirroring society. Natural science works ex ante—developing knowledge in order to make it possible for mankind to use nature. Social science, on the other hand, works ex post—trying to understand and relate to changes in society.

Paradigms in the natural sciences develop due to innovations within science, such as when Newton developed the theory of gravity after

having heard an apple hit the ground while he sat contemplating, or when Einstein invented the general relativity theory to explain certain planetary motions that Newton's theory on classical mechanics could not. The basics of what is called classical mechanics goes back to the research efforts of the early modern period, performed by, among others, Galileo Galilei, Johannes Kepler and Isaac Newton. This part of classical mechanics had been the basis for engineering and construction techniques. While the motions of the planets have not changed over the course of humankind, natural science has over time developed more precise theories for understanding these motions. In social science paradigms, societies develop continuously; they are never the same. There are specific motions for specific types of societies, and there are motions that have to be understood in terms of transitions from one type of society to another.

The shift from an agricultural society to an industrial society is one such example. Here we face a societal shift that affects the conditions for science in such a radical way that we can talk about a paradigmatic shift with consequences for all social sciences. This fundamental paradigmatic change on a societal level is captured by several social scientists using law as an indicator for describing the development of society. One of the first representatives of this school of thought was the legal historian Henry Maine, who described the evolution from status to contract (Maine 1861, 1959). The main representatives of this scientific approach include Émile Durkheim and his study, *De La Division du Travail Social* (Durkheim 1933), in which Durkheim uses the transition from criminal to civil law over time as an indicator of a society transitioning from what he calls mechanical to organic solidarity. Even Max Weber's analysis of various types of authority in which the legal authority represents a modern society can be mentioned in this context (see Gerth and Wright Mills 1991).

According to this understanding of social science paradigms, one can talk about paradigmatic changes in society as a whole, which are reflected in the conditions of the daily lives of people and in the scientific interpretation of society in different respects. Changes in society are the driving force for the paradigmatic changes of social science. Since paradigmatic changes follow a certain logic (as described above), we can count on a time lag before society and science move in lockstep. This affects not only science in a narrow sense but the understanding of society as a whole—what is regarded as right or wrong, true or false, good or bad, etc. As a consequence, we can expect that what is regarded as normal behaviour or "deviant" behaviour will undergo shifts over time. Even though many old principles of what is right and wrong in relation to human behaviour in Western societies today have their roots in canonical law and Christianity, paradigmatic changes in society create new conditions that alter opinions of what is good or bad. The same applies for principles of economic activity—new techniques may give rise to new circumstances, which make the old "rules of the game" outmoded and eventually obsolete, as in the historical case mentioned at the outset of this chapter. History is full of examples of people who, in these situations, have been punished for being forerunners and, thereby, norm-breakers.

In the following parts of the chapter, we will argue that we find ourselves at just such a critical stage in history—a point where society is undergoing dramatic changes without the benefit of having science and present-day mentalities catch up with, and articulate, these new conditions. This is not meant as a critique, since we know that these necessary mental adjustments take time, and that the time lag depends on broad societal acceptance before the new reality can take root and develop in ordinary peoples' minds. We will just attempt to create awareness about these processes and, thereby, a level of humility in relation to what is happening in the digital world.

Metaphors and Conceptions

If mentalities describe core structures of beliefs or assumptions, they can be investigated in the context of the conceptions or "mental grids" they are constructed of, while looking for the symbols and metaphors that represent and reproduce them (Burke 1986, see Allwood 1986, p. 132-136). This can be complemented by Lakoff and Johnson's (1980) research on metaphors and metaphorical concepts. They strengthened the idea that human thought processes are mainly metaphorical—that the "human conceptual system is metaphorically structured and defined." (They equalled "metaphor" with "metaphorical concept.") (Lakoff and Johnson 2003, p. 6). Their work inspired various disciplines to develop in this direction. There are many ways to study metaphors and several schools to follow (see for instance Cameron and Low 1999, pp. 29-30). The purpose of this chapter is however not to in detail outline how to study metaphors but to connect metaphors and conceptions to mentalities and paradigm shifts. The presentation leans on the mentioned Lakoff and Johnson rather than other schools of metaphorical research, although an important distinction is here made between metaphors and conceptions.

The choice of what metaphors are used, Lakoff and Johnson argue, are sometimes connected to power (2003, p. 159 f). By this, they point out the changeability of language as depending on those who have the ability to control it. To state this is to state that a picture used in language to describe a phenomenon not necessarily is the most "true" way to describe it, that there are alternatives, and these alternatives can be limiting and controlling the conceptualisation of a phenomena in different ways. It can hence be "imposed" on us in our need to conceptualise a phenomenon, consciously or unconsciously, and to be able to control this process is to exercise power.

The conceptual system is not something that we normally are aware of. This is also the reason for our search for metaphors connected to law, in order to draw out the conceptions hiding behind them, in order to scrutinize parts of the principal foundation copyright law and its connected debates originates from (see Larsson 2009; Larsson and Hydén 2008). Metaphors carry with them a heritage of the context they are derived from. They are not always easily translated from one context to another without some kind of distortion. Metaphors controls the way people think, and describe the way in which we understand life, our world and our place in it (Morgan 1999). The problem, however, is that metaphors can be both informative and deceptive. They can be borrowed from a context where they function well, only to be used in another context where they deceive and distort. The metaphors reveal the conceptions behind them, the mental structures that form, for instance, debates on legal solutions and shapes. By looking at the linguistic labels (the metaphors) one can determine how phenomena are conceptualised in a given context. We look for metaphors in order to display "conceptions" rather than "concepts". The difference between "conception" and "concept" is here similar to how Eberhard Herrmanns exemplify the difference (2008):

"Our conceptions of gold, for instance, are the different understandings we get when we hear the word 'gold' whereas the concept of gold consists in the scientific determination of what gold is" (Herrmann 2008, p. 63. Emphasis added).

It is the understanding or perception of phenomena, rather than some type of definition of object, that we focus our attention to when it comes to conceptions. It is the thought structure on the one hand and its label or metaphor on the other, although it has to be said that this distinction occasionally is neither easy nor meaningful to make.

To be more specific and simultaneously focus in on the subject of copyright legislation, one can use the Jessica Litman's "sleight of hand" example (2006, pp. 77–88). Litman argues for a "metaphorical" progression (which could be described as a change of underlying conceptions here) behind American copyright legislation dur-

ing the twentieth century: from the initially less expansive conception of what rights authors and creators should have, to a more reciprocal, quid pro quo model between creators and the public, where dangers from "over-protection ranged from modest to trivial" (2006, p. 79). In the 1970s, copyright law began to be perceived as a construct that was full of holes and a threat to the interests of copyright owners. Litman argues that the bargaining "conception" has gradually been replaced in favour of a model drawn from a economic analysis of law, which characterises copyright as a system of incentives. She further argues that the success of this model lies in its simplicity, as it posits a direct relationship between the extent of copyright protection and the amount of authorship produced and distributed: "any increase in the scope or subject matter or duration of copyright will cause an increase in authorship; any reduction will cause a reduction" (2006, p. 80).

"When you conceptualize the law as a balance between copyright owners and the public, you set up a particular dichotomy—some would argue, a false dichotomy—that constrains the choices you are likely to make. If copyright law is a bargain between authors and the public, then we might ask what the public is getting from the bargain. If copyright is about a balance between owner's control of the exploitation of their works and the robust health of the public domain, one might ask whether the system strikes the appropriate balance." (Litman 2006, p. 79).

The point here is that depending on how copyright is conceptualised, the debates, the arguments and the regulatory efforts will be constrained within the logic walls of the leading conception. When the leading conception of copyright changed from a balance of mutual interest between creators and the public to a system focused mainly on the rights of creators, the remedy to this (newfound) lack of control would be more enforcement, more protection and more criminalisation of actions regarding unlawful distribution of content. This contemporary repressive legal trend (see Larsson, in press) rests upon this leading conception of copyright.

In short, the conceptions behind, for instance, law and metaphors create the building blocks for mentalities and paradigms. These "belief systems" could be looked upon as bundles of "schemata" or mental "grids" (or *grilles* as Foucault called them) that generally support one another, but can sometimes be in contradiction. Burke supports the idea of studying metaphors in terms of outlining the mentalities within a society or culture: "the notions of 'schema' and system may themselves be clarified if we look more closely at language, and especially metaphor and symbol" (Burke 1986, p 447). This is especially the case in terms of outlining the dissimilarities: "…if we are trying to describe the differences between mentalities, it seems a good idea to look at recurrent metaphors, especially those which seem to structure thought" (Burke 1986, p. 447, see also Allwood 1986). The fact that important metaphors are "in battle" and different imperative conceptualisations of reality seek to gain advantage over the other can be interpreted as signs of a bigger paradigmatic struggle or societal shift.

THE STRUCTURES OF SOCIETAL DEVELOPMENT

Societies can be said to develop over time, in waves or in a cyclical manner (Hydén 2002; Ewerman and Hydén 1997). They follow the cycle any system follows: society is born, it grows up, matures, and after a time it dies and begins a process of decay. One society emerges as a reaction to the existing society, meaning that when a society has reached its peak, a new society is already under development.

We have no way of knowing what will constitute society in the future. We can, however, use the

cyclical model of societal development to predict what form society may have. Societal development shows one common feature over time. Before explaining this, we will say something about the driving forces behind development. From a long-term perspective we live in a market epoch. The fundamental conceptions and metaphors of our time are, to a large extent, formed by the mentalities belonging to the logic of a market. In the wording of the Annales school, the market represents *la longue durée* or, using Immanuel Wallerstein and the World system theory, a civilisation. In the market epoch, technology has been the prime driver of change. However, not all technological innovation has had an effect on a societal level; instead, a "core" technology is necessary for driving change, such as the steam engine at the beginning of the eighteenth century, which was used to develop new engines that could, in turn, lay the foundation for further technological advancements. The same applies to the computer today, which also represents a core technological change. A significant factor in relation to a core technology is that it is potent enough to stimulate the fantasy and imagination of people, such that their application of the new technology promotes the development of new modes of fulfilling existing human needs.

These factors also influence legal trends and developments. The development of law "follows" the cyclical development of society. We know, for example, that the feudal system in rural areas, the guild system in towns and cities (with its statutes and regulations of who was entitled to obtain a certificate as master craftsman and carry on craftsmanship), and the mercantile system with its strong regulation of trade, were deregulated during the eighteenth century and gradually replaced by a policy of non-restrictive practices and free trade policies. In the nineteenth century, new kinds of regulatory principles emerged. The *Code Napoleon* in France and *Burgerliches Gesetzbuch* in Germany heavily influenced the regulation of the market economy regarding property, contract and economic security rights. The public law system grew significantly during the twentieth century, particularly during the First and Second World Wars, when a great amount of public administrative laws were introduced. Finally, a new type of legislation flourished when we reached the peak of industrial society: the intervening regulation. During this time, from about 1970 to the present day, society has been covered by an enormous legal superstructure—just as when the handicraft and agricultural society was at its peak at the beginning of the eighteenth century.[4] Therefore, a process of deregulation is not only expected; to a large extent it has already taken place.

The first phase of the new information society faces a period of self-regulation and competing, pluralistic efforts to set the standards for the new society. The characteristics of the shift from the old (industrial) society to the new (information) society are always related to a change from large-scale to small-scale. It is a question of going back to basics (or perhaps forward to basics), namely fulfilling old human needs in a new way with new technology. With this shift we have what we can call a society in transition, which affects all of the societal dimensions mentioned above. Technology makes it possible to produce goods and services in a much more efficient way. Social conditions will change, with growing social tensions in society followed by greater differences in wealth among different sectors of society. Those who have receive more; those who do not have receive less. This is a nearly inevitable consequence of the clash between the old and new society, which creates winners and losers. For a long period of time, however, hegemonic power continues to be related to the structures and strata that belong to the old society. The existing society (reality) always has the preferential power of interpretation with regard to what is right and what is wrong. Therefore, it is not until the new society has managed to articulate its own societal solutions that one can expect a tendency to shift from the old way of living and fulfilling human

needs to the new one. For a considerable period of time, the emerging society will be without these articulations and will therefore be an unknown phenomenon. This is apparent in contemporary science in their labelling (their metaphors) of present-day Western society as being post-modern or post-industrial—labels that remain focused on technological aspects and not reflecting the transition to the new society. These articulations are what newcomers in the "fractal political" scene are trying to aggregate, such as the French La Quadrature du net, the Swedish Juliagruppen, and thinkers and academics in the blogosphere.

LAW IN A SOCIETY OF TRANSITION

The Swedish Case

Sweden is an interesting case since it has a developed information technology (IT) infrastructure and a high degree of Internet usage. This is tied to the political vision of Sweden as a "leading IT nation", particularly as an "information society for everyone" (Prop 1999/2000:86, p. 1; Larsson 2008, p. 30f). This is significant for Swedish IT politics in general (Sundqvist 2001; Prop 1999/2000:86, p. 130; Larsson 2005, p. 39). Of a selected group of countries in which Internet usage is high, Sweden ranks among the highest, with 80 per cent of the population online. The file-sharing of copyright-protected material is, naturally, connected to the systematic conditions of a society: its infrastructure, degree of Internet access, and usage.

File-sharing and copyright has been a widely debated issue in Swedish politics for years. In 2008, the Centre Party, the third-largest party in Swedish Parliament at that time, suggested a thorough revision of the Copyright Act. Several of the youth segments of Sweden's political parties support free file-sharing for private use, as does the Left Party, one of the smaller parties in Parliament. Also in 2008, The Pirate Bay—claimed by Wired magazine as "the world's most notorious BitTorrent tracking site"—received global attention when the four individuals behind the company were prosecuted in Stockholm (Wired Blog Network 1 February 2008)[5].

The issue of file-sharing and media content was addressed at a hearing in Swedish Parliament in April 2008. The setting itself can be questioned from the perspective of a society in transition: only legal representatives were allowed to present their cases and no advocates of file-sharing were invited to the hearing. Although the point of the hearing was to discuss the issues and how they should be handled, with no one representing the file-sharing community, it was an unbalanced approach that undermines any attempt to understand the dilemmas of modern copyright.

On 17 April 2009, four men were sentenced to one-year prison terms and fined €2.84 million (SEK30 million) for assisting in the violation of copyright law through The Pirate Bay website. Three of these men had started a so-called BitTorrent tracker site in 2003 that, over the following years, grew into one of the most used and likely the most famous file-sharing site in the world. The Minister for Culture expressed support for the conviction, which she was reported to the Constitutional Committee for (Konstitutionsutskottet, which scrutinises the government and its ministers). The Pirate Bay case has been appealed by both sides. The date for the trial is not set, but has been postponed once; it is likely to start in summer 2010.

The Pirate Bay case, along with other unpopular legal reforms regarding surveillance laws and an EU-initiated expansion of the enforcement of copyright, has most likely fuelled interest in launching a Pirate Party focused on Internet-related issues. In the June 2009 national vote, the Pirate Party won two seats in the European Parliament. The legal reforms of interest here highlight the conflicts of interest that are at play in Sweden today, reflecting a society in transition.

Svensson and Larsson's 2009 study, in which 1,000 respondents between 15 and 25 years of age expressed very little negative social pressure with regard to illegal file-sharing, showed that this social norm barely exists. Moreover, the extreme popularity of the Pirate Bay BitTorrent tracker site shows that there is something dysfunctional with copyright law in the digital domain. The response to this dysfunction so far has been an expansion of efforts to monitor and enforce existing copyright laws in the EU, mainly through the INFOSOC and IPRED directives.

In 2008, a law was passed in Sweden regarding surveillance and signals intelligence. The law and, more importantly, the debate around the law, marked a key point: it is during this debate that Internet-related outbursts from politicians and the media became a critical force in the legislative process in Sweden. Bloggers and loosely-knit networks of intellectuals, "citizen journalists", academics, programmers and others joined forces, under the common theme of privacy and integrity, to voice their opinions against the law. The expression "blog quake" was used to describe the events. The law was called the "FRA law", after the authority responsible for carrying out the surveillance task, Försvarets Radioanstalt. This authority was previously only allowed to focus its surveillance activities on radio traffic, but this was expanded to include Internet traffic at "cooperation points" (Internet service providers). The law came into force on 1 December 2009 (see Kullenberg 2009, Ds 2005:30, and Prop. 2006/07:63).[6] The exceptionally stormy debate over increased government surveillance and signals intelligence is a good example of the blogosphere and Internet activists becoming an important entity with regard to knowledge-gathering and democratic journalism, as well as establishing a political voice on issues such as free communication, privacy and file-sharing. The "FRA law" seems to have had triggered an outburst of widespread discontent regarding how the politics around the Internet had been run. It also seems to have triggered a new type of political organisation and online activism that is here to stay. Protestors have highlighted the problems that this type of mass surveillance can bring (see Kullenberg 2009, p. 39).

This can be seen in the subsequent legislative processes regarding Internet and copyright enforcement (IPRED, see below) and the European internal market (Telecommunications Reform Package), as well as, to some extent, the directive on data retention that has yet to be implemented in Sweden.

The Telecommunications Reform Package and Copyright Amendments

The European Telecommunications Reform Package was heavily debated during 2009. Although it was presented to the European Parliament on 13 November 2007, the first vote on the legislation only occurred on 6 May 2009. The Reform Package is a cluster of directives (COM (2007) 697)[7] that is significantly focused on the role of Internet service providers. One battle over the legislation has revolved around whether or not it should be possible to regulate the ability of ISPs to disconnect Internet users based on suspected copyright violations before they are proven guilty in court. This was recently debated in France in the context of its HADOPI law.[8] Indeed, it was the French representatives in the European Parliament that sought to withdraw Amendment 138, which would ensure that a court trial preceded any potential disconnection. Another issue raised was whether ISPs should be able to determine which web pages users were allowed to visit. The battle within this debate was focused on the strength of the clauses to be included in the Reforms Package regarding the protection of individuals' rights.

Directive 2001/29/EC of the European Parliament and the European Council of 22 May 2001 regarding the harmonisation of certain aspects of copyright and related rights in an information society (the INFOSOC directive) included narrow exemptions to the exclusive rights of the rights

holder as well as protection for "technological measures", often referred to as Digital Rights Management, or DRM (Article 6). The effect of this directive was that more actions were criminalised, and that copyright regulations around Europe were generally expanded and became stronger. The directive has been criticised for focusing on the aggregators' rights rather than those of the creators (Hugenholtz 2000). Indeed, the INFOSOC directive caused some debate in Sweden, but nothing like the 2008 and onwards debate on the FRA law. Moreover, the implementation of the directive was somewhat delayed. The changes in the Swedish Copyright Act came into force on 1 July 2005 (SFS 2005:360; SOU 2003:35; Prop 2004/05:110; Larsson 2005, p. 28–29).

When the IPR Enforcement Directive (IPRED)[9] was approved by the European Parliament (9 March 2004), it caused a stir among civic organisations in the United States and Europe.[10] The directive deals with the enforcement of intellectual property and industrial rights, and its most debated aspect was the fact that the directive gives copyright holders the right (via a court decision) to retrieve the identity information behind an IP address once they have "presented reasonably available evidence sufficient to support its claims" (Article 6.1). The "competent judicial authorities" could then order the provision of such information. The implementation of IPRED in Sweden meant that most of the provisions in the IPRED directive were implemented by 1 April 2009. Its implementation was intensely debated in Sweden in 2008, and especially throughout 2009—particularly on the rights that copyright owners' representatives (such as the International Federation of the Phonographic Industry (IFPI) and Svenska Antipiratpyrån, an association of producers and distributors of film and video in Sweden) have to apply to the courts for the release of identity information from ISPs. This has even led to an increase in the use of online anonymity services (see Larsson and Svensson, in press), ISPs stating that they discard the information that IPRED targets as soon as possible, and even initiatives within online communities to create new, encrypted file-sharing services.[11]

METAPHORS REVEALING CONCEPTIONS

The European legal trend builds on conceptions that have worked well in the industrialised and "analogue" paradigm, but less well in an Internet-connected societal paradigm. The debate and the protests show how these conceptions and metaphors are being challenged by attempts to replace them with other metaphors that better relate to conceptions of the new context of a digitised society. The rhetorical power of the old metaphors gains by having the preferential power of interpretation as mentioned above, what we also can call the "darling conceptions" of our time (see Larsson 2009; Larsson and Hydén 2008).

The Swedish Copyright Act, as likely most copyright acts, is a complex set of rules that is a patchwork of amendments from an early draft. It is not all these technicalities of the actual law that people argue and debate or think of when they think of copyright, but rather a few principles or conceptions that they mean the law should be based upon or not. These conceptions are often expressed through, or labelled by, various metaphors that do not exactly describe what they are used for, but to a lesser or higher degree are functional for the phenomena they are intended to represent. Some of these conceptions and metaphors can be found *in law* or preparatory works (an important legal source in Sweden), some can be found *outside law*, in arguments and debates aiming at the legal conceptions, or *in between*, for instance in the extensive interpretation of the process of the court case against the men behind the Pirate Bay. This section aims to discuss a number of these conceptions and related metaphors.

The arguments that support copyright and its enforcement often build on the conception, that

characterises copyright as a system of incentives, as Litman has showed (2006). The argument then leads to the fact that if copyright fails in its enforcement, there will be no incentives for new cultural expressions to be born. Since much of the debate and legislative efforts centre around copyright in a digitised society, we will put forward here a few examples of metaphors that are problematic—some of them embedded in law, others that are a part of the debate around it.

The Swedish Copyright Act divides the rights of the creator into two parts: the economic right and the non-profit (or ideal) right. The economic right itself has two parts, namely the right to produce copies of the work, and the right to make it publicly accessible. Economic right is limited in some ways, however. One example, which is of interest in the context of moving from an analogue to a digital era, is the right to produce a few copies for private use, as expressed in Section 12 of the Copyright Act, which outlines the right to "produce one or a few samples of public work" for private use.

The Exemption for "Private Use" in Copyright Law

The exemption for "private use" builds on the concept that there is a viable dichotomy between private and public use. Generally, in Swedish legal tradition, the private sphere has been left unregulated. Copyright legislation has followed this logic, as demonstrated in Section 12 of the Copyright Act. With the digitisation, and organisation of networks, this private-public dichotomy has become a regulated conception that functions increasingly less well as a regulatory method (at least in the field of copyright). Behavioural and societal norms change in accordance with how the conditions in society change. User-generated application emerges, many industries transition from producer lead to consumer lead, and copyright is unavoidably affected by the introduction and distribution of information technology in society. This development takes place in contrast to the basic economic principles and thereby has to struggle against the long term mentalities of the market economy

"One or a Few Samples" and "Copy"

The word "copy" elicits the act of replicating an original, which can be described as an action better situated in an analogue setting. The idea that each copy is valuable and should be protected comes from the idea that copying involves a cost. The Swedish term for copyright is more tied to "the originator's right" (Upphovsrätt) and is non-specific with regard to its content, more than it is some type of right of the individual who has created something. Traditionally, the reproduction of copyrighted content was not an every-day act. Now, when you can't do anything online without reproducing copyrighted content, the conception that the exact numbers of copies should be controlled and protected is less well adopted to the modern conditions of society (see Lessig 2008, p. 269, compare Yar 2008, p. 611). What conception you argue for here likely depend on what mentality you base your arguments upon. "A few samples" is problematic in a digitised context from two perspectives: it makes little difference from a production cost perspective if you create three or three thousand copies, and "private use" is not private in the same sense as it used to be.

"Theft"

When the idea of property rights are established in an analogue reality and then transferred to a digital one, certain problems will occur. An obvious one, which reflects the two sides of the debate over the handling of media content, is the "copyism" of Internet communications on the one hand and "theft" on the other. From a traditional perspective, the illegal file-sharing of copyrighted content has been called theft. The metaphor is problematic in the sense that a key element of stealing is that the

individual who has been robbed physically loses the stolen object; this of course is not the case with file-sharing, since files are copied. The Swedish Penal Code expresses this as: "A person who unlawfully takes what belongs to another with intent to acquire it, shall, if the appropriation involves loss, be sentenced for theft to imprisonment for at most two years" (Penal Code, Chapter 8, Section 1, translation in Ds 1999:36). More specifically, the problem in arguing that file-sharing is theft lies in the phrase "if the appropriation involves loss". There is no loss when content gets copied, and the loss is radically different from losing a physical product, such as a bicycle. The loss in this case is cast as the individual likely losing a *potential buyer* of the product. The "theft" argument, therefore, is an example of how one idea or conception tied to a traditional analogue context is transferred to a newer, digital context and creates problems in the transfer. Ultimately, something is simply "lost in translation" (See Larsson 2009 p. 38, Yar 2008, p. 612-613).

"Piracy"

"Piracy" is problematic in a similar sense. Even though file-sharing advocates have adopted this term and have used the Jolly Roger symbol as a logo to identify their resistance, genuine acts of piracy such as hijacking ships under violent and cruel circumstances have nothing in common with the act of copying media content and sharing it freely. A problem with a metaphor like this is that, as Lakoff and Johnson write, "the acceptance of the metaphor forces us to focus only on those aspects of our experience that it highlights, leads us to view the entailments of the metaphor as being true" (Lakoff and Johnson 1980, p. 157). This means that whatever negative value originates from the original use of a concept can remain inextricably linked to the concept and contaminate the new actions that the concept is now used to describe metaphorically. The use of the word "piracy" to describe file-sharing is a way of describing a complex new activity from the perspective of the traditional paradigm, while adding a characterisation to make it sound ruthless and "bad".

As such, this term will be functional and meaningful for the brief period of time when file-sharing represents something rebellious or otherwise deviant from a widespread and accepted value system (including one supported by laws). By the time the flows of Internet is the defining paradigm, file-sharing is not likely to be seen as rebellious or deviant, and therefore will not fit well with the "piracy" metaphor.

ISPs as Customs Officers or Caretakers of "Mere Conduits"?

The leading principle in the EU on the liability of Internet service providers has been that of "mere conduit" (Article 12, Directive on Electronic Commerce).[12] Critics believe that legal proposals such as the Telecommunications Reform Package attempt to make the ISPs liable for the data that is being run though their systems—thereby creating a monitored Internet (see Horten 2008). The debate draws on different metaphors such as the postal system and the mailman, revealing the different conceptualisations of what it is an ISP does and, hence, what an ISP should have liability for.

The abovementioned cluster of legislation seeking to harmonise national laws on copyright within the European Union are all part of a trend of increasing control over the flow of information on the Internet. More data is being generated and retained in order to support copyright owners in their fight against illegal file-sharing of protected content. At the same time, the copyright holders' representatives have been given easier access to identification data via regulation that hands greater responsibility to Internet service providers for content that is being trafficked through their infrastructure. This is one of the reasons why the debate around net neutrality has increased.[13] Europe, with France in the forefront, has shown

tendencies of further increasing ISPs' regulatory responsibilities (Larsson 2010, in press).

PARADIGM SHIFTS AND THE LEGITIMACY OF LAW

Problems of Transition

To borrow from the abovementioned work of Lakoff and Johnson on metaphors, but in the wider context of this chapter: metaphors are unavoidably attached to discourse, and although they may have a very specific meaning in the discourse this meaning can change, and their use can be altered. This implies that metaphors can represent conceptions, that can be tied to an arranging order—an administrative pattern—which in and of itself stems from the analogue context of media distribution (for instance). These conceptions are likely to stand in the way when the administration is in need of change due to an evolving context. In short, digitisation has changed the context for media distribution, and the conceptions behind some parts of the way copyright is regulated today are standing in the way of the necessary changes to copyright legislation.

Many of the conceptions and metaphors scrutinised above regards the boundaries and ways of thinking about property in the digitised milieu. It is around these that a type of battle is being fought, a battle of who is to "impose" metaphors and conceptions on others, whose conceptions will lead and take precedence over the others'. This has much in common with the "rhetoric" in educational actions made by copyright interest organisations targeting children in school between eight and thirteen years that has been studied by Majid Yar (2008). Yar has looked at the ways in which

"...the boundaries of criminal and deviant behaviour are rhetorically redefined. It suggested that current attempts to moralize intellectual property rights and criminalize their violation make recourse to a range of repertoires of justification that attempt to naturalize a capitalistic conception of private property" (Yar 2008, p 619).

What about this "conception of private property", when it is translated to a digitised environment? Many individuals practicing illegal filesharing do not believe that what they are doing is morally wrong or an illegal infringement on someone else's property rights. The natural and spontaneous feeling of ownership is related to the "use value" of a specific thing, not its "exchange value" on the market. Intellectual property rights are an abstract construction which, in part, has no reference to the moral world of ordinary people. It is motivated by market reasons, introduced from above, and forced upon the relevant actors. When the capitalistic economy—based on the concept of exchange value—emerged in the nineteenth century, modern society attempted to find solutions in the transition from the old to the new society, where use value and exchange value could co-exist (Christensen 1994). But when the exchange value of the product eventually took over as the dominant paradigm, the legal and regulatory framework lost its legitimacy. The new practices were guided norms other than those the laws were built on; in these situations, the law will lose, especially if the norms have "history as a tailwind". Legal regulation has to be supported by existing norms in society. While these norms can sometimes be changed by law, the law must be an expression of a desirable state in society. Otherwise, the regulation will be too costly to implement and uphold, and will be unstable over time.

Cognitive Jurisprudence and the Predicaments of Digitised Property

Information technology changes the context of regulation vis-à-vis the concept of property. The Austrian sociologist of law and one-time federal chancellor of the Austrian empire, Karl Renner

(1870–1950), has described how the legal context of property has been the same since the time of Roman law, despite the fact that the socio-economic consequences have changed significantly since then (Renner 1949). This legal context remained unchanged by staying connected to different complementary legal instruments, related to the contract and credit systems, and the concepts of the legal person and state regulation. From the perspective of information technology, property as a legal institution has become complicated in relation to the question of how property is transferred from one owner to another. In the classical legal understanding, this is constituted by the Latin word *tradera*, which means that the thing or a representation of it on paper is literally handed over to the new owner. In a situation where an increasing amount of transactions and changes in ownership take place in an electronic form, the antiquated notion of *tradera* no longer fits. This becomes even more apparent when more and more goods take the form of software. The challenge here is whether intellectual property rights will be developed in a way that aligns with the new regulatory requirements or if the legal concept of property has reached the end of its useful life in this context.

Within the emerging discipline of cognitive jurisprudence (which builds on cognitive neuroscience), Oliver Goodenough and Gregory Decker have asked the question: Why do good people steal intellectual property (Goodenough and Decker 2006)? The authors built on the findings created by the link between the physiology of our nervous systems and how we think and translate thought into action (Goodenough and Decker 2006, p. 2). The idea is that our decision-making is formed by a combination of the genetic organisation of our brain and the influence of our physical, social and cultural environments—which all come together to inform memories and habits, and develop capacities such as conscious thought, logic and the ability to create and shape external institutions such as the law (Goodenough and Decker 2006). Emotion is also a key component in an effective legal regime (Maroney 2006). Property rules need to be powerfully rooted in our emotional reactions in order to make us recognise and respect property. It is also connected to some primitive cognitive reactions in the human brain: the brain has a structure that helps humans assign the characteristics of property to those things that we recognise as possessions. Furthermore, there appears to be a deep emotional component to our property rules, since they apply to our physical possessions. Intellectual property law, by contrast, faces more serious challenges in promoting voluntary compliance. The problem is thus not doctrinal, but emotional (Goodenough and Decker 2006, p. 13). Instead of emotions, the parts of the brain that assign property rights to creative expression and invention are activated. A different set of pathways may have evolved to reward creativity—pathways related to respect and prestige on the one hand and to keeping secrets on the other. The authors provide the following conclusion:

"The act of spreading intellectual works sends a deeply understood message to the recipients that runs counter to the concept of property. It is a message that demands respect but not money. In this context, file-sharing makes perfect sense and is not a crime; in fact, what better way to show respect for the creator than to pass the subject matter of the acclaim on to others?" (Goodenough and Decker 2006, pp. 16-17).

If these hypotheses are correct, there is no use of "more of the same, only harder", as reflected in the abovementioned description of legal developments in the field (Goodenough and Decker 2006, p. 18). This will not produce noticeably better results in terms of compliance. As such, it seems as though the new practices produced by technological developments will be regarded as normal and legitimate, albeit illegal. The concept of deviance pre-supposes the existence of a yardstick that identifies what is "normal". When

illegal behaviour becomes normal it may not be regarded as deviant any longer; this is the lesson of history. The present historical situation indicates that we have reason to expect something similar to happen in relation to the sharing of files, as well as in other aspects of information technology law.

The Challenge of Transition

Copyright regulation is based on ownership and the reproduction of copies. Globally, it is solidly anchored at national, intergovernmental as well as supranational (EU) levels, has been broadened in terms of scope and criminalisation (INFOSOC), and has been strengthened in terms of enforcement (IPRED)—all as a legal response to regulations that did not function in the online milieu. It appears as though the legal construct that was developed in an analogue context is unable to incorporate or align with how the Internet is structured and with the conceptions possible in a digitised society. There is something completely different about ownership in the digital domain that does not work well in an environment where the phenomenon of making digital copies is not nearly as significant as making analogue copies.

Sweden has had the policies of an IT-savvy nation for almost two decades. The aim of these policies has been to develop infrastructure, and that information technology is good for "regional balance", for companies and job opportunities, for industry, and for the education system. Thus, on the one hand, there is and has been a strong political will to develop Sweden as a widely-connected IT nation, where the Internet is present in every home, and where everyone should be able to take part in, create and contribute to the web. On the other hand, traditional regulations and protectionist thinking is working to limit such behaviour and use of Internet. The development thinking of an industrial society has led to an infrastructure that has supported the development of norms that challenge the logic of industrial society, particularly bound to analogue reproduction and distribution of media content. This is the paradox that is being played out right now. The phenomenon is typical for a society in transition and well known from similar historical examples of societies changing from one organisational logic to another.

Some mental references belong to the passing paradigm, as do power and what can be called stakeholder interest, even within the sciences. This creates a time lag or mental delay before the new principles and norms become accepted and "mainstream". In the meantime, we have to live with contradictions, increasing social tension and economic inadequacies. Some people, being forerunners and norm-breakers, might suffer and be punished for their beliefs.

Since law is a reflection of society, legal science must understand how society changes, lest there be too strong a risk that the legal order becomes an institution that uses its powers to support the parties that act and are coming from the traditional order in society. Law will then play the role of an institution that distorts societal development to fit some interests before others, merely based on its paradigmatic kinship. The risk lies in the fact that the legal order can become a tool of power in a struggle between the paradigms, supporting one mentality before the other, and based only on which was introduced earliest. It is a task for the social sciences to question a given societal order and the "truths" that it rests upon. Law is never value neutral, something we as scientists has to reveal. The conceptions embedded in law may hinder a more fruitful transition to the new means of distribution and production, and distort the more genuine ways of stimulating creativity and cultural development, making the owners of media content that was created (or at least protected) in the latter half of the twentieth century the biggest beneficiaries. It is also social scientists' duty to help construct adequate concepts, labels, metaphors and tools for creating the new society. It is our task to look beyond the partly informational and partly deceptive metaphors of this construct. Digitisation challenges some of

the preferred conceptions of our time. It is a time of conflict, and its outcome will shape creativity, and life, to come.

AUTHORS NOTES

The chapter touches on four central themes: Societal change and how to look at it; (copyright) laws' place in the transition; thought structures and their representations in law and debate; and Sweden as a case for the above. Many of the references in the chapter provide excellent further reading in relation to these central themes. In addition to those, here follow a few suggestions on additional reading.

For a grand take on societal change connected to information technology the modern classic trilogy of Manuel Castells' is worth looking into. *The Information Age: Economy, society and culture* is a grand synthesis managing to incorporate and tie together the reconstructions of identity, social movements, globalization, the decline of the national states, and the global criminal economy, with the transformation of work and employment the information technology revolution. See for instance the term *resistance identity*, as an identity produced by those actors who are in a position/condition of being excluded by the logic of domination, and *project identity* as a term for proactive movements that aim at transforming society as a whole, rather than merely establishing the conditions for their own survival in opposition to the dominant actors. (1997, pp. 10-12).

When it comes to a critical assessment of copyright in days of digitisation, the American law professor Lawrence Lessig is one of the leading authors. Lessig is known through a number of books on the nature of the Internet, its condition-changing force for the legal regulations, which quite naturally also regards copyright. He has extensively studied the interplay between legal regulations and Internet and its code, for instance in *Code and other laws of cyberspace* (1999), which he updated in *Code version 2.0*, (2006). Lessig has had a strong focus on culture and creativity, and what legal foundation that best would serves its preservation in a digitised world, and he drew attention to the potential harms of overregulation in *Free culture: how big media uses technology and the law to lock down culture and control creativity* (2004). He developed this critique to also include suggesting the possibilities of a hybrid economy, in *Remix: making art and commerce thrive in the hybrid economy* (2008). On the background of copyright, as it has developed in the twentieth century, see Said Vaidhyanathans *Copyrights and copywrongs: The rise of intellectual property and how it threatens creativity* (2001). Vaidhyanathan paints a bleak picture of the future and contemporary imbalance on how copyright functions as a regulative force in relation to creativity.

In a Swedish perspective, Johan Söderberg's *Allt mitt är ditt. Fildelning, upphovsrätt och försörjning* can be mentioned ("All mine is yours. File-sharing, copyright and making a living", author's translation), dealing with the historical and philosophical contexts of copyright in relation to the contemporary debate on file sharing and culture in Sweden. A case study that could be mentioned regards the recent economic development of the Swedish music industry, and was made at the Royal Institute of Technology in Sweden during 2009 by Johansson and Larsson (2009). Castells, M. (1996/2000). *The Information Age: Economy, society and culture, vol. 1: The rise of the network society*. 2nd edition, Blackwell Publishing. Castells, M. (1997/2004). *The Information Age: Economy, society and culture, vol. 2*: *The power of identity*. 2nd edition, Blackwell Publishing Castells, M. (1998/2000). *The Information Age: Economy, society and culture, vol. 3* (1998): *End of the millennium*. 2nd edition, Blackwell Publishing.

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KEY TERMS AND DEFINITIONS

Paradigm Shift: A label used to describe scientific progress in terms of "revolutions", developed by T S Kuhn. Here expanded to describe also societal transition in connection to "mentalities".

Mentality: Set of unspoken or unconscious assumptions, a structure of beliefs consistent within a culture or civilisation over a longer period of time.

Metaphor: A figure of speech in which a word or phrase that ordinarily designates one thing is used to designate another, and a fundamental part of the human conceptual system of thought and communication. Here used, together with "conception", as parts of the building blocks or mental grids that construct mentalities.

Conception: A thought structure, understanding, perception or logic.

ENDNOTES

1. The mentality concept fills an important function in terms of attention to the role that historic structures play in contemporary conflicts.
2. Among works exemplifying the *long durée,* Fernand Braudel remarked on Alphonse Dupront's study (Dupront, *Le Mythe de Croisade: essai de sociologie religieuse*,

1959, reprinted without the subtitle in 1997) of the long-standing idea in Western Europe of a crusade, which extended across diverse European societies far beyond the last days of the actual crusades, and among spheres of thought with a long life.

[3] For a discussion, see Christopher G.A. Bryant (1975), and for an overview see Douglas Lee Eckberg and Lester Hill, Jr. (1979). For readers in Swedish, Thomas Brante (1980) provides an extensive elaboration of the issue.

[4] The Portuguese sociologist of law, Boaventura de Sousa Santos, has used the metaphor of an overloaded camel being burdened by the load of laws (Santos 1995).

[5] The Wall Street Journal published an article about Pirate Bay at the same time (Wall Street Journal, 11 January 2008).

[6] Lag (2008:717) om signalspaning i försvarsunderrättelseverksamhet. Proposition 2006/07:63 En anpassad försvarsunderrättelseverksamhet. Ds 2005:30 En anpassad försvarsunderrättelseverksamhet. Betänkande 2009/10:FÖU3 Signalspaning.

[7] Proposal for a Directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services; 2002/19/EC on access to, and interconnection of, electronic communications networks and services; and 2002/20/EC on the authorisation of electronic communications networks and services.

[8] HADOPI is the abbreviation for a French law officially titled *Loi favorisant la diffusion et la protection de la création sur Internet* or "law favouring the diffusion and protection of creation on the Internet", regulating and controlling the usage of the Internet in order to enforce the compliance to the copyright law. The abbreviation is taken from the acronym for the government agency created by the law.

[9] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the Enforcement of Intellectual Property.

[10] S M Kirkegaard, "Taking a sledgehammer to crack the nut: The EU Enforcement Directive" (2005) *Computer Law & Security Report*, Vol 21, Issue 6, at page 489.

[11] What in Sweden is called Prop. 2008/09:67 Civilrättsliga sanktioner på immaterialrättens område - genomförande av direktiv 2004/48/EG.

[12] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on Electronic Commerce")

[13] For a discussion on "net neutrality", see C.T. Marsden, "Net Neutrality and Consumer Access to Content" (2007) SCRIPTed, Vol. 4, Issue 4, 407–435.