



## The ultimate villains



**CRIMINAL PROSECUTION OF THOSE WHO USE FILE-SHARING SERVICES CAN BECOME A REALITY. Law enforcement officers searched more than 20 'active users' of a popular torrent tracker Interfilm.ru. The searches were a part of a criminal investigation against the creators of the web-site.**

In spring 2009 the Russian Anti-Piracy Organization (RAPO represents the interests of Universal, Paramount, Sony, Warner Bros., 20th Century Fox) accused the owners of the site of violation of copyright and complained to the Ministry of Internal Affairs.

According to the police Interfilm.ru had distributed dozens of movies without the consent of the right holders. Counterfeit copies were bought in other countries where the films had been released earlier than in Russia. The site owners then added an amateur translation and 'sent the movies to the masses'.

The technology of the torrent tracker is such that while downloading a file users also make it available to others. Any of them therefore can be prosecuted for distribution of pirated products.

At the moment the authorities are considering the prosecution of the most active users, those who had 'a significant number of counterfeit copies of films' in their computers .

This could become a precedent for Russia where so far only those who place the counterfeit content on the Internet have been held responsible, not those who downloaded it.

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text: E. Istomina

picture: [Cybrain \(http://en.fotolia.com/id/23828056\)](http://en.fotolia.com/id/23828056) - Fotolia.com



### PROSECUTION OF ACTIVE USERS IS POSSIBLE

TEXT: [Anton Malginov, partner, Muranov, Chernyakov & Partners \(anton-malginov-muranov-chernyakov-partners\)](#)

From a technical point of view torrent services are interactive sites that allow users to exchange files via the Internet in real time. Essentially these are programs that accumulate data about users and the files they store in their computers and allow users to download such files from each other. Each file is cut in tiny parts that can be downloaded from different users (even if that user does not have the whole file, but only some parts of it).

In practice, torrents are often used to download audio-visual works for free and without the consent of the rightful holders. There are several articles in the Criminal Code which depending on the downloaded content, can be applied to users of a torrent service.

Firstly, there is art. 273 of the Criminal Code ('creation, use and distribution of malicious computer programs'). There are cases when programs such as 'cracks' or 'keygens' were considered as malicious.

Secondly, there is art. 242 of the Criminal Code (illegal distribution of pornographic materials). This article can be applied to those who distribute pornographic movies via torrent services. .

Although it is well known that torrent services are generally used for downloading movies, music and other content, according to art. 146(2) of the Criminal Code 'unlawful use of copyright or related rights, as well as acquisition, storage, transportation of counterfeit copies of works or phonograms for sale committed on a large scale' is a criminal offence.

In this article a special subject is not specified and therefore anyone who either posts or downloads content without proper authorization can be prosecuted. However the number of downloaded files per se does not allow criminal charges to be raised against the 'most active users of file-sharing services'.  
**Prosecution of active users is possible, but proving facts can be problematic**

The condition of criminal liability is not the amount of downloaded information but primarily the intention to sell which must also be committed on a large (very large) scale (the cost of copies of movies or phonograms, or the cost of rights to use copyright and related rights must be more than 50,000 roubles or \$1,600 (very large size – 250,000 roubles or \$8,200)).

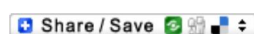
According to the Supreme Court such acts are deemed completed 'from the commission of the acts in a large (very large) scale regardless the actual harm done to the right-holder' (Resolution of the Plenum of the Supreme Court of April 26, 2007 № 14).

It might appear that the article should be applicable only to those users who are engaged in commercial - not private - use / distribution of downloaded content. However according to the explanations made in the same resolution of the Supreme Court 'distribution of counterfeit copies is their deliberate - whether for consideration or not - in any way (eg by sale, rental, free distribution with promotional purposes, gift, placing works in the Internet).'

There are cases when the courts have considered that the distribution of copies of works in the file-sharing networks, including for purposes of obtaining privileges and bonuses in file-sharing networks (points, rating, etc.) qualified for the purposes of art. 146(2) of the Criminal Code.

From a practical point of view, proving the facts of distribution / download and the 'size' of the offence can be problematic. After all a lot of users can distribute the file in question simultaneously (an individual user can have only some parts of the file and not the file as a whole). Also the group of users can vary from time to time during the distribution process. This complicates the process of proving of the fact of distribution, the number of copies distributed, and their value (though the case is different with Direct Connect networks).

It is unlikely that it will be easy to catch a single user of file-sharing networks who only occasionally uses the services. Yet, prosecution of active users is possible. However, much will depend on how the relevant fact will be established.



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