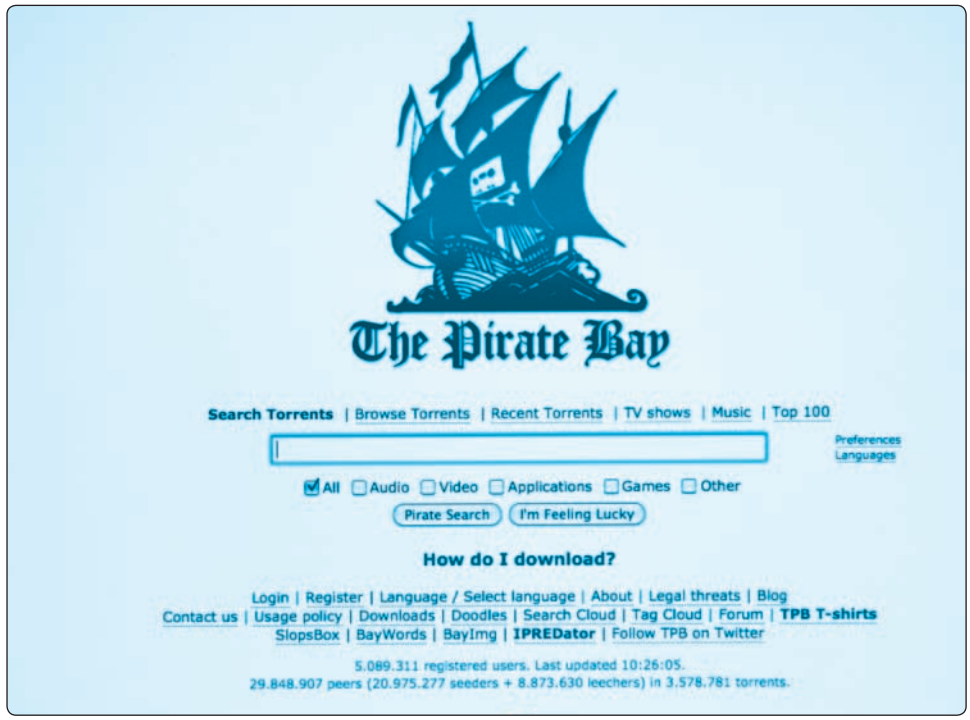
1.4 CASE STUDY

The Pirate Bay:

Searching for a Safe Haven

The Pirate Bay (TPB) is one of the world's most popular pirated music and content sites, offering free access to millions of copyrighted songs and thousands of copyrighted Hollywood movies. It claims it is the world's largest BitTorrent tracker. In June 2013, TPB reported that it had over 6 million registered users. It is in the top 500 Web sites in the world in terms of global traffic, with about 20% of the visitors coming from the United States. It even has a Facebook page and Twitter feed. This despite the fact that TPB has been subjected to repeated legal efforts to shut it down. In fact, the authorities pursuing TPB must feel as if they are engaged in a never-ending game of Whack-a-mole, as each time they "whack" TPB, it somehow manages to reappear. But the battle is far from over. The Internet is becoming a tough place for music and video pirates to make a living in part because of enforcement actions, but more importantly because of new mobile and wireless technologies that enable high-quality content to be streamed for just a small fee.

TPB is part of a European social and political movement that opposes copyrighted content and demands that music, videos, TV shows, and other digital content be free



and unrestricted. TPB does not operate a database of copyrighted content. Neither does it operate a network of computers owned by "members" who store the content, nor does it create, own, or distribute software (like BitTorrent and most other so-called P2P networks) that permit such networks to exist in the first place. Instead, TPB simply provides a search engine that responds to user queries for music tracks, or specific movie titles, and generates a list of search results that include P2P networks around the world where the titles can be found. By clicking on a selected link, users gain access to the copyrighted content, but only after downloading software and other files from that P2P network.

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

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

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

TPB has appealed the court judgment, has paid no fine, and its founders have, as yet, never spent a night in jail. TPB continues to operate much as before. Well, almost. In 2011, the firm moved its servers into caves in Sweden, and dispersed multiple

SOURCES: "The Pirate Bay Moves to .SX as Prosecutor Files Motion to Seize Domains," Torrentfreak.com, April 30, 2013; thepiratebay.sx, accessed May 25, 2013; alexa.com/siteinfo/thepiratebay.sx, May 25, 2013; "Pirate Bay Founder Submits Emotional Plea for Pardon," by Ernesto, TorrentFreak, July 7, 2012; "The Pirate Bay Evades ISP Blockade with IPv6, Can Do It 18 Quintillion More Times," by Sebastian Anthony, Extremetech.com, June 8, 2012; "World's Biggest Ad Agency Keelhauls 2,000 Pirate Sites," by Natalie Apostolu, *The Register*, June 14, 2011; "Internet Piracy and How to Stop It," *New York Times*, June 8, 2011; "The Pirate Bay: Five Years After the Raid," by Ernesto, Torrentfreak.com, May 31, 2011; "Why Google Would Defend Pirate Bay?," by Parmy Olson, *Forbes*, May 19, 2011; "The Protect IP Act: COICA Redux," by Abigail Phillips, Electronic Frontier Foundation, May 12, 2011; "Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property (Protect IP Act) of 2011," United States Senate, 112th Congress, 1st Session, 2011; "Pirate Bay Keeps Sinking: Another Law Suit Coming," by Stan Schroeder, mashable.com, June 22, 2010; "Idea Man of LimeWire at a Crossroads," by Joseph Plambeck, *New York Times*, May 23, 2010; "Pirate Bay Sunk by Hollywood Injunction For Now," by Charles Arthur, *The Guardian*, May 17, 2010; "British Put Teeth in Anti-Piracy Proposal," by Eric Pfanner, *New York Times*, March 14, 2010.

copies of its program to other countries just in case Swedish police tried to confiscate its servers again. Since then, like the fight against the original Caribbean pirates of the seventeenth century, global forces continue to marshal against TPB. Not the British Navy this time, but a loose coalition of a number of European countries and the United States. The firm has been hounded by lawsuits, police raids, and confiscation of servers in France, Finland, Italy, Germany, Denmark, Ireland, the U.K., and Greece. These countries have in some cases refused to allow Internet service providers in their countries to host TPB, or link to TPB, no matter where in the world its servers are located, although TPB has in some cases been able to circumvent this by frequently changing its IP address. In 2013, authorities shut down TPB's top-level domains in Sweden, Greenland, and Iceland. For the time being at least, it has found a safe haven in the the Caribbean island Saint Maarten, a fitting location for a latter-day pirate organization.

TPB has caused England, France, Malaysia, Finland, and most recently the United States to consider strong intellectual property protection laws that will prevent domestic search engines and ISPs from linking to infringing sites, or resolving their domain names. Meanwhile, the world's largest advertising agency, GroupM, keelhauled TPB and 2,000 other sites worldwide in 2011 by putting the sites on its blacklist of copyright infringing sites where it will not buy advertising space. Pirating intellectual property is, above all, about the money, as any good pirate knows.

The TPB case is just the latest in a saga of court cases involving the record industry, which wants to preserve its dominance of copyrighted music, and Internet users who want free music. In 2005, after several years of heated court battles, the case of *Metro-Goldwyn-Mayer Studios v. Grokster, et al.* finally reached the U.S. Supreme Court. In June 2005, the Court handed down its unanimous decision: Internet file-sharing services such as Grokster, StreamCast, BitTorrent, and Kazaa could be held liable for copyright infringement because they intentionally sought to induce, enable, and encourage users to share music that was owned by record companies. Indeed, it was their business model: steal the music, gather a huge audience, and monetize the audience by advertising or through subscription fees. Since the court ruling, Kazaa, Morpheus, Grokster, BearShare, iMesh, and many others have either gone out of business or settled with the record firms and converted themselves into legal file-sharing sites by entering into relationships with music industry firms. In May 2010, Mark Gorton, founder of the largest U.S. pirate site, LimeWire, lost a copyright infringement case. In May 2011, admitting his guilt ("I was wrong"), and having facilitated the mass piracy of billions of songs over a 10-year period, Gorton and his file-sharing company agreed to compensate the four largest record labels by paying them $105 million.

These legal victories, and stronger government enforcement of copyright laws, have not proven to be the magic bullet that miraculously solves all the problems facing the music industry. The music industry has had to drastically change its business model and decisively move towards digital distribution platforms. They have made striking progress, and, for the first time, in 2011 sales of music in a purely digital format accounted for more revenue than sales of music in a physical format. To do so, the music industry employed a number of different business models and online delivery

platforms, including Apple's iTunes pay-per-download model, subscription models, streaming models and now music in the cloud.

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

Case Study Questions

1. Why did TPB believe it was not violating copyright laws? What did the Swedish court rule?
2. How has TPB managed to continue operating despite being found in violation of copyright laws?
3. How has the music industry reacted to the problems created by pirates like TPB?

1.5 REVIEW

KEY CONCEPTS

■ **Define e-commerce and describe how it differs from e-business.**

- E-commerce involves digitally enabled commercial transactions between and among organizations and individuals. Digitally enabled transactions include all those mediated by digital technology, meaning, for the most part, transactions that occur over the Internet, the Web, and/or via mobile apps. Commercial transactions involve the exchange of value (e.g., money) across organizational or individual boundaries in return for products or services.
- E-business refers primarily to the digital enabling of transactions and processes within a firm, involving information systems under the control of the firm. For the most part, e-business does not involve commercial transactions across organizational boundaries where value is exchanged.

■ **Identify and describe the unique features of e-commerce technology and discuss their business significance.**

There are eight features of e-commerce technology that are unique to this medium:

- *Ubiquity*—available just about everywhere, at all times, making it possible to shop from your desktop, at home, at work, or even from your car.

- *Global reach*—permits commercial transactions to cross cultural and national boundaries far more conveniently and cost-effectively than is true in traditional commerce.
- *Universal standards*—shared by all nations around the world, in contrast to most traditional commerce technologies, which differ from one nation to the next.
- *Richness*—enables an online merchant to deliver marketing messages in a way not possible with traditional commerce technologies.
- *Interactivity*—allows for two-way communication between merchant and consumer and enables the merchant to engage a consumer in ways similar to a face-to-face experience, but on a much more massive, global scale.
- *Information density*—is the total amount and quality of information available to all market participants. The Internet reduces information collection, storage, processing, and communication costs while increasing the currency, accuracy, and timeliness of information.
- *Personalization* and *customization*—the increase in information density allows merchants to target their marketing messages to specific individuals and results in a level of personalization and customization unthinkable with previously existing commerce technologies.
- *Social technology*—provides a many-to-many model of mass communications. Millions of users are able to generate content consumed by millions of other users. The result is the formation of social networks on a wide scale and the aggregation of large audiences on social network platforms.

■ Recognize and describe Web 2.0 applications.

- A set of applications has emerged on the Internet, loosely referred to as Web 2.0. These applications attract huge audiences and represent significant opportunities for e-commerce revenues. Web 2.0 applications such as social networks, photo- and video-sharing sites, and blog platforms support very high levels of interactivity compared to other traditional media.

■ Describe the major types of e-commerce.

There are five major types of e-commerce:

- *B2C e-commerce* involves businesses selling to consumers and is the type of e-commerce that most consumers are likely to encounter.
- *B2B e-commerce* involves businesses selling to other businesses and is the largest form of e-commerce.
- *C2C e-commerce* is a means for consumers to sell to each other. In C2C e-commerce, the consumer prepares the product for market, places the product for auction or sale, and relies on the market maker to provide catalog, search engine, and transaction clearing capabilities so that products can be easily displayed, discovered, and paid for.
- *Social e-commerce* is e-commerce that is enabled by social networks and online social relationships.
- *M-commerce* involves the use of wireless digital devices to enable online transactions.
- *Local e-commerce* is a form of e-commerce that is focused on engaging the consumer based on his or her current geographic location.