MALMÖ UNIVERSITY
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WHAT DOES AN ELDERLY WOMAN HAVE IN COMMON WITH A MULTI-NATIONAL, MULTI-BILLION-DOLLAR COMPANY?

- A QUALITATIVE STUDY ON VICTIMHOOD, INTELLECTUAL PROPERTY AND PIRACY

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Piracy in intellectual property has grown extensively by the entrance of new media and communication channels. The aim of the present study is to examine if the companies are treated by the same normative standards as regular individuals when they are exposed to a crime. Christie's theory of the ideal victim has been used in order to analyze legal the company as a victim cases concerning piracy in Sweden between 2005 and 2011. The findings have, in many respects, reformulated how victimhood itself is constituted; the individual who is the ideal victim is not weak and defenseless but a person who enjoys a high social status and influence. The companies in the study are consequently treated as objective agents and their status as victims is not questioned by the courts.

Keywords: criminology, hermeneutics, legal norms, philosophy of law, piracy, semiotics, victimology.

VAD HAR EN ÄLDRE DAM GEMENSAMT MED ETT MULTINATIONELLT, MULTIMILJARD-DOLLOARS FÖRETAG?

– EN KVALITATIV STUDIE I OFFERSKAP, IMMATERIALRÄTT OCH FILDELNING.

Mika Andersson

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Fildelning av upphovsrättsskyddad egendom har ökat i stor utsträckning efter inträdet av ny media och nya kommunikationskanaler. Målet med denna studie är att undersöka om företag behandlas enligt samma normativa standard som vanliga individer när de utsätts för ett brott. Christies teori om det ideala offret används för att analysera brottsmål rörande fildelning i Sverige mellan 2005 och 2011. Resultatet har, i flera bemärkelser, omformulerat hur offerskapet i sig konstitueras; den individ som är det ideala offret är inte svag och försvarslös utan en person med hög social status och inflytande. Företagen i studien behandlas således som objektiva agenter och deras status som offer ifrågasätts inte av domstolarna.

Nyckelord: fildelning, hermeneutik, juridiska normsystem, kriminologi, rättsfilosofi, semiotik, viktimologi.

Table of contents

Chapter 1 – Background

1.1 Chapter Outline

This introductory chapter contains an overview of the major themes dealt with in this thesis. I will begin with an introduction to the subject covering the concept of the physical and legal person. This section is followed by a brief presentation of Christie's theory of the *ideal victim*; a theory that is central for this thesis. The chapter is ended with a general presentation of the field piracy.

1.2 Legal and Physical Persons

In this thesis, I will use Christie's theory of the ideal victim in order to analyse the relationship between the legal and the physical person in legal cases regarding piracy. In the present section I will give a brief introduction to the terminology, the problem and the central theoretical ideas that I will be working with.

A *legal person* refers to a non-living entity having the status of personhood by law (Hemström, 2009). Such an entity could be a foundation, a company, an association or even a state to mention a few. In this thesis I will discuss legal persons who are companies. Further, these companies are active in the specific market field of entertainment media: they are all producers and distributors of films, music and/or tv-shows (B 1333-05; B 624-06; B 13301-06; B 1230-09; B 4041-09; B 10414-11; B 6669-11; B 2323-11; B 2569-09). Having the status of personhood according to law is what makes it possible for companies to enter legal agreements, thus they have both legal rights and obligations (Hemström, 2009). These products of music/tv-shows/movies/games fall under the legal category of *intellectual property*. Having the ownership of a product that is legally defined as intellectual property, such as a song, equals having the right to control its distribution (Lag (1960:729) om upphovsrätt till litterära och konstnärliga verk). Thus, having the legal status of personhood is what gives these companies the distributional rights over these products (Hemström, 2009). The legal cases in my analysis are cases in which this right is infringed through various acts of piracy or file-sharing. At this point, I wish to clarify the relationship that I will be investigating. Hence, this is a field where the individual, who is legally defined as a *physical person*, engage in a criminal act against a company, legally defined as a *legal person*.

In this sense, these kinds of criminal acts contradict the edifice of the vast majority of criminological theories, as most theories are developed to apply to the relationship between individuals and crimes against a person. A prominent theory that deals with the relationship between offender and victim is Nils Christie's theory about the *ideal victim* (1986), and the aim of this thesis is to test the applicability of this theory to the relationship between the legal and the physical person. Christie does not refer to an actual person in his theory, nor does he aim to explain the type of individual who is most frequently exposed to crime, rather, his theory concerns a category of individuals who are given victim status if they are exposed to a crime. The theory of the ideal victim should consequently be

understood as a theory concerning itself with an idea of what constitute a victim. Christie claims that the victim must have at least five attributes: first of all, the victim should be weak, ideally old or very young, secondly, the victim should be carrying out a respectable project, thirdly, the victim should be located at a place he/she could not possibly be blamed for being at, the offender was big and bad, and lastly, the offender was an unknown person for the victim (Christie, 1986). By belonging to these attributes that determine whether or not a person is given *" [...] the complete and legitimate status of being a victim* (Christie, 1986: 19). A comprehensive presentation of this theory is given in the chapter two.

1.3 Digital Piracy

Any act that violates the monopoly of distributional rights listed in the Swedish law on intellectual property will be referred to as piracy in this thesis. The distributional rights state that the right-holder to a certain production holds the sole right to transfer the product to the public, and the crimes under piracy therefore refers to events in which individuals have infringed on this specific right as defined in 1 Chapter § 2 and 5 Chapter § 45 in the Swedish law on intellectual property (Lag (1960:729 om upphovsrätt till litterära och konstnärliga verk).

Most often, the channel for distributing these products will be an online peer-to-peer network. A peer-to-peer system allows its users to share and download data from one another and in my cases the offenders used hubs or the BitTorrent-technique (B 1333-05; B 624-06; B 13301-06; B 4041-09; B 10414-11; B 6669-11; B 2323-11; B 2569-09). The different techniques for piracy will be explained in detail in the chapter on method and material.

Piracy is manifested differently on a global and on a local scale and I am going to begin with presenting the most significant statistical correlates on a global level. Prosperi et al (2005) found in a study that the prevalence of piracy is strongly correlated with a number of factors associated primarily with political and social systems. Factors that correlated positively with piracy were authoritarianism, collectivist culture, corruption and the proportion of the population between ages 15 and 29 years. Factor that was negatively associated with piracy was the level of education and gross domestic product. These results are not very surprising as we know that piracy correlate with age, collectivist culture place emphasis on property as public rather than private and corruption suggests that even though there may be laws forbidding piracy but that these may not be enforced. The level of education and gross domestic product are strong variables for measuring the financial state of a country, and having low indices of both of these indicate a population that does not have the possibility to consume a lot of goods (Prosperi et al, 2005).

Leeper Piquero and Piquero collected data on the levels of piracy in 82 countries between the years 1995-2000. They also gathered independent variables to create indices on the structure of the market, the level of democracy and level of corruption. These variables were assessed in a trajectory analysis along with the frequency and the authors found that countries with a high gross domestic production and high levels of democracy had the lowest levels of piracy. However, they also found that the level of piracy was decreasing during this period for all the studied countries (Leeper Piquero, Piquero, 2006).

Studies made at state-level in western societies have tested the applicability of criminological theory, identified risk-factors and risk-groups, and established some possible behavioural mechanisms that affect the tendency to download illegally. I will present a summary of the results of a few studies below.

Sameer (2006) tested the applicability of general strain theory, control theory and social learning theory on music piracy. He found correlates between levels of piracy and social learning and control theory, however the strongest correlation manifested in relation to social learning. Social learning as a theory holds that crime is learned through an *exposure of definitions* favourable to the violation of law. That is, the meaning of an act is reformulated, from being a crime into being justifiable, through a social process. Differential association holds that the most influential exposure is the social network closest to the individual, often friends and family and Gunter's study (2011) affirmed that the values possessed by the closest circle of friends and family did indeed influence whether individuals shared files illegally or not.

Bachmann (2011) studied the effect of deterrence on piracy rates during a campaign held by the Recording Industry Association of America (RIAA). The campaign was twofold; the companies partly used the media coverage from several trials they held at the time during which the defendants was sentenced to pay very large sums in reparation for damages to the companies. At the same time, they launched the possibility for individuals to sign an act in which they assured that they would never share files again. This act would then make it impossible for companies to charge the individuals for the crimes they had committed, and it was referred to as *"the Clean Slate Program"* (Bachman, 2011: 158). Bachman (2011) found that the number of users on peer-to-peer networks continued to increase during the period, but that it did affect the prevalence on which individuals shared the products targeted by the campaign. However, the effect was only temporal, confirming that deterrence needs to be "visible" in some way in order to affect the offender.

Neutralization is also a theory that has been tested in relation to piracy (Sameer, 2007; Marcum et al, 2011). The theory holds that individuals justify actions they normally perceive as being wrong by using seven techniques of neutralization in order to avoid an internal moral conflict. These are denial of responsibility, denial of injury, denial of victim, condemnation of the condemners and appeal to higher loyalties. Other techniques of justification that are also associated with neutralization are the metaphor of the ledger (claiming that good deeds measure up bad ones as to remove responsibility for the act), claim of normality, denial of negative intent and claim of relative acceptability. Sameer (2007) could not find a strong correlation between piracy and neutralization, while Marcum et al (2011) found that neutralization was important for initiating file sharing.

In a report from Statistics Sweden (2011) on internet habits, demographic variables was cross-referenced these with whether the individual had been sharing files. The most significant demographic variables were age and occupation; 50% of the individuals between 16-24 years and 49% of the individuals who were students shared files. Age is a variable that reduces the likeliness of sharing files very dramatically from age 45 and up, but the prevalence of piracy is high for individuals below that age: 45% of the individuals between 25-34 and 27% of the individuals between 35-44 shared files. The sex of the individuals also influences

the likeliness to share files; men are overrepresented in all categories (Statistiska Centralbyrån, 2011: 206).

In a study by Higgins (2011), it was found that self-control and rational choice influence the tendency towards piracy and thereby offered some guidance towards understanding the decision-making processes behind piracy. Further, Brett (2010) identifies a preventive strategy that clearly influence the levels of piracy; presenting consumers with an online alternative to piracy. He evaluated a concept developed by Steve Jobs, namely that companies made broadcasts of television-shows available for legal downloads through an online payment in the same moment they were broadcast on television. Jobs interpreted piracy as a consumer-demand and believed that it was possible to compete with it by offering a similar and affordable service. Brett (2011) found that the strategy managed to reduce the amounts of downloaded torrents from those specific TV-shows that were made available online.

As the field of cybercriminology has grown, researchers have found that this particular type of criminality creates new theoretical demands. As a consequence, Jaishankar (2011) presented Space Transition Theory, a theory that offers an explanatory model for how virtual environments affect behaviour and its interaction with physical space and physical actions.

To my knowledge, Space Transition Theory has only been tested once in a study made in Ghana, in which the correlation between online crime and the causal links proposed by the theory was studied. They found that individuals were less concerned about their social status and therefore took more risks in virtual environments and that the risk-taking behaviour was accumulated by the anonymity the offenders enjoyed online. It was also found that criminal actions such as sexual violence against children were exported from the internet to the physical world. Further, the authors found that individuals were not likely to organize in order to commit crimes nor that there was a higher prevalence of online criminal behaviour in authoritarian states as held by the theory (Danquah, Longe, 2011). However, the authors made three questionable decisions regarding their method; (1) they only had three interview subjects in their sample and (2) these were asked direct questions on each item of the theory (this means that the sample was very small, and that it was the subjects´ *own interpretation of how they were affected* by virtual environments that was measured) and (3) the data on the levels of online criminality for different states consisted of the prevalence reported internet offences, a measurement that very rarely offer an adequate picture of the actual level of crime.

Chapter 2 – Research Question

2.1 Chapter Outline

This very short chapter provides the reader with a presentation of the aim and research question of the thesis. I also present a brief background of the necessity of asking this particular question and what an answer may contribute with.

2.2 Aim and Research Question

I aim to examine if Christie's (1986) theory about the ideal victim is applicable on legal cases where the parties are a physical person and a legal person.

Victimology, and Christie's (1986) theory, is classically dealing with a relationship between two human beings and the question raised by this thesis is *if the legal person is measured with the same normative standard as a physical victim.* As observed by the studies mentioned in the previous chapter, internet-based criminality place new demands on criminological theory and crime prevention, but this observation also applies on the justice system.

I believe that this type of situation challenges the fundamental conception of what it means to be a victim or an offender, at least it appears to have done so in the eyes of the public: the large proportion of individuals who share files online speak for itself. I also believe that if there are common factors that are necessary for achieving the status of being a victim, these should, theoretically, be present in these cases as well, whether the victim is human or non-human. In toto; these cases challenge the concept of what it means to be a victim and therefore they offer a unique opportunity to test the applicability of the theory.

Chapter 3 – Method and Material

3.1 Chapter Outline

I will begin this chapter by presenting my choice of method and how I have been using it in the selection, collection and analysis of the data. This section is followed by ethical considerations that have been made, primarily regarding the anonymity of the subjects of my analysis. After this, I present the characteristics of the data case by case and end with an overview of the more general patterns. The chapter is concluded by an epilogue where I problematize the information that is given during the course of the chapter; this is done in order to give the reader a wider framework for understanding piracy and intellectual property.

3.2 Method

This thesis is qualitative; Christie's theory is understood and analyzed from a linguistic perspective and then used as a framework to assess the data through a qualitative content-analysis. It is worth noting that I am using grounded theory in this thesis. Grounded theory is popular in qualitative research and presupposes that theory is built upon empirical results as a part of the research project. This method thereby allows the theoretical framework to develop along with the gathering of data (Bryman, 2002). However, as I am conducting a theory-test, I remain focused on one theory and its compatibility with the data, rather than aspiring to formulate a new theoretical framework to explain the results.

My point of entrance is from a postmodern tradition, I hold that the method through which we choose to understand the world participates in the construction of "reality" by determining *how* we perceive it (Bryman, 2002). Consequently, it becomes necessary to understand the operational room of the theory as it determines what can be known. By entering from a postmodern perspective, I actively integrate limitations and critique of the theory in the analysis.

Qualitative method is a diverse field, but Bryman (2002) have listed six stages that are generally present and I have used these as a model during the study of my data. Stages one to five are presented below as these are the procedures associated with gathering and analyzing the data while the sixth stage is about writing the article/paper/report that the study was intended to result in.

The first stage is to determine general research questions and my first task was to understand Christie's theory on a deeper level. This proved to be a difficult task as Christie's theoretical works consist of very complex statements that are developed by examples and stories and he does not enter a metaphysical room to describe the underlying processes that work within the theory. I hold that these metaphysical processes are crucial for understanding the theory and in order to understand these I have used a semiotic and hermeneutic approach. For the reader who is unfamiliar with qualitative research; semiotics is the study of the meaning of signs, while hermeneutics emphasize the context in which meaning is created (Bryman, 2002). I have chosen these as they are two perspectives that enrich one another and these concepts will be explained in detail in Chapter 3. Primarily, I

use the basic theories in Derrida´s (1997) “Of Grammatology” as these are theoretical frameworks that explain the operational processes Christie writes about. I will also use theories of other authors in order to enrich the analysis, mainly Foucault, Karmen and Lindgren.

It is only after such an analysis that the essential ideas and claims of the theory are made visible. Through this process, I was able to pin-point very precise questions and themes to look for in the data, which lead us to the second stage in Bryman´s (2002) review of the qualitative method; choosing relevant data.

Christie’s theory holds that a person who is exposed to a crime will be treated differently if they show belonging to five attributes or not (1986:18-19). He claims that if an individual does not achieve this status then this person will likely not be treated as if he/she is a victim; he/she will either be considered to have participated in the crime or the event will not be interpreted as crime. Christie´s critique is primarily directed towards governmental institutions that meet and interact with victims and offenders (Christie, 1986). This puts at least two demands on the data: it has to contain a narrative that evaluates crimes from the perspective of an official authority and these narratives also need to have an outcome that is real for the victim and the offender. Since my question concern itself with how legal persons achieve the status of being victims, especially regarding piracy, this pose yet another demand on the data.

As a result, I chose to analyze juridical decisions in cases concerning piracy as these documents fulfill all of the demands that are posed above. They include a narrative evaluation of criminal cases in which legal persons are victims from the perspective of governmental institutions that has a direct effect on the victim and the offender.

These goals could also have been fulfilled through studying police reports concerning piracy but due to the limited time and scope of this thesis, I considered the judgings to be more realistic and adequate. Further, this material also lead up to the criteria-set described by Scott; authenticity, credibility, representativity and meaningfulness (Bryman, 2002).

The third procedure that Bryman (2002) presents is the collection of data. I began by contacting all District Courts in Sweden, by phone or by email, requesting that a search was performed in their digital databases on cases concerning intellectual property and online piracy. Some of the courts were unable to make these narrow searches in their databases as most searches are made through the individual case-number, not on the type of crime. These courts sent me lists of cases under the category “other criminal cases” that then contained a few thousand cases per year. The lists of cases regularly covered a period of five years back in time, 2006-2011 and I was able to search these files for relevant cases as they contained information on the type of crime and the law relevant to each case. Some courts held digital archives that extended longer than five years, thus, one of the cases is from 2005.

The search in the District Courts took place in January 2012 and generated 11 cases, of which 8 was relevant for the study. I contacted the Court of Appeal in February and received one more case that was included in the study. There are five cases tried in 2011, two cases from 2010, one case each for the years 2009, 2006 and 2005. One of the cases concerned four defendants and the trial was held

at two different occasions, once in 2010 and once in 2011. This was due to that one of the defendants was not present during the first trial and the case could not be tried in his absence. A summary of each case is presented in Chapter 3.

A certain limitation in the scope of the data material needs to be noted. In my cases, the defendants have either made copyright-protected material available to the public directly by sharing files from their computer, or they have contributed to such crimes by administrating webpages or hubs used for such purposes. Other types of acts that are included under piracy are not represented in the study. One example of piracy that is not represented is individuals who function as suppliers; individuals who leak files from the company. Another example is individuals who engage in "stripping" or "cracking" files, meaning that they remove the copy-protection from the product in order to make a digital copy (Urbas, 2007).

Data processing as well as the intelligible and theoretical work which are Brymans (2002) 4th and 5th stages are woven together and presented in Chapter 4. By presenting the analysis of the theory and the data along with one another, I hope to provide the reader with useful examples of how the theory manifests in the data.

3.3 Ethical Considerations

I have chosen to refrain from using any names of victims or defendants. The purpose of such a restriction is partly that none of the victims or defendants should have their names placed in a thesis that primarily does not concern itself with the individuals per se, but the structures that surround them. A second reason is the differences in availability to the public between the thesis and the cases; even though the cases are official material, the availability is slightly different. The thesis will be published in the database of Malmö University and available to the public by only a few clicks on a computer screen while the cases that I have used is available only after contact with officials at the individual courts. A second difference is that the digital archives of the courts are screened after five years while the information in the database of Malmö University will continue to be available. There is consequently no theoretical or empirical incentive that could motivate such intrusion in the privacy of the victims or the defendants. Similarly, I have chosen not to name any singular works of music, films or games that are brought up in the cases as these are directly linked to the victims. However, several cases were initiated on the behalf of individual companies by an international organization with over 1 400 different members, and in this slightly different situation I have chosen to use the name of the organization; with such a large number of members, there is no chance of identifying the individual companies with only the organization as the only reference.

Especially one of the cases was given a lot of attention by the media in Sweden, and the case may thereby be recognized even though I do not mention names of victims or offenders. I have chosen to use the case partly because it contained a lot of information and have added significantly to the certainty of the results in the study, and partly because this thesis does not concern itself with sensitive or intimate information about the defendants as individuals, but the structure that they were located within during the trial.

3.4 Data Overview and Descriptives

I will summarize each case chronologically below and finish the section with a description of general patterns and changes over time. Each summary consist of (1) a summary of crime, (2) the response given by the defendant, (3) the evidence presented by the prosecutor and the investigation, (4) how the victim is represented and lastly, (5) the penalty. In many cases the defendants are sentenced to pay fines, and worth noting is that in the Swedish system these consist of two amounts; the first sum indicates the severity of the crime and span from 30 to 150 kr, while the second sum is calculated based upon the income of the individual.

In case B 1333-05, the defendant was charged for having violated the distributional right for a movie by uploading and sharing it on a hub on DC++. The defendant claimed to have seen the movie in question, but not that he had uploaded it on DC++. Partly, he argued that the copyright law does not protect works if these are not in a physical format, and after a confession he changed his story into claiming that he had never downloaded any films nor have he any knowing of what a hub is. The defendant was identified after an IP-tracking on the address of the user on DC++ who shared the movie. The victim does not have a representative voice apart from the prosecutor and the person who informs the court on the IP-tracking system and legitimacy of it. The defendant is sentenced to pay a fine on 80 x 200 kr.

In case B 624-06 the defendant was charged for having distributed four songs on DC++. The defendant stated that he was not aware that is was illegal to share files, and admitted to have been doing this occasionally, but not at the time and date when the evidence was gathered. In the witness statement, he says that the music came from records that he had bought and that he believed that you could do whatever you want with a product you've bought. The evidence held against the defendant was his confession, the testimony of the investigator, a screenshot, a log over distributed files and an IP-tracking of the distributor. The voice of the victim is held by the prosecutor and the investigator who work for the victims through the International Federation of the Phonographic Industry (IFPI). The investigator works on an assignment of IFPI to protect the interests of his clients and it was according to their instructions that he investigated the particular hub in the case. The defendant is sentenced to pay a fine on 80 x 250 kr.

In case B 13301-06 four defendants was charged with aiding and abetting crime against the law on intellectual property, they stand accused for having administered, organized, systematized, programmed, financed and run a website through which others shared large amounts of protected material without the consent of the right holders. They are tried individually and sentenced for the extent by which they have participated in the website, ergo aiding and abetting to violation against copyright protection. The evidence in the case consist of screenshots of files that was available through the site and the investigators also downloaded copies of these files in order to make sure that the material was equivalent to their own productions. During the investigation several servers and computers used in the management of the website was confiscated and used as evidence. The court also had access to mail-correspondence between the defendants regarding financial, administrative, legal and organizational matters as well as monetary transactions for advertisements for the website. Further, the

defendants confessed several of these acts and their involvement in the website in their testimonies, but they all deny that they were in a position in which they could or should intervene in the crimes. Consequently, the case largely concerns itself with whether the acts of the defendants fall under aiding and abetting to crime against the Swedish law of intellectual property. The victims are represented through the prosecutor, several expert witnesses and individual statements from the right holders. The latter is only used in this particular case and case B 1230-09. The case thereby contains individual narratives from the victims, and the victims hold a strong position in the court. The defendants are sentenced to 1 year in prison and to pay a total of 7 482 310 kr per individual in reparation for damages to the victims. The defendants should also pay the expenses for the trial on behalf of the victims.

In case B 1230-09 the defendant was charged with infringement of the distributional rights of a company regarding two pay-per-view sports games available through the victim´s website. The offender discovered a bug in the system that made it possible to link to the games and view these without paying. The victim who is the distributor of the channel hosting the games asked the offender twice to remove the links from his own webpage before pressing charges. The proof held by the court is the testimony of the defendant and representatives from the company that holds the intellectual rights for the game. It is unclear in the verdict how the website was linked to the defendant apart from the testimony. The victim is represented by the prosecutor, expert witnesses, statements, a lawyer and an attorney. As a result, the victim claims agency in a larger extent compared with the larger part of the cases in which the narrative of the victim is brought forward primarily by the prosecutor and investigator, not by the victim itself. The defendant is sentenced to pay a fine of 70 x 100 kr, reparation for damages to the victim on 11 780 kr, and to pay for the court expenses of the victim.

Case B 4041-09 is case B 13301-06 when tried in the Court of Appeal. One of the offenders is absent from the negotiations and therefore the court ruled that the verdict from the District Court should prevail and gives the offender the possibility to appeal within a certain amount of time if assuming he had valid reasons for being absent. The other three offenders were, like in the first instance, tried individually and sentenced according to the extent in which they have participated in the five counts that they stand charged for. The evidence held against the defendants is the same as when the case was tried in first instance and the question for the Court of Appeal is also whether these acts fall under the category of aiding and abetting to crime against the Swedish law on copyright protection. Similarly, the victims are represented by the prosecutor, their lawyers, expert witnesses, and statements. The sentences are lowered but remain the highest for piracy-related crimes in the cases of my study. The decision of imprisonment from the District Court is lowered to 10 months for person B, 8 months for person C, and 4 months for person D. They shall pay for the trial of some of the victims, and compensate the damages with 15 244 644 kr/person.

In case B 10414-11, an individual was tried for having shared 24 movies through torrents. The defendant was a 16 year old who had been sharing the files through the school´s internet connection using a laptop distributed to him by the school. The IT administration on the school discovered that the student had been using the computer for piracy when he accidently downloaded a virus that spread across the computer network on the school and consequently contacted the police. The case

is thereby unique in the sense that the victim was not the one who pressed charges and the victim is represented by the prosecutor only. The evidence held by the court was the witness statements of the defendant and an expert witness who explained the BitTorrent software, and reports made on the content of the computer of the defendant. The defendant confessed to have downloaded the movies, but claims that he did not know that it was illegal and that he was not aware that he shared the files while downloading them. The court states that the prosecutor had been unable to prove that the offender understood the technology and performed the crime intentionally. However, the court also state that the suspect acted inattentive but that the action, seen in the light of his age, should not be considered grave. Consequently, the case is dismissed and the suspect is freed of all charges.

Case B 6669-11 is the only one in my study in which the defendant confessed the crime. Consequently, he received a conditional sentence to pay a fine on 40 x 50 kr for having made 3000 music files publically available through DC++. The proof held by the court is the witness statements by the defendant and the investigator and a list of the files shared by the defendant. The verdict is extremely short and narratives from the victim as well as the offender are absent. However, in the plaint it is stated that the case was initiated by IFPI and that the victims were represented by the prosecutor and the investigator.

In case B 2323-11, the defendant had been sharing 1 100 music files through DC++ and stand charged with crime against the copyright law. The defendant confessed to having downloaded the files, but claimed that he was not aware that it was illegal. He states that he had heard of the trial against the Pirate Bay, but says that he did not realize that this was the same as what he was doing. The proof held in the case is the witness statements made by the defendant and the investigator, and an IP-tracking linking the defendant to the IP of the individual who shared the files. The victim, IFPI, is represented by the prosecutor and a private investigator working for the victim. The offender is sentenced to pay a fine of 100 x 70 kr.

In case B 2569-09 a person was charged for having administered and running a hub on DC++, and is charged with aiding and abetting to crime against the intellectual property regulation. In being responsible for the hub, he had the possibility to remove material and ban users, but the offender only used this capacity to ban users who misbehaved in the chat and to remove material that contained certain types of pornography. In the witness statement the offender states that he did not share or download any material himself, but only used the chat-function of the hub as a social tool and took care of the administration of the hub. The evidence builds upon the witness statements of the defendant and the investigator and an IP-tracking of the hub from the Internet service provider leading to the defendant. The victim, IFPI, is represented by the prosecutor and according to the plaint there had been a witness statement given by a representative of IFPI, the latter is however not present in the verdict. The offender receives a conditional sentence and a fine of 40 x 170 kr.

3.5 General Patterns and Development over Time

A distinct pattern in the cases is how the defendants were introduced to piracy through a social network in real life. The defendants are given recommendations by friends who may even help them to install the required software to get them started, and recommend sites or hubs with a wide supply of movies/music/games. Such a pattern indicate that individuals are introduced to piracy through processes of social learning, a theory or processes that have been found have a strong correlation with piracy in studies (Sameer, 2006; Gunter, 2011).

It is also worth noting that there is a change concerning what issues of legal applicability that are discussed by the courts. In the first cases of piracy dealt with after the entrance of the new formulation of the copyright law that went into effect in June 2005, there was a strong emphasis on how the law was applicable and whether the kinds of proofs gathered, such as IP-tracking and screenshots were valid. In these early cases, it was common with expert witnesses who were working with these specific techniques. Such discussions are absent in later cases that deal with events in which individuals share material through some form of digital peer-to-peer network. However, it is worth noting that the acts covered by the Swedish copyright law are not homogenous; a wide range of types of acts that fall under the jurisdiction is represented in the cases, but each time a new form occurs, the court again brings in expert witnesses in order to ensure that the act falls within the jurisdiction of the regulation.

Yet another pattern that should be brought up here is that the cases covering aiding and abetting to crime against the copyright protection generally lead to higher penalties compared with the crime itself. This may seem counter-intuitive, but the individuals who are sentenced with aiding and abetting are held responsible for the copyright infringements of a very large proportion of material that a single individual who “only” uses these services for a private interest does not generally add up to.

Similarly, the outcome of the cases has to be seen in relation to what the victim is demanding; in most cases the victims did not demand any reparation for damages, or that the trial should be paid for by the defendant. The court and the victims did not always agree upon how the compensation should be calculated but one fact remains: the victims received compensation in every case where they held a position in which they were strong enough to claim it.

The victim in case 1230-09 present two different ways of calculating the compensation. The first, and the one the victim argue the strongest for, is the equivalent of what a license to broadcast the sports game which amounts to 100 000 kr. The second way to calculate the reparation for damages is by multiplying the number of views of the game with the cost for viewing the game on the webpage of the victim. The court reasoned that the event that has taken place in the crime cannot be compared with a broadcast-license and thus calculate the reparation for damages by multiplying viewers with the cost for viewing one game. The victims were also granted compensation for more general damages caused by piracy itself.

In case 4041-09, the claims for compensation have been calculated differently by different companies, and to make it more complex: the compensation is calculated differently for different product and circumstance. For instance, if the product was

a song that was available online, then the companies calculate the market value a little bit differently, and they claim more compensation if the song was available as a torrent file before its official release, further, games and movies are more expensive then single songs. As the number of downloads does not necessarily correspond with the amount of actual downloads, the court adjust the victims that only multiplied the estimated market value with the number of downloads of their product and gave these a lower compensation than they claimed.

The Court of Appeal also resent giving compensation for general losses of incomes caused by piracy at a larger level, as the defendants cannot be individually responsible for the consequences of piracy as a phenomenon (B 4041-09: 53). As such, the verdict of the Court of Appeal is inconsistent with the District Court in case B 1230-09.

A last issue that needs to be clarified at this point is that the narratives held by the various courts in the verdicts do not necessarily represent the trials in whole. What they do represent is the *narrative and issues that the courts deemed important enough to motivate the outcome of the trial*, that is, they represent the connection between what narratives actually correlate with penalty. Consequently, this material captures the processes that create meaning between representation and penalty that Christie presents in his theory of the ideal victim.

Chapter 4 – Theory

4.1 Chapter Outline

This chapter establishes the theoretical ground needed in order to understand the analysis. I will present Christie's theory about the ideal victim from a science theoretical perspective in order to present the reader with an understanding of the fundamental claims made by the theory. Such perspective makes it possible to understand what theoretical room the theory inhabits, and thereby clarify its operational framework.

Further, I will put Christie's theory in relation to other victimological theoretical frameworks that concern themselves with the meeting between the victim and legal institutions. These are theories concerning themselves with victim-blaming/victim-defending and the concepts of the contributing, passive or implacable victim. Such a comparison will offer a more nuanced understanding of the theoretical field of victimology and Christie´s role in it.

This section is followed by a presentation of Lindgrens (2004) interpretation of Christie's theory in his dissertation concerning the meeting between crime victims and certain governmental actors from the perspective of the victim. The actors that are examined are the police, the prosecutor and the court with a focus on the treatment, availability and information given to the victims.

The chapter is concluded in the epilogue, a section in which I also present some critique against Christie's theory from a theoretical perspective.

4.2 A Brief History of the Field

The role of the victim has been changing over time, and the term crime victim was not introduced in Sweden until the 1970´s. This was partly due to the growth of feminism and recognition of an underlying power-structure in which the victim was in a subordinate position in relation to the offender. At this point, the victim figured in the legal room mainly as object, whose only role was to provide the court with his/hers story (Lindstedt Cronberg, 2011). This passive role given and expected of the victim was heavily criticized for reproducing rather than breaking the power-structure established by the crime. The field of victimology should be understood as a response to a legal system that treated crimes as a conflict between the state and the offender, rather than between the victim and the offender (Tham, 2011). Victimology place emphasis on the needs of the victim and it has contributed in giving victims more agency and resulted in new policies regarding how the police and the prosecutor meet and treat crime victims (Karmen, 2010). In Sweden it also resulted in a new profession; a special counselor for the crime victim whose role is to provide the victim with information about the legal process, support the victim in the legal process and participating in the trial (Lindgren, 2004).

4.3 Ideal Victims and Ideal Offenders

Christies definition of the ideal victim does not aim to capture the category most frequently victimized, rather, he writes that *"By ideal victim, I have instead in mind a person or a category of individuals who – when hit by crime – most readily are given the complete and legitimate status of being a victim"* (Christie, 1986:18). Consequently, the sphere that we enter into when trying to understand Christie's theory is a hermeneutic one, and we can understand the hermeneutic process in Christies theory as working through three stages: it is (1) a theory of an idea of what it means to be a victim that does not necessarily occur in practical reality, but that (2) influence the physical world as we (3) act in the belief that it does.

An example given by Christie on an individual who would come very close to being an ideal victim is an old lady who gets robbed in the middle of the day on her way home from caring for her ill sister as she shows belonging to five attributes that a person need in order to gain the status of being a victim;

1. The victim is weak
2. The victim was carrying out a respectable project
3. The victim was located at a place where he/she could not be blamed for being at
4. The offender was big and bad
5. The offender was an unknown person for the victim

Apart from these attributes, the event taken place need to be categorized as a crime, the victim should resist and he/she needs to be able to claim the status of being a victim. The consequence of not achieving the status of being a victim is that the person exposed to the crime is either blamed for the crime or treated as if the event was not a crime. Examples of such events could be when a prostitute tries to involve the police in a rape-case or a drunken man in a bar who got into an argument and up getting beaten up. Such event are, according to Christie, more unlikely to lead to a conviction if they are tried in court, even though the violence may be as severe as in the case in which the victim fitted into the framework of being an ideal victim (Christie, 1986). Christie explains these processes partly by providing us with the following example:

"The importance of these differences is illustrated in rape cases. The ideal case here is the young virgin on her way home from visiting sick relatives, severely beaten or threatened before she gives in. From this there are light-years in distance to the experienced lady on her way home from a restaurant, not to talk about the prostitute who attempts to activate the police in a rape case." (Christie, 1986:19)

Christie begins his section about the ideal offender by stating *"Ideal victims need – and create – ideal offenders. The two are interdependent."* (Christie, 1986:25), and at this point we need to clarify the meaning of this statement before we go any further. Such a statement, that something needs and creates its opposite, is purely post-structuralist, and I will present some key-features from Derrida´s work "Of Grammatology" in order to make this statement understandable and accessible.

Derrida concerns himself with semiosis; the study of signs. A sign is any object that we define, and throughout the following explanation, I will use the victim as an example of a sign.

The sign holds three properties; (1) it is arbitrary, and by that Derrida means that it is determined by human convention. In relation to the victim this means that *what we conceive to be a victim is determined by a set of conventions without any connection to the physical world outside of itself*. (2) Signs are not only mental; they are exterior or material. This means that the sign, and the victim, has a shape outside the mere idea of there being such a thing. This would be the substantial *writing* of the word "victim" as well as the *pronunciation* of it. (3) Each sign must be repeatable; we can write or speak the words "victim" repeatedly (Derrida, 1997). Hereby, we have established that the ideal victim could be interpreted as a sign, but in order to understand Christie's statement, we need to understand what it means to be a sign.

The fundamental claim made by Derrida is that the meaning of the sign is created through the relative combination or two separate processes; a diachronic or temporal aspect of its occurrence and a synchronic or simultaneous pattern of related signs in language. The first one, the diachronic of temporal aspect refer to the historical use of the word "victim", and it includes all of the meanings attributed to this particular word. The second one, the synchronic or simultaneous aspect refers the system of words associated with the term "victim" that give meaning to it (Derrida, 1997) In relation to the victim, the diachronic aspect is all uses of the word "victim", while the synchronic pattern of related signs refer to those exterior objects that are necessary for defining a victim. Examples of the latter are events that are categorized as a crime and offenders who performed crimes. From this perspective it is obvious that *being a victim* is defined by the situation and a number of other signs, and one that is central and necessary is the offender.

Being a victim would be directly impossible if there were no offender and there is no such a thing as an offenderless crime. This means that the term victim is meaningful only in situations in which there is an offender and vice versa. It is in this context, that sign is created as a combination of two separate processes that we may fully understand Christies quote *"Acts are not. They become. The definitions of acts and actors are results of particular forms of social organization."* (Christie, 1986:29).

When Christie explains this logic in his article, he confronts the reader with a story of an elderly woman who falls and breaks her leg and he writes that we may pity this woman, we may feel sorry for her, but she is not a victim as the event is an accident, and an accident is something very different from a crime. Christie then compares this situation with one in which the elderly woman instead breaks her leg as a person push her while stealing her purse (Christie, 1986). Christies claim is that these actions are endowed with entirely different meanings but we need to understand *why* they are. In the event in which a person push the elderly woman, there is a clear cause-effect between the push and the injury that is directly linked to the offender. Consequently, this link provides the woman to hold the offender responsible for the injury (loss of purse and broken leg) and she has the legal right to do so. In the other event, the accident, the injury cannot be traced or understood as caused by an individual outside the woman herself, and she is thereby unable to hold anyone responsible.

Christie is a theoretician whose texts are constructed in a certain way. Christie himself does not explain or develop the metaphysics of his statements, instead, he frequently use stories and examples that capture the essence of the statements. When he describes the ideal offender, he poses three stories that concern the non-ideal offender as he believes that it is in the light of these we may fully understand the ideal offender.

The first example he gives is what he calls the narco-shark. This is a Norwegian term of an individual who import and sells large amounts of drugs without ever using it himself. It is quite literary a person who makes a living on other people´s suffering and according to Norwegian law, such a person may be sentenced to 21 years in prison which is longer than the tariff for murder. However, this person rarely exists: importers are most often users themselves merge with and are friends with their victims, and one could say that they began their career as a victim themselves.

Christie's second example is the violent offender. The typical case of violent crime is either someone who is abused by somebody close to them, or the event takes place when both parties are intoxicated. This contradicts the ideal offender who Christie describes in the following way: *"He is, morally speaking, black against the white victim. He is a dangerous man coming from far away. He is a human being close to not being one. Not surprisingly, this is to a large extent also the public image of the offender"* (Christie, 1986:26).

Christie's last example is drawn from his first study, one where Christie studied guards who had served in concentration camps in Norway during the Second World War. Christie found that these individuals who had participated in systematic torture and murder of prisoners of war were just average Norwegians and given the same situation, age and education, pretty much anyone would have done the same. When he published the results in 1952, there were no responses whatsoever to the study, it was not until 1972 when the results was republished that they were discussed. Christie writes that *"My interpretation is that the first reports in 1952 and 1953 appeared too close to the war. It was just too much – it became unbearable – to see the worst of the enemies, the tortures and killers, as people like ourselves"* (Christie, 1986:26).

4.4 Consequences of the Dichotomy

The study that is mentioned above is likely one of the reasons why Christie began to work with stereotypes and ideals among victims and offenders. Being confronted with individuals presented as monsters and reaching the conclusion that these were only average citizens is a hard lesson on the workings of human behavior and social psychology. It does also shed light on the wide difference between interpretation or the "image of" the world as it is, and the observable results.

Christie's theory is fundamentally a critique of a moral simplification; *"By having an oversimplified picture of the ideal offender, business can go on as usual. My morality is not improved by information about bad acts carried out by monsters."* (Christie, 1986: 29). His point of entrance is that victims and offenders are created through stages of social processes that endow events and actors with certain

meanings and that the moral simplification of coding the crime into good and evil partly dehumanize, partly exclude events that cannot fit into such binary code and that partly fossilize human society in a primitive system. He also argues that the role of the scientist is to make such uncomfortable observations visible, even though one is likely met by a system that consider and treat you like a troublemaker. Christie believes that victims and offenders can be given their humanity back first when the ideals of these are dissolved through establishments of human connection. He argues that the justice system in its present form separates individuals rather than allowing and encouraging interaction, and that it is through the latter victims can gain agency and offenders can become human (Christie, 1986).

4.5 Other Victimological Perspectives

Christie is not the only theoretician in victimology who identifies the problem of gaining victim-status and its meaning for how the victim is treated by the justice system. These other theories are necessary to understand in order to get a full view of how extensively victimhood is created by normative perceptions of what it means to be victim. It is also necessary to understand how the acting space of the victim is determined by a pre-existing set of norms in order to fully grasp how Christie's theory and attributes manifest in criminal cases between the physical and legal person. As Christie is one of many who have chosen to define and these normative patterns, it useful from a hermeneutic perspective to widen these concepts by presenting how they are narratively described by other authors.

Karmen (2010) is one theoretician who also discusses the normative expectations of victims and offenders in "Crime Victims – an introduction to victimology". In this book, he presents what is defined as victim-blaming and victim-defending. These are two different frameworks for understanding and creating meaning of an event. What we are dealing with is consequently two interpretative discourses for determining whether someone has been exposed to a crime or not. These discourses are frequently used by lawyers and prosecutors in trials in order to undermine the story of the opposite part by endowing the event with certain meanings and interpretations. When attempting to undermine the narrative of the victim, the prosecutor generally accuse the victim for having facilitated, precipitated and/or provoked the offender to such an extent that he/she lost control (Karmen, 2010). This is consequently a technique for undermining the innocence of the victim by interpreting the event as if though the victim participated in the violence directed towards him/her.

These concepts, facilitation, precipitation and provocation may sound very different from Christie's theory, but they do fall well within the theoretical framework of the ideal victim. *Facilitation* is explained by Karmen as situations in which the victim in some sense could be considered to have "made it easy" for the offender to commit the crime and an example could be when someone forgot to lock their front door and who come home to a robbed apartment. Such a victim may not be able to get any compensation from the insurance company, and may be met by a blaming police if he/she files a report. Similarly, *precipitation* is a mild form of provocation; it could be a situation in which an individual starts an aggressive argument with someone that may lead to an abuse. *Provocation* is according to Karmen more direct than precipitation, it could be a question of a

person who hits first but then end out getting brutally beaten up by the other person (Karmen, 2010). Consequently, these three aspects of victim-blaming all aim to create a narrative and symbolic understanding of an event in which the victim somehow participated in the crime, and they show a strong similarity with Christies "not so ideal" victim. Examples given by Christie is the prostitute who tries to engage the police in a rape-case or the drunk man who get in an argument in a bar, and his explanation of why these individuals do not fit into the category is that they will be blamed for the event and met with an attitude that they should have protected themselves by not "getting themselves into" the situation (Christie, 1986). I would say that these three interpretative points undermine the possibility to understand an event as involving a victim who show belonging to the five attributes of Christie; a person who provokes a crime is not weak but shows agency and intent to cause a conflict, he/she is not carrying out a respectable project, he/she was likely in a high-risk environment or participated in the making of one by behaving provocative, he/she is as bad as the offender and may even have initiated the contact with the offender.

Victim-defending on the other hand is the exact opposite technique that aims to interpret and narratively endow the event with meanings that hold the offender as solely responsible. As critique raised against the victim blaming narrative it holds that it overstate the extent that facilitation, precipitation or provocation can offer a reasonable explanation of a criminal act. It is argued that motivated offenders would have attacked a victim regardless of these circumstances, that facilitation, precipitation or provocation rarely takes place and that laying the responsible on the victim and expecting these to be more cautious is an inadequate and ineffective solution to criminality.

The victim-blaming narrative that Karmen (2010) describes shows a strong resemblance to what Lindgren (2004) defines as the *contributing victim*; a person who acted provocative in connection to the crime. This critique has been raised by researches who find that the categories of victims and offenders often cross over one another (Fattah, 2003). The *passive victim* on the other hand is an individual whose coping-mechanism is interpreted as consent by an ignorant justice system, or as Wade puts it: *"Unless a person fights back physically, it is assumed that she did not resist*." (Wade, 1997: 25). Resistance to violence may sometimes be in forms that appear passive, but they are in effect logical and may even save the life of the victim. For instance when somebody stops screaming for help when the offender put knife at their throat and threaten to kill him/her if she/he continues screaming, or reacting by "going somewhere else in mind" during a rape (Wade, 1997). A further example is the recalcitrant victim, who does not cooperate with the police or the prosecutor. A reoccurring situation described by Lindgren (2004) is when a woman reports her partner for abuse, but who later comes to a point when she is trying to get back together with the same partner and consequently tries to take report back and stops cooperating with the police and the prosecutor. The frequency in which individuals exposed to assault by a partner tried to dissolve the case resulted in a legal change which made the prosecutor has a prosecution duty independently on whether the victim participated or not. Such event does not fall within the frames of Christie's theory, and this is the critique that he aims to bring forth with it: ideal victims are rarely present in the justice system.

When Lindgren (2004) discusses Christies theory in his dissertation, he holds that the perception of the existence of an ideal victim as a norm have direct effects on

how legal regulations are formulated, and thus affect certain groups directly. One of many examples given is that prostituted women are, by law, not entitled to the same amount of compensation for damages after rape as any other women. The motivation is presented in SOU 1992:82 page 293: *"en våldtäkt för en prostituerad kvinna vanligtvis inte innebär en så allvarlig kränkning av människovärdet som för kvinnor i allmänhet, varför ersättning enligt 1 kap. 3 § skadeståndslagen bör bestämmas till lägre belopp än i det så kallade normalfallet"*[1] (Lindgren, 2004:31). Similar exceptions also apply to other groups that are not, by various reasons, perceived as ideal victims, and one group mentioned by Lindgren is policemen injured in duty. These are one of several professional groups who are less protected when they are exposed to violence or harassment in duty as the violence is "included" in the profession: the message by legal institutions are that if you are a police, you have to expect a certain degree of violence and harassment in duty (Lindgren, 2004). The consequence of such regulations is that some groups who are exposed to risk-environments are not given the same protection as the average citizen.

4.6 Epilogue

The role of the victim has changed over time, from having a very central role to being an individual who is only expected to supply his/hers story to the investigation of the crime. Both these roles have been, in different ways, problematic for the victim (Lindstedt Cronberg, 2011). The rise of victimology during the latter half of the 20th century has made structures surrounding the victims visible, and most perspectives deal actively with some type of problematic stereotypization of the victim (Christie, 1986; Karmen, 2010; Lindgren, 2004).

A strength in Christies theory is that the ideal victim and the ideal offender are familiar figures to anyone exposed to a western mass-media. In reading his article, it becomes apparent that the ideal victim is just that; an ideal with very little to say about reality, but on the other hand a lot to say about the system that produce and enforce it. At the very same time, this also becomes a main weakness in the theory due to the absence of a metaphysical explanation of the inner workings in the theory and I am going to explain this a little more carefully.

Christie makes the statement that there is an ideal victim and an ideal offender and then he contrast these figures with the idea of the real victim and the real offender, consequently, there are real and hyperreal[2] worlds in the universe of this theory. He also makes the claim that this real and definable world could make a civilized and humane system of justice possible.

For me, this reasoning boils down to one fundamental paradox; Christie himself writes that the definitions of acts are the result of particular forms of social organization, which is to state that the meaning that we make out of a symbol is

[1] Authors translation: *"a rape for a prostituted woman does not usually violate the human value as such in the same extent as for women in general, wherefore compensation in accordance with 1 chap. § 3 in the law of compensation for damages should be determined to a lower level compared with the normal case."*

[2] Baudrillard (1994): Baudrillard coined the concept hyperreal as to define the process of how certain objects are endowed with meaning. In "Simulacra and Simulation" he presents a set of stages through which the sign gain a hyperreal meaning without reference to its physical object.

created. At the same time he also writes that “as scientists” criminologists has the duty to present to the public the actual truth. My reaction to such statements is immediately to raise the question of how one could talk about and describe a non-hyperreal event or object in a world where the meaning of these events are created?

I want to end this chapter by presenting a quote by Foucault from his work “An Archeology of Science” (1994). In this book he subjects the scientific narrative and meaning-making to a linguistic analysis and he concludes that:

"If the word is able to figure in a discourse in which it means something, it will no longer be by virtue of some immediate discursivity that it is thought to possess in itself, and by right of birth, but because, in its very form, in the sounds that compose it, in the changes it undergoes in accordance with the grammatical function it is performing, and finally in the modification to which it finds itself subject in the course of time, it obeys a certain number of strict laws which regulate, in a similar way, all the other elements of the same language; so that the word is no longer attached to a representation except in so far as it is previously a part of the grammatical organization by means of which the language defines and guarantees its own coherence. For the word to be able to say what it says, it must belong to a grammatic totality which, in relation to the word, is primary, fundamental, and determining." (Foucault, 1994: 280-281)

Chapter 5 – Analysis

5.1 Chapter Outline

This chapter begins with a presentation of Christie's attributes one by one. Attributes one to three begins with a semiotic and hermeneutic analyze of what it means to be an ideal victim according to that very attribute. It is followed by examples of how this normative system is manifested in the data. Thereafter I subject the ideal offender to the same type of analysis and present how this ideal is manifested in the data. I also expose the separation of the victim and the offender for these attributes to a semiotic and hermeneutic analysis, and end with linking the attribute to criminological theory. As Christies fourth attribute deal primarily with the offender, the analysis of the offender is placed earlier then the analysis of the victim. Christies fifth attribute does not deal with an ideal offender or an ideal victim, rather it deals with an ideal relation between these. This means that it is this relation that is the primary subject for analysis under that section.

Lastly, I present how these attributes reinforce one another and discuss the manifestations on a meta-level. This section also contains concluding remarks and implications of my findings. As I am using grounded theory as a framework, I leave room for interpreting the theory and the data by the usage of hermeneutic and semiotic tools; primarily deconstruction.

5.2 First attribute

According to Christie, the *ideal victim* is weak but if we take a closer look into his examples of weakness and ideal victims, we find that he is referring to a very particular kind of weakness. Christie strongly holds that it is important that the victim is a person who one could feel sympathy with. Ideally, he writes, the victim should be either an old lady or a young child as these two characters have something in common, namely that they are innocent and defenseless in accordance with social norms and perceptions (Christie, 1986).

By inductive reasoning, I have come to the conclusion that the weakness is connected to *purity*. The reasons for making such a statement cannot be fully understood if this attribute is not read as taking place in correlation with the context of the other four attributes. Consequently, the purity that I refer to has to do with the moral character and innocence of the ideal victim that becomes visible and meaningful only as part of the larger totality of the ideal victim. Thus, for each attribute I will try to show how the essence in the singular attribute reflect and gain its place in theory and practice only in relation to the whole of the ideal victim. As will be shown by the unfolding of each attribute, these present an image of an ideal victim who is an innocent person of a high moral standard, who puts this moral into practice, who's interests, desire and life-style is constructive for society as a whole and lastly, who kept her/himself within normative boundaries.

The question at this point become how does a weakness that is innocent and pure appear in the relationship between the physical and legal person in the cases of the present study? These attributes may seem inherently human, but they are structural in origin, and if they are structural and incorporated in the legal system as such we should be able to observe its outcomes. What I have found is that weakness in this particular attribute is most definitely expressed, but in a slightly different way than in crimes between physical persons.

Most cases contain a very detailed descriptions of the ways in which the crimes took place. More specifically, there are extensive explanations of how the certain combination of medium (internet) and channel (sophisticated software) together make the crime possible, and further, that this is something that takes place outside the control of the victim. These acts cover hacking pay-per-view sites (B 1230-09), peer to peer networks through hubs (B 2569-09; B 624-06; B 2323-11; B 6669-11; B 1333-05) and bit torrent technology (B 10414-11; B 13301-06; B 4041-09). In case B 4041-09, that concerns itself with four defendants who developed a website through which others could share protected material, the victims states in their testimony that the offenders had organized and administrated the site in such a way that the danger for completion of crime had been significant. This means that it was never a question *if* the crime would be completed, but *when* (B 4041-09). Consequently, the victims are presented as defenseless against highly developed technology and vicious offenders.

The crimes are also presented as a large threat against this financial status in the narratives held by the victims. These claims are backed up with studies and expert opinions that assure the severe economic impact caused by piracy and the correctness of the presentations held by the victims (B 1230-09; B 4041-09). In case B 4041-09 the companies was able to refer to studies showing that the effects of piracy works like a downward spiral; if the selling rates of a record for an artist goes down (or never go up if a pirated version is released online before the legal version is available), the artist will suffer a loss of publication that would have accelerated its popularity, which in turn would have resulted in more promotion and an increase in interest from consumers. The effect is thereby extended longer then a loss of sold records (B 4041-09, p. 54). This particular case also contain a list of aggravating circumstances, these being the amount of protected materials available on the website, the extensive injury and danger imposed on the companies through the acts of the offenders as well as the extensive risk for further violations, and that the actions was carried through in an organized form and for financial profit. After this presentation the court state that there are no mitigating circumstances for the offenders (B 4041-09, p 43-45). Thereby, the acts performed by the offenders target and harm the victims as the crime is directed at its possibility to sell its products: the kernel of its existence. The victim is therefore weak in relation to the offender as piracy undermines the underlying structure of the market in such a way that the victims' existence in their present forms is threatened.

But the concept of weakness is a wider concept then being pure, innocent and vulnerable and these very particular aspects of weakness may not even be what we instantly attribute with the word when it comes to mind. It is into this opposite side of the concept of weakness that we will find Christies ideal offender and I will explain the logic of this process in detail below.

According to Derrida, something is defined as much by what it excludes as by what it includes (Derrida, 1997), and this is an opinion that Christie shares with him when he writes that the ideal victim demands the ideal offender into existence along with itself. In Christies view, the offender is necessary for there to be a victim or a crime to start with, and he is very determined on this point and uses the example of the old woman who falls down the stairs and breaks her leg to manifest the "need for an offender". He writes that we may pity this woman, we may feel sorry for her, but she is not a victim as the event is an accident, and an accident is something very different from a crime (Christie, 1986). What these authors, Derrida and Christie, are both writing about is that something is not simply *in itself*; rather, something is always *in relation to*, and further that it is in relation to something *gains its meaning*.

Diminishing Christie's theory into a theory that only deals with the ideal victim would be a severe mistake as he repeatedly writes not only that there is an ideal offender, but since he also describes this offender. Partly in terms of describing the ideal offender as the exact opposite of the ideal victim, and as Christie is a theoretician who makes his points through telling stories that manifest the complexity and dynamics of the theoretical problem he wants to mediate to his reader, he complements this statement with examples of the ideal as well as, in his own terms, the "not so ideal offender" (Christie, 1986). Christie's ideal offender is partly represented in the shape of the narco-shark, the individual who lives and profit from the drug-use of others. Another example that he mentions is off course the offender who attacks the young girl on her way home, and violently rape her (Christie, 1986).

At this point I want to bring us back to beginning of this section; we began with a discussion of weakness, and what type of weakness that is not innocent and pure that may represent the *ideal offender*. Both of Christie's examples above are individuals who fall for temptation and choose to fulfill their desires no matter the consequences of the victim, and such acts fit very well into what we could define as an *impure type of weakness*: the opposite of the ideal victim. The question then remains whether such a character exists in cases of piracy, and I must say that they definitely do.

As mentioned under the description of the data, I found that individuals sentenced for *contributing to* crime against the intellectual property law was given more severe punishments then individuals who had *committed* crime against the intellectual property law. The most obvious example appears in B 4014-09: the only case that involved financial gain and the offenders are presented as (quite justly so) individuals who support themselves on the criminal acts of others. Further the offenders also intervene when they are informed about the criminal acts taking place, but not as to make the infringements stop; they systematically hang out and ridicule companies that complain about their artists having their materials shared on the site in a specific forum on the homepage (B 4014-09). These individual thereby show a strong similarity with the narco-shark of Christie, as they support themselves on the criminal acts of others. By such action, the offenders have fallen under an *impure kind of weakness* as they posited their own financial needs *prior to and in expense of* those of the victim.

Though the other offenders did not act in the interest of making money on the criminal acts in a systematic way, there is a presence of the concept that they give in for greed or temptation in various ways, though the motivational cause varies

from case to case. In case B 2323-11 the offender motive his crime with the will to complement his music collection (B 2323-11) and in case B 2569-09 the offender claim that he ran a hub only for using it as a tool for social networking, not primarily to make it possible for others to share copyright-protected material (B 2569-09) and in case B 10414-11 the offender outright claim that the purpose for using and installing the software was to be able to watch movies and listen to music without paying (B 10414-11). By the same logic, offenders diverging from this profile in their motivation are given lower penalties in cases B 6669-11 and B 2323-11.

The separation of the attribute of weakness between the ideal offender and the ideal victim serve as *an assurance of permanence*; the innocence or the guilt is buildt into the general nature of the individuals as such. According to Foucault's work "Abnormal" (2003), this is the result of a gradual change in the legal doctrine in which penal institutions have come to justify their rulings in specific cases by referring to the general conduct of the individual. Foucault also holds that one of the consequences is that the individual comes to represent the crime before he has even committed it and writes that *"In other words, this analysis of the constant criminal desire makes it possible to fix what could be called the fundamental position of illegality in the logic or movement of desire. The subject's desire is closely connected with transgression of the law: His desire is fundamentally bad."* (Foucault, 2003:21). Perhaps, this situation is the partial result of the processes that made the victim a passive part in the courtroom, addressed by Lindstedt Cronberg (2011) in her article "Från Målsägande till brottsoffer"[3].

An example of when such a link between desire and act could not be made appear in case B 10414-11; the only verdict in which the offender is freed. This is not due to a lack of evidence, the subject actually confessed the crime and the amount of proof is plenty and solid. The reason that the subject is freed is that the prosecutor could not prove that the subject understood how the technology worked and could therefore not be considered acting with intent. Adding to the decision of the court is that the subject was only 16 years old, and claimed that he did not know that it was a crime to download movies or music (B 10414-11). The motivation for not sentencing this person could therefore be understood in the context that the prosecutor failed to present a believable picture in which the crime was incorporated into the nature of the offender.

The interest of finding such a link between desire and crime also seem to result in frustration from the side of the courts when the offender is unwilling to make a statement about his/hers position or intent in the question. Such an example appear in case B 4041-09 when the court criticize one of the subjects for not being clear on whether he considered piracy as the goal with the website or as a necessary evil appearing in pursuit of other goals, *"[Tilltalades namn] har inte i klartext förklarat om han betraktade överföringen av sådana verk till allmänheten som själva syftet med [namn på hemsida] verksamhet eller snarare som en nödvändig effekt av andra ändamål som han ville uppnå"* [4] (B 4041-09, p. 41).

[3] Authors translation: "From plaintiff to crime victim"

[4] Authors translation "[Name of defendant] have not clarified whether he regarded the distribution of such works to the public as the purpose of the activities of [name of website] or as a necessary effect for the achievement of other goals"

An observant reader with a criminological background would find the themes dealt with in this section to be rather familiar, as the themes connect with those in strain-theory. Strain theory hold that western culture emphasizes the achievement of certain levels of wealth, and that strain is the anomie rising from the inability of some groups to achieve these goals within institutionalized means. Merton held that the value of achieving the goal is held higher than the institutionalized means of achieving these, and as a consequence we may encounter situations when individuals take in illegal measures either through a process of innovation or rebellion (Merton, 1968).

5.3 Second attribute

The *ideal victim* should be carrying out a respectable project, and Christie gives the example of being on the way home after caring for an ill relative (Christie, 1986). This attribute make sure that the person who was exposed to the criminal act is an individual of a high moral standard. It is important to note that a "respectable" project does not equal "legal", but rather the result of *normative perceptions of morality*, and this aspect is presented when Christie gives an example of the "not so ideal victim" as a man, located in bar, consuming alcohol (Christie, 1986). This man is not breaking any laws by being in a bar, or consuming alcohol, but it is not preferable if one should be able to be presented as innocent, which the ideal victim is.

What we are confronted with is consequently a very specific norm: that of internalizing *in practice and opinion* a set life-style falling within the frames of *ethical goodness*, mirroring the purity in the first point. Having written that these behaviours do not necessarily equal legal behaviours, they still achieve a higher legal status in the case of a crime. As a practical example of such grading of status with regard to circumstances that has very little to do with legal or illegal, I would like to bring up the Swedish law of compensation for damages again, but this time chap. 6 § 1. This article state that if a person, by intent or grave carelessness, contributes to the crime, the compensation should be adjusted accordingly (Skadeståndslag, 6 kap. §1). This mean that the man located at a bar, who gets into an argument with another man and get punched is legally entitled less compensation, not because he did anything illegal, but because he was not carrying out a respectable project.

There are no direct narratives in the cases that are concerned with the actions of the victims apart from being producers of music, games or films. The image that we are left with is one in which the victim is simply doing what it has always been doing; producing culture. However, there seem to be a clear difference in motivation behind penalties depending on whether the products are attributed to be the result of a long project and large investments.

In case B 1230-09 the offender, who ran a website, put up two links that lead the surfer to a pay-per-view sports game without needing to pay and the offender made the claim that a sports game could not be considered covered by the law on intellectual property. The court responds by declaring, in support of the victim, that it is not the sports game in itself that is protected through the law but the filming and production of it is. The company had been using at least four different cameras, hired commentators and producers who co-produce a film with the aim

that the recorded version may capture the development of the game and its dramatic content in order to live up to the expectations of their viewers. The victim also state that the act of the offender result only partly in the direct injury in the shape of a loss in income, but also result in a loss of goodwill and other market-related injuries (B 1230-09).

Such a narrative over the value is absent in case B 1333-05 the court reason that the sentence could stay at a fee since the case only concerned one product that had been publically available during a limited time (B 1333-05).

In opposition to the ideal victim, the *ideal offender* is carrying out a dishonorable project; the crime (Christie, 1986). As discussed earlier, the attribute assure that the victim is of a high moral standard but it also assures that the offender is of a low moral standard. A crime is not an event that appears in itself in the sense that it is an event that requires an active agent performing it and in the ideal crime it is the offender who initiates and performs the crime against an innocent individual. The importance of moral is evident as all the courts in my study place emphasis on the moral motivation of the offender when the severity of the penalty is determined.

In case B 2569-09 the offender, who is responsible for a hub, state that he never shared any protected materials and thereby did not commit any crime. By being the administrator of the hub he also had the capacity to block users and remove material though he only did this if the user misbehaved on the chat or shared certain types of pornography. The court responds that the offender had been aware that others shared protected materials and that this was illegal and that he still kept the hub online and functioning and he is thereby considered to have contributed intentionally to the piracy of others (B 2569-09). In case B 6669-11 the amount of material (over 3000 music files) motivated a conditional sentence (B 6669-11). The offender in case B 1333-05 is harshly criticized for changing his story from confessing to claiming that the proof had been manipulated. The court writes that the witness statement appears as a construction so irrational and unlikely that it can be left without further comment (B 1333-05, p 9). In case B 624-06, the court is remotely impressed to hear that the offender believed that he could do whatever he pleased with a product he had bought and the claim that he did not know that piracy was illegal. The court present the offender as immature and his statements are met with comments such as “improbable” and “not credible” (B 624-06). In case B 4041-09, the offenders are accused for having, together and in collusion, organized a site through which others could share protected material without repercussions or interventions. That the offenders abstained from intervening is presented by the court as an active choice in such a degree that they are responsible for the crimes *“objektivt sett”*[5] (B 4041-09: p. 28) for contributing to the crime. They are also heavily criticized for their non-intervention in illegal activities, and proof is brought up that the offenders made plans to move their servers to another state in which their site would not be illegal (B 4041-09).

This far we have come to the conclusion that the separation in this attribute serves to (1) assure the existence of moral good and moral wrong, that these are (2) manifested in the victim and the offender. I am going to explain how this separation also invokes the need for a third part, the state, to sanction the crime.

[5] Authors translation: ”objectively seen”

In order to understand this last claim we need to make the historical development of what it has meant to be a victim visible. Lindstedt Cronberg (2011) describe a procedural change of the norms and action space governing the victim that has developed over a long period and gradually resulted in an exclusion of victim from a position of power. The system began with a victim that gathered evidence and who determined the sanction, to result in a system in which the victim only contributes with his/hers narrative. It is not a coincidence that the changes in the role of victim takes place over the same period that the state begin to concern itself with individuals, rather than citizens (Foucault, 1999). According to Foucault, this change resulted in a state apparatus that began to concern itself with the health and wellbeing of its population, and took upon the role to provide for these needs (Foucault, 1999). Being secure and safe from violence by others most definitely fall within the category of health and wellbeing, and in order to provide to that need *the state would take over the role to investigate and sanction* the crime (Lindstedt Cronberg, 2011). By dividing the offender and the victim into the dichotomy of moral good and moral wrong in combination with defenseless and reckless respectively, the need and justification of sanction is evident and morally defendable. The justice system also appears to work in the belief that sanctions function as a crime-deterrent tool, something that is evident in a few cases in my study.

In case B 4041-09, the court choose to apply a principle called *"likgiltighetsuppsåt"*[6] as it may have a deterrent effect and thereby contribute to the rule of law and other fundamental societal interests according to the court: *"En tillämpning av likgiltighetsuppsåt på dessa situationer kan emellertid leda till resultat som inger betänkligheter med hänsyn till rättssäkerhet och andra grundläggande samhällsintressen"* [7] (B 4041-09: p. 33). In accordance with this principle, an individual can be sentenced for contributing to a crime even though he did not participate directly in aiding and abetting the crime. In the relevant case one of the individuals who are tried is sentenced for lending computers, bandwidth and servers for a website and the act is compared with hotels that rent out rooms for prostitution (B 4014-09). The conception of the legal process as one that has a deterrent effect in itself is also presented as the reason for not using incarceration in case B 2569-09 and B 6669-11.

I believe that at the center of this separation there is an issue of moral consequence, namely, the idea that if everyone had a certain moral foundation there would be no criminal behavior.

The idea of a connection between behavior and threat of sanction is highly present in criminological theory. One example is Gottfredssons and Hirschis (1990) general theory of crime, in which they argue that deviant behavior, is the cause of the parents' reluctance to sanction wrong behaviors. The individual is thereby left with an underdeveloped moral and sense of consequence (Hirschi, Gottfredson, 1990). Wikström is another criminologist who has also chosen to interpret crime as moral action in his situational acting theory and writes that *"If an individual is taught moral rules that correspond to what is stated in the law, and the extent to*

[6] Authors translation: negligence as intent: this principle makes it possible to equal negligence to intervene in a crime as active participation in it.

[7] Authors translation: "Using the principle of negligence as intent in these situations may lead to an increase in awareness with regard to the rule of law and other fundamental societal interests."

which his or her compliance with these rules are rewarded and breaches punished, he or she is likely to develop a morality and moral habits that promote law-abiding behavior" (Wikström, 2007:355). Wikström's mains argument for why criminality occurs is that individuals perceive the criminal behavior as a reasonable alternative in the situation, and the process through which individuals achieve action alternatives is in itself purely moral (Wikström, 2010).

5.4 Third attribute

The *ideal victim* should be located at a place where he could not be blamed for being at, and Christie gives the example of being in the streets during daytime (Christie, 1986). My interpretation is that this attribute serves as evidence for the court that the moral of the victim that was discussed under the second attribute is put in actual practice as it *ensures that the routine activities are performed in such a way that they can be regarded as legitimated by morally justified needs*. Christie's antagonist of the ideal victim should have protected himself by not being in a bar (Christie, 1986). I am also certain, that this attribute serve to make sure that the victim lives a life of structure and regularity, conforming to social norms. I make this claim as this attribute leave no room for non-fulfilment of the moral self-image of the individual. The criteria thereby make sure that the victim is included and belongs in his/her environment. The question for my data becomes, is the location of the victim dealt with by the courts?

As discussed earlier, most victims are not present on the internet and there is not much information about those that are, apart from using the internet as a channel to reach their customers. The latter is understood first when levels of compensation are discussed as these contain figures on prices on products that are sold in a digital format, however, *the presence of the victim on the net through such channels is not dealt with or given any attention by the courts* (B 1230-09) (B 4014-09; B 13301-06). In the majority of the cases the companies have hired other professionals to search for their materials and thereby never enter the crime scene themselves (B 2569-09; B 2323-11; B 624-06; B 6669-11). In case B 1333-05 when the offender accuses the victims for having manipulated the proof, the court reasons that the victim had no interest or motivation to act in such a way. The first argument that builds up this conclusion is that the company had hired an investigator who possessed objectivity, and secondly that neither the investigator nor the victim knew who the offender was in person before they requested that his identity was handed down from the broadband-company hosting his IP (B 1333-05).

An exception from the pattern of online absence and frequent use of objective investigator appear in case B 1230-09. In this case the victim had received a tip but who it came from was not specified in the verdict. In this case the individual had been using a bug in the system of the webpage of the victim, allowing him to link directly to pay-per-view games without being charged. This did not, however, undermine the status of the victim who was actually given a financial compensation from the offender for both the direct and indirect effects of the intrusion (B 1230-09).

The *ideal offender* on the other hand, is a person who had no right to be at the location where the crime took place. This individual in not included, but rather

somebody who intrude in the personal space of the victim. When Christie writes about the "ideal" rape-case in which the victim is never questioned, he writes that it would be *"the young virgin, on her way home from visiting sick relatives, severely beaten or threatened before she gives in"* (Christie, 1986:19). By giving such an example, Christie also imply that the intruded space where the offender cannot legitimately be located is not necessarily a geographic area, but rather a space of integrity (Christie, 1986). When the offender is attributed with such a property, he/she is presented as an unpredictable and chaotic person who does not conform to the behavioral social norms set by different environments.

In those instances when the offenders have been inconsistent in their witness statements they directly lose their credibility. In case B 1333-05, the offender loses credibility when he changes his story from a confession to a denial, and the offender in case B 642-06 is described as unreliable and untrustworthy.

In case B 4041-09, the case resulting in the highest penalty, the offenders were not accused for using already existing software for illegal activities but rather for the creation of such channels. This act is an active manipulation in the function of the virtual room itself and as such considered as graver than piracy as a phenomenon (B 4041-09). Similar issues are brought up in case B 2569-09 in which the offender administered a hub. The court argued that even though the offender was not responsible for updating or developing the software, nor for sharing any copyright-protected materials himself, he was responsible for the maintenance of the daily support of the hub and therefore had the ultimate responsibility for the criminal acts taking place through the hub (B 2569-09).

In case B 1230-09 where the offender uses a bug, he gets severely punished for it. Even though such a practice was possible and simple it transgressed the actual function of the website: providing a pay-per-view service. The offender knew that the links was a hack as they were listed in his site under the header "see pay-per-view games for free here" (B 1230-09). In such an event, there is an intrusion in the private space of the victim as the usage does not corresponds the purpose and design of the webpage or service provided by it.

As stated above, the separation between the victim and the offender under this attribute relate *to the conditions through which personal interactions may or may not take place in physical space*. As such it keeps social spheres separated and intact. Breaching the principles of this social division result in guilt regardless if it is as a victim (as contributing to the crime) or as an offender (as culpability for the crime) (Karmen, 2010). Perhaps, this is yet another explanation for why assisting intellectual property crimes are given higher penalties in comparison with the cases concerning the crime itself as the individuals who assist to the crime have actively contributed in the breaching of such social division. This separation lead, according to Christie, to a vast array of consequences, one of the most obvious being interpreting events from a grossly over-simplified perspective without ever needing to question our own moral (Christie, 1986); helpless and innocent individuals should be protected by all means while the malicious wrongdoer can be punished without causing conflicts in within the ethical subject[8] (Critchley, 2008).

[8] Critchley describe the ethical subject as an ethical concept that the self identifies with. If I break an ethical code that I have internalized as ethical subject, I act in a manner destructive for the self I have chosen to be. The response of such an event is often colored by deep remorse, guilt and a

This attribute reflect the general theme in Cohen and Felson's theory of routine activities. The theory holds that the risk of victimization is intimately linked with every-day activities. The authors believed that a crime occurred by the convergence of three elements in space and time; a motivated offender, a suitable target and an absence of capable guardians, and that certain patterns of behavior left the individual exposed to such situations in a larger extent than others (Cohen, Felson, 1979). However, piracy place new demands on how geography is dealt with and handled as it is a crime that do not occur in a physical world, nor does it require a "meeting" in the regular meaning. It does imply a kind of meeting, in the sense that the offender is introduced to the product through some reference before performing the crime, but this meeting is interpreted as unilateral from the point of view of the victim as it does not involve a legal distributor. Consequently, the victims own the narrative of what is a meeting, and what is not.

5.5 Fourth attribute

Since Christie's fourth attribute is primarily given to the offender rather than to the victim, I am going to begin to analyze the role of the offender.

Under his fourth attribute, Christie writes that the *ideal offender* is big and bad, an attribute that assure that the offender was superior to the victim who did not stand a chance. The superiority is not necessarily a physical one, remember that Christie portraits the ideal offender as the "narco-shark", who's superiority to his victims is rather his position as being a reckless and greedy dealer (Christie, 1986). Consequently, I believe it is fair to say that the superiority of the offender has to do with 1. an asset that makes the offender superior in the situation of the crime, and that the offender 2. takes advantage of this superiority in order to violate others. Thus, I hold that the usage of such superiority is colored by violence, even in those cases where physical violence was not used or even a treat. The hacker who hijacks websites in order to gain access to individual bank accounts is still a "big and bad" offender who robs innocent individuals of their private savings even though he/she never pointed a gun at their heads. Instead, he/she used his intelligence for violent and self-centered purposes through. What we are dealing with at the very bottom of this attribute is thereby a *destructive superiority*. The question is thereby how such a destructive superiority would express itself in cases of piracy.

As written earlier, these attributes should be understood within the context of each other and this leaves us with several hints. The superiority enjoyed by the offenders has been related to the techniques governing the crimes and the organization behind the criminal acts. Several cases break against this ideal as their acts was not part of any organized group with a purpose, nor was the actions performed for profit (B 2323-11; B 6669-11; B 2569-09) and in all of these cases, this is presented as a mitigating circumstance. The case in which the offender diverge the most from this caricature is case B 10414-11, which is also the only case in where the offender is freed from the charges. In this case, a 16-year old is charged for breaking the distributional right of the victims by downloading films to the laptop he had been given by his school. The crime was discovered by the

feeling of self-failure. The dichotomy between ideal victims and ideal offenders remove such a conflict.

school when the child accidentally downloaded a virus that spread across the schools computer-network, and discovering that he had been downloading films the school took the decision to contact the police. When confronted with the crime, the offender confesses and states that the reason was that he wanted to see movies for free. In the witness statement he also says that his friends recommended the webpage and the software. However, he denied that he knew that at the same time that he downloaded a file, it was also shared with others and that he found this out first when he was confronted by it by a police officer after having his computer confiscated. As previously discussed, the reason that the offender was freed was partly because the prosecutor could not prove that the subject realized how the software worked (B 10141-11). At the opposite end we have case B 4041-09 in which the four offender organized, administered and developed a site through which others could share copyright-protected material and this is the only case that resulted in imprisonment. It is also the only case in which the offenders are considered to have profited financially from the crime, and the only case in which the offenders themselves developed software. Consequently, these are the only offenders that are proved to hold "special" capacities - as in their knowledge of programming and access to hardware that they also used in a destructive way by creating a site trough which they made money from the criminal acts of others (B 4041-09). These offenders thereby fit the profile of Christie's ideal offender utterly well.

The *ideal victim* on the other hand is entitled to another type of superiority. I interpret Christies ideal victim to share the first point of superiority with the offender, but that the way this individual uses his superiority is considered constructive and good in difference from the destructive offender.

By the first statement, that the ideal victim shares the attribute of superiority, I mean that Christie's description of the ideal victim is indeed a representation of the most privileged individual in western society. It is a person who is, as we have seen through the presentation of the previous attributes, considered worthy of protection and who fall within normative frameworks of behavior. The ideal victim is thereby someone who has a high social status. By the second statement, I mean that the individual who lives within such a space is a person who achieves his desired goals in constructive way as it is internalized in systems of education, work, social rules and economy. When Christie writes about the non-ideal victim, he explicitly explain the opposite of this individual; the working class child who fails within the educational norms and takes this as a personal failure, not knowing that he is taking part in a competitive system designed by and for children of another social background (Christie, 1986:24).

In case B 4041-09 that is mentioned above, the victims are entitled to a large part of the story. However, the narratives never deal directly with the social sphere that the victims are located within, apart from it having been brutally violated by the offenders. In cases B 2323-11, B 624-06, B 2569-09 and B 1333-05 there are witness statements from the investigator who operated on behalf of the victimized companies. In his statement, he says that his job is to protect the interests and products of his clients, the companies. He further explains that piracy have long-ranging effects on the economy of his clients, and indeed, the entire market. Thereby, the social sphere as well as the acting space of the victims is integrated in established institutions. That the victims are sometimes very powerful actors is not a problem, as they have used their assets within established norms and further, that they all are, in the given situation, subordinate in relation to the offender.

Dividing the offender and the victim into individuals endowed with either a destructive or constructive superiority is essentially about the various *ways of using* superiorities. The ideal offender is using his superiority in a destructive way while the ideal victim uses his in for constructive purposes. We have also seen that the framework that determines whether the usage is constructive or deconstructive is social organization; the offender represents a figure that breaks down and violates the social organization while the ideal victim contributes to and upholds it. This conflict thus breaks down to the conflict between society and nature, and the separation serves as a way to keep these spheres intact from one another as described by Latour in *"We have never been modern"* (Latour, 1993). This issue is demonstrated in case B 1230-09 in which the offender discover a weakness in the pay-per-view system of a website and used it to distribute their product for free. Nor did the offender remove the links despite being warned twice by representatives for the company that owned the material (B 1230-09).

Criminological control-theories base themselves upon this conflict. Hirschi, who is famous for his and Gottfredssons self-control theory (1990) wrote the following interpretation of self-control in more recent theoretical work; *"Control theories assume that delinquent acts result when an individual's bond to society is weak or broken"* (Hirschi, 2009:17). Perhaps crime could, in accordance with Hirschi's interpretation of self-control, be understood as the act of *falling out of society*.

5.6 Fifth attribute

The fifth and last attribute that Christie attaches to the *ideal victim* is that the *ideal offender* was an unknown person. A large part of his article is devoted to writing about the treatment of individuals who are abused or raped by a partner, and who consequently are not given status as a victim since the offender is an individual close to them (Christie, 1986). Similarly, in Karmen's *An Introduction to Victimology*, the chapter on partner-violence is filled with descriptions of a system that accuse those victims who were in an intimate relationship with the offender. In the worst cases, the victim is blamed for causing the violence by acting provocative, for maintaining the violence by not leaving, for not documenting damages, and for reporting the crime too late. When discussing the historical background to the present situation and treatment of victims, Karmen writes that *"Many people, including some counselors and family therapists, believed that a high proportionate of beatings were unconsciously precipitated or even intentionally provoked. The wives who were said to be responsible for inciting their husbands´ wrath were negatively stereotyped as "aggressive", "masculine", and "sexually frigid"."* (Karmen, 2010:231). Christie also identifies similar normative tendencies in the background of the present treatment of victims exposed to violence from a partner; *"When a man beat up his wife in my culture, and the police are called in, they called, until recently, a case of "husbråk". That means noise in the house. Noise does not create good victims. Noise is something that needs to be muffled."* (Christie, 1986:20).

In the cases of my study, none of the victims knew or had any relationships towards or with the offenders (B 1333-05; B 624-06; B13301-06; B 1230-09; B 4041-09; B 10414-11; B 6669-11; B 2323-11; B 2569-09).

In the few cases in which the offender and the victim interacted before the trial, the victims informed the offender that the action they were performing was criminal, and asked to remove materials from the concerned websites (B 1230-09; B4041-09). It is essential to understand that the victim and the offender were unknown to one another prior to the crime, and that the victim contacts the offender to make the violation stop. That these two cases was also two with high penalties is consistent with Christies theory as the ideal victim is someone who always put out a reasonable amount of energy in order to protect themselves (Christie, 1986). Consequently, that the victims were ridiculed for their resistance by the offenders in case B 4041-09 thereby contributes to the ideal roles, rather than dissolving them.

Common for all of the cases apart from the fact that the offender and the victim were unknown to one another prior to the crime is that it is the offender who initiates the crime; in the eyes of the courts there is no previous "provocation" by the victims that they could be held accountable for (B 1333-05; B 624-06; B13301-06; B 1230-09; B 4041-09; B 10414-11; B 6669-11; B 2323-11; B 2569-09). As discussed earlier, this is a narrative held and owned by the victims; the defendants most surely knew what they were downloading, meaning that they had at some point become familiar with a certain song, seen the commercial for a certain movie/game and the like.

As such, this attribute marks the end of a set of separations that send the message that victims and offenders inhabit different universes, and that these universes ought to be kept separated in order to prevent abuse and violence.

5.7 Cumulative Effects

According to Christie, these attributes enhance one another, meaning that an ideal victim will result in an interpretation of the offender as more ideal (Christie, 1986). This means that the final interpretation is more than just the sum of all attributes added together, it is rather so that that these gain a different and stronger meaning when correlating.

An interesting aspect that I encountered was that all attributes listed by Christie was dealt with in each case. It was expected that attributes would be entirely absent in some cases, which they very correctly were, but in these instances the courts brought the absence of the attribute up for discussion: even when it was not there, it had to be lifted. A chart of the presence of narrative for each case is presented below.

Table 1. Presence of Narrative Presented by Case and Actor

First Attribute	V	S	O	Second Attribute	V	S	O
B 1333-05	X+			B 1333-05	A		X
B 624-06	X+			B 624-06			X
B 13301-06	X+		X	B 13301-06			X
B 1230-09	X+			B 1230-09	X+		X

B 4041-09	X+	X	X	B 4041-09		X	X
B 10414-11	X+	A+	X	B 10414-11			X
B 6669-11	X+		X	B 6669-11		X	X
B 2323-11	X+		X	B 2323-11			X
B2569-09	X+		X	B2569-09		X	X
Third Attribute	**V**	**S**	**O**	**Fourth Attribute**	**V**	**S**	**O**
B 1333-05	X+	X	X	B 1333-05	X+		
B 624-06	X+	X	X	B 624-06	X+		
B 13301-06	X+	X	X	B 13301-06	X+		X
B 1230-09	X+	X	X	B 1230-09		X	
B 4041-09	X+	X	X	B 4041-09	X+		X
B 10414-11		X		B 10414-11			A+
B 6669-11	X+	X		B 6669-11			A+
B 2323-11	X+	X		B 2323-11	X+		A+
B2569-09	X+	X	X	B2569-09	X+		A+
Fifth Attribute	**V**	**S**	**O**	**Fifth Attribute**	**V**	**S**	**O**
B 1333-05	X+	X	X	B 10414-11	X+	X	X
B 624-06	X+	X	X	B 6669-11	X+	X	X
B 13301-06	X+	X	X	B 2323-11	X+	X	X
B 1230-09	X+	X	X	B2569-09	X+	X	X
B 4041-09	X+	X	X				

Table 1. The presence of narratives is marked with an X for each attribute and case for the victim (V), the separation (S) and the offenders (O). If the narrative is treated because it is absent it is market with an A and empty boxes indicate that these specific fields were not handled in the cases. If the X or A is followed by a plus, it narratively presented in favor for the part and vice versa.

One cannot avoid noticing that almost all of the narratives under each attribute concerning the victims are in their favor. The sole exception is in case B 1333-05 under the second attribute, where the court argues that the offender should be given a lower penalty because the product had been publically available under such short time. Almost like the opposite, most Xs under the offenders represents narratives that are to their disadvantage. The sole exception appear under attribute four where the defendants in cases B 2569-09, B2323-11, B 6669-11 and B

10414-11 are given lower penalties as their acts were not organized, nor did they profit financially from the piracy.

These results stand in sharp contrast with how physical victims are regularly treated (Lindgren, 2004; Karmen, 2010). The acts and attributes of physical victims are questioned in a larger extent, and I am going to give a few useful examples demonstrating this issue.

The first attribute of the victim, being weak, is not questioned in any of the cases. There is an absence of discussing how the victims could have protected their material as they are presented as powerless against the vices of new technology and the ill intentions of the offenders. When material is released earlier than the official date, a leak that always takes place from within the corporation, they are given more compensation rather than less (B 13307-06; B 1230-09; B4041-09). The higher levels of compensation are motivated by larger losses when material is leaked earlier, but they are at the same time not held responsible for sloppy security. It is also obvious that it was not any of the offenders in the relevant cases who had leaked the material from the company, but yet they stand as responsible for somebody else's criminal act a by being sentenced to pay larger compensation for these products. Also, nothing in the cases indicated that the offenders had access to these products previous to their release-date.

Neither the second attribute, that the victim should be carrying out a respectable project, is questioned. The activities of the companies are not dealt with at all by the court (B 1333-05; B 624-06; B13301-06; B 1230-09; B 4041-09; B 10414-11; B 6669-11; B 2323-11; B 2569-09). The only differences appearing are whether the products are presented as large investments or not; in the cases the product is presented as unique and valuable they are given higher compensation. There is only one case that breaks this trend, B 1333-05, in which the victim is getting a lower compensation because the material was available online during a very short period of time. However, in the same case, the defendant is ridiculed by the court for questioning the nobility of the victim by claiming that he was being set up and that the proof held against him was manipulated. In case B 4041-09 the court takes the nobility of the victims so far that it states that the defendants are *objectively* responsible for committing the crimes that they are accused for. At the same time the court itself states that there are really no directly comparable cases that have been tried in a higher instance, and that the legal regulations have never been tried in relation to the events that had taken place. The question remain whether a court that repeatedly during the trial choose to interpret regulations as having more far-reaching implications than motivated by the law itself or by previous legal praxis could be considered objective.

The third attribute, being at a location where the victim could not be blamed for, is yet another attribute that is not questioned in any of the cases. Many of the victims are not present on the internet, but it seems as even if they are and even if they do not have any basic web-security they still will not be questioned, rather the opposite. In case B 1230-09, in which the defendant discovered a hack in the website of the victim, he was not only sentenced to pay compensation for direct damages, but also for damages caused by piracy as a phenomenon. If the same logic would have been applied on an average rape-case it would mean that the woman would be given compensation and victim-status regardless of what types of clothes she wore, and there is a possibility to be given compensation for all the times that she had been exposed to sexual harassment or violence from anyone,

not only the damages imposed by this particular offender in this particular case. It is an understatement to say that the responsibility placed on the defendant is far-reaching in comparison with cases between physical persons, though it is worth noting that the Court of Appeal did not share the far-reaching interpretation of what issued that would result in compensation for damages.

Similarly, the status of the victims is not questioned in accordance with the fourth attribute, however, most of the defendants does not confirm with the attribute of the ideal offender. Actually, the only case in which the defendants fit into the attribute is in case B 4041-09/B 13301-06, and for some cases, this absence of belonging is interpreted as a mitigating circumstance, lowering the sentence (10414-09; B 6669-11; B 2323-11; B 2569-09).

The question of how the fifth attribute should be interpreted has already been lifted. As mentioned earlier, the narratives of the court suggest that there was no previous direct relation between the offender and the victim prior to the crime.

In sum, the problem in the cases is not what they say, but mainly in what they do not say. That the courts never question these attributes of the victim indicate that their credibility is normalized to such an extent that it does not need to be motivated or defended.

As presented, the non-physical victims are subjected to the same normative standard as physical victims, but they are not questioned in the same extent that physical victims are. This means that non-physical victims enjoy a stronger status and are more ideal than physical ones. This result is logical only when understanding that the sum of Christie´s attributes of the ideal victim does not add up to an individual who is defenseless outside of the event of the crime, but one with a high social status (Christie, 1986).

Chapter 5 – Concluding Remarks

5.1 Conclusions

The ideal victim and ideal offender are creations that according to Christie (1986) make sentencing very simple as our moral is not developed by sentencing wolves and protecting sheep. In the present study, I wanted to lift the question of what it meant to be the wolf or the sheep in cases that seemingly broke the edifice of these figures; cases that involved non-human victims with a very high social status and a strong position in society. As the analysis of Christie´s theory evolved and progressed, it was found that the ideal victim had very little to do with being a sheep, and all to do with belonging in the herd. As presented, the ideal victim is a person who operates and lives within established institutions and every aspect in the ontology of their being is included here, from the expression of their desires and needs, to their moral and their everyday routines.

The result of the present study shows that the legal person is measured by the same attributes as the physical person, but enjoys a stronger status as victim. In difference from physical victims, the non-physical victim is not questioned. At large, the non-physical victims are treated and presented as objective agents endowed with both reason and credibility.

However, in the present study I found that the same objectivity was questionable from a number of aspects, especially as the victims were not questioned. It was found that the courts repeatedly chose to interpret legal regulations in ways not supported by praxis or the law in itself, in order to deliver harsher sentences and deter other possible offenders.

The limited amount of cases dealt with in the study should be noted. These were in many respects very heterogeneous but I would like to emphasize the importance of studying cases in which the victims do claim compensation in order to confirm or write off the present results.

I would also like to encourage research on the interactions between lobbying and sentencing regardless of the type of crime. A further topic for research is to develop a preventive paradigm for intellectual property that set out from techniques proven effective, such as providing a service that is similar to piracy. There is also a lack of evidence supporting the idea that deterrence through formulations of law and harsh penalties actually influence the rates of piracy other then temporarily, nor is it proven that the penalties helped to reintegrate the offenders into a law-abiding life-style. Consequently, penological research in the field is necessary in order to shed light on these issues.

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