



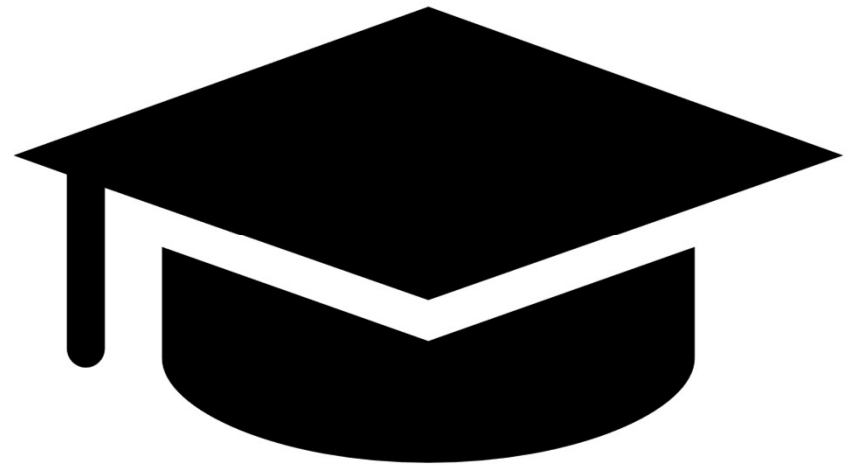
# Information Technology Law in the Global Society

Class 8 – 24 March 2020

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# Administrative Matters: Mid-Term Exam

- The Mid-Term Exam will be made available for download from the course website on Tuesday, 31 March 2020. If possible, I will also have the exam e-mailed to you on the same day.
- Please e-mail me your Mid-Term Exam answers to me at [sullivan@sullivanlaw.net](mailto:sullivan@sullivanlaw.net) by Monday, 6 April 2020.
- Your Mid-Term Exam answers should include your name and student ID number on the first page and in the document header.
- Please submit your answers in Microsoft Word, RTF, or PDF format.
- Please do your own work, and do not “collaborate” on your answers with other students.



# Chapter 12. Copyright infringement in the digital environment





# The Global Phenomenon of File Sharing via Internet



- Digital technologies made copying free, easy, and very accurate.
- Through the first half of the 1990s, certain factors (bottlenecks) limited the widespread distribution of music files copied by users:
  - Very large file sizes;
  - Relatively slow Internet connection speeds (dial-up).
- Second half of the 1990s these constraints were eased through:
  - File compression technologies.
    - MP3 file with bitrate of 128 kbit/s by about 1/11 the size of an uncompressed LPCM file at compact disk levels of quality (44.1 kHz, 16 bits deep).
  - Higher-speed bandwidth of dedicated Internet connections (e.g., DSL and T1 connections).
- New technologies were developed to enable widespread sharing of files “ripped” from CD-ROMs.
- These technologies were made available to people worldwide.

## The “Content” Industries Reacted with Copyright Lawsuits, Lobbying, & Technological Protection Measures

- Recording Industry Association of America (RIAA) and (later) Motion Picture Association of America (MPAA) brought copyright infringement lawsuits against both the users who directly copied content protected by copyright & against the websites & platforms that enabled such copying.
- Lobbying produced Digital Millennium Copyright Act (DMCA) & WIPO Copyright Treaty.
- TPMs (encryption, scrambling, “digital locks”) were added to digital content, & unauthorized removal of TPMs from content was made unlawful.





## Geographic Focus of Litigation against File Sharing: United States & Europe

- U.S. had robust copyright laws that imposed infringement liability on both the “direct” infringer and the “indirect” infringer (a “contributory infringer” or a “vicarious infringer” who helped somebody else infringe).
- However, in *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984), a/k/a the “Betamax case,” U.S. Supreme Court declined to impose liability for contributory infringement on producer of equipment (videotape machine) that enabled users to make copies.



## *Napster and Grokster*





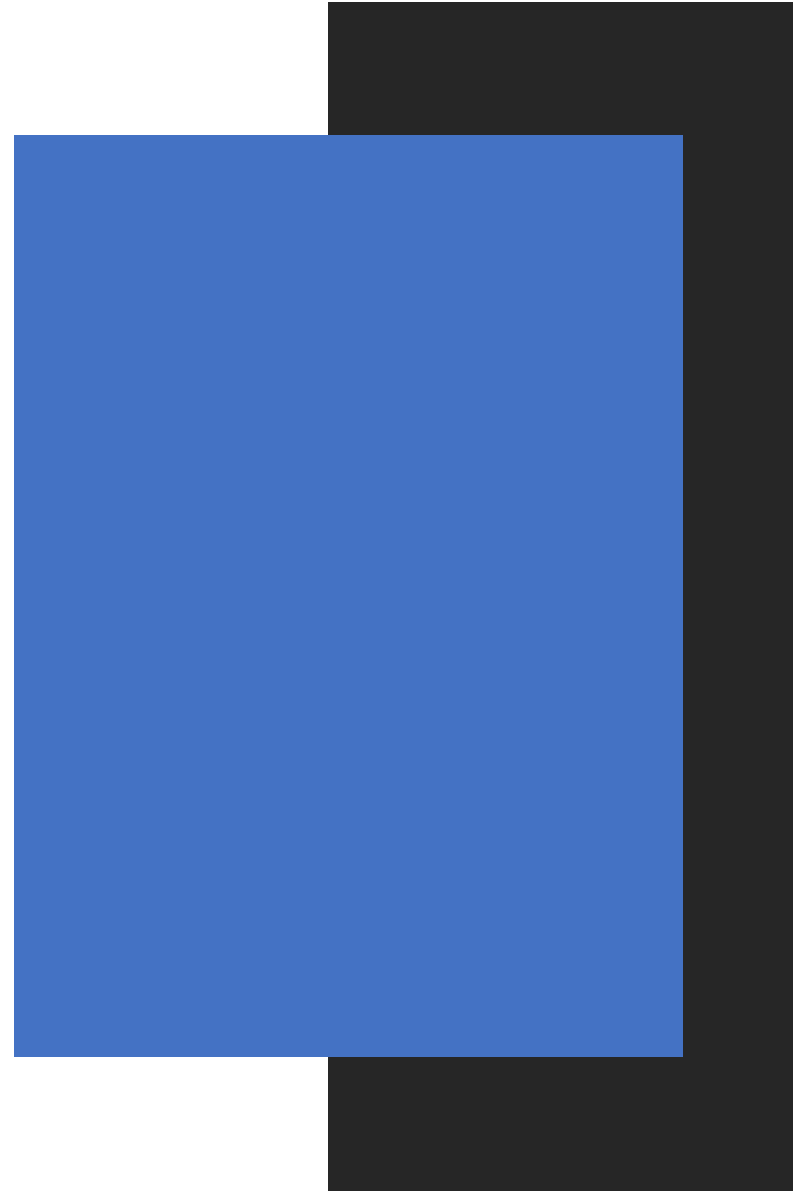
Sweden v  
Neij et al.  
(the pirate  
bay case)



Site blocking



# Chapter 13. Databases





# EU Database Directive Sui Generis Right


- Database protection Directive (11 March 1996)
- Two-tier protection scheme: copyright and sui generis right
- What is protected: “collection of works, data or other materials arranged in a systematic or methodological way and individually accessible by electronic or other means.”



# What Is a Database?



- Three conditions:
  - Collection: important number of items
  - Structure or arrangement of content (for ex. if database management software)
  - Independence of elements and individually accessible
- Application: a content advice website will be considered as a database



# When Is a Database Entitled to the Sui Generis Protection?

- Substantial investment:
  - qualitative (expertise of a professional) or
  - quantitative (financial resources, time, effort, etc.)
- Object of investment:
  - Obtaining (collecting the data) or
  - Verification (checking, correcting, updating, etc.) or
  - Presentation (retrieval of data, digitalization of the analog files, design of a user interface, etc.)




# Who Is the Right Holder of the Database Right?

- Maker of the database: “person who takes the initiative and the risk of investing” (recital 41)
  - Exclusion of subcontractors
  - Joint ownership issues



# Exclusive Rights of the Right Holder

- Right to prevent extraction: “the permanent or temporary transfer of the whole or of a substantial part (...) of the contents of the database”
  - E.g., downloading, copying, printing or any reproduction in whatever form (even transitory)
- Right to prevent reutilization: “form of making available to the public.”
  - E.g., distribution of hard copies, renting, on-line forms of transmission

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# How Long Does Sui Generis Database Right Afford Protection?

- 15 years from date of completion of making of the database or first making available to public
- However, a new 15 year term begins if substantial change (e.g., substantial verification of the contents)



# Who Can Benefit from Sui Generis Database Right?

- EU Member State nationals
- Any company formed under the law of a Member State and having its registered office or principal place of business within the EU.
- Applies to foreigners on basis of special agreements if their nation offers material reciprocity.