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The copyright & linking saga

- the development in the European Union

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Structure of the presentation

- Technical background
 - What is linking and its different forms
- ”Communication to the public”
 - A quick overview of CTTP and linking
 - The expansion to cover secondary liability
- Certain criteria
 - Extent of liability
 - Link posted for profit
 - Link posted with knowledge of illegality



Technical background

- HTML, JavaScript, DHTML, CSS, etc.,
- Web 2.0-koncept

- Referral link
- Deep link
- Frames/inline link
- Embedding
- URL shortener



Technical background

Referral link

`http://www.prv.se`

<http://www.prv.se>

`PRV:s webbsida`

[PRV:s website](http://www.prv.se)

Deep link (v. Surface link)

<http://www.prv.se/sv/Varumärke/Lagar-och-regler/Disclaimer/>

`PRV:s webbsida`

[PRV:s website](http://www.prv.se)



Technical background

Inline link

```
<img src=bild.jpg>
```

```
<img src=http://www.hogstadamstolen.se/Bildbank/Logotyper/hd_color_left.gif>
```

Framing

```
<frameset rows="150,*">
```

```
    <frame src="http://www.prv.se/">
```

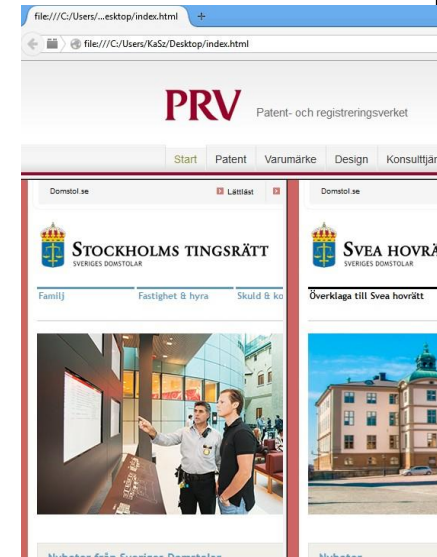
```
</frameset cols="350,* ,500">
```

```
    <frame src="http://www.stockholmstingsratt.se/"  
    scrolling="no">
```

```
    <frame src="http://www.svea.se/" scrolling="no">
```

```
    <frame src="http://www.hogstadamstolen.se/"  
    scrolling="no">
```

```
</frameset>
```





Technical background

Embedding

```
<iframe width="560" height="315"  
src="http://www.youtube.com/embed/gx0czER6FIk?list=PLIf6LUv3ttCRsqpnLF  
D51ltK8Lamyv6oD" frameborder="0" allowfullscreen></iframe>  
<embed src="... .swf">
```





Technical background

URL shortener

http://www.elgiganten.se/catalog/personvard-halsa/se_halsa_valbefinnande/halsa-och-valbefinnande?SearchParameter=%26%40QueryTerm%3D*%26ContextCategoryUUID%3DkBesGQV5FD4AAAFDSr02st5_%26discontinued%3D0%26online%3D1%26Produkttyp%3DCykel%26%40Sort.ProductListPrice%3D0&PageSize=45&ProductElementCount=&searchResultTab=Products&CategoryName=se_halsa_valbefinnande&CategoryDomainName=store-elgigantenSE-ProductCatalog

<http://goo.gl/>

<http://tinyurl.com/>

<http://tinyurl.com/ABCFUI>

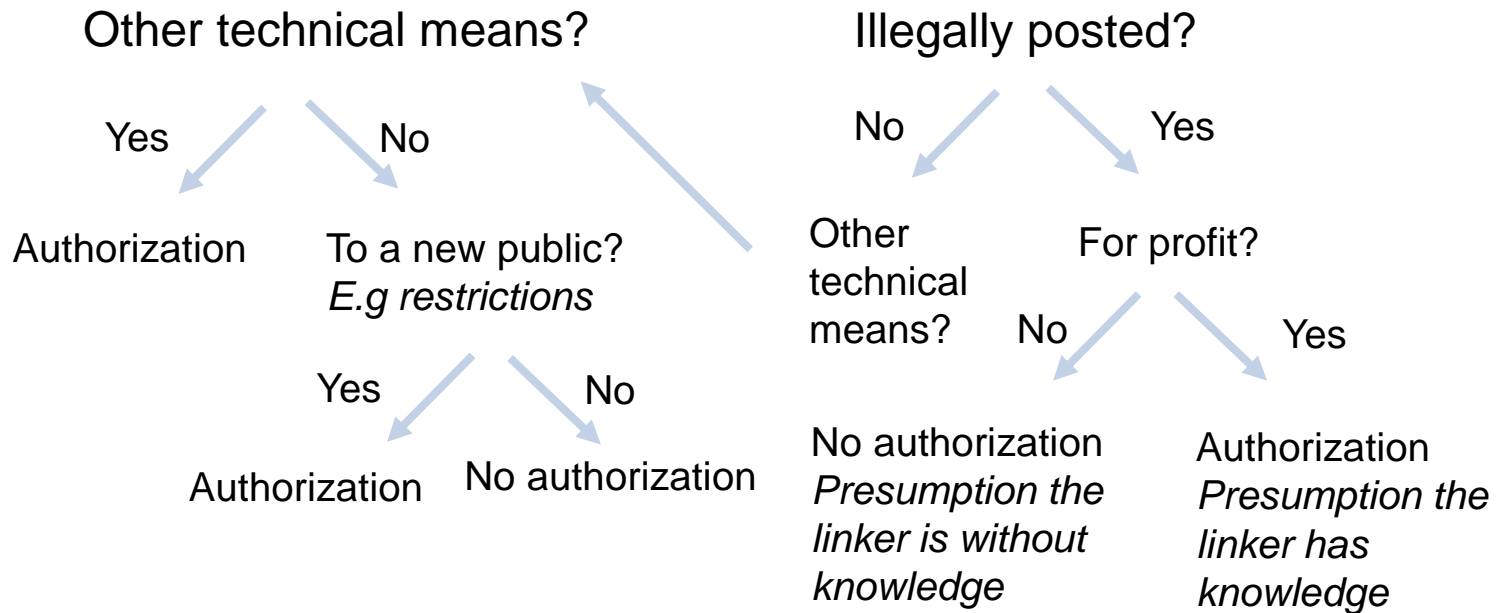


Communication to the public

- Article 3(1) of the Information Society Directive
- Recital 23 of the Information Society Directive
- Two cumulative requirements
 - (1) the existence of an act of communication of the work; and
 - (2) the communication of the work to the public



Overview on EU development





The expanding "communication to the public"

- Communication to the public - an expanding concept in EU
 - The CJEU's broad interpretation to also cover "interventions with knowledge of the consequences" that result in or facilitate infringing acts of others
 - Installing TV/radio sets in hotels, allowing customers access
 - Linking to an illegal publication
 - Selling a multimedia player that included links to unauthorised programs and movies
 - Managing the online sharing platform (The Pirate Bay) with indexed metadata which helped users to locate and share infringing works
 - Providing solutions within EU law to the issues traditionally addressed through domestic "secondary liability" standards
 - Requires developing conditions based on (for example) knowledge and intention
 - Contrast to strict liability of copyright infringement (where those are irrelevant)!
 - Consequences?



The expanding ”communication to the public”

- Two complementary criteria
 - (1) the deliberate nature of the internet users intervention; and
 - (2) the profit-making nature of the communication
- What are the consequences if you link to (for example):
 - an authorized file
 - a blog, which includes an unauthorised image
 - a blog, which includes a hyperlink to an unauthorized file
 - a link site, providing access to unauthorised TV streams?
- Open question how extensive the linker’s liability is!
 - A problem in particular for commercial linkers, who have a duty of care to perform checks to ensure legality
 - Very extensive liability and duties of care would cripple the internet

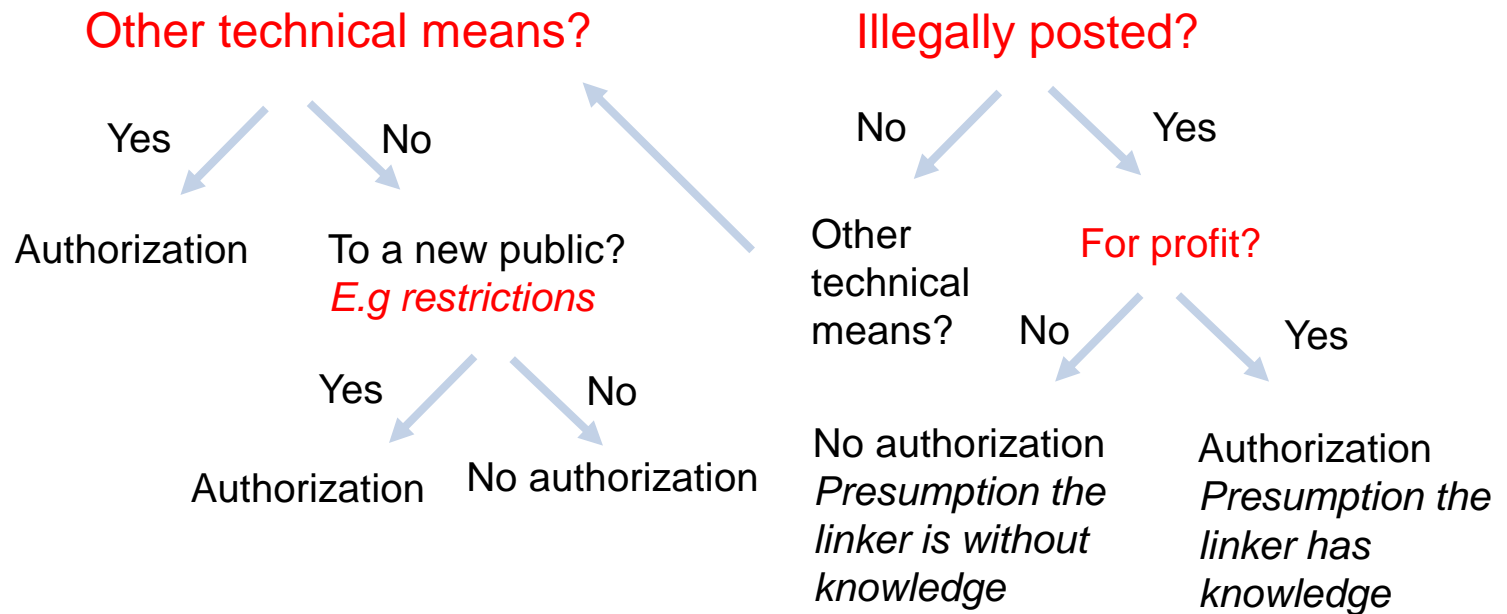


Profit-making nature or not posted for profit?

- Link posted for profit
 - Presumption of knowledge of illegality
 - Strict liability
 - Rebut the presumption (evidence that not known the lack of authorization)
 - How to ensure that the work is not illegally published?
 - When and how notified by the rights holder?
 - Terms of use at YouTube or other platforms?
 - Reposted on Instagram, blog or any other media/platform?
 - Initially made available with the right holders authorization
- Not knew or ought to have known
 - Presumption the linker is without knowledge
 - When and how notified by the right holder?
 - Circumvent restrictions
 - What kind of restrictions?



Problem areas in EU





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Thank you!

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