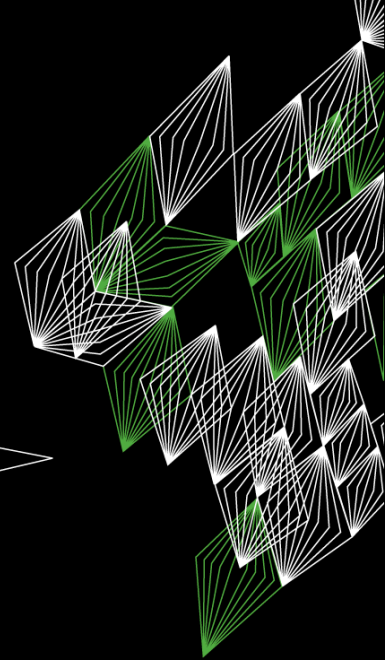
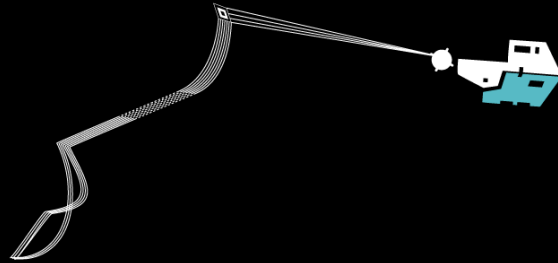


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## IT & Law

2019-2020

dr. Lesley C.P. Broos LL.M.





# Lecture 1

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- Introduction IT& Law
  - Learning aims
  - Set-up of submodule IT&Law
  - Written test and assignments
- Intellectual property protection in a digitized world



## Learning aims (BIT and CS)

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1. Signaling of relevant IT-juridical aspects in the execution of the work of computer scientists and in their task to communicate on these aspects with legal professionals
2. Understand the possibilities and limitations w.r.t. the legal protection of software, databases and domainnames.
3. Integrate requirements concerning the law on privacy during design and realisation of ICT systems and processes.
4. Have insight in the criminal regime w.r.t. computercrime.

## Learning aims (additional for BIT)

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5. Understanding legal framework that applies to online commercial interaction (internet law)
6. Analyse risks and suitability of IT-contracts (contract law)
7. Understand do's, don'ts and alternatives in case of conflict regarding the execution of IT-contracts (dispute resolution)



## Set-up of IT & Law submodule

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- Practice oriented introduction to IT & Law
  - Lectures as a guide for easy studying of papers and legislation
- Interactive lectures
- Colstruction on Case law analysis including presentation of results
- ‘Legislation Selection’ published on Canvas
  - BYOD during lectures and colstruction!
- Focus on EU-based legal regimes
  - With Dutch law examples

Non-annotated **Legislation Selection document** to be used during test!

## Test and assignment

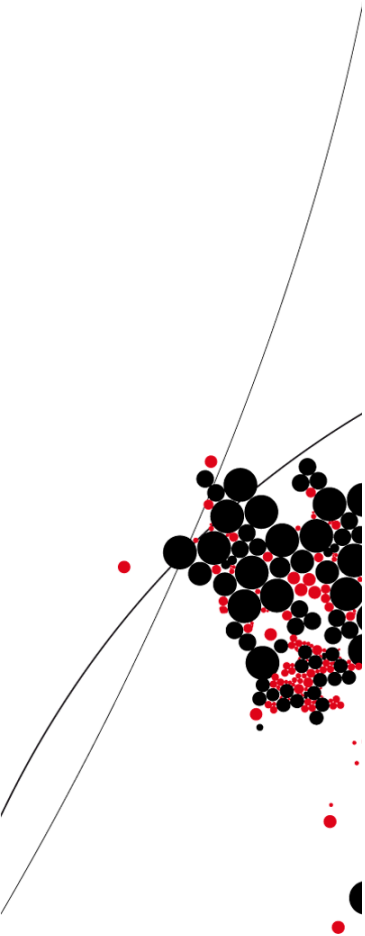
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- CS 2.1 Computer Systems (1EC)
  1. Individual assignment on software licensing (pass/fail)
  2. Case law analysis colstruction (mandatory participation)
  3. Multiple choice test about lectures and literature (50%)
    - Literature (papers) on Canvas
  4. *Group assignment (legal reflection on module project) (50%)*
  
- BIT 2.1 Finance for Engineers (2.5EC)
  1. Individual assignment on software licensing (pass/fail)
  2. Case law analysis colstruction (mandatory participation)
  3. Multiple choice test about lectures and literature (75%)
    - Literature (papers, *extended*) on Canvas
  4. *Individual assignment (reflection on case law) (25%)*



# Intellectual property protection in a digitized world

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- IP-rights may contain...
    - Copyright
    - Database rights
    - Patents
    - Trademarks
    - Tradenames
    - Plant varieties
    - Industrial design rights
    - Trade secrets
    - Portrait rights
    - Neighboring rights
- 



# Intellectual property protection in a digitized world

---

- Property vs. intellectual property
  - Absolute rights on objects vs. creative performances
- Copyright
  - source, owner, exploitation rights, home copy, personality right, exhaustion doctrine, transfer, license
  - Closed source vs. open source software
- Database right
  - source, owner, exploitation rights, spin-off theory, transfer
- Patent law
  - Computer programs as such excluded
- Brand names and trade names vs domain names



# Software patents

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## European Patent Convention (EPC) article 52

*“(1) European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.”*

*“(2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:*

*(a) discoveries, scientific theories and mathematical methods;*

*(b) aesthetic creations;*

*(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;*

*(d) presentations of information.*

*“(3) Paragraph 2 shall exclude the patentability of the subject-matter or activities referred to therein only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.”*

# Copyright

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***Dutch copyright act 23 September 1912,  
“containing new regulations of copyright”***

# Copyright

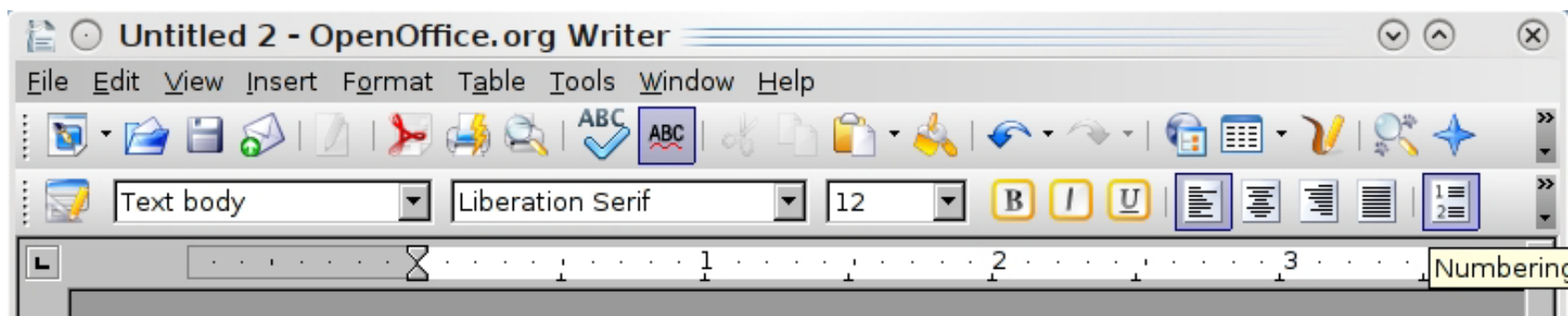
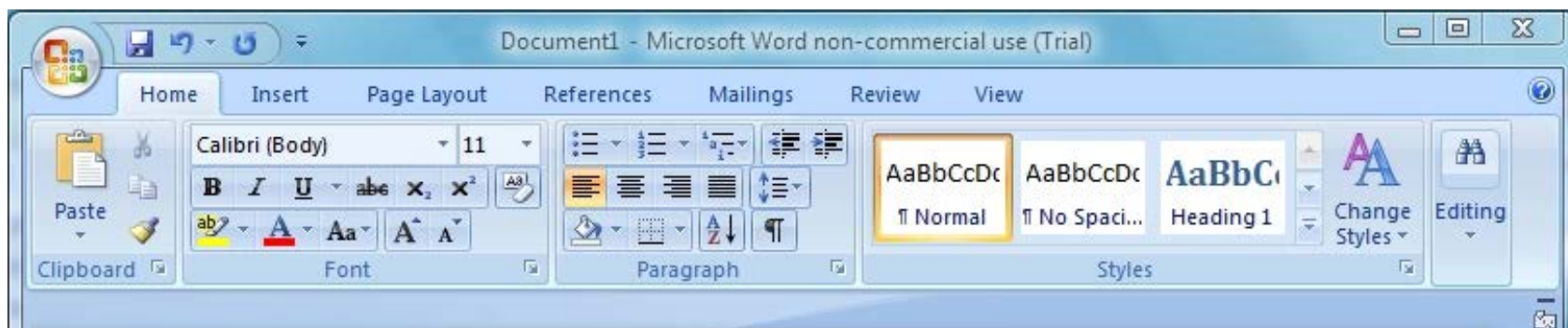
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- Several [EU directives and regulations on copyright](#)
  - Including recent Directive [2019/790 on copyright and related rights in the Digital Single Market](#)
- Most relevant for software protection: [Directive 2009/24/EC on the legal protection of computer programs](#)
- Exclusive rights to do or to authorize... (art. 4 'restricted acts')
- No registration required for copyright protection
- Employer as right holder (art. 2.3)
  - Does not apply for freelancers / contractors
  - First sale doctrine (art. 4.2)
- Transfer of copyright requires deed (= signed document as proof)
  - (Non-exclusive) licenses do not
- Term of protection: 70 years after the death of the author

# Copyright infringement?

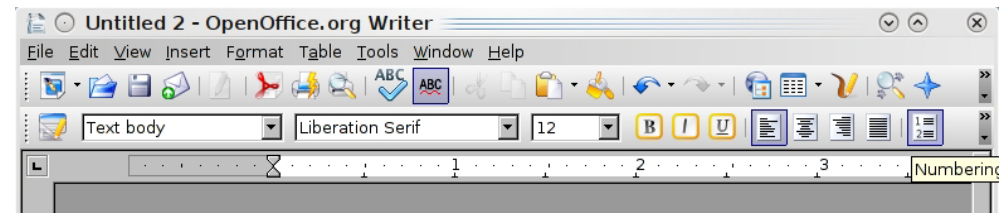
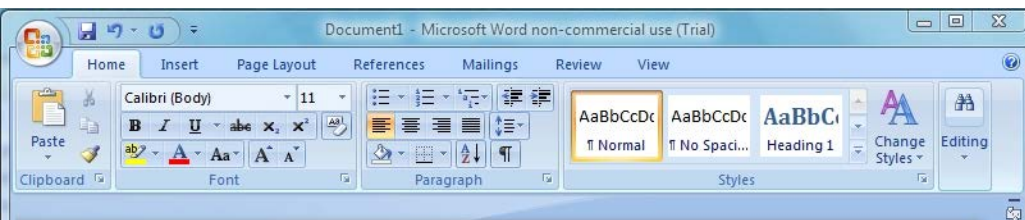
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# Object of copyright protection

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- [SAS Institute Inc. vs World Programming Ltd](#)
  - neither the functionality of a computer program nor the programming language and the format of data files used in a computer program are protected by copyright
  - Expression of a computer program, such as the source code and the object code, can be protected



***“Second hand  
software  
licenses are  
completely  
legal.”***

*Source: European Court of Justice*



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**...is this true?!**

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# First sale doctrine / exhaustion rule

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- UsedSoft vs Oracle
  - Application of First sale doctrine on software
  - Conditions:
    - License for an unlimited period
    - remuneration corresponding to the economic value of the copy
    - first acquirer has deleted his copy

# First sale doctrine / exhaustion rule

---

- UsedSoft vs Oracle

- Application of First sale doctrine on software

*“It should be pointed out, however, that if the licence acquired by the first acquirer relates to a greater number of users than he needs, as stated in paragraphs 22 and 24 above, the acquirer is not authorised by the effect of the exhaustion of the distribution right under Article 4(2) of Directive 2009/24 to divide the licence and resell only the user right for the computer program concerned corresponding to a number of users determined by him.”*

# Database rights

---

- 'database' = collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means
- Protection of investment
- Exclusive rights:
  - prevent extraction and/or re-utilization of the whole or of a substantial part (qualitatively and/or quantitatively)
  - prevent repeated and systematic extraction and/or re-utilization of insubstantial parts
- Term of protection: 15-16 years (after 'completion'...)
- Spin-off theory: databases created as a by product of the maker's main activity are excluded from database protection
- Transfer and license regime comparable to copyright

# Database rights – additional materials to study for test

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- Case law: [The British Horseracing Board Ltd and Others v William Hill Organization Ltd.](#)

*“The expression ‘investment in ... the obtaining ... of the contents’ of a database in Article 7(1) of Directive 96/9/EC (...) must be understood to refer to the resources used to seek out existing independent materials and collect them in the database. It does not cover the resources used for the creation of materials which make up the contents of a database.”*

- Paper: ‘Something Completely Different: Europe’s Sui Generis Database Right’ (P.B. Hugenholtz)

# Domain Names (1)

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- Registration: private regulations
  - first come, first serve principle
  - ICANN (Internet Corporation for Assigned Names and Numbers)
    - Top level domains (.nl, .de et cetera)
  - SIDN (Stichting Internet Domeinregistratie Nederland)
    - Second level domain names

## Domain Names (2)

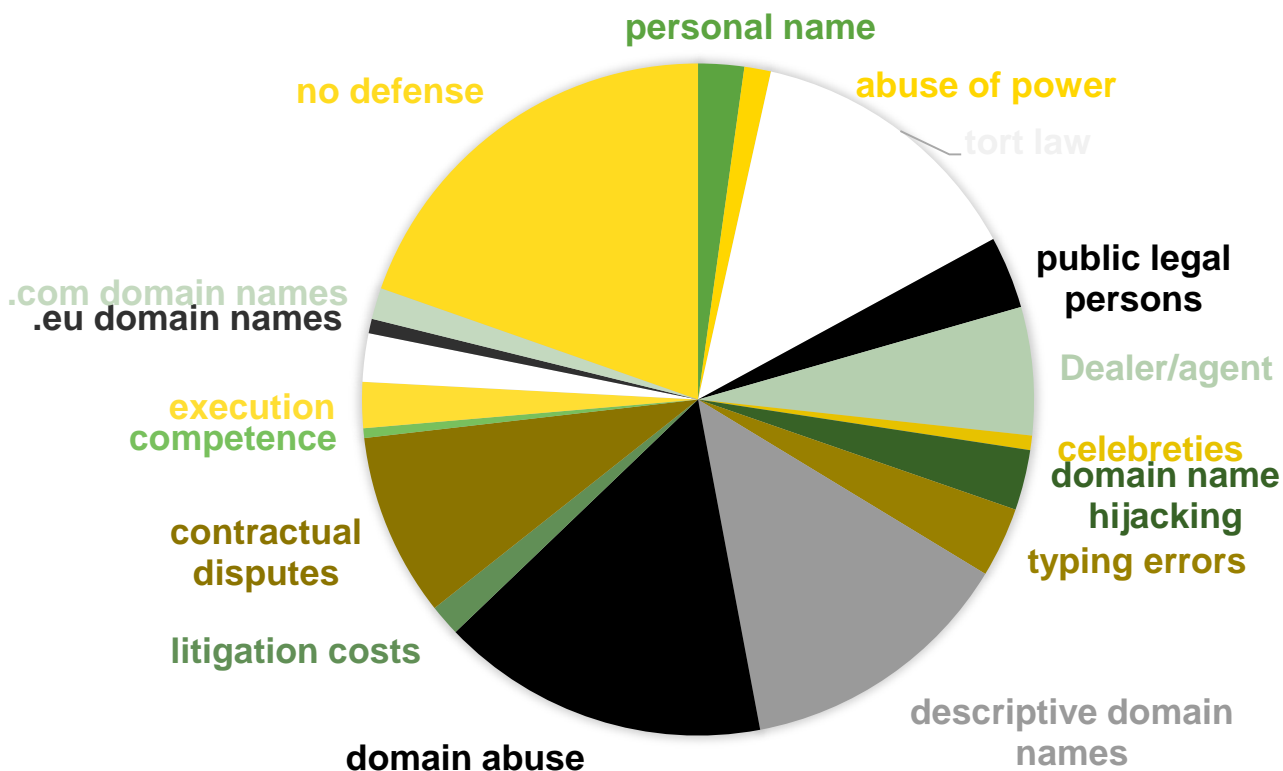
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- Disputes
  - No specific 'domain name law'
  - Disputes based on other IP rights
    - trade marks offer stronger rights than trade names
    - tort law? Sometimes relevant...
    - Equal rights? First come, first serve...
  - WIPO - Domain Name Dispute Resolution
    - Alternative & Online Dispute Resolution (ADR/ODR)
  
- lots of NL examples: domjur

# Domain Name Disputes (domjur September 2017)

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861 DISPUTES



## Domain names (3)

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- Study:
  - DOMAIN NAME REGISTRATION PROCEDURES AND PRACTICES AND DOMAIN NAME DISPUTE RESOLUTION
    - Madeleine de Cock Buning

# Individual assignment – Software licensing

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a. Read:

(1) SAP

- Software license and support agreement
  - Published on Canvas

(2) Compiere Community Edition

- GNU General Public License (GPL) Version 3
  - <http://www.gnu.org/licenses/gpl.txt>

(3) OFBiz enterprise automation software

- Apache License, Version 2.0
  - <http://www.apache.org/licenses/LICENSE-2.0>

**(4) One of these OSS-licences: BSD3, LGPL, MIT, Mozilla, Common Development and Distribution License, Eclipse OR Academic Free License 3.0 (<http://opensource.org/licenses/category>)**

- b. Present a table showing the main differences between (1), (2), (3) and (4). Is (4) more similar to (2) or (3)?
- c. Which license would you choose if you were a software producer and why?



## Lecture 3: Privacy law

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- Privacy law
  - Aim and scope of privacy law
  - Legislative history and developments
  - General Data Protection Regulation





# Contents

---

- Privacy law
  - Aim and scope of privacy law
  - Legislative history and developments
  - General Data Protection Regulation



# Aim of (European) privacy law

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- Under the GDPR the maximum administrative fine is €20.000.000, or in the case of an undertaking, 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher.
- Why...?
  - *Because privacy is a fundamental (human) right?*
  - *Because privacy is a consumer right?*
  - *To prevent abuse of personal data as 'the new gold'?*
  - *To prevent societal / individual damage due to identity fraud?*
  - *To stimulate the internal market?*

# Scope of privacy law

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- Protection of personal data... against whom do we need protection?
  - Vertical protection (state vs citizen)
  - Horizontal protection (citizen vs citizen)

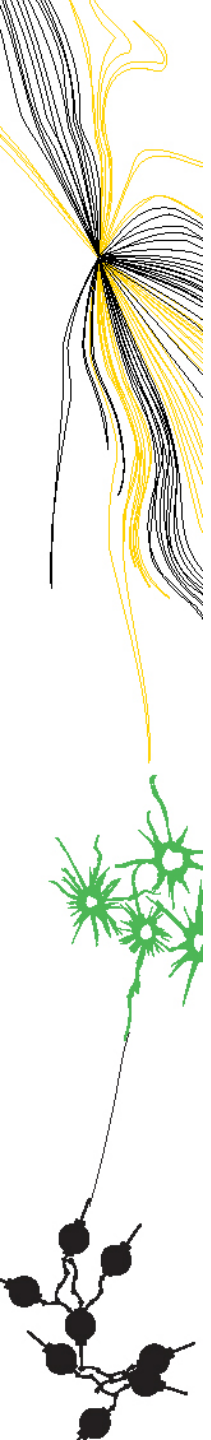


# PRIVACY CATEGORIES

## TYPES OF PRIVACY PROTECTION

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- Information privacy
  - collection and processing of personal data
- Bodily privacy
  - protection of people's physical selves against invasive procedures such as genetic tests, drug testing and cavity searches
- Privacy of communications
  - security and privacy of mail, telephones, e-mail and other forms of communication
- Territorial privacy
  - limits on intrusion into the domestic and other environments such as the workplace or public space



# PRIVACY LAW – SCOPE GDPR

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- Information privacy (data privacy)

≠ territorial privacy, bodily privacy, communications privacy...

By the way...

*E-Privacy Directive* also includes aspects of communications privacy



# Contents

---

- Privacy law
  - Aim and scope of privacy law
  - **Legislative history and developments**
  - General Data Protection Regulation





# INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966)

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## ***Article 17***

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.



# CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (1950)

NL: 'EVRM'

---

## **Article 8 - Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others



# CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (2000/C 364/01)

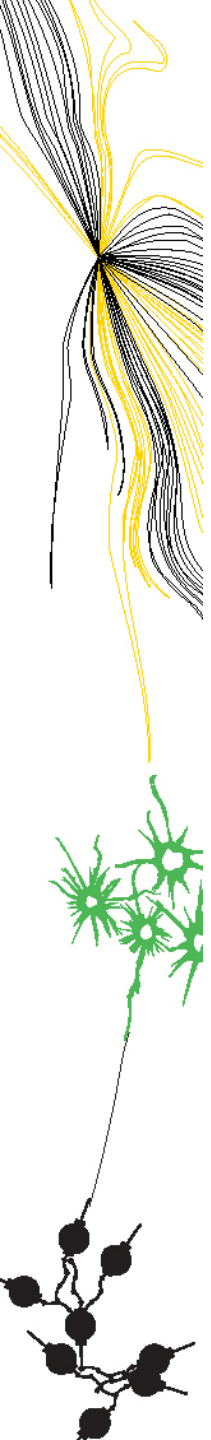
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## **Article 7 - Respect for private and family life**

Everyone has the right to respect for his or her private and family life, home and communications.

## **Article 8 - Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. (...)



# TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU)

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## **Article 16**

1. Everyone has the right to the protection of personal data concerning them.
2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities. (...)



## EXAMPLE: DUTCH CONSTITUTION (REV. 1983)

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### **Article 10**

1. Everyone shall have the right to respect for his privacy, without prejudice to restrictions laid down by or pursuant to Act of Parliament.
2. Rules to protect privacy shall be laid down by Act of Parliament in connection with the recording and dissemination of personal data.
3. Rules concerning the rights of persons to be informed of data recorded concerning them and of the use that is made thereof, and to have such data corrected shall be laid down by Act of Parliament.

→ *Wet persoonsregistratie (1983)*

→ *Wet bescherming persoonsgegevens (2001)*



# EUROPEAN DIRECTIVE 95/46/EC (1995)

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- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on **the protection of individuals with regard to the processing of personal data and on the free movement of such data**



# GENERAL DATA PROTECTION REGULATION

EFFECTIVE FROM 25 MAY 2018

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- REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ([General Data Protection Regulation](#))

→ *GDPR = market regulation to protect of consumer rights rather than protecting fundamental (human) right?*



# RELATED EUROPEAN PRIVACY LEGISLATION

## PRIVACY AND ELECTRONIC COMMUNICATIONS

---

- DIRECTIVE 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)
  - A.k.a. e-Privacy directive
- Directive evaluated... and to be replaced?
  - Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications)



# RELATED EUROPEAN PRIVACY LEGISLATION

## PRIVACY IN CRIMINAL MATTERS

---

- DIRECTIVE (EU) 2016/680 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA



# Contents

---

- Privacy law
  - Aim and scope of privacy law
  - Legislative history and developments
  - **General Data Protection Regulation**



25th of May

2018



# General Data Protection Regulation

# GDPR

## CHAPTER OVERVIEW

---

1. General provisions
2. Principles
3. Rights of the data subject
4. Controller and processor
5. Transfers of personal data to third countries or international organisations
6. Independent supervisory authorities
7. Cooperation and consistency
8. Remedies, liability and penalties
9. Provisions relating to specific processing situations
10. Delegated acts and implementing acts
11. Final provisions



# GDPR PRINCIPLES RELATING TO PROCESSING OF PERSONAL DATA (ARTICLE 5)

---

- Lawfulness, fairness and transparency
- Purpose limitation
- Data minimization
- Accuracy
- Storage limitation
- Integrity and confidentiality
- Accountability



# LAWFUL PROCESSING OF PERSONAL DATA

## MAIN STEPS UNDER GDPR (INCLUDING RELEVANT ARTICLES)

---

1. Identify and document (processing of) personal data / special categories (4.1/5.2/9/30)
2. Process only if necessary for specified, explicit and legitimate purposes (5.1b)
3. Explicit legal basis applicable (6)
4. Perform Data Protection Impact Assessment? (35)
5. Conduct Data Processing Agreements between Controller and Processor (28.3)
6. Consult/cooperate with Data Protection Authority (DPA) / designate DPO? (36/37)
7. Inform Data subject (13/14)
8. Comply with processing principles (5) and requirements like:
  - (a) *minimization of data (no excessive processing) (5.1c)*
  - (b) *data quality (accurate and up to date) (5.1d)*
  - (c) *erasure of data (5.1e)*
  - (d) *data security (technical and organizational measures) (5.1f/24)*
  - (e) *data subject's rights (access 15, rectification 16, erasure 17, restriction 18, notification 19, data portability 20, object 21, profiling 22)*
  - (f) *Privacy by Design & Privacy by Default (25)*
9. Register and communicate Personal Data breaches (33-34)
10. Respect Data export restrictions (44-50)



# TECHNICAL REQUIREMENTS MANDATED BY THE GDPR

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- Read: [technical requirements](#)
- Read: Privacy Design Strategies (published on Canvas)

# LECTURE 4: COMPUTER CRIME





# COMPUTER CRIME TYPOLOGY

---

1. Computer as motive for criminal behavior
2. Computer as instrument for criminal behavior
3. Computer as target of criminal behavior

All combinations are possible... example:

- executing a DDoS attack (2)
- on a computer of your opponent (3)
- In response to an online gaming conflict (1)



# INTERNATIONAL TREATY ON CYBERCRIME

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- [Convention on Cybercrime / ETS No. 185 / Budapest Convention](#)
  - Title 1 – Offences against the confidentiality, integrity and availability of computer data and systems
    - Illegal access, Illegal interception, Data interference, System interference, Misuse of devices
  - Title 2 – Computer-related offences
    - Computer-related forgery, Computer-related fraud
  - Title 3 – Content-related offences
    - Offences related to child pornography
  - Title 4 – Offences related to infringements of copyright and related rights



# INTERNATIONAL TREATY ON CYBERCRIME

---

- [Convention on Cybercrime / ETS No. 185 / Budapest Convention](#)
  - binding international instrument on cybercrime
  - guideline for any country developing comprehensive national legislation against Cybercrime
  - framework for international cooperation between State Parties to this treaty
- Treaty open for signature since 2001
- 61 [ratifications](#) (43 members Council of Europe, 18 non-members)
- [Challenges](#) (video)



# EUROPEAN DIRECTIVE

## ON ATTACKS AGAINST INFORMATION SYSTEMS

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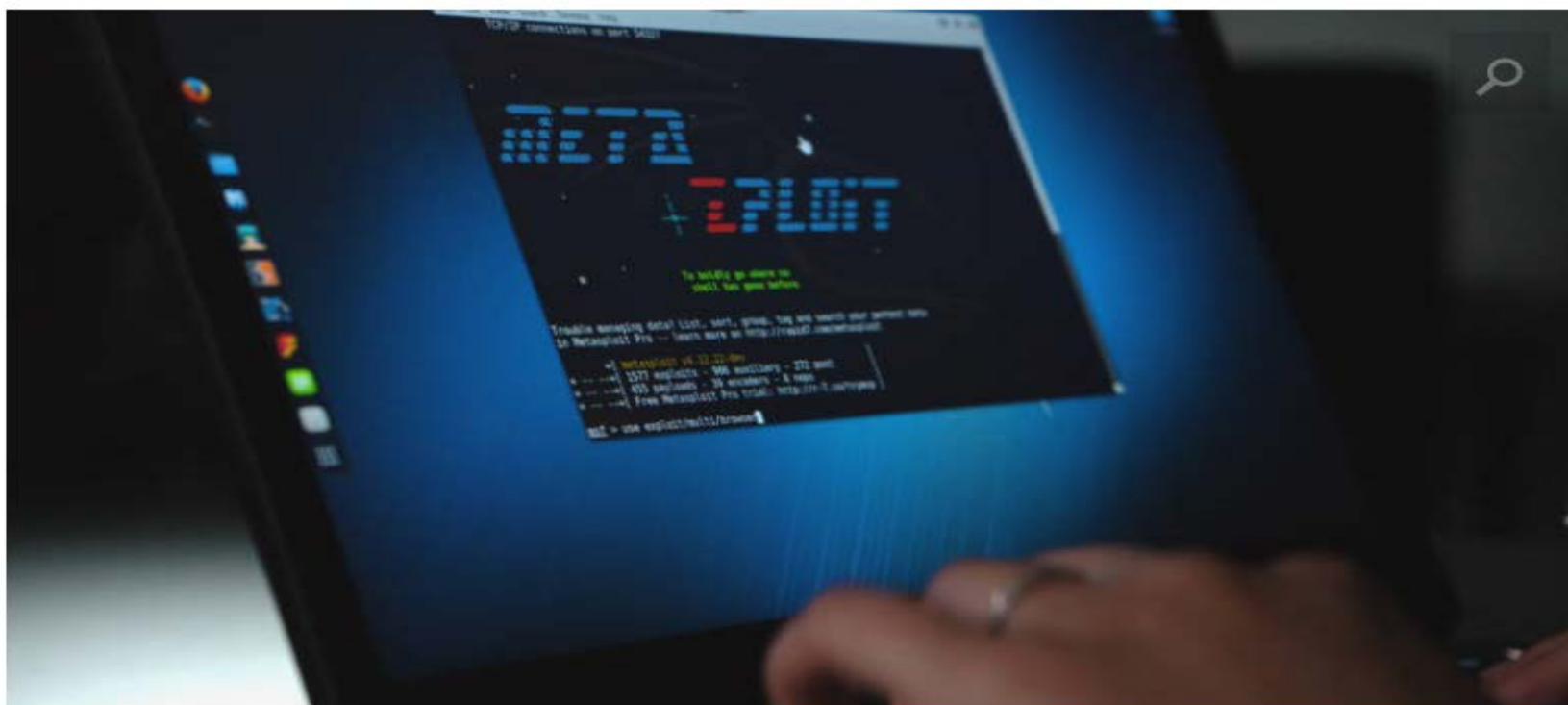
- [Directive 2013/40/EU](#)
  - illegal access to information systems
  - illegal system interference
  - illegal data interference
  - Illegal interception
  - Illegal tools
  - Illegal incitement, aiding and abetting and attempt
- Penalties for natural persons / Liability of legal persons
- Jurisdiction and international cooperation

**Substantive  
Law**

**Procedural Law**

# Politie lost bijna geen hackaanvallen op

© VRIJDAG, 00:02 AANGEPAST VRIJDAG, 18:09 TECH



Een hacker gebruikt Metasploit om in te breken op een computer NOS

De politie heeft vorig jaar nog geen 5 procent opgelost van in totaal 2300 aangiften over hackmisdrijven. Het aantal aangiften blijkt bovendien het topje van de ijsberg: van naar schatting 80 procent van de hacks wordt geen aangifte gedaan.

# Two types of criminal law

---

- Substantive criminal law ('prohibited acts')
  - Criminal Law Code
    - Offenses
    - Penalties
- Criminal procedural law ('powers')
  - Criminal Procedure Code
    - Investigation of data in computers
    - Order to give access to a computer
    - ...

Study: *Computer-Related Crime* (Lodder e.a.), published on Canvas

**Dutch Computer Crime Codes I, II & III are mixtures of substantive and procedural law!**

## Criminal Law

An injury to the public

Prosecuted by government

Attorney provided, if defendant cannot afford one

Burden of proof is beyond a reasonable doubt

Conviction may result in civil disabilities or loss of liberty

Penalties potentially include loss of liberty

## Civil Law

A private injury or wrong

Plaintiff sues defendant

Parties must provide their own attorneys

Burden of proof is preponderant of the evidence

No civil disabilities and no loss of liberty

Penalties are typically monetary

# Main criminal law principle: Nulla poena sine lege

---

- Lex certa / Nulla poena sine lege
  
- Extending interpretation (online application of offline rules) unlawful
- Introduction of new rules for online crimes
  - Trespassing 138 Sr <-> hacking 138ab Sr
  - Sabotage 161 Sr <-> computer sabotage 161 sexies / 161 septies Sr  
DDoS attacks 138b Sr
  - Destruction 350 Sr <-> changing and deleting data &  
making data unusable / inaccessible 350a Sr



Protection against malicious and unwanted software



### Check for new definitions

Definitions allow Windows Defender to detect the latest harmful or unwanted software and prevent it from running on your computer.

Check for Updates Now

[View troubleshooting tips on the web](#)

### Status

Last scan:	Today at 2:02 AM. (Quick scan).
Scan schedule:	Daily around 2:00 AM.
Real-time protection:	On
Definition version:	1.45.1012.0 created on 10/23/2008 at 3:43 AM.

## Qualitative liability regime for computer users?

---

*“Any person who, through negligence, causes data stored, processed or transferred by means of a computerised device or system to be altered, erased, rendered unusable or disabled, or causes other data to be added thereto, shall, if this causes serious damage to that data, be liable to a term of imprisonment or of detention not exceeding one month or a fine of the second category” (Section 350b sub 1 Sr)*

# Tutorial: Case law analysis

---

- Read, analyze, summarize and present 1 case regarding
  - Online Intellectual Property Law Online / Domain name disputes
  - Privacy law OR
  - Computer crime
- Pay attention to:
  - Context (parties and their interests?)
  - Type of procedure (which court?)
  - Legal question to be answered / articles to be interpreted?
  - Arguments pro / contra?
  - Legal decision?
  - Consequences in practice?

# You may choose on of the following cases ...or find one yourself

---

- Domain name disputes
  - America Online, Inc. v. Johuathan Investments, Inc., and AOLNEWS.COM Case No. D 2001-0918
  - Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale Case No. D2000-0662
  - FC Bayern München AG v. Peoples Net Services Ltd. Case No. D2003-0464
  - Dr. Michael Crichton v. In Stealth Mode Case No: D2002-0874
  - C-483/07 P - Galileo Lebensmittel v Commission
  - C-569/08 - Internetportal und Marketing
  - C-376/11 - Pie Optiek

# You may choose one of the following cases ...or find one yourself

---

- Copyright online
  - C-5/08 Infopaq International
  - C-467/08 Padawan
  - C-462/09 Stichting de ThuisKopie
  - C-135/10 SCF (“Del Corso”)
  - C-145/10 Painer
  - C-277/10 Luksan
  - C-360/10 SABAM
  - C-607/11 ITV Broadcasting and Others
  - C-351/12 OSA
  - C-355/12 Nintendo and Others
  - C-435/12 ACI Adam BV and Others

# You may choose on of the following cases ...or find one yourself

---

- Copyright online
  - C-463/12 Copydan Båndkopi
  - C-466/12 Svensson and Others
  - C-117/13 Eugen Ulmer (“TU Darmstadt“)
  - C-201/13 Deckmyn and Vrijheidsfonds
  - C-279/13 C More Entertainment
  - C-360/13 Public Relations Consultants Association (“Meltwater”)
  - C-419/13 Art & Allposters International
  - C-516/13 Dimensione Direct Sales and Labianca
  - C-160/15 GS Media GS Media BV v Sanoma Media Netherlands BV, Playboy Enterprises International Inc., Britt Geertruida Dekker
  - C-527/15 Stichting Brein v Jack Frederik Wullems, Filmspeler
  - C-610/15 Stichting Brein v Ziggo BV, XS4ALL Internet BV – Pirate Bay
  - C-265/16 VCAST

# You may choose on of the following cases ...or find one yourself

---

- Software protection
  - C-393/09 Bezpečnostní softwarová asociace
  - C-166/15 Aleksandrs Ranks, Jurijs Vasilevičs,, Finanšu un ekonomisko noziegumu izmeklēšanas prokuratūra, Microsoft Corp.
  
- Database protection
  - C-304/07 Directmedia Publishing
  - C-545/07 Apis-Hristovich
  - C-604/10 Football Dataco and Others
  - C-202/12 Innoweb
  - C-30/14 Ryanair

# You may choose on of the following cases ...or find one yourself

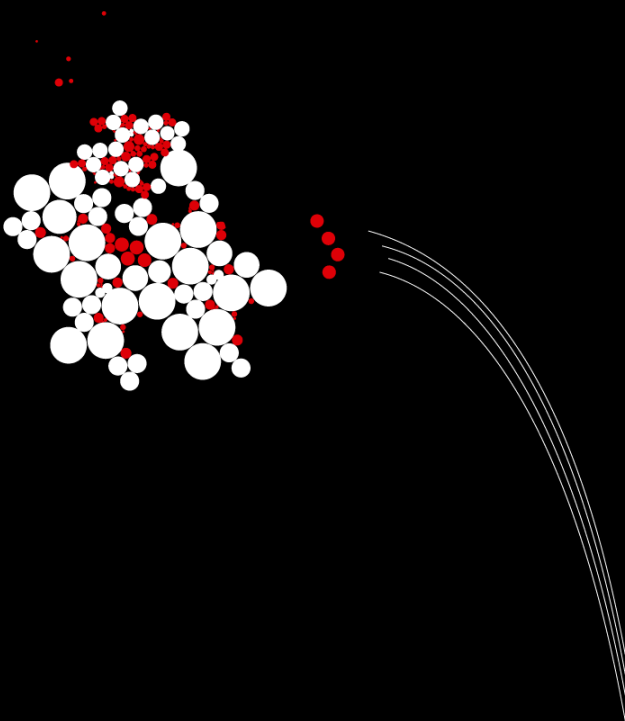
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- Privacy law
  - C-101/01 Criminal proceedings against Bodil Lindqvist)
  - C-275/06 Productores de Música de España (Promusicae) v Telefónica de España SAU
  - C-557/07 LSG-Gesellschaft zur Wahrnehmung von Leistungsschutzrechten GmbH v Tele2 Telecommunication GmbH
  - C-461/10 Bonnier Audio AB et al. v Perfect Communication Sweden AB
  - Joined Cases C-293/12 and C-594/12, (Digital Rights Ireland Ltd, Kärntner Landesregierung)
  - C-131/12, Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD), Mario Costeja González

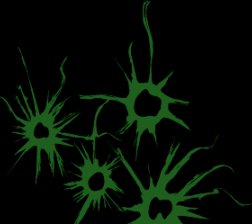
# You may choose one of the following cases ...or find one yourself

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- Privacy law
  - C-212/13, František Ryneš v Úřad pro ochranu osobních údajů
  - C-362/14 - Schrems
  - Joined Cases C-203/15 and C-698/15 Tele2 Sverige AB v Post- och telestyrelsen, and Secretary of State for the Home Department (C-698/15) v Tom Watson, Peter Brice, Geoffrey Lewis
  - C-210/16 Wirtschaftsakademie Schleswig-Holstein
  - C-434/16 Nowak
  - C-73/16 Puškár



Sample test questions



# Sample test questions

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Which of the following topics is hardly regulated by governments?

- a. protection of computer software
- b. protection of trade secrets
- c. protection of domain names
- d. protection of databases

# Sample test questions

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# Sample test questions

---

I am employed as a software developer at a software development company. Responding to an order from my boss, I just finished a fantastic new computer program that is copyright protected. Who is the owner of this copyright?

- a. the employer, as the employer invested in the development of the software
- b. the employee ('me'), as I performed the creative steps needed to develop the software
- c. the employee ('me') unless we agreed differently in the employment contract
- d. the employer unless we agreed differently in the employment contract

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# Sample test questions

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For the transfer of copyright on software we need

- a. oral agreement
- b. a deed
- c. a public notary
- d. a license

# Sample test questions

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# Sample test questions

---

The 'first sale doctrine' is

- a. limiting the exclusive right of the licensor
- b. limiting the exclusive right of the licensee
- c. limiting the exclusive rights of the licensor as well as the licensee
- d. expanding the exclusive rights of the licensor as well as the licensee

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## Sample test questions

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Only the 'expression' of a computer program can be protected by copyright. According to the European Court of Justice, (an) example(s) of 'the expression' of a computer program is/are

- a. the functionality of that computer program
- b. the ideas and principles expressed in the computer program
- c. all of the above
- d. none of the above

## Sample test questions

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- c. all of the above
- d. none of the above**

# Sample test questions

---

Which of the following statements is/are correct?

- I. database protection aims at protection of creativity in creating that database
  - II. database protection aims at protection of investments in that database
- 
- a. Only statement I
  - b. Only statement II
  - c. Statement I and statement II
  - d. None of the statements

# Sample test questions

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# Sample test questions

---

Mr. Pepper owns an exclusive right on a database as meant in Directive 96/9/EC. On 15 July 2010, he finally completed his database, published it on a website and made it available for any visitor online. On the same webpage, he mentions that – as long as the database is protected by Directive 96/9/EC – it is not permitted to transfer the contents of his database to another web page. Nevertheless, you would want to do so. On which date is it allowed to do so?

- a. Any date, as Mr. Pepper did not protect the database that he published online
- b. 16 July 2025
- c. 6 March 2026
- d. Never, as the database is protected under Directive 96/9/EC

# Sample test questions

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## Sample test questions

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The General Data Protection Regulation (GDPR) contains a stricter regime for certain 'special categories of data'. This regime does NOT apply to information concerning someone's

- a. political opinions
- b. biometric data for the purpose of uniquely identifying him/her
- c. a natural person's sex life
- d. financial position

## Sample test questions

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# Sample test questions

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For lawful processing of personal data, you always need

- a. (informed) consent of the data subject
- b. permission from the Data Protection Authority (DPA)
- c. a specified, explicit and legitimate purpose
- d. a data protection impact assessment

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# Sample test questions

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A 'Data processing agreement' is legally required between

- a. the data subject and the controller
- b. the data subject and the data processor
- c. the data controller and the data processor
- d. the data processor and the Data Protection Authority (DPA)

# Sample test questions

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- b. the data subject and the data processor
- c. the data controller and the data processor**
- d. the data processor and the Data Protection Authority (DPA)

# Sample test questions

---

Which of the following statements is/are correct?

- I. Data protection by design is strongly advised for data controllers but not legally required
  - II. Data protection by default is strongly advised for data controllers but not legally required
- 
- a. Only statement I
  - b. Only statement II
  - c. Statement I and statement II
  - d. None of the statements

# Sample test questions

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## Sample test questions

---

Under the General Data Protection Regulation, companies infringing basic principles for processing of personal data are risking a maximum penalty of

- a. €10.000.000
- b. €10.000.000 or up to 2% of the total worldwide annual turnover of the preceding financial year, whichever is higher
- c. €20.000.000
- d. €20.000.000 or up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher

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## Sample test questions

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In terms of a cybercrime typology, the intentional and unlawful production and distribution of ransomware is an example of using a computer as

- a. motive and target
- b. target and instrument
- c. instrument and motive
- d. all of the above

## Sample test questions

---

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# Sample test questions

---

Under Dutch criminal law, any person who intentionally causes the defective functioning of any telecommunication infrastructure facility, shall - if such act is likely to generally endanger the provision of services - be liable to

- a. a term of imprisonment not exceeding six months or a fine of the third category
- b. a term of imprisonment not exceeding three years or a fine of the fourth category
- c. a term of imprisonment not exceeding six years or a fine of the fifth category
- d. a term of imprisonment not exceeding nine years or a fine of the fifth category

# Sample test questions

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Under Dutch criminal law, any person who intentionally causes the defective functioning of any telecommunication infrastructure facility, shall - if such act is likely to generally endanger the provision of services - be liable to

- a. a term of imprisonment not exceeding six months or a fine of the third category
- b. a term of imprisonment not exceeding three years or a fine of the fourth category
- c. **a term of imprisonment not exceeding six years or a fine of the fifth category**
- d. a term of imprisonment not exceeding nine years or a fine of the fifth category

## Sample test questions

---

Recently, in the Netherlands the prosecutor has been granted additional investigative powers to fight cybercrime (Computer Crime Code III). Rules concerning these powers qualify as rules of:

- a. substantive criminal law
- b. procedural criminal law
- c. civil procedural law
- d. case law

## Sample test questions

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