

Empirical
Aspirations:
The Substance
of Procedure
in Online
Music Sharing
Litigation

Law's Empire
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WIPO Copyright Treaty

Art. 11

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.

Terminology

- Pseudonyms
 - geekboy@kazaA.ca
- Internet Address
 - 24.84.179.98
- Internet Service Provider (ISP)
 - Sympatico, Telus, Rogers

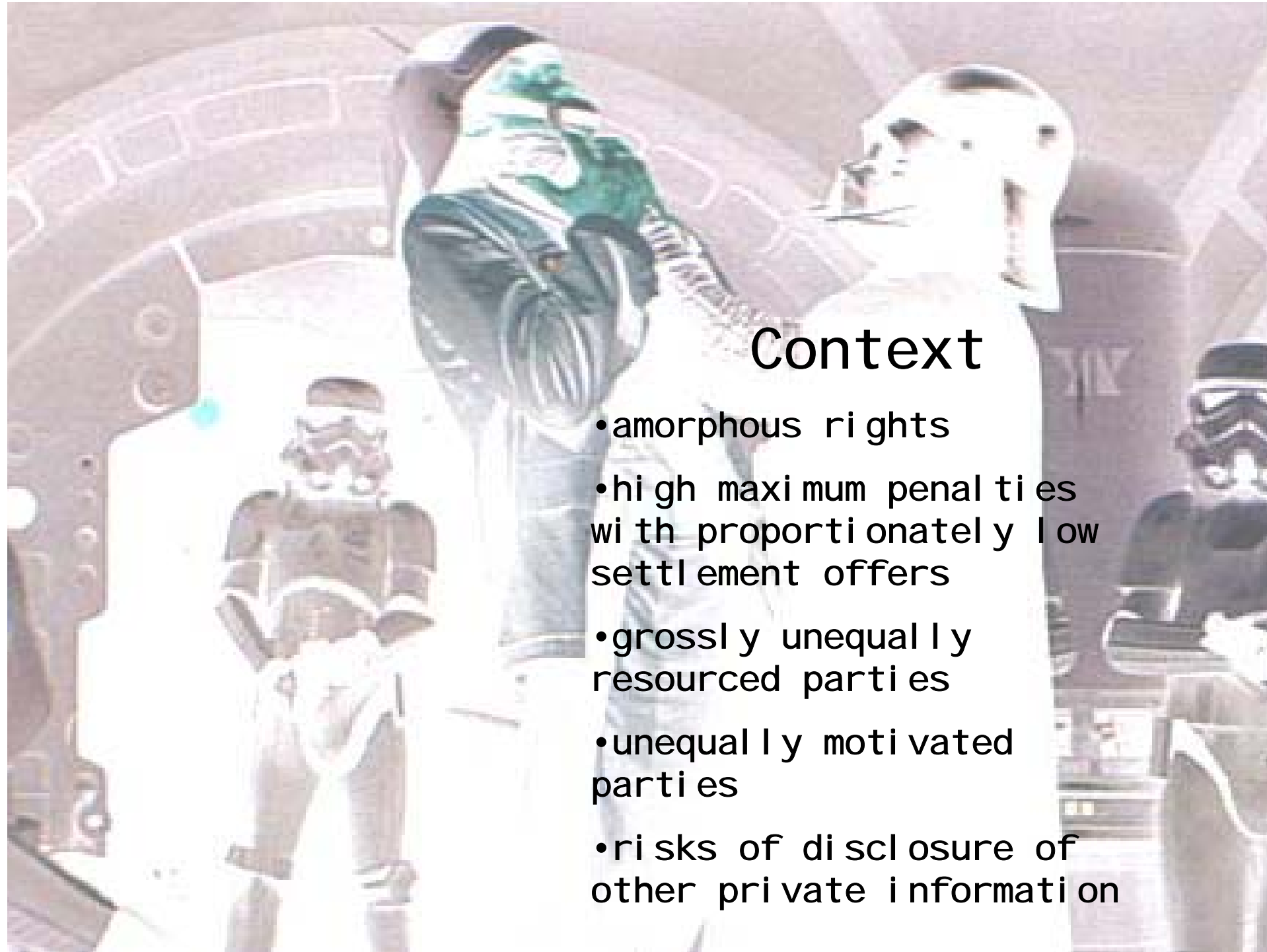
DMCA s. 512(h)

Clerk must issue subpoena
against ISP upon filing of:

- sworn written statement of bona fide belief person engaged in infringing file sharing
- proposed subpoena
- written notification of claimed infringement

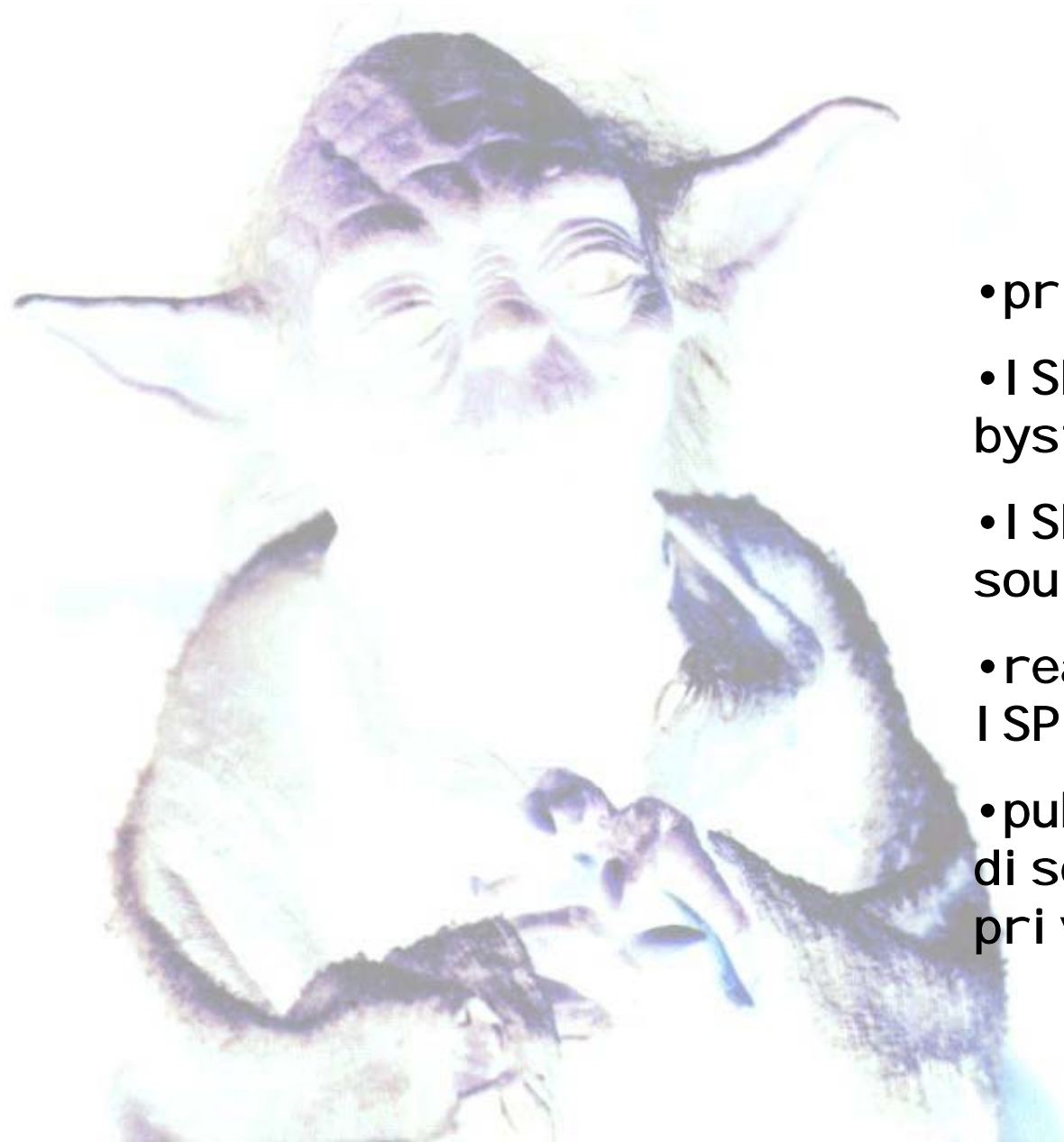
U. S. Li ti gati on Stati sti cs

- 11, 456 i ndi vi dual s sued
- 2, 484 settl ements averagi ng \$3600
- 0 tri als



Context

- amorphous rights
- high maximum penalties with proportionately low settlement offers
- grossly unequal ly resourced parties
- unequal ly moti vated parties
- ri sks of di scl osure of other pri vate i nformation



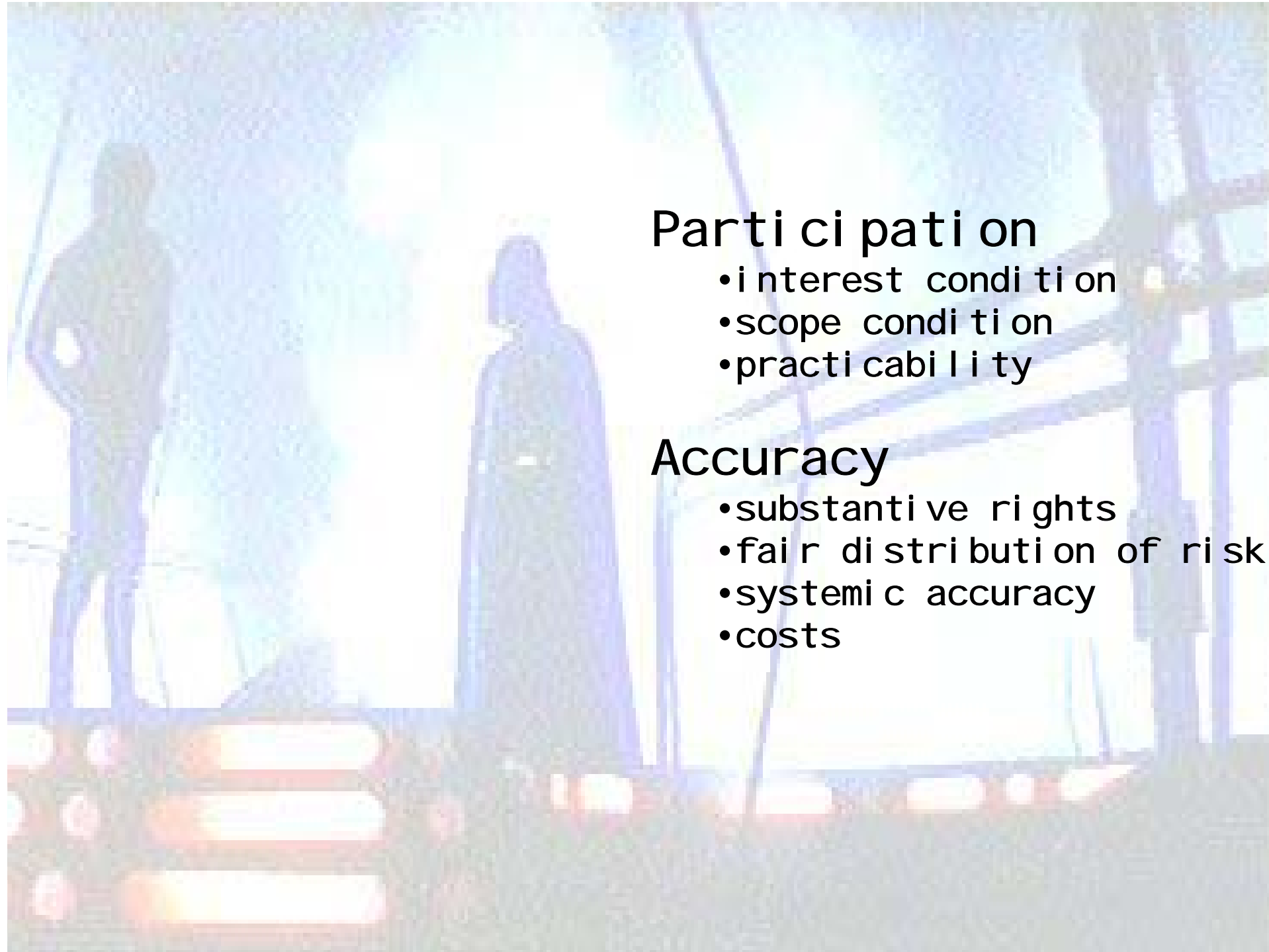
BMG I

- prima face case
- ISP not innocent bystander
- ISP only practical source of information
- reasonably compensate ISP
- public interest in disclosure outweighs privacy concerns



BMG II

- current, complete, firsthand evidence
- bona fide claim
- ISP not innocent bystander
- ISP only practical source of information
- reasonably compensate ISP
- public interest in disclosure outweighs privacy concerns
- extract only information relevant to copyright infringement
- confidentiality orders



Participation

- interest condition
- scope condition
- practicality

Accuracy

- substantive rights
- fair distribution of risk
- systemic accuracy
- costs



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