

eCommerce & Cybercrimes  
Final Examination – Fall  
Professors Kurt Olson & Mick Coyne

STUDENT ID: \_\_\_\_\_

Use your student ID number on the exam and the bluebook. Please write legibly and coherently. Nothing other than a writing instrument is allowed on your person at or near your desk. **Cell phones must be powered OFF (not silenced), and it is a disciplinary violation to have it on or near your person during the exam.**

You will be graded on your ability to recognize and discuss major course themes, your ability to analyze the issues in each question, and your ability to provide cogent and thoughtful responses.

Please take the time to think about and organize your answers. Please do not just identify the issue, but carefully and clearly state your positions and conclusions are. Please write on only ONE side of each page of your bluebook.

RAST  
EXAM

1. A client just walked into your office and wants your help registering and protecting her new product, a roll-on butter applicator. She tells you she has not talked with anyone else about this, so she hasn't worked out a lot of the fine details. However, she does have a name for the product and a prototype built. She also wants your help setting up a website with online ordering once the product is ready for distribution. What steps must you take to register and protect her product, and lastly, secure web space for her eCommerce storefront? What other pertinent advice would you give her related to her online store? (20 Points)

2. Define each term and briefly explain its legal context: (10 Points)

a. Domain Name

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b. Registrar

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c. WHOIS

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d. TLDs and SLDs

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e. Metatags

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f. Cybersquatter

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g. SPAM

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h. DDoS/Botnet

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i. Phishing

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j. Cryptocurrency

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3. When the Supreme Court decided *Aereo*, the future of digital streaming innovation was permanently altered. Some pundits have questioned whether shutting down Aereo forces consumers into less choice in the marketplace, forever resigning them to their cable provider's rising costs. If startups can't rely on the existing regulation structure remaining intact, unchanged by court opinion, how can new innovators simultaneously develop alternative and unique new products, but not run afoul of the law? Can you see any similarities between Aereo's situation and the future of moderately un-regulated eCommerce tech like DraftKings, Uber, Airbnb, or other emerging apps or services? (15 Points)

4. Multiple Choice  
(15 Points)

- i. James was just hired by Gossamer Pharmaceuticals to develop their social media presence across all platforms, as well as work with Gossamer's third-party analytics firm, Wooble Analytics, to determine where to focus their marketing strategy in terms of location and age demographics. Gossamer hired James because of his prior experience as a social media consultant to other Fortune 500 companies, as well as his ownership of Collins Creative, a design and promotions company.

About 4 months after his hiring, James left Gossamer for Kindred Designs. While he was working at Gossamer, he would routinely send work emails related to Gossamer's social media marketing strategy to his personal email box so he could

work on those projects from home, a practice his bosses at Gossamer were aware of. Since James left for Kindred, Gossamer has filed suit against James, with claims including unauthorized access under the Computer Fraud and Abuse Act and trespass to chattels. If the court applies the precedent the 9<sup>th</sup> Circuit set forth in *LVRC Holdings v. Brekka* (employee's access authorized until employer explicitly revokes access), James will be:

- a. Not liable on all claims.
  - b. Liable for unauthorized access under the CFAA but not for trespass to chattels.
  - c. Liable for trespass to chattels but not for unauthorized access under the CFAA.
  - d. Liable for both unauthorized access under the CFAA and for trespass to chattels.
- ii. Monday Mornings is a shoegaze-emo band that has a loyal and dedicated following that call themselves The Mondays. They have an online fan message board with over 12,000 active members across the United States. At 11:11AM on December 13<sup>th</sup>, 2017, a forum user with the user-handle "Caseof3Mondays" posted that Monday Mornings planned to perform a secret holiday show at a bowling alley in Lowell, MA on December 22<sup>nd</sup>.

Caseof3Mondays's post on the forum quickly caught fire and was reposted to Twitter, where it caught the attention of Monday Mornings' record label and management team. The label and management team want to subpoena the message board's hosting provider and discover the identity of Caseof3Mondays, alleging that the artist, label, and management team have sustained serious monetary harm by not being able to roll out their marketing campaign across multiple platforms in the week leading up to the show. Which of the following cases is the *best* case for Caseof3Mondays to cite to prevent Monday Morning's label and management team from uncovering his or her true identity and determining who leaked the secret concert's details?

- a. *Habush v. Cannon* (keywords/adwords not speech)
- b. *Krinsky v. Doe 6* (defamation and the right to anonymous speech on Internet)
- c. *O'Grady v. Superior Court* (AKA *Apple v. Does* - no relevant distinction between print journalist and online blogger in regard to protecting sources)

- d. *Intel v. Hamidi* (non-permissive negative emails sent to employees of parent company do not constitute trespass to chattels)
- iii. Bert Coulson is a prolific YouTuber. He posts 4-5 videos per day, and is continually one of the top-earners of YouTube year after year. Bert's operation is simple: he finds obscure video games and other niche products, and with his unique and off-beat sense of humor, reviews them on his YouTube channel. Coulson remarkably makes about \$160,000 annually just from YouTube posts, all without any licensing deals with any of the products he reviews.

When Smacktvision, a potentially injured game publisher, issues YouTube and Coulson a takedown notice under the Digital Millennium Copyright Act (DMCA), it must first consider if Coulson has a defense of:

- a. First Amendment protected speech – Coulson's reviews are critiques
  - b. Fair Use – Coulson's videos fall into DMCA Safe Harbor
  - c. YouTube's ContentID system is untested and prone to error
  - d. Bert Coulson is located in a state where no applicable statutory cause of action exists
- iv. Which of the following are examples of non-violent cybercrimes? (Circle all that apply)
- a. Embezzlement: Misappropriating money or property for your own use that has been entrusted to you by someone else
  - b. Online Enticement or Attempted Online Enticement
  - c. Unlawful Appropriation: Differs from embezzlement in that the criminal was never entrusted with valuables but gains access from outside the organization and transfers funds, modifies documents, giving him title to property he does not own
  - d. Internet is used to obtain a victim's personal information, such as Social Security and driver's license numbers, in order to assume the person's identity to commit criminal acts
- v. A computer hacker gains access to Home Keep-O's computer system because Home Keep-O failed to institute sufficient security protocols to prevent access through insecure ports. While the hacker had originally intended to attempt to gain access to debit and credit cards used by HK customers, he found that HK had locked down cardholder's information, preventing them from gaining access to sensitive customer PII. When HK finds out about the hacker's access, their

officials contact the authorities. The U.S. Attorney's Office brings criminal charges, and Home Keep-O institutes a civil action. Which of the following will likely succeed? Circle all that apply.

- a. Criminal charges under the CFAA
  - b. Criminal charges under the DMCA
  - c. Civil claims under Trespass to Chattels
  - d. Civil claims under the ECPA
5. It's been widely reported recently that Uber was hacked in 2017, making over 20 million users' data vulnerable as a result of the breach. It's also been reported that Uber paid the 20-year-old hacker over \$100,000 as a ransom so he or she would not notify the press or the authorities of the breach. As to Uber, what penalties do you think are appropriate for a company like Uber maintaining so much sensitive consumer data? As to the hacker, should offenses like this always be prosecuted under the Computer Fraud and Abuse Act to deter future attacks? Does it matter if the accused/defendants are experienced hackers, white-hat hacktivists, or "script kiddies?" (10 points)
6. The Recording Industry Association of America (RIAA) has launched its newest music site, called "MusicMatch." Using MusicMatch, customers can access and download music after entering their credit card information. Christina Spears is an avid music listener and computer programmer who lives in the Netherlands. She thinks that the music industry should not have so much control over music distribution. Christina maintains a website, [www.freethemusic.nl](http://www.freethemusic.nl), which contains her manifesto on the greed of the recording industry as well as her argument that "all information needs to be free."

In addition, there is a link on her page titled "The Stupidity of the Recording Industry." Viewers who click the link are taken to another page on her site that lists all the actions taken by the RIAA that Christina believes are stupid, such as sending cease and desist letters to many college students who used Napster. Among the items in the list is the following entry:

*The RIAA is so stupid it can't even design its MusicMatch site so that it actually works. Any idiot knows that if, instead of entering your credit card number, you enter the number 0000-0000-0000-0000, the site lets you download music as if you had entered a real number.*

In the United States, a group of college students calling themselves "Students for Freedom" have launched a website, [www.studentsforfreedom.org](http://www.studentsforfreedom.org), which discusses Internet issues. The site provides short summaries of recent Internet news items along with links to further information about each item. One of the items on the site reads as follows:

*A Dutch website has come up with a way to get around the RIAA's MusicMatch site and download music without paying a cent. This further demonstrates the impossibility of locking up content online.*

Next to this item is a link to the page on Christina's website listing "The Stupidity of the Recording Industry," including the skeleton-key credit card number. In the week after studentsforfreedom.org posted the link, a million users hit the link and read Christina's idea, then go to the MusicMatch site and download music for free. By the time the RIAA fixed the site to stop the fake credit card number, hundreds of millions of hours of music have been downloaded from the site without payment.

In the wake of this incident, the RIAA, seeking to make an example out of Christina and Students for Freedom (to discourage future incursions on the integrity of the MusicMatch site) files suit against both parties in federal district court in Arizona. Arizona is the corporate home of GoDaddy, the hosting provider for the Students for Freedom website. Both Christina and Miley Stefani, the organizer of the Students for Freedom site (and a citizen of Tennessee) seek to dismiss the suit, arguing that the district court does not have personal jurisdiction over them.

- A. Discuss the arguments each of the defendants might make, as well as the RIAA's possible responses, and then give your best analysis of whether the federal district court would be likely to assert jurisdiction over either or both defendants. Please discuss the relevant issues with regard to each of the two defendants. (15 points)
- B. Assume that the district court does assert jurisdiction over both parties. Assess the likelihood that the RIAA's suit will succeed against either or both defendants. What are the possible legal bases for the RIAA's claim? What are the defendant's possible arguments in defense? (15 points)

Congratulations! You're done your exam!