INSTRUCTIONS
Please read carefully

There are 2 questions. Q1 is worth 75% of the final score and Q2 is worth 25% of the final score. You should allocate your time accordingly.

This is an “open book” exam, so you may use any written material you want that was assigned this semester or to which you have previously referred in your homework assignments. However, during the exam, you may not communicate about the exam or your answer with anyone (orally, electronically or otherwise). Do not use any materials other than these in preparing your answers.

If you refer to any material that is not your unique work product, it must be adequately cited. By this, I mean that you sufficiently identify the work product so I will know what you are referring to (e.g., “Cyberlaw Week 4 Lecture,” “Cubby v CompuServe” or “Foucault in Cyberspace by James Boyle”). Failure to reference quoted, paraphrased or otherwise unoriginal material on your exam is an honor violation and will be dealt with accordingly.

Your exam should include your student number but not your name. Use this document as the template for your exam.

Your answer should be written in one of the following formats ONLY: pdf, doc, docx, rtf or txt. **I WILL ACCEPT NO OTHER FORMATS** and you will receive a zero grade for the course if you do not submit your exam in one of these formats. Also, the title of your document should be in this format: Your Student ID Number__Cyberlaw Final Exam.doc (or pdf, docx, rtf or txt).

This is a take-home exam. This exam is scheduled to begin at 6pm, December 15. You have until 9pm (3 hours) to return the exam to me at my e-mail account: ToddCheesman@gmail.com. **IF YOUR ANSWER IS LATE, YOU WILL FAIL THE COURSE. THERE IS NO GRACE PERIOD. NO EXCUSES!** Of course, students with medical exemptions who have been cleared with the registrar’s office will be allotted additional time as permitted. When I have received your exam I will send you an email confirmation once I have confirmed the document is printable and that you have followed the instructions properly.

**YOUR EXAM IS NOT CONSIDERED OFFICIALLY RECEIVED UNTIL I SEND THIS EMAIL CONFIRMATION.** You should allot sufficient time for equipment and Internet delays in
submitting your answer.

If you have not received confirmation within 10 minutes of submitting your answer you should resubmit it via email. Note: in no case will any late submission be accepted. No time exceptions will be granted due to computer, equipment or power failures, or for failures transmitting the exam. Failure to submit your exam by 9pm sharp will result in your failing the course. There is zero grace period.

Other guidance:

• Specific answers are more correct than more general answers.

• For both Parts I & II, each correct item listed or issue identified will earn credit for the answer. Incorrect items or issues will result in a deduction in your grade.

• All relevant parties are, and all relevant actions take place, in the United States, and all parties are over the age of majority.

• Spend adequate time reading the question and outlining a response.

• Read each question very carefully. Answer the questions actually asked. Do not answer questions that I did not ask.

• Prioritize your discussion. Extensive discussion of irrelevant issues may hurt your score.

• Partial credit will be awarded for partially complete answers.

• If you think additional information would help your analysis, explain what information you would like (and why it would help) and then state your assumptions to continue with your analysis. Similarly, if you need to assume any further information in order to answer a question, explain what information you are assuming and the consequences this has for your answer to the question.

• While generally your answer should be based on legal principles, you are also welcome to address other perspectives and concerns.

• While you may refer to your notes, our website is off limits for the duration of the exam.

• If you have questions or concerns during the exam, email me and I will reply ASAP.
Question #1

Lotus Hornblower is a digital performance artist. Her latest project is the “Elmo Rehabilitator” located at elmorehabilitator.com. Hornblower identifies third party websites that denigrate Elmo, the furry red monster from Sesame Street\(^2\). She then posts a link on her website to a targeted website and encourages her readers, with their full knowledge and consent, to download a small software program (the “applet”) from her website to the reader’s computer RAM. After the applet loads and readers follow the link to the targeted website, the applet automatically causes readers’ computers to do two things:

First, the applet causes the reader’s computer to request the targeted website’s home page multiple times a minute. This facilitates Hornblower’s artistic statement by potentially disrupting the targeted website’s normal server operations.

Second, Hornblower creates a non-existent URL containing a message for the target website. For example, if the target website is “ihateelmo.com,” Hornblower might create the URL www.ihateelmo.com/elmo-is-sweet-and-you-are-not.html. The applet automatically requests this non-existent URL from the target website. Server logs typically show failed URLs, so Hornblower effectively communicates the message contained in the created URL (i.e., “elmo-is-sweet-and-you-are-not”) to the target website’s operator when he/she reviews the server logs.

Discuss Hornblower’s potential liability to (1) a website she targets (please address the possibility that the website has a restrictive “browserwrap”), and (2) the owner of Elmo’s trademark rights (when discussing likelihood of confusion, please don’t do a full multi-factor analysis). Do not discuss her potential liability to anyone else. Do not discuss metatags. 47 USC 230, 17 USC 512 or 17 USC 1201.

Question #2

Shrugged is an online game that allows users to interact with, and play against, each other in a virtual reality environment. Shrugged charges users a monthly subscription fee, and users can buy the game’s virtual currency (called “Reards”) using real dollars. Built on principles drawn from Machiavelli and Ayn Rand, the game encourages users to lie to each other to advance their game play. Indeed, the game’s motto is that “fraud is fun!”

Cap, a Shrugged user, set up a “virtual bank” within the game. The bank allowed users to deposit Reards and promised to repay their Reards, plus “interest” in the form of additional Reards, in the future. However, Cap instead sold the Reards to other users for real dollars, in effect “stealing” all of the depositors’ Reards. Cap made $100,000 of real money in the process.

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\(^1\) This question is inspired by [http://www.thing.net/~rclom/ecdl/ZapTact.html](http://www.thing.net/~rclom/ecdl/ZapTact.html) but I deliberately modified the facts.

\(^2\) This is a popular sentiment online, as a search on “hate Elmo” quickly reveals.
Can Shrugged claim 47 USC 230 as a defense to any legal claims attributable to Cap's behavior? Assume that Cap did not commit any IP infringements and that the Shrugged user agreement is silent in all relevant respects.

END OF EXAMINATION

Have a Great Winter Break!!!
Cyberlaw Final Examination
Fall 2009
Professor Todd Cheesman

PROFESSOR'S INSTRUCTIONS
Please read carefully

Question 1 is worth 2/3 of the total grade, and Question 2 is worth 1/3. You should allocate your time accordingly.

This is an “open book” exam, so you may use any written material you want. However, during the exam, you may not communicate about the exam or your answer with anyone (orally, electronically or otherwise).

If you are typing your answer on a computer, at the beginning of each question’s answer, tell me the number of words in your answer. I DO NOT INTEND TO GRADE AN ANSWER THAT EXCEEDS THE WORD LIMIT BY EVEN ONE WORD. OMITTING OR INACCURATELY REPORTING A WORD COUNT MAY LEAD TO SIGNIFICANT PENALTIES. If you are not typing on a computer, no word count is required.

Other guidance:

• Assume that all relevant parties are, and all relevant actions take place, in the US.
• Spend adequate time reading the question and outlining a response.
• Read each question very carefully. Answer the questions actually asked. Do not answer questions that I did not ask.
• Prioritize your discussion. Extensive discussion of irrelevant issues may hurt your score.
• If you think additional information would help your analysis, indicate what information you would like (and why it would help) and then state your assumptions to continue with your analysis.
• Bullet points, short citation forms and unambiguous abbreviations are OK.
• Please quote statutes or cases only as necessary to make your point.
• While generally your answer should be based on legal principles, you are also welcome to address other perspectives and concerns.
Question 1 (Maximum 2000 words)

Cutest Birthday Cakes (CBC) is a website that allows readers to exchange ideas for baking custom birthday cakes for children, such as the following examples:

Tank cake  Marlboro cake  Simpsons cake

The CBC website allows users to submit photos of the cake (and, occasionally, people enjoying the cake), a description of how to make the cake, the cake’s title, and the submitter’s name, email and location. The submission page tells users: “A birthday cake picture must be original and cannot be copied from another source.”

Kate, the CBC website operator, manually reviews the submitted content for general appropriateness, but Kate does not try to prepare the cakes, so the instructions could be wrong (or even harmful). Kate also superimposes the CBC web address on the photos (look closely at the photos above). Finally, Kate publicly posts the submitted content to the CBC website.

The CBC website generates revenues by displaying ads from Google’s AdSense program. Google automatically infers keywords from each CBC web page (the CBC website cannot tell Google which keywords to pick) and then triggers ads based on those keywords. For example, if Kate creates a “Marlboro cakes page” using the user’s submitted content for the Marlboro cake depicted above, Google might automatically trigger ads associated with the word “Marlboro.”

Q1A: Discuss the most significant legal risks that CBC faces.
Q1B: Suggest some ways that CBC might mitigate those risks.

Do not discuss the liability of Google or any CBC user, except to the extent such liability may affect CBC’s liability. Do not discuss any legal issues arising from the name “Cutest Birthday Cakes” or any associated domain name.

END OF Q1

1 This question is based on the website http://www.coolest-birthday-cakes.com/ but I have modified some facts.
“URL” means a web page’s address.
“Scrape” means to automatically collect content from a web page using robots.

Question 2 (maximum of 1,000 words)

Facebook.com is a social networking website (like MySpace) popular among college students. A Facebook user can create a profile page displaying user-submitted content about him/herself, such as favorite celebrities or TV shows. The site also provides various tools (such as private messaging and message boards) that allow users to communicate with each other. Many students use Facebook to keep in touch and flirt with each other.

John Arrow operates UnFaced.com, which enables “compatibility tests” between Facebook users. Assume Joe and Karen are registered Facebook users. Karen can register with UnFaced.com and display a link on her Facebook profile to UnFaced.com’s website. Joe can follow that link to UnFaced and request a compatibility test with Karen by submitting the URL of his Facebook profile. UnFaced then automatically accesses Joe and Karen’s Facebook profile URLs using robots, downloads each profile, and uses the profile data to assess compatibility using a proprietary algorithm. UnFaced then shows Joe a web page describing its compatibility assessment, which presumably can facilitate further flirting between Joe and Karen.

Only registered Facebook members can access Facebook profile pages (unregistered web visitors who try to access those URLs simply get a login screen). Thus, John must be a registered Facebook member to access Facebook profile URLs. To register, John entered into a mandatory non-leaky clickthrough agreement containing the following terms:

Provided that you are eligible for use of the Site, you are granted a limited license to access and use the Site and to download...the Site Content solely for your personal, non-commercial use...[Y]ou may not republish Site Content on any Internet, Intranet or Extranet site or incorporate the information in any other database or compilation....

[Y]ou agree not to use automated scripts to collect information from the Service or the Site....In addition, you agree not to use the Service or the Site to...register for more than one User account...or register for a User account on behalf of any group or entity; [or...] create a false identity on the Service or the Site.

According to a news report, John “admitted that he’s ‘scraping’ data from the Facebook profiles, but said it shouldn’t matter because UnFaced only did so at the behest of users who gave Facebook that content in the first place.”

Q2A: Discuss UnFaced’s liability to Facebook. Do not discuss any copyright or trademark claims that Facebook may have. Do not discuss UnFaced’s potential liability to any Facebook user or any other third parties.
Q2B: If Facebook terminates John’s Facebook registration and blocks UnFaced’s IP addresses, what can UnFaced do to continue to provide its service?

END OF Q2
END OF EXAM
This is a take-home exam. You have eight (8) hours from the time you receive this exam to complete and return it to my email address. Your exam is not considered received until you receive a return email from me indicating that I have received your exam and that it is in order.

You may use Microsoft Word or WordPerfect. Please be sure to remove all personal information from your document properties (document -> properties in Word). Also make sure that your exam number appears on each page, which is most easily done with a header or footer.

This exam includes a strict word limit of 4200 words, which is approximately 14-16 pages of a proportional spaced font, or many fewer pages with smaller margins. I am grading each exam all at once, so feel free to refer to a prior answer if relevant. NOTE: You do not have to use all of the words available – the questions can be answered in less space than allotted.

Do not rely on page limits; you should count words using your word processor’s “properties” menu item (word counts are sometimes in the bottom bar of the word processor as well). You may divide the word limit however you wish, **but I will stop reading after the word limit is reached.**
CyberLaw Final Exam Fall 2008

The questions are weighted as follows: Question 1, 30 points; Question 2, 40 points; Question 3, 7 points; Question 4, 6 points, Questions 5-6, 5 points each. If any of your answers depend on facts not stated in the problem, feel free to identify which facts would be helpful, and how they would affect resolution of the issue. You may refer to answers to prior questions. ALL PEOPLE, WEBSITES, and EVENTS ARE FICTIONAL.

MyPlace.com

MyPlace.com, Inc. owns and runs a website located at http://www.myplace.com. The site, which opened in March of 2000, is a free “community” website, in which people join to discuss their homes. There is a discussion forum (bulletin board), a classified ads section, and each member may create a “profile page” in which they post photographs of their homes (inside and outside) and discuss home renovation projects that they are working on. Registered users and anonymous guests are allowed to post comments on profile pages. Only registered users are allowed to post in bulletin boards. There are 100,000 registered users, and 400,000 web pages viewed per day. MyPlace.com, Inc. is incorporated in Illinois and all its servers are located there.

For example, the profile page of user coolhouse42 contains this photo, which coolhouse42 took himself:
Concerned about privacy and potential liability for privacy violations, MyPlace.com has always included the following language in its Terms of Service:

**Privacy and Anonymity**

Our homes are personal places, and we do not want to aid others in finding out where you live. Thus, MyPlace.com has the following rules:

1. Registered users shall not post any identifying information, including as part of the username, either on their profiles, in bulletin boards, or anywhere else on the site.
2. Registered users shall not post their addresses, either on their profiles, in bulletin boards, or anywhere else on the site.
3. No user of this website may post any identifying information or address of another on any profile, bulletin board, or anywhere else on the site.
4. No user of this website may use information gathered from this website for commercial purposes or in a manner that violates and copyright, trademark, patent, trade secret, or privacy rights of any person or other entity.
5. MyPlace.com, Inc., will maintain the secrecy of a registered user’s personal information and will not divulge such information to others, nor will it allow others to discover such information.

There are, of course, other terms of service that are not included above. One such term is that registered users continue to own anything they post to the website, but that MyPlace.com has a license to reproduce and display such content solely for the purpose of displaying such content on the MyPlace.com website.

The Terms of Service are available to any site visitor by clicking on a hyperlink at the bottom of every page on the website. The link is entitled “Terms of Service.” Additionally, users that register with the website must click a button that says “I Agree” that is listed on the same page as the terms of service prior to being allowed to register with MyPlace.com.

To the extent you believe any other possible terms might be relevant, you should so state in your answer.

MyPlace.com is a small company with little money given the free nature of its offerings, though it does have links to advertisements provided by Google, which provides it with some revenue. However, site management performs no checking to ensure that usernames, profiles, bulletin board posts or other information posted by users contains no address or personally identifying information. Occasionally, if someone within the company happens to notice such information they will remove it. No one has complained (yet) to the web site about a violation of the term of service detailed above.
YourPlace.com

YourPlace.com, Inc. runs a website located at http://www.yourplace.com. YourPlace.com operates a website, first made public in June of 2007, designed to make money from the growing membership of MyPlace.com. YourPlace.com, Inc. is incorporated in California, and all its servers are located there.

YourPlace.com started with the kernel of an idea: combine the photographs posted in MyPlace.com profiles with aerial imagery to determine where houses are located. (Assume that YourPlace.com has a license to use the aerial photos for any purpose).

For example, the following photograph shows an aerial view of the coolhouse42 house shown above:

Using advanced pattern recognition technology (comparing shapes, colors, sizes, landscape, neighboring houses, rooflines, etc.), the YourPlace.com system is able to determine that this aerial map corresponds to the photo shown above that appears on coolhouse42's profile page. The YourPlace.com system works as follows:
A. The system proceeds one MyPlace.com profile page at a time
B. The system then loads the entire MyPlace.com profile page into random access memory (RAM) of the computer
C. The system then uses pattern recognition to compare the photos found on the MyPlace.com profile page to all of the aerial photos in its library
D. The system provides the address of the home in its aerial photo database that appears to best match all of the photographs from the MyPlace.com profile page
E. The system then deletes the MyPlace.com profile page and all photos from RAM
F. Because there are so many homes to search in the aerial photo database (the entire U.S.), the process is slow -- each search (steps A-E) takes almost three hours per house (though it can perform many searches at once).
Because YourPlace.com knows the address of the house from the aerial photo, YourPlace.com knows the address of coolhouse42. YourPlace.com also uses various information sources and web searches to gather additional information. Thus, YourPlace.com is able to gather coolhouse42’s name (or at least the name of whoever lives in or owns the house), the social security number(s), neighbor information, off-line consumer preferences (e.g. what catalogs coolhouse42 receives in the mail), and place of employment, as well as various on-line information – email address, social networking site profiles having the same user name, affiliated websites, and anything else that can be gathered. Finally, YourPlace.com obtains from marketing companies buying and browsing preferences associated with coolhouse42’s email address and other identifying information it can find.

YourPlace.com uses this information to create a new web profile page that contains all of this information for each MyPlace.com user. The web profile page also includes the appropriate instructions for loading the MyPlace.com photos directly from MyPlace.com servers (in-line framing). Thus, when the page is displayed to a user in his or her web browser, the photos appear to the user even though they are not located on any YourPlace.com server. A portion of the YourPlace.com profile for coolhouse42 is attached.

YourPlace.com currently limits access to its profile pages to those who pay for access. Anyone is allowed to purchase access to any set of names or geographic regions, though all of the company’s customers to date are mass marketers that sent either electronic mail or standard (paper) mail solicitations. For example, marketers can see what home renovation projects MyPlace.com users are engaged in, and can attempt to sell products and services relating to those projects by sending email to them. YourPlace.com customers report that the response rate to advertisements directed toward MyPlace.com users has been very high, which they believe is due to the highly targeted nature of the advertisements allowed for by such detailed information.

Access to the profile pages is limited by password protection. YourPlace.com has no terms of service and enters no agreement with its customers about use of the information in its profile pages. It is unaware of anyone having obtained access without a password.

Coolhouse42

Virginia resident Cy Law, also known as coolhouse42, was surprised last week when an anonymous poster wrote the following comment on his MyPlace.com profile: “Cy Law: are you willing to sell your house? I know you are unemployed and need the money, and I would love to live at 1234 Main Street, Anytown, U.S.A. Thanks for the tip, YourPlace!”

Cy was surprised for three reasons. First, he is not unemployed and doesn’t need money (assume that this comment on his profile is defamatory). Second, he did not believe anyone knew his identity and address; he was very careful not to share that information anywhere else. Third, he had never heard of this site “YourPlace.”

Cy sent a letter to MyPlace.com, requesting that the posting be removed, and MyPlace.com did so about four weeks later. During that time, several of Cy’s friends called and said “I’m sorry to hear that you’re unemployed.”
Coolhouse42 profile on YourPlace.com

Cy Law – MyPlace.com user Coolhouse42
1234 Main Street, Anytown, U.S.A. (Source: YourPlace.com aerial pattern recognition) Phone: (555)555-5555 (Source: OnlinePhoneBook.com) Email: cylaw@email.com (Source: OnlineSearchEngine.com) Social Security Number: 123-45-6789 (Source: SSNumber.com)

Employment Status
Unemployed (Source: Equifax Credit Reporting)

Credit Status
Poor (Source: Equifax Credit Reporting)

MyPlace.com profile text (direct quote):
Hi, I'm coolhouse42, and this is my house. We are in the process of doing a whole house remodel – we are looking for contractors for construction, electrical, and plumbing!

Home Photo:

Neighborhood Information
[omitted for Exam]

Other Online Memberships using coolhouse42 username: AIM Instant Messaging eBay [verified, matching email] Yahoo Instant Messaging Skype […]other omitted for Exam] Note YourPlace.com cannot verify that all username instances found are used by the same person.
Essay Questions

1. Cy Law comes to you and asks for a memo detailing what claims he might have against MyPlace.com and/or YourPlace.com, what defenses they might raise, and the likely outcome. Please draft that memo, and be sure to include discussion of potential defamation and contract claims. You may assume that if someone published the anonymous comment in a newspaper, Cy Law would win a case of defamation against the newspaper as a publisher. You do not need to address issues of jurisdiction, but you should discuss any state or federal laws that could potentially be relevant.

2. You are now in-house counsel at MyPlace.com, Inc. MyPlace.com’s CEO, Weber “Web” Site is extremely upset about YourPlace.com. She is upset because YourPlace.com has potentially harmed the site’s users, but she is even more upset that YourPlace.com has figured out a better way to make money from MyPlace.com than she had thought of. She asks you to write a memo about any claims MyPlace.com has against YourPlace.com, its possible defenses, and the likely outcome(s). She asks you to include discussion of any actions she can try to get federal or state governments to bring as well. You do not need to address issues of jurisdiction, but you should discuss any state or federal laws that could potentially be relevant.

Short Answer Questions

1. In what state or states could Cy Law potentially assert personal jurisdiction in a case against YourPlace.com, Inc. and why?

2. Cy Law asks the district court to force MyPlace.com to provide information about the identity of the anonymous poster. What test should the Court use to determine whether to grant this request, and why?

3. Assuming Cy Law discovers the identity of the anonymous poster, can the anonymous poster successfully defend a defamation lawsuit on the grounds of 47 U.S.C. 230?

4. Is there anything that Web Site could have done to better protect the privacy interests of MyPlace.com users? Focus on legal (rather than specific technical) protections available to MyPlace.com.
Internet Law/Cyberlaw Final Exam
Professor Todd Cheesman
Massachusetts School of Law
Fall 2007

Student Number __________
Time Started ____________
Time Completed __________

December 11, 2007
Essay Exam with 3 Questions
Open Book, Open Notes

INSTRUCTIONS
Please read carefully

Your exam should be in Microsoft Word format and should include your student number but not your name. Use this document as the template for your exam.

This exam is scheduled to begin at 9pm, Tuesday, December 11. You have until 9pm Wednesday (24 hours) to return the exam to me at ToddCheesman@gmail.com. Of course, students with medical exemptions who have been cleared with the registrar's office will be allotted additional time as permitted. When I have received your exam I will send you an email confirmation once I have confirmed the document is printable and that you have followed the instructions properly. Your exam is not considered officially received until I send this email confirmation. You should allot sufficient time for equipment and Internet delays in submitting your answer.

If you have not received confirmation within 30 minutes of submitting your answer you should resubmit it via email. This does not apply to submissions between the hours of 10pm and 8 am. Students submitting answers during those hours will receive confirmation when I get back to the office. If you do not receive confirmation within 30 minutes you should contact me by phone and I will instruct you on proper steps to take for alternative submission. Note: in no case will any submission after 9pm on the 12th be accepted. No time exceptions will be granted due to computer, equipment or power failures, or for failures transmitting the exam. Failure to submit your exam by 9pm sharp on the 12th will result in your failing the course. There is zero grace period.

This exam consists of three (3) essay questions. You must answer all three. The percentage of your test score, suggested time and word limit is listed next to each question. This limit excludes citations and bibliography, but includes discursive footnotes. This is a strict word limit. Do not exceed the word limit for any question or you will not receive credit for your exam. Do not submit more than one version of any answer. If you do, you will receive zero credit for that answer.

This is an "open book" exam, so you may use any written material you want that was assigned this semester or to which you have previously referred in your homework assignments. However, during the exam, you may not communicate about the exam or your answer with anyone (orally, electronically or otherwise). Do not use any materials other than these in preparing your answers.
If you refer to any material that is not your unique work product, it must be properly cited (i.e., Blue Book format). Failure to reference quoted, paraphrased or otherwise unoriginal material on your exam is an honor violation and will be dealt with accordingly.

Other guidance:

- Unless stated otherwise, assume that all relevant parties are, and all relevant actions take place, in the US.

- Use the comments I have provided you throughout the semester on previous answers to help your writing style and to illustrate what I look for in your answers.

- Spend adequate time reading the question and outlining a response.

- Read each question very carefully. Answer the questions actually asked. Do not answer questions that I did not ask.

- Prioritize your discussion. Discussion of irrelevant issues may hurt your score.

- If you think additional information would help your analysis, explain what information you would like (and why it would help) and then state your assumptions to continue with your analysis. Similarly, if you need to assume any further information in order to answer a question, explain what information you are assuming and the consequences this has for your answer to the question.

- Bullet points, short citation forms and abbreviations are not acceptable. Use your best legal writing.

- Please quote statutes or cases only as necessary to make your point. However, if you do reference any material that is not your own work product, you must reference it in proper Blue Book format. The reference does count toward your total word count.

- While generally your answer should be based on legal principles, you are also welcome to address other perspectives and concerns.

- While you may refer to your notes, our website is off limits for the duration of the exam.

- If you have questions or concerns during the exam, please first email me and I will reply ASAP. If you have not received a reply within 30 minutes you can then call me at 978-912-7415 between the hours of 8:30am and 8:30pm. I will be checking email until 10pm but you will not be able to reach me by phone until the morning. Please note that calls outside the listed time frame will not be answered or returned. If for some reason I do not answer your call during work hours, you can leave a message and I will respond via phone or email as soon as I can.

GOOD LUCK AND HAPPY HOLIDAYS!
Question 1 (Suggested Time: 90 minutes, Maximum Length for Answers: 1,250 words)

The Bugett website describes itself as follows: "Bugett.com was created to efficiently bypass the login of web sites that mandate registration and the collection of personal and demographic information" (such as the New York Times). Bugett's creator objects to websites that have visitors register before accessing content or functionality. As a result, Bugett provides a way of avoiding those registration processes, allowing users to save time by not completing invasive registration forms and to avoid disclosing personal information as part of registration.

The way Bugett works is that it users each conduct a search for the URL of a specific website that has a registration process (let's call that a "target website"). In response to the search query, if it has any responsive search results, Bugett displays a username/password combination (a "U/P combination") for the target website. For example, on November 24, 2007, a search for the target website www.nytimes.com yielded the following result:

![Image showing Bugett login details for www.nytimes.com]

In this case, when a www.nytimes.com visitor is asked to log in or register, the user can check Bugett and use the above search result to provide www.nytimes.com with the username "Rainbow" and the password "Sapphire." If the User/Password combination is valid, the user will successfully log into www.nytimes.com without having to complete the www.nytimes.com's registration process.

Bugett users provide all User/Password combinations contained in the Bugett database by electronically uploading them to Bugett. These User/Password combinations are automatically added to the database; Bugett's creator does not verify or screen them.

Bugett displays a link to a "terms of use" at the bottom of every page on the website. In addition, users uploading a User/Password combination see the phrase "I agree to be bound by

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1 If it doesn't have responsive results, Bugett encourages the user to provide a User/Password combination for the website.
the Terms of Use" [where the words “Terms of Use” hyperlink to the terms] and must click on a checkbox (which, as a default, is unchecked) before the website will accept the submission. Selected provisions of the terms of use:

[1] By using buett.com in any way you are agreeing to comply with these terms, which we may update without notice and encourage you to check back here at any time. To use buett.com, you must be legally competent to enter a binding agreement.

[2] We are not responsible for any failure to remove or delay in removing harmful, inaccurate, unlawful, or otherwise objectionable content on buett.com originating with or otherwise provided by third parties.

[3] We provide links to other World Wide Web sites or resources. We do not control these sites and resources, do not endorse them, and are not responsible for any aspects of those sites, including their availability, content, accuracy, legality or delivery of services. You waive any claim resulting from your exposure to material on or through buett.com that is offensive, indecent, or otherwise objectionable. You must be at least 18 to view the adult-oriented sites listed with buett.com.

[4] You warrant that you have all rights necessary to authorize the distribution and re-distribution of any material you submit for inclusion or use in the buett.com system.

[5] You will not submit login accounts for (1) sites that have any form of age access verification (COPPA), (2) pay-per-view accounts or any other form of paid content access, or (3) services and sites you have no ownership of or are not the responsible party for.

Assume that DoughRayMe.com [a fictitious site] publishes news content. DoughRayMe.com has a registration agreement (formed via a mandatory non-leaky clickthrough process) containing (among others) the following terms:

- “you may not disclose your password to any third parties nor share it with any third parties”

- “you may not browse or access our website except as permitted by this agreement”

Visitors to the DoughRayMe.com website who do not register/login cannot read the news content.

Assume that you are my law clerk for this question. Based on my lectures this semester and the comments on your homework, prepare a memo for me:

1) Critiquing Buett's contract formation process [spend less than 1/3 of your time on this subquestion]
2) Discussing the legal liabilities of:

   • a user who uploads a DoughRayMe.com User/Password combination to Bugett

   • a different user who obtains that User/Password combination from Bugett and enters the DoughRayMe.com website to read news content

   • Bugett.com (generally for its users’ actions/statements, as well as specifically for the actions/statements of the foregoing users). In doing so, consider the effects (if any) of Bugett’s terms of use.

Tip: do not discuss trade secret misappropriation or any statutes we did not discuss in class.

1. Discussing the legal liabilities of:

   • a user who uploads a DoughRayMe.com User/Password combination to Bugett

   • a different user who obtains that User/Password combination from Bugett and enters the DoughRayMe.com website to read news content

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END OF QUESTION 1

Question 2 (Suggested Time: 60 minutes; Maximum Length: 750 words)

During the October Democratic Presidential Debates, Hillary Clinton told viewers that they could verify her statements at CheckmeOut.com. But she mispoke; she meant to say CheckMeOut.org, a Massachusetts School of Law non-partisan website that monitors the factual accuracy of statements made by major U.S. political players in their TV ads, debates, speeches, interviews, and news releases.

CheckMeOut.com was registered in February 2007 by Political Widgets Inc., a Cayman Islands outfit. Prior to the debate, CheckMeOut.com visitors saw a page containing only advertising (no “editorial” content). After the debate, Political Widgets “redirected” CheckMeOut.com to oneroushill.com, which is owned and operated by Crusty McCutchen. Crusty is a well-known billionaire who opposes election of Senator Clinton, so debate-watchers acting on her suggestion arrived at a webpage titled “Why We Must Not Elect Hillary Clinton.” Political
Widgets redirected the domain name\(^2\) for two reasons: (1) the unexpected volume of visits to CheckMeOut.com caused it to incur expensive bandwidth charges to its Internet access provider, and (2) to tweak Senator Clinton. Political Widgets did not make any money from the redirection and did not speak with the oneroushill.com operators prior to implementing the redirection.

Identify potential plaintiffs and briefly discuss Political Widgets's potential liability for CheckMeOut.com to those plaintiffs.

Tip: Do not discuss any election law issues.

END OF QUESTION 2

**Question 3** (Suggested Time: 90 minutes; computer users capped at 1,800 words)

Piledechien.com runs a search engine (they call it a "search engine scraper\(^3\)") that works as follows:

Step 1: A user submits a search request to Piel de Chien.

Step 2: Piel de Chien automatically submits the search request to top search engines like Google, Yahoo, Ask and Lycos among others.

Step 3: Piel de Chien receives the search results from the search engines.

Step 4: Piel de Chien automatically extracts the search results, and removes the ads, from original search engine results pages.

Step 5: Piel de Chien delivers the extracted search results to the user as part of a Piel de Chien web page.

Users use Piel de Chien (instead of searching other search engines directly) because (1) Piel de Chien strips out ads (a benefit to people who hate ads), and (2) search engines like Google and Yahoo cannot record a user's behavior\(^4\).

\(^2\) There are a few ways to do this; please assume Political Widgets updated the IP addresses associated with CheckMeOut.com to use the IP addresses associated with oneroushill.com.

\(^3\) "Scrape" means to robotically collect content from a website.

\(^4\) It is a common practice for search engines such as Google to use cookies and to record the IP address of each search. This means that law enforcement can access these search engine server logs and associate particular searches (and sequence of searches) with a particular computer. Search engines also use this kind of information to develop and use profiles of its users for potentially unwanted purposes (such as ad targeting). In contrast, Google cannot record Piel de Chien users' IP address or place a cookie on their computers. Piel de Chien also proudly announces its policies to protect its users' privacy: "no cookies | no search-term records | access log deleted after 7 days."
Piel de Chien is run by long-time Google critics, and they do not appear to derive any financial benefit from the site. Piel de Chien explains its thinking as follows:

Our review of the legal situation has convinced us that we are covered by "fair use" under the Copyright Act....We are convinced that if internet users scrape Google and strip the ads, and make the scraped results available as a nonprofit public service, that this is legal....

...Google blocked Piel de Chien in November, 2007. We moved to a different server and continued as before, because Google could no longer find us. In our opinion, it's legal for Google to block whomever they want, even while it's also legal for us to scrape them if we can.

Assume you are Piel de Chien’s lawyer. Identify and critique Piel de Chien's potential legal liabilities to Google.

END OF QUESTION 3

END OF EXAM
Final Examination
Fall 2006

Instructions:

Please read the questions carefully. There are two questions. Each question is worth 50% of your exam grade; you have 24 hours to complete the exam, but you should not need more than a few hours if you have properly prepared. Please allocate your time and effort accordingly.

This exam is open book and take-home. Please base your answers on assigned readings and class lectures only. You may bring in pre-existing outside knowledge, but you may not do Internet or Lexis / Westlaw searches for additional information once you have received the examination questions. (Such searches are unlikely to help you in any event.) Of course, you may not consult with anyone else during the exam.

Word limit: 2500 words. Courts enforce word limits and so will I. Your exam must be no longer than 2500 words, including any footnotes or endnotes (approximately 12 pages double-spaced). Please include a word count at the top of your document. I will spot-check word counts and will stop reading after 2500 words.

Anonymity. Your name should not appear anywhere on the exam. Each page should have your exam number and page number. Make certain to repeat the call of each question before your answer.

Good luck!

Question 1: Blogs Blast Off

You are General Counsel to Goofy Macrocomputer (“Gocfy”), a privately-run manufacturer of large computer systems. Goofy has caught the blogging phenomenon, and management asks you for a memorandum addressing several legal issues that have arisen regarding the company weblogs.

Goofy has configured blogging software to let employees create weblogs under the URL <http://blogs.Goofymacro.com>. Each employee or department has the option to create a blog, such as <http://blogs.Goofymacro.com/marketing/>. In typical weblog style, these have entries written by company employees arranged in reverse chronological order, with reader-submitted comments underneath. Goofy’s CEO feels that weblogs enable the company to communicate more directly with
customers and independent developers who program for Goofy’s systems. Marketing confirms that customer satisfaction is at an all-time high, particularly because customers like the rapid feedback of blog comments. The blog rollout is not without challenges, however, as described in the incidents below:


One of Goofy’s bloggers, Betty Jo, posts an entry congratulating her development team for their hard work to create and launch a new product, the Comet Switch. That entry spawns an active thread of comments posted by readers of the blog. Most posts discuss the product, but one comment, by “Cranium,” says:

> I bet you didn’t get bonuses for all the extra hours you spent getting this ready for production. I didn’t when I worked for the sleazebags at Goofy. Cya, Cranium

Betty Jo deletes this post and blocks the AOL-owned IP address from which Cranium posted, but a new “Cranium” comment appears, from a different AOL address, each time she deletes one. Frustrated because these posts are lowering her team’s morale, she disallows comments on this entry and then on her team’s entire blog. The “Cranium” comments spread to other Goofy blogs, where the IT staff must spend several hours deleting them.


On Goofy’s Enterprise blog, Lev posts an entry about the challenges he faces in writing new management software for the Enterprise mainframe. One reader (“FreeAsInSpeech”) posts a comment saying that there is a Free Software package, licensed under the GNU GPL, that already does most of what Lev wants. He suggests that it would do the job if Lev modified it somewhat.

A second reader (“FreeAsInGrog”) posts several pages of code and written documentation. Before Lev gets a chance to read FreeAsInGrog’s comment, NeonCorp sends a compliant DMCA notification of claimed copyright infringement to Goofy. NeonCorp claims that FreeAsInGrog posted NeonCorp copyrighted code and documentation without authorization, and demands expeditious removal of FreeAsInGrog’s comment from the Enterprise weblog. NeonCorp also demands that Goofy pre-screen comments to prevent anyone from posting this code again.

**Kess**, <http://Kesssys.com>

Goofy’s CIO, Buzz, notices that competitor Kess Systems does not yet have a web presence. He registers the domain name KessSys.com and makes a particularly nasty weblog, titled “Kess Belt and Suspenders,” appear there. Unsurprisingly, Kess does not appreciate this. Kess threatens a lawsuit over the domain name, as well as over a comment on the Comet blog entitled “Ditch Kess’s Switch,” which says “*Benchmarks show that Kess’s switch is slower than Goofy’s Comet. Tests performed by independent systems researchers confirm what we knew all along, Goofy’s the keeper.*”

Please write a memorandum to Goofy management assessing Goofy’s
potential legal liabilities and legal and business options with regard to each of these blog incidents. (If relevant, please assume that Goofy would be responsible for its employees’ activity because they are acting as agents of the company within the scope of their employment.) Please also suggest future steps Goofy might take to balance the liability risks evident from these incidents with the business benefits Goofy derives from blogs.

Question 2: Senator Kay

You are Legislative Director to Senator Catherine “Kay” Cahill, junior senator from Massachusetts. The Senator has just received a delegation from the group Internet Decency Is Our Mission (“IDIOM”). Knowing that she has spoken out against video game violence, IDIOM has proposed that the Senator introduce a new bill “to protect us from online evils.”

Specifically, IDIOM recommends that the Senator sponsor new law to:

1) Require anyone who uses the Internet to distribute material “obscene as to minors” or obscene generally to use a domain name with “XXX” in it, including for private email correspondence (so racy emails could only be sent between addresses such as me@xxx.aol.com and you@mailxxx.com);

2) Hold Internet service providers liable for any violations of this law by users of or traffic carried on their networks; and

3) Empower the government to search Internet traffic – both public and private communications – for content that does not comply with these rules.

The Senator also meets with the Massachusetts Internet Service Providers (“MISP,” which they pronounce “Mice”). They argue that the IDIOM bill would place a terrible burden on ISPs, who are working to bring broadband Internet service to more residents, including low-cost service for disadvantaged people. They say that existing law, combined with technologies that give parents filtering options, better promotes open dialogue and creative use of the Internet. Moreover, they wonder how the law would apply to newer technologies such as Voice-over-Internet-Protocol (VoIP) telephony, many of which do not use domain names. If the law is changed, NYISP says, it should be to give ISPs broad immunity from lawsuits about anything their users do.

The Senator is a lawyer, and she says that even if some members of Congress knowingly support unconstitutional bills for the public relations value (the public remembers the bill’s passage, but forgets who sponsored it when the courts strike it down years later), she would prefer to propose constitutional legislation that is likely to be effective. She also recognizes that while some of her constituents are IDIOM members, others are members of civil liberties groups such as ACLU and
Please prepare a memorandum for Senator Cahill addressing IDIOM's legislative proposals. For each proposal 1 – 3, the Senator asks you to analyze whether the proposal raises constitutional questions or conflicts with existing statutes; discuss policy arguments for and against the law; and make recommendations whether she should introduce such a bill. In the policy analysis, please discuss the effectiveness of potential solutions other than changes to the law. The Senator suggests that she is also interested in how the proposed legislation would have affected important past cases.

Thanks for an interesting class!