E-Commerce Final Exam
Fall 2011

INSTRUCTIONS
Please read carefully

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At the beginning of your 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 YOUR WORD COUNT MAY LEAD TO SIGNIFICANT PENALTIES.

This is a take-home exam. This exam is scheduled to begin at 6 pm, December XX. You have until 9 pm (3 hours) to return the exam to me at my e-mail account: Cheesman@mslaw.edu. 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.

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- The word count cap is a maximum, not a target!

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GOOD LUCK AND HAVE A GREAT WINTER BREAK!
Part I
[60% of grade]

CentrePointe Corp., a Delaware corporation with principal place of business in Michigan, operates CentrePointe.com, a website that aggregates quotations that its users select from published materials and make available to CentrePointe for this purpose. A registered user of the CentrePointe.com website may type or copy quotations of his choice into text files, and place those files in a particular folder on the hard drive of his Internet-connected computer. CentrePointe accesses the hard drives of the computers of all contributing users who are online at a given time, and displays text drawn from multiple contributors. The quotations are attractively formatted, and are organized by topic into a series of screens that can be viewed with a standard browser via the Internet. CentrePointe calls these compilations of quotations QuoteComps.

Contributing users submit a wide variety of quotations, limited only by the range of their literary knowledge. There are quotations from the literary giants of yesteryear, such as Plato, Cervantes, Shakespeare, Milton, and Voltaire, and also ones from more contemporary giants, such as Steele, Clancy, and Turow. The quotations vary in length from brief one-liners to a page or more. CentrePointe encourages contributors to submit quotes from the more recent writers, aiming at broader popular appeal. CentrePointe also encourages the submission of quotations from more journalistic sources, such as The National Enquirer, which publish "news" about celebrities that is not always accurate but can be very entertaining. CentrePointe encourages contributors by awarding them PremiumPointz for their submissions, with more points given for submissions of quotes from modern authors and from the scandal sheets. Users may redeem their PremiumPointz for valuable prizes.

The QuoteComps are displayed in such a way that they appear to compose a single web page, accessed via a URL within the CentrePointe.com domain. However, the text composing each such page is drawn from the text files on users' hard drives and assembled and formatted on the fly, and is not stored permanently on CentrePointe's server: it resides only briefly on the server just long enough for CentrePointe's proprietary software to add HTML formatting codes so that it will appear in a formatted manner on the viewer's monitor. CentrePointe accesses a user's hard drive by means of a software agent that is downloaded to the computers of its registered users.

In the formatting process, CentrePointe's software turns some of the words and phrases into hyperlinks, displayed as underlined blue text. Clicking on an underlined term brings up a list of links to other quotations within the CentrePointe system that contain the same term, allowing a viewer quickly to locate quotes that contain a particular term. Clicking on a term also generates revenue for CentrePointe, through a cooperative push-advertising system. CentrePointe allows advertisers to "buy" the terms of their choice, using a dynamic pricing scheme in which a term goes to the highest bidder. Generic terms like "stapler" and "buttonhook" may be purchased for very little money; premium generic terms like "diamonds" and "Alaska cruise" go for more; famous trademarks like "Tiffany" and "Mercedes-Benz," and names of entertainment stars like "Britney Spears" and "Justin Timberlake," command the highest prices. When a site visitor clicks on a term that an advertiser has bought, CentrePointe automatically generates an email to the visitor. Each such email contains an advertisement that the advertiser has provided to CentrePointe. The Subject line of each email says something to the effect of "Information you requested about _________," where the blank is filled in with the term on which the viewer clicked. The introductory phrase is varied on a random basis (e.g. "Free info about _________," "New, improved _________," and "Lowest price ever on _________"), so that the messages display greater variety to the recipient.
CentrePointe also compiles for the advertiser a database indicating the name, email address, and several pertinent items of demographic data about each visitor who has clicked on the purchased term, and forwards the database to the advertiser on a daily basis.

In addition to accessing the quotation text files on a registered user's hard drive, the CentrePointe software agent accesses the user's Outlook contact list (if she has one), and downloads the names and email addresses contained in it. In an effort to build its membership, CentrePointe sends out email messages to each of those contacts, inviting them to join the CentrePointe quotation community. To make it more likely that the recipients will view these messages, CentrePointe's mail program is configured to insert the user's name and address in the From box of the email messages. CentrePointe sends a series of five such invitation messages to the invitee over a three-week period. If the recipient has not joined by then, CentrePointe discontinues the marketing effort.

Those who wish to contribute quotations to CentrePointe, or to visit the website and view the QuoteComps, must register at the CentrePointe.com website. One who registers as a quotation contributor must designate a folder on her hard drive where text files containing her selected quotes will be stored. As part of the registration process the user must agree to CentrePointe's Terms of Service by clicking on a button that is clearly labeled "I Agree." Near the bottom of the screen where this button appears is a hyperlink, consisting of blue underlined text, labeled "Terms of Service." Clicking on the link brings the user to a web page that states the terms, including the following:

By registering as a user you authorize CentrePointe to access the files on your computer that contain the quotations you have selected to add to CentrePointe's quotation community. To this end, you authorize CentrePointe to download to your hard drive a software program that will access the files in the folder that you designate as the one where your quotation text files are located. You also authorize us to make use of the text of those files in constructing our QuoteComps compilations.

***

You are a practicing attorney. Now that CentrePointe has its quotation community up and running, it retains you to provide legal advice. Draft an assessment of the legal risks that CentrePointe faces due to its business operations. Include a discussion of the claims that might be brought against CentrePointe, the defenses that it might assert, and the likelihood that any such claims and defenses would be successful. Include in your analysis a discussion of where CentrePointe should anticipate having to defend itself, if lawsuits are brought against it; that is, in what courts would CentrePointe be amenable to suit? What modifications to its business operations would you advise CentrePointe to make in order to reduce its exposure to legal liability?
Part II
[40% of grade]

In the mid- to late-1990s, the U.S. Congress enacted a statutory scheme insulating providers and users of interactive computer services from most types of liability premised on their role as an intermediary in online transactions, and a wholly separate scheme protecting online service providers from copyright infringement liability. At the time of their enactment there had not yet been much experience with the use of online communication technologies by large numbers of people for a range of commercial and non-commercial purposes. Since that time we have accumulated more than ten years of additional experience, accompanied by an enormous expansion in the size of the online population. That population now spans a great range in terms of sophistication, from new users to highly experienced ones.

You are a legislative aide to one of Michigan’s representatives to the U.S. House of Representatives. Write a memorandum to your boss, providing an assessment of the successes and failures of the two statutes viewed in the light of experience. Include a recommendation as to whether amendments to these statutory provisions are warranted, and if so sketch out the sorts of changes you would propose.
E-Commerce Final Exam
Professor Todd Cheesman
Massachusetts School of Law

Student Number
Time Started 6:00 pm
Time Completed

December 15, 2010
Essay Exam
Open Book, Open Notes

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Part I

Fact-Based Questions (50 Points)

Answer 5 of the following 10 questions.

Question 1.

What factors we discussed in the lectures can be employed by an e-commerce Internet site to help

SPC operates a web site which hosts a second hand "Virtual Swap Meet" for used computer hardware and software. SPC facilitates these exchanges by providing payment, insurance and escrow services that can be used to complete the online transactions. Among the products sold on SPC's web site are bootleg copies of software including computer games. SPC receives fees for its services in hosting the "Virtual Swap Meet." SPC requires all visitors to click agreement to its terms and conditions agreement ("TOS"). SPC's TOS specifies "that all disputes are to be resolved in Massachusetts." The TOS conspicuously disclaims all liabilities and notes that SPC is not a party to any transactions on its "Virtual Swap Meet." SPC states that it hosts the Swap Meet as a service and is not otherwise affiliated with buyers or sellers.

You are counsel to SPC. You have recently received an e-mail from a trial lawyer in Massachusetts representing a client injured by a posting on SPC's bulletin board. In the demand letter, the plaintiff's attorney claims that a posting on a "Virtual Swap Meet" online forum injured his client. SPC hosts the online forum "Virtual Swap Meet" on its web site. The plaintiff complained that an unknown third party defamed the plaintiff, a Massachusetts software company. The e-mail also contains an attachment in the form of a summons demanding that SPC make a personal appearance in a Massachusetts court and requesting a jury trial. What are some of the matters you should discuss with SPC on the question of jurisdiction, choice of law, and choice of forum? Assume that SPC has sales of $5,000 originating from its website's online store.

A. What are the key factors affecting whether SPC is subject to personal jurisdiction in Massachusetts?

B. Assuming that there is a sufficient basis for personal jurisdiction, under what circumstances would SPC be liable for the alleged defamation?

Question 2

SPC, your client, calls you after reading that the Uniform Computer Information Transactions Act (UCITA) has not yet been enacted in Massachusetts the state in which SPC's corporate headquarters is located. Massachusetts also happens to be the state that SPC's standard software license agreement adopts as
governing law. Assume that UCITA is applicable to SPC’s license-agreement. Assume that SPC entered
into an agreement with XYZ Pharmacy to supply hardware and software to support the needs of XYZ’s
retail and institutional operations. SPC gave XYZ a shrink-wrap license agreement in the box containing
the software. The shrink-wrap license agreement disclaimed all warranties and provided a limited remedy
that it would repair the system. Soon after installation it was apparent to XYZ that the computer system
did not perform according to the representations of SPC’s sales staff. Over the next two years, SPC
representatives tried to correct the systems deficiencies. XYZ lost patience with SPC and uninstalled
(removed) the system leasing a computer system from another vendor. SPC was unaware that XYZ
uninstalled its system and continued demanding license fees. XYZ filed a lawsuit to recover what it paid
SPC for software, hardware, and service. SPC filed a motion to dismiss relying on a contract clause in the
shrink-wrap license requiring all suits to be brought within one year of accrual of the cause of action. XYZ
argued that the contract was a contract of adhesion and the one year limitation a surprising and
oppressive term.

List SPC’s rights and remedies

Question 3

SPC’s chief of software engineering has developed a method for managing Internet affiliate programs.
The idea is that software placed on a merchant’s site gives SPC the ability to track a user’s online
behavior from the moment the user clicks on an advertisement on a referring web site to the point of a
completed transaction on a merchant’s site. The software permits “affiliate links” to generate a
commission each time a user clicks on them and then buys something. SPC would like to know whether
patent law may protect this affiliate method. Assume that no other party has sought intellectual property
protection for this method of managing Internet affiliate programs.

A. What steps does SPC need to take to protect its proposed affiliate business method?

B. What concerns are posed by SPC’s method of tracking users?
Part II

Knowledge-Application Questions (50 Points)

Question 1

Sally Dazzle is a first year law student at the University of Missouri-Columbia. She grew up in Rolla, Mo., where her parents still reside. Sally has never traveled outside the state of Missouri. She has never voted or paid taxes. She has a Missouri driver’s license.

Stressed out by school, as well as by the events of Sept. 11 and its aftermath, Sally decided to spend the summer following the first year of law school at a yoga meditation retreat in Hawaii. Sally learned about the particular retreat, Swami Stress Reduction, while surfing the internet. She sent an e-mail to the Swami site and was provided with additional information describing the two week Hawaii program. In order to book her seat, Sally made a down payment of $500 on October 5 by providing her credit card information over the internet. The total cost of the program was advertised to be $10,000, and Sally agreed to pay the remaining $9,500 one month prior to the start date of the program, June 1, 2002.

Some time after making her initial payment, (November 15, 2001), again while cruising the internet, Sally learned that several consumer-oriented web sites were not impressed with the Swami Stress Reduction program. In fact, one site labeled it "a poor corporate attempt to provide yuppies with what they think non-yuppies want." Another site announced that "Swami is just a guy from Brooklyn who likes to wander around with a washcloth on his head." So, Sally notified Swami that she would not be enrolling and demanded a return of her $500.

Unbeknownst to Sally (until the commencement of litigation) it turns out that the Swami Stress Reduction Program is a division of the Vidabuena Corp. Vidabuena is incorporated in Delaware and has its principal place of business in New York. Vidabuena operates a number of different retreats and all-inclusive vacation spots throughout the world.

When Sally sent in her down payment of $500 she also assented to a series of contractual clauses. By repeatedly hitting "enter" on her computer she confirmed that her total payment would be $10,000, that if any dispute arose it would be governed by New York law, and that if any dispute arose both Sally and Swami Stress Reduction agreed that any lawsuit arising out of such dispute would be resolved in a court of competent jurisdiction in New York.

When Sally notified Swami that she would not be attending the summer program, Vidabuena Corp. brought suit against Sally in state court in New York. Sally, horrified at the prospect of having to pay $9,500 she does not have, and also outraged by the unseemly business practices of the Swami et al, has retained you to provide her with legal advice. Please answer the following questions:

(a) Does the New York court have personal jurisdiction to hear the claim? For purposes of this question assume that the New York long arm statute provides "courts of this state have personal jurisdiction to the full extent provided by the U.S. Constitution." Explain your conclusions in detail, and provide your reasoning.
Question 2

Your client, Big Important Stuff, Inc. (BIS), contracts with the U.S. Department of Sausage (USDOS) to run simulations of turkey gizzard markets on BIS supercomputers. The security officer for BIS recently discovered that one George Curious had been monkeying around on BIS computers without the company's authorization. Curious logged onto his home computer, found a gap in the BIS firewall, and gained access to a BIS supercomputer running simulations for the USDOS and other, private parties. Curious neither harmed the computer nor interfered with the simulations, apparently being content to simply observe its processing. But BIS did lose over $100,000 in patching the gap in its firewall, a process that delayed all simulations for two days.

BIS asks you to answer the following questions:

A. Is Curious guilty of violating the Computer Fraud and Abuse Act? Why or why not?

B. Assume without analysis, for the purposes of this question only, that Curious violated some law (whether the CFAA, a state statute, or common law). How should BIS proceed -- by bringing the full weight of the law to bear against Curious, or by saying nothing and letting him off the hook? Describe the pros and cons of each of these strategies.

END OF EXAMINATION/
Have a Great Winter Break!!!
E-Commerce Final Exam  
Professor Todd Cheesman  
Massachusetts School of Law

Student Number  
Time Started 6:00 pm  
Time Completed

December 13, 2009  
Essay Exam  
Open Book, Open Notes

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Part I

Fact-Based Questions (50 Points)

Question 1.

What factors we discussed in the lectures can be employed by an e-commerce Internet site to help bolster the site’s credibility?

Privacy Policy
Terms and Conditions
Physical Address
Photos of your business premises and staff to show there is a real entity behind your website
Solid Customer Service
Staff profiles
Testimonials from former and current clients
Toll-free number that is staffed
BBB or other online watchdog approval posted
Statements from satisfied customers
Prompt delivery
Easy return policy
Highlight the unique selling points and expertise of your staff or product
Easy verifiability of your website content (Phrases like “Google Adword verified company”)
Professional website design
Updating website content frequently or indicate that the content has been reviewed recently
Avoid grammatical and factual errors of any kind in your website content
Background for Questions 2-3

You have graduated from Massachusetts School of Law and have been appointed as corporate counsel to SoKool Personal Computers ("SPC"), a dot.com company with a "brick and mortar" headquarters in Massachusetts. You have been asked to render advisory opinions about a number of matters.

Question 2
SPC's Internet logo consists of the words "GO," "TO," and "SPC" in white, stacked vertically within a green circle, against a square yellow background. To the right of "TO" are the characters "com" in black. SPC's logo closely resembles a traffic light. GPC Networks one of SPC's competitors also has an Internet logo, which resembles a traffic light: a green circle within a yellow square. Within the green circle, the word "GO" appears in white; next to the traffic light; the word "GPC Network" appears in black. SPC's Chief Executive Officer believes that the two companies' logos are glaringly similar because of the identical colors and shapes. SPC seeks a preliminary injunction against GPC Networks to prohibit it from using the logo. Assume that SPC and GPC are both software companies.

A. What factors will be critical in a court's decision whether to grant a preliminary injunction in favor of SPC?

B. What are the initial matters you should discuss with SPC's officers in protecting intellectual property rights prior to the launch of the website?

Question 3
SPC's Chief Executive Officer tells you that he tried, a few months ago, to register the domain name "SPC.COM" with Network Solutions, but found that it had already been registered to a Canadian company.

A. What measures, if any, can SPC undertake to procure the domain name?

B. What remedies are available to SPC in forum(s) in which they can bring suit? If more than one forum is applicable, identify which remedies are appropriate for which forum.
Part II

Knowledge-Application Questions (50 Points)

Background for Questions 1-3

By the year 2012, the Wireless Internet Protocol Forum version 3.11 (WIPF311) standard for mobile data communication services has become the dominant means of digital information transport all around the world. With the exception of a few states that fear political unrest and cultural upheaval (China, North Korea, Cuba and Iran), these services are ubiquitously available at low prices through a variety of access devices: from mobile phones, PDAs, PCs, pay-per-use kiosks in public places, in the dashboard of most cars, and so on.

The services used through WIPF look very much like today’s World Wide Web services, although WIPF offers several other important new features:

- **Location and state-based services**: both client and server-based services have access to precise data about the physical location of the client device. The network also detects other “state” information such as whether a given user's device is on or off, engaged in other communications, *et cetera*.

- **Rich metadata.** Unlike today’s World Wide Web, most data accessible through WIPF311 comes with a rich set of metadata (*exempli gratia*, XML tags), specifying attributes such as document author, copyright holder, identifying information about the data itself (creation time, point of origin, *et cetera*), and what kinds of personal information is collected by the given service. There is also third party metadata offered by independent providers, including whether a given piece of content is appropriate for a given age range or religious persuasion, whether a service’s stated privacy policy should be trusted, *et cetera*. Accompanying this metadata is the ability to prevent and report obscene, indecent and otherwise illegal content (*exempli gratia*, peer-to-peer) to proper local authorities.

- **Speech Processing.** The WIPF offers a full range of both speech recognition and speech synthesis tools. Technological advances since the early days of tools such as ViaVoice and Dragon Naturally Speaking from the first decade of the 21st century have made speech services genuinely useful and all but eliminated the need for keyboards.

- **Authentication Services.** WIPF offers trusted and reliable identity services, which enable users to prove their identity to other users or services at a distance across the network.
WIPF services are provided by the successors of the 20th century wireline telephone and cell phone providers.

Question 1

The Wireline Decency Act of 2011: A Memo to the Public Policy Director of the Wireless Freedom Foundation (WFF)

In 2013, United States Senator Darlene Ma Bell (D-NJ) introduced the Woreless Decency Act (WDA), claiming that children around the US are gaining access to inappropriate, sexually explicit materials over WIPF311 services. Indeed, the proliferation of peer-to-peer, obscene and indecent material as well as interactive gaming mushroomed with the introduction of WIPF. This proliferation has led to a booming international cottage industry presently accounting for 12% of the global economy and an even higher percentage of the domestic economy. Nevertheless concerned about the welfare of the nation’s children, Congress passed her bill one month after it was introduced. No hearings were held in either house.

The provisions of WDA are identical to the Communications Decency Act of 1996, struck down by the US Supreme Court in Reno v. ACLU, except for the following changes:

1. The provisions of the CDA explicitly apply to all WIPF311 data and WIPF311 service providers.
2. An additional defense is added to the ones originally in the CDA, providing complete immunity from prosecution to any content provider who labels its content with metadata identifying it as indecent, provided that the metadata technology conforms to current industry technical standards.

Even before the WDA is passed, the WFF (a non-profit advocacy organization, based in Newark, New Jersey, whose mission is to support the human rights of WIPF311 users world-wide) determines that it must stop Congress from making the same mistake twice in two decades.

You have been asked by the WFF Public Policy Director to write an internal memo evaluating the constitutionality of the WDA and its impact on Internet commerce. As this is an internal strategy memo, you should consider reasons that this Act might and might not be constitutional. You need to apply the same strategy with regard to its impact on forms Internet commerce. Based on your conclusions as to both the Act's constitutionality and its impact on Internet commerce, you should also make recommendations on strategy for either lobbying or First Amendment litigation.

Additional Background for Questions 2-3

AOL-Time Warner-Verizon “Drive Center”
The globalization and corporate consolidation trends begun in the late 20th Century have continued apace until now, the year 2012. Seeking to leverage its considerable breadth of consumer services, AOL-Time Warner-Verizon (ATWV) has recently introduced a new comprehensive package of on-road services called “Drive Center.” Drive Center offers customers the convenience of one-stop-shopping access to services including:

- Maps, directions and location-finder services
- Customized in-car entertainment individually tailored to each passenger
- En route gift buying services, promising delivery at or before your arrival time

All of these services are provided on board ATWV-equipped vehicles, or through any WIPF311 device at all. Needless to say, some of the services listed above are delivered with targeted product/service advertisements promoting either ATWV or other products.

As General Counsel to the ATWV Driver Center division, you have a very challenging job. Legal questions come your way on a regular basis. Respond

**Question 2**

The ATWV Drive Center service is so successful that Saab (Europe’s only remaining independent automobile manufacturer) is considering acquiring all of ATWV just to get access to Drive Center.

In reaction to the planned acquisition, some ATWV customers begin a series of actions designed to block the deal. They don’t want their services disrupted, and they fear that prices will increase under Saab’s ownership. The activists use ATWV-operated chat rooms to discuss protest tactics and begin a smear campaign to challenge the integrity of the CEO of Saab.

ATWV management responds by shutting down the chat rooms used by the disgruntled customers. But before this happens, the CEO of Saab (who is no longer so sure about the deal) declares that he is going to sue ATWV for defamation. Your boss asks for a legal assessment of this entire mess.

**Question 3**

Jane Quick is the owner of an ATWV Drive-Center equipped vehicle. The FBI suspects that she may be using this vehicle to transport stolen decoder chips that unlock access to all ATWV satellite TV services for free. If she is doing so, this would violate federal law.

FBI Special Agent Frank Rizzo obtains a search warrant to recover the chips from Quick’s car. Rizzo got a search warrant because Rizzo lives in her car full time and he did not want to risk the
search being thrown out because of a possible Constitutional violation. In reaction to the millions of Americans now living in their cars due to skyrocketing property values (especially in the North East), the US Supreme Court recently ruled that “a person’s car is her car and her castle.”

Agent Rizzo happens to spot Quick’s car and stops it on a highway. As he is pulling her over, Rizzo notices that she appears to be talking on a headset to someone else. Upon presenting the warrant and recovering a box that appears to contain the contraband chips, Rizzo also demand that Quick provide him a complete copy of the car’s computer memory, which would include a record of Quick’s recent communications (both contents and transactional records) as well as a log of her recent travels.

Feeling that he is now hot on the trail of an international entertainment theft ring, Rizzo obtains a court order to obtain all of Quick’s communications from her car. This order is served on you as general counsel for ATWV.

In talking with you when the order is served, Rizzo also demands access to all of the files the ATWV has on Quick, both her data and any information you have compiled about her. Rizzo also asks you for the records of Johnny Damon, to whom Quick recently had flowers delivered through the Drive Center gift service.

Upon your review of the contractual guarantees of the ATWV Drive Center full service package, you determine that it is likely that you are permitted if not required to lend such advice in the event that the records of a client are subpoenaed.

How do you respond to Rizzo? What advice do you and should you offer Quick’s defense attorney?

END OF EXAMINATION

Have a Great Winter Break!!!
Final Exam for E-Commerce
Spring 2004

Refer to notes from every class
Refer to readings from every class

1. Place your student identification number in the upper right corner of this page
2. No books, paper or electronic devices are permitted in the examination room. Only pens or pencils are permitted in the examination room.
3. There is to be no talking in the classroom for any reason
4. Write your answers in the space provided or on the backs of the pages. No blue books are permitted. No additional paper will be provided.
5. Make certain all of your writing or printing is completely legible. Credit will be given only for legible answers.
6. Only one student is permitted to leave the class for a bathroom break at any one time.
7. Partial credit will be awarded for partially complete answers.
8. There is one single best answer for each matching and multiple choice question. Specific answers are more correct than more general answers.
9. On sections one and four, 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.
10. You have 3 hours (180 minutes) to complete the exam

Part I  Fact-Based Questions
20 Points (2 points each)

Question 1.
What factors we discussed in class that can be employed by an e-commerce Internet site to help bolster the site’s credibility?

Privacy Policy
Terms and Conditions
Physical Address
Solid Customer Service
Toll-free number that is staffed
BBB or other online watchdog approval posted
Statements from satisfied customers
Prompt delivery
Easy return policy
Background for Questions 2-3
You have graduated from Massachusetts School of Law and have been appointed as corporate counsel to SoKool Personal Computers ("SPC"), a dot.com company with a "brick and mortar" headquarters in Massachusetts. You have been asked to render advisory opinions about a number of matters.

Question 2
SPC's Internet logo consists of the words "GO," "TO," and "SPC" in white, stacked vertically within a green circle, against a square yellow background. To the right of "TO" were the characters "com" in black. SPC's logo closely resembles a traffic light. GPC Networks one of SPC's competitors also has an Internet logo, which resembles a traffic light: a green circle within a yellow square. Within the green circle, the word "GO" appears in white; next to the traffic light; the word "GPC Network" appears in black. SPC's Chief Executive Officer believes that the two companies' logos are glaringly similar because of the identical colors and shapes. SPC seeks a preliminary injunction against GPC Networks to prohibit it from using the logo. Assume that SPC and GPC are both software companies.

What factors will be critical in a court’s decision whether to grant a preliminary injunction in favor of SPC?

What are the initial matters you should discuss with SPC’s officers in protecting intellectual property rights prior to the launch of the website?

Question 3
SPC's Chief Executive Officer tells you that he tried, a few months ago, to register the domain name "SPC.COM" with Network Solutions, but found that it had already been registered to a Canadian company.

A. What measures can SPC undertake to procure the domain name?
B. What remedies are available to SPC in forum(s) in which they can bring suit? If more than one forum is applicable, identify which remedies are appropriate for which forum.

Question 4
SPC operates a web site which hosts a second hand "Virtual Swap Meet" for used computer hardware and software. SPC facilitates these exchanges by providing payment, insurance and escrow services that can be used to complete the online transactions. Among the products sold on SPC's web site are bootleg copies of software including computer games. SPC receives fees for its services in hosting the "Virtual Swap Meet." SPC requires all visitors to click agreement to its terms and conditions agreement ("TOS"). SPC's TOS specifies "that all disputes are to be resolved in Massachusetts." The TOS conspicuously disclaims all liabilities and notes that SPC is not a party to any transactions on its "Virtual Swap Meet." SPC states that it hosts the Swap Meet as a service and is not otherwise affiliated with buyers or sellers.

You are counsel to SPC. You have recently received an e-mail from a trial lawyer in Massachusetts representing a client injured by a posting on SPC's bulletin board. In the demand letter, the plaintiff's attorney claims that a posting on a "Virtual Swap Meet" online forum injured his client. SPC hosts the online forum "Virtual Swap Meet" on its web site. The plaintiff complained that an unknown third party defamed the plaintiff, a Massachusetts software company. The e-mail also contains an attachment in the form of a summons demanding that SPC make a personal appearance in a Massachusetts court and requesting a jury trial. What are some of the matters you should discuss with SPC on the question of jurisdiction, choice of law, and choice of forum? Assume that SPC has sales of $5,000 originating from its website's online store.

What are the key factors affecting whether SPC is subject to personal jurisdiction in Massachusetts?

Assuming that there is a sufficient basis for personal jurisdiction, under what circumstances would SPC be liable for the alleged defamation?
Question 5
SPC, your client, calls you after reading that the Uniform Computer Information Transactions Act (UCITA) has not yet been enacted in Massachusetts the state in which SPC’s corporate headquarters is located. Massachusetts also happens to be the state that SPC’s standard software license agreement adopts as governing law. Assume that UCITA is applicable to SPC’s license-agreement. Assume that SPC entered into an agreement with XYZ Pharmacy to supply hardware and software to support the needs of XYZ’s retail and institutional operations. SPC gave XYZ a shrink-wrap license agreement in the box containing the software. The shrink-wrap license agreement disclaimed all warranties and provided a limited remedy that it would repair the system. Soon after installation it was apparent to XYZ that the computer system did not perform according to the representations of SPC’s sales staff. Over the next two years, SPC representatives tried to correct the systems deficiencies. XYZ lost patience with SPC and uninstalled (removed) the system leasing a computer system from another vendor. SPC was unaware that XYZ uninstalled its system and continued demanding license fees. XYZ filed a lawsuit to recover what it paid SPC for software, hardware, and service. SPC filed a motion to dismiss relying on a contract clause in the shrink-wrap license requiring all suits to be brought within one year of accrual of the cause of action. XYZ argued that the contract was a contract of adhesion and the one year limitation a surprising and oppressive term.

List SPC’s rights and remedies

Question 6
SPC’s chief of software engineering has developed a method for managing Internet affiliate programs. The idea is that software placed on a merchant’s site gives SPC the ability to track a user’s online behavior from the moment the user clicks on an advertisement on a referring website to the point of a completed transaction on a merchant’s site. The software permits “affiliate links” to generate a commission each time a user clicks on them and then buys something. SPC would like to know whether patent law may protect this affiliate method, assume that no other party has sought intellectual property protection for this method of managing Internet affiliate programs.

What steps does SPC need to take to protect its proposed affiliate business method?

What concerns are posed by SPC’s method of tracking users?
Question 7
Sally pays for and downloads a digital telephone directory off the Internet. The directory is protected by a "trusted system" that prevents copies from being made. Sally writes a program that circumvents the trusted system thus allowing multiple copies to be created. Sally posts copies of the directory and her hacking software on her web site. Which specific provisions of US Federal law has Sally violated?

Question 8
The world's most popular business software is BigSoft Office, developed by BigSoft, Inc. While BigSoft has registered the word "BigSoft" and the phrase "BigSoft Office" as a trademark in the United States, it has been successful in registering the name "Office" as a trademark only in the country of Tunisia. The Tunisian government does not evaluate applications for trademarks, but simply grants registrations upon the receipt of a $500 fee. "BigSoft" and "BigSoft Office" are both famous trademarks in the United States.

Charles owns a web site selling materials such as books, videos and pamphlets used for training people how to use business software applications including BigSoft Office. Charles' web site uses the domain name officetraining.com, which he registered with an official ICANN registrar in January 2000. At the time he registered his domain name the business was called "Charles' Training Materials" but in March 2000, Charles formally changed the name to "Office Training" in part because of his success at attracting customers to the officetraining.com web site. The training materials designed for BigSoft Office have textual descriptions on the web site that include the words "BigSoft Office" and "Office" in them.

Charles has also contracted with Amazon.com to drive traffic to his site. Amazon has developed the alternative search system we discussed in class with one additional feature in that users who type words and phrases into the "location" area of the browser are automatically transferred to a web site corresponding with that word or phrase in the Amazon database, thereby bypassing the DNS system.

Subsequently, BigSoft sends Charles a letter objecting to the use of the officetraining.com domain name and his agreement with Amazon. What are his possible avenues for obtaining relief?
Question 9
What permits a court (domestic courts and foreign courts) to exercise jurisdiction based on contacts over the internet?

Question 10
What protections are there for copyrighted works published on the net?

Part II Multiple Choice Questions
30 Points

1. The majority of information on the Internet is:
   
   A. In the public domain, anyone can use it without permission
   B. Published by the federal government, therefore is not covered by copyright law
   C. Protected by copyright law. You must document this fact or receive permission to use
   D. Protected by copyright law only if it includes the © symbol somewhere on the page
   E. Originates outside the United States
   F. Is of a commercial nature
   G. A and E
   H. A and F
   I. C and E
   J. C and F
   K. All of the above
   L. None of the above

2. Circle the following statement(s) that is/are false
   
   A. E-mail messages that are posted on-line aren't considered copyrighted material.
   B. Items on-line that aren't considered original work are blank forms, short phrases, names, titles, facts, and ideas.
C. It is legal to use a small portion of copyrighted material for education purposes
D. It is illegal to scan images out of a book or magazine to one's web site
E. Individuals who are affiliated with an education institution aren’t allowed to use copyrighted text material or motion media from the Internet without obtaining permission from the owner or indicating that the material is copyrighted
F. It is a copyright violation to use material directly quoted from authors without any attribution
G. When obtaining permission to use copyrighted material, it is not necessary to contact the owner of the copyrighted works.

3. Where do network administrators point their DNS servers?
   A. Root servers
   B. ACPA
   C. ICANN
   D. ISP
   E. COPA
   F. DMCA
   G. CDA
   H. UETA
   I. ICPA
   J. ECPA
   K. COPPA
   L. GLBA

4. E-Company, Inc. posts and follows a privacy policy, which in its entirety provides: complete notice of data collection activities, including the collection of names, addresses, email addresses, and sensitive information; allows access by individuals to their collected data; maintains collected data very securely; allows transfer of all data to third parties; allows the use of data for online profiling; and allows the user to opt-out of the transfer of their personally identifiable information upon request. Which of the following guidelines and laws does the E-Company policy meet?
   B. COPPA Safe harbor
   C. The Consumer Internet Privacy Enhancement Act
   D. The TRUSTe seal program
   E. The BBBOnline seal program
   F. A and B
   G. A and C
   H. A, B and C
   I. All of the Above
   J. None of the Above

5. John advertises his consulting service with false testimonials that purport to be from satisfied clients. These testimonials are sent to members of internet newsgroups. This is likely:
   A. Cyber fraud
   B. Trespass to personal property
   C. A violation of a licensing agreement
   D. Improper but not illegal activity
   E. Outside the scope of current federal law
   F. A and B
   G. A and C
   H. B and C
   I. D and E
   J. A, B and C
   K. All of the above
   L. None of the above

6. Ace manufacturing Corporation orders from E-One products company goods that E-One offers for sale on the Web. Ace pays for the goods, but does not receive them. This is likely:
A. Cyber fraud
B. Trespass to personal property
C. A violation of a licensing agreement
D. Wire fraud
E. A and B
F. A and C
G. A, B and D
H. B and C
I. B, C and D
J. All of the above
K. None of the above

7. One World, Inc. is an ISP that collects data about its members without their knowledge or consent and sells it to its advertisers. One World may be liable for:
A. Cyber Theft
B. Misrepresentation
C. Trespass to personal property
D. Violation of a licensing agreement
E. A DMCA violation
F. A UETA violation
G. A and B
H. A and C
I. B and C
J. All of the Above
K. None of the Above

8. International Media, Inc. (IMI) publishes US Opinion Magazine, which contains an article by Carl. Without Carl's permission, IMI posts Carl's article in an online database. IMI's action is most likely:
A. Copyright violation
B. Beach of contract
C. Violation of a licensing agreement
D. Misrepresentation
E. All of the Above
F. Permissible use
G. A violation of the Lanham Act
H. A UETA violation
I. None of the above

9. DataView Corporation (DVC) licenses to DataVista Company the use of DVC's trademark for the sole purpose of including it in DataVista's domain name. While independently designing the HTML code for its web page and without copying any of the HTML code DataVista redesigns its web page to resemble DVC's site. This is most likely:
A. Permissible since the HTML code was independently derived
B. Within the terms of the negotiated licensing agreement
C. A violation of the licensing agreement
D. Implicit in the licensing agreement
E. Fair use
F. A and B
G. A and D
H. A and E
I. A, D and E

10. Regional Sales, Inc. is named Small Business of the Year (SBY) by Business Enterprises, Inc. (BEI). SBY is a BEI trademark. Regional Sales uses SBY as a tag for its web site. This is most likely:

11. Online Services Company (OSC) is an ISP. Ads Unlimited, Inc. transmits spam to OSC's customers, some of whom then cancel OSC's services. Ads unlimited is most likely liable for:

A. Cyber fraud
B. Cyber terrorism
C. Trespass in a public forum
D. Trespass to personal property
E. Theft of services
F. A violation of the Lanham Act
G. A UETA violation
H. An ACPA violation
I. All of the above
J. None of the above

12. Internet Services, Inc. (ISI) is an ISP. ISI does not create but disseminates a defamatory statement by Jill, its customer, about Ron in a semi-public chat forum. ISI hires paid moderators for its sponsored public forums but for semi-public forums such as this, it allows but does not require voluntary chat room moderation by volunteer moderators. Two moderators, Pete and Brian volunteer for this chat forum. Pete was aware of the content which was posted for several weeks on the site. Brian never checked the site during that time frame. Liability for the remark may be imposed on:

A. Both ISI and Jill
B. Either ISI or Jill but not both
C. ISI only
D. Jill only
E. ISI, Pete and Jill
F. All of the parties
G. None of the parties

13. Bob who lives in Texas advertises his business on the Web. He sells software for immediate download by credit card only. Bob's page receives hundreds of hits from Ohio residents. If a resident of Ohio files a suit against Bob in an Ohio State court, the Court may compel Bob to appear:

A. If Bob conducted substantial business with Ohio residents at his website
B. If he was aware of the substantial Ohio viewership of his web page
C. If he was aware or should have been aware of the substantial Ohio viewership of his web page
D. If there were any sales to Ohio residents at his web site
E. If their was any interactivity on his part with Ohio residents at his website
F. If Bob's web site was only a passive ad
G. A and B
H. A and C
I. A and E
J. A, B and E
K. A, C and E
L. All of the above
Background for Questions 14-17

These look like just 4 answer questions. They are found on pages 74-75 of West's study guide.

Computer Data, Inc. (CDI) incorporates and based in Massachusetts, signs a contract with Digital Products Company (DPC), incorporated and based in Florida, to make and sell customized software for DPC to, in turn, sell to its clients.

14. To protect the rights that CDI has in its software, CDI’s best protection is offered by:
   
   A. The DMCA
   B. Constitutional law
   C. Tort law
   D. Intellectual property law
   E. Criminal law
   F. ACPA
   G. CDA
   H. DARPA
   I. DNS
   J. ECPA
   K. GLBA
   L. ICANN
   M. ICPA
   N. UETA

15. CDI ships defective software to DPC, which sells it to a customer, Eagle Distribution Corporation. The defective software causes losses that the Eagle estimates at $100,000. With respect to Eagle, CDI has likely violated:

   A. The DMCA
   B. Constitutional law
   C. Tort law
   D. Intellectual property law
   E. Criminal law
   F. ACPA
   G. CDA
   H. DARPA
   I. DNS
   J. ECPA
   K. GLBA
   L. ICANN
   M. ICPA
   N. UETA

16. DPC’s officers order some employees to access CDI’s computers online to obtain its data without CDI’s permission. This is:

   A. Cyber fraud
   B. Cyber terrorism
   C. Trespass in a public forum
   D. Trespass to personal property
   E. Theft of services
   F. All of the above
   G. None of the above

17. During an investigation into DPC’s activities, some of its officers are suspected of having committed crimes. As a corporation, DPC can:
18. Company ABC has several divisions that have created private resources that can be accessed using Internet protocols. The company is now going to link these resources together. What type of network is being described?

A. Internet
B. Extranet
C. Intranet
D. Virtual private network
E. Internal Data Exchange System
F. Encrypted Exchange Protocol System
G. C and D
H. C or D
I. C and E
J. C or E
K. C, D and E
L. None of the above

19. Which of the following is not a benefit of bundling products?

A. Lower total cost
B. Product customization
C. Lower cost of production
D. Differentiation of vendors
E. B and C
F. B and D
G. C and D
H. All of the above
I. None of the above

20. One unique item is offered. The price starts high and drops at fixed intervals until someone bids and becomes the winner. What type of auction is being described?

A. English auction
B. Yankee auction
C. Dutch auction
D. Free-fall auction
E. Bid auction
F. Double auction
G. Offer auction
H. Second-Price Sealed-Bid Auction
### III. Matching

**10 Points (1/2 point each)**

Match each term in the left column with the single best choice in the right column. Make certain your lines precisely match one item with another. If there is any doubt, you will not receive credit for your answer.

<table>
<thead>
<tr>
<th>Term 1</th>
<th>Term 2</th>
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<tbody>
<tr>
<td>A communication protocol</td>
<td>152.144.123.16</td>
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<tr>
<td>256 Bit encryption</td>
<td>An example of poor netiquette</td>
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<td>ACPA</td>
<td>Archie</td>
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<tr>
<td>Bid Auction</td>
<td>Auctioneer lowers the offer price until a buyer agrees to pay the offer price</td>
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<td>Browser</td>
<td>Bookmark</td>
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<td>Caching</td>
<td>Cybersquatting</td>
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<td>CDA</td>
<td>Department of Defense</td>
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<td>Clearinghouse Auction</td>
<td>Easier to use than FTP, while still using a text-only interface</td>
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<td>Cookies</td>
<td>Illegal but most secure means of encrypting information on the net</td>
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<td>COPA</td>
<td>IP Address routed to</td>
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<td>COPPA</td>
<td>Model law similar to the UCC that establishes rules for e-commerce</td>
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<td>Cracking</td>
<td>Operating system</td>
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<td>DARPA</td>
<td>Popular business auction model</td>
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<td>DMCA</td>
<td>Principal liability</td>
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<td>DNS</td>
<td>Regulatory body enforcing consumer protection and Internet advertising</td>
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<td>Double Auction</td>
<td>Safe Harbor</td>
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<tr>
<td>Dutch Auction</td>
<td>Sellers make sequential offers; buyers can accept any offer, but can't make bids.</td>
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<td>ECPA</td>
<td>Song Beverly</td>
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<td>English Auction</td>
<td>Storing copies of internet sites on a server to facilitate repeated access</td>
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<td>Ethernet</td>
<td>Used to customize web content to user preferences</td>
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<td>Quantum Cryptography</td>
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<td>UETA</td>
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<td>Yankee Auction</td>
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Part IV Knowledge-Application Questions

40 Points (4 points each)

Background for Questions 1-3

By the year 2012, the Wireless Internet Protocol Forum version 3.11 (WIPF311) standard for mobile data communication services has become the dominant means of digital information transport all around the world. With the exception of a few states that fear political unrest and cultural upheaval (China, North Korea, Cuba and Iran), these services are ubiquitously available at low prices through a variety of access devices: from mobile phones, PDAs, PCs, pay-per-use kiosks in public places, in the dashboard of most cars, and so on.

The services used through WIPF look very much like today's World Wide Web services, although WIPF offers several other important new features:

- **Location and state-based services**: both client and server-based services have access to precise data about the physical location of the client device. The network also detects other "state" information such as whether a given user's device is on or off, engaged in other communications, et cetera.
- **Rich metadata.** Unlike today's World Wide Web, most data accessible through WIPF311 comes with a rich set of metadata (*exempli gratia*, XML tags), specifying attributes such as document author, copyright holder, identifying information about the data itself (creation time, point of origin, et cetera.), and what kinds of personal information is collected by the given service. There is also third party metadata offered by independent providers, including whether a given piece of content is appropriate for a given age range or religious persuasion, whether a service's stated privacy policy should be trusted, et cetera. Accompanying this metadata is the ability to prevent and report obscene, indecent or otherwise illegal content (*exempli gratia*, peer-to-peer) to proper local authorities.
- **Speech Processing.** The WIPF offers a full range of both speech recognition and speech synthesis tools. Technological advances since the early days of tools such as ViaVoice and Dragon Naturally Speaking from the first decade of the 21st century have made speech services genuinely useful and all but eliminated the need for keyboards.
- **Authentication Services.** WIPF offers trusted and reliable identity services, which enable users to prove their identity to other users or services at a distance across the network.

WIPF services are provided by the successors of the 20th century wireline telephone and cell phone providers.

**Question 1**

**The Wireline Decency Act of 2011: A Memo to the Public Policy Director of the Wireless Freedom Foundation (WFF)**

In 2013, United States Senator Darlene Ma Bell (D-NJ) introduced the Wireless Decency Act (WDA), claiming that children around the US are gaining access to inappropriate, sexually explicit materials over WIPF311 services. Indeed, the proliferation of peer-to-peer, obscene and indecent material as well as interactive gaming mushroomed with the introduction of WIPF. This proliferation has led to a booming international cottage industry presently accounting for 12% of the global economy and an even higher percentage of the domestic economy. Nevertheless concerned about the welfare of the nation's children, Congress passed her bill one month after it was introduced. No hearings were held in either house.

The provisions of WDA are identical to the Communications Decency Act of 1996, struck down by the US Supreme Court in Reno v. ACLU, except for the following changes:

1. The provisions of the CDA explicitly apply to all WIPF311 data and WIPF311 service providers.
2. An additional defense is added to the ones originally in the CDA, providing complete immunity from prosecution to any content provider who labels its content with metadata identifying it as indecent, provided that the metadata technology conforms to current industry technical standards.

Even before the WDA is passed, the WFF (a non-profit advocacy organization, based in Newark, New Jersey, whose mission is to support the human rights of WIPF311 users world-wide) determines that it must stop Congress from making the same mistake twice in two decades.

You have been asked by the WFF Public Policy Director to write an internal memo evaluating the constitutionality of the WDA and its impact on Internet commerce. As this is an internal strategy memo, you should consider reasons that this Act might and might not be constitutional. You need to apply the same strategy with regard to its impact on forms Internet commerce. Based on your conclusions as to both the Act’s constitutionality and its impact on Internet commerce, you should also make recommendations on strategy for either lobbying or First Amendment litigation.

Questions 2-3

AOL-Time Warner-Verizon “Drive Center”

The globalization and corporate consolidation trends begun in the late 20th Century have continued apace until now, the year 2012. Seeking to leverage its considerable breadth of consumer services, AOL-Time Warner-Verizon (ATVV) has recently introduced a new comprehensive package of on-road services called “Drive Center.” Drive Center offers customers the convenience of one-stop-shopping access to services including:

- Maps, directions and location-finder services
- Customized in-car entertainment individually tailored to each passenger
- En route gift buying services, promising delivery at or before your arrival time

All of these services are provided on board ATVV-equipped vehicles, or through any WIPF311 device at all. Needless to say, some of the services listed above are delivered with targeted product/service advertisements promoting either ATVV or other products.

As General Counsel to the ATVV Driver Center division, you have a very challenging job. Legal questions come your way on a regular basis. Respond

Question 2

The ATVV Drive Center service is so successful that Saab (Europe’s only remaining independent automobile manufacturer) is considering acquiring all of ATVV just to get access to Drive Center.

In reaction to the planned acquisition, some ATVV customers begin a series of actions designed to block the deal. They don’t want their services disrupted, and they fear that prices will increase
under Saab's ownership. The activists use ATWV-operated chat rooms to discuss protest tactics and begin a smear campaign to challenge the integrity of the CEO of Saab.

ATWV management responds by shutting down the chat rooms used by the disgruntled customers. But before this happens, the CEO of Saab (who is no longer so sure about the deal) declares that he is going to sue ATWV for defamation. Your boss asks for a legal assessment of this entire mess.

Question 3

Jane Quick is the owner of an ATWV Drive-Center equipped vehicle. The FBI suspects that she may be using this vehicle to transport stolen decoder chips that unlock access to all ATWV satellite TV services for free. If she is doing so, this would violate federal law.

FBI Special Agent Frank Rizzo obtains a search warrant to recover the chips from Quick's car. Rizzo got a search warrant because Rizzo lives in her car full time and he did not want to risk the accomplice being thrown out because of a possible Constitutional violation. In reaction to the millions of Americans now living in their cars due to skyrocketing property values (especially in the North East), the US Supreme Court recently ruled that "a person's care is her car and her castle."

Agent Rizzo happens to spot Quick's car and stops it on a highway. As he is pulling her over, Rizzo notices that she appears to be talking on a headset to someone else. Upon presenting the warrant and recovering a box that appears to contain the contraband chips, Rizzo also demand that Quick provide him a complete copy of the car's computer memory, which would include a record of Quick's recent communications (both contents and transactional records) as well as a log of her recent travels.

Feeling that he is now hot on the trail of an international entertainment theft ring, Rizzo obtains a court order to obtain all of Quick's communications from her car. This order is served on you as general counsel for ATWV.

In talking with you when the order is served, Rizzo also demands access to all of the files the ATWV has on Quick, both her data and any information you have compiled about her. Rizzo also asks you for the records of Johnny Damon, to whom Quick recently had flowers delivered through the Drive Center gift service.

Upon your review of the contractual guarantees of the ATWV Drive Center full service package, you determine that it is likely that you are permitted if not required to lend such advice in the event that the records of a client are subpoenaed.

How do you respond to Rizzo? What advice do you and should you offer Quick's defense attorney?
Question 4

Sally Dazzle is a first year law student at the University of Missouri-Columbia. She grew up in Rolla, Mo., where her parents still reside. Sally has never traveled outside the state of Missouri. She has never voted or paid taxes. She has a Missouri driver's license.

Stressed out by school, as well as by the events of Sept. 11 and its aftermath, Sally decided to spend the summer following the first year of law school at a yoga meditation retreat in Hawaii. Sally learned about the particular retreat, Swami Stress Reduction, while surfing the internet. She send an e-mail to the Swami site and was provided with additional information describing the two week Hawaii program. In order to book her seat, Sally made a down payment of $500 on October 5 by providing her credit card information over the internet. The total cost of the program was advertised to be $10,000, and Sally agreed to pay the remaining $9,500 one month prior to the start date of the program, June 1, 2002.

Some time after making her initial payment, (November 15, 2001), again while cruising the internet, Sally learned that several consumer-oriented web sites were not impressed with the Swami Stress Reduction program. In fact, one site labeled it "a poor corporate attempt to provide yuppies with what they think non-yuppies want." Another site announced that "Swami is just a guy from Brooklyn who likes to wander around with a washcloth on his head." So, Sally notified Swami that she would not be enrolling and demanded a return of her $500.

Unbeknownst to Sally (until the commencement of litigation) it turns out that the Swami Stress Reduction Program is a division of the Vidabuena Corp. Vidabuena is incorporated in Delaware and has its principal place of business in New York. Vidabuena operates a number of different retreats and all-inclusive vacation spots throughout the world.

When Sally sent in her down payment of $500 she also assented to a series of contractual clauses. By repeatedly hitting "enter" on her computer she confirmed that her total payment would be $10,000, that if any dispute arose it would be governed by New York law, and that if any dispute arose both Sally and Swami Stress Reduction agreed that any lawsuit arising out of such dispute would be resolved in a court of competent jurisdiction in New York.

When Sally notified Swami that she would not be attending the summer program, Vidabuena Corp. brought suit against Sally in state court in New York. Sally, horrified at the prospect of having to pay $9,500 she does not have, and also outraged by the unseemly business practices of the Swami et al, has retained you to provide her with legal advice. Please answer the following questions:

(a) Does the New York court have personal jurisdiction to hear the claim? For purposes of this question assume that the New York long arm statute provides "courts of this state have personal jurisdiction to the full extent provided by the U.S. Constitution." Explain your conclusions in detail, and provide your reasoning.
Question 5

Your client, Big Important Stuff, Inc. (BIS), contracts with the U.S. Department of Sausage (USDOS) to run simulations of turkey gizzard markets on BIS supercomputers. The security officer for BIS recently discovered that one George Curious had been monkeying around on BIS computers without the company's authorization. Curious logged onto his home computer, found a gap in the BIS firewall, and gained access to a BIS supercomputer running simulations for the USDOS and other, private parties. Curious neither harmed the computer nor interfered with the simulations, apparently being content to simply observe its processing. But BIS did lose over $100,000 in patching the gap in its firewall, a process that delayed all simulations for two days.

BIS asks you to answer the following questions:

1. Is Curious guilty of violating the Computer Fraud and Abuse Act? Why or why not?

2. Assume without analysis, for the purposes of this question only, that Curious violated some law (whether the CFAA, a state statute, or common law). How should BIS proceed — by bringing the full weight of the law to bear against Curious, or by saying nothing and letting him off the hook? Describe the pros and cons of each of these strategies.

Question 6

Several scholars, and now even a few courts, have discussed how to apply trademark law to Internet domain names. The domain name constitutes everything to the right of the "@" symbol in, say, an email address. But nobody seems to have noticed that the portion in front of the "@" — the user name or "user id" — might raise similar issues. For example, someone unrelated to the respective businesses might grab "kodak@aol.com" or "nike@ix.netcom.com". Note that NSI/InterNIC has nothing to do with user names.
Rather, the parties responsible for providing user access -- such as AOL or Netcom -- typically assign them.

Please answer the following questions:

1. To what extent does the potential seizure of user names raise the same problems as the seizure of domain names?

2. To what extent does it raise different issues?

3. What would you advise ISPs and others responsible for assigning user names to do to avoid the sorts of problems that NSI/InterNIC has faced in its assignment of domain names?

4. What would you advise trademark attorneys to do about user names that might interfere with their clients' marks?

Background for Questions 7-9

In January, 2000, one "A-Bomb" (his/her actual identity being at that time unknown) wrote the "Crush" virus and released it on the Internet. Here is how the Crush virus works:

1) A victim receives an email having the subject line "I've got a crush on you!"

2) Because the text of the email claims that the attached file includes "an interesting photo," the gullible victim opens the file.

3) Rather than a photo, the attached file includes a virus program that, on computers lacking proper security measures, sends identical emails and attachments to every address stored in the victim's email program.

4) The Crush virus then corrupts a variety of files on the victim's computer, causing it to crash and lose data.

The Crush virus caused a great deal of harm to state, federal, and private computers throughout the United States. The following questions concern what response, if any, the legal process offers.
Question 7.

Suppose that you represent a California corporation and that your security experts assure you that they have traced the Crush virus to one Kim Craft, an employee of Amazon.com. They further assure you that Craft (a.k.a., "A-Bomb") used Amazon.com’s computing and telecommunication resources (albeit without Amazon.com’s permission) to write and distribute the virus. You want to bring a civil suit in a California court against both Craft and Amazon.com. Discuss the jurisdictional issues and your causes of action.

Question 8

Suppose that you represent MySP.com, a large internet service provider (ISP), and that your security experts assure you that they have traced the Crush virus to one Kim Craft, an employee of Amazon.com. Because MySP.com wanted to protect its customers, it posted on its homepage background information about the Crush virus and directions on how to avoid being infected by it. The background information alleged that Craft created the virus. Craft, now defending herself against both criminal and civil charges, claims that she did not author the virus. She brings suit against MySP.com for defamation. Discuss your prospects of winning a motion for summary judgment.

Question 9

A local group of hackers impressed by A-Bomb’s virus-writing skills has registered the CRUSH.NET domain name with Network Solutions, rented space on a server in Irvine, and posted at WWW.CRUSH.NET information about the Crush virus. Their webpage includes the source code of the virus and instructions on how to implement it, allowing aspiring virus-writers to create new and better variations on the Crush virus.
A. As the California Attorney General, you want to enjoin CRUSH.NET from publishing information about how to create variations on the Crush virus. Discuss how the First Amendment will affect your effort.

B. You serve as counsel for the Crush Cola Company, manufacturer of the Orange Crush, Strawberry Crush, and Grape Crush soft drinks, holder of registered trademarks in those same names, and owner of the CRUSH.COM domain name. You want to shut down CRUSH.NET. Discuss whether and how you might do so via legal means.

Question 10

Select one of the following topics to answer:

Do you feel that the Communications Decency Act (CDA) would help or hurt the Internet as a whole and why?

Explain ODRP. Give an example of a business or process that would benefit from it. Explain why. Also, explains the drawbacks of ODRP.

Pick a type of fraud that may be committed in an online auction and describe what you would do to eliminate/reduce the fraud.

ReferenceDesk@mslaw.edu
Electronic Commerce
Final Exam
Professor Todd Cheesman

You have three hours to complete this exam.

Part I – Five short answer questions worth 10 points each.

A. What are the pros and cons of the Uniform Computer Information Transactions Act (UCITA)?

B. It was postulated that knowledge and information, the increasingly important assets of the information age society, are different from tangible property assets of the agricultural and industrial ages. List some of the most significant differences and how these differences are affecting the law of e-commerce.

C. What are the ramifications for the legal system of the increased digitization of money?

D. What impact did the Napster music file sharing technology have on the intellectual property laws and businesses that depend on those laws?

E. What are the arguments for and against using computer animations at criminal trials?

Part II – twenty true/false questions worth 2 points each. (40 points total)

1. The scarcity doctrine was the basis for regulation of the broadcast medium when it was first developed.

2. UCITA refers to the electronic transfer from computer to computer of information using an agreed standard to structure the information.

3. Choice of law provisions in contracts will only be enforced if one of the parties is subject to the jurisdiction of the law chosen.

4. The Uniform Electronic Transactions Act applies only to the procedural aspects of transactions.

5. Commodity money refers to tokens or pieces of paper that are not intrinsically valuable themselves, but can be exchanged for a specific commodity, such as gold or silver.

6. In addition to designating approval, signatures on contracts provide a useful ceremonial function.


8. The Spider Web Approach to internet jurisdiction likens Internet users to insects that are captured on a particular spot of a spider's web.
9. Parties can specify in an electronic contract what law applies and most courts will enforce that selection, even if the law chosen has no substantial relationship to the parties or the transaction, as long as the selection is voluntary.
10. Open EDI or Internet EDI refers to a United Nations effort to provide EDI capabilities to businesses in developing countries.
11. The vast majority of e-commerce involves business to business transactions using the Internet.
12. EDIFACT is a set of internationally agreed standards, directories and guidelines for the electronic interchange of structured data.
13. Conventional or symmetric cryptography requires a “key” to encrypt and decrypt the message.
14. The Uniform Electronic Transactions Act is designed to require the use of electronic communications and records in any transaction unless excluded.
15. The *Geoffrey, Inc. v. South Carolina Tax Commission* (Toys "R Us) case discussed in the last class involved the use of an intellectual property holding company.
16. The Telecommunications Act of 1996 declares that service providers are liable for any defamatory information they transmit by classifying service providers as publishers.
17. The Anti-Cyber-Squatting Consumer Protection Act allows trademark owners to file in rem actions against the domain name itself in cases where the domain name registrant can’t be found or otherwise made subject to personal jurisdiction.
18. Both federal and state courts often allow the fact finder to draw a presumption against a party that intentionally destroys evidence that would have been unfavorable to the cause of the party that undertook the destruction.
19. With regard to regulation of the Internet the United States government has adopted a policy that is designed to preclude private regulatory action.
20. The ephemeral nature of electronic commerce provides opportunities for the reduction of taxes through structuring arrangements.

End of Examination

Answer Key to Part II

1. T
2. F
3. F
4. T
5. F
6. T
7. F
8. F
9. F
10. F
11. T
12. T
13. T
14. T
15. T
16. F
17. T
18. T
19. F
20. T