

eCommerce & Cybercrimes  
Final Examination – Fall 2019  
Professors Kurt Olson & Mick Coyne

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

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

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

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

1. A client just walked into your office and wants your help registering and protecting her new product: a LED screen that hangs in a vehicle’s window that displays messages to other motorists from her SmartPhone via Bluetooth. She calls it “Road Page,” and her friend helped her get a prototype coded and built. She wants your help setting up a website with online ordering once the product is ready for distribution. What steps must you take to register and protect her product? How will you secure web space for her eCommerce storefront? What advice would you give her related to her online store? What other pertinent legal advice would you give her about her product or her product’s development? (15 Points)

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

a. Fair Use

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b. Clickwrap

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c. HTML

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d. TLDs and SLDs

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e. DMCA

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f. Microtargeting

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g. Keylogger

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h. Metatag

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i. Phishing

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j. Napster

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k. Botnet

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l. Remix Culture

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m. Cybersquatter

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n. Cambridge Analytica

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o. Cryptocurrency

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3. When the Supreme Court decided *Aereo*, pundits questioned whether shutting down Aereo forces consumers into fewer choices in the marketplace, forever resigning the customer to his or her cable provider's increasing package prices. If startups can't rely on the existing regulations remaining intact, unchanged by court opinion, how can new innovators simultaneously develop alternative, unique new and necessary products, but not run afoul of the law? Explain what happened in *Aereo*, and compare Aereo's situation and the potential pitfalls of moderately unregulated eCommerce tech like Uber, Doordash, Airbnb, or other emerging apps or services.  
(15 Points)
4. Last year, the EU fined Facebook the equivalent of \$640,000 for violations of privacy related to the Cambridge Analytica dataset and may additionally fine them up to \$1.63B for a separate recent data breach. The new, more substantial fine will be levied under Europe's new strict data protection legislation, GDPR (The General Data Protection Regulation). In November, California unveiled legislation that will require stricter data protection standards state-wide. What types of penalties do you think are appropriate for a company like Facebook that maintains so much sensitive consumer data? Why do you think the US has not yet adopted more stringent data protection standards on the federal level? (10 points)
5. **MPT ESSAY** (30 Points)

Keith Bonham is the drummer in the locally-recognized, yet rhythmically-challenged uber-cover band, "Nevermind Synchronicity." They play dive-bars and restaurants, and every now and then, they get a referral to play a wedding or private party, which requires all band members to wear formal attire. Normally, Louie's, their Friday night haunt, pays them in twenties and beer. Every now and then they get a gig that pays about \$400, but they have to take the costly ferry out to the island to play.

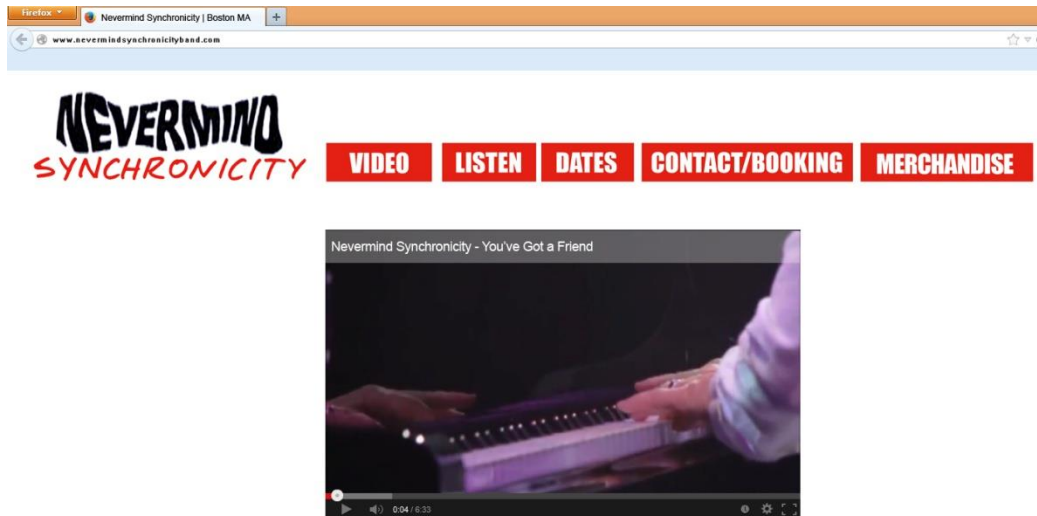
Sick of the never-ending cycle of paying out-of-pocket just to play a show that barely covers their travel expenses, Keith mentions to his guitar player, Pete Page, that he "knows a little bit about the Internet," and he thinks he could solve their black-tie and boat problems.

Pete and Keith bring their newly hatched idea to Roger Plant, who always gets final say on band-matters, because he's the lead-singer... and that's what lead-singers do. Expecting Roger to put the kibosh on their marketing scheme, Keith downplays to Roger the extent of the domineering web-presence he is about to create. Roger OKs the website creation, but was not told about the videos Keith intends to create and post, showing Nevermind Synchronicity performing Rolling Stones and Beatles tracks, among other classic rock staples.

Resolute to finally put Nevermind Synchronicity on the map, Keith combed through hours of footage to find a few nearly flawless thirty-second clips of them performing The

Beatles' "I Wanna Hold Your Hand" and the Stones' "Satisfaction." He cut them up on his computer and posted them to the Nevermind Synchronicity YouTube page he created. From there, he hot-linked the embed code from YouTube for each video into the Nevermind Synchronicity site HTML/CSS code. When he was finished, the portions of the video pages on Nevermind Synchronicity's site looked like Exhibit 1.

Exhibit 1



Soon thereafter, the band started to gain some traction, and wedding venues between Providence and Cambridge began booking the band, offering good money for them to perform their classic rock catalog. When the band arrived, set up, and started jamming, it was immediately clear to the venue that the band's name was no accident: Nevermind Synchronicity could not play in-tune or in time. The venue asked for its money back. To make matters worse, after the gig, they found all their videos had been removed, and their YouTube account had been suspended for violating YouTube's copyright policy. To make matters EVEN worse, YouTube has notified the band that the publishing rights holders intended to commence a Prince-style lawsuit.

### Questions

1. You are representing Keith and Nevermind Synchronicity. **Use the two case files attached to write a 2-to-3-page memorandum of law to senior partner** explaining the merits of the case and the band's potential liability.
2. Describe the process that YouTube uses to recognize infringing content posted to its servers, and then the process they use to remove the content or de-platform the subscriber.
3. What type of argument would you make to keep the content available on YouTube?

Congratulations! You're done!