

Internet Law

Professor Grimmelmann

Final Exam - Fall 2007

Take-Home and Open Book

This exam consists of FOUR (4) questions. Each question is worth 20 points, for a total of 80 points. (The other 20 points for the course come from your blog assignments.)

You have 24 hours to complete this exam; you can choose when to take it. You must pick this exam up *in person* from the Registrar's office, at any time during exam period *before* Thursday, December 20 at 5:00 PM. You must then return it either in person or via email (to submitexam@nyls.edu) within 24 hours.

Please type your answers in 12 point Times or Times New Roman, double-spaced, using 8.5"x11" paper, with one-inch margins and numbered pages. Be sure to **put your exam number on each page. DO NOT PUT YOUR NAME ANYWHERE ON THE EXAM.**

Maximum page counts are indicated for each question (using the formatting given above). These are maximum lengths, not target lengths; you do not need to make your answer that long to receive full credit. I will strictly enforce the page limits. The final question has a shorter page limit than the other three, but counts for the same number of points.

This is an open-book exam. You may use any materials that you wish to answer the questions, though you need not consult any sources other than those we used for class. You may not discuss this exam or your answers with anyone under any circumstances until after the final day of the exam period, which is December 21. **Your work must be exclusively your own.**

Please pay attention to the questions being asked and answer them. Support your answer with detailed analysis, reference to specific statutes and cases as appropriate, and an explanation of how you have applied the law to the facts. Keep references simple; bluebook/ALWD format is not required. Feel free to shorten your answers by using an outline format and stating your arguments in bullet point format, so long as the substance of your points is clear.

If anything about a question is ambiguous, decide what you think is meant, say what you think is meant, and answer it accordingly. If you need to assume additional facts to answer a question, say what those facts are and how they affected your answer. No reasonable resolution of an ambiguity will be penalized.

This exam has **5 pages total**, including this cover sheet.

GOOD LUCK!

(1) **The Perfect-Copy Storm** (20 points, maximum of **4 pages**)

One of the many, many kinds of devices you can now hook up to your computer is a weather station that takes minute-by-minute readings of local temperature, humidity, wind velocity, and so on. Francine Beaufort writes Cloud.Burst, a program that creates a peer-to-peer network from computers equipped with weather stations. Using a protocol she designed (WITP, the Weather Information Transmission Protocol), computers running Cloud.Burst continuously communicate to each other all the weather data that they have. Beaufort hopes eventually to create a network of amateur meteorologists who produce more complete weather data than professionals do. She releases Cloud.Burst under the GNU GPL and hooks her own computer up to the network to gather weather data.

A few months later, Tamiko Fujita, another amateur meteorologist, modifies the Cloud.Burst code to create a new version she calls Cloudster. Cloudster also uses WITP, and computers running both programs make up one large network. Cloudster has better graphics and crashes less often. Cloudster has a feature called StormSounds, which uses WITP to transmit not weather information but audio data. When it's running, Cloudster automatically sends out any music currently playing in iTunes or Windows Media Player as though it were weather data. Both Cloud.Burst and Cloudster computers in the network therefore store this "weather" data, but only Cloudster is able to convert it back to music. (To a Cloud.Burst computer, it just looks like another weather station is sending out incredibly detailed wind-speed information.)

Fujita releases Cloudster without disclosing its source code and sells it for \$5 a copy. Many weather fanatics buy and run it. Some of them know about the StormSounds feature and use it so they can listen to the same music as their weather-fanatic friends. Others prefer it because of the better graphics. Beaufort's computer is one of the Cloud.Burst computers storing music; it is unknown whether Beaufort herself knows of this fact, or even knows about Cloudster. Both Beaufort and Fujita post their phone numbers and email addresses on their respective software download pages, but neither has appointed an agent for service of DMCA notices.

You are in-house counsel at Megalomaniac Records, an independent/punk record label with a strong commitment to environment-friendly business (no plastic CD cases, a carbon-neutral recording studio, etc.) It has come to your attention that many of Megalomaniac's copyrighted sound recordings are being shared on the Cloud.Burst/Cloudster network. Currently, about 1500 computers in the United States are part of it, and the number is growing rapidly. Megalomaniac wants to protect its recordings from further infringement, while preserving its street cred and good public image.

Discuss the legal options open to Megalomaniac and recommend the best overall course of action.

(2) **Desktop Dance Party** (20 points, maximum of **4 pages**)

Today, when Santos Halpern turned on his laptop in the morning, the first thing he saw was a window asking him to say "I Accept" or "I Don't Accept" the license agreement for something called the Cromulent Jukebox. It read:

Contratulations! [sic] You've just installed the greatest computer program of all time! It's the Cromulent Jukebox, written by me, Omar Simpsoy! All you need to do to get started is to accept the terms of this license agreement.

Permission is hereby granted to install and run the Cromulent Jukebox (the "Program") on one computer. You agree not to decompile, disassemble, reverse engineer, or uninstall the Program. You further agree to submit all disputes arising out of the use of this product or breach of the license agreement to the exclusive jurisdiction of the United States District Court for Hawaii.

Halpern thought this sounded sketchy, so he clicked on "I Don't Accept." His computer promptly shut down. He rebooted and saw the same window. He clicked "I Don't Accept" again, and again his computer shut down. The third time, he clicked on "Accept" and his computer booted, apparently normally. His desktop, however, now contained a small Cromulent Jukebox window, with no close button. The Jukebox played an incredibly annoying trance-metal disco song, over and over.

Halpern tried to use the Windows Add or Remove Programs feature to uninstall the Cromulent Jukebox. It threw up a dialog box, however, telling him that uninstalling was forbidden by the license agreement, and asking him to enter the "administrator password" to continue. Halpern then searched online and found that another user had run a password cracker against the Cromulent Jukebox and discovered that the password was "kwyjibo." Halpern entered the password and disabled the program. He then discovered that a great many files on the hard drive had been overwritten with copies of the Cromulent Jukebox. He paid \$10,000 to a computer consultant to recover the previous versions of his files.

Halpern, who lives in New York, still has no idea how the Jukebox got on his computer in the first place. His best guess is that he opened an email attachment without reading the message or clicked on the wrong link when trying to close a pop-up. It appears that Simpsoy is a Wisconsin resident.

You are an associate at a mid-sized law firm that does a lot of transactional work for Halpern's construction company. Halpern approached the real-estate law partner with whom he usually works, asking what he can do to recover his \$10,000 (more, if possible) and "bring that scumbag to justice." Halpern is also concerned that some of his own actions may have exposed him to legal liability. The partner knows he out of his depth when it comes to computer matters, so he's turned to you for an analysis.

Discuss Halpern's legal situation, and recommend his best overall course of action.

(3) **This Web Site Ain't Big Enough for the Two of Us** (20 points, maximum of **4 pages**)

Houghton Online is a web site about the town of Houghton. It's owned and operated by Burbville LLC, a local computer consultant. The site includes a set of discussion forums and provides webmail accounts to all town residents. It makes its money by showing banner ads, most from local businesses. It applies a spam filter to all inbound and outbound emails. It gets the list of sites to block from the free, privately-run Grand Spam Slam list, which combines user-submitted reports of spam-sending addresses. Any IP address that gets more than 10 reports goes on the block list for a month.

Arline Greenaway is a florist in Houghton. She's been criticized on the Houghton Online forums by a number of posters claiming to be disgruntled former customers, who've called her a "crook" and a "cheat" and who claim she's supplied them with rotting begonias. (She vehemently denies these allegations.) When she tries to post responses, however, she finds them immediately deleted by the Houghton Online administrators.

Even worse, Greenaway has discovered that her office IP address is on the Grand Spam Slam block list. There's no way for her to view the details, but Grand Spam Slam claims to have received 28 reports of spam from her IP address in the last three days. This is a potential disaster for her business; Houghton residents who use Houghton Online can't send her email or get email from her. She doesn't know exactly how many emails she's missed since the blocking started yesterday, but her office usually has about thirty emails a day from locals, five or ten of which are orders. Historically, she says that about one-fifth of her customers use Houghton Online webmail email addresses.

Greenaway suspects that her competitor Horace Blackheart might be behind the pseudonymous criticism and the spam reports, but admits that she has only indirect evidence to back up this suspicion. She and Blackheart have had a few shouting arguments in the last few months, and a particularly bad one the day before the first complaints appeared on Houghton Online.

You are a local solo practitioner in Houghton. Greenaway has come to your law office seeking advice. She'd like to know what if anything she can do about the complaints and the email blocking, and to find out whether Blackheart is behind them.

Advise Greenaway on her legal options and best overall course of action.

(4) **Ancient History** (20 points, maximum of **3 pages**)

In 1996, John Perry Barlow published "The Declaration of the Independence of Cyberspace" and Judge Frank Easterbrook published "Cyberspace and the Law of the Horse." These two essays are often considered the polar extremes of Internet policy, with Easterbrook arguing that traditional laws could fit the Internet just fine, and Barlow arguing that traditional laws were completely inappropriate for the Internet.

Something else important happened that year: the Telecommunications Act of 1996. That Act contained three major things we've discussed in this course:

- 1) The anti-obscenity and anti-indecency provisions that were struck down in *ACLU v. Reno*.
- 2) The immunity for interactive computer services that we know as section 230.
- 3) The telecommunications deregulations that set the stage for current network-neutrality debates.

In hindsight, did Barlow or Easterbrook have it more nearly right? Use the history of one or more of these provisions of the 1996 Telecommunications Act over the last decade as evidence for your position.