

The KIDS Is Alright

You are associate general counsel to ThySpace, a social-networking site with a faux-medieval theme. Members create profiles that describe themselves as knights, ladies-in-waiting, peasants, and so on. They can send each other private messages ("dispatch a courier"), list their favorite music ("troubadours"), and do much of what they'd do on any other social-networking site, but with corny Ye Olde Shoppe spelling. The site is still in early beta testing, but hopes to grow rapidly.

One morning, your boss the general counsel comes to you and asks you to look at a letter from the chief prosecutor of Trego County, Kansas. The letter begins by calls your attention to the Kansas Internet Defense Statute (KIDS), which was enacted in 2006 to respond to public concern about "cyberbullying" in Kansas schools. In cyberbullying, groups of students gang up on a victim by sending hundreds of mean-spirited emails, IMs, and other messages to them. KIDS has created a new misdemeanor of sending a "cyberbullying Internet communication," defined as "any message sent by means of the Internet that is intended to have the effect, and which does have the effect, of causing emotional distress to a minor." A "minor" is defined as any person under the age of eighteen.

The letter explains that Trego County officials are investigating several recent incidents of cyberbullying and that several of the cyberbullying Internet communications were sent by way of ThySpace by a user whose ThySpace name is "LordPoopyPants." It demands that ThySpace disclose all information in its possession pertaining to LordPoopyPants, including (but not limited to) his name, address, IP address, and other contact information. It concludes by warning that should ThySpace fail to comply promptly, it risks exposing itself to tort liability from victims of further cyberbullying by LordPoopyPants.

ThySpace's offices are in New York, it's incorporated in Delaware, and its servers are at a colocation facility in New Jersey. According to the latest site-stats report from the operations team, ThySpace has 26,092 total users, of whom six provided Kansas addresses when they signed up. 8,165 users list themselves as under eighteen on their profile pages. ThySpace doesn't charge membership fees. It plans ultimately to make money by selling advertising, but hasn't started showing ads yet.

The general counsel explains that she is busy with the negotiations for the next round of ThySpace's venture-capital funding. She needs to know as soon as possible how ThySpace should respond to the letter and whether ThySpace faces any legal risks from KIDS that might affect the negotiations. She asks for a memorandum of no more than 1000 words on your conclusions by the end of the day.

Write the memorandum.