



Cyberlaw Final Exam
(Law 434)
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This exam has 2 questions with a total time limit of 3½ hours. Question 1 is worth 75% of the final score. Question 2 is worth 25% of the final score. You should allocate your time accordingly. The total time limit includes 60 minutes of discretionary time to use for transportation, printing, unforeseen delays or whatever you'd like (but please, not to spew unorganized thoughts!).

This is a “take-home” exam, meaning that you can take the exam anywhere you like. For your convenience, I have reserved Room 318 for using laptops, Room 319 for handwriting exams, and the Miller computer lab for using the school’s desktop computers or printing. However, you can take the exam in the library, another open classroom or outside the law school.

You must return the exam to me in my office (Room 109) or by email (see below) by 12:00 pm Central time. www.time.gov provides the official time for the exam. Because I have already given you ample discretionary time, **THERE IS NO ADDITIONAL GRACE PERIOD—NOT EVEN ONE MINUTE. I DO NOT INTEND TO GRADE LATE EXAMS. NO EXCUSES!**

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

If you use a computer:

- You may return your answer by delivering a printed copy to me in Room 109 or by emailing me at eric.goldman@marquette.edu. Include page numbers and your exam number on every page of your answer, but do not otherwise include any information that would identify yourself in the answer.
- If you email me your answer, your answer is not received until your answer is in my inbox *and* I can successfully open and print the file using Microsoft Word for Windows 2000. I will promptly reply to confirm that I can print your answer, in which case my reply email confirms receipt. However, if you do not promptly receive a reply from me, I expect you to take all necessary steps to turn in your answer before the deadline. You can reach me by phone at (414) 288-5232.
- **NO TIME EXTENSIONS WILL BE GIVEN DUE TO COMPUTER, EQUIPMENT OR POWER FAILURES, BECAUSE I CANNOT OPEN OR PRINT YOUR FILE, OR**

BECAUSE OF DIFFICULTIES TRANSMITTING THE FILE VIA THE INTERNET (although I might make special adjustments for widespread power or email failures).

- At the beginning of each question's answer, tell me the number of words in your answer. I DO NOT INTEND TO GRADE AN ANSWER THAT EXCEEDS THE WORD LIMIT BY EVEN ONE WORD. FAILURE TO INCLUDE A WORD COUNT, OR INACCURATELY REPORTING A WORD COUNT, MAY LEAD TO SIGNIFICANT PENALTIES.
- If you submit multiple versions of your answer, I will randomly choose one version to grade unless you prominently and unambiguously indicate which version I should grade. In either case, I will toss all other versions of your answer without reviewing or grading them.

If you are hand-writing your answer, please write legibly! Also, include your exam number on every bluebook and tell me how many bluebooks you are submitting. Hand-written exams are not word-limited and do not require a word count.

I have the following additional thoughts for you:

- I recommend that you spend adequate time reading the question and outlining a response.
- Read each question very carefully. Make sure you answer the questions actually asked. Do not answer questions that I did not ask.
- Some potential efficiency techniques:
 - Bullet points are OK
 - Short citation forms are OK
 - You can use abbreviations if you define them and they are not ambiguous
 - Please quote statutes or cases only as necessary to make your point
 - If any additional information would be useful in your analysis, indicate what information would be helpful and then state your assumptions in order to proceed with your analysis
- While generally your answers should be based on legal principles, you are also welcome to address other perspectives and concerns.

GOOD LUCK AND HAPPY HOLIDAYS!

Question 1 (112.5 minutes; typed answers may not exceed 2,250 words)

The Bugmenot website¹ describes itself as follows: “BugMeNot.com was created as a mechanism to quickly bypass the login of web sites that require compulsory registration and/or the collection of personal/demographic information (such as the New York Times).” The website’s creator morally objects to websites that require visitors to register before accessing content or functionality. As a result, Bugmenot provides a way to avoid those registration processes, allowing users to save time by not completing lengthy registration forms and to avoid disclosing personal information as part of registration.

Operationally, a Bugmenot user conducts a search for the URL of a specific website that has a registration process (let’s call that a “target website”). In response to the search query, if it has any responsive search results, Bugmenot displays a username/password combination (a “U/P combination”) for the target website.² For example, on November 24, 2004, I searched for the target website www.nytimes.com and got the following result:



In this case, when a www.nytimes.com visitor is asked to log in or register, the user can check Bugmenot and use the above search result to provide www.nytimes.com with the username “swedish_chef” and the password “borkborkbork.” If the U/P combination is valid, the user will successfully log into www.nytimes.com without having to complete the www.nytimes.com’s registration process.

Bugmenot users provide all U/P combinations contained in the Bugmenot database by electronically uploading them to Bugmenot. These U/P combinations are automatically added to the database; Bugmenot’s creator does not verify or screen them.

Bugmenot displays a link to a “terms of use” at the bottom of every page on the website. In addition, users uploading a U/P combination see the phrase “I agree to be bound by the Terms of

¹ Located at www.bugmenot.com; you are welcome to visit the website as part of preparing your answer.

² If it doesn’t have responsive results, Bugmenot encourages the user to provide a U/P combination for the website.

Use” [where the words “Terms of Use” hyperlink to the terms] and must click on a checkbox (which, as a default, is unchecked) before the website will accept the submission. Selected provisions of the terms of use [I’ve edited the original slightly]:

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

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

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

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

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

Assume that 1234.com [a site I made up for this exam] publishes news content. 1234.com has a registration agreement (formed via a mandatory non-leaky clickthrough process) containing (among others) the following terms:

- “you may not disclose your password to any third parties nor share it with any third parties”
- “you may not browse or access our website except as permitted by this agreement”

Visitors to the 1234.com website who do not register/login cannot read the news content.

Assume you are Bugmenot’s lawyer.

- 1) Critique Bugmenot’s contract formation process [spend less than 1/3 of your time on this subquestion]
- 2) Discuss the legal liabilities of:
 - a user who uploads a 1234.com U/P combination to Bugmenot
 - a different user who obtains that U/P combination from Bugmenot and enters the 1234.com website to read news content
 - Bugmenot.com (generally for its users’ actions/statements, as well as specifically for the actions/statements of the foregoing users). In doing so, consider the effects (if any) of Bugmenot’s terms of use.

Eric’s Tip: do not discuss trade secret misappropriation or any statutes we did not discuss in class (e.g., 18 U.S.C. §1029; Cal. Penal Code §484j or §502).

END OF QUESTION 1

Question 2 (37.5 minutes; typed answers may not exceed 750 words)

During the October 2004 Cheney/Edwards debate, Dick Cheney told viewers that they could verify his statements at *factcheck.com*. But he misspoke; he meant to say *factcheck.org*, a University of Pennsylvania non-partisan website that “monitor[s] the factual accuracy of [statements made] by major U.S. political players in [their] TV ads, debates, speeches, interviews, and news releases.”

Factcheck.com was registered in February 2004 by Name Administration Inc., a Cayman Islands outfit. Prior to the debate, Factcheck.com visitors saw a page containing only advertising (no “editorial” content). After the debate, Name Administration “redirected” factcheck.com to *georgesoros.com*.³ George Soros is a well-known billionaire who opposed the re-election of Bush/Cheney, so debate-watchers acting on Cheney’s suggestion arrived at a webpage titled “Why We Must Not Re-Elect George Bush.” Name Administration redirected the domain name for two reasons: (1) the unexpected volume of visits to factcheck.com caused it to incur expensive bandwidth charges to its Internet access provider, and (2) to tweak Cheney. Name Administration did not make any money from the redirection and did not speak with the *georgesoros.com* operators prior to implementing the redirection.

Identify potential plaintiffs and briefly discuss Name Administration’s potential liability for factcheck.com to those plaintiffs.

Eric’s Tip: Do not discuss any election law issues.

END OF QUESTION 2
END OF EXAM

³ There are a few ways to do this; please assume Name Administration updated the IP addresses associated with factcheck.com to use the IP addresses associated with *georgesoros.com*.