



**Cyberlaw Final Exam**  
(Law 434)  
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This exam has 2 questions with a total time limit of 4 hours. Question 1 is worth 60% of the final score. Question 2 is worth 40% of the final score. You should allocate your time accordingly. The total time limit includes 90 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, so you can take the exam wherever you want. For your convenience, I have reserved Room 307 for using laptops, Room 210 for handwriting exams, and the Miller computer lab for using the school's desktop computers. However, you can take the exam in the library, another open classroom or outside the law school.

You can return your exam answer one of two ways. First, you can turn in your printed answer or bluebooks to Room 109. Alternatively, you can submit an electronic copy of your answer to the Assignment Drop Box in TWEN.

At 12:30 pm Central time (as measured by time.gov or Westlaw's internal system clock, respectively), I will close the door to Room 109 and TWEN's Assignment Drop Box will automatically close, and it will be impossible to submit your answer after that time.\* In either case, **IF I DO NOT HAVE YOUR ANSWER BEFORE THE DOOR OR THE ASSIGNMENT DROP BOX CLOSES, YOU WILL FAIL THE COURSE. THERE IS NO GRACE PERIOD. 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:

- 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 submit your answer electronically, I may refuse to accept it if I cannot easily open and print the file using Microsoft Word for Windows 2003. After I have printed your answer, I will promptly send you a confirming email that your answers have been

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\* If for some reason the drop-box does not close, the Westlaw-assigned submission timestamp shall be determinative.

successfully submitted. However, if you do not get that email, you remain responsible to successfully submit 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 or problems with TWEN).
- 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. OMITTING 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 answers are not word-limited and do not require a word count.

I have the following additional thoughts for you:

- Assume that all relevant parties and actions are in the United States.
- You should 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, short citation forms and unambiguous abbreviations are OK
  - 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 why it would help) and then state your assumptions in order to proceed with your analysis
- While generally your answer should be based on legal principles, you are also welcome to address other perspectives and concerns.

GOOD LUCK AND HAPPY HOLIDAYS!

Question 1 (90 minutes; computer users capped at 1,800 words)

[Scroogle.org](#) runs a search engine (they call it a “Google scraper”) that works as follows:

Step 1: A user submits a search request to Scroogle

Step 2: Scroogle automatically submits the search request to Google

Step 3: Scroogle receives the search results from Google

Step 4: Scroogle automatically extracts the search results, and removes the ads, from Google’s search results pages

Step 5: Scroogle delivers the extracted search results to the user as part of a Scroogle web page

Users use Scroogle (instead of searching Google directly) because (1) Scroogle strips out Google’s ads (a benefit to people who hate ads), and (2) Google cannot record a user’s behavior.<sup>1</sup>

Scroogle is run by long-time Google critics, and they do not appear to derive any financial benefit from the site. Scroogle [explains its thinking](#) as follows:

Our review of the legal situation has convinced us that we are covered by "fair use" under the Copyright Act....We are convinced that if citizens scrape<sup>2</sup> Google and strip the ads, and make the scraped results available as a nonprofit public service, that this is legal....

...Google blocked Scroogle in December, 2003. We moved to a different server and continued as before, because Google could no longer find us. In our opinion, it's legal for Google to block whomever they want, even while it's also legal for us to scrape them if we can.

Assume you are Scroogle’s lawyer. Identify and critique Scroogle’s potential legal liabilities **to Google**. As part of your answer, please specifically critique Scroogle’s explanation (the text in the box).

Eric’s tips:

- Only discuss the legal issues attributable to Scroogle’s Google scraper service as operated by Scroogle; do not discuss any other aspect of Scroogle’s operations.
- Do not discuss Scroogle’s potential liability to Scroogle’s users, to websites indexed by Google or to anyone other than Google.

END OF QUESTION 1

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<sup>1</sup> Google uses cookies and also record the IP address of each search. This means that law enforcement can access Google’s server logs and associates particular searches (and sequence of searches) with a particular computer. Google could also develop and use profiles of its users for potentially unwanted purposes (such as ad targeting). In contrast, Google cannot record Scroogle users’ IP address or place a cookie on their computers. Scroogle also [proudly announces](#) its policies to protect its users’ privacy: “no cookies | no search-term records | access log deleted after 7 days.”

<sup>2</sup> Eric’s comment: “scrape” means to robotically collect content from a website.

Question 2 (60 minutes; computer users capped at 1,200 words)

I run a blog<sup>3</sup> at <http://blog.ericgoldman.org>. Initially, I was the only author. However, assume that I want to allow other people to post blog entries in the following two ways:

- *Joint blogger.* As a joint blogger, Kelly will jointly operate the blog with me. She will have equal power to control and configure the blog administratively, we will have equal rights to post blog entries, and we will share all advertising revenue equally.
- *Guest blogger.* As a guest blogger, Jenny will have unlimited rights to post blog entries but only for 2 weeks. Jenny will not have any administrative power over the blog's operation, and she will not share in any ad revenue.

I will not normally pre-review the entries posted by either Kelly or Jenny before the content is publicly available. However, I expect to read every entry they post, and on occasion I may edit their entries (i.e., fix typos, move them into different categories). I will have the administrative power to delete their entries. Assume that the blog displays advertising (although if a lack of advertising, or a different revenue allocation, would change your analysis, please discuss).

Q2A: Should I be worried about my legal liability for the entries that either Kelly or Jenny post to the blog? Why/why not?

Q2B: Are there any steps you would recommend that I take before entering into the joint blogger or guest blogger arrangements?

END OF QUESTION 2  
END OF EXAM

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<sup>3</sup> A blog is a type of web publication. Conventionally, new entries are made frequently and ordered chronologically (latest displayed at the top), and entries tend to address newsy topics.