



Internet Law (Law 793) Final Exam
Eric Goldman • Fall 2012

This exam consists of two questions. The first question is worth 2/3 and has a word-count cap of 1,700 words. The second question is worth 1/3 and has a word-count cap of 800 words. This exam is 4 pages long.

This is an “open book” exam. You may use any written materials you want, but during the exam, you may not communicate about the exam or your answer with anyone (orally, electronically or otherwise), other than law school staff regarding exam administration. You don’t need to do outside research, and such research is unlikely to affect your grade.

Type your answer. Unless you use SofTest’s word-processing feature, include page numbers and your 4 digit blind grade ID number (not your Access card number) on every page of your answer, but do not otherwise include any information that would identify yourself in the answer. At the beginning of your 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 YOUR WORD COUNT MAY LEAD TO SIGNIFICANT PENALTIES.** I’ll ignore any material you submit other than your word-counted answers.

This is a take-home exam. You can electronically download the exam from www.examssoft.com/sculaw and upload your answer (in one of the ExamSoft-supported formats) there as well. ExamSoft will time-stamp your exam download and answer upload. Those time-stamps may not be more than 32 hours apart. You may only electronically submit your answer once, so don’t upload it until you are completely finished. The earliest time you may download the exam is November 26, 2012 at 8:30 am Pacific. The latest time you may upload your answer (provided it’s less than 32 hours after your exam download time-stamp) is December 7, 2012 at 4:30 pm Pacific.

If you prefer, you can use SofTest’s native word-processing functionality. However, if you do, you can’t exit the program before you’ve finished your answer (you cannot change your answer after you exit the program), though you can “suspend” the program.

Note: if you are taking both of my courses this semester, you can only electronically download one exam at a time.

If you run into any ExamSoft/SofTest problems, contact Lisa Willett by phone between 6 am and 12 am at (408) 569-1109.

Instead of downloading the exam electronically, you can check out a hard copy of the exam from the Faculty Support Office (Bergin 214) during its office hours, in which case your answer will be due in the FSO no later than *the earlier of* (a) the FSO closing time the next business day, or (b) 32 hours from your checkout time. If the FSO is unexpectedly closed during its normal

office hours, follow the instructions on the FSO door; better yet, check with the FSO about its upcoming office hours when you check out the exam. The earliest time you may obtain a hard copy of the exam is November 26, 2012 at 8:30 am Pacific. The latest time you may return a hard copy of your answer (provided it's less than 32 hours from your checkout time-stamp) is December 7, 2012 at 4:30 pm Pacific. If you check out a hard copy of the exam on November 30 or December 7, it is due back the same day no later than 4:30 pm Pacific. You may not check out the exam on December 1 or 2.

IF THE TIME STAMPS BETWEEN YOUR EXAM DOWNLOAD/CHECKOUT AND YOUR ANSWER UPLOAD/RETURN ARE MORE THAN 32 HOURS APART, EVEN BY ONE MINUTE, YOU WILL FAIL THE COURSE. THERE IS NO EXTRA GRACE PERIOD. NO EXCUSES! If you wait until the last minute to upload or return your answer, your neighbor may be downloading massive amounts of pornography, or there may be an accident on the 101, or something else may go unexpectedly wrong—so *don't wait until the last minute*. Consider the law of diminishing marginal returns in allocating your time.

If you download the exam electronically and return a hard copy answer, or vice-versa, we will try to coordinate your time-stamps, but **ALL INFERENCES WILL BE MADE AGAINST YOU.**

Some additional thoughts for you:

- All relevant parties are, and all relevant actions take place, in the United States, and all parties are over the age of majority. Do not discuss any statutes of limitation.
- Prioritize your discussion!
- Read the question very carefully. Answer the questions actually asked. Do not answer questions I didn't ask.
- It's fine to use bullet points, short citation forms and unambiguous abbreviations. Please quote statutes or cases only as necessary to make your point. It's fine to use IRAC/CRAC, but it's also fine to use any methodology that effectively communicates your points.
- If any additional information would help your analysis, indicate what information you'd like and why it would help, and then state your assumptions and proceed with your analysis.
- While generally your answer should be based on legal principles, you are welcome to address other perspectives and concerns.
- The word count cap is a maximum, not a target!

GOOD LUCK ON THE EXAM AND HAVE A GREAT WINTER BREAK!

Question 1 (1,700 words maximum; 2/3 of exam grade)

Your client is Jalopy.com. The site helps car owners maintain their cars themselves, including guides for diagnosing car problems, how-to instructional videos, and calculators to show how much money users can save by doing car repairs themselves.

To reinforce that car owners should do car repairs themselves instead of using professional car mechanics, Jalopy.com will add a new feature to its website called “Car Killers.” Jalopy.com will ask users to nominate the “worst” car mechanics via a 3 minute video that must:

- Have the user explain why the mechanic is a bad car mechanic.
- Include a video-recording of the mechanic, at his/her office, interacting with a third party customer in an unflattering way.
- Include music. While some users will prepare their own music, most users are likely to incorporate third party music without obtaining the appropriate licenses.

All users can upload their videos to jalopy.com/carkillers, and those videos will be immediately viewable to the public. To help users record unsuspecting car mechanics, if they request it, Jalopy.com will loan them tiny and easily hidden digital video cameras.

After users post their videos, Jalopy.com employees will select a few videos depicting some of the worst car mechanics. Jalopy.com will pay \$500 to the submitters of each selected video. Those videos will each appear on their own page at a URL of [jalopy.com/carkillers/\[name of car mechanic's business\]](http://jalopy.com/carkillers/[name of car mechanic's business]), and Jalopy.com employees will add to that page (in the visible part of the page, not in the metatags) other factual material about each car mechanic's business designed to help increase the page's placement in search results based on the business' name. These pages won't contain any third-party ads, but the pages will cross-promote Jalopy.com's other services.

Jalopy.com also will run “house ads” (i.e., ads that will appear only on other areas of Jalopy.com, not on third party websites) promoting the Car Killers service with the following ad copy: “You can do better than professional mechanics. Meet one of the worst car mechanics, [name of the car mechanic's business], at Car Killers.”

Write a memo to Jalopy.com describing the major legal risks that the Car Killers feature exposes it to. Suggest ways to reduce those legal risks and discuss the pros/cons of your suggestions.

Eric's notes: Don't analyze any aspect of Jalopy.com other than the Car Killers feature. Don't discuss any trademark issues regarding the name “Car Killers.” Assume all video submitters are independent contractors, not employees. Assume that any user agreements are properly formed mandatory non-leaky clickthrough agreements. Do not discuss pornography, 17 USC 1201/1202, or any contest/sweepstakes issues. If you think the ACPA is relevant, note its definition of “domain name” (15 USC 1127): “any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.”

Question 2 (800 words maximum; 1/3 of exam grade)

This semester, we explored legal restrictions on how online users may use someone else's chattel via the Internet, including the legal doctrines of trespass to chattels, the Computer Fraud & Abuse Act and California Penal Code Sec. 502; example cases like Hamidi, Register.com, WEC and Ticketmaster; related legal doctrines like CAN-SPAM; and analogous cases such as theglobe.com and, perhaps more obliquely, Specht and Rolando S.

We could organize these chattel-protection legal doctrines on a continuum, where one endpoint is that the chattel owner has the absolute right to prevent chattel usage (unless it grants permission), and the other endpoint is that the chattel owner has zero right to prevent chattel usage so long as the chattel is connected to the Internet. There are many possible policy outcomes between those two endpoints.

Based on what you've learned in class, *in your opinion*, what do you think should be the legal rules for the ability of chattel owners to restrict online usage? Explain why. Where appropriate, you may want to distinguish the different types of ways online users might use someone else's chattel. How do the existing legal doctrines differ from your preferred standard(s)?

To the extent you believe chattel owners should be able to restrict online users (in whole or in part), *in your opinion*, how do you think chattel owners should notify users of any applicable restrictions? Compare/contrast your preferred standard to the current state of online contract formation.

Eric's note: we didn't discuss a lot of policy considerations in class, but I'm not looking for a rehash of policy debates. Instead, I'm asking for your personal reactions to these topics after you've synthesized and distilled the material we covered in class. What do you think works, what doesn't, and why?