

4-DIGIT EXAM ID: _____ COURSE: _____ PROFESSOR: _____

THESE EXAM QUESTIONS MUST BE RETURNED AT THE END OF THE EXAM.
THE STANDARD EXAM RULES GOVERN THIS EXAMINATION.

Law 793—Cyberspace Law
Professor Eric Goldman
Essay exam with 2 questions

December 4, 2006
8:30 am to noon (3½ hours)
Open book, open notes

PROFESSOR'S INSTRUCTIONS

Please read carefully

Question 1 is worth 2/3 of the total grade, and Question 2 is worth 1/3. You should allocate your time accordingly.

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 are typing your answer on a computer, 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 are not typing on a computer, no word count is required.

Other guidance:

- Assume that all relevant parties are, and all relevant actions take place, in the US.
- Spend adequate time reading the question and outlining a response.
- Read each question very carefully. Answer the questions actually asked. Do not answer questions that I did not ask.
- Prioritize your discussion. Extensive discussion of irrelevant issues may hurt your score.
- If you think additional information would help your analysis, indicate what information you would like (and why it would help) and then state your assumptions to continue with your analysis.
- Bullet points, short citation forms and unambiguous abbreviations are OK.
- Please quote statutes or cases only as necessary to make your point.
- While generally your answer should be based on legal principles, you are also welcome to address other perspectives and concerns.



STOP! DO NOT TURN THIS PAGE UNTIL THE PROCTOR TELLS YOU TO DO SO.

Question 1 (maximum of 2,000 words)

Cutest Birthday Cakes¹ (CBC) is a website that allows readers to exchange ideas for baking custom birthday cakes for children, such as the following examples:



Tank cake



Marlboro cake



Simpsons cake

The CBC website allows users to submit photos of the cake (and, occasionally, people enjoying the cake), a description of how to make the cake, the cake's title, and the submitter's name, email and location. The submission page tells users: "A birthday cake picture must be original and cannot be copied from another source."

Kate, the CBC website operator, manually reviews the submitted content for general appropriateness, but Kate does not try to prepare the cakes, so the instructions could be wrong (or even harmful). Kate also superimposes the CBC web address on the photos (look closely at the photos above). Finally, Kate publicly posts the submitted content to the CBC website.

The CBC website generates revenues by displaying ads from Google's AdSense program. Google automatically infers keywords from each CBC web page (the CBC website cannot tell Google which keywords to pick) and then triggers ads based on those keywords. For example, if Kate creates a "Marlboro cakes page" using the user's submitted content for the Marlboro cake depicted above, Google might automatically trigger ads associated with the word "Marlboro."

Q1A: Discuss the most significant legal risks that CBC faces.

Q1B: Suggest some ways that CBC might mitigate those risks.

Do not discuss the liability of Google or any CBC user, except to the extent such liability may affect CBC's liability. Do not discuss any legal issues arising from the name "Cutest Birthday Cakes" or any associated domain name.

END OF Q1

¹ This question is based on the website <http://www.coollest-birthday-cakes.com/> but I have modified some facts.

Question 2 (maximum of 1,000 words)

Facebook.com is a social networking website (like MySpace) popular among college students. A Facebook user can create a profile page displaying user-submitted content about him/herself, such as favorite celebrities or TV shows. The site also provides various tools (such as private messaging and message boards) that allow users to communicate with each other. Many students use Facebook to keep in touch and flirt with each other.

John Arrow operates UnFaced.com, which enables “compatibility tests” between Facebook users. Assume Joe and Karen are registered Facebook users. Karen can register with UnFaced.com and display a link on her Facebook profile to UnFaced.com’s website. Joe can follow that link to UnFaced and request a compatibility test with Karen by submitting the URL² of his Facebook profile. UnFaced then automatically accesses Joe and Karen’s Facebook profile URLs using robots, downloads each profile, and uses the profile data to assess compatibility using a proprietary algorithm. UnFaced then shows Joe a web page describing its compatibility assessment, which presumably can facilitate further flirting between Joe and Karen.

Only registered Facebook members can access Facebook profile pages (unregistered web visitors who try to access those URLs simply get a login screen). Thus, John must be a registered Facebook member to access Facebook profile URLs. To register, John entered into a mandatory non-leaky clickthrough agreement containing the following terms:

Provided that you are eligible for use of the Site, you are granted a limited license to access and use the Site and to download...the Site Content solely for your personal, non-commercial use...[Y]ou may not republish Site Content on any Internet, Intranet or Extranet site or incorporate the information in any other database or compilation....

[Y]ou agree not to use automated scripts to collect information from the Service or the Site....In addition, you agree not to use the Service or the Site to...register for more than one User account...or register for a User account on behalf of any group or entity; [or...] create a false identity on the Service or the Site.

According to a [news report](#), John “admitted that he’s ‘scraping’³ data from the Facebook profiles, but said it shouldn’t matter because UnFaced only did so at the behest of users who gave Facebook that content in the first place.”

Q2A: Discuss UnFaced’s liability **to Facebook**. *Do not discuss any copyright or trademark claims that Facebook may have.* Do not discuss UnFaced’s potential liability to any Facebook user or any other third parties.

Q2B: If Facebook terminates John’s Facebook registration and blocks UnFaced’s IP addresses, what can UnFaced do to continue to provide its service?

END OF Q2

END OF EXAM

² “URL” means a web page’s address.

³ “Scrape” means to automatically collect content from a web page using robots.