Cyberspace Law (Law 793) Final Exam
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There are 2 questions. Q1 is worth 75% of the final score and Q2 is worth 25% of the final score. 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).

Type your answer. Include page numbers and your 4 digit blind grade ID 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 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.

This is a take-home exam. Your answer must be turned into the Faculty Support Office (Bergin 214-A) no later than 2 pm Pacific, December 2, 2008 (as measured by the FSO time clock). IF YOUR ANSWER IS LATE, YOU WILL FAIL THE COURSE. **THERE IS NO GRACE PERIOD.** NO EXCUSES!

Some additional thoughts for you:

- All relevant parties are, and all relevant actions take place, in the United States.
- Spend adequate time reading the question and outlining a response.
- Prioritize your discussion. Extensive discussion of irrelevant issues may hurt your score.
- Read each question very carefully. 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.
- The word count cap is a maximum, not a target!

GOOD LUCK AND HAPPY HOLIDAYS!

Question #1 (maximum of 1,950 words)[1]

Lotus Hornblower is a digital performance artist. Her latest project is the "Elmo Rehabilitator" located at elmorehabilitator.com. Hornblower identifies third party websites that denigrate Elmo, the furry red monster from Sesame Street.[2] She then posts a link on her website to a targeted website and encourages her readers, with their full knowledge and consent, to download a small software program (the "applet") from her website to the reader's computer RAM. After the applet loads and readers follow the link to the targeted website, the applet automatically causes readers' computers to do two things:

First, the applet causes the reader's computer to request the targeted website's home page multiple times a minute. This facilitates Hornblower's artistic statement by potentially disrupting the targeted website's normal server operations.

Second, Hornblower creates a non-existent URL containing a message for the target website. For example, if the target website is "ihateelmo.com," Hornblower might create the URL www.ihateelmo.com/elmo-is-sweet-and-you-are-not.html. The applet automatically requests this non-existent URL from the target website. Server logs typically show failed URLs, so Hornblower effectively communicates the message contained in the created URL (i.e., "elmo-is-sweet-and-you-are-not") to the target website's operator when he/she reviews the server logs.

Discuss Hornblower's potential liability to (1) a website she targets (please address the possibility that the website has a restrictive "browsewrap"), and (2) the owner of Elmo's trademark rights (when discussing likelihood of confusion, please don't do a full multi-factor analysis). Do not discuss her potential liability to anyone else. Do not discuss metatags, 47 USC 230, 17 USC 512 or 17 USC 1201.

Question #2 (maximum of 650 words)

Shrugged is an online game that allows users to interact with, and play against, each other in a virtual reality environment. Shrugged charges users a monthly subscription fee, and users can buy the game's virtual currency (called "Reards") using real dollars. Built on principles drawn from Machiavelli and Ayn Rand, the game encourages users to lie to each other to advance their game play. Indeed, the game's motto is that "fraud is fun!"

Cap, a Shrugged user, set up a "virtual bank" within the game. The bank allowed users to deposit Reards and promised to repay their Reards, plus "interest" in the form of additional Reards, in the future. However, Cap instead sold the Reards to other users for real dollars, in effect "stealing" all of the depositors' Reards. Cap made $100,000 of real money in the process.

Can Shrugged claim 47 USC 230 as a defense to any legal claims attributable to Cap's behavior? Assume that Cap did not commit any IP infringements and that the Shrugged user agreement is silent in all relevant respects.

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[1] This question is inspired by http://www.thing.net/~rdom/ecd/ZapTact.html but I deliberately modified the facts.
[2] This is a popular sentiment online, as a search on "hate Elmo" quickly reveals.