



Cyberspace Law (Law 793) Final Exam

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This exam consists of a single question worth 100% of the final score. You may use a maximum of 2,750 words for your answer.

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 (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.**

This is a take-home exam. Your answer must be turned into the Faculty Support Office (Bergin 214-A) no later than 4:30 pm Pacific, November 30, 2009 (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, and all parties are over the age of majority.
- Spend adequate time reading the question and outlining a response.
- Prioritize your discussion. Extensive discussion of irrelevant issues may hurt your score.
- Read the 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!

YouTabloid.com describes itself as “the Paparazzi for the Rest of Us.” The service works as follows:

- YouTabloid allows users to upload embarrassing photos of their friends. YouTabloid encourages users to obtain these photos from social networking sites like Facebook and MySpace, including photos accessible only to “friends” in the service. Assume that many social networking sites, including Facebook and MySpace, have validly formed user agreements that prohibit users from taking photos from the sites and republishing them elsewhere.
- YouTabloid requires the uploading user to identify (“tag”) the individuals in the photo and to provide email addresses for tagged individuals.
- YouTabloid then publishes the photo on a page that prominently references the tagged individual’s name. These pages are designed to index well in search engines. As a result, a Google search for that name is likely to display the YouTabloid page as a high search result. YouTabloid does not display ads on these pages.
- Using the email address provided by the uploading user, YouTabloid emails each tagged individual and invites them to become a YouTabloid member for \$20/month or \$50/year. A paid YouTabloid membership allows tagged individuals to remove their names from being associated with any YouTabloid photos, which causes the member’s YouTabloid page to stop showing up as a search result for that name.
- YouTabloid pays a referral fee of \$5 to uploading users each time one of their tagged friends purchases a YouTabloid membership. As YouTabloid’s marketing says: “Fraternities around the country are finding that photos from their last keg party can help buy the beer for the next kegger.”

At the 2009 ΨΘΩ fraternity’s “Endless Kegger” party, Suzy takes a photo of Jonas enjoying the party and uploads the photo to her Facebook page. She restricts access to her Facebook content only to her friends.

Kip is Suzy’s Facebook friend. Kip downloads Suzy’s photo of Jonas from Facebook to his computer, modifies the photo to make it appear that Jonas wore a shirt prominently displaying a highly inflammatory racial slur, and then uploads the photo to YouTabloid, which initiates the process described above.

Assess Suzy’s, Jonas’ and Facebook’s claims (if any) against Kip and YouTabloid. You can organize your discussion however you like; organizing it by plaintiff is one good way. Do not discuss ECPA (or state law equivalents), intentional/negligent infliction of emotional distress, trademarks, copyright management information violations (17 USC 1202) or anti-circumvention (17 USC 1201). Assume that YouTabloid has made appropriate Copyright Office filings and website disclosures under 17 USC 512.

END OF EXAM