



**Internet Law (Law 793) Final Exam**  
Eric Goldman • Fall 2010

This exam consists of a single question worth 100% of the final score. You may use up to 2,500 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. You have a maximum of 24 hours from the time you check-out the exam to return your exam to the Faculty Support Office (FSO) in Bergin 214-A. The FSO time-stamp is the dispositive record of your check-out and check-in times. **IF THE TIME STAMPS ARE MORE THAN 24 HOURS APART, YOU WILL FAIL THE COURSE. THERE IS NO EXTRA GRACE PERIOD. NO EXCUSES!** You can check-out and check-in the exam any time the FSO is open between December 1 and December 10 (normally M-F 8:30-5). However, if you check-out the exam on December 3 or December 10, your exam must be checked-in to the FSO that same day before the FSO closes. If the FSO is unexpectedly closed during its normal hours, turn in the exam to the Law Library Circulation Desk—and get it time-stamped—*before your 24 hour window ends.*

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.
- 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!

CelebrityTrax.com is a website that publishes near-real-time reports of celebrity sightings. Its target customers are (1) paparazzi who want to find and photograph the celebrity, or (2) enthusiastic fans hoping to see the celebrity in person. CelebrityTrax charges its customers \$20/month to track up to 3 celebrities.

CelebrityTrax creates its database by sending robots to multiple user-generated content websites, including the blogging service Thwarter (a service, like Twitter, that immediately publishes brief user postings to the world). Every 5 minutes, CelebrityTrax's robots automatically conduct keyword searches on Thwarter looking for new user posts containing the celebrities' names that CelebrityTrax's customers are tracking. After collecting new postings, CelebrityTrax automatically identifies the subset of posts that apparently report a celebrity sighting (as opposed to mentioning the celebrity for other reasons). CelebrityTrax then delivers a copy of those posts into the accounts of customers tracking that celebrity.

Thwarter's user agreement, reachable as a hyperlink from every page's footer, includes the following language: "By accessing or using our website, you agree to these terms.... You may not access our website by any automated means unless we have expressly authorized you to do so. Without limiting the foregoing, you may not scrape our website." Even so, Thwarter's system has adequate capacity to handle CelebrityTrax's robots without losing data or slowing down. In its user agreement, Thwarter takes only a non-exclusive license to user postings.

Jason Fiever is a very popular "teen idol" singer with a distinctive hairstyle that looks like a well-groomed Persian cat is sitting on his head. Fiever's name has achieved secondary meaning, and he has a federal trademark registration in his name for music and related merchandise. CelebrityTrax lists Jason Fiever as one of the celebrities its customers could track.

On Thursday, Jill published to Thwarter the following message: "**OMG! I saw Jason Fiever @ Carnivore Club in Norfolk VA. He's a cutie pie & I ♥♥♥ him, but his bangs look like a fuzzy porcupine HAHHAHA**". At about the same time, Amber published to Thwarter the following message: "**Jason Fiever is at Norfolk's Carnivore Club totally kissing & groping Katy Kardashian. I had no idea they were dating**".

In fact, Katy Kardashian wasn't in Norfolk that day and has never dated Fiever. Amber's misstatement could reduce consumer interest in Fiever's goods and services because public awareness of Fiever's romantic attachment would potentially alienate many of Fiever's fans who prefer to believe he is either single or asexual.

CelebrityTrax's robots automatically gathered Jill and Amber's Thwarter posts and republished them to the Jason Fiever subscribers on CelebrityTrax. As a result, dozens of girls quickly descended on the Carnivore Club, hoping to confirm if Fiever was actually with Katy Kardashian. One overzealous CelebrityTrax subscriber tried to cut some of Fiever's hair as a souvenir, scratching Fiever's forehead with her scissors in the process.

Discuss CelebrityTrax's potential liability to Jill, Thwarter and Jason Fiever (don't discuss any other plaintiffs or defendants!) and briefly explain a few ways CelebrityTrax might reduce its legal exposure. Do not discuss 17 USC 512, copyright inducement, anti-circumvention (1201), copyright management information (1202), domain name issues (including ACPA), hot news, jurisdiction, COPPA or spam.