



Internet Law (Law 793) Final Exam
Eric Goldman • Fall 2011

This exam consists of one question worth 100% of the final score. You may use up to 2,750 words for your answer. This exam is three pages long.

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

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.** I’ll ignore any material you submit other than your word-counted answers.

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. 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 (normally 8:30-5) between Nov. 30-Dec. 2 and Dec. 5-9. However, if you check-out the exam on Dec. 2 or Dec. 9, 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, follow the instructions on the FSO door. Consider the law of diminishing marginal returns in allocating your time.

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!

James and Sophie are both enthusiasts of Giant Sequoia trees (*Sequoiadendron*). As a hobby, James runs a website celebrating the Colonel Friedman Tree, a Giant Sequoia specimen that is one of the biggest trees on Earth. The website displays advertising, but the ad earnings are so meager that they do not cover James' modest website hosting fees.

Initially, James created all of the website's text and photos. After visiting James' website, Sophie volunteered to help him improve the website's content. James shared his website's administrative login credentials (username and password) with Sophie, giving her equal power to modify the website's content. The parties did not have a written contract, but when James sent his login credentials to Sophie, he told Sophie that she must stop using his login credentials if he asked. Sophie never directly responded to that email. Instead, with James' login credentials, Sophie logged into the website and uploaded several photos of the tree that she took on a recent vacation.

After a few months, James and Sophie had a vitriolic private email exchange over whether KFC's Double Down chicken sandwich or Burger King's TenderCrisp chicken sandwich tastes better (James prefers the KFC sandwich). As their relationship soured, James instructed Sophie to stop using the website's login credentials.

Sophie ignored that instruction, logged into the website one last time, and "reverted" the website back to the version James had created just before Sophie got his login credentials. This reversion deleted everything Sophie had uploaded over the past few months, but it also deleted all of James' content uploaded during that time. James had a recent backup copy of the website, so he restored and republished most of the website's content, including the photos Sophie had uploaded. However, all website changes in the week before Sophie's reversion were permanently lost.

Sophie was unhappy that James' restoration republished her photos, and she sent a letter to James' third-party web hosting vendor asserting that her photos should not be available on James' website. The hosting vendor ignored her letter.

Meanwhile, Sophie correctly guessed that James used the same login credentials for his personal account at FaceSpace, a social networking site virtually identical to Facebook. Like Facebook, FaceSpace displays ads on user pages, but users don't get a share of the ad revenue. Sophie logged into James' FaceSpace account, changed the password so James could no longer access the account, renamed the account "KFCBugSandwiches," and posted an essay asserting that KFC's Double Down sandwich tasted like it was made from insect parts. The essay included a photo of the KFC Double Down sandwich that Sophie copied-and-pasted from KFC's website. Because the essay was posted to James' FaceSpace account, readers assumed James wrote it.

The essay ended by requesting that readers speculate why the KFC Double Down sandwich tasted like bugs. Several readers responded. One commenter claimed his Double Down sandwich had been seasoned with ground-up grasshoppers, and another commenter asserted that her KFC Double Down sandwich had included a whole intact beetle. Both comments were fabricated. A third commenter, "BaconateRulz," criticized James for the essay and posted James' social security number and home address; this commenter also sent a poisonous insect to James in the postal mail.

A few days after Sophie posted the essay on James' FaceSpace page, KFC sent a takedown notice to FaceSpace, which promptly made James' pages unavailable to the public.

Discuss and assess the merit of:

- 1) James' claims against
 - a) Sophie; and
 - b) BaconateRulz; and
 - c) FaceSpace for the comments to Sophie's essay and for BaconateRulz's postal mail.
- 2) KFC's claims against Sophie and FaceSpace.
- 3) Sophie's copyright claims.

In your analysis, identify which of these claims you would recommend the plaintiff pursue.

Notes: Do not discuss 17 USC 1201 or 1202 (anti-circumvention or CMI), CAN-SPAM, domain name issues, personal jurisdiction or publicity rights. To the extent you would duplicate your analysis in two or more questions, just cross-reference your analysis and address the unique issues raised by the new question(s). Assume that Sophie is an independent contractor and not James' employee, agent, partner or joint venturer.