Cyberlaw Final Exam
(Law 434)
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This exam has 2 questions with a total time limit of 3½ hours. Question 1 (2 hours) is worth 80% of the final score, and Question 2 (30 minutes) is worth 20% of the final score. You should allocate your time accordingly. The total time limit includes 60 minutes of discretionary time to use for transportation, printing, unforeseen delays or whatever you'd like (but please, not to spew unorganized thoughts!).

This is a "take-home" exam, meaning that you can take the exam anywhere you like. For your convenience, I have reserved Room 325 for using laptops, Room 318 for handwriting exams, and the Miller computer lab for using the school's desktop computers. However, you can take the exam in the library, another open classroom or outside the law school.

You must return the exam to me in my office (Room 110) or by email (see below) by 9:00 pm Central time. www.time.gov provides the official time for the exam. Because I have already given you ample discretionary time for unforeseen problems, THERE IS NO ADDITIONAL GRACE PERIOD—NOT EVEN ONE MINUTE. I DO NOT INTEND TO GRADE LATE EXAMS. NO EXCUSES!

This is an "open book" exam, meaning that 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 use a computer:

- You may return your answer to me by delivering a printed copy to me in Room 110 or by email to eric.goldman@marquette.edu. Include page numbers and your exam number on every page of your answer, but do not otherwise include any information that would identify yourself in the answer. If you are concerned that emailing your answer does not sufficiently preserve anonymity, please send it from an account that does not use your name or through an anonymous remailer, or turn in a printed copy.
- If you email me your answer, your answer is not received until your exam is in my inbox *and* I can successfully open and print the file using Microsoft Word for Windows 2000. I will reply as promptly as I can to confirm that I can print, in which case my reply email confirms that I have received your exam. However, if you have not promptly received a reply from me, I expect you to take all necessary steps to get your answer to me before the deadline. You can reach me by phone at (414) 288-5232.

- NO TIME EXTENSIONS WILL BE GIVEN DUE TO COMPUTER, EQUIPMENT OR POWER FAILURES, BECAUSE I CANNOT OPEN OR PRINT YOUR FILE, OR BECAUSE OF DIFFICULTIES TRANSMITTING FILES VIA THE INTERNET (although I might make special adjustments for widespread power or email failures).
- At the top of each question's answer, you must 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. FAILURE TO INCLUDE A WORD COUNT, OR INACCURATELY REPORTING A WORD COUNT, MAY LEAD TO SIGNIFICANT PENALTIES.
- If you submit multiple versions of your answer, I will randomly select one to grade unless you clearly and unambiguously indicate which version I should grade. In either case, I will toss all other versions of your answer without grading them.

If you are hand-writing your exam, please write legibly! Also, include your exam number on every bluebook and tell me how many bluebooks you are submitting. Hand-written exams are not word-limited and do not require a word count.

I have the following additional thoughts for you:

- I recommend that you spend approximately 1/3 of your allocated time reading the question and outlining a response.
- Read each question very carefully. Make sure you answer the questions actually asked.
- Some potential efficiency techniques:
  - Bullet points are OK
  - Short citation forms are OK
  - You can use abbreviations if you define them and they are not ambiguous
  - Please quote statutes or cases only as necessary to make your point
- While generally your answers should be based on legal principles, it can be appropriate to address other perspectives and concerns.
- If any additional information would be useful in your analysis, indicate what information would be helpful and then state your assumptions in order to proceed with your analysis.

GOOD LUCK AND HAPPY HOLIDAYS!

Question #1 (2 hours; computer users are allowed a maximum of 2,400 words)

I host my personal website at Tripod. Every time a web browser visits a page on my personal site, the browser sees an ad at the top of the page, which you should assume is displayed as follows. When a web browser requests a web page, Tripod automatically scans that page's contents and designates some keywords that it thinks represents the principal topics addressed on that page.

Two examples may be illustrative. On December 16, 2003, my personal home page [http://eric_goldman.tripod.com] displayed the following ads at the top of the page:

- "Intellectual Property Law // San Francisco Firm focused on patent and trademark litigation // demorylaw.com"
- "Rapid Patent Search- $249 // Patent search & law analysis. Get marketing & legal evaluation. // PatentSearchExpress.com"
- "Learn Patent Law – Free // Online introduction to Patent Law course for free! Sign-up. // www.patenteducationseries.com"
- "Law Study Aids & Outlines // Discounted law school books & study guides at BarristerBooks! // www.BarristerBooks.com"

The same day, my page discussing my favorite vegetarian restaurants [http://eric_goldman.tripod.com/personal/vegetarianrestaurants.htm] displayed the following ads:

- "ShopNatural // Over 5,000 natural and organic products delivered to your home. // www.shopnatural.com"
- "Raw Food Nutrition // World's premier source of raw foods Serving you efficiently since 1996. // www.raw-food.com"
- "Chez Paul Restaurant Maui // French Cuisine with a Hawaii Flair. Celebrating 35 Years on Maui. // www.ChezPaul.net"
- "Vegan Food - Amazon.com // 200+ Merchants. 20,000+ Products. Gourmet foods from A to Z. // www.Amazon.com/gourmetfood"

Tripod does not actually sell or serve these ads. Instead, pursuant to an agreement with Google, Tripod passes the automatically designated keywords to Google. Google has an advertising program that allows online advertisers to "buy keywords;" that is, to display their ads in response to designated keywords. Using the keywords provided by Tripod, Google prepares the ad by assembling content from advertisers who bought those keywords. A code on each Tripod page then asks Google's servers to deliver the ad directly to the visitor, and the visitor's computer places the ad in the appropriate location on the Tripod-served page.

The net result of this process is that the ads displayed on Tripod pages are contextually relevant to each page's content. Contextually relevant ads make it more likely that a Tripod visitor will be interested in viewing the advertiser's website. Thus, Tripod can provide relevant ads on user-managed content (like my personal home page) without a cost-prohibitive manual analysis of each page.

What liabilities might Tripod have from this process? What liabilities might Google have from this process?

END OF QUESTION 1

Question 2 (30 minutes; computer users are allowed a maximum of 600 words)

I received the following email:

> The list owner of VegSource Newsletter has invited you to join their mailing list at vegsource.com. Here is the list description: "The VegSource Newsletter brings news, views and recipes from the veg community, and comes out about once a month, with occasional updates."

> In the past you have received or sent articles from vegsource.com, or perhaps contacted vegsource with a question or comment. We'd love to have your permission to send additional updates! Would you like to sign up for the vegsource newsletter? It's very easy -- all you have to do to subscribe is to click this link [URL]. You will receive no further correspondence unless you choose to respond to this email by clicking on the link.

Assuming I wanted to sue based on receiving this email, what legal theories might support a claim and what additional information would be useful to evaluate those claims? Ignore the CAN-SPAM Act.

END OF QUESTION 2
END OF EXAM