



**Internet Law (Law 793) Final Exam**  
Prof. Eric Goldman • Spring 2023

This exam has 1 question. The Word file containing your answer may not contain more than 3,000 words total, including your word count, AGID, and any footnotes (but no footnotes please). Please use a font size that is kind to my aging eyes.

This is an “open book” exam. You may consult any materials other than chatbots. During the exam period, you may not communicate about the exam or your answer with anyone (orally, electronically, or otherwise), other than law school staff or ExamSoft regarding exam administration. You don’t need to do outside research, and such research is unlikely to help your grade. However, if you aren’t sure exactly what a statute says, don’t rely on summaries from class—read the statute!

I will email you the exam question on May 1, 2023 by 10 am Pacific. You must upload your answer to your ExamSoft profile at <https://ei.examssoft.com/GKWeb/login/sculaw> no later than May 15, 2023, 1 pm Pacific. ExamSoft’s timestamp is irrefutable evidence of your upload time. **IF YOUR ANSWER IS UPLOADED AFTER THE DEADLINE, EVEN BY ONE MINUTE, YOU WILL FAIL THE COURSE. THERE IS NO EXTRA GRACE PERIOD. NO EXCUSES!** Don’t wait until the last minute to upload your answer. Confirm you successfully uploaded your answer.

Submit your answer as a Microsoft Word file in accordance with the Assessment Office’s instructions. The file name should be “Your4-DigitAGID\_InternetLaw\_Goldman\_Spring2023.” In the file itself, include page numbers and your AGID in the document footer, but don’t include any other identifying information. At the top of your answer, tell me how many words the answer contains. **I DON’T PLAN TO GRADE AN ANSWER THAT EXCEEDS THE WORD LIMIT BY EVEN ONE WORD. OMITTING OR MISSTATING YOUR WORD COUNT MAY INCUR SIGNIFICANT PENALTIES.**

If you have a technology emergency, call Law Technology at (408) 554-5762. If you cannot reach Law Technology, call ExamSoft at (866) 429-8889 to timestamp the issue. You may also contact Janelle Atangan at (408) 554-5137 or [jatangan@scu.edu](mailto:jatangan@scu.edu) with any exam issues. If you have a personal emergency, contact Nicole Maxwell at (408) 554-4677 or [nmaxwell@scu.edu](mailto:nmaxwell@scu.edu). Do not contact me directly.

Some additional thoughts for you:

- Unless otherwise specified, all parties are, and all actions take place, in California. Don’t discuss any statutes of limitation. Unless otherwise specified, all parties are adults.
- Only address topics we covered this semester.
- Read the questions very carefully. Answer the questions I actually ask. Don’t answer questions I didn’t ask.

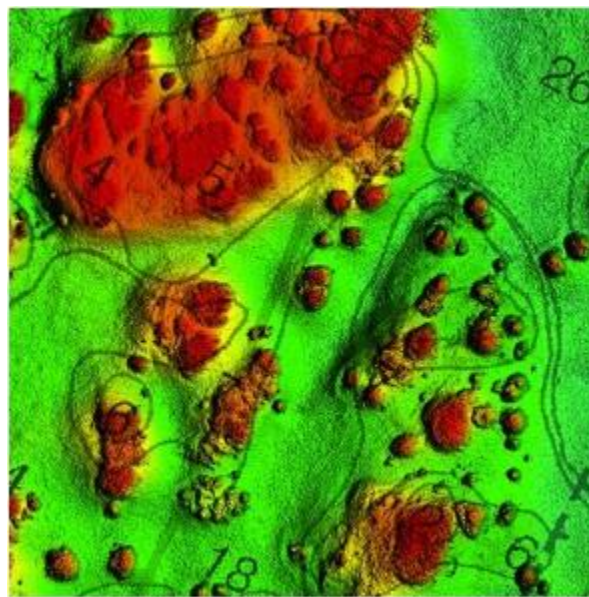
- Allocate your word count smartly. You score most points from issue-spotting and applying the law to the facts. Organize and prioritize your answer accordingly. It's OK to use bullet points, short citation forms, and unambiguous abbreviations. Please quote statutes or cases only as needed to make your point. It's OK to use IRAC/CRAC, but I'm also OK with any method that effectively and efficiently communicates your points.
- If additional information would help your analysis, explain what information you'd like and why it would help.
- While generally your answer should be based on legal principles, you are welcome to address other perspectives and concerns.

This question involves two fishing-related websites: “SecretReefs,” a well-known site among fishers, and a new competitor “CatchMoreFish.”

Both businesses aim to help fishers find good fishing spots. Fish often congregate at reefs, but reefs can attract too many fishers, which can lead to over-fishing. To avoid this, fishers prefer reefs that are not well-known by other fishers.

SecretReefs offers a database of GPS coordinates for reefs. The GPS coordinates come from two different sources and are priced differently.

*Proprietary GPS Coordinates.* SecretReefs uses sonar readings to generate 3D maps of the ocean floor. Here is part of an example 3D map created by SecretReefs:



SecretReefs then uses proprietary algorithms to analyze the sonar readings and discover previously unknown reefs that are likely to appeal to fishers. SecretReefs then offers to sell the GPS coordinates to these newly identified reefs, along with its 3D maps for the surrounding area, for about \$200 each. To inhibit overfishing, SecretReefs sells each set of proprietary GPS coordinates only to a single buyer, i.e., once purchased, SecretReefs removes those coordinates from its catalog.

*Public GPS Coordinates.* State governments have created artificial reefs and publish their GPS coordinates. SecretReefs legally obtains the public GPS coordinates and supplements them with its 3D map for the area. SecretReefs does not charge fishers to access the public GPS coordinates. However, fishers must “order” the coordinates and associated 3D map by placing the item into a virtual shopping cart (with a price tag of \$0) and checking out through SecretReefs’ standard shopping checkout process.

SecretReefs considers proprietary GPS coordinates to be its trade secrets. SecretReefs’ “terms and conditions” (discussed below) say that buyers of proprietary GPS coordinates may not share

the coordinates with any third party or post the coordinates online. Regardless of how they are obtained, GPS coordinates are not copyrightable (and please do not discuss any compilation copyright in databases of GPS coordinates). Prior to CatchMoreFish's entry into the marketplace, SecretReefs had made all appropriate IP registrations for its name and its website. SecretReefs believes that its copyright registration for its website covers each individual 3D map it posts on the website, but it has not attempted to register those maps individually.

CatchMoreFish (CMF) competes with SecretReefs and similarly provides fishers with the ability to download GPS coordinates and maps for reefs. However, it does not charge fishers to access its offerings. Instead, it generates revenues by displaying ads from sellers of boat charters, fishing gear, frozen fish for home consumption, and related items.

CMF obtains GPS coordinates for reefs in two ways.

First, CMF allows users to upload GPS coordinates along with associated maps and photos. CMF encourages buyers of SecretReefs' proprietary GPS coordinates to upload those coordinates and SecretReefs' associated 3D maps. [Note: some SecretReefs buyers want to keep their purchased coordinates secret to avoid overcrowding on future visits, but other buyers never plan to return to the coordinates]. CMF doesn't know exactly how many SecretReefs customers have uploaded GPS coordinates along with SecretReefs' 3D maps, but it is likely dozens or hundreds.

Second, CMF obtained all of the public GPS coordinates on SecretReefs' website. [Note: CMF could have obtained the coordinates directly from each state, but it would have required more effort to locate the resources from each state and then incorporate the material into its database because states publish the information in a variety of formats].

To collect the public GPS coordinates from SecretReefs, CMF used an automated script to "order" all of the public GPS coordinates and place them into CMF's virtual shopping cart. SecretReefs uses standard off-the-shelf "throttling" software that caps how many web page requests it will honor per minute from any single user. The software, operating normally, automatically throttled CMF's script; with the throttling, CMF's script was able to complete its operation, just at a slower pace than the script was designed to operate. With the throttling, SecretReefs' website suffered no deleterious consequences because of CMF's script. After CMF's script filled up a virtual shopping cart, a CMF employee manually completed the checkout process (reminder: the public GPS coordinates cost \$0). To fulfill the order, SecretReefs emailed CMF's employee an enormous file containing all of the ordered public GPS coordinates and associated maps. It was such a massive file that it slowed down SecretReefs' email server and delayed the delivery of several other customers' orders by about one minute. SecretReefs' website had a robot exclusion header that expressly allowed search engine robots and expressly disallowed all other robots. No one at CMF reviewed SecretReefs' robot exclusion header. SecretReefs' "terms and conditions" (discussed below) expressly disallowed the use of any automated scripts to access its website. In future years, CMF plans to order (for free) any new public GPS coordinates that have been added to SecretReefs' catalog in the prior year, but this should only be a handful of new coordinates per year.

CMF's marketing includes:

- Incorporating hundreds of fishing-related keywords into its website’s keyword metatags, including the phrase “Secret Reefs.”
- Keyword advertising at Google. CMF buys hundreds of fishing-related keywords as triggers for its ads, including the phrases “Secret Reefs” and “SecretReefs.” CMF’s keyword ad copy reads: “Wanna catch more fish? Learn about the secret reefs others don’t want you to know about. CatchMoreFish.com.”

For all GPS coordinates (whether uploaded by users or ordered from SecretReefs), CMF allows users to post comments about the reef that other users can read. CMF employees review all user-submitted comments before they are publicly posted, but the employees only attempt to locate and block profanity and nudity. Some user comments posted to CMF:

- Abner’s comment encourages other fishers to enjoy scuba-diving and snorkeling at the reef. However, Abner privately emailed CMF’s customer support team recommending that CMF remove the coordinates because he saw many dangerous sharks, stingrays, and jellyfish there.
- Billy’s comment claimed that Luke, another CMF user, has engaged in illegal poaching at a reef. Luke strenuously objected to that assertion and demanded in writing that CMF remove the comment. CMF told Luke it would investigate his objections, but CMF never investigated the comment or took any action on it.
- Caleb’s comment explained that the reef at the GPS coordinates is right next to a federal preserve where the fishing is much better, and Caleb encouraged other fishers to fish in the preserve instead of the reef. [Note: it’s a federal crime to fish in a federal preserve.]

CMF has made all disclosures and designations contemplated by Section 512. It has adopted a repeat infringer policy that restricts users from making new comments after they have been alleged to engage in copyright infringement 5 or more times. Because no users have received that many allegations, CMF has never terminated a user’s account based on its repeat infringer policy.

SecretReefs requires all purchasers to go through the following screens to complete their orders (including the public GPS coordinates that are priced at zero). SecretReefs does not link to the “terms and conditions” anywhere on its website other than on the screens displayed below.

## Screen 1:

### Your selection (1 items)

Description	Price	Quantity	Subtotal
✘ 4-20-18 #223 Small Artificial	\$190	1	\$190

Coupon code  Coupon:

### Cart totals

Subtotal	\$190
Tax	\$0
<b>Total</b>	<b>\$190</b>

## Screen 2 (after clicking “proceed to checkout”):

### Billing details

First name \*  Last name \*

Company name (optional)

Country / Region \*

Street address \*

Town / City \*

State / County \*

Postcode / ZIP \*

Phone \*

Email address \*

### Your order

Product	Subtotal
4-20-18 #223 Small Artificial	\$190
<b>Subtotal</b>	<b>\$190</b>
<b>Tax</b>	<b>\$0</b>
<b>Total</b>	<b>\$190</b>

### Credit Card (Stripe)

Pay with your credit card via Stripe.

Card Number \*

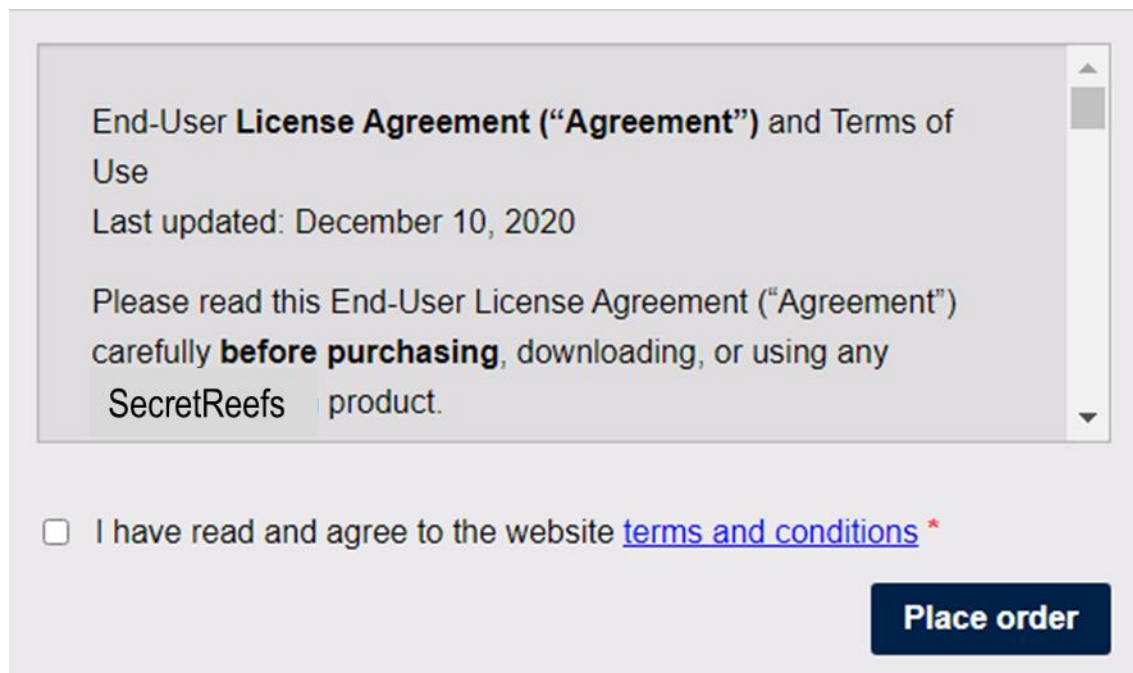
Expiry Date \*  Card Code (CVC) \*

Save payment information to my account for future purchases.

I have read and agree to the website [terms and conditions](#) \*

When navigating Screen 2, a buyer cannot successfully click on the “place order” button until all of the items marked with a red asterisk are completed.

Screen 3 shows what happens if a buyer reviewing Screen 2 clicks on the blue/underlined words “terms and conditions” (this is an enlarged view of the area above the “I have read and agree to the website terms and conditions” line in Screen 2):



End-User **License Agreement (“Agreement”)** and Terms of Use  
Last updated: December 10, 2020

Please read this End-User License Agreement (“Agreement”) carefully **before purchasing**, downloading, or using any SecretReefs product.

I have read and agree to the website [terms and conditions](#) \*

**Place order**

Buyers do not need to scroll through the End-User License Agreement and Terms of Use to select the “place order” button, but they must check the box to the left of the “I have read and agree to the website terms and conditions” line to proceed.

Analyze CMF’s legal risks based on the topics we covered in class. However, do not discuss personal jurisdiction; 17 U.S.C. §§ 1201 or 1202; web browsing as infringement; criminal copyright infringement; CA AADC; COPPA; GDPR; CCPA/CPRA; anti-spam laws; ECPA/state law equivalents; infliction of emotional distress; or laws against stalking, harassment, or true threats.