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Internet Law
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Final Examination

Instructions: This exam booklet has four (4) pages. Please be sure you have all four pages.

Please read the questions carefully. There are two questions. Each question is worth half of the final grade; you have eight hours to complete the exam. Please allocate your time and effort accordingly.

This exam is open book and take-home. Please base your answers on assigned readings and class discussions. You may bring in pre-existing outside knowledge, but you may not do Internet or Lexis / Westlaw searches for additional information once you have received the examination questions. (Such searches are unlikely to help you in any event.) Of course, you may not consult with anyone else during the exam.

Word limit: 2500 words. Courts enforce word limits and so will I. Your exam must be no longer than 2500 words, including any footnotes or endnotes (approximately 12 pages double-spaced). Please include a word count at the top of your document. I will spot-check word counts and will stop reading after 2500 words.

Anonymity. Your name should not appear anywhere on the exam. Each page should have your exam number and page number.

Good luck!

Question 1: Blogs Blast Off

You are General Counsel to Pluto Macrocomputer (“Pluto”), a privately-run manufacturer of large computer systems. Pluto has caught the blogging phenomenon, and management asks you for a memorandum addressing several legal issues that have arisen regarding the company weblogs.

Pluto has configured blogging software to let employees create weblogs under the URL <http://blogs.plutomacro.com>. Each employee or department has the option to create a blog, such as <http://blogs.plutomacro.com/marketing/>. In typical weblog style, these have entries written by company employees arranged in reverse chronological order, with reader-submitted comments underneath. Pluto’s CEO feels that weblogs enable the company to communicate more directly with customers and independent developers who program for Pluto’s systems. Marketing confirms that customer satisfaction is at an all-time high, particularly because customers like the rapid feedback of blog comments. The blog rollout is not without challenges, however, as described in the incidents below:

Pulsar, <http://blogs.plutomacro.com/pulsar/>

One of Pluto’s bloggers, Sally, posts an entry congratulating her development team for their hard work to create and launch a new product, the Pulsar Switch. That entry spawns an active thread of comments posted by readers of the blog. Most posts discuss the product, but one comment, by “Crater,” says:

I bet you didn’t get bonuses for all the extra hours you spent getting this ready for production. I didn’t when I worked for the sleazebags at Pluto.

L&r, Crater

Sally deletes this post and blocks the AOL-owned IP address from which Crater posted, but a new “Crater” comment appears, from a different AOL address, each time she deletes one. Frustrated because these posts are lowering her team’s morale, she disallows comments on this entry and then on her team’s entire blog. The “Crater” comments spread to other Pluto blogs, where the IT staff must spend several hours deleting them.

Jupiter, <http://blogs.plutomacro.com/jupiter/>

On Pluto’s Jupiter blog, Yuri posts an entry about the challenges he faces in writing new management software for the Jupiter mainframe. One reader (“FreeAsInSpeech”) posts a comment saying that there is a Free Software package, licensed under the GNU GPL, that already does most of what Yuri wants. He suggests that it would do the job if Yuri modified it somewhat.

A second reader (“FreeAsInBeer”) posts several pages of code and written documentation. Before Yuri gets a chance to read FreeAsInBeer’s comment, MarsCorp sends a compliant DMCA notification of claimed copyright infringement to Pluto. MarsCorp claims that FreeAsInBeer posted MarsCorp copyrighted code and documentation without authorization, and demands expeditious removal of FreeAsInBeer’s comment from the Jupiter weblog. MarsCorp also demands that Pluto pre-screen comments to prevent anyone from posting this code again.

Kuiper, <<http://kuipersys.com>>

Pluto's CIO, Buzz, notices that competitor Kuiper Systems does not yet have a web presence. He registers the domain name KuiperSys.com and makes a particularly nasty weblog, titled "Kuiper Belt and Suspenders," appear there. Unsurprisingly, Kuiper does not appreciate this. Kuiper threatens a lawsuit over the domain name, as well as over a comment on the Pulsar blog entitled "Ditch Kuiper's Switch," which says "*Benchmarks show that Kuiper's switch is slower than Pluto's Pulsar. Tests performed by independent systems researchers confirm what we knew all along, Pluto's the keeper.*"

Please write a memorandum to Pluto management assessing Pluto's potential legal liabilities and legal and business options with regard to each of these blog incidents. (If relevant, please assume that Pluto would be responsible for its employees' activity because they are acting as agents of the company within the scope of their employment.) Please also suggest future steps Pluto might take to balance the liability risks evident from these incidents with the business benefits Pluto derives from blogs.

Question 2: Senator Chill

You are Legislative Director to Senator Charlene “Chill” Schumton, junior senator from New York. The Senator has just received a delegation from the group Internet Decency Is Our Mission (“IDIOM”). Knowing that she has spoken out against video game violence, IDIOM has proposed that the Senator introduce a new bill “to protect us from online evils.”

Specifically, IDIOM recommends that the Senator sponsor new law to:

- 1) Require anyone who uses the Internet to distribute material “obscene as to minors” or obscene generally to use a domain name with “XXX” in it, including for private email correspondence (so racy emails could only be sent between addresses such as me@xxx.aol.com and you@mailxxx.com);
- 2) Hold Internet service providers liable for any violations of this law by users of or traffic carried on their networks; and
- 3) Empower the government to search Internet traffic – both public and private communications – for content that does not comply with these rules.

The Senator also meets with the New York Internet Service Providers (“NYISP,” which they pronounce “nice”). They argue that the IDIOM bill would place a terrible burden on ISPs, who are working to bring broadband Internet service to more residents, including low-cost service for disadvantaged people. They say that existing law, combined with technologies that give parents filtering options, better promotes open dialogue and creative use of the Internet. Moreover, they wonder how the law would apply to newer technologies such as Voice-over-Internet-Protocol (VoIP) telephony, many of which do not use domain names. If the law is changed, NYISP says, it should be to give ISPs broad immunity from lawsuits about anything their users do.

The Senator is a lawyer, and she says that even if some members of Congress knowingly support unconstitutional bills for the public relations value (the public remembers the bill’s passage, but forgets who sponsored it when the courts strike it down years later), she would prefer to propose constitutional legislation that is likely to be effective. She also recognizes that while some of her constituents are IDIOM members, others are members of civil liberties groups such as ACLU and EFF.

Please prepare a memorandum for Senator Schumton addressing IDIOM’s legislative proposals. For each proposal 1 – 3, the Senator asks you to analyze whether the proposal raises constitutional questions or conflicts with existing statutes; discuss policy arguments for and against the law; and make recommendations whether she should introduce such a bill. In the policy analysis, please discuss the effectiveness of potential solutions other than changes to the law. The Senator suggests that she is also interested in how the proposed legislation would have affected important past cases.

Thanks for a great class!