E L E C T R O N I C  C O M M E R C E
Professor Wagner
Fall 2000

FINAL EXAMINATION

Exam first available: 9:00 AM, December 11, 2000
Exam last available: 10:00 AM, December 15, 2000

Time Limit: 6 hours. (No extra time for LLM students.)

INSTRUCTIONS

1. The exam consists of eight total questions – five “short answer” questions and three “essay” questions. A total of 100 points are available; the points for each question are indicated.

2. Start each question on a new page. Be sure to designate clearly which question you are answering.

3. Write your exam ticket number on EVERY page of your answers, as well as the first page of the exam.

4. You have up to six hours to complete this exam. You may allocate your time as you wish, but be sure to allocate ample time for printing and returning the exam to the Registrar’s office at the end of your six-hour period.

5. All answers must be typed/printed. (Computer disks will not be accepted by the Registrar.) Please double-space and use a font of at least 11 pts.

6. Each answer has a maximum word limit. DO NOT WRITE BEYOND THE WORD LIMIT FOR EACH ANSWER. Each violation of the word limit will result in a letter grade reduction in your final grade. Note, however, that the word limit is not a suggestion – write only as much as you think you need to answer the question.

7. The exam is “open book” and “open notes”. The only restriction is that you may not get assistance from another human being. Attribution of sources of ideas or language is not required, though citations are encouraged and will be viewed favorably.

8. Do not discuss the content of the exam with anyone until 5:00 PM on December 15, 2000.

9. Good luck, and have a great holiday break.
SHORT ANSWER QUESTIONS

1. Sally pays for and downloads a digital telephone directory off the Internet. The directory is protected by a “trusted system” that prevents copies from being made. Sally writes a software program that “circumvents” the trusted system (thus allowing multiple copies to be created). Sally posts copies of the directory and her hacking software on her web site. Which specific provisions of U.S. Federal law Sally has violated? (Give citations.) [4 points. 100 word limit.]

2. Why do network administrators point their DNS servers towards the root servers controlled by ICANN? What, if anything, would happen if they didn’t? [4 points. 100 word limit.]

3. On November 15, 2000, Alice, a resident of Iowa, contracts electronically to purchase an e-book from Bob, a resident of Maryland. Neither Bob nor Alice are merchants. The contract specifies that the law of Maryland shall apply. Alice files suit in an Iowa court, arguing that the contract must be interpreted according to Iowa law. Is she right? (Assume there are no jurisdictional problems.) [4 points. 100 word limit.]

4. Name a court that you are certain can consider a dispute involving the appropriate ownership of the domain name “bestbuysucks.com.” Why are you certain? [4 points. 100 word limit.]

5. E-Company, Inc., posts and follows a privacy policy, which (in its entirety) provides: complete notice of data collection activities, including the collection of names, addresses, email addresses, and sensitive information; allows access by individuals to their collected data; maintains collected data very securely; allows transfer of all data to third parties; allows the use of data for online profiling; and allows the user to opt-out of the transfer of their personally identifiable information upon request. Which of the following guidelines and laws does the E-Company policy meet (note: it may meet more than one, or it may meet none at all): (a) the safe harbor provisions of Senate Bill 2928, the “Consumer Internet Privacy Enhancement Act,” (as presently written); (b) the US Department of Commerce safe harbor provisions of the European Union Data Directive; (c) the TRUSTe seal program; and (d) the Better Business Bureau (BBBOOnline) seal program. [4 points. 100 word limit.]
6. ESSAY QUESTION

The world’s most popular business software is Bigsoft Office, developed by Bigsoft, Inc. While Bigsoft has registered the word “Bigsoft” and the phrase “Bigsoft Office” as a trademark in the United States, it has been successful in registering the term “Office” as a trademark only in the country of Tunisia. (Tunisia, a country in North Africa, does not evaluate applications for trademarks, but simply grants registrations upon the receipt of a $500 fee.) “Bigsoft” and “Bigsoft Office” are both famous trademarks in the United States.

Charles owns a web site selling materials (books, videos, pamphlets, etc.) used for training people how to use business software applications, including Bigsoft Office. Charles’ web site uses the domain name officetraining.com, which he registered with an official ICANN registrar in January 2000. At the time he registered his domain name, the business was called “Charles’ Training Materials”; but in March 2000, Charles formally changed the name to “Office Training” -- in part because of his success at attracting customers to the officetraining.com web site. The training materials designed for Bigsoft Office have textual descriptions on the web site that include the words “Bigsoft Office” and “Office” in them.

Charles has also contracted with a company called OtherNames, Inc. to drive traffic to his site. OtherNames has developed an “alternative search system” whereby users of some web browsers who type words and phrases into the “location” area of the browser are automatically transferred to a web site corresponding with that word or phrase in the OtherNames database (thereby bypassing the DNS system). Charles paid OtherNames to have the words and phrases “training”, “software,” “office”, and “bigsoft office training” associated with his officetraining.com web site.

a. In November 2000, Bigsoft sent Charles a letter, objecting to his use of the officetraining.com domain name and his agreement with OtherNames. Charles comes to you for legal advice. Write him a memo addressing Bigsoft’s possible avenues for obtaining relief, evaluating the likelihood of success for each. [20 points. 1000 word limit.]

b. After being contacted by Bigsoft, Charles registers the domain name officetraining.biz, hoping to use it in the event that officetraining.com is granted to Bigsoft. If Bigsoft files a complaint under the UDRP, will Charles be able to retain officetraining.biz? (Assume that the .biz top level domain operates under the same ICANN procedures as .com.) [10 points. 500 word limit.]
7. ESSAY QUESTION

Your college roommate, Pat, who recently started an eCommerce business, has hired your law firm to conduct the company’s legal affairs. Pat’s company has developed a software technology called WebNotes, which allows web surfers to post small “notes” on any web site on the Internet – these notes appear on the surface of the web page much like “Post-It” notes appear on a real-world page of a book or magazine. A note posted by a WebNotes user can be seen by anyone else who downloads and uses the WebNotes software, and can include text, graphics, or hyperlinks. These notes do not actually exist on the third-party web page; rather, the WebNotes software connects to a large central database hosted by Pat’s company, which contains the content of the notes as well as the web sites they are “posted” on. When a WebNotes user visits any web site, the software checks the central database to find and display any notes available for that site. Presently, about 20,000 people use WebNotes, a number that grows by 10,000 per month.

Pat calls you to discuss two legal questions:

First, some WebNotes users are using the software to post disparaging remarks about the web sites upon which their notes appear. Because of this, some major web sites like Amazon.com are threatening lawsuits against Pat’s company unless the company removes all associated notes and prevents users of WebNotes from posting to those sites. Pat notes that complying with such demands would greatly diminish the value of WebNotes to its users, and would thus be very undesirable for the company. Also, the company does not at this point have the technological capability to block posting to certain web sites – though with some significant rewriting of software, such a feature could, in theory, be developed.

Second, Pat has noticed that a competitor company has developed a nearly identical software application, called NetPost. This software allows NetPost users to see all of the WebNotes “notes” as well as the notes created by NetPost users. (Apparently, the NetPost software accesses the WebNotes database if the user checks a box in the software’s preferences – a box that is unchecked by default.) Because of its compatibility with WebNotes, Pat suggests that NetPost, although developed later, may be able to attract more users to its service, seriously harming WebNotes. Thus, Pat wants to know if they can do anything about NetPost from a legal perspective.

Write Pat a memorandum addressing both legal questions. Discuss the possible legal challenges that might be faced and/or initiated by the company, and what the arguments for each side would be. Be sure to express a view on the likely outcome for each question. If additional facts would alter your analysis, state what information you would request from Pat, and its relevance. [25 points, 1250 word limit]
8. ESSAY QUESTION

A court in France recently enjoined Yahoo! Auctions from offering any Nazi-related merchandise to French citizens. The court, after extensive testimony and over Yahoo!'s protests, determined that Yahoo! could feasibly implement the injunction – that it was technologically practicable. (Assume that Yahoo! Auctions is a single web site, available across the Internet.)

You are a law clerk to a United States District Court Judge. The Judge asks you to write her a memo addressing the following questions: [20 points, 1000 word limit.]

a. What particular technological tools do you think the court was referring to? Do you agree with the court’s view of the technology? Why or why not?

b. Assume the French court’s reasoning – that web sites have the technological capability to fully ascertain and control the locations of their users – was adopted in United States courts. Discuss how such a theory would alter the rules of personal jurisdiction as applied to the Internet. Be sure to address jurisdiction based on web sites as well as online communications.