

Professor Paul Schwartz
Internet Law
Fall 1999

FINAL EXAMINATION

Instructions

1. Please read the examination questions carefully and write a complete answer.
2. The first question of this examination is worth 1/2 of the final grade; the second question is worth 1/2. Please allocate your time accordingly.
3. Your test must be typed and double-spaced. Do not write your name anywhere on the examination; please use only your test number on your answer.
4. Your copy of the examination and the answer to it are to be turned in 48 hours after you pick up the examination. Please return the copy of the examination and your answer to the Registrar of the law school.
5. Please assume the validity of all facts in the questions.
6. Finally, you must sign and turn in the enclosed "Student Honor Pledge," which reminds you of your responsibilities under Brooklyn Law School's Code of Academic Responsibility.

Question I

The year is 2006. You are outside counsel to the University of California, Los Angeles, California. The new Dean of the School of Arts and Sciences, William Hart, wants to take the following actions regarding email accounts and Web access at the school.

He also wishes to pursue the author of a so-called “parody” Web site that mocks the School of the Arts and Sciences and, in his view, defames him.

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First, Dean Hart wants to liberally interpret UCLA’s existing content guidelines to block access to and any links to all sites outside of its own domain relating to gun ownership and gambling, as well to ban chat and other postings relating to those subjects within UCLA sponsored chat rooms.

Second, Hart wishes to “pull the plug” on all anti-Hart Web pages. UCLA generally allows faculty, students, and staff to post their own Web pages. Hart has used the search engine on the UCLA home page and identified approximately a dozen such Web pages on UCLA’s server that are largely devoted to verbal abuse of him. In Hart’s view, the anti-Hart Web pages can be considered “hateful,” “harassing,” and “abusive” under UCLA’s existing on-line conduct policies.

Third, Dean Hart wishes to expel Jacob Smith, a junior at UCLA. He also seeks to pursue him for defamation and other legal actions if possible.

Smith has posted a Web site at <<http://www.ucla.com>> that mocks the Dean and the UCLA School of Arts and science. (The official Web site for UCLA is found at <<http://www.ucla.edu>>). At Jacob Smith’s Web site, anyone may submit comments for posting. Numerous UCLA students have done so; in many of these postings, hostile comments are made about other students, faculty members, and staff members. In Hart’s view, some of these comments defame him.

Fourth, Jacob Smith’s “ucla.com” Web site also contains a sexually explicit photograph. However, this picture would not be considered obscene as measured by community standards in Los Angeles, CA. This Web site does, however, contain a link to another Web site, which sometimes does contain images that would likely be found obscene by these community standards. Hart followed the links to this second Web site and found links to other sites, one of which is located in Finland. At the Finnish site, Hart

found images also likely to be found to be obscene. He is especially worried about children viewing these sites. Finally, Jacob Smith's site contains sexually graphic and violent stories about three of Smith's fellow students, all of whom are named. These students have contacted Dean Hart and told him how upset they are by this material. In two student's views, the material constitutes "a direct threat" to them.

You have been asked by Hart to write a memo that advises him of the legal and policy implications of the issues raised in this hypothetical.

Question Two

You are an attorney at Manzarek & Beard, a leading Intellectual Property firm in New York City. Jane Kouh, a prominent East Coast venture capitalist, has asked you to advise her of legal issues regarding Seagel Systems, an Internet company. Ms. Kouh is particularly interested in potential legal issues or more general policy issues that would diminish the attractiveness of an investment in Seagel Systems. She has also asked you if this company's products will make it liable to lawsuits in any jurisdiction in the United States or if there is any action that Seagel Systems can take to shift litigation to the judicial venue likely to be most favorable to it.

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A description of the firm follows:

Seagel Systems designs and markets software: (1) to change a Web browser's computer cursor into cartoon characters and other images, and (2) to convert audio files stored in any format (including MP3) into the proprietary, highly compressed "Seagel format" (also known as "SG files").

A. Seagel Cursor

The first product, the "Seagel Cursor" changes a Web browser's computer cursor into cartoon characters and other images and is intended to make surfing the Web more entertaining. Seagel plans to obtain permission to develop cursor images based on the Peanut comic strip, from animated Disney movies such as the "Little Mermaid," from the Pokemon series of characters as well as from select music, film and television stars who appeal to children.

Seagel will give away this software for free, but hopes to make money by selling advertisements on its site and by having other Web sites pay it based on their number of visitors who use its cursor-changing technology.

To increase the number of visitors to the Web site where the free cursor program will be offered, Seagel plans to embed metags at its site that bear descriptions that are likely to be popular on the Web and will lead search engines to it. These metags include: "Amazon," "Microsoft," "Bill Gates," "Hillary Rodham Clinton," "Mavis Beacon Teaches Typing," and "free sex pictures."

To make the fee-payment system work, Seagel must be able to track the surfing of those who use its cursor across the Internet. To do so, Seagel loads a unique serial number on the computer of those who will download their products. Seagel's chief technology officer Tom Mayfield explains, "Part of the identifier used by Seagel includes the serial number for each computer's network connection hardware." He adds, "As a

result, a customer's Web browsing history can be linked back to a specific machine by examining the company's tracking logs and her personal computer."

B. SG files

Currently, different standards compete with each other on the Internet to be the leading file format for storage and compression of music. MP3 files are typical of these compressed audio recordings. The size of MP3 files are about 1MB for each minute of sound.

In contrast, the Seagel format allows for far greater compression of music. Specifically, SG files will be one-half the size of MP3 files. Currently, Seagel Systems is planning to introduce the software for SG files, to establish a separate Web site for new bands to list their songs in SG files, and to sell a Diamond Seagel Player (in both portable and component form).

The software for SG files is used on one's computer and allows the conversion of music from CD's or any existing software file (such as MP3) into a SG file. These can be played on one's computer or on a Diamond Seagel Player (Portable or Component).

The Diamond Seagel Player Portable is a small device, about the size of a pack of cigarettes, which allows consumers to listen to music uploaded to it and others to download music that has been loaded on to it. The final device, the Diamond Seagel Player Component, is a larger device that is intended for use at home with one's stereo components; otherwise, the Diamond Seagel Player Component performs all functions possible with the software for SG files on one's computer as well as with the Diamond Seagel Player Portable. None of these products offer Serial Copyright Management (SCM) or any other limitations on copying and reproduction of digital music.

[Please sign and date this document. You are to turn it in with your final examination.]

Student Pledge

I have reviewed the attached pages from the Brooklyn Law School Code of Academic Responsibility.

I understand that, among other behavior, it violates the Code to:

obtain or receive any unauthorized information concerning the content or characteristics of an examination prior to the examination;

communicate with any other person during the conduct of any examination regarding the contents of or the answers to the examination, except persons administering the examination or faculty members responsible for overseeing the conduct of an examination;

in the case of take home examinations, collaborate with other persons or receive the assistance of other persons except as specifically authorized by the faculty member responsible for giving the examination;

copy, read, or attempt to obtain another student's answers or notes during the course of the examination;

discuss the examination with anyone whom the student knows, or should know, has not yet taken the examination or knowingly discuss the examination in any place where a reasonable person should realize that the conversation could be heard by another student who has not, but might take, the examination.

Name of Student (Please Print)

Name of Student (Signature)

Date