

FINAL EXAM
INTERNET & SOFTWARE LAW
PROFESSOR GREENBERG
SPRING SEMESTER 2006

1. You have **three (3) hours** to complete the exam.
2. **THIS IS AN OPEN BOOK, OPEN MATERIALS EXAM.** You may use any notes, books or other materials to assist you in responding to the questions.
3. This exam consists of three (3) essay questions. Two of the questions are worth 33 points, and one is worth 34 points. I suggest you spend 1/3rd of your time on each question outlining your response, and then write for the remaining time you allocate for each question. If you use the full period of three hours, this would mean outlining for 20 minutes and writing for 40 minutes on each question. Each subpart and subissue is equally weighted for grading purposes, so divide your response evenly among the subparts - do not write a full answer for one part and a short answer for another part. Answer each question as fully as you can, citing any appropriate cases, industry standards, and statutes that are relevant. Write your answer in a blue book, type it on plain, unmarked typing paper, or wordprocess it using the ExamSoft Software. **PLACE YOUR EXAM NUMBER ON EACH BLUE BOOK OR TYPED PAGE.** At the end of the exam, please turn in your exam books, scratch sheets and exam questions.
4. **DO NOT WRITE ON BOTH SIDES OF THE PAGE. WRITE LEGIBLY OR PRINT IF YOUR HANDWRITING IS DIFFICULT TO READ. WRITE ON EVERY OTHER LINE.** If I cannot read your response to a question, your grade will be adversely affected.
5. Write your exam number on your exam envelope. Put your exam # at the top of this page, each page of questions, and each blue book. **Do not** use your name, student ID number or Social Security Number on any exam materials.
6. At the conclusion of the exam, return all test materials, including blue books, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

GOOD LUCK

Question No. 1 (33 Points)

You represent Action Games, Inc., a computer game manufacturing company. Your client, aware of the huge success Eidos Inc., has had with its computer games based on the popular character Lara Croft, Tomb Raider, has designed a new computer game, entitled *Lara Croft Legacy*, that enhances the experience of users of Eidos' latest release: *Lara Croft Tomb Raider: Legend. Legacy*, when run on a computer at the same time as the *Legend* Game, allows players to add new characters into the *Legend* Game, and makes the *Legend* game run three times faster. Action Games uses the same command hierarchy as Eidos game, and the object code and source code of the *Legacy* game contains 55% of the identical object code and source code from the *Legend* game.

Action's engineers bought a copy of *Legend* and reverse engineered it to get to the code.

The *Legacy* game introduces 10 new characters to the *Legend* game, and uses the Eidos game graphic for the Lara Croft character. Action has just premiered the *Legacy* game, and two days later it receives a demand letter from counsel for Eidos demanding it stop the distribution and sale of the *Legacy* game, threatening litigation if Action does not comply. Action does not want to stop its sales of *Legacy*, which in one week have already grossed over \$4,000,000. Action asks you what claims can Eidos make, what defenses are available to Action, and who is likely to prevail, and why. What is your response?

Question No. 2 (33 Points)

Your client, San Francisco-based FinalTouch, Inc., develops and manufactures a software program for professional writers and publishers helping them edit and finalize manuscripts for publication. FinalTouch has a license agreement with Microsoft, signed at the Microsoft Redwood City, California office, which allows them the right to make their software compatible with Microsoft's Windows Operating system. The license allows FinalTouch to get updates on the Windows system, and other benefits that make their software compatible with Windows a compatibility they must have because their customers all use the Windows system.

The license agreement between FinalTouch and Microsoft requires, as a condition of continuation of the license, that FinalTouch will not develop any operating system that competes with Windows if they do, Microsoft reserves the right to terminate the license. After much consideration, FinalTouch has decided that it needs to develop and market a competing operating system, despite its knowledge that Microsoft presently has a 97% market share for desktop computer operating systems. It decides to challenge the validity of the Microsoft license on the grounds that the license agreement was included in a shrinkwrapped copy of Windows, and was not available for FinalTouch to read before they entered into their agreement with Windows. FinalTouch has come to you for advice as to whether they should launch their new operating system, what claims Microsoft would have against them if they do launch this new system, and who is likely to prevail and why. What is your advice?

Question No. 3 (34 Points)

You have been consulted by Playboy, Inc., in connection with the following problem: a religious group called the Anti-DaVinci League (the ADVL), based in Rome, Italy, has developed and launched from Italy its software program called *Invasion*, which attaches itself to the Playboy website. When users of the Playboy website click on any icons on that site, they are immediately redirected to an ADVL site which initially looks like the Playboy site, but on closer inspection is actually a site critical of Playboy, the magazine, and the companies attitudes towards women and sexual activity.

The ADVL site, entitled *Prayboy*, also has built in metatags using the name Playboy, as background wallpaper for its site, and as invisible tags that cannot be seen by users of their site. As a result of these metatags, websurfers attempting to locate the Playboy site on search engines are mis-directed instead to the ADVL *Prayboy* site. Playboy's

representatives ask you what steps they can take to stop ADVL's activities, and what defenses ADVL is likely to assert. They ask where any action brought against ADVL may be filed, and what steps they must take to enforce any judgments they receive. They also ask your opinion as to who will prevail in this matter. What is your advice?

END OF EXAM