

FINAL EXAM
INTERNET & SOFTWARE LAW
PROFESSOR GREENBERG
SPRING SEMESTER 2008

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 two (2) essay questions. Each of the questions is worth 50 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 30 minutes and writing for 60 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 (50 Points)

Setting aside what ever moral qualms you may feel about it, you and your law firm have agreed to represent Joe Francis and his company, GirlsGoneWild (GGW), which publishes a website, magazine and series of films depicting young women in various states on intoxication and undress. The company has a website in the U.S., with a registered domain name www.girlsgonewild.com. It has previously licensed its software and trademarks to an Australian licensee, which uses the domain name www.girlsgonewild.au.

GGW has recently entered into a license agreement with SAKO Ltd, a Japanese company, to allow SAKO to use GGW's proprietary software to launch a version of the GGW site in Japan, under the domain name www.girlsgonewild.jp. The license agreement provides that SAKO warrants that the launching of this site in Japan will not violate any Japanese laws. The agreement contains a fee for the use of the trademarked name (GGW) and software in a lump sum amount of \$3 million dollars, and all maintenance of the site is the responsibility of SAKO. GGW will offer updates to SAKO for purchase, again in lump sum amounts.

GGW has just received a letter from the Japanese National Police Agency, warning that the contents of the Japanese GGW site, as well as the links of the site to the U.S. GGW site, violate Japan's Obscenity Laws (Section 175 of the Criminal Code), which define obscene as any material which: " 1) stimulate or excites people's sexual desire, 2) offends their ordinary sense of shame, and 3) being against good sexual morality". The Police Agency demands that GGW take the Japanese site down, and block access by Japanese citizens to the U.S. site, or face prosecution for violating the Criminal Code.

GGW contacts SAKO and instructs them to take the site down. SAKO refuses to do so, claiming that GGW sold them the software and rights to the domain name, and that they are not going to take the site down, particularly since the Police Agency has not sent any warning to SAKO. GGW is not sure what action to take re: the U.S. site blocking request made by the Police Agency.

GGW asks what legal issues are involved in this situation, and what steps can be taken, and in what jurisdiction, to address these issues. What is your response?

Question No. 2 (50 Points)

You represent The Wikimedia Foundation, Inc., a non-profit charitable organization headquartered in San Francisco, which operates, among other online collaborative projects, Wikipedia, the free online encyclopedia. A recent article written by three volunteers, added to Wikipedia is an entry regarding the Harry Potter series of books, originally written by J. K. Rowling, and published by Scholastic Books. The Wikipedia

article about Harry Potter contains a 50 page excerpt from *Harry Potter and the Order of the Phoenix*, the fifth book in the series. The book is 870 pages long, and the excerpt reprinted in the Wikipedia article is the last fifty pages in the book, in which key explanations for the actions of the characters are provided, and the stage is set for the next two books in the series. In addition to this excerpt, woven into the reprinted text, the authors of the Wikipedia article have also included their own discussion of the meaning and significance of this portion of the text, and offer three different endings for the story, all of which they have created on their own.

J.K. Rowling and Scholastic sent notice to Wikipedia and the authors of the article, (Rupert Grint, Amanda Pierce, and Hubert Smally) to take the article off the site based on their claim that it is an infringement of copyright. Wikipedia and the authors have declined to remove the article, citing, among other defenses, First Amendment rights, fair use, and as to Wikipedia, that they are an ISP and are entitled to safe harbor protection under the Digital Millennium Copyright Act. In response, Rowling and Scholastic have filed a complaint against Wikipedia, its Board of Trustees, and the three authors, alleging intentional copyright infringement.

The Board of Trustees of Wikipedia have asked you to prepare an opinion memo for them, analyzing the issues posed in this dispute, the claims Rowling and Scholastic can make, the nature and merit of the defenses available to the various defendants, and the likely outcome of this litigation. Draft the memo addressing these matters.

END OF EXAM