

**FINAL EXAM  
INTERNET & SOFTWARE LAW  
PROFESSOR GREENBERG  
SPRING SEMESTER 2007**

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 1/3<sup>rd</sup> 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 have been retained to represent a French company, Nouvelle Vague (hereinafter “Nouvelle”), which is an online seller of antiques, based in Paris, France. In 2006, Nouvelle entered into a license agreement with Microsoft, the Washington State corporation, for the rights to use a database Microsoft developed and owns. The database is a collection of listings of antique furniture for sale on thousands of websites on the Internet. Microsoft has negotiated exclusive rights to linking these sites, and as such, its database is in a monopoly position in the marketplace of antique aggregation websites. The database just allows users to link to the sites where the furniture is for sale. The name used as a brand by Microsoft for this database is “FirstBuyz”. Microsoft holds a U.S. Trademark in the name, but has not registered the name in any other country.

Nouvelle and Microsoft are now in a dispute over payment of license fees – Microsoft claims Nouvelle owes it money, and Nouvelle claims that Microsoft’s accounting is in error. Microsoft has filed suit against Nouvelle in Washington state in the U.S., and in Paris, France, alleging that Nouvelle’s continued use of the FirstBuyz database without paying for the rights violates Microsoft’s copyright and trademarks rights in the database. Nouvelle asks you what are the merits of the Microsoft claim, what defenses are available to Nouvelle, and what is the likely outcome of each of the cases. What is your advice?

### **Question No. 2 (33 Points)**

Your client, Cliff, is a fan of the pop music singer, Gwen Stefani. Cliff has self-produced and created a 5 minute digital film tribute to Stefani, using several sound recordings and music from the latest Gwen Stefani album. Cliff has now posted his tribute film on YouTube, and on his MySpace page, using it to promote his hoped-for career as a film producer. Stefani and her record label sue Cliff, alleging separate claims of copyright infringement as to the sound recordings and the songs. Cliff wants you to assert a defense of fair use – based on his non-profit use, and the fact that only a small amount (about 25 seconds) of each sound recording and song is used. Plaintiff’s response is that the portions of the songs and sound recordings Cliff is using are the key melodies of each song, and that those melodies have been hot sellers as ringtones on cell phones, and that the market for these songs as ringtones has dropped since the YouTube posting went up. Discuss the merits of the claims filed by Stefani and her record label, and the defense raised by Cliff. What is the likely outcome of this dispute? Can any claim be brought against YouTube and/or MySpace? Discuss.

### **Question No. 3 (34 Points)**

You represent Kaiser-Permanente Medical Corporation, a company which owns and operates hospitals in California. In an effort to save money, Kaiser has entered into a medical records processing contract with Ganesh Medical Records Company, a private company located in Madras, India. All new patient data is sent electronically to Ganesh, which processes the information, creating digital patient files, which include the patients personal data, credit card and other payment data, and a summary of the patient’s medical

condition and history. The files are maintained in Madras on Ganesh's servers, and are accessed online by Kaiser personnel in California, as needed. Kaiser agrees to pay a monthly fee for this service.

Kaiser and Ganesh have recently become involved in a dispute over payment of the monthly fee. Kaiser claims that due to poor service, it is entitled to an offset of two months fees, so it declines to pay those fees, despite demand from Ganesh. In response, Ganesh has posted the entire medical data file of 20 of Kaiser's patients, on a variety of sites on the Internet, resulting in the widespread access and distribution of the patient's personal data. The twenty affected individuals have now filed lawsuits against Kaiser, alleging violation of their right of privacy, and damages, including public humiliation, disclosure of private embarrassing facts, loss of employment, etc. Discuss what responses to these suits are available to Kaiser. Discuss any jurisdictional issues Kaiser faces in connection with these responses, and analyze how Kaiser should address those issues. As to each party in this matter, what is the likely result of this dispute?

**END OF EXAM**