

FINAL EXAMINATION
E-COMMERCE LAW
PROFESSOR ROBERT TED PARKER
FALL SEMESTER 2005

1. This is a two-hour course, and thus, a two-hour exam. You must complete eight short essay answers in two (2) hours.
2. The exam is a **partially open** book exam: except no class notes are allowed in the exam room. You may only refer to your text and statutes in written format.
3. This exam consists of short essay questions. A few sentences could easily suffice in answering. In fact, a concise answer that responds to the issues presented is superior to a lengthy answer that rambles from the relevant to the irrelevant. The exam sheet presents about 13 questions, each presenting a topic covered by class material in most class meetings, but **you should answer only eight (8) questions**. Each answer is weighted equally with the others. You should clearly **indicate which question** you're proceeding to answer!!
4. You should budget your time fairly equally among the questions - about 15 minutes each on the two-hour schedule, minus the time required to read and discard any questions you don't attempt to answer on the way to answering eight.
5. Once again, none of the questions requires copious material in response, and conciseness will be valued along with completeness in the grading process.
6. Write your **exam number** on your exam envelope, all used blue books, and at the top of this exam packet. **Do not use your name, student ID number, or Social Security Number on any exam materials.**
7. At the conclusion of the exam, return all test materials, including blue books, scratch paper and this exam question 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!

1. Kristine Salkeld at CardSharp is concerned about proposed state legislation that would mandate the use of firewalls for any business storing credit-card information. She is concerned because she has heard that the proposed legislation will require the use of software that conforms to a specific IETF technical standard for firewalls. The firewall that CardSharp installed does not conform to that particular standard, although it seems to be working perfectly well. In fact, the

IETF standard has been adopted by only one of the many significant vendors of firewall technologies. She is not sure why a legislator would try to mandate a technical standard in law and needs to know what he will have to do if this bill actually becomes law. Do you have any constructive advice for Kristine?

2. You get a call from general counsel at CyberBear, an ISP providing broadband Internet access in Berkeley, and targeting Cal students. CyberBear just received a demand letter from the Recording Industry Association of America, claiming 54 CyberBear customers downloaded two or more pieces of copyright-infringing music. The demand letter states that if CyberBear does not terminate services for those 54 customers immediately, the RIAA will file suit directly against CyberBear charging it with copyright infringement and seeking hundreds of thousands of dollars in statutory damages. CyberBear is reluctant to terminate the service of these customers, because it fears that quick capitulation to this demand will diminish its outlaw image and market appeal to college students. What can you tell CyberBear about its potential exposure if it does not comply with the RIAA demand?
3. To increase productivity, your client Gary Willits recently decided to install software on the computer network at his real estate office in Marin County, hoping to monitor the computer activity of the employees. Only a few days after he installed the program, he learned that David Watts (a top producer and electrifying poet) was downloading huge graphic files from the Internet. When the program listed the URLs that Watts visited, and the files he downloaded, Gary was troubled (but not terribly surprised) to discover that Watts had a taste for hardcore pornography. Gary strode down the hall to Watts' office and fired him. After Watts left, Gary worried that Watts might try to sue in retaliation. Does Gary have anything to fear?
4. Your friend Floyd Rendheart at Tubas-To-You comes to see you today. Floyd runs a tuba manufacturing company located in Petaluma, with customers located around the United States. As his business grows, he decided to start marketing his products under the hipper name -- 2Ba2U. He also would like to set up a Web site at www.2ba2u.com from which he would sell tubas. He has several questions for you. The first question is whether (and when) he should do anything to protect the name 2BA2U? Another question is whether there are any other risks in this move?
5. Dave Adamcyck, general counsel of Podville, the operator of www.podville.com, a Web site that sells audio equipment. Due to technical error, last week Podville posted a large banner ad on several Web sites, indicating that customers could buy a Mini iPod for \$23. This was a mistake; there was supposed to be a special sale of Mini iPods for \$230. The ads were, in a sense, quite successful. 3000 customers made purchases over the Internet in response.

This is of course a disaster for Podville, which pays Apple \$200 per machine (plus a 7% referral fee). Podville sent e-mails to the people who had ordered machines over the Internet, apologizing for the mistake and offering to honor the sales at the

intended price of \$230. One disgruntled purchaser wrote a letter threatening a class action on behalf of the buyers unless Podville complies with its contract. David Adamcyck now wants to know if Podville can avoid the contract. What do you tell him?

6. Floyd Rendheart decides to hire The Doyster Design, a large Web development firm in Burlingame, CA, in order to improve his somewhat elementary Web site. Doyster explained that it could give Floyd a much lower price if it could start by modifying Floyd's existing site instead of creating an entirely new one. When Floyd called the creator of the original Web site, however, the account representative there told him that unless Floyd purchased the right to make a derivative work for an amount equal to the three months of hosting fees, he wouldn't authorize Floyd to change the Web site. Floyd then called you to find out if he truly has to pay more just to let The Doyster modify his current site. What should you tell him?
7. Robin Roderick's hobby is collecting rare books. Years ago, he purchased several sets of them on eBay. Later he decided to sell some of his books, and then began buying and selling rare books on regular basis for himself and for friends who trusted his judgment on books. By 2004, Robin had 230 positive evaluations, no neutrals, and no negatives. When Robin noticed one day that a particularly valuable leather-bound set of Trollope was being offered, he resolved to make sure he won it, no matter what the price. He authorized eSnipe.com, an automated bidding site, to bid up to \$5,500 for the set of Trollope within 3 seconds of the auction closing. The bidding had reached \$3,000 with 5 seconds before the auction closed. With only 1 second remaining in the auction, eSnipe entered Robin's bid, the bidding went up to \$5,305 and Robin won the auction.

The eBay member who had bid \$3,000 for the set of Trollope had instructed eBay to bid up to \$4,000 for the set, never imagining anyone would bid more than that. The disappointed bidder decided to get even with Robin by ruining his reputation on eBay. This member began bidding aggressively on every item Robin offered for sale under a variety of pseudonyms, and after making a purchase, gave Robin spurious negative feedback. A month after he won the set of Trollope, Robin had 230 positive evaluations and 8 negative ones. Is there anything Robin can do about the negative evaluations? Is there anything he can do to stop the problem from getting worse?

8. Your client, Pedro Amaretto of Boutique Brazil, LLC, is a large designer and manufacturer of fabrics with exotic Amazon designs. Boutique Brazil has its U.S. headquarters on 46th Street in New York City. A former employee moved to Florida and now runs a business (amazotica.com) that purports to sell authentic fabrics actually made by Amazon natives. Amaretto is outraged, since he claims that not only are the fabrics not authentic, but also that the fabrics were based on his copyrighted designs. Amaretto wants to sue Amazotica.com for copyright infringement in New York.

- (a.) Assume that Amazotica.com maintains a Web site that gives a telephone number that prospective customers can call to receive a copy of its paper catalog in the mail. Can Amaretto sue Amazotica.com in New York? Does it matter how many fabrics Amazotica.com has shipped to New York?
 - (b.) Assume in addition that the Web site provides forms on which customers can place orders. Can Amaretto sue Amazotica.com in New York? Does it matter how many fabrics Amazotica.com has shipped to New York?
 - (c.) Assume in addition that Amazotica.com uses unsolicited commercial email (UCE) to market to the public. Does it matter how much UCE has been sent to New York residents?
 - (d.) Assume in addition that Amazotica.com has a catalog on the Web site that includes images of the fabrics. Can Amaretto sue Amazotica.com in New York on a claim that the images in its programs infringe the copyrights of Boutique Brazil? Does it matter if its records do not indicate that New York residents have viewed the images?
9. You are retained by Ciby 2000, a French entertainment company that owns a variety of musical works. Among other things, it owns the entire back catalogue for Les Bikistes, including the album Rocknroll. Francis Bousquet personally owns the musical works (which he composed), but Ciby 2000 owns the sound recordings. In combing through their records, they notice that Les Bikistes (and Bousquet) subsequently made a movie based on the album. For the movie, Les Bikistes and Bousquet returned to the studio with the same personnel as on the original album. They recorded most of the same songs as on the original album, recording very closely to the original. Ciby 2000 did not consent to this recording. Could the recordings have been lawful if made and distributed without Ciby's consent? Why?
10. Shinji Scotch owns a company that designs software to make Web pages more compatible with mobile Internet devices such as cell phones. It is crucial that his product be fully compatible with Microsoft Explorer. To ensure that his product works perfectly, he needs to study the interface that Explorer presents to other programs. Because he has been unable to obtain that information directly from Microsoft, he wants to reverse engineer the interface. Specifically, by analyzing the Microsoft program he can learn what he needs to know. But the reverse engineering process involves making a copy of the Microsoft program. His copies of the program came with his computer. They include an End User License Agreement, to which he consented in a typical click-wrap fashion when he first started up his computer. Among other things, the license includes the following paragraph:

Limitations on Reverse Engineering, Decompilation, and Disassembly. You may not reverse engineer, decompile, or disassemble the Software, except and only to the extent that such

activity is expressly permitted by applicable law notwithstanding this limitation.

Is that provision effective to prohibit the activity in which Shinji wishes to engage?

11. Your client Jim Writer operates a Web site called www.bazoom.com that sells music CDs. It has a patent on software for a click-n-buy system that stores information about site visitors. With stored information, customers can complete a purchase by clicking on a single button. A competing Internet retailer has recently introduced a one-button system, which appears to infringe the patent. Writer wanted to sue the competitor, but then worried about antitrust concerns. Writer explains that the patent gives it a monopoly on the one-click purchasing system, and that the sole purpose of bringing suit is to prevent the competitor from competing with that product. Does this raise a concern for Writer? What kinds of things would you like to know about www.bazoom.com's business to help you provide an informed response?
12. Allyn Streeter is a book dealer, and your cousin. He has learned that his suppliers now sell most items he needs over the Internet, and for this, they accept both credit cards and debit cards. He has heard about fraudulent transactions on the Internet, and he particularly remembers when credit card numbers were stolen from Wells Fargo two years ago. He is worried that he may expose himself to significant risk by purchasing over the Internet. What do you tell him about his risks of unauthorized transactions on his credit card? What law do you cite to him? Any difference if his sellers required him to enter a PIN or the 3-digit number from the back of his card? Would your advice be any different for his debit card? What if he made the purchase with a WEB entry?
13. The next morning you have a meeting with Mark Subin. ♦ Mark is general manager of Glandular LLC, a software company. The company's only product is a program for searching the database of the Human Genome Project. The software is designed to assist in locating sequences of genetic code that could be useful in efforts to combat particular diseases. Mark's existing lender (Citibank) is unwilling to advance any new funds at this time. Mark thinks that the company has some promising opportunities, which it could pursue if he could get some new financing.

You see from examining the file that the software has been registered with the Copyright Office, that Citibank has taken a security interest in the software (the company's only substantial asset), and that Citibank has recorded with the Secretary of State, but not at the Copyright Office. There are no precedents in your jurisdiction on the *Peregrine* question. In your judgment, does Citibank have a perfected security interest?

END OF EXAM