Internet Law

Professor Grimmelmann

Final Exam - Spring 2012

Take-Home and Open Book

This exam consists of three equally weighted questions. There is a page limit of four pages per question. It will be enforced strictly; extra space from one question may not be used on another.

You must upload your answer via the portal by **5:00 PM on Friday, May 18**.

Type your answers in 12 point Times or Times New Roman, double-spaced, using 8.5"x11" paper, with one-inch margins and numbered pages. Put your exam number on each page. Do not put your name anywhere on the exam. Upload your answers as a single file.

This is an open-book exam. You may use any materials that you wish to answer the questions, though you need not consult any sources other than those we used for class. You may not discuss this exam or your answers with anyone under any circumstances until after the end of exam period. **Your work must be exclusively your own**.

Please pay attention to the specific questions you are being asked and to the roles the questions place you in. Support your answers with detailed analysis, reference to specific statutes and cases as appropriate, and explanations of how you applied the law to the facts. Simple citations (e.g. "ProCD.") are appreciated but not required. Basic headers to organize the different parts of your answer are also a good idea. Spelling, grammar, clarity, organization, and good advice to your client are all parts of the grading.

If anything about a question is ambiguous, say what you think it means, and answer it accordingly. If you need to assume additional facts, say what those facts are and how they affected your answer. No reasonable resolution of an ambiguity will be penalized.

This exam has **FOUR pages total**, including this cover sheet.

GOOD LUCK!

Question 1: Block Party

Brady Networks is an ISP in Tennessee that offers family-friendly Internet service. It maintains a blacklist of IP addresses corresponding to sites Brady deems "obscene, indecent, improper, or contrary to Christian morals"; it deletes packets to or from those IP addresses. Sites on the blacklist include a large number of pornography companies, Planned Parenthood, and the New Jersey Devils.

Brady also uses deep packet inspection to determine whether users are receiving any webpage content that could be dangerous for impressionable children. If so, Brady's computers block the request by sending a forged RST packet and alert one of Brady's employees. The employee examines the webpage, telephones the subscriber at a number he or she has provided, describes what is in the webpage, and asks the subscriber to provide a secret code that only the subscriber (and not his or her children) will know. If so, the employee unblocks that subscriber's connection to the webpage for the next half hour and asks the subscriber to try again. Brady promotes this service both as a way to limit children's access to immoral websites and also as a way for subscribers to contain their own unwanted desires. These practices are described in detail in a 800-word Subscriber Notice that is shown to users the first time each day that they use their Internet connection: after ten seconds, the Subscriber Notice disappears and users may resume browsing as usual.

In most of the locations Brady serves, Internet service is also available through the local cable providers, and sometimes from phone providers as well. In the rural town of Hillsboro, Brady is the only provider of broadband Internet, and wireless reception is generally poor, although there are several providers of dial-up service.

The Knoxville Public Library system, which receives federal subsidies to purchase Internet access at computers in the library, has chosen to provide its access via Brady. The secret unblocking code is held by the head librarian, who asks patrons to look her in the eye and explain why they need to see a site that Brady has blocked. So far, she has never said "yes." Recently, at the request of Bertram Brown, who is a general contractor in Knoxville and a friend of Brady's CEO, Brady added to its IP blacklist the website of Jeremiah Hornbeck, a competing general contractor.

Drummond Enterprises is a Florida company that uses its website to sell gay interracial pornography on DVDs. The fifteen-year old daughter of a Brady subscriber tried to visit Drummond's website. (The daughter provided an affidavit that the attempt was the result of a typo, and also that she had never seen the Subscriber Notice but was aware that her parents used "some kind of good Christian Internet service.") When the Brady customer service agent saw the website, she was horrified, and notified her supervisor. The details came to the attention of an Assistant U.S. Attorney for the Eastern District of Tennessee, who decided to engage in a sting operation. He went to Drummond's site and ordered several DVDs to be shipped to an address in Hillsboro. After they arrived, he arranged to have three Drummond employees arrested and charged in Tennessee with the interstate transportation of obscene materials.

You work for Free Speech Tennessee, a nonprofit organization with the goal of promoting the First Amendment rights of Tennessee residents. Your office has limited resources; your supervisor has asked your opinion as to whether it would be worth becoming involved in this matter. ***Write a memo describing possible legal challenges, who could bring them, their likelihood of success, and what Free Speech Tennessee should do***.

Question 2: Bad Bromance

NotCoolB.ro* ("the Dot Ro site") is a new website, targeted at male college students and recent graduates, that asks its users to send in "callouts" of "uncool" conduct by their peers. As the site explains, "This is a place where bros can call each other out on those things that no true bro would do. Complete honesty is the name of the game: don't hold back!" Users must create a "brofile" with a username and password in order to post callouts. The site internally remembers which user posted each callout, but the site displays only that "On April 20, at 4:30 PM, a bro said …"

Users who create accounts can "man up" and publicly associate their accounts with the callouts about them. If they do, they can write replies either justifying their conduct or explaining why the callout is off-base. They are also able to receive purely private callouts from other users: again, the reports are still anonymous, but this time, there is a "bro-back" button that lets the user respond directly (and privately) to their anonymous accuser.

Andrea Meyer created a website at NotCoolBro.com ("the Dot Com site"). The Dot Com site is an exact clone of the public portions of the Dot Ro site: same graphics, same text, same layout, same everything. In fact, most of the the Dot Com site is assembled by taking every request for a webpage, sending an identical request to the Dot Ro site, receiving the response, and sending a modified version of the contents to the user. The one major difference is that Meyer designed the Dot Com site so that even when a poster removes a public callout from the Dot Ro site, it remains visible on the Dot Com site.

Because some of the pages that the Dot Com site mirrored were login pages, Meyer was able to capture several dozen users' usernames and passwords. Meyer used these credentials to log in to the Dot Ro site. She read the callouts these users had sent and received privately, as well as the bro-backs they had sent and received. Feeling adventurous, Meyer changed these users' passwords on the Dot Ro site, then used the users's accounts to post public callouts consisting entirely of fart jokes.

A week ago, an independent security researcher discovered what Meyer was doing. In short order:

• Meyer received an angry cease-and-desist letter from the operators of the Dot Ro site.

• The state police asked Meyer to pass along to them any private callouts or bro-backs from the Dot Ro site user with the username Slackosaur.

• Jayson Faust, who is not a user of either site, is upset about two public callouts. One claims that Faust is an alcoholic addicted to Smirnoff Ice: the other states that Faust killed and ate a pony. Faust filed a John Doe lawsuit against both posters, naming Meyer as an additional defendant. Faust also demanded that Meyer provide him with any identifying information about the user who posted it. The original poster of the Smirnoff Ice callout agreed to delete it from the Dot Ro site, but it remains visible on the Dot Com site.

You have been retained by Andrea Meyer, who has belatedly become concerned about the legal consequences of her actions. ***Explain to Meyer what legal risks she faces, whether she can mitigate those risks, and what you recommend that she do.***

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* .ro is the country-code TLD for Romania.

Question 3: A Streaming Comes Across the Sky

More and more home Blu-Ray players are connected to the Internet. In addition to allowing access to online content and tie-ins, it also allows new "firmware" to be downloaded into them when there is an update to the software that they run. Recently, Laszlo Bodine, an inquisitive programmer who lives in Massachusetts, found a way to modify the popular Yoyodyne brand of Blu-Ray players so that they are capable of streaming the video through their network connections. His technique works by intercepting the video stream after it has been decrypted by the player, but before it is sent to the TV output port.* Instead, it is transmitted out on the network connection to an arbitrary IP address. The program also allows for basic remote control of the player: play, pause, stop, fast-forward, rewind, and chapter skip. (For obvious reasons, the remote control can't change what disc is in the player.)

Bodine made his program available for free download on his personal website as a firmware update under the name Y-Rocket. About 250,000 Yoyodyne owners have downloaded it and installed it in their Blu-Ray players.

LaunchPad is a website run by the charismatic British citizen Katje Slothrop from her home in Indonesia. LaunchPad is custom-designed to facilitate matching between the owners of Y-Rocket-modifed players and others who wish to watch movies. The owner of a Yoyodyne player (call her Q) connects to the site and types in the name of the movie in her player. Another user (call him R) can then search (using a free-form text field) for titles he is interested in, and which are not currently being played. LaunchPad then handles setting up the connection from R's computer to Q's player, but the actual movie is streamed directly from Q's player to R's computer. LaunchPad has roughly 200,000 users, 100,000 of whom have IP addresses suggesting that they are in the United States, and is responsible for close to 1,500,000 streams per month. Anecdotal evidence suggests that most of these are recent commercial releases of popular Hollywood movies, but also that parents who have recorded their children's school plays find this a convenient way of sharing the video with distant relatives, especially those in different time zones.

Slothrop, who wears an eye patch as a result of a childhood injury, frequently carries a parrot on her shoulder and speaks with heavily rolled 'r's. She is independently wealthy, and spends most of her time running the Inherent Vice chain of hostels, which cater to Western tourists. She travels regularly to Britain, sometimes changing planes in the United States. She does not charge for use of LaunchPad. The LaunchPad website bears a statement at the top of every page, in 24-point bold text, that "USE OF LAUNCHPAD BY COMMERCIAL COPYRIGHT OWNERS AND LAW ENFORCEMENT PERSONNEL IS STRICTLY PROHIBITED." In addition, the front page of the site contains in a normal 12-point font the words "Brought to you by Inherent Vice," which are hyperlinked to the Inherent Vice homepage.

You are on the staff of the Motion Picture Association of America. Some of your members have become concerned that LaunchPad is leading to a decrease in Blu-Ray rentals and movie downloads. You have been asked to help decide whether it is worth attempting to bring civil copyright actions against Bodine and Slothrop. ***Write a memo explaining the costs and benefits of bringing such actions, and whether they would be likely to succeed***.

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* For purposes of this exam, you may assume that video is ordinarily sent from a Blu-Ray player to a TV in unencrypted form—that is, ignore anything you might happen to know about HDCP.