Internet Law
TAKE HOME

Day Division   Due by 5:00 PM
Professor Grimmelmann   Wednesday, May 4

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

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 examination number on each page. Do not put your name anywhere on the examination. Put your answers in a single file and email it to sboggs@law.umaryland.edu by the deadline.

It is your responsibility to make sure that your answer does not contain any identifying personal information. Do not identify yourself in any way to me as the author of an answer until grades are published.

This is an open-book examination. You may use any of the assigned readings for class and any of your own notes or outlines to answer the questions.

Your work on this examination is subject to the Student Honor Code. You may not discuss this examination or your answers with anyone under any circumstances until after the end of the examination period. **Your work must be exclusively your own**.

Please pay attention to the specific questions you are being asked to answer 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. "*See* Zeran.") 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.

The names in the problems are fictitious. Please disregard any resemblance to actual persons or institutions, living, dead, or nonexistent.

This examination has **FIVE pages total**, including this cover page..

GOOD LUCK!

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Question 1: Encryptinator

You represent. Heinz "Doof" Doofenshmirtz, Ph.D., the CEO of Doofenshmirtz Encryption Incorporated ("DEI"). For the past two years, DEI has sold the Encryptinator, a simple device designed to let anyone communicate securely and easily. They are capable of encrypting text messages (entered using a small keyboard), voice messages (via a built-in microphone), or arbitrary files copied to and from USB sticks.

Encryptinators are sold in pairs, each of which contains a copy of the same random 1,024-bit secret key. When an Encryptinator is connected to power and the Internet, it automatically connects to a server operated by DEI at encryptinator.com. First it downloads and installs any software updates; then it registers its current IP address; then it checks for the current IP address of the other Encryptinator with the same secret key. If they are both online at the same time, a small green light on each one lights up, and the two users can exchange messages encrypted using the shared secret key. The messages are sent directly to the other Encryptinator; they never pass through DEI's servers.

DEI is facing several legal challenges relating to the Encryptinator. First, Agent Perry from the FBI came to speak with you yesterday regarding an ongoing drug trafficking investigation. It appears that the Garcia-Shapiro cartel uses Encryptinators to arrange drug shipments. Agent Perry asked that DEI voluntarily turn over the complete logs from encryptinator.com, showing which Encryptinators connected to it, when, and from what IP addresses. She also asked that DEI voluntarily use its auto-update feature to install a modified version of the Encryptinator operating system, Cryptix, on all Encryptinators. This modified version of Cryptix would send to the FBI cleartext copies of all text and voice messages sent by or received by that Encryptinator. When you refused, Agent Perry gave you a week to think about it before she went to court to obtain an order under § 2703(d) of the Stored Communications Act compelling your assistance.

Meanwhile, DEI has received a pleading email from Jeremy X, a former victim of childhood sexual abuse. According to Jeremy X, his abuser videotaped the abuse and is now using Encryptinators to share the video with other child pornographers. He asks that DEI do whatever it can to prevent the video from being shared further.

You have also received a demand letter from the MPAA, which claims that Encryptinators have become a widely used mechanism for infringers to trade copyrighted movies with each other. The letter threatens suit unless these infringements cease.

The Encryptinator terms of service and privacy policy, which display as a new text message the first time an Encryptinator is used, say that "All Encryptinator communications are completely secure; no unintended recipients can read your messages. … We never share *any* of your information with any other party, except as required by law. … We may from time to time update the Cryptix Software to add features, fix bugs, and make other improvements. … Use of the Encryptinator constitutes your consent to these terms."

How should DEI respond to these various requests and demands?

Question 2: Bust My Brother

You are clerking for Judge Hirano of the federal District of Danville. She has given you the pleadings in *Flynn v. Flynn* and asked you to prepare a memorandum for her on the issues. The case involves a bitter feud between siblings Candace and Phineas Flynn. A few years ago, the two of them got heavily into the online message board Norm.com. The site's moderators take a deliberately hands-off policy and almost never block or remove user posts.

For reasons that are obscure, even after multiple readings of the briefs, Candace and Phineas had a bad falling-out last year, the result of which – according to the plaintiff, Phineas – was that Candace made a vow to "bust my brother" by any means necessary. Phineas now alleges that Candace posted to Norm.com saying that she was going to "Kick your ass so far you'll need a time machine to get back" and "Better check the brakes on your car before you start driving. You never know when they might go." She also posted on Norm encouraging other users to "Tell Phineas what you really thing of him"; he now receives upwards of a hundred insulting emails a day, most of them unprintable.

Phineas also complains about a website at phineasflynn.com. The site contains numerous statements alleging that the rollercoaster at Phineas's amusement park, "The Old Abandoned Amusement Park" (not actually abandoned; that's just the name), is dangerously unsafe and that Phineas is covering up the deaths of two maintenance workers on the ride last year. Phineas insists that this part is completely untrue: the rollercoaster is safe and no one has died on it. The website also has an old unflattering photograph of Phineas which has been Photoshopped to add scars and warts. It includes a link advertising a $15.99 coffee mug with the photograph on it. The domain is registered to "Buford Tjinder" at an address in the Cook Islands (population 10,000) in the South Pacific. Phineas claims that this is an obviously fictitious name and address,

Phineas served a subpoena on the website's doman-name registrar. Ferb.it, to turn over all identifying information on the website's owner; Phineas argues that it is likely to be none other than Candace, making the owner's identity relevant to his suit. "Tjinder," proceeding pseudonymously, has moved to quash the subpoena. Phineas also brought a UDRP action against Tjinder, which resulted in an arbitrator's decision that the domain name had been registered in bad faith. Five days later, Tjinder filed a motion to intervene in *Flynn v. Flynn*, seeking a declaration that he is entitled to use the domain name.

Candace, for her part, has moved to dismiss Phineas's entire lawsuit. She moved to France three years ago: after she started using Norm but before any of the posts about which Phineas complains. She argues that United States laws do not apply to her conduct as a French citizen and resident, that the federal courts in Danville lack personal jurisdiction over her, and that none of the conduct Phineas describes is sufficient to state a claim upon which relief can be granted.

How should Judge Hirano rule on Candace Flynn's and Buford Tjinder's pending motions?

Question 3: I Meant It When I Said Section 230 Would Be on the Final

Please *type out* (do not copy and paste) the complete text of 47 U.S.C. § 230(c). Then explain in one or two sentences what it means, give an example of a case in which it applies, and and promise that if you work on a case involving user-generated content you will never forget to ask whether section 230 applies.

This is not a trick question. I will give full credit for every answer that does all of the above. Thanks for a great semester!