

**Internet Law
Spring 2019
Final Examination**

This examination consists of **two questions** and **five pages**, including this cover page. Your answer has a limit of **3,000 words** (1,500 words per question), which will be strictly enforced. It is due by **4:00 PM on Friday, May 10**. You will have received instructions from the Law School Registrar on how to submit your answer. Please make sure that your answer contains **no identifying information**.

This is an **open-book** examination. You should not need to consult anything beyond the coursepack and your notes, but you can if you wish. You are free to discuss the general legal principles we covered this semester with anyone, including each other. But **you may not discuss the examination questions** with anyone else until after the deadline. Your work on this examination is subject to the Cornell Code of Academic Integrity, the Law School Code of Academic Integrity, and the Campus Code of Conduct.

The question puts you in a role, but the genre for your answer should be **“law school examination.”** Use **simple citations** (e.g. *“see Zeran”*) where appropriate. I include **spelling, grammar, clarity, and organization** in my grading. I appreciate the use of headings to organize your answer, but they’re not required. If you find the question **ambiguous** or need to **assume additional facts**, state your assumptions explain how they affect your answer. No reasonable resolution of an ambiguity will be penalized.

Assume for purposes of the examination that present-day law has been fully in effect at all relevant times. Unless otherwise noted, all names are fictitious. Please disregard any resemblance to actual persons, places, or institutions—living, dead, or nonexistent.

Question 1: @HottestStartups

Congratulations! You've just joined the team at the Fyre Fund, venture-capital firm that thinks so far outside the box, it doesn't even know what a box is. Your job is vet pitches for legal landmines: issues so fundamental that they make a startup's business model unworkable.

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EnforcerBot: "Unless you have the resources of the MPAA or RIAA, enforcing your copyrights online is a losing proposition. EnforcerBot does the hard work for you. Just upload the original song, book, movie, etc. and EnforcerBot will start searching the web for it. If it finds a match, it automatically sends a DMCA takedown notice every 30 seconds to the website where the match was found. If 30 minutes go by and the match is still there, EnforcerBot posts 'This site harbors copyright infringers!' in every text-entry field it can find on the site, as a way of shaming copyright scofflaws into taking action."

Cryptid: "Users of Bitcoin and other blockchains secure their holdings with a private key. Only transactions signed with a user's key will be accepted as valid by the community of blockchain miners for transferring that user's assets. But some users choose weak private keys, like all zeros. Cryptid will use machine learning to guess other users' private keys, then transfer all their Bitcoins, Ether, and other cryptocurrencies to Cryptid"

Feelgood, M.D.: "Surveys show that three reasons people avoid seeing a doctor are (1) repetitive paperwork, (2) the difficulty of finding a doctor with appointments available soon, and (3) the hassle of travel. Feelgood, M.D. has users fill out their paperwork once, and then whenever the user needs to see a doctor, it forwards all of their information to an appropriate doctor whenever the user needs to see one, and immediately connects them to a videoconference 'appointment' with that doctor."

"What about state and federal regulation of the practice of medicine?" asks one of the partners.

"Don't worry," replies the founder, "all of our partner doctors are independent contractors, not employees. We're just a middleman connecting patients and doctors. We get a commission from the doctors, but we don't charge for medical services or provide medical advice."

Domain Roulette: “We’re going to register a million domains that are combinations of random English words, and when you go to one of them, it’ll show you some ads and then forward you to another one of the domains at random, show you some more ads, and so on. Also, we’ve found a way to keep users from closing their browser windows.”

Sub-Ether-Net: “HavenCo¹ failed because it was dependent on the good will of the United Kingdom. Sub-Ether-Net is going to put a data haven on a submarine, so it can hide and relocate in case of trouble.”

UDRPCheap: “Defending against a UDRP can be stressful and difficult for laypeople. UDRPCheap is going to create a set of webforms that will ask users a series of questions about their domain and have them upload the correspondence they’ve received. Then we’ll use machine learning to tell them whether they’re likely to win if their case is competently presented. If they want to proceed, we’ll use some more machine learning to draft a basic response submission and file it for them for a \$99 fee.”

AnalogWhole: “AnalogWhole is a new a way to record shows from Netflix, Amazon Video, Hulu, and other streaming services so you can skip commercials and save your own copies. Inexpensive cameras are good enough now that we’ll sell a device you put near your TV that can detect the illumination of each individual pixel and correct for ambient lighting and other things happening in the room. Just put on a show, let it run from start to finish, and the AnalogWhole Box will save a copy to the your Dropbox, Box, Google Drive, or other cloud storage account.. Even better, we can do 95% of it using open-source software.”

* * *

Well, that was a trip. In a moment, the partners in the room will go around and give their opinions on which startups to invest in. But first, everyone is looking to you for the legal take.

For each startup, explain why *yes*, it is legally on solid ground, *no*, it has unfixable legal problems, *maybe* it could be legally safe under certain conditions or with certain changes (and say what they are), or *you don’t know* because you’re missing essential facts (and say what they are and what the answers would be if you had them).

¹ [You met a fictionalized version of HavenCo as “SeaHaven” in Chapter 2. -JG]

Question 2: Startup Sings the Blues

Disillusioned with the venture-capital world, you have taken a job instead as general counsel for Backroads and Blues, a website for users to share and discuss old blues recordings. It is your first day on the job.

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8:45 AM: Start reading the terms of service. The full terms are on a webpage linked from the page footer of every page of backroadsand-blues.com. When a user finishes completing the account-creation process (an account is required to post or listen to recordings and to post or read comments) and clicks “Create My Account,” a confirmation page appears. It reads “Thanks for creating an account. Please note that your use of Backroads and Blues is subject to terms and conditions,” where the underlined words are a hyperlink to the terms and conditions page.

You jot down notes on some of the terms. Backroads reserves the right to remove any content or deactivate any user account in its sole discretion. There are prohibitions on posting any illegal, infringing, or harassing content. There is a blanket waiver of all liability. And there is an arbitration clause. You don’t have time to look at the details, because ...

9:12 AM: Well, so much for finishing the terms of service. The CEO comes bursting into your office waving an email printout. Apparently, Backroads has been sued in Germany by a human-rights advocacy organization because many of the blues recordings from the 1920s and 1930s on your site feature what today would be considered obviously misogynistic lyrics. Your predecessor never responded to the suit or hired local counsel, as a consequence of which the court held for the plaintiffs and issued an order compelling Backroads to remove these recordings or face fines of EUR 50,000 per day. The order is dated three days ago. Backroads has a total of 46 users who have given a German address during signup, and about 300 average active users per day from IP addresses believed to be in Germany.

9:26 AM: Oh, look, it’s the head of the Trust and Safety team. One of the users, BlindSal, is complaining that another user created an account named BlandSal and is posting in one of the forums pretending to be her. Trust and Safety confirms that BlandSal was warned last month for uploading unauthorized copyrighted content, and two months ago for re-

peatedly posting racist comments about some of the musicians being discussed in the forums. Trust and Safety wants to ban BlandSal. You agree.

10:34 AM: Apparently, no one served by Bluegrass Broadband, an ISP with 500,000 customers in Arkansas, Tennessee, and Mississippi, can access the site. Bluegrass Broadband's DNS servers simply don't return any entries for backroadsandblues.com. You leave a message for the general counsel asking what's going on.

11:55 AM: You're trying to eat a sandwich at your desk, but no, apparently it's the end of the workday in Ireland and it couldn't wait until tomorrow. A user in Ireland, Fiona Gormlaith, is demanding that all of her uploads and all of her posts be removed from the site.

1:15 PM: You receive an email from the Office of the Attorney General for the state of Alabama. Apparently the state has a Blues Legacy Act, which makes it a criminal offense to "impugn the reputation of a recognized historical blues artist." The email directs your attention to a post by a user with the username CrossroadsChris saying that Delbert Johnson, an Alabama bluesman who lived roughly 1890 to 1935, was "a second-rate guitarist and a third-rate singer." It demands that you delete the post and provide the OAG with CrossroadsChris's identifying information.

2:34 PM: Someone from the "Content Partnership Division" at Bluegrass Broadband returns your call. They want a \$1,000/month payment to restore the DNS entry for backroadsandblues.com, which they're characterizing as an "enhanced content location fee."

3:12 PM: It's Trust and Safety again. BlandSal is furious about being banned. He claims that he was framed by BlindSal and that his only copies of various rare recordings were on Backroads. He's threatening to sue for copyright infringement, conversion of his property, violation of his First Amendment rights, and violation of the Sherman Antitrust Act.

* * *

That was the last straw. You have just put your phone on airplane mode and unplugged your office computer's Ethernet connection.

Write a short memorandum "to the file" (i.e. for your records) summarizing the legal risks each of these matters presents and what you plan to have Backroads do about them. If an issue requires more research, say so, but remember what your day has been like so far.