

Internet Law  
**TAKE HOME**

Day Division  
Professor Grimmelmann

Due by 5:00 PM  
Wednesday, May 6

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](mailto: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. "Specht.") 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!

## Question 1: CLAMPS Plays Grand Theft Auto

You represent Roberto Rodriguez, a tinkerer who built a robot he calls CLAMPS. It is human-shaped and three feet tall, with cameras for eyes, microphones for ears, a speaker for a mouth, a DVD drive in its chest, and hands capable of fine-motor tasks. CLAMPS runs on the open-source MorbOS operating system, and uses DeCSS to read DVDs.

The most interesting feature about CLAMPS is that it is connected to the Internet. Anyone who visits [givemetheclamps.com](http://givemetheclamps.com) sees what CLAMPS sees and hears what CLAMPS hears. When it plays a DVD, everyone on the site sees the DVD's video and hears the DVD's audio. The site is free to use, but users must create an account and provide an email address. Everyone who visits the site is shown a picture of Rodriguez, his resume, and a suggestion to "Hire me for your next cutting-edge robotics project!" Users of the site can also control CLAMPS. Every thirty minutes, the site randomly selects a different user and gives her control of everything CLAMPS does for the next half hour. On the afternoon of April 2, five users—Amy, Brannigan, Conrad, Dwight, and Elzar—were logged in between 1:00 PM and 4:00 PM.

At 1:00 PM, Amy had CLAMPS stand on a busy street corner shouting insults at passers-by. When one of them, the TV actor Linda van Schoonhoven, stopped to argue, Amy recognized her and had CLAMPS loudly accuse van Schoonhoven of tax fraud and child abuse. "Not my problem!" said Rodriguez.

At 1:30 PM, Brannigan had CLAMPS steal a copy of the latest *Astounding Tales* magazine from a newsstand, then walk to a copy shop and make several dozen photocopies of the magazine, and finally hand out the copies out to people on the street. Its publisher, MomCorp, sent Rodriguez a DMCA § 512(c) notice at 1:59 PM, identifying the work as "*Astounding Tales*, March 31" and its location as "CLAMPS." "Not my problem!" said Rodriguez.

At 2:00 PM, Conrad inserted a DVD of the recent movie *Deadly Aroma* in CLAMPS's DVD drive and played it for the site's users. "Not my problem!" said Rodriguez.

At 2:30 PM, Dwight had CLAMPS smash the window of a car, then emit a sequence of electrical pulses that precisely mimicked those that would be transmitted by the car's digital key. The car's on-board computer (which controls the engine and other car systems, and also shows maps on a dashboard display) turned on the engine. Dwight was able to have CLAMPS drive the car for several miles before his time expired and the car crashed into a mailbox. "Not my problem!" said Rodriguez.

At 3:00 PM, Conrad took control again. He had CLAMPS steal, photocopy, and hand out the latest issue of a different magazine, *Nosy Inquirer*, also published by MomCorp. "Not my problem!" said Rodriguez.

At 3:30 PM Elzar directed CLAMPS to hide in a garbage can on a street corner. He listened in on a conversation between Hattie and Petunia, who were unaware CLAMPS was inside. They discussed the Atomic Supermen, a basketball team. "Not my problem!" said Rodriguez.

Notwithstanding Rodriguez's constant denials, is any of this problem for him? *Write a memorandum advising Rodriguez about his and his users' potential civil and criminal liability.*

### **Question 2: There's Something About Crowdfunding**

You represent GrossOut.me, a crowdfunding site where people can raise money for good causes by doing disgusting things. Users (called "grossers") specify the disgusting thing they will do (called "stunts"), the amount of money they need to do it (called "goals"), and a charity that will get the money if they do (called "beneficiaries"). [For example: "I will take a bath in a bathtub filled with worms if you pledge \$15,000 for Human Rights International."]

Other users (called "gawkers") can browse the list of stunts and pledge money towards a grosser's goal. Gawkers can pay by credit card or by Bitcoin. Either way, they are charged immediately. If after 28 days, the total of all pledges for a stunt is greater than the goal, GrossOut gives the money (minus a 10% commission) to the beneficiary. If the total falls short, GrossOut refunds all pledges.

GrossOut, which is based in Virginia, screens stunts for compliance with Virginia law. It also rejects any stunts its staff consider too disgusting (which does not happen often). It does not ask grossers to specify their location; it has physical addresses for gawkers who pledge with a credit card but not for those who pledge with Bitcoin.

Last month, a grosser in Thailand, Terry Creosote, offered to publicly tear up a picture of the Thai king, an act which is illegal under Thai *lèse-majesté* laws. The project was successfully funded and the money transferred to the beneficiary, the Python Fund, a wildlife habitat preservation charity in New York. But then Creosote was arrested. by Thai authorities. As part of a plea-bargain, she agreed not to go through with the stunt.

Another grosser in Wyoming, John Ainsworth, offered to hold a skunk in his face and force it to spray him in exchange for \$50,000. The stunt was funded, but it turned out to be a sting: Ainsworth was a federal agent. Federal authorities brought an indictment against GrossOut and one hundred John Does in the District of Wyoming under 18 U.S.C. § 48A, which expands the federal animal cruelty statute to cover self-skunk-spraying. Specifically, it makes the following into felonies punishable by up to two years in prison:

- (a) "intentionally [self-skunk-spraying] in exchange for any thing of value in interstate commerce"
- (b) "furnishing or offering to furnish any thing of value [for self-skunk-spraying] in interstate commerce"
- (c) "intentionally and materially contributing to a violation of subsections (a) or (b) by another"

The Assistant U.S. Attorney prosecuting the case has office has also sent GrossOut a letter demanding that it provide a list of all gawkers who pledged money for the stunt so that it can investigate possible violations of the statute. GrossOut's CEO, Michelle Pakenham,

responded to the indictment by calling a press conference and saying that she would “personally tear the head off of anyone who tried to mess with us and drop-kick it to Mars.”

A third grosser, Eric Perkins, offered to hold barbecues prominently featuring pork outside of mosques and synagogues. News of this stunt spread, to great outrage. GrossOut’s ISP in Maryland, where its servers are located, cancelled its contract and gave GrossOut five days to find a new ISP. ISPs in Arizona and Texas announced that they would block any traffic to or from GrossOut.

You asked Pakenham what GrossOut’s terms of service had to say about any of this. She stared at you blankly. *Counsel GrossOut and Pakenham on their situation and advise them on how to proceed.*

### **Question 3: Carpe Momentum**

You represent 1Moment, a peer-to-peer video-chat app for smartphones. Usually, in its “Ordinary” mode, it sends fuzzy, low-resolution video back and forth between the two users. But each user’s phone saves the past 30 seconds of their side of the conversation as a high-resolution video. At any point, a user can tap a button to “Mark the Moment” as particularly important. When they do, the 1Moment app automatically switches into “Extraordinary” mode and uploads the previous 30 seconds of high-resolution video from the buffer on the user’s phone to the iMoment server, then also uploads the next 30 seconds of video (also in high-resolution). The result is a one-minute-long high-resolution video, centered on the moment the user tapped the “Mark the Moment” button.

Both parties to a conversation can access any marked Moments by logging in from the app with their passwords. The idea was that people would Moments of children being especially cute, or of key business points from a meeting, and so on. What happened instead was that people started leaving 1Moment on *all the time* and using the “Mark the Moment” button whenever something interesting happened. This resulted in a huge surge in popularity, and 1Moment is trying to adjust.

First, there’s the bandwidth problem. 1Moment has been approached by several major ISPs who are concerned about the huge amount of bandwidth that it consumes, even in low-resolution Ordinary mode. They have offered to collectively pay 1Moment \$5 million a month if it will lower the Ordinary video quality of its conversations even further.

Then there are some of the unpleasant ways people use 1Moment. For example, the Los Angeles Police Department arrested John Keating for distributing child pornography. He had in his possession an iPhone with the 1Moment app installed. The LAPD obtained a search warrant for the iPhone and discovered that at some point in the past Keating had used the 1Moment app with the username KeatingsBoys. The LAPD has sent 1Moment a § 2703(d) order requesting “all content on 1Moment available to the KeatingsBoys

account, including but not limited to any stored videos and any records pertaining to the parties with which the KeatingsBoys account has corresponded.”

Next, 1Moment has received a subpoena from an attorney for Gail Nolan, demanding that 1Moment produce all stored Moments in its possession from chats between employees of the Welton Corporation. Welton is a defendant in a pregnancy discrimination suit filed by Nolan, and her attorney argues that the Moments may establish that senior Welton employees were aware of her pregnancy.

1Moment has also received notice of a UDRP action filed by the band One Moment over the `1moment.com` domain name. One Moment alleges that fans are going to `1moment.com` rather than to the band’s site at `onemoment.com` by mistake.

Finally, 1Moment has received notice from Neil Perry, an open-source software developer, claiming that the 1Moment Android app include code taken from the Poetry video-player project, which is available only under version 2 of the GNU GPL. Perry now demands that 1Moment release the source code for the 1Moment Android app and license all Moments made using the Android app under the GPL.

1Moment is still trying to catch up with its rapid growth and has sought your legal advice. ***Counsel 1Moment on its rights and liabilities and advise it on how to proceed.***