

Cyberlaw  
Spring 2009 – Michael Risch  
Final Exam

This is a take-home exam. You have eight (8) hours from the time you download the exam to complete and upload the answer. Foreign Students will have ten (10) hours. If you experience technical difficulties, you may turn in a paper copy (or email) to my secretary, Karen Feather. She will note the time you turned it in, and you should make sure to tell her your exam number. *Giving your answer to Karen Feather is not the preferred method.* I recommend that you do not download the exam at a time when the due time will be outside of business hours of the law school.

**You may use any written materials you desire for the exam, but you may not receive help from any person. Note that the exam will be held during the first week, but there may be make-up exam days. You must be careful not to disclose any details of the exam to your classmates, or discuss any aspect of the exam (or your answer!) until after midnight on May 10. Page two of this exam is a confirmation that you understand this – please print, sign, and turn in to Karen Feather at some point before May 10.**

You may use Microsoft Word or WordPerfect. Please be sure to remove all personal information from your document properties (document -> properties in Word). Also make sure that your exam number appears on each page, which is most easily done with a header or footer.

This exam includes a strict word limit of 4200 words, which is approximately 14-16 pages of a proportionally-spaced font, or many fewer pages with smaller margins. I am grading each exam all at once, so feel free to refer to a prior answer if relevant. NOTE: You do not have to use all of the words available – the questions can be answered in less space than allotted.

Do not rely on page limits; you should count words using your word processor's "properties" menu item (word counts are sometimes in the bottom bar of the word processor as well). You may divide the word limit among the different questions however you wish, **but I will stop reading after the word limit is reached.**

Your exam must be typed, with double spacing on 8.5 x 11 paper size and reasonable font and margin size. Please begin the answer to each question at the top of a new page.

CyberLaw final exam, Spring 2009.

I \_\_\_\_\_, confirm that I have obeyed and will obey the WVU Student Code with respect to the above exam, and that I have not discussed and until after May 10, 2009, will not discuss any part of the exam, its contents, or my answer with any of my classmates.

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_

\_\_\_ Initial here if Prof. Risch may publicly post some or all of this answer (no names attached)

Please return to Karen Feather by 5PM on May 10, 2009.

## CyberLaw Final Exam Spring 2009

The questions are weighted as follows: Question 1, 30 points; Question 2, 28 points; Question 3, 24 points; Question 4, 5 points; Question 5, 4 points; and Question 6, 2 points. If any of your answers depend on facts not stated in the problem, feel free to identify which facts would be helpful, and how they would affect resolution of the issue. You may refer to answers to prior questions.

**ALL PEOPLE, WEBSITES, and EVENTS ARE FICTIONAL. DO NOT RELY ON ANY CASES, STATUTES, CLAIMS OR OTHER ARGUMENTS THAT ARE NOT BASED ON ASSIGNED READINGS OR CLASS DISCUSSION – YOU DO NOT NEED TO DO RESEARCH TO COMPLETE THIS EXAM.**

### **GettaLife.com**

GettaLife.com, Inc. owns and runs a website located at <http://www.GettaLife.com>. The site, which opened in March of 2000, is the world's first virtual world dating site. A virtual world is an online representation of the real world. Virtual world users are represented by "avatars," which are computer generated images that roam the on-line virtual world. Avatars can walk, talk, fly, swim, etc., as if they were video game characters, which they essentially are. The primary difference from a video game is that all of the other characters are also controlled by real people, so that the experience is completely interactive – people have real-time conversations in the virtual world.

GettaLife allows users to create avatar images in two ways. First, it provides already made graphical images that users can select from. Second, it allows users to upload images of themselves. These images are what other users see in the virtual world as the avatar explores the virtual landscape online.

GettaLife has an added component because it is a dating site – its stated goal is for people online to fall in love in real life. To accomplish this, GettaLife has a detailed questionnaire that asks many personal questions. Users answer these questions, and the questions and answers are then posted on the user's profile page, which is accessible within the virtual world.

Additionally, users can select profile attributes for the people they see in the virtual world. Anyone not matching these attributes is invisible to the user. For example, a male user can choose to see only female participants within a 50 mile radius of the user's real world home. The user would then be "alone" in a world of virtual women. Of course, those virtual women would see other virtual women or men, and thus would go about their business without ever noticing that others might or might not be able to see them. At user request, GettaLife will select potential companions through its own algorithms (based on common interests and characteristics such as hobbies, race, or religion). Anyone not matching these characteristics will be invisible to the user.

The site charges \$15.95 per month for membership. Though it is primarily a dating site, people have tended to use it for general recreation, even after they have found their real world mate. Some users date online only, and never meet in real life.

Concerned about privacy and potential liability GettaLife.com has always included the following language in its Terms of Service:

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### **Privacy and Integrity**

GettaLife.com has the following rules:

1. No user of this service shall register using someone else's name.
  2. Users may use any image they like for their avatar, but may not represent that they look like an image that does not, in fact, look like the user
  3. Registered users shall not post any defamatory statement
  4. No user may use the service for the purpose of harassment
  5. Users should attempt to be honest in the information they submit to their personal profiles (though we understand that sometimes we see ourselves differently than others might see us)
  6. No user of this service may violate copyright, trademark, patent, trade secret, or privacy rights of any person or other entity
  7. Misuse of this service is grounds for account termination
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There are, of course, other terms of service that are not included above. One such term is that registered users continue to own anything they post to the website, but that GettaLife.com has a license to reproduce and display such content solely for the purpose of displaying such content on the GettaLife.com website.

The Terms of Service are available to any site visitor by clicking on a hyperlink at the bottom of every page on the website. The link is entitled "Terms of Service." Additionally, users that register with the website must click a button that says "I Agree" that is listed on the same page as the terms of service prior to being allowed to register with GettaLife.com.

To the extent you believe any other possible contract terms might be relevant, you should so state in your answer.

GettaLife.com performs no checking to ensure that usernames, profiles, statements made in the virtual world or other information posted by users comply with the terms of service or any laws. Occasionally, if someone within the company happens to notice improper information they will remove it. No one has complained (yet) to the web site about a violation of the term of service detailed above.

## **Cyrano de Law**

Cyrano (Cy) de Law is an artist, as is Cy's friend Christian. Christian is owner of "ChristianArt™," a business that sells Christian's art. Cyrano has joined GettaLife.com in order to find his life mate. He convinced his friend Christian to sign up for the site at the same time. While Cy continued to use the

site, Christian stopped using the site after he submitted all the information for his profile. Christian didn't even get around to uploading an image for his avatar – apparently he had no need for a dating site.

Cyrano did upload an image for his avatar. He chose to use a self-portrait that he painted, which is below (assume that Cy has obtained a copyright registration):



Copyright (c) 2005 by Cyrano de Law

For some reason, Cy has had little success on GettaLife. He has initiated several conversations with virtual women, but after a couple of minutes of small talk, the women all seem to find something else to do.

Frustrated, Cy decides to try something new. He goes to GettaLife.com, and types in Christian's username: "Christian." Then, after a few tries at guessing a password, he successfully logs in using the password: "Chr1stian."

Cy does not change any of Christian's profile information, but he notices that no avatar image has been uploaded. Not wanting to lie, he decides it best to upload a self-portrait that Christian has painted of himself (assume that Christian has obtained a copyright registration):



Copyright (c) 2006 by Christian

GettaLife doesn't like square pictures running around its virtual world, so it automatically modified the uploaded image. This is the image stored on the GettaLife servers and what other GettaLife users see within the virtual world:



To his pleasant surprise, Cy has a much better time in GettaLife using Christian's persona. Virtual women appear to hang on his every word, and before too long, he has fallen in love with Roxanne's avatar, and she appears to have fallen in love with him. In fact, she is so enthralled with "Christian" that she spends all of her waking hours on-line, and loses her job and its \$50,000 per year salary.

After a few months of online dating, Roxanne and "Christian" decide to meet in person. When Roxanne arrives at the agreed upon location, the only person there is Cy, who professes his love. Roxanne is understandably upset, and tells Cy: "Our relationship is nothing but a lie!"

Cy, completely flustered, logs in as user Cyrano (not Christian) and posts the following sign in front of his virtual house: "Roxanne is a liar. She claims that she loves people for their inner beauty, but in reality she will only consider dating attractive men with short noses, like my former friend Christian! If you agree, visit my website: ChristianArtSucks.com." Roxanne asks GettaLife to remove the sign, but GettaLife's response is "You must have done something wrong for Cy to say these things. We will not remove the sign." Assume that Roxanne would win a case for defamation if she sued Cy for making this public statement in GettaLife.

It turns out that many people in GettaLife commiserate with Cyrano – they too have been snubbed by beautiful people. As a result, Cy's website ChristianArtSucks.com has been doing tremendous business. The website has two pages:

- A. The front page has a tirade about how Christian is a "beautiful person" and how Cy hates beautiful people. The page also states Cy's opinion that Christian is a terrible artist. On the page, he includes a "frame" that links to Christian's self portrait (the one shown above), which is stored on Christian's web site. Users viewing this page of ChristianArtSucks.com see the image (including the copyright notice) along with all of Cy's text when they view the page in their web browsers. Some of them have even clicked on the image to buy a copy of the self-portrait from Christian's web site. Assume that none of Cy's statements are defamatory.
- B. The second page shows various paintings by Cy that are for sale. Users of the site can select and buy his paintings from this page, and Cy has had a lot of sales of his artwork from this page.

## Essay Questions

1. (30 points) GettaLife.com comes to you and asks for a memo detailing what legal claims it might have against Cyrano de Law. It asks you to include discussion of any actions it can try to get federal or state governments to bring as well. You do not need to address issues of jurisdiction, but you should discuss any state or federal laws that could potentially be relevant. Please draft that memo.
2. (28 points) Christian comes to you and asks for a memo detailing what legal claims he might have against GettaLife.com, what defenses they might raise, and the likely outcome. It asks you to include discussion of any actions it can try to get federal or state governments to bring as well. You do not need to address issues of jurisdiction, but you should discuss any state or federal laws that could potentially be relevant. Please draft that memo.
3. (24 points) Christian does not like Cy's use of "ChristianArt" in his domain name. He asks you to write a memo describing the various ways he might force Cy to stop using it, including by imposing money damages. You do not need to address issues of jurisdiction, but you should discuss any state or federal laws that could potentially be relevant. Please draft that memo.

## Short Answer Questions

4. (5 points) Roxanne would definitely win a defamation case against Cy for the sign posted at his virtual house. Can she win a defamation case against GettaLife as the publisher of the text on the sign? Your answer should be no more than seven sentences.
5. (4 points) Can Christian win a case of direct copyright infringement against Cy because Christian's self portrait appears on "ChristianArtSucks.com?" Your answer should be no more than three sentences.
6. (2 points) It turns out that people are using GettaLife to find roommates as well as dates. The Fair Housing Administration sues GettaLife.com for discriminatory housing practices – apparently people use the "invisibility" feature to hide potential renters based on race or sex information in their profiles. In three sentences or less, describe the Fair Housing Administration's best theory for overcoming immunity under Section 230 of the Communications Decency Act.