

Cyberlaw  
Spring 2010 – 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 9. 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 9.**

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 2010.

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 9, 2010, 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 (without your name associated with it)

Please return to Karen Feather by 5PM on May 9, 2010. I cannot give you a grade without it, even if it means you don't graduate.

CyberLaw Final Exam  
Spring 2010

The questions are weighted as follows: Question 1, 5 points; Question 2, 41 points; Question 3, 11 points; Question 4, 8 points; and Question 5, 28 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. Remember your word limit. **I WILL STOP READING WHEN I REACH THE LIMIT.**

ALL PEOPLE, WEBSITES, and EVENTS ARE FICTIONAL OTHER THAN APPLE, STARBUCKS AND FACEBOOK, AND STATEMENTS RELATING TO THOSE COMPANIES MAY OR MAY NOT BE TRUE. 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.

**Apple® iPad®**

On April 1, Apple Computer began selling the iPad. The iPad is a mobile “tablet” device. Its operating system is based on the popular iPhone cellular phone, and the touch screen user interface is very similar to the iPhone’s interface. In fact, the operating system is so similar that most iPhone software application programs also work on the iPad, though there are also iPad specific applications. The applications available include a word processor, a web browser, a Facebook application, and various games.

However, iPad network connectivity is somewhat different from the iPhone cellular phone. There is no built in phone capability in the iPad. In the first models available, there is also no built-in cellular connectivity (sometimes called 3G) that allows for network connectivity wherever cell phones operate. Instead, the only way to connect an iPad to a network is through “Wi-Fi,” which is a traditional computer based wireless networking standard. Wi-Fi is the standard that allows laptops to work wirelessly throughout the law school, for example. Wi-Fi only works where there is a Wi-Fi hub that

accepts Wi-Fi network devices. The law school has them, as do many homes and businesses. Many public providers, such as McDonalds and Starbucks, offer Wi-Fi network connectivity as well, either for free or for a fee. If a Wi-Fi hub is connected to the internet, then computers connected to that hub are connected to the internet.

The iPad also has an application that allows photos to be imported from an Apple iPhone or other camera using a special cable. Pictures imported to the iPad can then be sent to various sites on the internet, or just stored on the machine. They can also be set as the background “wallpaper” on the iPad’s main screen (“desktop”).

The above is all you need to know about the iPad to answer the exam questions. However, if you want to know more, the website is <http://www.apple.com/ipad>. Including detailed information about the iPad (including trying to explain how any of the above facts are wrong) will not help you and may hurt you by taking additional time – only look at the site if you are having trouble understanding the description in this exam.

### **Bleeding Edge**

Bleeding Edge (no relation to U2 guitarist The Edge) has a lot of disposable income, and likes to spend it on gadgets. On April 1, Edge spent hours waiting in line to get an iPad. This is a recap of Edge’s day:

6:00AM – Edge gets to the Apple store to wait in line – second in line!

9:10AM – Edge buys an iPad!

9:15AM – Edge walks to the local Starbucks coffee shop and sees something funny on the way. Edge snaps a photo of it with the iPhone and imports it onto the iPad via a special connector cable. The photo is reproduced below.

9:30AM – Edge arrives at the Starbucks and starts setting up the iPad. (Despite having disposable income, apparently Edge doesn’t have to show up at work.). First, Edge takes the one photo

just taken and sets the background wallpaper to show that image when the iPad is turned on. Second, Edge sets a security code to “1234,” thinking that it can be changed later. When the iPad is turned on, this code must be entered in order to use any of the applications or even see the main screen.

9:45AM – Edge tries to run the Facebook application, enters a username and password, and selects “remember login information.” The iPad records the login information in its memory. However, when Edge tries to login to Facebook to brag about getting an iPad, Edge finds that there is a charge to access the Wi-Fi hub at Starbucks in order to obtain internet access.

9:50AM - Edge enrolls in the Starbucks Wi-Fi program, entering credit card information for automatic access in the future. With this, Edge can access the internet via Wi-Fi from any Starbucks. The plan gives Edge a total of five hours of Wi-Fi usage a month.

9:55AM – Edge is just about to connect to the internet and log in to Facebook using the Starbucks Wi-Fi network when Edge’s watch alarm goes off. It turns out Edge does have to work after all, and has a 10:00AM meeting. Edge turns the iPad off, puts the iPad in a backpack, hastily zips the pack, and starts running.

9:57AM – It turns out the backpack was not zipped very well. Unknown to Edge, the iPad falls out of the bag and lands on the sidewalk in front of the business next door to the Starbucks, the strip club called “Strip Tease.”

10:00AM – Edge arrives at the meeting a block away and realizes that the iPad is missing. Edge starts sobbing.

This is the photo Edge took with the iPhone and used as the background image on the iPad.



## **Cyber Law**

Cyber “Cy” Law is not so much of a gadget fanatic. Cy has no computer or computer network at home. Cy prefers to spend time in strip clubs, and that’s exactly what he was doing on the morning of April 1st.

At 9:58AM, Cy exits the Strip Tease, and sees Edge’s iPad on the ground. Cy picks it up and turns it on. When the iPad asks for a security code, Cy enters his ATM PIN code, “1234.” The iPad accepts the code, and the main screen appears. Cy sees the photo that Edge took and chuckles – apparently Cy has thrown his share of cigarette butts into the mulch.

Cy is impressed with how cool the iPad looks and decides he should return it to the owner. He walks over to Starbucks, buys a double grande half-caff low-sodium part-soy chai latte (light whip cream), and takes a seat. When he does, some of the drink spills on the iPad. Cy wipes it up, but some leaked into the iPad through the side, leaving a little streak under the glass of the new screen.

Cy starts looking for name and contact information, but can't find any. He does find the credit card information for logging on to Starbucks Wi-Fi and writes it down in case it might be useful in the future, but there is no name listed.

Because Cy is not too familiar with technology, he accidentally deletes a couple of applications on the iPad while he is looking for contact information. While randomly opening applications, Cy opens the Facebook application. The iPad automatically connects to the Starbucks Wi-Fi network and the internet, and loads up Edge's Facebook account.

## **Facebook**

If you are unfamiliar with Facebook, you can look at [www.facebook.com](http://www.facebook.com). A sample (and funny) Facebook status posting and comment thread can be found on the last page of the exam, after the questions.

Cy has never seen Facebook, but it is obvious that he can post a message in the box called "Share" – and so he does.

This is what Cy types:

Hi – I am using a cool device with a half-eaten Apple on the back. I found it outside the Strip Tease – I think you dropped it while leaving the club this morning. I don't know whose it is, but would like to return it. If it is yours, please call me at 123-4567.

While Cy is on Facebook, he reads all of the status postings that Edge could see. He can see that Edge brags a lot about purchases, and sees information posted by Edge's friends on Facebook – information about their work, their kids, and their vacation plans. There are also many postings that seem completely useless about running a farm. Cy accidentally deletes one of Edge's postings about

how Edge was watching American Idol and Didi should have been voted off. None of Edge's friends noticed that the posting was deleted.

However, Edge's friends did notice the posting made by Cy, and the friends are shocked to learn that Edge visits strip clubs. One friend posts: "Wow, I didn't know you went to strip clubs." More important, Edge's spouse posts: "You are in trouble when you get home. I want a divorce." A final friend posts: "This can't be right! Facebook, take this post down!"

Cy could not find any of Edge's contact information in Facebook. Apparently Edge did not enter any in the Facebook profile. Thus, while Cy now knew Edge's name from Facebook, he did not know any contact information. Cy tried to locate contact information in a telephone directory, but Edge's information was not listed in the directory.

At the bottom of Facebook's web page is a link called "Terms." It is one of many in a list of links:

About Advertising Developers Careers Terms • Find Friends Privacy Mobile Help Center Blog.

If one clicks the link "Terms," the Facebook Statement of Rights and Responsibilities appears. This document states: "By using or accessing Facebook, you agree to this Statement." Later, it says, "You will not transfer any of your rights or obligations under this Statement to anyone else without our consent."

One of the sections in the document states:

#### 5. Protecting Other People's Rights

We respect other people's rights, and expect you to do the same.

1. You will not post content or take any action on Facebook that infringes or violates someone else's rights or otherwise violates the law.
2. We can remove any content or information you post on Facebook if we believe that it violates this Statement.

...

## 14. Termination

If you violate the letter or spirit of this Statement, or otherwise create possible legal exposure for us, we can stop providing all or part of Facebook to you. We will notify you by email or at the next time you attempt to access your account.

There are other provisions of the document, but these are the only that should be considered.

### **yourappleipad.com**

After closing the Facebook application, Cy opens the web browser. The default home page has an advertisement for “Make Your Own Website,” for a web site hosting server run by Weber (“Web”) Site. Cy thinks that might be a good way to find the owner of the iPad. So, Cy clicks on the advertisement and starts creating a web page.

As part of the web site creation process, Cy has Web Site register the domain name, “yourappleipad.com.” Cy then puts the following into the web page located at [www.yourappleipad.com](http://www.yourappleipad.com):

Bleeding Edge – I found your iPad at the Strip Tease. I don't know why you would spend time playing with an iPad instead of looking at naked strippers, but to each their own. I have Your Apple iPad. In case there are two Bleeding Edges out there, I am including a photo you took. If you took this photo, then this is your iPad. Call me at 123-4567.

Cy uploads the “no cigarette butts” photo above and includes it as part of the web page. When the site asks for payment information, Cy types “Cy Law” as the account owner’s name but uses Edge’s credit card number. The web site costs \$100 a month – quite a rip-off, but that’s what happens when you follow internet ads. Like of the sites hosted by Web Site, Web includes advertisements on the yourappleipad web page. When users click on the advertisements, Web Site gets paid.

Cy turns off the iPad and heads home at noon. All told, Cy spent two hours using the Starbucks Wi-Fi.

### **Aftermath**

Edge returns home at the end of the day to find empty closets. Not understanding why, Edge logs on to see whether an email might explain the abrupt departure. That’s when Edge sees the Facebook

posting. Edge writes down Cy's number, and quickly deletes the post. Edge calls Cy and that night Cy returns the iPad. It takes Edge an hour to discover the applications that Cy deleted, and it takes Edge another fifteen minutes to replace those applications (at no additional cost). Edge never notices the deleted Facebook posting about American Idol.

Edge's spouse refuses to return, despite genuinely believing that Edge never went to the Strip Tease. Apparently Edge had other flaws as well.

Meanwhile, due to Edge's high spending ways, Edge does not notice the credit card charges for yourappleipad.com. The site, however, becomes a big hit among Apple fans. It is unclear why. It could be the funny photo that Edge took, but it is more likely the idea that the iPad is more attractive than naked strippers. Web Site continues to make \$100 a month on the site, plus significant advertisement revenue due to the number of people that view the web site every day who click on advertisements Web Site has embedded in the page.

About a year later, in May of 2011, Edge discovers the site and asks Web Site to take it down because it is embarrassing. Web Site says, "I don't have authority to do so – you aren't Cy Law." About a month after that, Edge finally convinces Web Site that a) the credit card used was Edge's credit card, and b) the photo on the site was the same one taken by Edge so long ago. Web Site takes the site down in June of 2012, saddening yourappleipad fans everywhere.

FOR ALL ANSWERS, ASSUME THE FOLLOWING:

1. Implying that Edge was at a strip club is defamatory.
2. You do not need to discuss any torts relating to Cy's use of the credit card other than those we discussed in class. In other words, no need to discuss conversion, fraud, credit card laws, etc.

Q1. SHORT ANSWER (5 points): Edge is devastated by the divorce and wants to sue Facebook for defamation relating to Cy's post. In four sentences or less, what is Facebook's best cyberlaw-related defense and will Facebook win?

Q2. ESSAY (41 points): Edge is not satisfied with suing Facebook. Edge asks you to draft a memo discussing all the claims that Edge might bring against Cy, and their chances of success. You do NOT need to discuss laws we did not learn in class, such as invasion of privacy, or any claim directly related to use of the credit card number. However, if there are claims that we DID discuss in class or the casebook related to any of these, then you should discuss them, though you need not discuss defamation.

Q3. SHORT ANSWER (11 points): Edge is still not satisfied and wants to sue Web Site for copyright infringement. In ten sentences or less, what are Edge's strongest arguments in favor, and what are Web Site's strongest defenses? You can divide the sentences any way you choose.

Q4. SHORT ANSWER (8 points): Still unsatisfied, Edge tries to get Facebook to sue Cy for breach of Facebook's contract. In ten sentences or less, write a memo that Edge can send to Facebook explaining the claims that Facebook might bring against Cy. Be sure to include Cy's possible responses/defenses and the likelihood that Facebook will win.

Q5. ESSAY (28 points): Despite the popularity of yourappleipad.com, Apple Computer is not happy with the site. Apple asks you to draft a memo (before the site is disabled in 2012) discussing what claims Apple might bring, whether such claims should be for damages or an injunction, who the claims should be made against, and the chances of winning such claims. You do not need to discuss claims not covered in class or the casebook, such as trade libel.

## Sample Facebook Status Posting and Comment Thread

The Troublemaker posts the initial statement, and the other postings are response comments by The Troublemaker and others.



**The Troublemaker** I have something misguided and angry to say about this current event. I'm posting it here because I know it will start a giant debate, and I am super bored.

Yesterday at 11:16pm · Comment · Like



**The Bait-Taker** You're wrong. You're the most wrong person ever. I had an uncontrollable urge to tell you that even though I can feel myself getting pulled into something we'll both regret.

Yesterday at 11:29am



**The Troublemaker** Wrong? Are you kidding me!? I plagiarized that word-for-word from something my talking head of choice said on his or her cable news show last night!

16 hours ago



**The Chime-In** I agree with Troublemaker because he reinforces everything I already suspected.

16 hours ago



**The Lazy Activist** Passionate rebuttal! Here's a link to an article I skimmed. I'll post it to prove my point, but there's probably something in it that can be used against me. <http://www.newssource.com/date-articlesnumber>

16 hours ago



**The Bait-Taker** Wow... is that last paragraph true?

15 hours ago



**The Lazy Activist** I have no idea. But yes.

15 hours ago

Credit: Chase Mitchell, An Honest Facebook Political Argument, College Humor (March 31, 2010), <http://www.collegehumor.com/article:1803025>