

Cyberlaw  
Spring 2008 – 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. 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.

**Note that the exam will be held on one day only, 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 any written materials you desire for the exam, but you may not receive help from any person.**

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 proportional 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 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 2008.

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, 2008, will not discuss any part of the exam, its contents, or my answer with any of my classmates.

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

Please return to Karen Feather by 5PM on May 10, 2008.

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The questions are weighted as follows: Question 1, 30 points; Question 2, 40 points; Question 3, 7 points; Question 4, 6 points, Questions 5-6, 5 points each. 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.

## MyPlace.com

MyPlace.com, Inc. owns and runs a website located at <http://www.myplace.com>. The site, which opened in March of 2000, is a free “community” website, in which people join to discuss their homes. There is a discussion forum (bulletin board), a classified ads section, and each member may create a “profile page” in which they post photographs of their homes (inside and outside) and discuss home renovation projects that they are working on. Registered users and anonymous guests are allowed to post comments on profile pages. Only registered users are allowed to post in bulletin boards. There are 100,000 registered users, and 400,000 web pages viewed per day. MyPlace.com, Inc. is incorporated in Illinois and all its servers are located there.

For example, the profile page of user *coolhouse42* contains this photo, which *coolhouse42* took himself:



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

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### **Privacy and Anonymity**

Our homes are personal places, and we do not want to aid others in finding out where you live. Thus, MyPlace.com has the following rules:

1. Registered users shall not post any identifying information, including as part of the username, either on their profiles, in bulletin boards, or anywhere else on the site
  2. Registered users shall not post their addresses, either on their profiles, in bulletin boards, or anywhere else on the site
  3. No user of this website may post any identifying information or address of another on any profile, bulletin board, or anywhere else on the site
  4. No user of this website may use information gathered from this website for commercial purposes or in a manner that violates and copyright, trademark, patent, trade secret, or privacy rights of any person or other entity
  5. MyPlace.com, Inc., will maintain the secrecy of a registered user's personal information and will not divulge such information to others, nor will it allow others to discover such information
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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 MyPlace.com has a license to reproduce and display such content solely for the purpose of displaying such content on the MyPlace.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 MyPlace.com.

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

MyPlace.com is a small company with little money given the free nature of its offerings, though it does have links to advertisements provided by Google, which provides it with some revenue. However, site management performs no checking to ensure that usernames, profiles, bulletin board posts or other information posted by users contains no address or personally identifying information. Occasionally, if someone within the company happens to notice such information they will remove it. No one has complained (yet) to the web site about a violation of the term of service detailed above.

## YourPlace.com

YourPlace.com, Inc. runs a website located at <http://www.yourplace.com>. YourPlace.com operates a website, first made public in June of 2007, designed to make money from the growing membership of MyPlace.com. YourPlace.com, Inc. is incorporated in California, and all its servers are located there.

YourPlace.com started with the kernel of an idea: combine the photographs posted in MyPlace.com profiles with aerial imagery to determine where houses are located. (Assume that YourPlace.com has a license to use the aerial photos for any purpose).

For example, the following photograph shows an aerial view of the *coolhouse42* house shown above:



Using advanced pattern recognition technology (comparing shapes, colors, sizes, landscape, neighboring houses, rooflines, etc.), the YourPlace.com system is able to determine that this aerial map corresponds to the photo shown above that appears on *coolhouse42*'s profile page. The YourPlace.com system works as follows:

- A. The system proceeds one MyPlace.com profile page at a time
- B. The system then loads the entire MyPlace.com profile page into random access memory (RAM) of the computer
- C. The system then uses pattern recognition to compare the photos found on the MyPlace.com profile page to all of the aerial photos in its library
- D. The system provides the address of the home in its aerial photo database that appears to best match all of the photographs from the MyPlace.com profile page
- E. The system then deletes the MyPlace.com profile page and all photos from RAM
- F. Because there are so many homes to search in the aerial photo database (the entire U.S.), the process is slow – each search (steps A-E) takes almost three hours per house (though it can perform many searches at once).

Because YourPlace.com knows the address of the house from the aerial photo, YourPlace.com knows the address of *coolhouse42*. YourPlace.com also uses various information sources and web searches to gather additional information. Thus, YourPlace.com is able to gather *coolhouse42*'s name (or at least the name of whoever lives in or owns the house), the social security number(s), neighbor information, off-line consumer preferences (e.g. what catalogs *coolhouse42* receives in the mail), and place of employment, as well as various on-line information – email address, social networking site profiles having the same user name, affiliated websites, and anything else that can be gathered. Finally, YourPlace.com obtains from marketing companies buying and browsing preferences associated with *coolhouse42*'s email address and other identifying information it can find.

YourPlace.com uses this information to create a new web profile page that contains all of this information for each MyPlace.com user. The web profile page also includes the appropriate instructions for loading the MyPlace.com photos directly from MyPlace.com servers (in-line framing). Thus, when the page is displayed to a user in his or her web browser, the photos appear to the user even though they are not located on any YourPlace.com server. A portion of the YourPlace.com profile for *coolhouse42* is attached.

YourPlace.com currently limits access to its profile pages to those who pay for access. Anyone is allowed to purchase access to any set of names or geographic regions, though all of the company's customers to date are mass marketers that sent either electronic mail or standard (paper) mail solicitations. For example, marketers can see what home renovation projects MyPlace.com users are engaged in, and can attempt to sell products and services relating to those projects by sending email to them. YourPlace.com customers report that the response rate to advertisements directed toward MyPlace.com users has been very high, which they believe is due to the highly targeted nature of the advertisements allowed for by such detailed information.

Access to the profile pages is limited by password protection. YourPlace.com has no terms of service and enters no agreement with its customers about use of the information in its profile pages. It is unaware of anyone having obtained access without a password.

## **Coolhouse42**

Virginia resident Cy Law, also known as *coolhouse42*, was surprised last week when an anonymous poster wrote the following comment on his MyPlace.com profile: "Cy Law: are you willing to sell your house? I know you are unemployed and need the money, and I would love to live at 1234 Main Street, Anytown, U.S.A. Thanks for the tip, YourPlace!"

Cy was surprised for three reasons. First, he is not unemployed and doesn't need money (assume that this comment on his profile is defamatory). Second, he did not believe anyone knew his identity and address; he was very careful not to share that information anywhere else. Third, he had never heard of this site "YourPlace."

Cy sent a letter to MyPlace.com, requesting that the posting be removed, and MyPlace.com did so about four weeks later. During that time, several of Cy's friends called and said "I'm sorry to hear that you're unemployed."

**Cy Law – MyPlace.com user Coolhouse42**

1234 Main Street, Anytown, U.S.A. (Source: YourPlace.com aerial pattern recognition)

Phone: (555)555-5555 (Source: OnlinePhoneBook.com)

Email: [cylaw@email.com](mailto:cylaw@email.com) (Source: OnlineSearchEngine.com)

Social Security Number: 123-45-6789 (Source: SSNumber.com)

**Employment Status**

Unemployed (Source: Equifax Credit Reporting)

**Credit Status**

Poor (Source: Equifax Credit Reporting)

**MyPlace.com profile text (direct quote):**

Hi, I'm coolhouse42, and this is my house. We are in the process of doing a whole house remodel – we are looking for contractors for construction, electrical, and plumbing!

**Home Photo:**



**Neighborhood Information**

[omitted for Exam]

**Other Online Memberships using coolhouse42 username:**

AIM Instant Messaging

eBay [verified, matching email]

Yahoo Instant Messaging

Skype

[...other omitted for Exam]

*Note* YourPlace.com cannot verify that all username instances found are used by the same person.

## Essay Questions

1. Cy Law comes to you and asks for a memo detailing what claims he might have against MyPlace.com and/or YourPlace.com, what defenses they might raise, and the likely outcome. Please draft that memo, and be sure to include discussion of potential defamation and contract claims. You may assume that if someone published the anonymous comment in a newspaper, Cy Law would win a case of defamation against the newspaper as a publisher. You do not need to address issues of jurisdiction, but you should discuss any state or federal laws that could potentially be relevant.
2. You are now in-house counsel at MyPlace.com, Inc. MyPlace.com's CEO, Weber "Web" Site is extremely upset about YourPlace.com. She is upset because YourPlace.com has potentially harmed the site's users, but she is even more upset that YourPlace.com has figured out a better way to make money from MyPlace.com than she had thought of. She asks you to write a memo about any claims MyPlace.com has against YourPlace.com, its possible defenses, and the likely outcome(s). She asks you to include discussion of any actions she 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.

## Short Answer Questions

3. In what state or states could Cy Law potentially assert personal jurisdiction in a case against YourPlace.com, Inc. and why?
4. Cy Law asks the district court to force MyPlace.com to provide information about the identity of the anonymous poster. What test should the Court use to determine whether to grant this request, and why?
5. Assuming Cy Law discovers the identity of the anonymous poster, can the anonymous poster successfully defend a defamation lawsuit on the grounds of 47 U.S.C. 230?
6. Is there anything that Web Site could have done to better protect the privacy interests of MyPlace.com users? Focus on legal (rather than specific technical) protections available to MyPlace.com.