

**CML 3358
DCL 7301
REGULATION OF INTERNET COMMERCE**

FINAL EXAMINATION

Fall 2005

Professor Michael Geist

INSTRUCTIONS:

DURATION: 48 HOUR TAKE-HOME

PICKING UP THE EXAM

The exam is available in either traditional paper format or in electronic format. Those students who wish to use the paper format can pick up the exam from the Secretariat on December 7th. It must be returned within 48 hours.

The exam is also available for download from the course website (<http://www.michaelgeist.ca/roic>) starting at 10:00 am ET.

RETURNING THE EXAM

The paper exam must be returned to Secretariat within 48 hours of pickup, as per the standard rules for take-home exams.

The electronic exam must be returned electronically by 10:00 am ET on December 9th. In order to ensure confidentiality, please comply with the following steps:

1. Visit <http://mail.yahoo.com>
2. Logon with:

ID - `geistexamsubmission`
password - `ottawa`

3. Send an email to mgeist@pobox.com attaching the exam

4. Include only your student number in the email. Do not include your name or other identification

I will send an email to geistexams@uconn.edu address, listing the student numbers from whom I have received an exam. I will also post the students numbers on the course website temporarily. Please note that there are occasionally delays with email transmission. If you are sending the exam via email, I would advise leaving some time for transmission.

VALUE of exam is 100% of final grade. The value of each question is indicated on the exam. The exam totals 100 marks for LL.B. students. The exam totals 120 marks for LL.M. students.

There is no page or word limit for your answers.

Students are not allowed to discuss the exam or their answers with anyone during the 48-hour period.

Graduate students are required to answer one additional question as marked.

The exam has SIX (6) pages (including the instructions).

It is recommended that answers be submitted in typewritten form.

QUESTION ONE – MANDATORY QUESTION – 30 MARKS

Ausiva is an Australian e-commerce company that sells video games for popular video game consoles such as the Sony Playstation. When Ausiva sells its games outside the country, it modifies them by removing regional coding restrictions that might otherwise inhibit playing the games in other jurisdictions. Following a recent Australian High Court decision that cleared the way for the sale of such modified games, Ausiva began to aggressively market its products outside Australia. As part of that marketing campaign, Ausiva registered the Ausiva trademark in Canada, registered the Ausiva.ca domain name, and advertised its site on FastConnect, a leading Canadian ISP. A banner ad for Ausiva.ca appears on the front page of FastConnect, inviting users to “hit the Net’s best source of mod games.” Ausiva does not currently maintain a physical presence in Canada.

Brianna Caber is an Ottawa resident who saw the Ausiva advertisement, visited the website and purchased a video game. When the game arrived in the mail from Australia, she found that the regional coding had not been effectively removed and she was unable to play it on her video game console.

Caber sought a refund from Ausiva. The Australian company refused, however, arguing that its contractual terms, which were linked-to at the bottom of the front page of their site, provided that all games were sold “as is”, that there were no guarantees that the games would play on all game consoles and there were no refunds permitted. When Caber threatened to sue Ausiva to obtain a refund, the company noted that its terms and conditions also provided that any disputes would be governed by Australian law and heard in Australian courts.

To add to Caber’s woes, she soon after began receiving a deluge of spam messages which she believes originated from Ausiva’s sale of her personal information. When she confronted Ausiva about the spam increase, the company noted that its privacy policy, which was not posted on its website but available for a AU\$5.00 fee by request, granted it permission to “disclose any personal information to any third party for any purpose whatsoever.”

Caber has turned to you, a well-known Internet commerce lawyer, for assistance. She is furious with the entire transaction and prepared to do whatever she can to remedy the situation. To that end, she is seeking advice on any potential recourse that she may have including launching a lawsuit against Ausiva in Canadian court, holding FastConnect accountable for having promoted Ausiva, and commencing a privacy complaint against Ausiva under Canadian privacy law. Please provide Caber with a memo assessing the state of the law and the likelihood of success.

QUESTION TWO – MANDATORY QUESTION – 30 MARKS

PLEASE ANSWER ONE OF QUESTION A OR QUESTION B

QUESTION A

Shopandgo.com, founded in 2001, has emerged as one of the leading e-commerce sites in the United States. The company, based in Buffalo, New York, focuses primarily on providing travel services as well as the sale of high-end electronics products. It is considering expanding into additional areas including clothing and entertainment products. Due to regulatory restrictions in the travel services industry, the company currently restricts its services to U.S.-based customers (though its website is accessible globally). The company advertises in a variety of media including television, radio, and the Internet. Shopandgo.com has obtained a trademark in the name Shopandgo.com to cover online travel services and electronics sales. The company has aggressively pursued a large portfolio of domain name registrations including defensive registrations such as shopandgosucks.com.

Although Shopandgo.com is U.S. based, its proximity to Canada has made entry into the Canadian market highly desirable. The company believes it can enter the market without the need for a substantial physical presence. It has filed for trademark protection for Shopandgo.com in Canada and received preliminary approval.

The company would like to use a dot-ca domain for its Canadian operations. In attempting to register the domain, however, it was discouraged to learn that shopandgo.ca was registered in 2001, just two months after the company began operating in the U.S. The domain name is owned by Great Domains Inc., a Vancouver based company that owns a large portfolio of domain names. Great Domains buys and sells some domain names, though it typically retains its domain names based on their potential to generate advertising revenue through click-through ads. In this case, the shopandgo.ca domain was initially used to redirect users to the Great Domains website, however, for the past 18 months, the site contains click-through advertising with links to other shopping portals, including sites that sell travel services.

Shopandgo.com approached Great Domains about a potential purchase of the domain. Great Domains responded that the domain was available for purchase, but at a premium price. A Great Domains representative noted that “shopandgo.ca is a premium domain and it will command a premium price. We generate significant advertising revenue from the domain at present. Moreover, several other parties have expressed an interest in acquiring the domain at a six-figure price. If you are interested in purchasing the domain, I suggest that your offer be no lower than \$100,000.”

Shopandgo has asked you to draft a complaint to be launched against Great Domains under the Canadian Internet Registration Authority’s Domain Name Dispute Resolution Policy (http://www.cira.ca/en/cat_dpr_policy.html). Please provide your draft following the CIRA policy and rules. The draft should address

each of the criteria under the CIRA policy for the contested domain name. You need only focus on the substantive arguments - there is no need to provide the procedural history of the case. If you believe that there are shortcomings in the Shopandgo case, you should feel free to call attention to those issues within your text.

OR

QUESTION B

The recently concluded World Summit on the Information Society agreed to create a new Internet Governance Forum (IGF). The agreement calls upon U.N. Secretary General Kofi Annan to convene the first IGF meeting in Greece in the spring of 2006.

You are the Internet governance policy expert within the U.N. Secretary General's office. He has tasked you with developing a plan for the Greece meeting. Your plan should include details on:

- **background information on the "path to Greece"**
- **issues to be addressed**
- **potential participants**
- **format for discussion**
- **longer term planning for future meetings**
- **identification of potential outcomes of the Greece meeting**

**QUESTION THREE – PLEASE ANSWER TWO OF (A), (B), (C), AND/OR (D) –
20 MARKS PER SUB-QUESTION (40 MARKS TOTAL)**

It is February 2006 and with the conclusion of another national election, the new government is seeking your advice on a technology law legislative agenda. The government seeks your views on the following legislative priorities:

- (a) A successor to Bill C-60, the Canadian copyright reform bill
- (b) A successor to Bill C-74, the lawful access bill
- (c) An anti-spam bill
- (d) The parliamentary review of PIPEDA

Please provide the Government with a memo addressing two of the four issues noted above. Your memo should identify strengths, weaknesses, potential reforms, and policy priorities for your selected issue. Please include a brief overview of the current Canadian legal framework and background on the bill or policy.

LL.M. STUDENTS ONLY – 20 ADDITIONAL MARKS

Please provide a larger memo that addresses three of (a), (b), (c), and/or (d).