

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

**FINAL EXAMINATION**

**January 2008**

**Professor Michael Geist**

**INSTRUCTIONS:**

**DURATION:        EIGHT (8) HOUR TAKE-HOME (8:30 – 4:30)**

**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 Common Law Secretariat on January 25, 2008 beginning at 8:30 am. It must be returned by 4:30 pm.

The exam is also available for download from the course website (<http://www.michaelgeist.ca/content/view/2504/281/>) starting at 8:30 am ET.

**RETURNING THE EXAM**

The exam may be returned to Secretariat by 4:30 pm as per the standard rules for take-home exams.

Alternatively, the exam may be returned electronically by 4:30 pm. 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](mailto: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 geistexamsubmission address, listing the student numbers from whom I have received an exam. I will also post the students numbers on the course website. 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 115 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 exam period.**

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

**The exam has FIVE (5) pages (including the instructions).**

**It is recommended that answers be submitted in typewritten form.**

## **QUESTION ONE – MANDATORY QUESTION – 40 MARKS**

Marcus Zucker has been a social network site user for many years, starting with Friendster, followed by MySpace, and most recently Facebook. Marcus senses that interest in Facebook may be waning and he is anxious to establish the next big social network success story. His idea is to create a new site called Facester, which he hopes will combine the best of Napster and Facebook.

In addition to the usual social networking capabilities (posting likes, dislikes, and other personal information) users to the site will be able to do the following:

1. Post their favourite videos and sound recordings on their own personal Facester page. While anyone will be able to see a list of the content they've posted, only those users designated as Facester friends (as approved by the user) will be able to download copies of the content as well as post reviews or commentary about it.
2. Facester will adopt an "open platform" that will allow third-party developers to create new applications for the site. One developer has already proposed creating a program called "Facester Remix", that will allow Facester users to remix, mashup, or digitally alter any video or sound recording posted on the network and repost the new version online.

Marcus envisions generating revenue from several sources including:

1. Aggregating the personal information of its users and selling that data to private companies and marketing organizations.
2. Click-through and banner advertising on the site.
3. E-commerce functionality that will allow users to purchase authorized copies of the videos and sound recordings found on user pages.

**Marcus is excited about this new venture but has some questions about the potential legal issues arising from the site. In particular, Marcus seeks your advice on the following:**

1. **The site can be established in either Canada or the United States. Given the business plan described above, which jurisdiction provides the most advantageous legal framework? Please justify your answer.**
2. **If the site is established in Canada, are there any copyright or new media regulation concerns that Marcus ought to consider? Please confine your answer to the two unique Facester features.**
3. **Venture capitalists have expressed some interest in Facester, but are curious about potential risks associated with the plans for generating revenue. Please provide a brief assessment of such risks, if any.**
4. **The site will include a standard terms and conditions link at the bottom of the page. Users that click on the link will be taken to a lengthy legal document that confirms that use of the site is subject to local law and that**

**all users agree to abide by those laws. It will also contain the site's privacy policy. Marcus seeks your assurance that these terms will be legally binding on the site's users.**

**QUESTION TWO – MANDATORY QUESTION – 30 MARKS**

**PLEASE ANSWER ONE OF QUESTION A OR QUESTION B**

**QUESTION A**

A Canadian comedy group has created a new, Internet-based comedy program called The Daily Show North. Each episode of the show lasts roughly five minutes, covering the news of the day with brief clips and funny commentary. The program does not air on commercial television. Rather, it is posted on YouTube Canada, the Canadian version of YouTube. YouTube Canada's servers are located in the United States and the site is owned by U.S.-based Google. Google maintains a small sales office in Canada and has registered the youtube.ca domain. The comedy group embeds each video on its own site, located at dailyshow.ca.

Viacom, the U.S.-based owner of Comedy Central and the producer of the television program the Daily Show with Jon Stewart becomes aware of the Canadian effort after its anti-piracy investigators inadvertently flag the Canadian program with takedown notifications due to copyright infringement. Although the Canadian program remains online when it becomes clear that the Daily Show North is a different program from the Daily Show with Jon Stewart, Viacom is troubled by this online competition. The Daily Show with Jon Stewart airs nightly on Canadian television. Viacom restricts Canadian access to online clips of the show by using geo-blocking technologies.

Viacom has decided to consider its options to stop the Canadian program from competing with its program. It has a U.S. trademark in the name "Daily Show" and owns the domain name dailyshow.com. It does not have a Canadian trademark in the same name but has a wholly owned subsidiary ("Viacom Canada") that operates in Canada.

**Viacom has asked you for legal assistance in this matter. It specifically seeks answers to the following two questions:**

- 1. Can Viacom launch a complaint under the ICANN UDRP and/or the CIRA CDRP over the dailyshow.ca domain? If so, what is the likelihood of success? Please assess the complaint by referencing the specific conditions of the relevant policy or policies.**
- 2. Can Viacom sue the Canadian group in U.S. courts? Please ignore the substantive grounds for such a suit and focus exclusively on the relevant jurisdictional law issues that arise from this question.**

**OR**

**QUESTION B**

South Korea will host the 2008 OECD Ministerial Conference on the Future of the Internet Economy in June 2008. The Conference organizers are anxious to ensure that the event charts a law and policy path for the next decade to address “Web 2.0” concerns.

**You are a Web 2.0 legal expert. The organizers have tasked you with developing a briefing note on the key legal concerns associated with Web 2.0 business models. They recognize that there are many issues that could be addressed. Given the need to focus on the most crucial concerns, they ask that you identify your top three issues. Please provide a backgrounder to each of the three issues and explain why it ranks as one of your top policy priorities.**

**QUESTION THREE – PLEASE ANSWER TWO OF (A), (B), (C), AND/OR (D) – 15 MARKS PER SUB-QUESTION (30 MARKS TOTAL)**

It is January 2008 and the minority Canadian government is about to embark on another parliamentary session. The government is seeking to attract the interest of the “youth vote” by increasing its focus on technology law issues. It seeks your views on the following legislative priorities:

- (a) A copyright bill that implements the WIPO Internet treaties
- (b) An anti-spam bill
- (c) A privacy reform package that addresses the recommendations contained in the PIPEDA review report
- (d) A new media policy agenda that includes net neutrality

**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 – 15 ADDITIONAL MARKS**

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