

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

January 2010

Professor Michael Geist

INSTRUCTIONS:

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

PICKING UP THE EXAM

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. It must be returned by 4:30 pm.

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

ALTERNATIVELY

1. Visit <http://www.gmail.com>
2. Logon with:

ID – geistexamsubmission

Password – ottawalaw

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 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. Further, if you have concerns about receipt, you can send a backup copy to the Secretariat at clawacad@uottawa.ca.

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 125 marks for LL.M. students.

With the exception of Question 2, 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.

Questions about the exam will be accepted via email at mgeist@pobox.com until 10:00 am. If the question can be answered, the answer will be posted on the course website at that time. If your question is not answered, you should state your assumptions regarding the issue in your answer.

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 – 45 MARKS

Yourdata Inc. is a software company based in Los Angeles, California that creates and operates various online games. The games typically require players to provide personal information regarding their consumer preferences as they play. Yourdata collects this personal information and offers it for sale to other marketing companies. Its most successful game is Farmvillage, which was launched in 2008 and is available both online at Farmvillage.com as well as a popular new application for Facebook. Farmvillage allows users to tend to their virtual farms and to collect points toward new equipment for these virtual farms. There is also a community element to Farmvillage where players enter into chat rooms to engage in open discussions.

Yourdata has no offices in Canada. The computer servers used to run Farmvillage are based in the United States. There are approximately 100,000 Canadian users of Farmvillage. Yourdata recently applied for a Canadian trademark for the word “Farmvillage.” That trademark has not been formally granted.

When a user signs up to play Farmvillage, they create a user name and password. Below the user name and password is an icon that says “Start Farming.” Users click the icon to begin playing. At the bottom of the page is a link to the site’s terms of use. The terms include a privacy policy that notifies the users about the collection, use, and disclosure of their personal information. It also advises that the online chat forum is not moderated and that the company is not responsible for any of the discussion. The agreement states that players are presumed to have agreed to the terms by playing the game.

The success of Farmvillage has suddenly attracted increased legal scrutiny. This includes:

1. Dwight Shrewd is a Canadian farmer who registered Farmvillage.ca in 2006. He has used the site since the registration to sell beets and other vegetables to a global clientele. He is concerned that people are confusing his site with the Farmvillage.com site. This has resulted in increased traffic (leading to higher bandwidth costs from his ISP) but no evidence of increased sales.

Please advise Dwight on whether he can use the ICANN UDRP to contest the Farmvillage.com domain name registration. Your answer should explain the key elements of the policy and assess whether Dwight can successfully mount a case.

2. Pam Beasel lives in Toronto and has grown increasingly concerned with the amount of time her children spend playing Farmvillage. She is particularly concerned with how the game collects personal information and how the company may use the information for commercial purposes. Following the recent Facebook decision from the Privacy Commissioner of Canada, Pam filed a complaint with the Privacy Commissioner over Yourdata’s privacy practices.

Please advise the Privacy Commissioner of Canada on whether the office can assert jurisdiction in order to investigate the case. Moreover, in the event that it proceeds with an investigation, please advise the office on the key privacy law issues that arise from Yourdata's operations with specific reference to the relevant PIPEDA provisions.

3. Michael Scotch is an active Farmvillage player from Winnipeg, Manitoba. Scotch spends hours on the site tending to his farm and regularly participates in the online chat forum. Recently, another player posted a hostile rant about Scotch, making disparaging remarks about his virtual farm and his personality. Scotch was furious with the posting and demanded a retraction. When none was forthcoming, he threatened to sue Yourdata in both Manitoba and California over the postings, arguing that the company is the publisher of the comments. Yourdata has not responded to the Scotch demand.

Yourdata has approached you for legal advice on the Scotch demand. Please provide advice on its liability risk should Scotch proceed with the lawsuits.

QUESTION TWO – MANDATORY QUESTION – 30 MARKS

The terms of use for Facebook can be found at

<http://www.facebook.com/terms.php?ref=pf>

In addition to this eight-page “rights and responsibilities” document, there is a link to a privacy policy, which can be found at

<http://www.facebook.com/terms.php?ref=pf#/policy.php>

While Facebook claims to have adopted a plain language approach to these documents, they remain lengthy and somewhat confusing to the average user. A Canadian consumer group has raised concerns with Facebook about the difficulty of understanding its agreements. The company has agreed to post a plain language, simplified version of no more than 750 words for the two documents combined.

The consumer group has asked you to do the first draft of the plain language Facebook agreement. There is no need to repeat or cover all of the various terms and conditions found in the current Facebook agreement. Your simplified agreement should identify the issues of greatest concern to the average user and explain Facebook's approach to those issues. For the purposes of this exercise, you can consider both the terms of use and the privacy policy together. Your simplified agreement can include new headers, identification of the policies, along with explanations of their implications to the average user. It should not exceed 750 words.

QUESTION THREE – 25 MARKS TOTAL

The Minister of Industry Tony Clement recently stated that establishing a national digital agenda is a top policy priority for 2010. In the same statement, Clement noted a copyright bill and privacy law reforms would form a crucial part of his agenda. You are an advisor to Minister Clement and he is now seeking your advice on the key issues associated with the reforms, the likely areas of contention, potential stumbling blocks, and the ideal policy approach.

Please provide Minister Clement with a memo addressing **ONE** of the following:

- A. copyright reform
- B. privacy reform
- C. a third digital agenda issue other than copyright or privacy

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 – 25 ADDITIONAL MARKS

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