

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

FINAL EXAMINATION

January 2013

Professor Michael Geist

INSTRUCTIONS:

DURATION: SIX (6) HOUR TAKE-HOME (10:00 – 4:00)

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 10:00 am ET. It must be returned by 4:00 pm.

RETURNING THE EXAM

The exam may be returned to Secretariat by 4:00 pm as per the standard rules for take-home exams.

Alternatively, the exam may be returned electronically by 4:00 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.

VALUE of exam is 100% of final grade. The value of each question is indicated on the exam. For JD students, the exam totals 100 marks. For LL.M. students, the exam totals 125 marks.

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 11:00 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.

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

It is recommended that answers be submitted in typewritten form.

SECTION ONE (all students must answer) – 50 MARKS

Nordstrom is a leading retailer in the United States that has recently announced plans to enter the Canadian market. The company is very well known in the U.S., but has no physical presence in Canada and nor any registered Canadian trademarks in its name. While its plans focus primarily on opening dozens of physical stores throughout the country, it has decided to develop a large e-commerce website for the Canadian market in the hopes of developing brand awareness and building customer loyalty in advance of the formal physical entry.

Nordstrom's marketing strategy for the Nordstrom Canada site involves a two-part plan. The first part involves marketing directly to Canadian customers who have previously shopped at Nordstrom stores in the United States or at the Nordstrom U.S. website. Nordstrom collects information on its customers and has compiled a large list of Canadian customers. It plans to use email to send marketing materials to these customers to promote the Nordstrom Canada website.

The second part involves developing a new database of customer information based on customers that visit or shop at a new Nordstrom Canada website. This database will include name, address, shopping habits (including pages visited on the site), purchase history, and any other information that can be gleaned from the use of the site. Nordstrom intends to send this information to its data processing facility in Bangalore, India for analysis. It also plans to make the information available to a Canadian credit card issuer that will offer eligible customers a new Nordstrom Canada credit card.

The company recognizes that the new Canadian website will need to include legal language including terms and conditions as well as a privacy policy. The Nordstrom U.S. website currently features terms and conditions that address a wide range of issues including governing law (State of California), jurisdiction in the event of a dispute (State of California), enforceability of online contracts (binding once the user clicks "I agree"), and a policy that conforms to the DMCA for alleged copyright infringements. The Nordstrom U.S. website also features a brief privacy policy that advises users that it collects personal information which can be used in whatever manner the company sees fit. The company says that both the terms and conditions and the privacy policy meet their needs and they would like to use the same documents on the Nordstrom Canada website.

Target hopes to launch the Canadian website this year at the domain name Nordstrom.ca. Unfortunately, it does not currently own the Nordstrom.ca domain, which is held by Patrick Nordstrom, an engineer in Halifax, Nova Scotia. Patrick Nordstrom registered the domain in 2005, but uses it only to display paid advertising links, some of which link to Nordstrom's U.S. website. The company believes that Patrick Nordstrom registered the domain in the hopes of selling it at a profit. It is reluctant to set a precedent by paying for the domain and would prefer to use the Canadian domain name dispute resolution policy.

Nordstrom has approached you to provide legal advice on its plans for Canadian market. Please provide a memo identifying the legal issues and risks raised by Nordstrom’s plan, discussing any concerns or legal issues in light of Canadian law, and advising on how the company should proceed in order to comply with Canadian law. Your answer should not exceed 1500 words.

SECTION TWO – 50 MARKS (25 MARKS PER QUESTION)

JD Students: Answer 2 of 3 questions

LL.M. STUDENTS ONLY – Please answer all three questions in Section 2. Your exam will be graded out of 125 total marks.

QUESTION A (25 MARKS)

Despite public criticism over its digital economy strategy (or lack thereof), Canadian government officials maintain that they have completed much of the necessary legislative work. In recent years, the government has passed copyright legislation, enacted anti-spam legislation (with new regulations), and fostered significant changes at the CRTC. Industry Minister Christian Paradis is now considering the next stage of the government’s approach.

Paradis has asked you to draft memo providing a recommendation on which one of the following issues should be prioritized:

- 1. Privacy reform, including Bill C-12 and PIPEDA review**
- 2. Lawful access**
- 3. Next round of copyright reform**

Your memo, which should be no more than 700 words, should include a brief contextual history of the issue, the likely areas of controversy (if any), and your reasons for the recommendation.

QUESTION B (25 MARKS)

The Oxford Union, one of the world’s leading debating societies, is planning a debate on Internet regulation. The following is the proposition:

“This House believes that new Internet regulations are rarely designed to facilitate Internet commerce or serve the best interests of Internet users but rather are promoted by established stakeholders seeking to leverage legal or regulatory processes to create entry barriers to new competitors.”

Writing no more than 700 words, draft an opening statement that either supports or opposes the proposition.

QUESTION C (25 MARKS)

The OECD has a well-earned reputation as a leading international organization in developing global best practices in the technology law field. From the first e-commerce ministerial meeting in Ottawa in 1998, it has prided itself in identifying the best policy approaches and promoting them throughout its member states.

The OECD has sent a questionnaire to the Canadian government seeking two examples of “made in Canada” Internet law policies that could serve as models for the rest of the world.

Writing no more than 700 words, respond to the OECD request, identifying two examples and explaining why they should serve as a model for other countries.