

6.805/STS085 Midterm

22 March 2001

This is an open-book exam. You can use any reference material you like.

Instructions

This exam asks you to discuss two scenarios that take place in a hypothetical future in the year 2014. Respond to each scenario, drawing on your knowledge of Internet law as it exists today. In other words, make the (ridiculous) assumption that, except where explicitly mentioned below, there will be no additional statutes or court decisions between now and 2014 that you would need to consider.

In discussing the issues raised by each scenario, be sure to state the legal principles that you believe are relevant *and also* discuss how those principles would apply to the question you are addressing. You are encouraged to cite case names and specific statutes, but you should not provide long, verbatim quotations.

You will probably need to use more than one exam booklet. Be sure to number the booklets and write your name on each booklet.

Note on using laptops: You may use a laptop to compose your answers, although we suggest that you use the exam booklets instead. If you do use a laptop, *you must turn in your answers to Hal by 15 minutes after the exam ends – no exceptions.* You can save your answers on a floppy, or you can send them by email to hal@mit.edu. If you do use a laptop, you accept all responsibility and all consequences for anything that goes wrong (losing your work in a system crash, writing an unreadable floppy, lossage in the email system, etc.). This is called “liability” ☹

Grading

Questions A and B below carry equal weight and you should answer them both. Be sure to allow adequate time to respond to each question.

Credit will be awarded primarily for the quality of your analysis, more so than reaching the correct conclusion. In some cases, there are clearly correct legal conclusions to be drawn, while in some cases, a variety of legal arguments could be correct. A well-reasoned but incorrect conclusion is worth more than a poorly reasoned discussion that asserts the correct answer.

Background for both questions

By the year 2014, the Wireless Internet Protocol Forum version 3.11 (WIPF311) standard for mobile data communications services has become the dominant means of digital information transport all around the world. With the exception of a few States that fear political unrest and cultural upheaval (China, North Korea, and Sadaam Hussein Jr.'s Iraq), these services are ubiquitously available at low prices through a variety of access devices: from mobile phones, PDAs, PCs, pay-per-use kiosks in public places, in the dashboard of most cars, and so on.

The services used through WIPF look very much like today's World Wide Web services, although WIPF offers several important new features:

- ? *Location and state-based services:* both client and server-based services have access to precise data about the physical location of the client device. The network also detects other "state" information such as whether a given user's device is on or off, engaged in another communications session, etc.
- ? *Rich metadata:* Unlike today's World Wide Web, most data accessible through WIPF311 comes with a rich set of metadata (e.g., XML tags), specifying attributes such as document author, copyright holder, what kinds of personal information is collected by the given service. There is also 3rd party metadata offered by independent providers, including whether a given piece of content is appropriate for a given age range or religious persuasion, whether a service's stated privacy policy should be trusted, etc.
- ? *Speech processing:* The WIPF offered a full range of both speech recognition and speech synthesis tools. Technological advances since the early days of tools such as ViaVoice from the first decade of the 21st century have made speech services genuinely useful and all but eliminated the need for keyboards.
- ? *Authentication services:* WIPF offers trusted and reliable identity services, which enable users to prove their identity to other users or services at a distance across the network.

WIPF311 services are provided by the successors of the 20th century wireline telephone and cell phone providers.

Question A

The Wireless Decency Act of 2013: A Memo to the Public Policy Director of the Wireless Freedom Foundation (WFF)

In 2013, United States Senator James Exon IV (D-NE) introduced the Wireless Decency Act (WDA), claiming that children around the US are gaining access to inappropriate, sexually explicit materials over WIPF311 services. Concerned about the welfare of the nation's children, the Congress passed his bill 1 month after it was introduced. No hearings were held in either house.

The provisions of the WDA are identical to the Communications Decency Act of 1996, struck down by the US Supreme Court in *Reno v. ACLU*, except for the following changes:

1. The provisions of the CDA explicitly apply to all WIPF311 data and WIPF311 service providers.
2. An additional defense is added to the ones originally in the CDA, providing complete immunity from prosecution to any content provider who labels its content with metadata identifying it as indecent, provided that the metadata technology conforms to current industry technical standards.

Even before the WDA is passed, the WFF (a non-profit advocacy organization, based in Columbus, Ohio, whose mission is to support the human rights of WIPF311 users worldwide) determines that it must stop Congress from making the same mistake twice in two decades.

You have been asked by the WFF Public Policy Director to write an internal memo evaluating the constitutionality of the WDA. As this is an internal strategy memo, you should consider reasons that this Act might be constitutional, as well as reasons it might not be constitutional. Based on your conclusion as to the Act's constitutionality, you should also make recommendations on strategy for either lobbying or First Amendment litigation.

Question B

AOL-Time Warner-Verizon-DaimlerChrysler-LL Bean "Drive Center"

The globalization and corporate consolidation trends begun in the late 20th Century have continued apace until now, the year 2015. Seeking to leverage its considerable breadth of consumer services, AOL-Time Warner-Verizon-DaimlerChrysler-LL Bean (ATWVDCLLB) has recently introduced a new comprehensive package of on-road services called "Drive Center." Drive Center offers customers the convenience of one-stop-shopping access to services including:

- ? maps, directions and location-finder services
- ? customized in-car entertainment individually-tailored to each passenger
- ? en route gift-buying services, promising delivery at or before your arrival time

All of these services are provided on board ATWVDCLLB-equipped vehicles, or through any WIPF311 device at all. Needless to say, some of the services listed above are delivered with targeted product/service advertisements promoting either ATWVDCLLB or other products.

As General Counsel to the ATWVDCLLB Drive Center division, you have a very challenging job. Legal questions come your way on a regular basis. Respond to the two queries on the following pages:

Query B1: FBI request for records

Jane Quick is the owner of a ATWVDCLLB Drive-Center equipped vehicle. The FBI suspects that she may be using this vehicle to transport stolen decoder chips that unlock access to all ATWVDCLLB satellite TV services for free. If she is doing so, this would violate federal law.

FBI Special Agent Frank Ruiz obtains a search warrant to recover the chips from Quick's car. (Ruiz had to get a search warrant because Quick lives in her car full time. In reaction to the millions of Americans who now live in their automobiles, the US Supreme Court recently ruled the "a person's car is his home is his castle.")

Agent Ruiz happens to spot Quick's car and stops it on a highway. As he is pulling her over, Ruiz notices that she appears to be talking on a headset to someone else. Upon presenting the warrant and recovering a box that appears to contain the contraband chips, Ruiz also demands that Quick provide him a complete copy of the car's computer memory, which would include a record of Quick's recent communications (both contents and transactional records) as well as a log of her recent travels.

Feeling that he is now hot on the trail of an international entertainment theft ring, Ruiz obtains a court order to obtain all of Quick's communications from her car. This order is served on you, as General Counsel of ATWVDCLLB.

In talking with you when the order is served, Ruiz also demands access to all of the files ATWVDCLLB has on Quick, both her data and any information you have compiled about her. Ruiz also asks you for the records of John Smith, to whom Quick recently had flowers delivered through the Drive Center gift service.

How do you respond to Ruiz? What advice do you offer to Quick's defense attorney? (This legal assistance to the defense is part of the ATWVDCLLB Drive Center full service package.)

Query B2: Chat rooms and defamation

The ATWVDCLLB Drive Center service is so successful that Saab (Europe's only remaining independent automobile manufacturer) is considering acquiring all of ATWVDCLLB just to get access to Drive Center.

In reaction to the planned acquisition, some ATWVDCLLB customers begin a series of actions designed to block this deal. They don't want their service disrupted, and they fear that prices will increase under Saab ownership. The activists use ATWVDCLLB-operated chat rooms to discuss protest tactics and begin a smear campaign to challenge the integrity of the CEO of Saab.

ATWVDCLLB management responds by shutting down the chat rooms used by the disgruntled customers. But before this happens, the CEO of Saab (who is no longer so sure about the deal) declares that he is going to sue ATWVDCLLB for defamation. Your boss asks for a legal assessment of this entire mess.