

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

FINAL EXAMINATION

January 2011

Professor Michael Geist

INSTRUCTIONS:

DURATION: SEVEN (7) HOUR TAKE-HOME (9:00 – 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 9:00 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. The exam totals 100 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 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.

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

It is recommended that answers be submitted in typewritten form.

QUESTION ONE – 50 MARKS

Target 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 hundreds 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.

Target hopes to launch the website this year at the domain name Target.ca. Unfortunately, it does not currently own the Target.ca domain, which is held by Jonathan Target, a computer programmer in Edmonton, Alberta. Jonathan Target registered the domain in 2003, but uses it only to display paid advertising links, some of which link to Target's U.S. website. The company believes that Jonathan Target 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.

One of the most popular aspects of the Target U.S. website is a feature that allows users to rate and comment on the products for sale at the site. Below each listed product, the company gives users the ability to rate the product on a scale between 1 and 10 and to provide any additional comments they see fit. The company does not moderate or monitor the ratings or comments. It has received occasional complaints about specific ratings or comments, but has taken no action to resolve those concerns. It hopes to replicate the feature on the Target Canada website.

Target's marketing strategy for the Target Canada site involves a two-part plan. The first part involves marketing directly to Canadian customers who have previously shopped at Target stores in the United States or at the Target U.S. website. Target 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 Target Canada website.

The second part involves developing a new database of customer information based on customers that visit or shop at the Target 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. Target intends to send this information to its data processing facility in the U.S. for analysis. It also plans to make the information available to a Canadian credit card issuer that will offer eligible customers a new Target Canada credit card.

The company recognizes that the website will need to include legal language including terms and conditions as well as a privacy policy. The Target U.S. website currently features terms and conditions that address a wide range of issues including governing law (State of Minnesota), jurisdiction in the event of a dispute (State of Minnesota), enforceability of online contracts (binding once the user clicks "I agree"), and a policy

that conforms to the DMCA for alleged copyright infringements. The Target 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 Target Canada website.

Target has approach you to provide legal advice on its plans for Canadian market. Please provide a memo identifying the legal issues and risks raised by Target’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. There is no word limit for the answer to this question.

QUESTION TWO – 25 MARKS

Bill C-28, the government’s anti-spam bill received royal assent in December 2010. With the House of Commons set to resume later this month, House Leader John Baird is working to prioritize the government’s legislative agenda. He recognizes that there are many Internet and technology law issues that could be addressed, but he has determined that only one bill can go forward through the legislative process this spring.

Baird has asked you to draft memo providing a recommendation on which one of the following bills (or groups of bills) should be prioritized:

1. Bill C-29
2. Bill C-32
3. Bills C-50, 51, and 52

You memo, which should be no more than 800 words, should include a brief contextual history of the bill, an explanation of its key substantive provisions, the likely areas of controversy (if any), and your reasons for selecting it as the top Internet legislative priority.

QUESTION THREE – 25 MARKS TOTAL

The Canadian government has grown increasingly concerned with the lack of new Internet companies choosing to call Canada home. In order to attract more companies, it has decided to launch a new campaign designed to make the case that Canada is an ideal place to start an Internet business. The campaign documentation will feature several components including sections on the skilled workforce and government funding programs.

You have been asked to draft a section on the Internet law and policy framework.

Writing no more than 800 words, please draft a document that identifies at least two legal issues where Canada provides an advantageous legal framework. Your answer should briefly describe each issue, explain the Canadian approach, reference the difference between Canadian and foreign laws (where applicable), and discuss why the Canadian approach is a good one. Your answer may include both current laws and proposed laws presently before the House of Commons.