

**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)

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 THREE (3) pages (including the instructions).

It is recommended that answers be submitted in typewritten form.

QUESTION ONE – 50 MARKS

Purelytracks is a leading online and offline music seller of both physical CDs and MP3 files. The company's head office is located in British Columbia. 95 percent of the company's revenues are generated through its very large network of physical retail outlets located throughout British Columbia.

In recent years, the company has placed increasing emphasis on its online presence at purelytracks.com. The website allows for the purchase of music files by credit card payment and subsequent download. Before payment and download, users can sample 20 seconds of any music file before buying. If the user likes the song, they need only click on an "I Want My MP3" button and the full file is downloaded and their credit card billed as appropriate.

Users can also click on a "Tunes Terms" link located at the bottom of the website. It advises that the company is located in B.C. and that any disputes shall be governed by the law of that province. The website also allows users to subscribe to a mailing list and to order catalogues and other promotional material. Given the need for a responsive web presence, the company uses a server farm in Northern California for hosting its website.

Thus far, only 19 of the thousands of users downloading music files via the website since its launch in 2001 have come from Ontario. Only 105 users on the mailing list (out of a total of 11,500 subscribers) are from Ontario. No user from Ontario has requested a catalogue or other promotional material.

- a. Steve Work is one of the users in Ontario who has downloaded music files from Purelytracks' website. Purelytracks knew that Work is from Ontario, as he declared his physical address in a registration form. Work has advised the company that he intends to sue it in Ontario court on a breach of contract claim. Work's claim is worth \$10,000 and relates to music purchased for his personal use.
- b. Purelytrack is an Ontario company, which owns the trademark for "Purelytrack". It operates a series of public recording studios that allow aspiring musicians to record their music for personal and commercial purposes. Purelytrack has informed Purleytracks that it also intends to sue it in the Ontario court system on both trademark and economic tort grounds.
- c. Britney Timberlake is a famous pop star and an Ontario resident who claims to have been defamed in the gossip column hosted on the Purelytracks website. This gossip column is called "B.C. gossip" and is an online edition of the music & cinema part of a local B.C. magazine. Timberlake plans to sue Purelytracks in Ontario for defamation.

You are a junior lawyer at a law firm representing Purelytracks. A firm partner has asked you to draft a memo sorting through the jurisdictional issues raised by

these three prospective lawsuits against the firm's client. Citing relevant caselaw and legal doctrine, please draft a memo to analyzing each respective case, advising on the likelihood that the Ontario court will assert jurisdiction over the matter, and formulating possible arguments that Purelytracks might raise in a motion to contest jurisdiction.

QUESTION TWO – 25 MARKS

You are the Deputy Minister of Industry Canada. The Minister has become engaged on Internet policy issues and asked for your views on two of the following four issues:

- (a) Developing mandatory security breach disclosure requirements
- (b) Increasing law enforcement Internet surveillance capabilities
- (c) Identifying the optimal approach for intermediary liability
- (d) Addressing concerns associated with competition for Internet access services

Please provide the Minister with a memo addressing two of the four issues noted above. Your memo should include a brief overview of the current Canadian legal framework, references to alternative approaches, and an assessment of how, if at all, Canadian policy should change on your selected issues.

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.