Exam No.

INFOLIBERTIES
Privacy, Free Speech, and Access to Information in the Information Age
Professor Susan M. Richey
Fall 2000—Final Exam

***General Instructions*:**

This exam has three short essay questions, with multiple subparts, worth a total of 80 points. ***The questions are not evenly-weighted, so, allocate your time accordingly.***

The exam is open-book and you may take any written material that you wish into the exam with you. ***Do not work with any of your classmates during the exam.***

Do not use a blue book. Please confine your responses to the lined area of this exam but do not feel compelled to fill the entire lined area.

You have 2 hours to complete the exam unless otherwise stated by the proctor.

1. Two former employees of Omnipot, a credit reporting agency located in New Hampshire, have transmitted anonymous e-mail messages to all of Omnipot's current employees, disparaging leadership of the company. The messages state that the CEO of Omnipot frequently indulges in alcohol consumption during the work day and performs his duties incompetently when he is sober. The messages threaten to hack into a competitor's website and transmit streaming video showing Omnipot's CEO collapsed in a drunken stupor in the men's bathroom. In addition, the messages indicate that the CEO's credit rating has been damaged by his alcoholism and they threaten to make details of his embarrassing financial information public in the next e-mail. The CEO of Omnipot is certain that the video referred to has been obtained from hidden cameras mounted throughout Omnipot's facility by the company's Security Director, at the behest of management. He knows that his financial information was most likely obtained when the employees worked for the company and had access to its massive database of credit records. On behalf of himself individually and Omnipot, the CEO files suit against the two employees for commercial defamation of the company, libel of the CEO, and invasion of the CEO's privacy. The two former employees are designated as Doe defendants, i.e., defendants whose names are not yet known.

(a) (12 pts.) The plaintiffs have requested issuance of a subpoena directed to the e-mail service provider with whom the messages originated in order to determine the names of the two former employees. As the judge assigned to rule on this case, how would you characterize the competing rights of the parties and how would you rule, given the need to balance those rights?

(b) (12 pts.) The plaintiffs have informed the court that, as soon as the identity of the Doe defendants is known, the plaintiffs will seek a preliminary injunction against any digital display of the video. Assume for purposes of this part of the question only that the Doe defendants voluntarily reveal their identity. How would you rule on plaintiffs' motion for a preliminary injunction, keeping in mind that the video, if sufficiently original, is a copyright-protected work that only the company has the right to display. Briefly explain the basis for your ruling, indicating the extent to which you must take into account the CEO's assertion of a privacy interest.

(c) (8 pts.) Identify the federal statutory scheme that specifically prohibits unauthorized disclosure of individual credit information maintained by Omnipot to third parties? Does this scheme constrain the defendants from their intended disclosure of the CEO's financial information? Please briefly explain your response.

(d) (8 pts.) Assume for purposes of this part of the question only that the CEO will attempt to "get even" with the defendants, once their identity is known, by selling their names, addresses, birth dates, social security numbers, and American Express credit card numbers to an entity known as "IDs Are Us" and suspected of trafficking in counterfeit documents. Identify a New Hampshire state statutory scheme that specifically prohibits the CEO's intended activity in relation to the former employees' credit information and explain how his intended activity falls within that scheme.

2. One afternoon in October, Bridgette O'Rourke used her cell phone to call her sister Ginger in Belfast, Ireland. Bridgette, working in Baltimore, Maryland, made the call specifically to complain about her boss and his female assistant. She had nicknamed the pair, "The Big Guns." Bridgette was convinced that her boss and his assistant were having an affair because they frequently disappeared together at lunchtime only to reappear several hours later. During the call, Bridgette told her sister, "Someday the Big Guns are going to be discovered and then there will be more damage than you can possibly imagine!" U.S. government authorities intercepted the phone call, utilizing Echelon surveillance technology. The authorities were not purposely trying to intercept Bridgette's call; rather they were monitoring calls to and from Belfast at the request of a foreign government concerned about the activity of the Irish Republican Army (IRA), a nationalist group involved in violence in Northern Ireland. Based upon the intercepted conversation, federal agents believed that they had probable cause to enter Bridgette's home without a warrant and conduct a thorough search for a cache of guns intended for the IRA. Although they found no guns, the agents did discover an in-home factory for the manufacture of crack cocaine. Bridgette has been indicted for drug trafficking.

(a) (12 pts.) Is Bridgette likely to be successful in invoking the 4th Amendment to exclude evidence of the in-home crack cocaine factory in her criminal trial and why or why not?

(b) (12 pts.) Assume for purposes of this part of the question only that Bridgette's lawyer and the prosecutor for the U.S. Department of Justice strike a deal and charges against her are dropped in exchange for her testimony on an unrelated matter. Bridgette knows that federal agents were looking for guns when they searched her house but she does not know why, and the prosecutor declines to reveal the reason. What federal legislative scheme may help Bridgette to determine the reason? Is she likely to be successful in her quest and why or why not?

3. (16 pts.) Your client, a toy and game manufacturer, maintains a general audience website for chess enthusiasts and wants to avoid falling under the provisions of the Childrens Online Privacy Protection Act (COPPA). Your client's website includes online tips for playing the game of chess, an online gift shop from which customized chess sets may be ordered as well as other games of strategy carried by your client, and restricted chat rooms in which real time chess games are played. The winner of ten consecutive chess games is awarded free tickets to a current movie. In order to get into the chat rooms, participants must register by filling out a form requiring detailed information on other recreational interests along with identifying personal information such as name, address, phone number, and e-mail address. Your client uses the information to conduct targeted marketing of its own line of toys and games and occasionally sells the information to manufacturers of noncompeting recreational items, such as musical instruments and books. Advise your client regarding the design of his website, including a discussion of language and graphics to be used, advertisements (your client's and others) that will appear on the website, items that will be sold through the online gift shop, details of the form to be completed in order to enter a restricted chat room, and the prizes to be awarded to winners of ten consecutive chess games in the chat rooms. ***Remember, the idea is to help your client avoid having to comply with COPPA, not to help your client comply with the statute.***