

**Internet Law  
Spring 2023  
Final Exam**

This examination consists of **two questions** and **eleven pages**. Your answer has a limit of **3,000 words**, which will be strictly enforced. (This is 1,500 words per question, which is *shorter* than the midterm.) It is due by **11:59 PM on Tuesday, May 16**. Please submit your answer using the instructions provided by the Law Registrar's office.

This exam will be **blind-graded**. You must not put your name or other identifying information anywhere on your answer. In addition, you must not compromise the anonymity of the grading in your communications with me. If you have any technical issues in taking the exam, you must discuss them with the registrar, not with me.

This is an **open-book** examination. You should not need to consult anything beyond the casebook and your notes, but you can if you wish. You are free to discuss the general legal principles we have covered with anyone, including each other.

You are also free to post general **questions** about the material covered in the course, about the exam instructions, or about the *facts* (not the law) in the problems on the exam in the designated discussion area on Canvas. I will answer all questions posted there before 11:59 PM on Friday, May 12.

Aside from the above, **you may not discuss the question** with anyone else until after I have returned your grades. You are also **specifically prohibited** from using any artificial-intelligence or machine-learning system that generates text.

Your work on this examination is subject to the Cornell Code of Academic Integrity, the Law School Code of Academic Integrity, and the Campus Code of Conduct.

## General Advice

Please make your answer as **specific** to the facts of the questions as you can. Generic statements or suggestions, such as “Make sure that all employees follow proper security practices,” will receive few or no points. Use **simple citations** (e.g. “*see Burdick*”) where appropriate. I include **spelling, grammar, clarity, and organization** in my grading. I appreciate the use of headings to organize your answer, but they’re not required. If you find the question **ambiguous** or need to **assume additional facts**, state your assumptions and explain how they affect your answer. No reasonable resolution of an ambiguity will be penalized.

Assume for purposes of the exam that **present-day law** has been fully in effect at all relevant times. Unless otherwise noted, **all names are fictitious**. Please disregard any resemblance to actual persons, places, or institutions.

I have provided lightly reformatted versions of ChatGPT-produced answers to the exam questions in the appendix. To be clear, these are **bad answers**. You may find it useful to read them and ask yourself: which issues did ChatGPT miss entirely? What did it get wrong?

## The Voyage of the Algo

Jersey Computer and Network (JCN) has developed a new AI virtual assistant, called Jason. It works by picking up one end of a Zoom, FaceTime, Skype, or Microsoft Teams video call. The user at the other end of the call sees a highly realistic animation of a person sitting at a desk in an office. Jason listens to the user's words and uses them as prompts for a large language model (LLM). The output of the LLM is then used to synthesize a realistic human voice speaking the words (like Siri or the Google voice assistant). This voice synthesis is synced up with the animation so that the person at the desk appears to be speaking the words, with natural head movements, gestures, and body language.

Jason's LLM was trained on the complete contents of the publicly available web as of December 2022. JCN downloaded every webpage that did not require a username and password to access. It ignored all robots.txt files. The resulting LLM has capabilities roughly equivalent to ChatGPT as of May 1, 2023. It does not have any limitations on what subjects it will give answers on.

Jason can be customized in two ways. First, the LLM can be given instructions as to the personality it should adopt and the style it should use. For example, it can be instructed, "You are a librarian. You will respond to questions by directing the user to the most relevant and useful sources of information you know about." Or, it could be instructed, "You are are a pirate captain. You will tell the user about your adventures on the high seas.." These customizations are called *personas*.

Second, Jason can be customized with a person's voice and likeness. The process requires about 90 minutes of audio of them speaking, and about 30 photographs of them from different angles and in different lighting. The resulting animation will look and sound like so much like that person that someone who does not already know them will not be able to tell the difference. (Someone who does know the person already will be able to tell that it doesn't talk just like them or move its body just like them.) These customizations are called *avatars*.

JCN initially made Jason available to the public by providing a website on which users can click a button to start a video call with "Atalanta, your virtual reference assistant." Atalanta uses Jason's librarian persona and an

avatar based on an actress who agreed to allow JCN to use her voice and likeness. JCN charged users ten cents per minutes of use. After two weeks of success with Atalanta, JCN made Jason's pirate persona available as "Roger" for free sessions of up to five minutes. Roger's avatar was based on an actor who agreed to the use. This also went over well, so JCN rolled out dozens more assistants.

And then the lawsuits started. JCN has now been sued by:

- Telamon Aeacus, who claims that his son Ajax was traumatized when Roger threatened to keelhaul Ajax and make him walk the plank.
- Medea Colchis, who claims that Atalanta answered her questions about how to remove a mole by directing her to the website Useful Home Remedies, which said to pour bleach on it. Colchis did, and suffered serious burns as a result.
- O.R. Fyneux, a musician and songwriter, who alleges that JCN scraped the pages of his website with the lyrics to his songs, in violation of copyright law and the CFAA. Fyneux claims that at all relevant times the site had a robots.txt file prohibiting all access by all scrapers. Fyneux claims that the Ida Songwriting assistant on the Jason platform sometimes produces lyrics that resemble theirs.
- Leo Herc, a well-known actor, who alleges that his face and voice were used as the basis for the Personal Trainer assistant, which gives you workout advice.

In addition, the Troy Police Department has requested access to all of Pelias Iolcus's conversations with the TherapyBot Jason assistant. According to the TPD, Iolcus is a suspect in the theft of looted ancient artifacts and there is evidence that he may have discussed his crimes with TherapyBot. TPD wants recordings of all of Iolcus's conversations with TherapyBot, and has asked what level of legal process JCN will require to provide such recordings.

You have been hired as JCN's general counsel after its previous GC quit to go on a four-month cruise in the Aegean.

*Write a memorandum to JCN of 1,500 words or fewer describing the merits of the lawsuits it faces.*

## Will Somebody Please Think of the Users?

You are a member of the litigation and policy counsel team at NetChoice, the technology industry association that is the lead plaintiff in the *NetChoice v. Paxton*, *NetChoice v. Attorney General*, and *NetChoice v. Bonta* cases we discussed this semester. Your members include Google, Meta, Amazon, Airbnb, Etsy, and many other well-known Internet companies. The following bill has just been introduced in the West Dakota legislature and you have been asked to prepare a briefing memo on it.

### State of West Dakota House Bill 1337

WHEREAS large technology companies have for too long profited at the expense of the citizens of West Dakota.

#### NOW BE IT ENACTED

#### SECTION 1. Definitions.

(a) "Internet platform" means an service that provides the ability to send or receive information by means of the Internet and which has been used by more than 50,000 residents of West Dakota in the preceding month.

(b) To "discriminate" against content means to remove, delete, downrank, shadowban, or otherwise reduce the visibility of that content to users.

#### SECTION 2. Age Restriction.

An Internet platform shall not provide service to a minor without the consent of the minor's parents.

#### SECTION 3. Non-Discrimination.

An Internet platform shall not discriminate against any lawful content.

#### SECTION 4: Fraud Prevention.

(a) An Internet platform shall not transmit or display to any user within the state of West Dakota any ponzi scheme, cryptocurrency initial coin offering, extended warranty alert, or any other message that is or has a high likelihood of being fraudulent.

(b) Any Internet platform that violates subsection (a) shall be liable to any victim of the fraud to the extent of the victim's losses.

#### SECTION 5: Suicide Prevention.

(a) No person within West Dakota shall post, and no person outside of West Dakota shall post in a manner accessible to persons within West Dakota, any material that promotes, encourages, or endorses the suicide of a specific person.

(b) An Internet platform that has actual knowledge of material accessible through its service in violation of subsection (a) shall take immediate action to make such material inaccessible.

#### SECTION 6: Law Enforcement Access

An Internet platform shall provide all information in its possession pertaining to a user, including the contents of that user's communications by means of its service, to any state or local law enforcement agency upon receipt of a written demand from that agency.

*Write a memorandum of 1500 words or fewer to the president and general counsel of NetChoice analyzing HB 1337 and recommending how NetChoice should respond. What options do its members have to comply with HB 1337's requirements? Would doing so create any additional legal risks for them? Which of its provisions could NetChoice or its members successfully challenge in court, and on what grounds?*

## APPENDIX

*ChatGPT-Produced Answer to Question 1:*

### MEMORANDUM

**To:** JCN's Senior Management

**From:** General Counsel

**Subject:** Merits of Lawsuits against JCN

#### *Introduction*

Jersey Computer and Network (JCN) has been sued by several parties claiming that its virtual assistant, Jason, has caused harm or violated their legal rights. This memorandum discusses the legal merits of each lawsuit and the potential defenses available to JCN.

#### *Telamon Aeacus v. JCN*

Telamon Aeacus's son, Ajax, was allegedly traumatized when Roger, the pirate persona of Jason, threatened to keelhaul Ajax and make him walk the plank. Although JCN's use of Jason's pirate persona may have been meant to be amusing, threatening violence is not acceptable. JCN may be held liable for intentional infliction of emotional distress and negligence if it is determined that JCN failed to exercise reasonable care to prevent the harm that Ajax suffered.

#### *Medea Colchis v. JCN*

Medea Colchis claims that Atalanta, JCN's virtual reference assistant, directed her to pour bleach on a mole, causing serious burns. If Atalanta provided negligent advice that caused harm, JCN may be held liable for negligence. However, if Atalanta provided general information and Colchis misinterpreted it or used it improperly, JCN may not be liable.

#### *O.R. Fyneux v. JCN*

O.R. Fyneux alleges that JCN violated copyright law and the Computer Fraud and Abuse Act (CFAA) by scraping the pages of his website with lyrics to his songs, despite his robots.txt file prohibiting all access by all scrapers. JCN's failure to comply with the robots.txt file could constitute a

violation of the CFAA. If JCN reproduced Fyneux's lyrics without permission, it could be held liable for copyright infringement.

*Leo Herc v. JCN*

Leo Herc claims that JCN used his face and voice to create the Personal Trainer assistant without his permission. JCN's use of Herc's likeness may violate his right of publicity, which protects an individual's commercial interest in their identity. JCN could also be held liable for invasion of privacy if it is determined that JCN intruded into Herc's private affairs.

*Pelias Iolcus v. JCN*

The Troy Police Department has requested access to all conversations between Pelias Iolcus and the TherapyBot Jason assistant, alleging that Iolcus may have discussed his crimes with TherapyBot. JCN may be required to comply with the request if it is determined that the recordings are relevant to an ongoing criminal investigation. However, JCN may have a duty to protect the privacy of its users and may be required to obtain legal process before providing the recordings.

*Conclusion*

JCN faces significant legal challenges from the lawsuits described above. To defend against these lawsuits, JCN may need to show that it acted with reasonable care to prevent harm, obtained appropriate permissions, and complied with applicable laws and regulations. JCN may also need to adopt policies and procedures to prevent similar legal challenges in the future.



*ChatGPT-Produced Answer to Question 2:*

**To:** President and General Counsel of NetChoice  
**From:** Litigation and Policy Counsel Team  
**Subject:** Analysis of West Dakota House Bill 1337 and Recommended Response

*Introduction:*

This memo provides an analysis of West Dakota House Bill 1337 and recommends how NetChoice should respond. The bill contains provisions that could negatively impact NetChoice and its members, including age restrictions, non-discrimination, fraud prevention, suicide prevention, and law enforcement access. Our team has reviewed the bill and recommends that NetChoice should take action to challenge its provisions.

*Analysis:*

*Section 2: Age Restriction*

Section 2 of the bill requires an internet platform to obtain parental consent before providing service to a minor. While this provision is intended to protect minors from harmful content, it could create significant compliance costs for NetChoice and its members. To comply with this provision, NetChoice and its members would need to develop and implement an age verification system, which could result in a significant decrease in user engagement.

Moreover, the provision could conflict with federal law, such as the Children's Online Privacy Protection Act (COPPA), which already regulates the collection of personal information from minors. Compliance with COPPA requires a parental consent mechanism, and imposing additional age verification requirements would impose significant compliance costs and confusion.

*Section 3: Non-Discrimination*

Section 3 of the bill prohibits an internet platform from discriminating against any lawful content. While this provision appears to be aimed at preventing censorship by internet platforms, it could create significant legal risks for NetChoice and its members.

Internet platforms are currently protected from liability for content posted by third parties under Section 230 of the Communications Decency Act. If this provision is enacted, internet platforms would be required to allow all content regardless of its legality, exposing them to potential liability for illegal or harmful content. It is also unclear how the provision would be enforced and whether it would be feasible for internet platforms to comply with it.

#### *Section 4: Fraud Prevention*

Section 4 of the bill prohibits internet platforms from transmitting or displaying messages that are fraudulent or have a high likelihood of being fraudulent. While this provision may be well-intentioned, it is overly broad and could impose significant compliance costs on NetChoice and its members.

To comply with this provision, NetChoice and its members would need to develop and implement a system to identify and remove potentially fraudulent messages. This would be a time-consuming and expensive process that could negatively impact user experience. Furthermore, the provision would create additional liability risks for NetChoice and its members if they fail to identify and remove fraudulent messages.

#### *Section 5: Suicide Prevention*

Section 5 of the bill prohibits any person from posting material that promotes or encourages suicide, and requires internet platforms to take immediate action to remove such content. While suicide prevention is an important issue, this provision could create significant compliance costs for NetChoice and its members.

To comply with this provision, NetChoice and its members would need to develop and implement a system to identify and remove potentially harmful content related to suicide. This would be a time-consuming and expensive process that could negatively impact user experience. Additionally, the provision could be difficult to enforce, as it is not clear how internet platforms would be able to identify and remove content that promotes or encourages suicide.

### *Section 6: Law Enforcement Access*

Section 6 of the bill requires internet platforms to provide all information in their possession to law enforcement upon receipt of a written demand. This provision could create significant legal risks for NetChoice and its members, as it conflicts with federal law that regulates the disclosure of user data to law enforcement.

The Electronic Communications Privacy Act (ECPA) establishes procedures for law enforcement to access electronic communications and prohibits internet platforms from disclosing user data without proper legal process. The Supreme Court has held that individuals have a reasonable expectation of privacy in their electronic communications, and that searches must generally be supported by a warrant issued upon probable cause. While there are certain exceptions to this rule, such as exigent circumstances, it is unlikely that a blanket requirement for Internet platforms to turn over user data upon written demand would meet the legal standard for a permissible search.

### *Conclusion*

In conclusion, NetChoice and its members have several options to comply with the provisions of HB 1337, but doing so may create additional legal risks for them. Some provisions of the bill, such as the age restriction in Section 2 and the fraud prevention measures in Section 4(a), may be feasible for Internet platforms to implement without violating their legal obligations or facing significant legal challenges. However, other provisions of the bill, such as the content moderation requirements in Section 3 and the law enforcement access provisions in Section 6, would likely be challenged in court as unconstitutional or preempted by federal law. NetChoice and its members should carefully consider the legal risks and benefits of complying with HB 1337 and engage in a dialogue with West Dakota lawmakers to address their concerns while protecting the rights of Internet users and platform operators.