

Massachusetts Institute of Technology
Harvard Law School

MIT 6.805/6.806/STS085: Ethics and Law on the Electronic Frontier

Midterm Exam

Closed Book

These questions require *short* answers: a couple of sentences up to a short paragraph. Please observe the length guideline given for each question. A longer answer is not a better answer. If you find yourself writing more than this, you are probably on the wrong track. Also, please write *legibly* – illegible answers will be graded unsympathetically, if graded at all.

Question 1: According to Larry Lessig in “Law of the Horse”, there are four basic mechanisms that policy makers can use in attempting to influence people’s behavior. List the four mechanisms. For each one, give a brief example (2 sentences at most) of how this mechanism could be employed to discourage people from doing unauthorized music swapping over the Internet.

Question 2: When viewed as property, information is different from many other forms of property because it is *non-rivalrous*. What does “non-rivalrous” mean? (2 sentences at most)

Question 3: In the case *Eldred v. Ashcroft*, the plaintiffs argue that a certain Act of Congress was unconstitutional, claiming that it violates the provision in Article I Section 8 of the U.S. Constitution, which gives Congress the power:

To promote the Progress of Science and the Useful Arts, by securing for limited Times to authors and inventors the exclusive Right to their respective Writings and Discoveries.”

Which Act do the plaintiffs claim is unconstitutional? Why, according to the plaintiffs, does the Act specifically violate Article I Section 8? (3 sentences at most)

Question 4: Copyright protection gives the author a specific set of rights, as enumerated in 17 USC §106. List three of these rights.

Question 5: According to 17 USC §109, the Court should consider several specific factors in evaluating whether a particular use of copyrighted material qualifies as *fair use*. List two of these factors.

Question 6: Copyright is supposed to cover “expression” not “underlying idea”. Which Supreme Court case, which you read for class, addresses this distinction? What was the example of expression vs. idea in that case? (1 short paragraph at most)

Question 7: If you buy a book, you are legally permitted to resell the book, despite the fact that the work is copyrighted. What provision of copyright law allows this? (1 sentence at most)

Question 8: For many years, it was thought that computer programs *per se* could not be patented. Finally, in a case before the CAFC, the Court ruled that: “a computer operating pursuant to software may represent patentable subject matter ...”. What was the case?

Question 9: In the United States today, if you create an original work, what steps do you need to take in order to obtain copyright on your work? (2 sentences at most)

Question 10: The following phrases, which have entered common speech, all derive from Supreme Court opinion. For each one, say which Supreme Court opinion it derives from:

1. “the remedy for speech is more speech”
2. “shouting fire in a crowded theater”
3. “the marketplace of ideas”
4. “clear and present danger”

Question 11: For many years, “clear and present danger” was the standard used by the Court to evaluate whether advocating violent or lawless acts could be punished under the First Amendment. Eventually, this standard was overturned in favor of a new standard. What was this new standard, and what was the Supreme Court ruling that established the new standard?

Question 12: In *Miller v. California*, the Court established a test for obscenity, which defines obscene material as satisfying three conditions. What are the three conditions?

Question 13: In the November, 2001 appellate ruling in DeCSS case *Universal v. Remeirdes*, the Second Circuit ruled that a prohibition on posting DeCSS would not violate the First Amendment. Which of the following reasons were cited by the Court to justify this decision (more than one answer may be true: list *all* that apply; just list each true answer – don’t give an explanation)

- DeCSS infringes the patent on the CSS algorithm
- computer object code is not protected by the First Amendment
- the prohibition on posting DeCSS is based on the functional elements of the code, not the expressive elements
- DeCSS represents a clear and present danger to the United States
- the District Court’s prohibition on linking is consistent with the First Amendment

Question 14: Briefly explain the major differences between subpoenas and warrants. (one or two sentences at most)

Question 15: In *Olmstead v. U.S.*, the Supreme Court ruled that a certain activity did not violate the Fourth Amendment, because there was no physical trespassing involved. What activity was this?

Question 16: The *Olmstead* ruling was overturned in a subsequent Supreme Court case. The ruling in this case, by Justice Potter Stewart, contains an important phrase that expressed the Court’s new attitude towards the Fourth Amendment. What was the case, and what is Stewart’s famous phrase?

Question 17: The FBI suspects that Brad Beaker, an MIT chemistry post-doc, is using his lab to manufacture illegal methamphetamines. An FBI agent arrives at MIT Information Systems, armed with a subpoena issued by an Assistant US Attorney in Boston. The subpoena directs MIT to give the agent a printout of the entire contents of Beaker’s Athena mail box. How should MIT respond to the agent, and why? (one paragraph)

Question 18: In the Napster case, the Court ruled that Napster could be liable for both contributory and vicarious infringement. What’s the difference between contributory infringement and vicarious infringement? (one paragraph)