

Sample midterm

The midterm will be held in class on Thursday, October 27.

The material on this page is not the midterm -- it is a midterm that we gave in this course a few years ago. We're including it here as an example, so you'll have some idea of what to expect.

Sample Midterm Exam

This is an open-book exam. You can use any reference material you like, so long as you work alone (e.g., no messaging with anyone during the exam).

Instructions

In discussing the issues raised by each scenario, be sure to state the legal principles that you believe are relevant and also discuss how those principles would apply to the question you are addressing. You are encouraged to cite case names and specific statutes, but you should not provide long, verbatim quotations. You will probably need to use more than one exam booklet. Be sure to number the booklets and write your name on each booklet. Note on using laptops: You may use a laptop to compose your answers, although we suggest that you use the exam booklets instead. If you do use a laptop, you must turn in your answers to the staff within 15 minutes after the exam ends: no exceptions. You can save your answers on a floppy and hand them to us, or you can send them by email to 6.805-staff. If you do use a laptop, you accept *all* responsibility and all consequences for anything that goes wrong (losing your work in a system crash, writing an unreadable floppy, lossage in the email system, crash of the global Internet, etc.). This is called "liability".

Suggestions: Take time to outline your answers before diving into the writing. Pay careful attention to the facts presented in each question, but don't automatically assume that every fact mentioned is legally relevant.

Grading

Questions A and B below carry equal weight and you should answer them both. Be sure to allow adequate time to respond to each question. Credit will be awarded primarily for the quality of your analysis, more so than reaching the correct conclusion. In some cases, there are clearly correct legal conclusions to be drawn, while in some cases, a variety of legal arguments could be correct. A well-reasoned but incorrect conclusion is worth more than a poorly reasoned discussion that asserts the correct answer.

Question A - Mobile Video Spam Protection Act

Background

Advances in mobile phone technology in 2004 and early 2005 have brought the wonders of full-motion video conferencing and messaging to all mobile phone users. Federal budget pressures have also led to a sudden decision by the Federal Communications Commission to put all radio spectrum previously allocated to High Definition Television up for auction. With abundant bandwidth and cheap, high-powered mobile phones in the hands of the vast majority of customers, including over 70% of kids over age 10, the mobile phone environment had reached a new plateau of capability and ubiquity. With this success, unfortunately, also came a growing social problem: video spam. By mid-2004, digital video editing is increasingly easy and transport over both wireless and wired networks of all sorts is effectively free. Worse yet, the spam problems that plagued SMTP email in earlier years have only multiplied given the increasing complexity of the mobile phone operating system software. Video spam is everywhere and through a variety of possible hacks can appear on the users screen without warning (known as 'autopopup spam'). A recent study by the National Academy of Sciences estimated that mobile video spam has the following characteristics:

- 80% commercial, 20% non-commercial
- advertising: 45%, sexually-explicit: 25%, political advocacy: 20%, personal appeals: 10%
- targeted to all ages: 83%, targeted to children: 17%
- delivered to inbox: 58%, autopopup: 42%

On 9 June 2005 the United States Congress passed legislation entitled the Mobile Video Spam Protection Act (MVSPA), which President Schwarzenegger signed into law the following week. The Act provides:

1. criminal penalties for anyone who sends mobile video spam (MVS)
2. a defense against prosecution if the sender provides an opt-out mechanism for users
3. a private right of action whereby recipients of MVS may sue senders of MVS for not more than \$10,000 per message received
4. the following definition of mobile video spam:

Mobile Video Spam is any video message sent to the subscriber of a video-message-capable mobile phone where:

- (a) the sender has no prior business or personal relationship with the recipient;
- (b) the message is sent either by being directly addressed to the recipient or reaches the recipient through sender's use of fraudulent routing and/or addressing information; and,

- (c) the message is either commercial or non-commercial in nature
- a severability clause whereby if any provision of the Act is found unconstitutional, the remaining provisions of the Act shall remain in operation.

After hearings in both the Senate and House, the MVSPA passed 90-10 in the Senate and 434-1 in the House. The Act was welcomed by many mobile phone users who have been deluged by unsolicited video streams. However, free speech advocates and others are now considering challenging the Act. As Staff Counsel to the Live Internet VIDEO Foundation (LIVID), a pro-civil liberties advocacy group, you are asked to write a memo assessing the constitutionality of MVSPA and making recommendations on steps that LIVID could take to challenge the Act. Your memo should address the constitutionality of the various provisions of the Act based on the case law studied in class. If you believe there are issues not covered by the cases we read, note those issues as unresolved.

Question B - Indianapolis v. Edmond & the Terrorism Information Awareness Program

You are legislative counsel to the Senate Judiciary Committee. In reviewing the US Department of Defense's reply to questions posed by your committee regarding privacy problems posed by the proposed Terrorism Information Awareness Program, you recall a recent Fourth Amendment case, *CITY OF INDIANAPOLIS et al. v. EDMOND et al.* [531 U.S. 32 \(2000\)](#). Read the majority opinion in case (attached). Write a memo to your boss Senator Hatch regarding the relevance of that case and any others we have studied you believe relevant to the Genisys system as described in the DARPA report to your Committee. For purposes of this question, assume that Genisys includes publicly available data and the following:

- all EZPass toll records
- RFID transactions from the top ten supermarket chains
- Visa & Mastercard charge transactions.

What Fourth Amendment issues are raised? Does the Fourth Amendment analysis change depending on the which of the above information stores are included? Assume that all data is collected pursuant to proper legal requirements.