First, some special procedural instructions for the take-home.

- In your exam answer, create a header so that your exam number appears on each page.
- Save your exam as a Word document, and use the following filename convention: [Your Exam Number]InternetLawExamAnswer
- When prompted for your anonymous ID on TWEN, use your exam number.
- This is an open book, open notes exam, meaning you may refer to your text as well as any noncommercial notes or outlines you have prepared yourself. You may NOT use any other tools. You may NOT use the Internet to try to find additional information for the answers. This is not the moment for irony.
- You have until noon on Friday, Dec. 16 to upload your exam answers. TWEN will time-stamp your exam when you access it and when you submit it.
- If you have difficulties submitting the exam on TWEN, send it as an attachment to Tina Brooks at tina.brooks@uky.edu. Also send a copy to yourself.

This examination consists of ten short answer questions worth 5 points each, six ten-point brief and two twenty-point long essays, for a total of 150 possible points. A maximum word limit has been assigned to each question type; points will be deducted for any excess verbiage.

Please read each question completely before beginning to outline or write your answer. Answer the question that is actually asked. Answer each question fully and completely, but avoid unnecessary digressions. Because of the length of time you have to work on the exam, your answers are expected to show full mastery of the materials and concepts, and not simply that you were a good note taker in class. Put your responses in context, make explicit all assumptions you make, support all legal points with specific statutes, cases or authoritative discussions, and develop your ideas in good style.

All academic endeavors of the students of the University of Kentucky College of Law are governed by the Honor Code. The Honor Code prohibits lying, cheating, stealing, and interference with academic pursuits. Additionally, the Honor Code places on all law students an affirmative duty to report a breach of the Code. A failure to report is itself a violation of the Honor Code.

In Turning in This Exam, I Hereby Pledge on My Honor as a Student That I have Neither Given nor Received any Unauthorized Aid on this Exam.
PART I: SHORT ANSWERS [200 words each]: Answer ten of the questions below [5 points each].

1. “For Stelios, the teletransporter is the only way to travel. Previously it took months to get from the Earth to Mars, confined to a cramped spacecraft with a far from perfect safety record. Stelios’s TeletransportExpress changed all that. Now the trip takes just minutes, and so far it has been 100 percent safe.

“However, now he is facing a lawsuit from a disgruntled customer who is claiming the company actually killed him. His argument is simple: The teletransporter works by scanning your brain and body cell by cell, destroying them, beaming the information to Mars and reconstructing you there. Although the person on Mars looks, feels and thinks just like person who has been sent to sleep and zapped across space, the claimant argues that what actually happens is that you are murdered and replaced by a clone.” – *The Pig that Wants to be Eaten*.

For reasons beyond our comprehension, this case will be settled according to the rules of internet and copyright law. According to the ReDigi court, was there a murder? Briefly explain.

2. Yelp, the online review site, deleted positive reviews about a New York dentist, leading to a defamation suit. Is Yelp protected by CDA §230? Why/Why not?

3. Given that jurisdiction is a function of interactivity and commercial activity, if static page gets revenue from ads based on number of visitors, what outcome under Zippo?

4. Compare *Inset* and *uBid*. What accounts for the courts reaching directly opposite conclusions about jurisdiction and website accessibility?

5. A client with a secure website that can be accessed only through individual passwords wants to file a suit against someone who obtained access through use of someone else’s login. What possible causes of action will you include, and what likelihood of success? What additional facts, if any, do you think would be relevant?

6. Discuss why the registry in *GlobalSantaFe* would refuse an order to violate its agreement with ICANN, but the registry in *Register.com* felt unbound by its ICANN agreement. Is there a generalized inconsistency here?

7. The *Brookfield* court said that while West Coast could not use “MovieBuff” in the metatags, it could use it in comparative advertising on its webpage. Wouldn’t
this still “misdirect” customers in the same way as that being originally complained about? What argument supports this distinction?

8. Would the result in Sony have been different under the DMCA?

9. When typing the name of an insurance company into Google, the search engine helpfully offered suggested other terms like “swindler.” Analyze the likely outcome of its defamation complaint against Google first from the perspective of the law before CDA §230, and then after.

10. Does Bucci establish a per se rule that use of a mark on the Internet is “in commerce” for jurisdictional purposes? Explain.

11. In the view of the Chang court, when would the fortuitous use by a defendant of a server located in the forum state be sufficient as a basis for finding personal jurisdiction? As part of your discussion, review the various reasonings that other courts have applied to the relevance of server location to answer jurisdiction problems.

12. Are data scrapers like the one in EF Cultural Travel a per se unauthorized access under the CFAA?

13. Clarify whether Calder is an effects test or a targeting test, and illustrate the difference with case examples. Apply your conclusion to a hypothetical where the defendant’s acts targeted California, but the effects of the actions were felt in New York. Where can the plaintiff get jurisdiction under Calder?
PART II: BRIEF ESSAYS [500 words]: Answer six of the questions below [10 points each]:

1. An online journal believes that, in order to protect itself against defamation suits, it should add a disclaimer on its home page that the views expressed on the blog belong to the authors and do not necessarily represent the opinions of the journal. In the event of a future suit against the journal, will the presence or absence of such a disclaimer influence the outcome? What will the court look at? Will the blog be liable?

2. The running theme of the textbook was the power of analogies to influence the creation of new legal rules in an emerging area of law. Provide specific examples where the court’s analogies directly motivated its preferred outcome (i.e., not where the decision casually invoked an analogy, but where the analogy exerted a primary influence). Offer some insight into the appropriateness of analogical reason in court decision making, and whether this is a rational or an arbitrary mode of judicial reasoning in this context.

3. Instead of articulating a new rule of inducement, could the Grokster Court have found the defendant liable based upon the existing standards of contributory and vicarious infringement? If so, what was gained by adopting the rule; if not, what interests moved the Court to create a new rule?

4. The Napster court states that:
   Defendant argues that if space-shifting is deemed a fair use, the staple article of commerce doctrine precludes liability for contributory or vicarious infringement. Defendant fails to show that space-shifting constitutes a commercially significant use of Napster. Indeed, the most credible explanation for the exponential growth of traffic to the web site is the vast array of free MP3 files offered by other users—not the ability of each individual to space-shift music she already owns. Thus, even if space-shifting is fair use, it is not substantial enough to preclude liability under the staple article of commerce doctrine.

To what extent is this statement consistent with the rule in Sony, which states that:

The question is thus whether the Betamax is capable of commercially significant noninfringing uses. In order to resolve that question, we need not explore all the different potential uses of the machine and determine whether or not they would constitute infringement. Rather, we need only consider whether on the basis of the facts as found by the district court a significant number of them would be noninfringing.
5. Changes in technology are almost inevitably destabilizing to the existing regulatory environment. Explain why, illustrating your points with case decisions.

6. Use the cumulative insights of the course to reconsider Bidder’s Edge, the first case we read. Discuss the pros and cons of the trespass to chattels analogy, citing relevant case decisions on both sides. If the Bidder’s Edge decision is correct, would this endanger search engines? Why or why not?

7. How do Turner’s must-carry provisions differ from the right of reply statute at issue in Tornillo? Frame your reply in the broader context of relating access and content regulation.

8. Courts seem inclined to base dispute outcomes on the current state of technology or its popularity, rather than on more persistent and fundamental legal principles. Using specific court decisions, identify both strengths and weaknesses to this strategy.
PART III: EXTENDED ESSAYS [1000 words]: Answer **two** of the questions below [20 points each]:

1. Review the various positions on the relationship of domain names as an indicator of the official status of a web page. If, as some argue, URLs connote authority, why is that not a “communicative message” deserving of First Amendment protection, rather than, as others say, being merely an “address”? Which should it be?

2. Consider these hypotheticals:

Suppose a bus driver decided to pub the following sign on the interior wall of the bus: “Air-50 cents per breath.” Do passengers assent to the contract by breathing? By staying on the bus? Busing the same bus each day of the week? Is it relevant that the private bus company has a policy prohibiting its employees from posting such signs?

Suppose a homeowner places a sign on her front yard stating: “View my garden for $5.” Do people that walk on the sidewalk and peer across the lawn at the beautiful garden daily assent to the homeowner’s proposed terms? The passersby benefit repetitively, and they surely understand the terms. Must they pay? Must they avert their eyes to avoid forming a contract? Suppose a passerby calls out to the homeowner and asks where she planted the tulips, and the homeowner points to them. Does the analysis change? Suppose the homeowner builds a wall and puts the sign on the outside. A passerby brings a ladder and peers over the top of the wall. What result?

What is the difference between these hypotheticals and the apple stand hypothetical discussed in *Register.com*? Is the fact pattern in *Register.com* more or less analogous to the hypotheticals? Is there a relevant difference between WHOIS information, apples, air, and a view of the garden? Is there a relevant difference between the relationships between the parties? The underlying property rules? Community norms and expectations?

3. Review and discuss the courts’ discussions on filters as an adequate means to obstruct the flow of indecent and obscene materials to minors. Is there a coherent position emerging, or are the outcomes ad hoc? To what extent, if any, can any inconsistencies among the courts be attributed to the progressive familiarity and understanding of the relevant technology?
Please answer the following question:

I spent ________ hours working on this exam.