

**UNIVERSITY OF NEW HAMPSHIRE SCHOOL OF LAW  
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**INTERNET LAW  
FALL 2021 – FINAL EXAM**

**INSTRUCTIONS**

This is an open-book, take-home exam. You may use any materials you want. You do not need to do outside research, and you will not receive points for any topics not covered in our course.

**Your exam must be limited to 3,500 words total, including footnotes, headings, etc. Please use a readable font, in 12-point size, single-spaced.**

**Do not put your name (or any identifying personal information) anywhere on the exam.** Do not identify yourself in any way to me as the author of an answer until grades are published.

Your work on this examination is subject to UNH Law's Academic Rules & Regulations, including prohibitions on plagiarism and cheating. **During the exam period, you may not communicate about the exam or your answer with anyone, other than law school staff regarding exam administration. Your exam response must be totally and solely your own original work.**

Do not just summarize the law. Remember to apply the law to the facts. Draw conclusions and explain your analysis for those conclusions. (For example, if the question asks for a "Yes" or "No," do not only explain arguments for both sides. You must draw a conclusion and argue for it.)

Support your answers with reference to statutes, cases, and legal doctrines as appropriate. Simple citations (e.g., "*Perfect 10*") are appreciated but not required. If you choose to quote text from other sources, you must make clear which text is quoted.

If any questions are unclear or missing information, say what you think the question means and answer it accordingly. If you need to assume additional facts, state any assumptions you make and then answer the question based on those assumptions.

A few optional tips for writing clear exam answers:

- Break up your text into paragraphs, each focused on a single idea.
- Use short, complete, grammatically correct sentences.
- Basic headings and subheadings to organize different parts of your answer can help.

For this exam, assume the following:

- Unless otherwise stated, all relevant parties are adults with full legal capacity.
- Unless otherwise stated, all relevant parties are, and all relevant actions take place, in the United States.

This examination has six (6) pages total, including the instruction pages. In answering the questions,

you may use information from any part of this exam, including in the Facts section as well as in other question sections.

I encourage you to take your time, outline your answers before you start writing, and review your responses before submitting your exam.

**Remember: For many of these questions, there is no single “right answer.” What matters is that you can identify legal issues, explain relevant law, apply law to facts, and argue for conclusions based on your analysis. You can do this 😊**

Thanks for a great semester. Good luck and enjoy the upcoming winter break!

## PETRICHOR: FACTS

You are the first attorney hired to represent Petrichor. (Congrats on the new job!) Petrichor is a small, New Hampshire-based, early-stage startup. Recently Petrichor's main product, Petrichor Chat, has become popular, with hundreds of thousands of active users and a userbase that is growing by the day.

Petrichor Chat is a social media platform where users can live-stream video and audio from their individual profile page, or as part of chat rooms, where multiple users can live-stream together. Users must log in to the Petrichor Chat app or site to view profile pages and access rooms.

The founders of Petrichor Chat wrote the TOS and Privacy Policy before seeking legal help, and it shows.

The Terms of Service page reads (in total):

*“As a user of Petrichor Chat, you agree not to do anything illegal or harmful using our website or applications. You also agree not to use the site or app in any unauthorized manner. You agree not to misuse Petrichor intellectual property, and you agree not to access or attempt to access the platform or any Petrichor product or service through automated means, including bots, spiders, scrapers, crawlers, or any similar tool.*

*By using the site or app, you grant to Petrichor a non-exclusive, royalty-free, transferable, sub-licensable, worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your content, which may include any text, images, audio, or video content you upload or stream on our site or app, for whatever purposes Petrichor chooses.”*

The Privacy Policy page reads (in total):

*“Petrichor cares deeply about your privacy. We will protect you from any and all privacy invasions. We will not share your information with anyone at all, ever, and we definitely won't use your data in any way without your express consent LOL ;-)”*

Petrichor wants to prove itself to potential investors. This means that positive publicity and reputation are important to them. It is also important to them that the company is seen as an ethical and responsible company that does not have a host of unresolved legal problems or risks of liability.

**Petrichor now seeks your legal advice on the following matters. While you are expected to advise *primarily* on legal risks, you are not limited to *only* advising on law-related issues.**

## **PETRICHOR: QUESTIONS**

### **1. Petrichor Vote!**

Petrichor wants to host a series of pre-election debates for the upcoming election for New Hampshire state governor. Petrichor will curate a series of rooms where leading candidates can engage in debate via live-stream, with a live comments section open to the public.

The two leading candidates are: Glinda Goverson, the current sitting Governor of NH; and Tycho Techovsky, a tech CEO who runs a private corporation and currently holds no political or government office.

The candidates have requested that Petrichor to design a function that will allow candidates to immediately block users from accessing the live-stream and the comments section, at the will and discretion of the candidates.

**Please advise Petrichor on how they should respond to the request raised by the campaigns.**

### **2. MrBonez411**

Recently, a viral news story criticized Petrichor for allowing the sale of human bones on Petrichor Chat. The story reported that MrBonez411, an extremely popular Petrichor Chat streamer, has been live-streaming himself showing off what he claims are human bones he is offering for sale. Audience members who watch the livestream then use Petrichor Chat's Direct Messaging (DM) function to arrange transactions with MrBonez411.

There is no federal law banning the sale of human remains, including bones. However, there is a California state law banning the sale of human remains. Additionally, the sale of human remains is a crime in some countries outside the U.S. – including France, where any party that directly or indirectly facilitates or supports the sale of human remains can be punished by heavy financial penalty and potentially jail time.

Petrichor Chat has many users in California. While Petrichor Chat only has a few users in France, Petrichor is advertising heavily in the country and actively trying to grow the business in France.

**Please advise Petrichor on legal risks and what they should do about MrBonez411.**

### **3. PetrichorHatesWomen.com**

Recently, a number of vocal Petrichor Chat users created PetrichorHatesWomen.com, a site that argues "Petrichor is GUILTY of creating a SEXIST and HARMFUL environment for women!"

The website argues that Petrichor has created a harmful environment for women users by allowing harassment, cyberbullying, and stalking that has taken place online and offline. Additionally, the website claims that Petrichor has allowed users to expose and share private photos and personal information of women users on the Petrichor Chat website. The website calls for Petrichor Chat to "ban all sharing of other people's private photos and information."

PetrichorHatesWomen.com also includes a downloadable file containing the usernames and profile photos of 100,000 Petrichor Chat users, scraped from Petrichor Chat’s website. Usernames and profile photos are publicly available to any visitor who accesses the Petrichor Chat website, regardless of whether the visitor is registered or signed in.

PetrichorHatesWomen.com includes this notice on the top of the page:

“All information here is provided freely by real Petrichor Chat users to expose the sexist harm of Petrichor. We are NOT affiliated with Petrichor. If you want to join our cause, donate to our fundraising donation site or buy one of our ‘DOWN WITH PETRICHOR’ posters today!” (A link to the fundraising donation site and poster shop is included.)

**Please advise Petrichor on legal risks and what they should do about PetrichorHatesWomen.com, as well as what they should do about the allegedly sexist and harmful environment on Petrichor Chat.**

#### **4. Petrichor Face**

Petrichor is secretly planning to develop Petrichor Face, a new facial recognition software product they plan to sell to military and law enforcement buyers worldwide.

Some Petrichor employees are unhappy with this idea. They argue that the software could easily be misused, e.g., by authoritarian governments to target protestors and silence free expression. Some of the unhappy employees have even threatened to expose Petrichor Face to the press.

All Petrichor employees have signed a non-disclosure agreement (NDA), in which they agreed to never share any confidential or non-public information related to Petrichor to any external party outside Petrichor. This NDA is well-crafted, and NDAs are enforceable in the state of New Hampshire, where all Petrichor employees live and work.

Buying large sets of face data is expensive. Luckily, Petrichor already has access to millions of photos and videos that users uploaded to Petrichor Chat (including both public photos and videos, as well as private photos and videos). Petrichor would like to take those photos and videos and use them to train the Petrichor Face machine learning algorithm.

To design the machine learning algorithm, Petrichor’s engineers plan to use code copied from FreeFlow, an open-source software library that offers machine learning and artificial intelligence tools.

FreeFlow includes a license that reads:

*“Copyright 2021 FreeFlow Foundation, Inc.*

*Permission is hereby granted, free of charge, to any person obtaining a copy of this software, to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the software, so long as the following conditions are met:*

- *The above copyright notice and this permission notice shall be included in all copies or substantial portions of the software.*

- *The software shall not be used, in whole or in part, for any illegal, unethical, or immoral purpose.”*

**Please advise Petrichor on legal risks and what they should do to proceed (or not proceed) with this new product idea.**

### **5. Global Expansion**

Most Petrichor users are U.S.-based, but the company wants to expand globally. As their attorney, you have been asked to create a series of presentations for the company’s executives on legal issues that may arise as the company expands to target more international consumers, in more countries around the world.

**Please explain one legal issue *not previously discussed in depth in your exam response* that you think Petrichor executives need to consider as they plan their global expansion. Explain what the issue is, why it matters for Petrichor, and what Petrichor should do about it.**