

Please see the appendix to the materials for the 2008 and 2012 exams.

The George Washington University Law School
Munich Intellectual Property Summer Program

July 2015

Final Examination In
THE LAW OF SOFTWARE CONTRACTS

(Course No. 6850; 1 credit)

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Instructions:

1. You have 1 hour to complete this examination.
2. This examination consists of two problems of equal weight (i.e., 50% each). I recommend that you spend about 30 minutes on each problem, but you may divide your time as you wish.
3. Each problem consists of 3 questions. Points will be allocated to these questions according to their difficulty.
4. This is an open-book examination. In writing your answers, you may consult any written materials that you have brought with you.
5. You must write your answers in essay form, using complete sentences and proper paragraphs.
6. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.
7. Keep your answers concise so that you have time to complete the entire examination.
8. You may keep this copy of the examination at the end of the examination period.

Good luck!

PROBLEM I.

(30 minutes)

Please read the following edited excerpt from Lily Hay Newman, *Who Owns the Software in the Car You Bought?*, Slate (Future Tense Blog), May 22, 2015:

General Motors and John Deere are both claiming in hearings with the U.S. Copyright Office that even when someone buys a car, the software that coordinates how everything moves is customized and subject to copyright protection.

The big battle here is over who should be able to access the electronic control units that turn software commands into physical actions for things like steering and braking. Not only does access provide people a window into a car company's proprietary code, it also allows independent mechanics and hobbyists to fix the cars. The copyright office is weighing an exemption that would allow these third parties to continue repairing cars. But GM and other car companies are going to great lengths to defeat the exemption.

Proponents of [the proposed exemption], like the Electronic Frontier Foundation, argue that restricting access could stifle competition and impede innovation. In *Wired*, Kyle Wiens argues that vehicle manufacturers could undermine the basic concept of ownership. But there are also safety concerns about letting anyone access and modify car code. People who don't know what they're doing—or even just make mistakes—could make a car dangerous to drive without realizing it. And if a car were sold used, it would be difficult for the new owner to detect any software changes.

The copyright office will hold a second hearing on the subject . . . and plans to make a determination in July. Car software really is the ghost in the machine.

On the basis of this article and the materials considered in the course, please answer separately each of the following questions:

- A. Even if the proposed exemption is not established, might car buyers still have grounds to challenge license terms restricting who may use, modify, remove, or reverse engineer the software in their cars?
- B. How might vehicle manufacturers and sellers attempt to use software license agreements to limit their liability for defects in the software? How might buyers challenge the legality of these attempts?
- C. In what ways might buyers fare better if all of the software in their vehicles were subject to the GNU General Public License instead of proprietary licenses drafted by vehicle manufacturers? In what ways might buyers fare worse?

PROBLEM II.

(30 minutes)

Please read the following edited excerpt from Eva Dou, *Lenovo Offers Free Antivirus Software in Wake of Superfish*, Wall Street Journal, Feb. 27, 2015:

Lenovo Group Ltd. said Friday it will offer customers six months of free antivirus software and cut down on preloaded software on future personal computers in response to criticism for preloading its consumer laptops with adware called Superfish, which made users more vulnerable to hacking.

“The events of last week reinforce the principle that customer experience, security and privacy must be our top priorities,” Lenovo said in a statement. “With this in mind, we will significantly reduce preloaded applications.”

Lenovo said it would offer affected users a six-month subscription to the antivirus software McAfee LiveSafe. It also pledged to post information on all software preloaded onto its computers.

“We are starting immediately, and by the time we launch our Windows 10 products, our standard image will only include the operating system and related software, software required to make hardware work well,” the company said.

Lenovo came under criticism last week for preinstalling its consumer laptops with the ad-serving software Superfish that security researchers said made it easier for hackers to access encrypted Web data and even online passwords. The company said last Thursday it stopped shipping computers with the Superfish adware in January and said it wouldn’t preload the software on its products again.

On the basis of this article and the materials considered in the course, please answer separately each of the following questions:

- A. In what ways might Lenovo's conduct here be seen as more culpable or less culpable than the defendant's conduct in *People ex rel. Spitzer v. Direct Revenue* [p. 110]?
- B. Suppose some buyers of Lenovo computers previously agreed to receive software updates from Lenovo and to have these updates automatically installed. May Lenovo distribute a new software update that installs MacAfee LiveSafe and removes Superfish without obtaining more specific consent from these buyers?
- C. Suppose the security researchers discussed in this article copied and decompiled the Starfish object code to determine the risks that the software posed. What arguments might be made about whether these researchers violated Starfish's copyright or a license agreement prohibiting copying for any purpose?

END OF EXAMINATION