

Loyola of Los Angeles Law Review
Loyola of Los Angeles Entertainment Law Review
Loyola of Los Angeles International and Comparative Law Review

2023 WRITE-ON COMPETITION

LAW REVIEW INFORMATIONAL PACKET

(With Helpful Hints for Preparing Your Paper)



Loyola Law School
Loyola Marymount University
Los Angeles

WRITE-ON INFORMATION HANDOUT 2023

Hello and Welcome to the 2023 Write-On Competition!

LMU Loyola Law School is home to three law review journals that participate in the Write-On Competition, the *Loyola of Los Angeles Law Review*, the *Loyola of Los Angeles Entertainment Law Review*, and the *Loyola of Los Angeles International and Comparative Law Review*.

Each journal selects its new members through a single combined Write-On Competition. Students participate by completing a citation exercise and writing a “case comment” about an appellate judicial decision selected by the Chief Note & Comment Editors of all three journals. Each journal then uses its own selection and grading process to select candidates.

In this handout, you will find useful materials to guide you through the write-on process. This packet includes:

- (1) Descriptions of All Three Law Reviews
- (2) Frequently Asked Questions
- (3) Helpful Hints for Drafting Your Case Comment

You can also find information online about the write-on competition at [Loyola’s website](#). Please read this packet *carefully*.

Please do not hesitate to email us at write-on@lls.edu if you have additional questions. You should ONLY use this email PRIOR to packet distribution. In order to ensure the integrity of the law reviews’ blind grading processes, if you have questions AFTER packet distribution on Thursday, May 18, 2023, all questions must be directed ONLY to Professor Stephanie Der and the administrative coordinator, Colin Goward, using the email address: LRAdmin@lls.edu.

Good luck on your exams! We look forward to reading your submissions.

Sincerely,

Kendyl Barnholtz, Zell Agbaosi, and
Katia Shrayber

The Chief Note & Comment Editors from
LLR, *ELR*, and *ILR*

LAW REVIEW INFORMATION

LOYOLA OF LOS ANGELES LAW REVIEW

The *Loyola of Los Angeles Law Review* (LLR) is Loyola's flagship law review and also its oldest, celebrating its fifty-seventh volume in the 2023–2024 academic year. Since 1968, LLR has published articles written by prominent legal scholars, professors, practitioners, and Loyola students. LLR typically releases four issues per year, all of which include student-produced work. LLR is not confined to any one field of law; contributors are free to write about any pertinent legal topic.

LLR has two main goals: (1) to promote and advance legal scholarship, and (2) to provide students with an unparalleled opportunity to develop superior legal writing, research, and editing skills.

Why Join LLR?

Distinguish Yourself in the Job Hunt. LLR membership is a mark of academic distinction that enhances your resume and competitiveness throughout your career. Members receive constant opportunities to hone their research, writing, and analytical skills, adding value to their law school experience. Further, prospective employers—Big Law firms, federal judges, government entities, public interest groups, and boutique firms—look very favorably upon flagship law review members. LLR extends invitations to incoming members before Fall On-Campus Interviews, giving members a competitive edge during the selection process.

Publish Your Scholarly Work. LLR members have the opportunity to publish their own writing in LLR. Publication is a huge accomplishment that distinguishes you by demonstrating your work ethic and legal writing to employers and judges. Volumes typically include roughly twenty student submissions. Recent topics of student work range from the homelessness crisis reform to the effect of California labor law on professional gamers.

Networking. LLR offers students the opportunity to develop meaningful and lasting relationships with students across sections and class years, as well as with professors. LLR also holds networking events with LLR alumni, who share their insights and experiences to help LLR members achieve their career goals.

Satisfy the Upper-Division Writing Requirement. Members can fulfill Loyola Law School's upper division writing requirement if they elect to write. LLR members can write a Note, Comment, or *Developments* Note (explained below). Successful completion of any one of these three options will fulfill the requirement, so long as a faculty supervisor determines that the student's work complies with all of the upper division writing requirements.

Class Credit. First year staffers will receive one (1) unit of *pass/fail* academic credit for each semester of participation on LLR, for a total of two (2) credits over the course of the year.

How Does LLR Select Its Members?

After the Write-On Competition concludes, LLR invites the top scoring contestants to join as members. The scores are broken down as follows: 45% case comment response, 30% citation exercise, and 25% Legal Research & Writing grade. The essay and citation grades are based on an average of several scores.

When Does LLR Begin?

LLR is a year-long commitment that begins in early August. Before the fall semester begins, there is a mandatory orientation and training session. At that time, you will receive your first editing assignment. However, you are encouraged to begin thinking of legal topics to write about as soon as you are invited to join LLR.

What Work Do Members Complete?

First year staff members are essential to LLR's success. Here's what to expect:

Article Review, Source Collection, and Citations. Your primary job will be to edit articles and ensure that they are error-free and publication ready. This includes researching and collecting the sources the articles cite, verifying quotations and information that articles reference, properly formatting footnotes and citations in accordance with the *Bluebook*, and making stylistic revisions according to the *Chicago Manual of Style* and our internal style guide. Editing can be challenging and time-consuming, but you will receive guidance from LLR editors along the way, and engaging in the process will give you invaluable knowledge and understanding of the intricate aspects of legal writing and research.

Complete Office Hours. LLR aspires to be a community of dedicated and driven students. Accordingly, members are required to spend an enumerated number of hours a week in the LLR office. Members often use this time to complete LLR assignments, work on other law school assignments, or socialize with other LLR students.

Attend LLR Production Days. You must attend all scheduled "Production Days," which occur on designated weekends during the academic year (typically two each semester). Production Days are mandatory events and are an integral part of the editing process.

LLR's Writing Opportunities. Law Review provides its first-year staffers with three unique writing opportunities. Successful completion of each of these options requires approval by a faculty supervisor. Students have the option to write (1) a Comment focusing on a recent and notable case, (2) a Note delving into a narrowly defined legal topic, or (3) if preselected for publication in the *Developments* issue, a Note addressing a developing area of law specific to California.

The Comment, Note, or *Developments* Note must exceed 7,500 words, not including footnotes, to satisfy the upper division writing requirement. A student who successfully completes one of these three options can earn two (2) *graded* credits in addition to the two (2) *pass/fail* credits described above.

What Happens After the First Year of LLR?

In the second semester of your first year on LLR, you can apply for editorial positions for the following year. There are a variety of editorial positions, and you will have the opportunity to interview current editors to determine which position will be the best match for you. The current editorial board selects the incoming editorial board. You may also elect to return as an editor. Editors earn two (2) units of credit per semester and have additional opportunities for publication.

If you have any questions about LLR, please feel free to email us at [http://loyola.lawreview@lls.edu](mailto:loyola.lawreview@lls.edu). We strongly encourage you to participate in the Write-On Competition and wish you the best of luck.

LOYOLA OF LOS ANGELES LAW REVIEW

DEVELOPMENTS 2023 – 2024

WHAT IS DEVELOPMENTS?

Developments is a specialized issue of LLR focused on developing areas of California law that seeks to place Loyola and its excellent student writers at the forefront of the California legal community. The five student authors for *Developments* are hand-selected each year based solely on the quality of their LLR write-on submissions. Once selected, *Developments* authors work closely with an editor and faculty sponsor to produce an in-depth Note on a timely and emerging issue in California law of their choice.

WHY PARTICIPATE IN DEVELOPMENTS?

YOU GET PUBLISHED. As a *Developments* author, you are virtually guaranteed publication. Publication is a prestigious and rewarding accomplishment that employers and judges look upon favorably.

YOUR RESUME STANDS OUT. Authors are notified of their acceptance into *Developments* over the summer. This allows authors to inform prospective employers (e.g., Fall OCI) of their preselection for publication, which separates authors' resumes and interviews from the crowd.

YOU HAVE AN IMPACT. *Developments* authors get to choose a specific area of developing California law on which to write their articles. Thus, authors have the opportunity to cultivate expertise in a chosen field, engage the professional community in that field, and impact emerging issues they are passionate about.

IT COUNTS TOWARDS YOUR DEGREE. *Developments* satisfies Loyola's upper division writing requirement, and upon completion, authors receive two course credits.

HOW TO APPLY FOR DEVELOPMENTS?

Produce a great write-on submission and check the Yes box under "LLR Developments" on the Confidential Information Form you will be requested to complete in Brightspace when uploading your submission at the end of the competition. The five applicants with the highest graded submissions are invited to join. Factors for grading include organization, clarity, cogency, and effective use of the source materials.

Please note that *Developments* is a significant time commitment. Authors' work will begin in August and continue throughout the school year. However, *Developments* does not conflict with any other LLS activities or opportunities.

If you have any questions about *Developments*, please contact Scot Gauffeny at scot.gauffeny@lls.edu



The Loyola of Los Angeles Entertainment Law Review (ELR) is entering its forty-fourth year of production. ELR is an authoritative source for professional and scholarly articles on entertainment, sports, communications, and intellectual property law.

ELR is distinctive among law reviews and legal journals because it is one of the few scholarly publications dedicated exclusively to legal development in the entertainment field. LMU Loyola Law School is located in the entertainment capital, Los Angeles. This creates a unique opportunity for ELR to flourish and for staff members to write Notes or Comments that ultimately can change the law. ELR's readership includes leaders in the entertainment world, such as judges, educators, lawyers, agents, managers, and artists. ELR retains its preeminence in the industry through its close contacts and continuing relationships with those at the forefront of legal developments.

WHAT IS ENTERTAINMENT LAW?

ELR staff writers find that they can explore virtually any area of law in an entertainment context. Entertainment law is a vast subject area encompassing complex legal issues in:

- Constitutional law
- Anti-trust litigation
- Bankruptcy law
- Contracts law
- Corporate law
- Tax law
- Communication regulation
- Labor and employment law
- Sports arbitration
- Intellectual property rights such as copyright, trademark, and patent

As the world becomes technologically interconnected, entertainment issues have also become prevalent on an international level. Consequently, entertainment law encompasses areas such as international trade and taxation, finance, and immigration.

OUR MEMBERSHIP POLICY

The 2023–24 editorial board seeks talented, dedicated, and hardworking staff members to contribute to ELR's continued success. Each year, ELR welcomes at least 30 staff members to join in the publication of three issues. Each staff member, with the guidance of an editor, has the opportunity to author a piece of legal scholarship to be considered for publication in the journal. Students have the option to submit either a longer Note or Comment that may fulfill the school's upper division writing requirement or a shorter essay. In addition to the flexibility offered for page length, the journal offers staffers several different timelines in order to accommodate students' diverse needs. The process of writing the Note or Comment requires

topic research, consultation with law professors and other subject matter experts, production of at least two drafts within established deadlines, and a demonstrated understanding of the Bluebook.

Throughout the production cycles, all staff members are required to complete cite-checking assignments to verify the substantive and technical accuracy of the articles. These assignments include researching and editing student-written Notes or Comments and outside articles to prepare them for publication. The assignments will begin in early fall and continue throughout the school year under strict deadlines. The production cycle culminates on Production Day when staff members perform a final proofreading of the articles for grammatical and footnote corrections prior to publication. Production Days are typically held on Saturdays or Sundays and offer an opportunity for all staffers and editors to come together.

ELR membership is a commitment that lasts throughout the academic year. Each staff member must contribute time dedicated to ELR related work and participating in office hours. Staff members who wish to remain on ELR after their first year must apply for an editorial position for the following year. Each spring, members of the current Executive Board select new editors based on the applicants' individual qualifications; performance as a staff member, such as adherence to deadlines; and demonstrated interest in the continued success of the law review.

ADVANTAGES OF MEMBERSHIP ON ELR

Prestige

Law review membership is a mark of academic distinction that employers look to when evaluating the strength of an applicant's research and writing skills. Since ELR typically publishes three issues per year, we offer our staff writers a unique opportunity to hone these skills in preparation for summer employment. Additionally, ELR gives its staff writers opportunities to be published. Article publication is a significant accomplishment that the legal community will recognize for the rest of your career.

ELR is also a well-respected entertainment publication, and many articles help influence legal changes. As just one example, an ELR article was cited by the California Supreme Court in *Marathon Entertainment, Inc. v. Blasi*, 42 Cal. 4th 974 in 2008. The California State Legislature also used a student written article published in ELR when it drafted California Civil Code § 1708.8, a statute that seeks to protect the personal privacy rights of celebrities from overzealous paparazzi.

Symposium

Every year, ELR hosts the Loyola Law School Entertainment Symposium. This multi-day event allows staffers to interact with entertainment industry professionals ranging from executives who work in studios to lawyers in the top law firms. This past year, the Keynote speakers included Jeff Brabec, the Vice President at BMG Chrysalis, and Kris Muñoz, the Senior Vice President of Business & Legal Affairs at BMG Rights Management. While the Executive Board secures the speakers, staffers are invited to participate in moderating these panels and engaging with the panelists.

Alumni

Due to ELR's distinguished history, staffers receive access to an extensive alumni network. ELR alumni work at some of the nation's top law firms, entertainment/sport agencies, corporations, and government offices; as such ELR encourages its staffers to learn from those who succeeded before. ELR sponsors alumni panels and events, which also cater to students who seek mentorship during their law school years and beyond.

Community

ELR offers a fun and intellectually stimulating environment to explore the cutting-edge legal issues of today. Members are inducted into a community of intelligent, fun, like-minded students, providing an ideal environment for entertainment-based scholarship. ELR creates teams to perform production duties based off similar interests and encourages staffers to stay connected throughout the entire production cycle. Beyond working hours, ELR hosts regular social events to keep members constantly entertained, engaged, and supported.

Upper Division Writing Requirement and Flexibility

Each staff member who satisfactorily completes a Note or Comment can fulfill Loyola Law School's upper division writing requirement (UDWR) and earn two graded credits from their supervising faculty member (see Student Handbook for details). These graded credits will not be competitively curved against any other student.

In addition to earning one pass/fail credit per semester, the staff members will have the opportunity to publish their work and develop a relationship with their faculty supervisor. In order to receive UDWR credit, staff writers must complete a well-researched article consisting of at least 7,500 words excluding footnotes, double-spaced, in 12-point Times New Roman font. The staff member's final draft must also receive a passing grade and approval from their individual Note and Comment Editor. The articles are then given to the Executive Board and Faculty Advisor for final approval.

While shorter essays will not satisfy the UDWR, these submissions will be considered for publication by the Board alongside traditional Notes and Comments. Essays range from 4,500 - 7,000 words including footnotes (roughly 15 double-spaced pages as opposed to the minimum 33 pages for a Note or Comment). These shorter essays can provide a staffer more of an opportunity to be published.

Class Credit

Each staff member will receive one pass/fail credit per semester for a total of two pass/fail credits for the year upon satisfactory completion of the staff member's ELR duties. Each staff member who chooses to complete a Note or Comment will receive an additional two graded credits for the year. In their second year, each editor who fulfills the editor's own obligation receives two pass/fail credits per semester for a total of four credits for the year. The Editor-in-Chief can elect to receive one additional credit for a maximum of five credits for the year.

WHAT TO EXPECT

Staff members are required to attend an orientation approximately 1-2 weeks prior to the start of the fall semester. The orientation is hosted by the editorial board and consists of an informational meeting and training workshop. Subsequently, cite-checking assignments will be distributed on a regular basis throughout the year. ELR encourages all students, especially those interested in an entertainment-related field, to choose *Entertainment Law Review*.

WRITE-ON COMPETITION GRADING DISTRIBUTION

There are three components to the Write-On Competition grading: 1) the competitors' Legal Research and Writing grade, 2) the competitors' Write-on Competition case comment score, and 3) the competitors' Write-On Competition citation exercise score. For current Loyola students, ELR allocates the following weights to each component of the grade for the final consideration of applicants' ultimate admission to ELR: 25.5% LRW grade, 49.5% essay score, and 33% citation exercise. For transfer students, the weights are: 33% citation exercise, 66% essay score.



LOYOLA OF LOS ANGELES INTERNATIONAL AND COMPARATIVE LAW REVIEW

Since 1978, the International and Comparative Law Review (ILR) has published articles written by prominent legal scholars, including professors, attorneys, and jurists worldwide.

ILR also publishes quality student articles, generally referred to as “Notes” or “Comments.” *ILR* publishes multiple issues per year, which often includes a Symposium issue. For example, our 2022 Symposium issue was centered around the discovery and development of the CRISPR/Cas9 family of genome editing tools and its effect upon humanity. This symposium aimed to contribute to the ongoing conversation on the global governance of germline engineering by bringing together international legal scholars, policymakers, and scientists at Loyola Law School, Los Angeles.

ILR also runs the unique and prestigious Inter-American Court of Human Rights (IACHR) Project. This project offers students the opportunity to write case summaries that are published on the IACHR database maintained by Loyola Law School. See below for more details.

MEMBERSHIP BENEFITS

Distinction: *ILR* stands as a point of distinction for resumes and job applications, demonstrating that members have acquired a high level of technical ability, writing skills, and professional discipline. Furthermore, membership at *ILR* shows employers that candidates are interested in multicultural legal topics and matters of international consequence.

Skill Building: *ILR* offers Loyola students the opportunity to critically analyze current international issues from a legal perspective and build practical skills that will assist them in becoming better lawyers. As a 2L *ILR* staff member, you will hone your critical thinking, legal research, writing, and editing skills. As a 3L *ILR* editor, you will further develop leadership and management skills.

Publication: Each year *ILR* publishes several high-quality student Notes and Comments. Having a published article speaks highly of your legal analysis and writing skills and is valued by future employers. Students who participate in the IACHR project will be almost certainly guaranteed publication on the IACHR database.

Networking & Community: By joining *ILR*, Loyola students have access to a tight-knit community on campus and a large network of *ILR* alumni. Our large office serves as both a superb work environment and a much-needed nexus of great conversation, mentor support, and good coffee.

Satisfying the Upper-Division Writing Requirement: By submitting a qualified Note or Comment or participating in the IACHR project, students will fulfill their Upper-Division Writing Requirement and earn two *graded* credits from their supervising faculty member.

SELECTION PROCESS

Each year *ILR* selects approximately 35 highly skilled staff members based on the quality of their Write-On Competition submissions. Membership is open to day students entering their second or third year and evening students entering their third or fourth year. After the write-on competition concludes, *ILR* invites high-scoring contestants to join as members. The scores will be broken down as follows: 50% essay response, 25% citation exercise, and 25% Legal Research & Writing grade. The essay and citation grades are based on an average of several scores.

WHAT TO EXPECT

ILR is a year-long commitment that will begin in August. **There will also be a mandatory orientation in August before the start of the fall semester.** *ILR* staff members will receive one pass/fail unit per semester, as well as two *graded* units if they choose to write a Note or Comment or participate in the IACHR Project. Assignments are handed out on a weekly basis and deadlines are strictly enforced.

MEMBERSHIP RESPONSIBILITIES

All *ILR* members are staff members for their first year on the law review and play a crucial role in publication. *ILR* staff members have the following responsibilities:

Article Revision, Editing, and Cite-checking Assignments: In order to prepare scholarly articles for publication, staffers work under the supervision of 3L editors to review articles for grammar and substantive errors, correct citations to bring them into Bluebook compliance, and verify the authors' cited sources for accuracy. This detail-oriented review is necessary to ensure that the articles are ready for publication and gives staffers the experience that will enable them to take their legal research and editing skills to the next level.

Production Days: Each staffer must attend scheduled "Production Days" on designated Saturdays or Sundays during the school year. There will be approximately two Production Days in the fall and two in the spring semester.

MANDATORY INTERNATIONAL LAW COURSE

ILR staff members who have not already completed Introduction to International Law as a 1L elective or enrolled in a qualifying summer offering *must* take one international law course in either their first or second semester of their second year. (NOTE: International law course offerings are typically more limited in the Spring semester, and there is less time to employ the knowledge gained in the service of the review. So, staffers are encouraged to take an international course that satisfies this requirement in the Fall 2023 semester). Participation in an international law-focused summer abroad program sponsored by an ABA-accredited law school may satisfy this requirement. The list of required courses will be determined prior to Fall registration.

WRITING

We strongly encourage each staffer to either write a Note or Comment or participate in the IACHR Project. In addition to earning two graded credits, students who write will have the opportunity to be published and develop a relationship with a faculty supervisor.

Note or Comment: The Note or Comment topic must be of contemporary international legal significance. Each staff member electing to write will select the subject of his or her Note or Comment at the beginning of the Fall or Spring semester. Note & Comment Editors support and guide staffers through the writing process in a collaborative, streamlined framework. Editors work with students to help them develop ideas, refine their writing, and make substantive improvements to each draft iteration.

Note: A Note is a law review article that addresses a legal issue and makes a novel and coherent argument about that issue. In keeping with the nature of our Review, the topic must be either *International* (discussing international laws, bodies, trends, conflicts, etc.) or *Comparative* (comparing the laws/standards of different countries and analyzing how that conflict affects something/someone/etc.).

Comment: A Comment is an article that analyzes a court decision and the potential effect of that decision. While students may select a decision from a U.S. court, the bulk of the paper must discuss the potential effect of that ruling in another country or how another country has approached a similar issue.

Successive drafts of the Note or Comment are due on announced deadlines, with the final version due approximately at the end of the Spring or Fall semester. The staff member's final Note or Comment will satisfy the Loyola Upper Division Writing Requirement – provided that it meets the mandatory 7,500-word minimum length requirement and represents publishable quality – and earn the staffer two units of *graded* credit.

IACHR Project: The Inter-American Court of Human Rights (IACHR) is an international tribunal that renders decisions on human rights abuses in the Americas. Although the Court has rendered decisions since the 1980s, there were no detailed summaries of the decisions publicly available, which made human rights enforcement difficult, frustrating, and inefficient. Under the leadership of Professor Romano, ILR has provided a solution to this problem through the IACHR project. Since 2013, the IACHR Project has published summaries of IACHR decisions. The Project also launched a web publication and database of Court decisions and summaries, which scholars, students, and human rights practitioners use to improve the protection of human rights in the Americas. All IACHR staffers who satisfactorily complete their writing assignments will be guaranteed publication in IACHR's online journal, as the Project aims to publish all staffers' summaries. Staffers and editors are identified as coauthors in every published summary. The IACHR schedule is created so that the fall writing component is completed well before finals and the substantive writing is completed by February of the spring semester.

Each IACHR staffer completes several summaries of the Inter-American Court's decisions. Editors serve as summary co-authors and provide staffers with extensive feedback and support. In past years, IACHR staffers have written summaries on such subjects as the massacre of indigenous people in Guatemala and El Salvador, forced disappearances in the Dominican Republic, and the mandatory death penalty in Barbados. Incoming staffers on the IACHR Project will have the unique opportunity to simultaneously learn about human rights issues, develop as writers and researchers, work as part of a close-knit team, and know that their work has a positive impact on others. Once the new ILR staffers are selected, we will solicit interest for new members for the IACHR project.

EDITORIAL BOARD

During the spring semester, current editorial board members elect and train staff members to serve as editors for the following year. There are many options for editorial positions, and you can meet with current editors to determine which position you are most interested in. Editors are selected based on their effort, quality of work, and overall contribution to *ILR* throughout the year. 3L editors receive two units per semester.

We encourage your participation in the Write-On Competition and look forward to your involvement next year as a member of *ILR*!

If you have any questions, we encourage you to email us at ilr@lls.edu and check out our websites at <http://digitalcommons.lmu.edu/ilr/> and <https://iachr.lls.edu/>.

Good luck with finals and the Write-On Competition!

FAQs

FREQUENTLY ASKED QUESTIONS

1. What is law review?

A law review is a student-run academic journal that publishes articles written by students, law professors, and other legal professionals. Law review editors and first year staffers prepare these articles for publication by checking that the citations are correct and that the sources say what the author is asserting that they do. This work is very technical and detailed-oriented. A single production cycle, of which LLR has four, and ILR/ELR have three or four depending on the year, takes weeks to complete. The cycle culminates in a “production day” in which the article is reviewed by many students in its entirety. Production days usually happen on a weekend day.

2. Who is eligible to enter the Write-On Competition?

The annual Spring Write-On Competition is open to:

- First and second year day students
- Second and third year evening students
- J.D./M.B.A. dual degree program students (please see item #9 below)
- Internal transfer students from evening to day

Eligibility: Students are defined as "eligible" to participate in the Write-On Competition if they are a qualified day, evening, or transfer student and if they obtain Write-On packet during the scheduled pick-up date and time, adhering to all rules stipulated within the packet.

Students on academic probation are eligible to participate in the Competition. However, only those students in academic good standing are eligible to become staff members. Thus, students must be removed from academic probation before they can be selected for membership. All students interested in becoming a member of ELR or ILR or LLR must complete a Write-On packet.

3. What is in the Write-On packet?

The Write-On packet includes everything you need to know to complete the Competition. Included in the packet are:

Source Materials – The packet contains all the source materials you will cite in your paper. ***Do not use any sources other than the packet, the Twenty-First Edition of the Bluebook, and the Chicago Manual of Style (optional).*** Use of outside sources will result in disqualification from the Competition. For purposes of the competition, assume each source is good law. Source materials may include cases, statutes, legislative history, law review articles, newspaper articles, or even comic strips.

Rules Sheet – The rules are numerous but important. Be sure to follow them. Deviation from the rules may result in disqualification from the Competition.

Format Sheet – The Format Sheet gives the technical format requirements of the submissions. Deviation from the format requirements may result in point deductions or even disqualification from the competition.

Grading Sheet – This sheet provides the general grading consideration by the Law Reviews. Use it as a checklist to evaluate your own submission.

Topic Sheet – This sheet gives you guidance on the issue presented by the source materials. This may be the most important part of the Write-On packet. Its purpose is to narrow the scope of your discussion. This year, participants will be writing a case comment.

Source Material List – This sheet lists all the source materials contained in the packet and the number of pages. *Do not assume that the name of a source on this list is the proper name for citation purposes.*

Citation Sheet – The Write-On Competition and the Law Reviews follow the Bluebook citation rules. The Citation Sheet provides general guidance on using the Bluebook. Pay attention to this sheet as you are expected to follow it—particularly where it tells you to disregard certain Bluebook rules.

Supplementary Citation Assignment – This is a citation checking exercise that is *in addition* to the endnotes you do for your individual paper. Check the footnotes and make changes to ensure they conform to Bluebook standards as modified by the Citation Sheet.

Submission Guidelines – This sheet sets forth detailed instructions for submitting your application. Be sure to follow these carefully.

4. How do I sign up for the Write-On competition?

All students must sign up for the Write-On Competition through the form listed on the law review website: <https://www.ils.edu/academics/lawreviews/lawreviewswrite-oncompetition/>. The link is accessible starting **March 20, 2022**. Completing the form will result in you being assigned a three-digit packet number which you will use to identify your submission in the blindly graded competition process in lieu of your student ID number. Without a packet competition number, you **CANNOT** participate in the Write-On Competition, so completing the E-Form is essential.

Our IT department will take the information from this e-form and enroll all the entrants in a special Brightspace Write-On Competition “Course.” Once the competition begins on Thursday, May 18, 2023, you will be able to access the competition materials on this course page. Your final entry must be uploaded electronically as an assignment before the deadline of **11:59 pm on Tuesday, May 30, 2023**. There is NO need to submit anything in hard copy. You can complete the competition anywhere in the world; you will just need internet access to submit your final entry.

You can continue to request an electronic copy even after the competition begins. Students will have about 12 days, including two full weekends, to complete the Write-On this year. Our assessment is that a fully competitive entry can be completed in about 60 hours of work, beginning when you first start reading the materials.

5. When, where, and how do I pick up the Write-On packet?

ELECTRONIC DISTRIBUTION

All students participating in the competition will be given access to an electronic version of the full competition packet on the Write-On Competition Brightspace page at **noon on May 18, 2023**.

HARD-COPY DISTRIBUTION

Students signing up via the [Law Reviews Write-On Competition \(WOC\) Sign-Up Link](#) prior to 11:59 pm on April 18, 2023 may also request to receive one printed copy of the competition materials from the law school. There is no cost for copies picked up on campus or mailed to evening students in their first year of contest eligibility (i.e., 1Es applying for transfer to the day division and continuing evening students completing their 2E year). Any other student may have their requested hard copy mailed to them for a \$10 fee (payable online when the copy is requested) to cover mailing costs.

Hard copies may be picked up on campus up (location to be determined - please check the Brightspace page) **between Noon and 5 pm on May 18, 2023**. Copies not picked up during that time window will be delivered to the Security Office at the entrance to the parking garage, where they may be picked up at any time thereafter. That office is accessible 24/7 throughout the competition period.

REMINDERS: ANY COLLABORATION OR CONSULTING OUTSIDE SOURCES WILL RESULT IN DISQUALIFICATION FROM THE WRITE-ON COMPETITION. THERE IS NO DIFFERENCE BETWEEN THE ELECTRONIC COPY AND THE HARD COPY. IT IS SIMPLY THE FORMAT IN WHICH YOU CHOOSE TO RECEIVE THE WRITE-ON MATERIALS.

6. What if I cannot pick up my Write-On packet in person?

If you cannot pick up your Write-On packet in person, you may have another person pick up a packet on your behalf. However, that person must have your Student ID number. Packets will not be released without a Student ID number.

7. When, where, and how do I return the completed Write-on packet?

Packets are submitted through Brightspace. The deadline is **11:59 pm on Tuesday, May 30, 2023**.

REMINDERS: LATE SUBMISSIONS WILL NOT BE ACCEPTED. The competition is designed so that it can be completed within the span of two weekends – about 60 hours.

8. How does the Competition work if I am an incoming transfer student?

Incoming transfer students are eligible to participate in a flexible ten-day period in August once they have confirmed acceptance of an offer to attend Loyola. Each incoming transfer will be individually notified of the transfer competition procedures following their acceptance.

9. How does the Competition work if I am a student in the J.D./M.B.A. dual degree program?

J.D./M.B.A. dual degree program applicants must compete in the Spring Write-On Competition, even though applicants will not be notified of admission decisions until August. If a J.D./M.B.A. applicant is accepted into the dual degree program and is selected by one of the law reviews, they may defer acceptance of a staff position until the following year. However, J.D./M.B.A. students who intend to complete the dual degree program in less than four years (e.g., those who obtained an undergraduate degree in business) are eligible to become staff members this Fall.

10. How will my application be judged?

All applications will be anonymously graded by the Law Reviews' editors using uniform standards. The primary criteria for review, not in any particular order, are: structure, organization, clarity of presentation, depth of analysis, and proper citation. You must also distinguish relevant from irrelevant materials and properly identify issues.

11. How are staff members selected?

Students are invited to join ELR, ILR, and LLR through the Write-On Competition. Legal Research and Writing grades will be considered as one of the components weighted into the selection decision.

Additionally, twenty-one students, consisting of the top four with the highest cumulative grade point averages from each of the four day first-year sections and from the evening second-year section, plus the one student with the next highest cumulative grade point average regardless of section, will be offered the opportunity to be placed on the staff of the Law Review of their choice, provided that they have submitted a writing packet which the Faculty Advisors determine represents a good faith effort. To be clear, ANY student desiring to earn a spot on a law review – whether based on grades or their performance on the competition packet – must register for the competition following the procedures outlined above AND complete an entry fully compliant with all competition rules.

12. When can I expect to hear the results of the Competition?

The administration will issue invitations to students based on the submission rankings provided by the three law reviews over the summer. **We will render decisions in time for students to update their resumes to document law review selection in early July before the first batch of resumes are sent out to OCI employers. Do NOT delay submitting your resume to Career Developments because you are waiting on Write-On Competition results – you must meet the established deadline to be eligible to participate in OCI.**

13. What are the general rules?

- All research materials are provided in the Write-On packet.
- You **may not** conduct any additional research, nor is it necessary. Conducting additional research will result in disqualification from the Competition.
- You **may not** collaborate with anyone concerning your application. Collaboration with others will disqualify you and subject you to disciplinary action per Loyola's policies.

- Any outside assistance is absolutely prohibited. You **may not** discuss or consult with anyone regarding the application, including family, friends, professors, lawyers, or other students. Violation of this rule will result in disqualification and potential disciplinary action.
- Usage of **any** AI programs, including but not limited to ChatGPT, will result in disqualification and potential disciplinary action.
- Comply with all formatting requirements. Set up the margins, font, font size, headers, and page numbers beforehand. You don't want to worry about formatting at the last minute.
- Deadlines will be strictly enforced. Late applications will not be accepted.

14. Does the Competition make disability accommodations?

Yes! Loyola Law School complies with the Americans with Disabilities Act of 1990 and with Section 504 of the Rehabilitation Act of 1973 as amended. Specifically, we provide reasonable accommodations to meet the needs of individual students. Students must follow the Law School's Accommodation Request Procedure. If you have a temporary or permanent disability that may require reasonable accommodations during the Write-On, we encourage you to request accommodations as early as possible to enable timely implementation of any approved requests. Please see the Law School's policy and procedures by clicking the link below: <https://my.lls.edu/studentaffairs/disabilityaccommodations>

All requests for accommodations during the Write-On Competition are handled exclusively by Student Accessibility Services in the law school's Student Affairs Office. Please direct all disability related questions only to that office.

WRITE-ON COMPETITION

- 1. CASE COMMENT**
- 2. SUPPLEMENTAL CITATION
EXERCISE**

CASE COMMENT WRITE-ON 101

This year we will be doing a case comment as the essay component of the Write-On Competition. We have provided a sample submission from the 2022 Write-On Competition at the end of this packet. An additional sample will be posted on the Competition Brightspace page.

Disclaimer: the given samples are only examples. DO NOT rely on them in any capacity, especially for grammatical rules or more importantly, for *Bluebook* rules.

What is a case comment?

A case comment is a short paper analyzing the decision in a particular case. The comment lays out a court's decision and tells the reader your opinion about the decision. The comment is limited to a maximum of ten pages of double-spaced text, including the substance of your essay and endnotes.

Reading the sources

The source materials contain the text of the case you are tasked to write about and a number of related sources – such as prior cases, law review articles, etc. that you may cite in your comment. Read the Source Materials multiple times. A working knowledge of each source is necessary and extremely helpful.

(a) First Reading – Get a general sense of what the sources discuss. Do not worry about identifying any issues or arguments. You will not know how they fit together until you have read all the materials. You may choose to read the documents in the order they are given to you. However, you may also decide to read the sources chronologically or in order of importance.

(b) Second Reading – Summarize each of the sources. Start thinking about your approach to the topic and how each source will fit.

Make sure not to confuse a lower court case with the case you are supposed to be analyzing. The other cases and materials are included to give you context for the principal case.

Selecting a Topic

There are many options you have to analyze the case:

1. *The case was decided incorrectly.*

This is a common approach. Be careful not to reiterate the dissent or just explain where the court went wrong. Rather, you must attack the court's analysis. Did the court apply the correct law but come to the wrong conclusion compared to other precedential cases? Did it apply the incorrect law?

2. *The court came to the correct conclusion but used the wrong analysis.*

While you agree with the court's decision, you believe that the court used the wrong law or focused on the wrong part of the applicable law. If using this approach, either identify what the proper law was, where you identified it in another case, and why it is more proper for the legal analysis **or** explain why the court analyzed the correct law incorrectly yet came to the correct conclusion.

3. *The court failed to understand an important part of the law/ context.*

Maybe the court did not consider an important issue that other courts should consider in the future. Are there policy or equity considerations that override a given law or otherwise are a factor in the outcome?

4. *The court is correct.*

Taking this approach is dangerous but doable. Make sure this is not just a recitation of the facts and analysis of the principal case. An effective way to do this is to write from a defensive standpoint, anticipating and dismissing any counterarguments.

5. *There is a better approach to this problem than courts have been taking.*

Perhaps you don't believe the way courts have been addressing this problem is logical, and you have a new approach that courts can use to achieve consistent results that are supported by public policy. You should apply your new standard or approach to the principal case and compare it to the old approach.

NOTE: Whichever option you choose, please make sure you are contributing your own original analysis. Do not simply summarize what the court said in the majority or dissent. Analyze all given material and make an argument. Also, sometimes less is more. It is not necessary to come up with a grand idea. Legal writing is about making a clear and concise argument for your reader to understand and be persuaded by.

Format of a Case Comment

Your comment should include the following basic elements:

1. Introduction (3-4 pages)
 - a. Facts of the Case
 - b. Holding
 - c. Roadmap
2. Analysis (3-4 pages)
3. Conclusion (1/2 page)
4. Endnotes (2-3 pages)

REMEMBER: Your comment MUST NOT exceed 10 pages, including endnotes. Points will be deducted if this is not followed.

Introduction:

The introduction should begin by catching the reader's attention. It then should explain what the comment is about and why it is important. You should assume the audience does not know the problem as well as you do, so be clear in your writing. Next, you should explain the facts of the case and the holding. Finally, you should end with a roadmap of your paper. The roadmap should position the reader to understand what they will be reading about in the upcoming pages. It should also clearly state your thesis. It is perfectly acceptable to use language like "This comment will argue" or "Part one of the comment will analyze."

Analysis:

This is the most important part of your paper. The analysis should have headings and subheadings to guide your reader. Make sure this section follows the roadmap you have provided above. It may make sense to put your strongest arguments first and make sure to address any important counterarguments, but how you structure your argument is up to you. You may not be able to discuss everything you want to, so think about what the most important information is to convey.

Conclusion:

Your conclusion should be very brief (one or two sentences). It is a good idea to restate your thesis with your main arguments.

Endnotes:

Unlike in your LRW memos, you are NOT putting citations directly into the text. All citations will appear at the end of your comment in an endnote section. There are three reasons you may use an endnote:

1. To provide a citation: Anytime you cite to an authority in the text, you must include an endnote with the technical citation. Be very cognizant of the *Bluebook* rules around citing to cases for the first time.
2. To support a proposition: when you make a legal proposition, you must cite to a source to back it up. You may want to use Bluebook signals (Rule 1.2) or use a parenthetical to explain how the citation relates to the proposition. Use parentheticals only when they are appropriate.
3. To make ancillary points: If you have a point to make that is either distracting if put in the text or it simply takes up too much room, consider making that point in an end note.

REMEMBER: Endnotes MUST be technically correct. A lot of our work as staff editors on our law reviews is to correct citations to conform with the *Bluebook*. Technical errors are distracting and will be reflected in your grade for the Comment.

Technical Rules

What this section refers to as “Technical Rules” are Stylistic Rules and Citation Rules. Of the two, citation is the most important for you to consider and is the principal focus of this section. The technical accuracy of your paper is probably the single most important factor of your paper. This does not mean that you should ignore good organization and style but that you should put as much effort into ensuring that you have followed all the rules as you do in the other aspects of your paper.

A. Stylistic Rules

The principal guide for stylistic rules is the *Chicago Manual of Style* (“CMOS”). The CMOS pretty much has an answer for every grammatical question you might have but were afraid to ask. For example, the use of “that” and “which,” hyphenation, and numbers. Loyola has a subscription to CMOS, so you can access it by going to Loyola’s library website (library.lls.edu) and searching for “Chicago Style Manual” in the search box (catalog). Click on *Connect to Access Online (Licensed by LMU)* below the Title to access electronically.

CMOS is not required or necessary for completing your Write-On paper. We are giving you this information so that if you do have questions, you know where to look.

B. Citation Rules

Every quote, every statement of fact, and every statement which is not your own opinion or hypothetical **MUST** be cited. When you identify a source (such as a case name) this must be cited. This includes statements you make in your endnotes.

Citations direct the reader to the source of the information, tell the reader how recent or valuable the information is, and explain how the citation relates to the article.

General Method of Citing

1) *Identify the statements in your paper which need a citation.* Do this during each step of the writing process.

2) *Locate the source or sources which support your statement.*

Do this at each step of the writing process. If you cannot locate a source, try to rewrite what you're saying. Often, statements of opinion are written as statements of fact. Rewrite these statements so the reader knows this is your opinion.

3) *Confirm that each source says what you say it says.*

This is critical. If you are quoting a source, the quote should match the source exactly, subject to any alterations or omissions which are reflected in your quote. *See BB 5.* If you paraphrase, be sure to do so accurately.

4) *Determine the type of sources you are using for your support.*

Is the source a case, constitution, statute, journal article, other periodical, legislative material, book, etc.? The type of source dictates which source specific rule you will use.

Note: In the Write-On Competition, if you are uncertain about what type of source you are dealing with, then make your best guess and use that rule.

5) *Evaluate how strong the support is for your statement.* This determines what signal you will use. *See BB 1.2* for a list of signals.

6) *Group the sources according to how well each supports your argument.* All sources are grouped according to their signal. The groups are then ranked according to each signal's relative strength—which is simply the order in which they appear in *BB 1.2*. *See BB 1.3.*

7) *Order the sources within each group according to their relative value.*

Put your strongest authority within each signal first. Otherwise, cite authorities in the order below per *BB 1.4.*

8) *Determine if any additional information is required to clarify your source's relevance.*

This additional information will either appear in a parenthetical as part of the citation or as a separate sentence following the footnote. If the information appears as a separate sentence, that sentence must be followed by the appropriate citation. *See BB 1.1.*

Some *BB* Rules require or recommend parenthetical explanations. *See, e.g., BB1.2(a)*. If the Bluebook “encourages” the use of a parenthetical, **you should take that to mean that a parenthetical is required.**

The *Bluebook* can roughly be divided into the four following sections:

- General Rules of Citation and Style: Rules 1–9.
- Source Specific Rules: Rules 10–21.
- Tables and Abbreviations: Table 1–16.
- Index

You should read through the General Rules section and be familiar with it. You should also read some of the more common Source Specific Rules: cases, statutes, and secondary materials. You may want to scan the remaining rules so you have an idea of what is in there. By looking through all the rules you may find an example of a citation that helps you with a difficult source.

All of these sections work together to guide you in constructing your endnotes.

Constructing Your Endnotes

Each section of the *Bluebook* is structured in the same way.

- Each section begins with a whole number rule (1, 2, etc.). This is the general rule summarizing all the rules contained in that section.
- Each of the rules applies to a particular element of the general rule.
- Where applicable, each rule cross-references a table or practitioner’s note in the margin.

Short Citations

Short citations should be used once you already provided a full citation for the source provided that (1) it will be clear to the reader from the short form what source is being referenced, (2) the earlier full citation falls in the same general discussion, and (3) the reader will have little trouble locating the full citation quickly.

Proper use of short citation forms is correct *Bluebook* format. Incorrect short-citing is probably the most common citation error made in the Write-On Competition—it is also one of the easiest to spot. So don’t forget to short-cite. Please familiarize yourself with Bluebook Rules 4.1–4.2.

Helpful Hint: You should either full cite every source as you are writing your paper or use a form which allows you to easily identify the source. You should then change the full cites into short cites towards the end of the writing process or as part of your final edit. If you short cite your sources as you are writing and you later move or delete the full cite, you won’t know what source your *id.* refers to.

SUPPLEMENTAL CITATION EXERCISE

What does the citation exercise consist of?

The exercise consists of several citations containing a number of errors. Your job is to fix the errors using the rules from the Bluebook. You will not be provided with the source material the citations refer to. Thus, you are not responsible for the substantive information within the citation. For example, you are not responsible for making sure that a date of a statute is accurate. Your job is to ensure the citation formatting (typeface, spacing, punctuation, order, abbreviation, capitalization, etc.) is appropriate.

Tips & Tricks

1. Familiarize yourself with the rules beforehand: Before you can decide which rules apply to a citation, you need to know what rules there are. The Bluebook is divided into “blue pages,” “white pages,” and “tables.” Within each of these parts, there are several rules. One way to remove some pressure from the Write-On Competition week, is to skim the Bluebook beforehand to familiarize yourself with the different sections and general rules.

2. Identify applicable rules: During the competition, you want to identify what rules apply to the citation you are working on. Generally, there are two types of rules you want to keep in mind: source-specific rules, and general formatting rules.

a. Source-Specific Rules: Bluebook rules 10-21 are source-specific rules, meaning the rules apply to a specific type of source material. For example, rule 10 explains citing to cases. Look at the citation and identify the kind of source that is being cited to. Sometimes, identifying the type of source will be straightforward. For example, when you see the name of a case, you know Bluebook rule 10 will be implicated. Other times, the source may be obscure and may seem to fit into two different rules. This is often the case with internet sources.

b. Formatting Rules: Formatting rules 1-9 are rules that give guidance on the structure or format of a citation. For example, rule 8 deals with capitalization. Usually, source specific rules (10-21) will tell you how to format a certain part of a citation. Other times, the source specific rules will refer you to one of the general formatting rules. For example, rule 15, which deals with formatting nonperiodic materials and books, says that the title of nonperiodic materials should be “capitalize[d] according to rule 8.”

These rules often work together, so part of the exercise tests your ability to use different rules simultaneously. One helpful method is to, first, determine what kind of source material your citation is referring to. Second, identify what source-specific rule(s) to apply. Third, unless the source-specific rule(s) identifies the proper format of a citation, refer to the general formatting rules to make sure the citation is properly formatted.

3. Different sources trigger different rules: Some rules are seemingly in conflict. For example, some rules require that “federal” be abbreviated to “fed.,” while others require

abbreviating to “F.” Determining how to abbreviate “federal” depends on the kind of source being cited. Thus, identifying source-specific rules is important because different sources trigger different rules.

4. Rule out “special citation forms”: “Special citation forms” is a common sub-section that appears in several larger rule sections (ex. rule 10.8 and 15.8 both contain “special citation forms”). One time-saving practice is to rule out citing a source according to the “special citation forms” of a rule before trying to cite a source according to the general principles of that rule.

5. Look at examples: The Bluebook rules can sometimes be confusing in the abstract. Look at the examples to help you understand how to apply the rules.

Good luck!

Sample Write-On Competition Submission

The following is a sample paper from the 2022 Write-On Competition. An additional sample will be posted on the Competition Brightspace page.

Disclaimer: the given samples are only examples.

DO NOT rely on them in any capacity, especially for grammatical rules, or more importantly, for *Bluebook* rules.

The Dangers of Broadening the Immunity to ICSPs & Protecting the Right of
Publicity

I. Introduction

A world without Google, Yahoo, and Facebook is unimaginable. A 26-year-old statute is responsible for paving the path for the internet to flourish into what it is today. Section 230 of the Communication Decency Act (CDA) was passed by Congress in 1996.ⁱ Congress enacted this statute to help “promote the continued development of the Internet” and “preserve the vibrant and competitive free market that presently exists for the Internet.”ⁱⁱ The statute provides interactive computer service providers (ICSPs) with immunity against civil liability with respect to content disseminated by third-parties.ⁱⁱⁱ In the last two decades, ICSPs have grown significantly alongside the Internet. While the immunity provided by the CDA is broad in scope, § 230(e) creates certain limitations.^{iv} One of the exceptions to immunity is intellectual property claims identified in § 230(e)(2).^v The courts are split on whether to interpret the scope of the intellectual property exception to include state intellectual property laws like the right of publicity. Since the CDA itself provides such a broad immunity to ICSPs, it is imperative that courts carefully analyze the few limited exceptions Congress identified. In the current era of vlogger and influencer stardom and rapidly growing ICSPs, the spotlight on the right of publicity and the CDA is significant. In a 2007 case *Perfect 10, Inc. v. CCBill LLC*, the Ninth Circuit held that the intellectual property exception in § 230(e)(2) is limited to federal intellectual property laws.^{vi} This comment will argue that this decision was wrong. This result erroneously gives ICSPs more immunity and allows them to grow financially. Meanwhile it reduces an individual’s right of publicity rights and ability to contribute to the vibrant and competitive free market.

A. Perfect 10, Inc. v. CCBill LLC

Perfect 10 is the owner of an adult entertainment magazine publication and website titled perfect10.com.^{vii} The website allows consumers to purchase subscriptions to gain access to membership content.^{viii} Perfect 10 utilizes photos of models for its magazine and website.^{ix} The models assign their right of publicity to the company.^x Moreover, CWIE is a webhosting service and CCBill is a payment processing service utilized by consumers to make payments for subscriptions or memberships online.^{xi} In 2001, Perfect 10 began to send correspondence to CCBill and CWIE claiming that the companies' clients were using photos stolen from Perfect 10 on their websites.^{xii}

In 2002, Perfect 10 filed an action against CCBILL and CWIE alleging violations of copyright, trademark, state unfair competition, false advertising, and right of publicity laws.^{xiii} The District Court held that § 230(c)(1) of the CDA provides immunity to CCBill and CWIE against state law unfair competition and false advertising claims; however, it does not extend to the right of publicity claims.^{xiv} Consequently, Perfect 10 appealed and CCBill and CWIE cross-appealed.^{xv} CCBill and CWIE argued that the CDA provides immunity for right of publicity claims.^{xvi}

The Ninth Circuit Court affirmed the lower court's decision regarding immunity under CDA with respect to unfair competition and false advertising claims.^{xvii} Nonetheless, it reversed the lower court's decision regarding the right of publicity.^{xviii} The court reasoned that federal intellectual property law is uniform and well established whereas state intellectual property law is not.^{xix} State laws vary from state to state and thus there are various causes of action, remedies, and underlying policies.^{xx} Since websites are accessed across state lines, the lack of uniformity among different states' intellectual property laws would create an undue burden to ICSPs.^{xxi} This was not Congress's intention when creating § 230(e)(2).^{xxii} Thus, the court

concluded that the exceptions to immunity outlined in § 230(e)(2) of the CDA are limited to federal intellectual property law.^{xxiii}

B. Roadmap

The Ninth Circuit was wrong when it reversed the lower court's decision because it narrowly interpreted the intellectual property exception of the CDA. This comment will argue first that the textual analysis of the exception is broader than the Ninth Circuit's interpretation and it includes state intellectual property laws. Second, this comment will argue that the right of publicity is an intellectual property right that is analogous to federal intellectual property rights. Third, this comment will argue that Congress intended to include the right of publicity in the exception because it supports the underlying policy goals of the statute.

II. Analysis

A. A textual analysis of § 230(e)(2) and the CDA indicates that state intellectual property laws were intended to be included within the exception.

The Ninth Circuit overlooked the actual language in the statute and focused on interpreting the definition of "intellectual property."^{xxiv} To identify the definition, the court discusses the uniformity of federal intellectual property law and the lack of uniformity in state intellectual property law.^{xxv} It also discusses Congress's goals in implementing the CDA.^{xxvi} However, the court never went back to review the text of the statute beyond the words "intellectual property." By skipping the textual analysis,^{xxvii} the court's interpretation is out of context of the actual statute.

§ 230(e)(2) provides that "Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property." The Ninth Circuit's decision to construe this language to only mean federal intellectual property in effect limits the scope of intellectual property laws that apply in this exception. By creating this limit, it contradicts the

language of the statute which clarifies that this subsection shall not be construed to *limit* nor *expand* intellectual property law.^{xxviii} Further, this subsection applies to “any law pertaining to intellectual property law.” Many courts have recognized that the use of the word “any” expresses Congress’s intent to not place any limits as to the type of intellectual property law that applies to the exception.^{xxix} The statute goes even further to indicate that this exception relates not only to intellectual property law, but also to any law *pertaining to* intellectual property.^{xxx} This language further broadens the scope of traditional intellectual property laws.^{xxxi} To exclude state intellectual property laws from “any law pertaining to intellectual property” would be an incorrect interpretation of the text. By analyzing the use of the modifiers discussed above, it is clear that Congress’s intention was a broad interpretation of this subsection.

Furthermore, while several sections of the statute explicitly reference state and federal laws, § 230(e)(2) does not. For example, § 230(e)(1) references a federal criminal statute and § 230(e)(3) addresses state law. Contrarily, § 230(e)(2) simply indicates “any” law and does not make such distinction.^{xxxii} If Congress intended to limit § 230(e)(2) to federal intellectual property law, it would have made that distinction.^{xxxiii} Generally, when a statute contains particular language in specific sections, but omits it elsewhere, this omission is intentional.^{xxxiv} Thus, a natural reading of § 230(e)(2) would not limit the exception to federal intellectual property law.^{xxxv} Courts cannot conjure up legislative purposes of statutes in order to disregard the plain language of the text.^{xxxvi} Therefore, the Ninth Circuit erred in narrowly construing this exception by overlooking the plain language of the text.

B. Right of publicity is an intellectual property right that congress intended to include within § 230(e)(2).

The right of publicity is a right afforded to individuals to protect the commercial use of their name and likeness.^{xxxvii} While there may be varying nuances within the right of publicity laws that different states enact, the core principle of the protection remains unchanged. The Ninth Circuit incorrectly uses this lack of uniformity to justify Congress's underlying intention in implementing the CDA. Most states utilize principles of common law and federal common law for state statutes.^{xxxviii} Moreover, "federal and state trademark and unfair competition laws can coexist and cooperate without conflict."^{xxxix} Consequently, the justification to exclude state intellectual property from § 230(e)(2) due to the lack of uniformity is not supported by the principles used to establish state laws.^{x1}

1. The right of publicity is an intellectual property right that shares core principles with federal intellectual property laws.

Intellectual property is defined as "intangible rights protecting commercially valuable products of the human intellect."^{xli} This definition includes the right of publicity because an individual's name and likeness is a product of that individual's creations which creates protectable commercial value. In *Hepp v. Facebook*, the Third Circuit looked at various dictionaries and resources to help establish the definition of intellectual property.^{xlii} In several dictionaries, the right of publicity is explicitly identified as an intellectual property right.^{xliii} In addition, other dictionaries defined intellectual property as property rights that "result from the physical manifestation of original thought."^{xliv} The core principle of the right of publicity is analogous to this definition of intellectual property. The reputation one builds to create her name and likeness is a manifestation of one's thought. This right is highly valuable especially in today's era of influencer and vlogger stardom. Similar to patent and copyright laws that encourage creativity,^{xlv} the right of publicity also encourages creativity. Individuals such as influencers or vloggers utilize

various resources to develop content for users to enjoy. They are encouraged to generate creative content because it helps build their reputation. Like patents that are researched and built over time, the reputation of an individual is also created over time. Individuals build their name and likeliness similar to companies developing their brands. In *Hepp*, the plaintiff sued Facebook for using her photo as an advertisement.^{xlvi} She spent her adult years as a newscaster on a local television station.^{xlvii} She utilized human intellect to build her reputation and should not be exploited of the commercial value.^{xlviii}

Moreover, the right of publicity is also a property right that is economic in nature. While privacy torts hinge on protection of mental anguish, the right of publicity is a statutory right providing economic protection.^{xlix} Accordingly, to identify the right of publicity as a privacy tort is incorrect.¹ Similar to copyright and patent laws, the right of publicity allows individuals to “reap the reward of his endeavors.”^{li} These rewards are economic and prevent against unjust enrichment.^{lii} Further, like copyright, patent, and trademark laws that create certain monopolies, the right of publicity also creates a monopoly for an individual’s name and likeliness.^{liii} Thus, it follows that the right of publicity is not only an intellectual property right, but it also shares numerous characteristics with federal intellectual property laws. As a result, by limiting § 230(e)(2), the Ninth Circuit ignored the similarities between the right of publicity and federal intellectual property.

C. The Ninth Circuit misconstrued Congress’s policy goals for the CDA when interpreting § 230(e)(2).

A broad reading of § 230(e)(2) to include state intellectual property rights and recognize the right of publicity as an intellectual property right that should be included in this exception is supported by Congress’s goals for the CDA. The policy supporting the CDA includes the promotion of the

Internet and preservation of a vibrant and competitive free market.^{11v} These CDA policies do not suggest that Congress implemented the CDA for ICSPs to grow financially. While it is possible that this is an effect of allowing the Internet to prosper, it is unlikely the ultimate goal. However, it is implausible that Congress intended this effect at the expense of diminishing a competitive free market because individuals' right of privacy are excluded from the exception. Some courts argue that due to the staggering amount of information available online, tort liability for ICSPs would have a chilling effect.^{1v} However, this concern should not extend to the right of publicity. The right of publicity supports and promotes Congress's policy of a pro-free-market.^{1vi} As discussed in Section II.B, the right of publicity is economic in nature and comparable to federal intellectual property laws which are covered under the exception.

On the other hand, litigants and scholars argue that holding ICSPs responsible to comply with varying state laws regarding the right of publicity would create an undue burden.^{1vii} However, many ICSPs gain an economic advantage when third parties use their websites. Some ICSPs are also creating a medium for legal rights of publicity when they sell space for ads on their websites. As such, ICSPs must recognize the right of publicity laws. To extend their knowledge to prevent third party users from violating an individual's right of publicity would not create undue burden.^{1viii} In *Perfect 10*, most of the models released and assigned their right of publicity to Perfect 10. It would be inconsistent with the policy to allow CCBill and CWIE to reap the reward of these economic benefits explicitly given to Perfect 10. This would diminish a competitive free market. Therefore, including the right of publicity within the meaning of intellectual property in § 230(e)(2) follows Congress's policies.

III. Conclusion

In sum, the Ninth Circuit incorrectly limited the exception to include only federal intellectual property rights and its analysis was “shaky.”^{li*} This narrow interpretation broadens the immunity of the CDA even though it was not created to shield ICSPs from state intellectual property laws.^{lx} A close reading of the text of the statute identifies Congress’s intent to include state intellectual property laws. These state intellectual property laws should include the right of publicity claims because they are analogous to federal intellectual property claims that the Ninth Circuit recognized. This is supported by Congress’s policy goals when it enacted the statute and is still applicable today. In the era of influencer and vlogger stardom, proliferation of the Internet and a competitive free market fully supports the goals of the CDA. The internet is still thriving with no signs of collapse^{lxi} Twenty-six years after the CDA was implemented even with a broad interpretation of § 230(e)(2) to include state intellectual property laws such as the right of publicity.

ⁱ 47 U.S.C.A § 230.

ⁱⁱ § 230 (b) (1)-(2).

ⁱⁱⁱ § 230 (c).

^{iv} § 230 (e).

^v § 230 (e) (2).

^{vi} *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1119 (9th Cir. 2007).

^{vii} *Id.*

^{viii} *Id.*

^{ix} *Id.*

^x *Id.*

^{xi} *Id.*

^{xii} *Id.*

xiii *Id.*

xiv *Id.*

xv *Id.*

xvi *Id.*

xvii *Id.* at 1121.

xviii *Id.*

xix *Id.* at 1118.

xx *Id.*

xxi *Id.*

xxii *Id.*

xxiii *Id.* at 1119.

xxiv *Id.* at 1118.

xxv *Id.*

xxvi *Id.*

xxvii *Atl. Recording Corp. v. Project Playlist, Inc.*, 603 F. Supp. 2d 690, 703 n.11 (S.D.N.Y. 2009).

xxviii § 230 (e) (2).

xxix *Doe v. Friendfinder Network, Inc.*, 540 F. Supp. 2d 288, 300 (D.N.H. 2008). *See, e.g., Hepp v. Facebook*, 14 F.4th 204, 794 (3d Cir. 2021); *Atl. Recording Corp.*, 603 F. Supp. 2d at 702.

xxx *Hepp*, 14 F.4th at 214 (3d Cir. 2021) (citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383, 112 (1992)).

xxxi *Id.*

xxxii *Atl. Recording Corp.*, 603 F. Supp. 2d at 702.

xxxiii *Friendfinder*, 540 F. Supp. 2d at 300 (quoting *Duncan v. Walker*, 533 U.S. 167, 173 (2001)).

xxxiv *Id.*

xxxv *Hepp*, 14 F.4th at 211-12.

xxxvi *Friendfinder*, 540 F. Supp. 2d at 301 (quoting *Ruiz v. Bally Total Fitness Holding Corp.*, 496 F.3d 1, 8 (1st Cir. 2007)).

xxxvii *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1322 (11th Cir. 2006) (citing *ETW Corp. v. Jireh Publ'g Inc.*, 332 F.3d 915, 928 (6th Cir. 2003)). *See, e.g., Hepp*, 14 F.4th at 212-14.

xxxviii *Friendfinder*, 540 F. Supp. 2d at 301 (quoting THOMAS J. MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 22:2 at 22-8 (<editor name>, 4th ed. 1992)).

xxxix *Friendfinder*, 540 F. Supp. 2d at 301 (quoting THOMAS J. MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 22:1 at 22-7 (<editor name>, 4th ed. 1992)).

x¹ See *Friendfinder*, 540 F. Supp. 2d at 301.

x^{li} *Almeida*, 456 F.3d at 1322 (quoting BLACK'S LAW DICTIONARY (7th ed. 1999)).

x^{lii} *Hepp*, 14 F.4th at 212-14.

x^{liii} See *Id.* (citing *Intellectual Property*, BLACK'S LAW DICTIONARY (11th ed. 2019)).

x^{liv} *Id.* (citing *Intellectual Property*, BALLENTINE'S LAW DICTIONARY (3d ed. 1968)).

x^{lv} Brief of Electronic Frontier Foundation, et al. as Amici Curiae in Support of Petition for Rehearing at 4, *Hepp v. Facebook*, 14 F.4th 204 (3d Cir. 2021) (No. 20-2725, 20-2885).

x^{lvi} *Hepp*, 14 F.4th at 206.

x^{lvii} *Id.* at 206-07.

x^{lviii} *Almeida*, 456 F.3d at 1322 (quoting BLACK'S LAW DICTIONARY (7th ed. 1999)).

x^{lix} *Stayart v. Yahoo! Inc.*, 651 F. Supp. 2d 873, 887 (E.D. Wis. 2009) (quoting THOMAS J. MCCARTHY, RIGHT OF PUBLICITY AND PRIVACY § 5.67 (<editor name>, 2d ed. 2008)) (critical difference between privacy and right of publicity “. . . is the nature of the right invaded: either psyche or pocketbook.”).

¹ Compare *Almeida*, 456 F.3d at 1322 (quoting BLACK'S LAW DICTIONARY (7th ed. 1999)) (intellectual property consists of publicity rights), with Brief of Electronic Frontier Foundation, et al. as Amici Curiae in Support of Petition for Rehearing at 4-5, *Hepp*, 14 F.4th (No. 20-2725, 20-2885) (right of publicity is rooted in privacy interest and is not analogous to intellectual property).

^{li} *Hepp*, 14 F.4th at 213 (quoting *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 573 (1977)). See *Almeida*, 456 F.3d at 1323. But see Brief of Electronic Frontier Foundation, et al. as Amici Curiae in Support of Petition for Rehearing at 4-5, *Hepp*, 14 F.4th (No. 20-2725, 20-2885).

^{lii} See *Hepp*, 14 F.4th at 213 (quoting *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 576-76 (1977)).

^{liii} *Hepp*, 14 F.4th at 213 (citing *Intellectual Property*, THE WOLTERS KLUWER BOUVIER LAW DICTIONARY (2012)).

^{liv} § 230 (b) (1)-(2).

^{lv} *Stayart*, 651 F. Supp. 2d at 884 (citing *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997)).

^{lvi} *Hepp*, 14 F.4th at 211. See discussion *supra* Section II(B).

^{lvii} See *Perfect 10*, 488 F.3d at 1118; Brief of Electronic Frontier Foundation, et al. as Amici Curiae in Support of Petition for Rehearing at 4, 8, Hepp, 14 F.4th (No. 20-2725, 20-2885).

^{lix} *Id.* at 301.

^{lx} *Id.* at 301-02. See also *Stayart*, 651 F. Supp. 2d at 885 (claiming "CDA immunity is not obsolete.").

^{lxi} *Id.*