**1. Toysmart Decision Point One:**

You are David Lord, a former employee of Holt Educational Outlet, a manufacturer of educational toys located in Waltham, Mass. Recently, you have joined with Stan Fung of Zero Stage Capital, a venture capital firm to buy out Holt Educational Outline. After changing its name to Toysmart, you and Fung plan to transform this brick and mortar manufacturer of educational toys into an online firm that will link customers to a vast catalogue of educational, high quality toys. Designing a website to draw in toy customers, linking to information on available toys, setting up a toy distribution and shipping system, and implementing features that allow for safe and secure online toy purchases will require considerable financing. But, riding the crest of the dot-com boom, you have two promising options. First, a venture capital firm has offered you $20,000,000 for website development, publicity, and other services. Second, Disney has offered the same amount for financing, but has added to it an additional $25,000,000 in advertising support. Disney has a formidable reputation in this market, a reputation which you can use to trampoline Toysmart into prominence in the growing market in educational toys. However, Disney also has a reputation of micro-managing its partners. Develop a plan for financing your new dot-com.

Things to consider in your decision-making:

1. What are Toysmart values? What are Disney values? Would Disney respect Toysmart’s values?

2. What synergies could result from working with Disney? For example, could you share information on customers? You could feed your customer profiles to Disney in exchange for their customer profiles. What kind of data managing technology would be required for this? What ethical problems could arise from transferring customer identifying information to third parties?

3. What kind of commitment would you be willing to make to Disney in terms of product and sales? How should Disney reciprocate? For example, how long should they stick with you through sales that fall short of projections?

**2. Toysmart Decision Point Two:**

You work for Blackstone, "an 18-person software business." You have been asked by Toysmart to provide software the following functions: (1) designing a webpage that would attract customers and communicate Toysmart Values, (2) advise Toysmart on its privacy and data security policy including whether to register with an online trust, security measures to protect customer data during online transactions, and measures to prevent unauthorized access to customer data while stored, and (3) a comprehensive online catalogue that would provide customers with access to educational toys from a variety of small busines manufacturers. An example of small toy manufacturers to which Toysmart should be linked is Brio Corporation which manufactures wooden toys such as blocks, trains, and trucks. Develop general recommendations for Toysmart around these three areas.

(Information for this scenario comes from Laura Lorek, "When Toysmart Broke," http://www.zdnet.com/eweek/stories/general/0,1101,2612962,00.html. Accessed July 16, 2001. )

Things to consider in your decision-making

a. Toysmart is a fairly new dot-com. While it is supported by Disney, it is still a risky venture. Should you ask them for advance payment for whatever services you render? What kind of policies does your company have for identifying and assessing financial risk?

b. What kind of privacy and data security policy should you recommend to Toysmart? What kind of values come into conflict when a company like Toysmart develops and implements privacy and data security measures? (Use your STS description to answer this question.)

c. Should Toysmart become bankrupt, their data base would turn into a valuable asset. What recommendations should you make to help Toysmart plan around this possibility? What values come into conflict when planning to dispose of assets during bankruptcy proceedings? What kind of obligations does a company take on during its operation that continue even after it has become bankrupt?

d. Using the link provided with this module, visit the TRUSTe website and find its white paper on developing a privacy policy. Evaluate this privacy policy for Toysmart. What benefits can a strong privacy policy bring to a dot-com? Should Toysmart work to qualify to display the TRUSTe seal on its website? Examine TRUSTe procedures for transferring confidential customer PII to third parties? What obligations will this create? Would this over-constrain Toysmart?

**3. Toysmart Decision Point Three:**

You work for PAN Communications and have been providing advertising services for Toysmart. Now you find out that Toysmart has filed a Chapter 11 bankruptcy, and it has an outstanding debt to your company for $171,390. As a part of this filing procedure, Toysmart has reported its assets at $10,500,000 with debts of $29,000,000. Toysmart creditors, including PAN Communications, have petitioned the Office of the United States Trustee for a "Creditors' Committee Solicitation Form." This will allow for the formation of a committee composed of Toysmart creditors who decide on how the assets of the bankrupt firm will be distributed. You, because of your knowledge of bankruptcy and accounting procedures, have been asked to represent your company on this committee. This bleak situation is somewhat remedied by the customer data base that Toysmart compiled during its operation. It contains profiles of the PII (personal identifying information) of 260,000 individuals. Because selling educational toys is profitable, there is a good chance that this data base could be sold for up to $500 a profile to a third party. Should you recommend selling this data base? Should Toysmart customers be notified of the pending transfer of their PII and, if so, how should they be notified?

Here are some constraints that outline your decision

a. As a member of the Creditors' Committee, you have a fiduciary duty to Toysmart creditors in working to distribute fairly the remaining Toysmart assets. This would, all things being equal, lead to recommending selling the Toysmart customer data base

b. There are some provisions in the bankruptcy code that may require or allow overriding fiduciary duties given prior legal commitments made by Toysmart. These commitments, in the form of strong privacy guarantees made to customers by Toysmart on its webpage, may constitute an "executory contract." See the Legal Trail table in the Toysmart case narrative and also Larren M. Nashelsky, "On-Line Privacy Collides With Bankruptcy Creditors," New York Law Journal, New York Law Publishing Company, August 28, 2000.

c. Finally, Nashelsky makes an interesting argument. While deontological considerations would require setting aside creditor interests and honoring Toysmart privacy promises, a justice-based argument would recommend a compromise. Bankruptcy proceedings start from the fact that harm (financial) has been done. Consequently, the important justice consideration is to distribute fairly the harms involved among the harmed parties. Harm distributions are correlated with benefit distributions. Because Toysmart customers benefited from Toysmart offerings, they should also bear a share of the harms produced when the company goes bankrupt. This requires that they allow the distribution of their PII under certain conditions.

Things to consider in your decision-making

a. How do you balance your obligations to PAN with those to other Toysmart creditors as a member of the Creditors' Committee?

b. How should you approach the conflict between honoring Toysmart promises and carrying out Creditor Committee fiduciary duties? Do you agree with Nashelsky's argument characterized above?

c. Should the Bankruptcy Code be changed to reflect issues such as these? Should privacy promises be considered an “executory contract” that overrides the duty to fairly and exhaustively distribute a company's assets?

d. Finally, what do you think about the FTC's recommendation? The Bankruptcy Court's response? The final accommodation between Toysmart and Buena Vista Toy Company?

**4. Biomatrix Decision Point Three: How far does free speech go?**

You work with a public service organization devoted to the defense of free speech, both off and online. For this reason you immediately noticed a newspaper story that three individuals, Richard Costanzo, Raymond Costanzo, and Ephraim Morris, were found guilty in a summary judgment of defamation. It seems they published, under 23 psuedonyms, some 16,000 messages that made negative claims against Biomatrix and its managers that they were unable to substantiate.

The claims made by these individuals in their emails were pretty strong:

* Biomatrix's most popular product, Synvisc, has produced significant harmful side effects and the company has taken wrongful measures to suppress this information. Synvisc is a manufactured substance that resembles the natural fluids that lubricate knee movements. These fluids disappear with age producing a condition called osteoarthritis. Synvisc has been presented as a highly promising treatment for this problem.
* They also accuse Biomatrix of covering up that fact that they are targets of potentially damaging lawsuits.
* These three individuals, who style themselves the BXM Police, also accuse the company of covering up negative, harmful information about their upcoming merger with Genzyme. The messages claim that inside information reveals that the merger will never take place.
* The BXM police also accuse Biomatrix top management of having committed war crimes and acts of sexual harassment.

During pre-trial depositions, the accused were unable to substantiate any of these claims. While the motives for posting these messages have never been made clear three stand out: revenge, short selling, and the perception that rules of defamation did not apply in cyber space. You have been asked by your organization to contact the BXM Police and propose that they appeal this decision. You and your organization think that there are strong legal and ethical arguments, based on the right to free speech, that need to be put forth in this case. Your job in this decision point is to set forth these legal and moral arguments. In other words, construct a comprehensive defense for the BXM Police.

*Important Considerations*

* EPIC (Electric Privacy Information Center) and the ACLU (American Civil Liberties Union) have presented an amici curiae (friend of the court brief) outlining their concerns about the use of John Doe lawsuits to pierce online anonymity. Their concerns is that the same procedures could discourage whistle-blowing or lead to retaliation against whistle-blowers and other dissenters.
* Perhaps the strongest case for Free Speech is made by John Stuart Mill in On Liberty. (a) Censorship is wrong when the opinion is true because this suppresses the truth. (b) Censorship is wrong when the opinion is partially true because this suppresses part of the truth. (c) In the deciding case, censorship is wrong when the opiion is false because this deprives the truth of the occasion to defend and clarify itself. Do defamation lawsuits suppress free speech?
* Did Biomatrix and its management team suffer damages as a result of the Yahoo messages? What is this damage? What evidence proves that the damage was caused by the negative speech and not something else? Who bore the burden of proof in the summary judgment against the BXM Police?
* The strongest argument the BXM Police offer for their actions is that they are not bound by rules of veracity and defamation while operating pseudonymously online. Should we be held responsible for what we say online? In the same way that we are held responsible off line? Doesn't Yahoo's disclaimer to readers that they should not assume that what they read is true suffice to exculpate those who post false speech?
* It has been suggested that the BXM Police were motivated by greed. Their speech was designed to lower the price of Biomatrix stock so they could profit from short selling it. Does this change your defense? There is also inconclusive evidence that they were not acting alone? Does this change your defense?

**5. Enron** **Case**

*You will find information on the Enron Case from two sources: Business & Society, 450-462 and cnx.org/content/m31972/latest. The Connexions module condenses the case into eight important points and three cautionary tales.*

* Lay formulated an exciting new idea: trading energy futures, that is, deregulating the energy market and trading energy futures in the same way that agriculture futures are traded. To bring about deregulation in the energy market, Kenneth Lay became a formidable Washington lobbyist who benefitted from close ties to the Bush family (President George H. W. Bush and President George W. Bush). What are the ethical and risk implications of deregulating the energy industry and trading energy futures on the market?
* Skilling implemented a rank and yank performance evaluation system. Each Enron employee was ranked in relation to his or her coworkers. Then the bottom 15% were fired and replaced the next year by new hires. This process then continued: every year at Enron, employees are ranked and the bottom 15% yanked. The ranking process was based primarily on an adversarial procedure where your mentor advances your portfolio and a detractor pushes it back and advances that of another candidate. The process terminates when the rankers get exhausted. Skilling implemented this system because he believed in a philosophy called “Social Darwinism” where only the fittest survive. (Social Darwinism is based on a misinterpretation of Darwin’s theory of evolution.) What do you think about this personnel process both from the standpoint of Human Resources or Personnel and from an ethical standpoint?
* Enron developed "creative" accounting methods. **Mark-to-market** allowed them to declare future earnings expected from a project at the moment the deal is made. While good in the short term, this method quickly put Enron on an accelerating treadmill: to maintain the illusion of profitability they had to keep making deals and immediately declaring expected profits. Enron also used **Special Purpose Entities** to distribute risk and secure needed loans at low interest rates. SPEs were artificial corporations endowed with Enron assets like gas pipelines and energy contracts. These assets made it possible for Enron to get low interest loans and generate needed cash flow. The problem was that Enron used its stock to guarantee the loans given to the SPEs. Thus, Enron had to continually make deals to appear profitable to keep its stock value rising, and we’re back to the accelerating treadmill. Evaluate the practices of mark-to-market accounting and the use of SPEs to distribute risk and secure loans. Are these practices unethical considered on their own terms? Ethically evaluate Enron’s use of these accounting practices. Use the three ethics tests.

**6. Nike Case**

Your textbook provides the following description of working conditions for a Nike suppliers located in Vietnam (p 512):

*“Workers who did not meet the aggressive production goals did not receive a bonus. Failing to meet production goals three times resulted in the worker’s dismissal. Workers were sometimes permitted to work additional hours without pay to meet production quotas. Supervisors were strict, chastising workers for excessive talking or spending too much time in the restrooms. Korean supervisors, often hampered by language and cultural barriers, sometimes resorted to hard-nosed management tactics, hitting or slapping slower workers. Other workers in need of discipline were forced to stand outside the factory for long periods in the tropical sun. The Vietnamese term for this practice was* phoi nang*, or sun-drying.” Business & Society, 512*

Is Nike responsible (or co-responsible) for the actions described above that were committed by its supplier? Explain your position by clarifying whether you are taking a shareholder or stakeholder view of corporate social responsibility. Then outline a plan for how should Nike respond to a supplier that engages in the practices described above?

**7. Hughes Scenario One: Responding to Organizational Pressure**

Frank Saia has worked at Hughes Aircraft for a long time. Now he is faced with the most difficult decisions of his career. He has been having problems in the environmental testing phase of his microchip manufacturing plant; the detailed nature of these tests has caused Hughes to be consistently late in delivering the chips to customers.

Because of the time pressure to deliver chips, Saia has been working to make the production of chips more efficient without losing the quality of the product. Chips are manufactured and then tested, and this provides two places where the process can bottle up. Even though you might have a perfectly fine chip on the floor of the plant, it cannot be shipped without testing. And, since there are several thousand other chips waiting to be tested, it can sit in line for a long time. Saia has devised a method that allows testers to put the important chips, the “hot parts,” ahead of the others without disrupting the flow and without losing the chips in the shuffle. He has also added a “gross leak” test that quickly tells if a chip in a sealed container is actually sealed or not. Adding this test early in the testing sequence allows environmental testing to avoid wasting time by quickly eliminating chips that would fail a more fine-grained leak test later in the sequence.

Because environmental testing is still falling behind, Saia’s supervisors and Hughes customers are getting angry and have begun to apply pressure. Karl Reismueller, the director of the Division of Microelectronics at Hughes, has given Saia’s telephone number to several customers, whose own production lines were shut down awaiting the parts that Saia has had trouble delivering. His customers are now calling him directly to say “we’re dying out here” for need of parts.

Frank Saia has discovered that an employee under his supervision, Donald LaRue, has been skipping tests on the computer chips. Since LaRue began this practice, they have certainly been more on time in their shipments. Besides, both LaRue and Saia know that many of the “hot” parts are actually for systems in the testing phase, rather than for ones that will be put into active use. So testing the chips for long-term durability that go into these systems seems unnecessary. Still, LaRue was caught by Quality Control skipping a test, and now Saia needs to make a decision. Upper management has provided no guidance; they simply told him to “handle it” and to keep the parts on time.

He can’t let LaRue continue skipping tests, or at least he shouldn’t let this skipping go unsupervised. LaRue is a good employee, but he doesn’t have the science background to know which tests would do the least damage if they were skipped. He could work with LaRue and help him figure out the best tests to skip so the least harm is done. But getting directly involved in skipping the tests would mean violating company policy and federal law.

**8. Hughes Scenario Two: Responding to Wrongdoing**

Margaret Gooderal works in a supervisory position in the environmental testing group at Hughes Aircraft. Her supervisor, Donald LaRue, is also the current supervisor for environmental testing. The group that LaRue and Gooderal together oversee test the chips that Hughes makes in order to determine that they would survive under the drastic environmental conditions they will likely face.

Rigorous testing of the chips is the ideal, but some chips (the hot chips) get in line ahead of others. Gooderal has found out that over the last several months, many of these tests are being skipped. The reason: Hughes has fallen behind in the production schedule and Hughes upper management and Hughes customers have been applying pressure to get chip production and testing back on schedule. Moreover, LaRue and others feel that skipping certain tests doesn’t matter, since many of these chips are being used in systems that are in the testing phase, rather than ones that will be put into active use.

A few months after Margaret Gooderal started her new position, she was presented with a difficult problem. One of the “girls” (the women and men in Environmental Testing at Hughes), Lisa Lightner, came to her desk crying. She was in tears and trembling because Donald LaRue had forcefully insisted that she pass a chip that she was sure had failed the test she was running.

Lightner ran the hermeticity test on the chips. The chips are enclosed in a metal container, and one of the questions is whether the seal to that container leaks. From her test, she is sure that the chip is a “leaker”—the seal is not airtight so that water and corrosion will seep in and eventually damage the chip. She has come to Gooderal for advice. Should she do what LaRue wants and pass a chip she knows is a leaker?

**9. Therac-25 Scenario: Fritz Hager’s Dilemma**

Therac-25 was a new generation medical linear accelerator introduced in 1983 for treating cancer. It incorporated the most recent computer control equipment. Therac-25’s computerization made the laborious process of machine setup much easier for operators, and thus allowed them to spend minimal time in setting up the equipment. In addition to making setup easier, the computer also monitored the machine for safety. With the advent of computer control, hardware based safety mechanisms were transferred to the software. Hospitals were told that the Therac-25 medical linear accelerator had “so many safety mechanisms” that it was “virtually impossible” to overdose a patient.

You are Fritz Hager a hospital physicist working for the East Texas Cancer Center in Tyler, Texas. It has been brought to your attention that there is a strong probability that a patient—possibly two—has received an overdose of radiation during treatment with the Therac-25 medical linear accelerator. Upon notifying your supervisors, East Texas Cancer Center officials, you have been told that you cannot talk with anyone outside of the hospital about this situation. This even includes interviewing the first person who suffered the possible overdose. You have three responsibilities in this situation: (1) as hospital physicist you are ultimately responsibility for any untoward results produced through the operation of the Therac-25 machine; (2) you are responsible for finding out what happened and, if the patient received an overdose, what caused this overdose; (3) you are also legally responsible, as an employee of the East Texas Cancer Center, for acting as the loyal agent of your supervisors who have told you unequivocally not to communicate with any outsiders concerning this issue. What should you do?

Design a course of action from Hager’s perspective given the situation described in the decision scenario. First, broadly define Hager’s problem and explore its ethical dimensions. Second, design a course of action for Hager that addresses the responsibilities mentioned just above. Is it possible to carry out the first two responsibilities while keeping the matter “in house?” Finally, include in your presentation a discussion of the values that you feel your solution embodies.

(To help you with this scenario please consult with the interview with Fritz Hager at Computing Cases.)

**10. Therac-25 Scenario: Are Operators Between a Rock and a Hard Place?**

You have been operating a Therac-25 unit for several months now. Even though the machine is new, rumors of problems have started to flow in from other places. From your standpoint, the machine is quite nice. For example, you are able to treat patients faster because the machine’s software automatically aligns the machine’s magnets and beams to produce the right kind of radiation treatment. One machine combines three functions: x-ray treatment, electron treatment, and a harmless beam that lets you target the machine on exactly the right place on the patient.

Four issues concern you. First, the newest Therac machine has dismantled many hardware safety controls and replaced them with software controls. AECL assures you that this is safer because hardware is more reliable. But, as a hands-on kind of person, you like to have more control over the configuration and operation of the machine.

Second, the patient and the machine are located in one room, but you carry out the radiation treatment from another room. This is for your safety, since you would be over exposed to radiation if you were to stay with all of your patients during their treatment. But your ability to monitor the treatment and the patient’s health depends on the audio and video monitoring systems. You know from past experience at the hospital, that these systems break down and the hospital maintenance staff is sometimes slow in getting around to repairs. You should decline to treat patients when these monitoring systems are not functioning but it is difficult for an operator to press this point with supervisors.

Third, while initially the quicker patient turnover time allowed you to spend more time with each patient, there is now subtle but increasing pressure to fill in the additional time by treating more patients. You understand the hospital’s concern to carry out treatments as efficiently and economically as possible. But what kind of arguments can you give to your supervisors for treating fewer patients and spending more time with each? Is it your job to advocate for patient interests in this context?

Finally, the computer interface with the operator simply provides inadequate information. When a treatment pause occurs, only a generic error message flashes on the screen. It would, in your opinion, be better if you knew the specific reason for the treatment pause. Furthermore, many of your counterparts have found ways to override the pauses. This saves time and money since resetting the machine and reentering the data takes up valuable time. Nevertheless, since you do not know the reason behind the pause, how do you know that the pause is not due to some dangerous machine state like an inadequate focusing of the photon beam? Is this a problem you need to bring to the attention of your supervisors?

Your hospital administration is holding a meeting. Fifteen minutes has been allocated for a report from you and the other Therac-25 operators on how the machine has been performing to date. Prepare a short informal presentation that makes these concerns known to the administrators. Be sure to deal with the problems mentioned above but also take care to define your problems in terms your administrators would find clear and persuasive. For each problem suggest some solutions, say 2 or 3. Evaluate these solutions in ethical and non-ethical terms. Rank them.

Key Arguments

**1. Toysmart**

Construct arguments for and against the selling of Toysmart’s customer data base to third parties. Your arguments should consider the perspectives of both the customers (whose personal identifying information forms the content of this data base) and Toysmart’s creditors (who are responsible to their stockholders for recovering Toysmart’s debt).

**2. Biomatrix**

A John Doe lawsuit was used in the Biomatrix case to uncover the names of the BXM Police, the Biomatrix cyber slanders. Privacy interest groups argue that this represents a dangerous precedent because the same tool can be used against legitimate dissenters (such as whistle-blowers) who use anonymity to protect themselves against retaliation. Construct arguments for and against the use of John Doe lawsuits and orient your arguments around the issue of free speech.

**3. Enron**

Enron’s use of creative accounting and business tools (mark-to-market accounting and special purpose entities to distribute risk) could be termed deceptive. But Malcom Gladwell argues that Enron was not at fault for deceiving its investors. Instead of being a mystery created when conspirators improperly conceal information, Enron was a puzzle where all the needed information is publicly available but nobody has the foresight to interpret the information in the proper fashion. (Gladwell points out that a group of students at Syracuse University studied Enron and recommended selling Enron stock long before the so-called experts reached the same conclusion.) Construct arguments for and against the claim that Enron business practices were deceptive and therefore unethical. Use your ethics tests.

**4. Nike and Its Suppliers**

Your module on corporate social responsibility outlines two different accounts of the target and scope of responsibility. The stockholder view holds that the corporation is responsible only to its investors/owners. Diverting resources from stockholders to other parties represents, according to Milton Friedman, “taxation without representation.” On the other hand, the stakeholder view holds that the corporation as to balance different stakeholder interests and rights; the corporation is responsible to all stakeholders and must treat them equally. Werhane agrees with the stakeholder view but goes one step further; to properly understand stakeholder responsibilities, the corporate manager must imagine the corporate stakeholder complex around each stakeholder taken successively as the center. Argue for a stockholder approach to the responsibilities of Nike for the actions of its suppliers. Argue for a stakeholder approach to the responsibilities of Nike for the actions of its suppliers. Imagine the Nike stakeholder complex as it is seen from the standpoint of the Vietnamese workers depicted in the case above. How should it respond to employee treatment from this perspective?

**5. Hughes Aircraft**

Margaret Gooderal’s problem could be specified as how to carry out effective dissent within the chip manufacture division at Hughes Aircraft. What are the different ways in which employees can disagree with decisions made by their supervisors? Construct arguments for and against whistle-blowing as the most ethical and effective way for Gooderal to manifest her concerns with LaRue’s test skipping. Be sure to take into account the harms of whistle-blowing to the whistle-blower, the target of the whistle-blowing, and those who become “collateral damage” such as the whistle-blower’s coworkers.

**6. Therac-55**

From both Hager’s and the operators’ standpoints, the decision must be made whether to recommend the continued operation of the Therac-25 units while investigating into the complaints of possible machine-caused radiation overdoses or to stop operating the units until the cause of the complaints of radiation overdose are identified and verified. Construct an argument for continued operation of the units while investigating. Construct another argument that all operation should cease until all the complaints are thoroughly investigated.