

Longer Essay Question

(This longer essay question is worth 40% of your grade.)

Question Four

Last year, Congress passed, and President Bush signed, a law creating the new United States Department of Illegal Music Downloading (DIMD). Congress charged the new department with the task of eliminating the problem of illegal music downloading. Through the statute, Congress created a new Illegal Music Downloading Advisory Board that will oversee and run the new DIMD. According to the statute, the Illegal Music Downloading Advisory Board shall be comprised of four members. The Chief Justice of the United States Supreme Court will select two members and the President will select two members. The Chief Justice and the President are free to choose anyone they think qualified and may use any selection criteria. The Illegal Music Downloading Advisory Board will submit annual reports to the Attorney General of the United States and will recommend if certain cases it investigates are worthy of criminal prosecution.

The statute creating the DIMD reads, in part, as follows:

The Illegal Music Downloading Advisory Board shall, after hearing, establish reasonable rules, regulations and practices to eliminate the problem of illegal music downloading. In establishing these rules, regulations and practices, the Illegal Music Downloading Advisory Board shall consider the effects of its rules, regulations and practices on the music industry, recording artists and on consumers.

The DIMD, at the direction of the Illegal Music Downloading Advisory Board, places a notice in the Federal Register explaining that Congress has created the DIMD to correct the problem of illegal music downloading and that it intends to announce a final rule that will require consumers who purchase music over the Internet to register with the DIMD. The DIMD provides an opportunity for written public comment and receives scathing letters from consumers and privacy advocates. Six months later, DIMD issues a final rule that categorically describes the scathing letters and explains that, after considering those letters, DIMD decided to announce a final rule, effective immediately, that requires all website owners who provide music downloading exchanges (whether for a fee or for free) to register with the DIMD. The final rule also announces that if a website provider fails to register within six months, the DIMD shall initiate a civil administrative proceeding against the provider.

Exam continues on the next page.

You are an attorney for iSongs, a popular, fee-based, legal music downloading website. The CEO of iSongs comes to your office and explains that she does not want to register iSongs with DIMD, as she believes there is already enough governmental oversight in this area. She asks you to explain to her, if she refuses to register iSongs, what, if any, legal arguments iSongs can make to challenge the DIMD final rule at some point in the future.

This is the end of the exam.