

**FINAL EXAMINATION
COPYRIGHT LAW
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May 10, 2007**

Instructions:

Please read these instructions carefully before proceeding.

1. The examination consists of 4 (four) pages, including this one. You will find three questions. Please make sure that your copy is complete and that you answer all three questions.
2. You have three hours (180 minutes) to complete the exam, and the exam is worth 180 total points. You should devote approximately 55 minutes to the first question, 70 minutes (one hour, ten minutes) to the second question, and 55 minutes to the third question. The recommended amount of minutes allotted to each question matches the number of points the question is worth: **Thus, the first and third questions are worth 55 points each or roughly 31% each of the final score. The second question is worth 70 points or roughly 39% of the final score.**
3. Answers will be graded based on content, clarity of expression, and organization. I strongly suggest that you spend time outlining your response before you start to write. Where information is not provided that would be relevant to the analysis, feel free to explain how different facts would lead to different outcomes.
4. Assume that all cases that were pending when we discussed them in class are still undecided. If any cases have been decided or statutes have been changed during the course of the semester, you are not responsible for knowing the final rule, result or reasoning, and you will not gain points by talking about the new decision or statute.
5. Since this is a class about entertainment and invention, some of the fact patterns may be based on real creative content, technology, and products. You will not be rewarded or penalized for facts about the actual content, technology, and products that are not presented in the exam questions. Feel free to add these types of details if you think they improve the readability of your answer.
6. In answering these questions, you may consult any written materials you wish.
7. Please type your answers or write them neatly. Mark your answers with your exam number, not your name. If you are handwriting the exam, please write on only one side of each page.
8. You must turn in these questions with your answers.
9. Good luck!

PROBLEM ONE (55 Minutes; 55 Points)

Sonny, an aspiring songwriter, has written a song he thinks may be the next great hard rock ballad which he has called, “An Independent Fixation of Other Sounds,” but he thinks he needs a little help for it to become a hit. He reads a classified ad for a woman calling herself Cher the Song Doctor. The ad says, “You’ve written a great song; now let us finish it for you! We’ll take your unpolished song and make it ready for the market.” As instructed in the ad, Sonny sends a transcribed (i.e. sheet music with lyrics) copy of “Independent Fixation” to Cher, along with \$450. Two weeks later, Cher sends Sonny a new, transcribed copy of the song. Although obviously at its core it is still Sonny’s original song, thanks to Cher’s efforts, the music is catchier, the lyrics are more heartfelt and sappy, and the entire thing is more polished. Sonny is very pleased with the results.

Sonny goes into the studio and records himself singing and playing the new version of the song. He posts the recording to his personal website.

Cher finds the recording on Sonny’s website and sends a CD with a copy of it to two of her friends who have a band called the Chomsky Gnomes. She includes a handwritten, signed note that says, “This is something I wrote with a guy named Sonny (sonny_songwriter@hotmail.com). This song will make you stars. It’s all yours. Enjoy!”

A few weeks later, the Chomsky Gnomes send Sonny an email message that says, “Dear Sonny: Thanks for ‘An Independent Fixation of Other Sounds.’ It’s a great song! We’re recording it today. Love the Chomsky Gnomes.” Sonny never responds.

The Chomsky Gnomes record a new version of the song, but instead of a rock ballad, they make a Calypso version. The lyrics are identical, and the song is readily identifiable, but it is obviously quite different. They sell a few hundred copies of the track online. They also perform the song at a friend’s house party in front of 50 people.

A week after the Chomsky Gnomes post the song on their website, Sonny comes to you, a budding new lawyer, and asks for advice. He feels like the Chomsky Gnomes have stolen his song, and he is thinking about suing them. Write him a memo evaluating the strength of any possible copyright claims against the Chomsky Gnomes.

PROBLEM TWO (70 Minutes; 70 Points)

Last fall, Diana Defendant, a 3L at CU Law, set up a website called the “CU Law Outline Bank” for students to share class outlines. Students upload outlines to the website, and anyone on the Internet can download any outline free of charge. Although Diana set up the site, it now essentially runs itself, and she performs no day-to-day maintenance to keep it running. The website is a great success, with more than a hundred available outlines and almost three hundred downloads during its first year online. There are no ads of any kind on the website.

Professor Curmudgeon is furious about the website, which contains ten outlines covering three of his classes. He feels threatened by the website, because most CU Law students know that he never, ever varies his lectures in the slightest from the same lecture notes he uses year after year, and they also know that those lecture notes follow the content of the assigned casebooks very closely. He worries that if students have access to past outlines, he will be forced to prepare something new for class for the first time in years.

Professor Curmudgeon sues Diana in Federal Court, claiming copyright infringement. According to the complaint, these outlines are based on his lectures, which are his copyrighted expression.

This isn’t Diana’s only legal headache. Joe Student also sues her. Joe is a 3L who got an A in Professor Curmudgeon’s “Law of the Horse” class as a 1L. Curmudgeon’s well-known penchant for repeating lectures makes Joe’s very detailed outline a marketable commodity, and during the year before the CU Law Outline Bank went online, he had been able to sell a dozen copies of his outline for \$15 per copy. Joe worries that Diana’s website will cut into or kill his sales.

There is only one copy of a Curmudgeon/Law of the Horse outline on Diana’s website. Although it is plainly not a literal copy of Joe’s outline, Joe is certain that the outline is based on his. His civil complaint avers to “many similarities in structure, presentation, and content between plaintiff’s outline and the outline defendant posted online.” In particular, the complaint identifies two specific similarities between his outline and the one on the website:

- The online version contains 15 phrases that Joe uses in his outline. These phrases cannot be found in the casebook or in Curmudgeon’s lectures or lecture notes.
- The “e” key on Joe’s laptop sometimes sticks, and his outline is full of double and triple “e’s” as a result. The outline on the website has 10 errant double- and triple- e’s. This is far fewer than found in Joe’s outline, but each of the 10 errors matches a typo in Joe’s outline.

You are a law clerk to the Federal judge assigned to both lawsuits. Both Joe and Professor Curmudgeon file motions for preliminary injunction. Your court is in the

(fictional) Twelfth Circuit, and you aren't bound to any other circuit's rules or precedents. Your judge asks you to write a bench memo addressing only each plaintiff's probability/likelihood of success on the merits.

PROBLEM THREE (55 Minutes; 55 Points)

Recently, somebody proposed a way to resolve the ongoing debate over the unauthorized use and copying of digital music: compulsory licenses for consumers. Under the plan, listeners could pay a blanket fee each month which would give them access to any music they obtained from any source.

3A. First, how would you implement this plan? Identify some practical difficulties with the proposal, and offer some solutions to those difficulties. Short of writing the actual new legislation, discuss where in the Copyright Act a change like this might be made.

3B. Second, write two short essays, one in support and one opposed to at least some aspects of the plan. Write persuasively, listing the best arguments in support or against the proposal. If you wish, feel free to write either or both essays from the point of view of a particular interest group or groups.