

READ ALL INSTRUCTIONS BEFORE YOU BEGIN

This is a take home examination that is to be picked up, completed and returned to the Registrar's Office in a single day.

You must pick up the exam from the Registrar's Office on Wednesday April 29. The Registrar's Office opens at 8AM. The exam must be completed and returned to the Registrar's Office prior to its closing time of 4PM on the same day - April 29. Submit to the Registrar, hard (printed) copies of the exam if you are writing the exam on a word processor. Hand in your blue books if you are handwriting the exam.

Do not email the exam to me or anyone else and do not put any personally identifying marks in or on the exam.

This exam is to be taken in accordance with the Honor Code. The only materials you may consult to complete this exam are: 1) unannotated copies of the relevant copyright statutes including 17 U.S.C. 101, et seq, the Berne Convention, and the WIPO Treaties; 2) your case book, *Copyright in the Global Information Economy*, and finally; 3) your notes and/or outline. **You may not use any other printed, electronic or online materials or resources.**

All writings, ideas, concepts and protectable expression you provide in your answers to the questions must be yours alone. You may neither collaborate with anyone on this exam, nor discuss the contents or subject matter of the exam with anyone until the exam period is closed.

Read each question carefully.

You should have ample time to provide thoughtful and well-organized answers to the questions, but pace yourself accordingly. Plan your answers to each question carefully. You will not receive credit for "disk dumping" everything you know about a certain area of the law or topic. You will only receive credit for analysis and discussion that answers the question asked. If you are writing this exam longhand, please make sure that I will be able to read your handwriting. Regardless of whether you are typing or handwriting the exam, unclear or ambiguous answers will be marked as incorrect. In answering exam questions, cite to cases, statute and policy where appropriate.

The exam grade is based on a maximum of 103 points with the following distribution of points:

Part I - Short Answer -- 35 total points
Part II - True/ False -- 20 total points
Part III - Essay -- 45 total points
Extra Credit -- 3 total points

All statutory references are to the Copyright Act of 1976, as amended, unless otherwise indicated.

Make sure that your examination number is on each page of the exam and/ or the cover of each bluebook or each page of your typed answers.

EXAM BEGINS ON NEXT PAGE

Part I - Short Answer: Thirteen Questions for 35 Total Points

1. What is copyright? [5 points]
2. Explain how secondary liability. Describe the types of secondary liability and how the Supreme Court's holding in *Grokster* is relevant. [5 points]
3. Generally, courts take the approach that copyright may accommodate First Amendment concerns through the application of which *two* established copyright doctrines? [2 points]
4. If Laszlo Montague paints his allegorical masterpiece called "101 Uses for a Superseded Copy of the Rules of New Hampshire Civil Procedure" in 2015, and he lives until 2086 - on what day will the work enter the public domain? [2 points]
 4. a. Laszlo's lawyer, Raoul Duke, advises him to register the work and place copyright notice "©" on the work otherwise Laszlo's painting will not be protected. Is this sound advice? Explain your answer. [2 points]
5. Jeff owns a video store and purchases 100 copies of the latest Batman movie. He wants to sell them to his customers. Can he sell them without permission of the copyright owner? Support your answer. [2 point]
6. In 1953 Laszlo Montague published the seminal biography on Willem de Kooning called *The Genius in Pink Pajamas*. Laszlo renewed properly. Laszlo died in 1983.
 - 6.a. In what year did Laszlo have to renew the copyright? [1 point]
 - b. What day is the last day *Genius in Pink Pajamas* will enjoy copyright protection? [1 point]
7. Does a book published in 1996 require a copyright notice? Explain why or why not. [2 points]
8. Explain the difference between compilations and collective works. [1 points]
9. What constitutes prima facie evidence of copyright ownership in an infringement action and why is this necessary and helpful? [2 points]
10. What is the effective date of the Copyright Act of 1976? [1 point]
11. Describe and explain the role *fair use* plays in United States Copyright Law. [4 points]

EXAM CONTINUES ON NEXT PAGE

12. What is *scenes a faire* and what role does it play in infringement analysis? [2 points]
13. What are moral rights and how does the United States respond to repeated criticism that the US does not comply with Article 6bis of The Berne Convention? [3 points]

Part II - True/ False: 20 Total Points [each T/F question is worth 2 points]

1. Fair Use may be raised as a defense against a claim of infringement.
2. The selection and arrangement of non-copyrightable materials is an essential factor in determining whether a work made from non-copyrightable materials may be copyrightable.
3. Phonorecords are copies.
4. A joint work is created when the decision is made by one or more of the authors that their creation will be a joint work.
5. In analyzing secondary liability, it is important to remember that vicarious liability requires constructive knowledge of the direct infringer's activities for the secondary infringer to be liable.
6. Two benefits of registering a work with the copyright office are the ability to ask for actual damages for infringement at trial and prima facie evidence of copyright ownership.
7. All phonorecords are copies, but not all copies are phonorecords.
8. One reason the United States joined the Berne Convention was so that it could comply with Berne's requirement that the term of protection or member states be 70 years p.m.a.
9. All sound recordings created after 1922 are protected under The Copyright Act of 1976
10. It is unlawful to traffic in circumvention devices for access controls, but not copy controls.

EXAM CONTINUES ON NEXT PAGE

Part III Essay: 45 Total Points

Essay #1: 35 points

In 1992 the musical group Anger Pump released its long awaited second album titled, *Laszlo Montague's Art Project*, or *LMAP* for short. Anger Pump consisted of four members: Thurston, Kim, J. and Lou. Each held an equal share in the rights to all Anger Pump songs and sound recordings. Following the release of *LMAP*, the group rocketed to stardom. While the entire album was a tremendous success, the single *Goop* became an instant classic and grew to become an iconic song from the 1990s.

Because of Anger Pump's appeal to the teen demographic, The Whinestein Company sought out the band to appear in its next film - a remake of Alfred Hitchcock's *Lifeboat* directed by John Hughes. After protracted negotiations, the band agreed to license their song for inclusion into the movie. Also, the band would perform that song in the motion picture during the big dance number. The movie was Rated R[®] by the Motion Picture Association of America (MPAA) for nudity, adult language and mild violence. During production, Hughes was so taken with Anger Pump that he asked the band to write an additional song for the *Lifeboat's* climactic scene. Anger Pump agreed. Hughes never told the Whinestein Company about the new song or the oral agreement he made with Anger Pump. The group agreed to write the song titled *Seasick Fun Party* and it was included in the final cut of the film. The Whinestein Company once again found cinematic gold and the film was huge hit.

Doris Daynger, is the national president of the John Hughes' fan club. Doris is ecstatic that the video tape cassette (also known as VHS tape) edition of the *Lifeboat* remake is being released next week. She has been waiting for this day for a very long time and wants to celebrate by holding a *Lifeboat* viewing party in her college dormitory common room. The room can hold 75 people. Doris is providing the video cassette, video cassette player, projector and the screen. Doris has also figured out a way to show the film in 3 - D, and she is providing all the necessary equipment for the 3 - D experience. Anyone that lives in the dorm is welcome to attend, local members of the John Hughes fan club have been invited, but non-residents may only attend as a guest of a resident. No admission will be charged and the event is BYOS (Bring Your Own Saltines).

While Doris is a huge fan of John Hughes movies, she is disappointed in the R Rating and finds the nudity, language and mild violence in *Lifeboat* to be an unfortunate departure from Hughes' earlier motion pictures. Without announcing the changes she made in advance of the showing, Doris used scissors to cut all scenes from the film that Doris found objectionable, i.e., nudity, some scenes of violence and some of the adult language that caused it to earn it's R Rating, and spliced the tape back together. Only one person at the event is aware of changes made by Doris - a local film critic who had already seen the film because the Whinestein's had sent him a preview copy that he had already watched.

EXAM CONTINUES ON THE NEXT PAGE

The critic was covering the local event and happened to notice the edits made by Doris. The newspaper publishes the critic's article on the event noting that it appears some scenes were cut from the original. Word on the event eventually makes it back to the legal department of The Whinestein Company.

You are The Whinestein Company's General Counsel and you call a special meeting with the Whinestein brothers, Bob and Harvey, to discuss several issues that have come to their attention. Harvey and Bob are savvy in the ways of the law, and they demand clear and professional answers from you. Advise them to the best of your ability supporting all your answers.

If *relevant*, and only if relevant, cite to cases, statute sections and/ or policy. If more information is required to complete the answer, state what information is needed and why, however, do not invent facts or circumstances that are not included in the fact pattern. Support all answers.

1. Bob and Harvey want to know what rights, if any, The Whinestein Company has in the Anger Pump song *Seasick Fun Party*. Support your answer. [5 points]
2. Does The Whinestein Company have any causes of action against Doris Daynger? What is your advice to the Whinesteins? [10 points]
3. What remedies, if any, are available to The Whinestein Company and what is your advice regarding potential remedies to Harry and Bob? [5 Points]
4. Does Doris have any defenses available to her? If so, what are her available defenses? Support your answer and evaluate the likelihood of her successfully defending the Whinestein's potential claims. [10 points]
5. Does the Whinestein Company have a cause of action against any other parties in the fact pattern? Why or Why not? [5 points]

Essay #2: 10 points

Throughout the semester, we discussed many policy issues. One of the most common concepts encountered was the notion that there is a "public benefit" component in analyzing copyright infringement cases, particularly those involving a defense of fair use, but in other non-fair use cases as well. Describe this notion of "public benefit" and discuss whether it is a valid consideration in adjudicating copyright cases.

EXAM CONTINUES ON NEXT PAGE

Part IV: EXTRA CREDIT -- 3 Points Total

There is no penalty for an incorrect answer, but correct answers will add a +3 points to the final grade.

1. Which of the musicians/ bands that were played prior to each class was your favorite and why? [1 Point]
2. Is Jeff Koons an artist? Explain your answer. (2 Points)

END OF EXAM
###