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Examination No. _____

593-002 Copyright Law

UNM School of Law
Final Examination

Professor M. Baum
Tuesday, May 13, 2003
9:00 a.m. to 12:00 noon

FINAL EXAMINATION
593-002 COPYRIGHT LAW

This is a three-hour examination. There are four questions worth a total of points. The first question is worth 150 points, the second is worth 75 points, the third is worth 100 points, and the fourth is worth 75 points. You should allocate your time based on the point value per question. An **optional** bonus question can be found at the end of the exam.

This exam is open-book. You may refer to any print materials including your casebook, statutory/casebook supplement, your class notes, and your course outline. You may NOT use electronic databases.

In your answers, you are to apply the law to the facts and to provide specific citations to and analysis of relevant provisions of the 1976 Copyright Act and relevant case law to demonstrate your reasoning and to support your conclusion. References to case names and code sections are sufficient as citation.

If you find any ambiguities in the facts or questions posed, identify the assumptions you make to resolve the ambiguities and then proceed with your answer.

Your answers are to be concise and directly applicable to the problems presented. Page limitations for answers are provided with each question. Answers beyond the page limits will NOT be considered in grading. If handwritten, your answers are to be single-sided. If typed, your answers are to be single-sided and double-spaced with 1" margins at tops, bottoms and sides of pages.

You are to return your exam questions with your answers.

QUESTION I
(150 points)

In 1997, a group of parents decided that they wanted to provide their children with versions of popular movies that did not contain nudity, violence or “vulgar” language. One member of the group, Mr. Clean, owned editing equipment that could be used to cut and splice videotapes. Each family purchased copies of the movies they wanted to share with their children for Mr. Clean to fix for them.

One parent, Linda Hamilton, decided that taping movies off HBO was easier than purchasing videocassettes. When “Titanic” was shown on HBO, she taped the movie and passed the cassette to Mr. Clean to remove certain scenes and language that she specified. When Mr. Clean returned the tape to her, she made copies on her dual-cassette VCR for her relatives and ten of her friends. Her family and friends found the tapes so much more kid-friendly than the originals that they asked Linda to tape other movies from broadcast TV and cable channels and to pass them to Mr. Clean for removal of offensive parts.

With the development and common use of DVD technology, Mr. Clean no longer could rely on his editing equipment to cut and splice the unwanted portions out of movies so he turned to his brother, Ajax. Ajax was a computer whiz who could circumvent any copyright protections on the DVDs and was able to use his computer to remove scenes and language from original movie DVDs and burn new DVDs with his kid-friendly versions of the movies.

One of Linda’s friends, Arnold, thought that there would be a market for the kid-friendly versions of these popular movies. Without Linda’s knowledge, he used his web site, www.terminator.com (hosted on the Law School web server), to advertise the videos, offering short clips for viewing by potential buyers. In addition, he worked with Ajax to advertise and sell the kid-friendly DVDs through the web site. His revenues in year 1 were \$50,000 with expenses of \$20,000. His sales to date in year 2 are already twice that high.

Copyright registration for the movie “Titanic” was filed prior to the movie’s release. Revenues for video and DVD sales for the movie were \$10 billion in the year before the terminator web sales started but dropped to \$5 billion in year 1 of the web site sales and have been only \$2 billion to date in year 2 of web site sales.

James Cameron, producer and part copyright owner of the movie “Titanic,” has learned of the availability of the kid-friendly versions for sale. As newly-hired associate at Attorneys for Hollywood, you have been asked to prepare an objective memo for the partner discussing in detail all relevant copyright issues, with full explanation of possible actions to be taken against any appropriate parties and the likely results for those actions. Your partner has instructed you to include all relevant code section and case references. You are also to include a conclusion that sets out your recommendations on each possible action. Your answer is to be no more than 20 hand-written, single-sided blue book pages (or no more than 6 typed, single-sided, double-spaced pages with 1” margins).

QUESTION 2
(75 points)

Four members of a band, "Superheroes Don't Exist," have come to you about a situation that has developed with a fifth band member, Superman. The band had recorded a CD that included a song, "My Cape Fell Off and Now I Can't Fly," which became very popular on the tour last summer.

While on the tour, Wonder Woman, Batman, Spiderman and Hulk had some problems with Superman's ego and decided he should leave the band. Superman immediately filed a copyright registration application for the bass guitar part of "My Cape Fell Off and Now I Can't Fly," listing himself as sole owner of the copyright in that part. He also notified the other band members that they could not play the bass guitar part of the song in the future because he owned it.

This song was written by the band during a jam session in which each member of the band developed his/her own instrument's part. The lyrics were co-written by Spiderman and Hulk after the instrumentals were done.

The four band members want to prepare a response to Superman and need to understand the copyright ownership in the song. They particularly want to know if Superman can prevent them from using the bass guitar part and the legal reasoning for the answer.

You are to draft a letter to the band members, explaining the ownership rights in the work, the rights to use or prevent use of the music, and any options for overcoming obstacles to use of the music. Be sure to include references to relevant code sections and case law. Your answer is to be no more than 8 hand-written, single-sided blue-book pages (or no more than 3 typed, single-sided, double-spaced pages with 1" margins).

QUESTION 3
(100 points)

As law clerk to the chief justice in the newly created 19th Circuit Court of Appeals, you have been asked to reconcile the tests for proving "copying" in copyright infringement actions. You are to explain the current tests from other federal circuit courts and offer a suggested test for the 19th Circuit, including the rationale to support your suggested test. You are to reference appropriate code sections and case law, drawing upon specific language to demonstrate your points. Your answer is to be no more than 10 hand-written, single-sided blue-book pages (or no more than 4 typed, single-sided, double-spaced pages with 1" margins).

QUESTION 4
(75 points)

Firm A, a large law firm, has begun claiming copyright in its filed complaints and sending cease-and-desist letters to other law firms it believes are copying its complaints verbatim. A December 2002 ABA Journal e-Report stated, "Responding to criticism that complaints can't be copyrighted because they are public documents, Herman says no court has found that court filings are free for public use, and nothing in the Copyright Act addresses this scenario. 'These complaints fall squarely in the literary copyright subject matter, in which copyright vests in the author at the time complaints are drafted,' he says. This is not a question of protectability but one of fair use, Herman argues."

Firm A's attorney was quoted as saying, "These are not run-of-the-mill notice complaints. They are very descriptive, involving sometimes hundreds of hours of investigation." The attorney went on to explain that, "[i]n its shareholder action against Enron, the firm spent hundreds of hours and devoted significant manpower to investigating claims and filed a 501-page complaint."

Firm A is suing Firm B for infringement of Firm A's right to reproduce the complaint. The claimed infringing document is Firm B's complaint in a lawsuit against another corporation. Firm B's complaint includes much of the same language as is found in Firm A's complaint but with modification to reflect the facts regarding the corporation Firm B's clients are suing. Firm B's answer to Firm A's allegations includes the following: 1) Firm A's complaint in the Enron case is in the public domain, 2) the language of both complaints is boilerplate language that can only be expressed in a limited number of ways, and, 3) the use of portions of the complaint is a fair use.

You are the federal district court judge presiding over the infringement challenge brought by Firm A. Draft your written opinion in the case, including your reasoning, appropriate citations, and your holding. Your opinion is to be no more than 8 hand-written, single-sided blue-book pages (or no more than 3 typed, single-sided, double-spaced pages with 1" margins).

BONUS QUESTION (OPTIONAL) (50 points):

You received the following email from a colleague on your college faculty.

"Did you record the PBS series on discrimination last week? I want to use the series in class. I know it's available for purchase on video but I don't want to pay \$300 for it. I only want to use it in one class each semester for the next ten years. If you did tape it, could I borrow it and make my own copy for classroom use?" Explain the copyright implications of your colleague's request, including basis for infringement, if any, and defenses, if any.