FINAL EXAMINATION
COPYRIGHT
Paul Ohm
April 27, 2010

Instructions:

Please read these instructions carefully before proceeding.

1. The examination consists of five (5) pages, including the pages containing these instructions. You will find three problems. Please make sure that your copy is complete and that you answer all three problems.

2. This is a take-home examination; you have six (6) hours to complete the exam. Your answers to the exam must be returned to the Registrar by the time she indicated in the email she used to send this exam. Your answers can be returned electronically via email to cindy.gibbons@colorado.edu or in person. DO **NOT** RETURN YOUR ANSWERS TO PROFESSOR OHM.

3. If you hand in your answers late, I may—at my sole discretion—deduct points or give you a failing grade.

4. If you are typing, you must submit your answers in a computer file with a file format that the Registrar can access on her computer. If the Registrar cannot access your answers, they may not be graded. Recommended file formats are Word 2007 (*.docx); Word 97-2003 (*.doc); Adobe Acrobat (*.pdf); and Rich Text Format (*.rtf).

5. The exam is worth 300 total points. Each problem is worth 100 points, or one-third of the final exam grade.

6. Answers will be graded based on content, clarity of expression, and organization. I 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.

7. Assume that all cases that were pending when we discussed them in class are still undecided. If any cases have been decided during the course of the semester, you are not responsible for knowing the final rule, result or reasoning, and you will gain nothing by talking about the new decision.

8. Since this is a class about entertainment and technology, 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.

9. In answering these problems, you may consult any written materials you wish. You may also consult electronic materials stored locally on your computer and any materials hosted on our class website, http://paulohm.com/classes/copr10/. You may not use the Internet to discuss the exam or assist you with the exam in any other way.

10. Regardless of when you return the exam, you may not communicate with any other student in our class _for any reason_ prior to the time when the exam is due. In addition, you may not communicate with anyone else (e.g. students in other classes, family members, other professors, etc.) about the exam prior to the time when the exam is due. A NUMBER OF STUDENTS ARE TAKING THE EXAM AFTER THE SCHEDULED DATE, SO BE CAREFUL TALKING TO FELLOW STUDENTS EVEN AFTER THE DEALINE FOR THE EXAM.

11. Each problem has a separate word limit, indicated at the beginning of the problem and as follows: Problem One: 1750 words; Problem Two: 2000 words; Problem Three: 1000 words. **Please put the number of words you write at the end of each answer.**

12. If you are handwriting the exam, please write on only one side of each page.

13. Good luck!

Problem One
(100 Points, 1750 Words Maximum)

William Wordsmith is a famous screenwriter who many in the movie business feel is well past his prime. Although he won multiple screenwriting Oscars more than two decades ago, he hasn't written a hit script in years.

His latest idea is a comedy about a clueless millionaire, a man who is wealthy beyond imagination, but silly and lacking in style or grace. William's agent, seeing promise in William's one-page synopsis, finds a collaborator for William, a promising young writer and actor named Niels Newbie.

Together, William and Niels improve William's synopsis, turning it into a full script, adding depth to the millionaire character—whom Niels has named "Reginald Worthalot"—and placing him in an elaborate, slapstick murder mystery plot.

William and Niels prove to be a good team. Sometimes they collaborate in person, usually at William's estate, and often they work apart, trading pages by fax and e-mail. They bring different skills to the process: William is better at sketching the broad strokes of character and plot, while Niels is better at adding depth, detail, and complexity. William and Niels never enter into a written contract.

In the end, Worthalot ends up being a very distinctive, very memorable character, both on page and on screen. Although similar to other eccentric millionaires who have appeared in movies before, he has many characteristics never before seen (all of which are described in detail in the original script), from an odd habit of clapping his hands together rapidly whenever he is thinking hard, to an inexplicable accent, which sounds like a cross of accents from Scotland and Boston.

After the rights to make the movie are sold, William sends Niels a large check—more money than Niels has ever received for a job in his life—along with a note of thanks for "helping out with my script." The final script lists William alone as screenwriter, with a note in small type crediting Niels with "assisting Mr. Wordsmith." Niels feels slighted, and although he is angry, he says nothing, because he knows that William still has enough clout to kill his career. Niels cashes the check. The movie is made and becomes a huge box-office success, but Niels receives no additional compensation.

A year after the movie is released, Niels writes and stars in a one-man play about the further adventures of Reginald Worthalot. In the play, Niels uses many details that appear in the movie, but he also adds many more details, in particular placing Worthalot in a completely new storyline. The play opens off-Broadway to rave reviews, but after a few performances, William sues Niels, alleging only that Niels infringed William's copyright in the Reginald Worthalot character.

You are an associate in the law firm which Niels has hired to handle his defense. A partner has asked you to write a memo discussing the strength of William's case, taking into account any defenses Niels might have. The partner has asked you **not** to discuss fair use, an issue he has assigned to another associate.

Problem Two
(100 Points, 2000 Words Maximum)

Note: This fact pattern is based on a real website (with a different name). Do not rely on anything you happen to know about the actual website. Rely only on the facts given below.

Deirdre Codehacker is a talented computer programmer who loves fashion. She creates a website she calls FashionHound which lets people build online fashion collages to show off their favorite fashion items using images found from around the web.

A user who signs up for a FashionHound account must first install software created by Deirdre which places a button with a picture of a pair of scissors on it into the toolbar of the user's web browser. After doing that, whenever the user finds an image she wants to load into FashionHound while surfing the web, she clicks first on the scissors and then on the image, thereby uploading a copy of the image into her FashionHound "virtual closet."

Back at the FashionHound website, the user uses another piece of Deirdre's software to build her fashion collage, by selecting images from her virtual closet, layering image atop image, and creating an ensemble of different fashion items. For example, a user might place an image of model Agyness Deyn next to separate photos of a Vivienne Westwood dress, an Alexander McQueen cuff bracelet, an Alexis Bittar bubble ring, strap-spangled Christian Louboutin Nitoinimoi ankle boots, and a Victoria's Secret mascara wand, all under the caption "Think Black." Most fashion collages contain images copied from a number of different websites.

Users publish their completed fashion collages to personalized pages on the FashionHound website, where other users can comment on them. In this way, the website has sparked a vibrant online community. Some users have earned huge followings, posting fashion collages that inspire thousands of user comments each.

The website is a huge success, with more than six million people visiting each month. Users can sign up for an account for free, but free-account holders are limited to storing only 500 items in their virtual closets. Premium users who pay $40 per year get unlimited virtual closets. More than 10,000 users pay for premium accounts, and some have uploaded as many as 5000 images into their virtual closets.

Many fashion designers praise FashionHound for providing free advertising to a fashion-obsessed audience. In fact, some designers pay Deirdre to place banner advertisements on FashionHound.

In contrast, one designer, Eleanor Waldorf, abhors FashionHound, which, in her opinion, is populated by computer dorks with awful tastes. What angers her most about FashionHound is that her staff has identified at least 10,000 fashion collages displaying photographs of clothes and accessories she has designed. Many of these images have been copied from Eleanor's own website. Eleanor doesn't sell clothes on her website, or anywhere else on the Internet, choosing instead to sell

only through a few high-end boutiques. Still, she sees her website as an important showcase for her clothes, and she spends more than a million dollars each year hiring models and photographers to make photos for her new lines of clothing. Eleanor hates how users can move her creations from the carefully crafted contexts of her expensive photo shoots, into tawdry association with ugly, department store fashions.

Not all of the photos of Eleanor's clothes on FashionHound originate at her website. Some come from the websites of fashion magazines that showcase her clothes or from celebrity gossip websites showing famous people wearing her designs.

To try to stop the use of any images of her clothes at FashionHound, Eleanor sues Deirdre for copyright infringement for creating and operating the website. She seeks damages and an injunction to shut down the site.

You are a law clerk to the district court judge assigned to this case. The judge has asked you to write a memo based on the facts presented above, assessing the strength of Eleanor's case, taking into account any possible defenses Deirdre may have.

Problem Three
(100 Points, 1000 Words Maximum)

"Copyright law depends too much on arbitrary differences between different categories of works. The rules shouldn't turn so much on whether you are a songwriter, musician, writer, sculptor, dancer, or something else. We should change some of the rules to harmonize the law."

Do you agree with these statements? Write an essay supporting or opposing them, and point to examples of specific Copyright rules in your discussion.