

**FINAL EXAMINATION
COPYRIGHT
Paul Ohm
April 26, 2011**

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 an electronic 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 printed materials you wish. You may also consult electronic materials stored locally on your computer; any materials hosted on our class website, <http://paulohm.com/classes/copr11/>; and the statutes hosted on Cornell's Legal Information Institute website, http://www.law.cornell.edu/uscode/html/uscode17/usc_sup_01_17.html. 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. **SOME STUDENTS ARE TAKING THE EXAM AFTER THE SCHEDULED DATE, SO BE CAREFUL TALKING TO FELLOW STUDENTS EVEN AFTER THE DEADLINE FOR THE EXAM.**

11. Each problem has a separate word limit, indicated at the beginning of the problem and as follows: Problem One: 2000 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, 2000 Words Maximum)

Dr. Phil Myman is the world's foremost Atlantologist, the name for those who study and search for the legendary lost city of Atlantis. Atlantis, first mentioned by Plato, supposedly sank to the bottom of the ocean thousands of years ago, and since then has inspired countless people seeking treasure or fame.

Recently, Phil visited his colleague, Dr. Lem Hewitt, the world's second most-renowned Atlantologist, to show him a map. Lem recognized that Phil's map was based on the so-called Veridian Map, a one thousand year old drawing that purports to be an accurate, detailed, topographical depiction of Atlantis. This map has been the subject of study by Atlantologists for centuries.

But unlike the traditional Veridian Map, Phil's map mixed the ancient inscriptions with modern place names and nautical markers. Lem could see that Phil's map placed Atlantis at a spot inside a deep trench in the Pacific Ocean, one that Lem knew had never been the focus of Atlantean inquiry in the past.

Sensing Lem's curiosity, suspicion, and excitement, Phil explained how he had created the map. For three years, Phil had spent every spare moment poring over detailed maps of the floor of the Pacific, trying to find similarities to topographical features in the Veridian Map, using painstaking rotations and transformations to find a place where the peaks and valleys on the ancient map matched today's sea floor. Although this process identified many close matches, one spot, the one shown in this map, matched precisely. Phil was sure he had found the lost city, and using his own hand, he had drawn the map he now held, a combination of the Veridian Map and the modern sea floor. Ever the showman, Phil contributed a little of his own personal style to this hybrid map, varying both the typefaces and colors and shading patterns he used from those used in the two source maps. Now that he had the map, Phil explained, he just needed to find financiers to underwrite a submarine mission to the spot.

After hearing this story, Lem argued that would-be financiers would be more likely to invest if Phil could obtain the opinion of another, independent expert, and he volunteered to serve that role. All he needed was a copy of the map. Phil resisted, knowing that anybody with the map was a competitor in the search, but he relented after being assured by Lem that as a fellow Atlantologist, he was duty-bound to give Phil the first diving rights. As Phil handed the original map to Lem he said, "You may make a single copy, which you must return to me as soon as you complete your assessment."

Unfortunately for Phil, after making one copy, Lem started calling wealthy treasure hunters he had met over the years, telling the story of the new map, and offering to sell access to it. Twenty people accepted the offer, on varying terms. Eighteen paid Lem \$1000 each for ten minute viewings of the map, which Lem conducted in their private living rooms or home offices. Another person paid Lem

\$2000 to view the map for ten minutes in a darkened booth at the back of a near-empty restaurant. Finally, one paid Lem \$100,000 for a photocopy of the map.

Soon, more than a dozen teams began planning expeditions to the spot in the Pacific pinpointed by Phil's map. Phil quickly learned of Lem's deceit and consulted you, a new lawyer with a fledgling practice, to see if he has any recourse against Lem under copyright law. Write a memo to Phil discussing his options, including the remedies he might obtain. **Do not discuss fair use.** Assume that all of the acts described took place in the United States.

Problem Two
(100 Points, 2000 Words Maximum)

P. Day Nalamayhs ("P") is a very successful filmmaker. He is best known for creating thrillers with twist endings. Many of P's loyal fans watch his movies primarily to try to guess the surprise before the big "reveal," which always occurs in the closing minutes of his films.

P's latest film is called "A Series of Related Images," for which he served as writer, director, and producer. True to form, the movie contains a surprising twist ending, which appears in the final three minutes of the movie.

To accommodate the annual film awards season, P releases "A Series of Related Images" on the last day of award eligibility in two theaters, one in Los Angeles and one in New York. The pre-release buzz around the movie is even better than usual for a P movie, and in the first weekend of release, the movie sells more tickets per screen than any of P's prior releases.

On the same day that the movie opens in L.A. and New York, P also sends approximately five thousand copies of the movie on DVD to all of the voting members of the film academy. He places the written disclaimer "For voting members of the Academy only" in three places: on the outside of the envelope, on the label on the DVD itself, and as a notice displayed on-screen before each viewing.

Two voting members of the film academy use their copies of the DVD to create new works that anger P. The first, Diane, speaks both English and a dying language called Furbish, spoken by only one hundred people on Earth. Unlike Diane, most Furbish speakers speak no other language, and because no movies are ever dubbed or subtitled in Furbish, these people never see Hollywood releases. As a gift to Furbish speakers, Diane decides to create a Furbish soundtrack for P's film.

First, Diane writes a screenplay, doing her best to faithfully transcribe each line of P's dialogue from the entire movie into Furbish. This painstaking process takes weeks. Second, Diane hires a group of Furbish speakers to record themselves reading the lines synchronized to the movie's visuals. Diane voices many of the roles herself. Finally, Diane puts P's video and her audio together, creating a Furbish-dubbed version of the movie, which she copies back to DVDs and mails to all one hundred Furbish speakers free of charge.

The second voting member of the film academy who reuses P's movie is Dakota. Dakota runs a popular website called SkipTheTheater.com. On this

website, Dakota posts what he calls “DakotaShorts,” video clips containing puppet show reenactments of hundreds of famous movies, each one compressing a full-length movie down to a running time under ten minutes. The tagline for the website is “because life is too short to watch long movies.”

Each DakotaShort is created entirely by Dakota. He watches the source movie dozens of times, and creates a new screenplay based on the original which cuts out entire scenes and characters but restages the remaining parts with as much fidelity to the original as possible. He then uses the screenplay to film an entirely new, puppet-based version of the movie, doing all of the work himself. In every DakotaShort, he tries to copy entire lines, the emotion used in delivering lines, the action, staging, scenery, etc.

Dakota creates a short version of “A Series of Related Images.” In order to portray the twist ending, Dakota includes a puppet-acted version of the entire final three minutes of the movie. A few weeks after P’s movie is released, Dakota publishes his DakotaShort version of it on a video-sharing website. The video goes viral, garnering millions of views in the first week. Thanks to the video site’s advertising platform, Dakota makes thousands of dollars from this video alone.

After three weeks of limited release, P’s movie opens nationwide in thousands of theaters. By the end of its run, the movie is considered a qualified theatrical success. Although it makes a very healthy profit, it does not quite live up to the pre-release expectations. Notably, it makes less money than any of P’s last five releases.

In separate actions, P sues Diane and Dakota for copyright infringement. You are the law clerk to the judge assigned both cases. After the complaints are filed, the judge asks you to write a memo weighing the strength of P’s two cases. He tells you **not to discuss third-party liability or remedies.**

Problem Three (100 Points, 1000 Words Maximum)

This semester, we repeatedly encountered how copyright law has had to adapt to the *digitization* (meaning the conversion to a digital format suitable for use on a computer or similar device and distribution on a computer network) of many different kinds of creative works including but not limited to books, recorded and printed music, video, and images.

Consider the following partial statement: “The digitization of creative works has had a(n) _____ effect on copyright law.” Write a short essay that fills in the blank with a word or phrase and then supports the completed statement. Feel free to focus on as few or as many types of works as you wish. Cite at least two copyright rules for support of your statement.