

FINAL EXAMINATION

**COPYRIGHT LAW**

P.N. Davis

Friday, December 15, 2000

8:30 - 11:00 AM

THIS IS A TWO HOUR AND 30 MINUTE EXAMINATION.

THIS EXAMINATION CONSISTS OF FIVE (5) PAGES (not including this page).

THIS EXAMINATION CONTAINS FIVE (5) QUESTIONS.

I = 30 min. II = 30 min. III = 30 min. IV = 30 min. V = 30 min.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

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YOU MAY BRING INTO THE EXAM YOUR COPY OF THE STATUTORY

SUPPLEMENT, with any notations in the margins and blank pages you care to make, but no page inserts.

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Instructions:

1. These questions will be graded on the basis of the times indicated with each questions. The indicated time for the questions total 2½ hours. You will be given 2½ hours to write the examination. Budget your time carefully or you may not finish.
2. Be sure to state a result whenever a question asks for one. Merely stating the arguments on both sides of a legal issue will result in only partial credit because you will not have completed the analysis required by that type of question.
3. If you find it necessary to make factual assumptions in order to answer a question, be sure to state the assumption.
4. Do not assume additional facts for the purpose of avoiding a legal issue or making its resolution easier.
5. Comment briefly on each legal issue reasonably raised by the questions and on each reason for your answer, even when you decide that one legal issue or reason controls the result.
6. The difference between triumph and disaster may lie in a **careful** reading of the questions.

# I

(30 minutes)

David Hurst made a 20 inch blue enameled bronze sculpture of a male human torso. The sculpture is a realistic rendition of a male human torso, except for its color. Hurst's work was purchased and displayed by the Chicago Art Institute. It received critical acclaim by art reviewers.

A year later, American Toys made a 10 inch plastic anatomy model of a male human torso as part of its Youth Scientist line of toys. The model is a realistic rendition of a male human torso. It is marketed with a variety of natural skin colors. The model is quite similar in physical appearance and pose to Hurst's work, but not in size or color.

American Toys seeks your legal advice. What rules of law would be involved if Hurst brought suit for copyright infringement? What factual issues would need to be investigated?

## II

(30 minutes)

Within the past 10 years, the MU Museum of Art and Archeology has taken photographs of works in its collection and posted them on its web page. Some have copyrighted notices affixed and some do not. The works photographed all were created in the 19<sup>th</sup> century or earlier.

Roger Peters has downloaded some of those photograph images and has produced a CD-ROM screen saver program incorporating those and other images. The MU images comprise about one-quarter of all the images in his program. Peters has made \$4000 gross revenues from sales of that screen saver program.

MU consults you about whether to bring a copyright infringement suit against Peters. What advice would you give MU? Discuss all relevant legal issues.

### III

(30 minutes)

Campus Class Notes, Inc., hires students enrolled in various classes at Jefferson University to take detailed notes of their professors' lectures, without the knowledge or consent of the professors. It then posts those student-prepared class lecture notes on its web site, together with downloaded copies of any materials the professor posts on his own website. Those materials can be downloaded by students for a price, paying with a credit card.

Jefferson University and several of the professors whose lectures had been the subject of class lecture notes, sued Campus Class Notes for copyright infringement, seeking an injunction and damages. The suit was brought in federal district court. Should the court grant the requested relief? Discuss all relevant legal issues. State a result.

#### IV

(30 minutes)

The Church, which has serious moral objections to the direction of American culture today, owns a video rental store. Because of its popularity, it found it necessary to make the video version of the movie "Titanic" available for rental. It purchased several copies of the video movie at a price which included rental rights. Because its moral objections to portions of the movie, it made one copy of each video it purchased with certain scenes excised. The scenes removed included the hero making a painting of the nude heroine reclining on a couch and several love scenes. The store retained the original videos in a locked cabinet and rented the edited videos in the original video boxes.

The movie producer, which owns the movie copyright, plans to sue The Church. What causes of action should be included in the complaint? Does The Church have any valid defenses? Discuss all relevant legal issues. State a result for each cause of action.

(30 minutes)

Briefly define the following terms:

- (1) secondary transmission
- (2) originality
- (3) composite work
- (4) abstraction-filtration-comparison
- (5) compilation
- (6) misappropriation
- (7) transformative use
- (8) right of paternity
- (9) blanket licensing
- (10) statutory damages

Copyright Law – Fall 2000  
Peter N. Davis

I. (30 min.)

Legal issues:

originality of each work  
similarity of each work to public domain human anatomy  
infringement presumed when there is access + substantial similarity  
four factor test *re* fair use

Factual issues:

access  
degree of similarity  
effect of D's toy on H's market

II (30 min.)

Photographed works are all in public domain (19<sup>th</sup> century & earlier) – discuss dates after which copyrights can still subsist.

Photograph of public domain work is considered a new copyrightable derivative work if it contains more than a trivial amount of originality – photographs are presumed to contain substantial creative input.

Ditto, web page images.

Work has to be in a "fixed medium of expression" – photograph is "fixed"; works on web are considered "fixed" because they can be replicated.

Notice not required for copyright protection on works created after Mar. 1, 1989 (here, photographs were taken in 1990's) -- copyrights in photographs and web images are valid.

Copying copyrighted photograph is infringement.

*Fair use:* entire image was copied, fact that original work is in public domain is not a defense (infringer can photograph original work directly, but cannot copy copyrighted derivative work).

Remedy is injunction against future infringement, plus damages.

Damages is either lost profits or infringer's profits, but not both to the extent they overlap.

III (30 min.)

*Copyright in lectures:*

Lectures are oral works (not in "fixed in a tangible medium of expression") – hence, they are not subject to the federal act, which is limited to fixed works.

[Oral works may be copyrightable – not expressly decided by any state court – if the utterances are delineated – lectures clearly are delineated oral works, and subject to a state common law copyright, if any can exist in utterances.]

*Copyright in web site materials:*

Written materials posted on a website are presumptively copyrightable – web materials are reproducible, and, thus, are fixed.

Copyright in lecture materials prepared by a professor are treated as copyrighted by the professor, not by the university – not subject to the "work for hire" rules, because, while employees, they are not produced under supervision and cannot be made the subject of a "work for hire" commission agreement (and don't fall within one of the 7 categories for commissioned works) – thus, the university is not a proper plaintiff

Student-prepared lecture notes arguably are not derivative works (derivative of the lectures) because the initial fixation is done by the student, not the professor -- they do have originality and could be said not to be copies.

Downloaded professors' website materials are originals, and D's downloaded copies are "copies".

Thus, court could enjoin use of downloaded website materials, but probably would not enjoin the making of student-prepared class lecture notes.

- damages for downloaded website materials may be minimal, since posting on web probably implies consent for non-commercial education copying by students – thus, there is no commercial market for selling those materials (even though students may be prepared to pay for such materials as a convenience).

IV (30 min.)

*Copyright infringement:*

First sale doctrine applies to the purchase of the videos: purchaser of a copy of the copyrighted works may do anything with that copy, except copy it. [§ 202]

Copying work for rental purposes is a violation of copyright owner's reproduction right. [§ 106(1)]

While making an archival copy by a library is permitted, that was not the type of copy made here, and D is not a library. [See § 108(a), (c)]

Making an edited copy is the making of a derivative work, which violates the copyright owner's right to make derivative works. [§ 106(2)]

It is not fair use, since nearly all the video was copied and the purpose of copying was not for one of the 7 reasons listed in the Act. [§ 107].

*Artists moral rights:*

The creator of "a work of the visual arts" have "artists' moral rights." These include a right against alteration or mutilation of the work. [§ 106A(a)(3)]

However, the definition of visual works expressly excludes motion pictures and other audiovisual works. [§ 101]

- thus, the video here is not subject to artists' moral rights.

V (30 min.)

Briefly define the following terms:

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