Exam No. _____

Copyright Law, Fall Semester, 2003
Final Exam, Friday, December 12, 2003
Karen Hersey, Visiting Professor

Directions: The following exam is scheduled for three hours. It is divided into Parts I, II and III.

Part I has 15 True/False statements. Please use the answer sheet. Directions are on it. Each correct answer is worth 2 points for a total of 30 possible points in Part I.

Part II is comprised of ten multiple choice opportunities. Please decide which answer (a) – (d) **best** completes the question or statement and mark the Answer Sheet with your choice. Each correct answer is worth 3 points for a total of 30 possible points in Part II.

Part III involves a hypothetical problem that will give you an opportunity to work through the copyright principles you have learned. The directions for this exercise are explained in Part III. Your total possible score on Part III will be 40 points.

Materials: You are permitted to use the 1976 Copyright statute during the exam.

PART I: Please use your Answer Sheet to identify the following statements or comments as True or False (T/F)

1. During the years since 1790 when the first federal Copyright statute was enacted, copyright law in the U.S. has undergone significant changes, most of them brought about by the influence of international treaties.

2. The idea/expression dichotomy that grew out of *Baker v. Selden* was an early expression of concern by judges that copyright law should always favor the rights of the public over the rights of authors.

3. The requirement of originality in order to establish copyrightability is often confused with novelty. In fact, whether or not a work is unique has very little effect on copyright.

4. Sec. 102(a) of the Copyright statute establishes a listing of categories of works that are proper subject matter for copyright. This list is extremely useful since in deciding whether or not a work is copyrightable, one has only to look to see whether or not it is on the list.

5. Just as the list under §102(a) is important to ascertaining works that are copyrightable, §102(b) of the 1976 Statute clearly tells us that if a work contains any of the uncopyrightable elements set out in §102(b), the work will not qualify for copyright protection.

6. *Mazer v. Stein* (1954) was an important case for rejecting the argument that originality could not be found in articles that had a useful purpose.

7. The right to prepare derivative works provides the copyright holder with significant rights to control subsequent uses of his or her work. Nevertheless, the author of a derivative work will not necessarily infringe the pre-existing work on which he or she may base the derivative.

8. The date of first publication of a work under the Copyright Act of 1909 was important because it established the date that statutory copyright protection began. Although the Copyright Act of 1976 establishes that statutory copyright protection is determined by the date of creation of the work rather than publication, the term of copyright for all works created before 1976 will continue to be based on their publication date.

9. The way to show that improper appropriation has not occurred in a situation involving a claim of violation of a copyright holder's reproduction rights is by always applying the "ordinary observer" test.

10. In considering a case to support the importance of transformative use to a fair use defense, one reason you would settle on using *Campbell v. Acuff-Rose Music, Inc.* rather than *Harper & Row Publishers, Inc. v. Nation Enterprises* is because *Campbell v. Acuff-Rose Music* involved parody.

11. A professor who sends copyright protected software programs to students over a campus computer network will not be liable under a theory of vicarious liability because students are not university employees.

12. The Berne Convention, to which the U.S. subscribed beginning March 1, 1989, removed many of the formal requirements for copyright that had long been part of U.S. Copyright law. In acceding to Berne, the U.S. joined in a system of international copyright law.

13. An individual authoring and publishing an original work with a copyright notice in 1924 will automatically be entitled under §304(b) of the Copyright Act of 1976 to a term of protection for her work until 2019.

14. It is clear from the way that the exclusive rights of authors are set out in §106 of the Copyright Act of 1976 that someone who infringes the performance right in digital audio transmission of sound recordings will also automatically infringe the musical public performance right under §106(4).

15. Damages and profits are both legitimate measures of monetary relief to which a successful plaintiff in a copyright infringement action may be entitled. However, in a situation where a plaintiff is awarded damages that include revenue he would have earned but for the sale of infringing items by the defendant, the Copyright Act of 1976 will not favor his collecting the defendant's profits.

PART II. MULTIPLE CHOICE

On your answer sheet, please indicate the letter below (a) – (d) that best completes the question or statement.

1. Two weeks ago, Mikey J, by chance, tuned into a late night showing of a new video written and produced by Weird Al Enterprises, Inc. ("Weird Al"). Mikey notices what he thinks are substantial similarities between the background music in the video and a song that he wrote in 1972 and calls his lawyer with directions to sue Weird Al for copyright infringement. Mikey J's lawyer cannot establish a *prima facie* case for copyright infringement of Mikey J's song, unless he can show:

    a. that someone associated with Weird Al had purchased a copy of Mikey's sheet music
    b. that Mikey J is the author of the song written in 1972
    c. that Mikey J's song was published in 1972
    d. that Mikey J owns the copyright in the song

2. *White-Smith Music Publishing Co. v. Apollo (1908)* established a precedent that took nearly 70 years to completely dispel. The Copyright Act of 1976 finally cleared up the confusion caused by *White-Smith Publishing* by establishing:

    a. Copyrightability of sounds whether or not fixed
    b. Granting authors exclusive rights to the public performance of musical works
    c. That copies do not determine fixation
    d. Copyrightability for musical works

3. "Bubba" Corvette is a computer programmer with a passion for the Indianapolis 500 Race ("Indy 500") which he attends every spring. He believes that if he compiles enough statistics on prior Indy 500s, he will be able to program a statistical database that can be used to forecast the winner, or at least the likely top three winners, each year. If his forecaster proves accurate, because he is a non-gambler, he hopes that he can sell it to Yellow Flag, Inc., a racing publisher, and make enough money from royalties to be able to attend Indy 500 races for the rest of his life. As a copyright specialist advising Bubba on the marketability of his Indy 500 Forecaster, you would most worry about:

    a. Who owns the statistics that Bubba is compiling
    b. Whether the program that Bubba has written is primarily functional
    c. The fact that in the U.S., database protection legislation is still pending in Congress
    d. The Supreme Court's decision in *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.* (1991)

4. Jack Stumbler, an employee of Video Vipers, Inc., acting within the scope of employment, and Jill Tumbler, independent contractor, in 1990 work jointly to develop a video game which is subsequently marketed by Video Vipers, Inc. in 1992. In advising Video Vipers as to when the term of copyright for the video will expire, you would tell them:

    a. December 31, 2087
    b. December 31, 2060
    c. December 31, 2110
    d. You don't know

5. The statutory heirs of Sam Shutterbug have just discovered that photographs taken in 1958 by their beloved relative who passed away a year ago have been posted on the website of the Museum for Lifelong Birding, located in Greentree, N.H. The Museum has told the heirs that Sam loaned the photographs to the Museum for an exhibition in 1967 with a promise of leaving the photographs to the Museum in his will and that the photographs have remained part of the Museum's open collection ever since. Prior to advising the heirs as to their rights in the photographs, you would have to establish that:

    a. There is no written notation in the Museum's files of Sam's intention to bequeath the photographs to the Museum.
    b. Registration for renewal of the copyrights was made in 1995 at the end of the first term of copyright for the photographs to avoid the photographs falling into the public domain.
    c. When the photographs first appeared in the Museum's exhibition in 1967 they had a copyright notice on them.
    d. That Sam had not trespassed on private property to take the photographs.

6. Polly Programmer has been accused of copyright infringement because she has developed a video game that is substantially similar to a widely-marketed video game created by Harry Hacker. Polly's best argument in defense to Harry's lawsuit for copyright infringement is:

    a. Her game is fair use since she developed it for fun and never intended to sell it
    b. Her uncle Rupert M. took a copy of her game without her permission and placed a downloadable copy of it on his newspaper's website to try and increase subscriptions to both the newspaper its website: therefore he and not she is the infringer.
    c. Harry's reputation as a professional hacker creates the probability that his copyright is invalid
    d. The fact that the games look the same does not mean she has infringed Harry's copyright.

7. Julie Sung, a songwriter of some fame, assigned the copyright in her song, "Who Loves Y'a Baby" to Playback Recording Studios in 1956. Her assignment included "all rights to the lyrics and musical score during the term of copyright, including any renewal periods that may be applicable". Ms. Sung died in 1974 without her song having been published. In 1976, Playback Recording Studios decided to publish an album of 50's Tunes and included "Who Loves Y'a Baby" in the album. In instructing Ms. Sung's heirs as to earliest date on which Playback Recording Studios' rights can be terminated you would tell them:

    a. They have no rights of termination due to the assignment made by Ms. Sung in 1956
    b. January 1, 2071
    c. It depends upon whether Playback Recording Studios registers for renewal between Jan. 1, 2004 and Dec. 31, 2004.
    d. January 1, 2032

8. One of the objectives of renewal rights under the 1909 Copyright Act was to provide authors with an opportunity to reserve the benefits of copyright for their heirs including children and grandchildren. This particular objective is maintained for works first protected under the Copyright Act of 1976 through the:

    a. Sonny Bono Term Extension Act of 1998
    b. Termination of transfer provisions
    c. §504(c) of the 1976 Act establishing a right for statutory damages in cases of infringement under certain circumstances
    d. The Copyright Renewal Act of 1992

9. Eddie the Entrepreneur, looking for a way to raise his standard of living while studying at Easy Degree University (EDU), has embraced an obvious way of doing so, by selling class notes to students whose sleeping habits cause them to miss all morning classes. Eddie is aware that there may be some copyright issues associated with his business plan and because he knows you are enrolled in the Copyright Law class for the semester seeks you out for advice. Without opining on the ethics of Eddie's proposal, you tell him that he can best avoid a problem of direct, contributory or vicarious copyright infringement liability by:

    a. Taking notes on the lectures in his own handwriting, copying and binding the notes into his own notebook format and selling them to students
    b. Asking professors if it is OK to tape their lectures and claiming his own copyright in the sound recording which he duplicates and sells.
    c. Placing his copy of the professors' handouts in a locked file requiring a $10.00 fee to open it with each of his customers then making his or her own copies of the master copy.

d. Writing his own commentary in the margins of the professors' handouts and claiming ownership of the handouts as a derivative work.

10. Prestigious University ("PU"), a private institution, has received a letter from Phyllis Photographer claiming that by sending out copies of a magazine article to its students containing a photograph of a professor interviewed for the article, PU has infringed Phyllis's copyright in the photograph. The news magazine that published the article has not objected to the University's distribution of copies of the article but confirms that Phyllis does in fact hold the copyright to the photograph. Nevertheless, the University believes its reproduction and distribution of the article was fair use and will defend against the allegation of copyright infringement on that basis. The University is most likely to be successful in asserting a fair use defense because:

a. It sent out copies of the article and photograph only to students
b. The nature of PU's actions were noncommercial
c. The photograph had no commercial value apart from the article
d. §107 of the U.S. Copyright Act of 1976 says reproducing copies for purposes of scholarship and research is fair use.

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ANSWER SHEET - PART I

PART I. True/False (check one)

	T	F
1.	___	___
2.	___	___
3.	___	___
4.	___	___
5.	___	___
6.	___	___
7.	___	___
8.	___	___
9.	___	___
10.	___	___
11.	___	___
12.	___	___
13.	___	___
14.	___	___
15.	___	___

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ANSWER SHEET - PART II

PART II – Multiple Choice (check <u>one</u> best answer)

1.	**a.**___	**b.** ___	**c.** ___	**d.** ___
2.	**a.** ___	**b.** ___	**c.** ___	**d.** ___
3.	**a.** ___	**b.** ___	**c.** ___	**d.** __
4.	**a.** ___	**b.** ___	**c.** ___	**d.** ___
5.	**a.** ___	**b.** ___	**c.** ___	**d.** ___
6.	**a.** ___	**b.** ___	**c.** ___	**d.** ___
7.	**a.** ___	**b.** ___	**c.** ___	**d.** ___
8.	**a.** ___	**b.** ___	**c.** ___	**d.** ___
9.	**a.** __	**b.** ___	**c.** ___	**d.** ___
10.	**a.** ___	**b.** ___	**c.** ___	**d.** ___

COPYRIGHT LAW, FALL SEMESTER, FINAL EXAM
PART III

FACT SITUATION:

Cecilia Valdez, President of Red Dog Communications, LLC, is negotiating with a publisher to arrange for the publication/or production in 2004 of a multivolume book & DVD to be titled Tejano Hats: A Sensory Tour of the Mex-American Border. A summary/outline of what she intends to include in the books and DVD is attached. She has hired you to answer two questions:

Which works (or work) will her company Red Dog Communications be able to copyright?

What rights to which works must Red Dog Communications obtain before it includes the material identified in the attached summary/outline in the works it plans to publish/produce? And who will it have to obtain those rights from?

In Part One, some of the individual works that are to be included in the books or DVD that Red Dog Communications plans to publish/produce will be listed. You will be asked to determine whether they are in the public domain and, if they are not, who holds the copyright; and to briefly explain the main copyright issues that could affect Red Dog Communications' ability to acquire the rights to each of the works.

In Part Two, you will be asked to analyze whether Red Dog Communications will be able to copyright the books and DVD; and to briefly explain the basis for your judgment.

SUMMARY/OUTLINE

Tejano Hats: A Sensory Tour of Mex-American Border Culture

Contents of Book #1: Tejano Hats: Volume One: Border Scenes by Celcilia Valdez and Juan Gonzalez

A. Introductory Essay
To be written in 2004 by Cecilia Valdez

B. Three (3) Paintings of U.S.-Mexican Border scenes.
Painted by Juan Gonzalez

Painting #1 is based on a photograph published in 1918.

PART III SUMMARY/OUTLINE (cont.)

Painting #2 is based on a mural that was painted on a public building in 1945 by an artist who was a full-time, regular employee of the U.S government whose sole job responsibility was to paint murals on public buildings.

Painting #3 is an original painting.

All paintings were painted after 1978.

C. Text describing the local setting of each painting
Written but not published in 2003 by Juan Gonzalez & Cecilia Valdez

Contents of Book #2: Tejano Hats: Volume Two: Facts, Food & Fantasies

A. Historical Essay on Border Culture
Written in 2000 by William Smith, a Mexican citizen, and published in a Magazine in Spain in 2001

B. Tex-Mex Food Recipes
Written in 2000 by Juan Gonzalez based on his memories of the ingredients and processes his mother told him she used to prepare and cook special Mexican dishes when he was a kid.

C. Two (3) Short Fictional Stories

Story #1 is a folk story that was originally told in Mexican villages in the early 1880s and passed along from generation-to-generation but never before published.

Story #2, written by Gloria Sanchez, has been specially commissioned for this book.

Story #3, written by Cecilia Velazquez, was previously published in 1985 by Red Dog Communications in a book of short stories.

Contents of CD: Tejano Hats: Words, Music & Dance

A. All of the material contained in the two book volumes is to be included on the CD.

B. Three (3) songs, all of which have been previously released in 1990 as part of a Music CD, Esta Aqui, produced by Jose Olivo.

PART III SUMMARY/OUTLINE (cont.)

The lyrics & music to Song #1 were originally written & performed by Trish Hinjosa in 1983.

The lyrics to Song #2 were taken from an anonymous poem published in 1920; the music was written by Jose Olivo in 1989.

The lyrics & music to Song #3 were written in 1989 by Santos Rodriguez, a studio musician and Backup singer who was regularly employed by Red Dog Communications at the time he wrote them.

C. A video clip of a Mexican hat dance choreographed by Jose Olivo in 1988 and first videotaped by Mr. Olivo in 1998.

D. A uniquely expressive map of the U.S.-Mexican border prepared by Jim Smith, a mapmaker who works full time making maps for Red Dog Communications.

THE EXAM QUESTIONS for PART III of the EXAM

Part One

Determine whether each work is in the public domain and, if they are not, who holds the copyright. Then, briefly explain the main copyright issues that could affect Red Dog Communications' ability to acquire the rights to the work.

Each Answer is worth a total of 5 points

1. Painting # 2 in Book One: A painting based on a mural that was painted on a public building in 1945 by an artist who was a full-time, regular employee of the U.S government whose sole job responsibility was to paint murals on public buildings.

Copyright Status: _____

Analysis

2. Historical Essay in Book Two: An Historical Essay on Border Culture written in 2000 by William Smith, a Mexican citizen, and published in a Magazine in Spain in 2001

Copyright Status: _____

Analysis

3. Tex-Mex recipes in Book Two written in 2000 by Juan Gonzalez based on his memories of the ingredients and processes his mother told him she used to prepare and cook special Mexican dishes when he was a kid

Copyright Status: _____

Analysis

4. Short Story #3 in Book Two: A short story written by Cecilia Velazquez and previously published in 1985 by Red Dog Communications in a book of short stories.

Copyright Status: _____

Analysis

5. Song # 2 on the DVD: The lyrics & music to Song #3 were written in 1989 by Santos Rodriguez, a studio musician and Backup singer who was regularly employed by Red Dog Communications at the time he wrote them.

Copyright Status: _____

Analysis

6. The Hat Dance video clip on the DVD: A video clip of a Mexican hat dance choreographed and videotaped by Jose Olivo in 1988.

Copyright Status: _____

Analysis

Part Two -- Each answer is worth a total of 5 points

1. Can Red Dog Communications claim copyright Volume One: Border Scenes? _____

If yes, to what contents of the book will Red Dog Communications hold the copyrights?

Analysis:

2. Can Red Dog Communications claim copyright this DVD? _____

If yes, to what contents on the DVD will Red Dog Communications hold the copyrights?

Analysis: