Exam No. _____

U. S. COPYRIGHT LAW
IPSI 2003
Professor Susan M. Richey

***General Instructions*:**

This exam has 6 questions, worth a total of 100 points. The questions are not evenly weighted, so allocate your time accordingly. All statutory references are to the 1976 Copyright Act, as amended.

The exam is open-book and you may take any written material that you wish into the exam with you. **Do not work with any of your classmates during the exam.** Do not use a blue book. Please confine your responses to the lined area of this exam but do not feel compelled to fill the entire lined area. You need not cite case law unless specifically asked to do so.

You have 2 hours to complete the exam unless otherwise stated by the proctor.

1. (15 pts.) In *Campbell v. Acuff-Rose Music, Inc.*, the U.S. Supreme Court takes the position that "there is no protectible derivative market for criticism." In other words, although a scathing theatre review might build upon the original dramatic work to the point that the review could be considered a derivative work, the reviewer is free to write the critical piece without worrying about infringing the underlying copyright holder's derivative rights. The Court draws a distinction between criticism and parody, noting that parody may impact a copyright holder's derivative rights and, so, must be analyzed against the backdrop of fair use to determine whether actionable infringement has occurred. Why does the Supreme Court believe that a parody of the original may infringe derivative rights whereas straightforward criticism of the original will never amount to infringement of derivative rights?

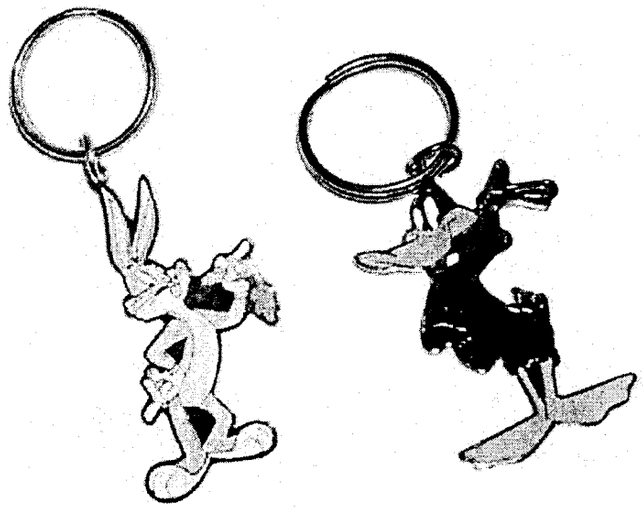
2. (5 pts.) Does the fact that an original work was unpublished at the time it was allegedly infringed automatically preclude a finding of fair use? [Hint: the answer can be found in the statute.]

3. (20 pts.) Analyze whether a 1992 collage by the famous American artist, Jasper Johns, composed of adhesive tape, gauze, cotton swabs, and other medical items glued to a canvas, would be protectible under the Visual Artists Rights Act (VARA)? [Address specifically the impact, if any, of the medical items on protectability.]

4. (10 pts.) One approach to determining substantial similarity in infringement litigation is to adopt the three-step abstraction/filtration/comparison analysis. During which step would a court consider the merger doctrine?

5. (20 pts.) To celebrate the bicentennial of the federal court system in 1989, the Administrative Office of the United States Courts commissioned KPBS, a public broadcasting station, to create a documentary for television dramatizing several famous early federal cases. The only reference to copyright rights in the production contract between KPBS and the Administrative Office was an agreement to assign all copyright rights in the audiovisual work to the federal government. Two individuals employed by KPBS—a director and a producer—created the documentary and KPBS executed a written assignment as promised. The History Channel now seeks to air the documentary. Who is/are the author(s) and must the History Channel obtain permission from the federal government to show the documentary? Briefly explain your responses.

6. (30 pts.) Warner Bros. owns the copyright in various characters featured in the company's famous Looney Tunes television cartoons. Warner Bros. manufactures small pewter statutettes depicting the various Looney Tunes characters, including Bugs Bunny and Daffy Duck, and sells them to greeting card stores nationwide. Greeting card stores carry many small gift items for customers who are interested in purchasing a gift and a card to go with it at the same time.



Warner Bros. has recently learned that a Florida corporation, Characterkeys, Inc., has purchased the Bugs Bunny and Daffy Duck statutettes in bulk, attached them to key rings, and begun reselling them to commercial car wash establishments on the West Coast. (See the key rings pictured to the right.) The car wash establishments market the key rings and other high end novelty items to customers who are waiting for their cars to be washed.

Warner Bros. has sent a cease and desist letter to Characterkeys, demanding that it stop infringing the copyright in the two Looney Tunes characters but Characterkeys takes the position that it has the right to dispose of the pewter figures as it wishes.

Analyze the legal positions of both parties and indicate which party should prevail if litigation ensues. Cite and discuss any relevant case law.