

**Massachusetts School of Law  
Publishing and Entertainment Law  
Final Exam – Spring 2008  
Professor Paul Auffermann**

You are a country lawyer in the small town of Backwater, MA. Upon your arrival back in your office from a much needed two week vacation, your office waiting room is filled with the following potential clients and their sad stories of injustice. Your clients names are shown **highlighted**.

**Deke**'s planned to open the Turn of the Century Pub ("TCP") as soon as construction was completed. TCP was decorated on the walls inside with over 200 newspaper headlines **Deke** had collected from newspapers published from 1890 to 1910. The themes of the headlines were selected by **Deke** to match the theme of each room in the pub. **Crosscut**, **Deke**'s general contractor, was working on finishing the interior of the pub and took photographs of the unique wall decorations before the opening of TCP to the public. **Crosscut** was responsible for the placement of the headlines on the walls. **Crosscut** sold the pictures to **Rip** two months prior to the opening of the pub for the sum of \$1,000 with a receipt saying "Payment of \$1,000 is acknowledged. Ownership of the photos is here by transferred to **Rip**" (Signed by **Crosscut**). **Rip** reproduced the photos for public display.

**Alicia** wrote down the musical score and lyrics for her favorite music published prior to 1920. She then organized a band to play the tunes at the high school foot ball field, and hired **Rambo**, a prominent event promoter, to make all necessary arrangements for her performance. **Rambo** handled the permits, police detail, refreshments, ticket sales and seating. **Alicia** also offered for sale CD recordings of the music. Local radio station **WTRU**, broadcasting from the football field, broadcast 5 minutes of the live performance (without **Alicia**'s permission) during the 6:00 p.m. news. (**WTRU** is a talk and news station and is not a licensee of ASCAP or BMI). **WTRU** also bought a CD recording of the music from **Alicia** and made copies to give away as prizes to listeners. In order to encourage television and radio stations to broadcast from town facilities, a town ordinance provides:

Anyone bringing a legal action in law or equity in opposition to broadcasting live entertainment from town facilities shall be required to pay the defendant's legal fees, in the event that the defendant shall prevail in such action.

**Alicia** and her band also arranged and performed music composed and recorded by the rock group, **Global Warming** (the music had previously been sold on CDs in Canada and the U.K. and was available for downloading worldwide for free by charitable organizations). She and her band also made CD copies of the performance and offered them for sale. Proceeds collected from the audience and CD sales were used to pay the cost of permits and other expenses, and the balance was donated to a charitable fund for the prevention of air pollution.

**Donnie**, a renowned and widely publicized war veteran, visited Marie, a real estate broker he had used to buy his house, in her office and discussed his experiences in Iraq. He told her in detail about his experiences during 10 days of captivity and his daring escape. Marie was so impressed with the story that she wrote and published a novel based upon a dozen of the specific experiences reported by **Donnie**. Marie purchased a copy of memoirs published by Donnie and posted it on her web site. She invited website visitors to compose and post to her website other fictional accounts incorporating Donnie's work. Donnie objected in writing to Marie about the material posted on her website.

**Victor** founded an Internet service called "Froogle" to search online content and help prospective buyers find and purchase books of interest. Froogle would hack past the online security of publishers' database to access the text of books sold by the publishers. Froogle customers would provide book quotes or keywords. Froogle would scan publishers databases and compare the search terms to published and unpublished book content. The Froogle service would then purchase the matching books from the publishers, and highlight the search terms in each book. The books would then be sold to customers at a markup of 50% over the publisher's price. Froogle would also make the highlighted books available for reading online by the purchaser. The purchaser could make further edits to the online version of the book, and give others access to read the edited book online.

**Alfonse** has posted several photos of landscapes on his website and is claiming infringement of his photo titled "Running Water" by Bravo's abstract work titled "Streaks of Blue". Expert analysis of the pictures showed that both used all the same shades of color, and each had 15% red, 20% blue and 25% yellow. Individuals who saw the pictures side by side commented that "Either one would look great in our living room.", and "I can't put my finger on it, but these pictures just have the same look and feel.". Although Streaks of Blue did not actually depict the same water scene as Running Water, many observers would agree that it had captured the "mood and feeling" of Running Water. (The "issue" in this case should include a discussion of whether either party is entitled to a summary judgment by the court, as well as a discussion of the merits of the case at trial).

**Fritz** operated an anti violence website, which targeted primarily the publishers of materials directed towards children, that emphasized violence. In particular, **Fritz** made copy of particularly violent scenes produced for television by Gore and Suspense Productions ("GASP") and joined the scenes together into a 45 minute video titled, "The Worst of GASP". Fritz included in the video 20 minutes of commentary by a noted child psychologist, Dr. Zigmund, on the harm that the particular scenes were doing to children. **Fritz** also included in the video an advertisement for his for profit movie production company. It was determined that children watching the video's scenes of non stop violence would soon stop watching GASP productions (much to the dismay of GASP). **Fritz** sold the video for \$9.99 (a profit of \$3.00 per video) and provided it free of charge for non profit use by schools and churches. Dr. Zigmund, without permission from anyone, made copies of the video and sold it to his patients.

**Ian**, a noted fence designer, was aware of the problems local residents were having with animals attacking their crops. Also, he was aware that the local zoning board would not permit fences in town which did meet the approval of the local town aesthetics committee. **Ian** did research on the critters which caused most of the damage in town and also studied popular wrought iron sculptures. As a result, **Ian** designed the fence shown in Figure A which provided a "variable density" design having bars closer together at the bottom and farther apart on top, to keep out both small and large animals, while allowing a graceful open look and the maximum light to pass through. **Clem**, a competing fence manufacturer, copied the design and sold virtually identical fences. Purchasers, having seen **Ian's** fences around town, assumed that **Clem's** fence was actually made by **Ian**.

#### QUESTION

Please discuss the rights or liabilities arising with respect to each of your clients. Particular attention should be given to a thoughtful analysis of the facts and a concise application of the legal principles learned in class.

FIGURE A

