

Publishing and Entertainment Law
Final Exam
Spring, 1995
Paul W. Auffermann

Flash, a self-employed photojournalist, had taken a set of photographs of European landmarks in 1939 and displayed prints of the photographs on the wall of his brother's art gallery that year. Flash made black and white reproductions of the photos and sold them as posters in 1945. Copyright in the posters was registered in 1945 but was not renewed. Flash executed the following bill of sale in 1946 to Trooper, who was on his way home from Europe:

"For good and valuable consideration, I transfer to Trooper the attached photographs and all of my right to publish the photographs." (Signed, Flash)

Flash died in 1965 and left all his estate to Heir. Trooper left his estate to his son, Vet, when Trooper died in 1980.

Vet used the photographs to make a set of slides. He would show the slides to veterans in their homes and ask them to discuss their wartime experiences associated with the various scenes. Vet would make an audio recording of his recollection of the interviews the next day after each interview.

Vet was recording an audio/video tape monologue as the introduction to his slide show. It was 10:30 at night and the rock group "Dawn's Early Light" was performing loudly in a studio next door. Vet asked the group to stop playing because it was getting late; they rudely refused. A city ordinance prohibited loud noises after 10:00 p.m. Vet went back to his store and finished recording his tape with the band playing in the background. Vet played the tape before each slide show.

To celebrate the 50th anniversary of V-E Day, Vet formed a vocal group, "The Rockets Red Glare". The group recorded an album, titled Sea to Shining Sea, which contained public domain marches and songs and a work titled Battlin' Bugles written by George M. Calhoun. Battlin' Bugles was first

published by Calhoun on February 18, 1995 and copyright for the tape was registered on May 15, 1995. Battlin' Bugles was arranged from sheet music and recorded by "The Rockets Red Glare" on February 1, 1995.

"The Rockets Red Glare" performed Sea to Shining Sea in the park behind the store. Each show ended with a two minute laser light and smoke display which was computer controlled to insure uniformity of the show. Vet had commissioned Byte to write the program for the software. Vet provided Byte with a description of the mood he wanted to create and a deadline for finishing the software. The entire light show was videotaped by WZAT TV and shown on the 6:00 p.m. news. In addition, WZAT played copies of Sea to Shining Sea.

Vet opened a store on May 1, 1995 to sell products, including the first sales of Sea to Shining Sea, commemorating WW II. He had a policy of selling the album for \$30 with a 90% refund if the tapes were returned within 15 days. The tapes could also be purchased without the refund option for \$5.

Vet had a room in the store where customers could listen to Sea to Shining Sea before purchasing it. Vet, by mistake, handed a customer, Norman Dee, a copy of one of his interview tapes. Norman Dee listened to album at the store, realized the mistake, and bought the tape. He sold the tape to the Daily Blab newspaper which printed excerpts from the text.

Vet placed the following newspaper ad:

US veterans are invited to bring in novel products commemorating America's contributions to freedom in Europe. Top prices paid.

Sketch brought in several hand drawn charcoal sketches he made of GIs on leave in European cities. The pictures were numbered 1-99 and each was signed by the author.

Vet purchased all the pictures. He used his water color kit to touch up and brighten pictures 1-50 and he mounted all the pictures on colored backs, sprayed each with a sealer

and framed the pictures. He offered the pictures for sale in the store.

Dodger, who had avoided military service, submitted a drawing of a cigarette lighter made from a model of the Statue of Liberty, the "Liberty Lighter". The statue's crown was replaced by a thumb wheel for activating the lighter and the torch was replaced by a holder for a wick and flint to ignite the flame. Vet made several changes to Dodger's design to make the lighter easier to cast in miniature and to serve as a more efficient fluid holder. Vet sold the Liberty Lighter without any payment to Dodger. Dodger, when he saw the lighter on the market, made copies and sold it himself.

The back of Vets store adjoined a town park where amateur music groups would often play. Vet used surplus military microphones to pick up music played by the group "Waves of Grain" in the park and played it in his store. Sarge aimed the microphone and installed the equipment in the store. The music was barely audible in the adjoining stores. Vet's business boomed during the "Waves of Grain" concerts.

On weekends, Vet would dress in a fictitious military uniform as "Sgt. Bivouac Barnes" and perform the songs of an anti-military rock group, "NonCom Formist". He would substitute lyrics which were disparaging of the group's political views. Sgt. Barnes always wore a straw hat as a part of his uniform. The hat was made in accordance with drawings provided by Vet to students majoring in basket weaving at a Florida university. Vet designed a unique vent which he placed in the front of the hat which appeared to be a military insignia but which also included a pattern of small openings to ventilate the hat.

A city ordinance provided:

No public music performance is permitted on city property unless a letter from the composer authorizing such performance is on file with the city.

"NonCom Formist" vowed to take whatever steps were necessary to enjoin performances in the park by Vet (as Sgt. Barnes) and "The Rockets Red Glare".

Knock-Off bought copies of the hat from the students and sold it as the Knock-Off brand, Sgt. Barnes hat. Knock-Off used the promotional line, "Look Like Sgt. Barnes".

Vet purchased 100 books of sketches of novel aircraft designs (sketches drawn by Messr. Schmidt) from a close out wholesaler, Surplus USA, for \$10 each. He sold each book for \$75 with a coupon for five model building classes. At no additional charge, Vet provided the supplies and instructions to enable purchasers to build models of the aircraft sketched in the book. The cost of materials for each course was \$35 and his overhead expenses (i.e. insurance, utilities and permits) for all the classes was \$1,500. The books could be purchased for \$25 from any retail store.

Vet hired Sarge, a retired army veteran, to stock shelves in the store. Sarge, who had served as a personal driver for officers during WW II, told Vet (based on his personal experience) that the allied generals, Bradley, Eisenhower, Montgomery and Patton each had his own distinctive personality and way of solving problems. He explained in detail many examples of each general's unique characteristics.

Inspired by Sarge's comment, Vet wrote a cartoon series about conditions of public concern during the period 1940-1945. He called the characters Brad, Ike, Monty, and Patty. They acted out civilian issues related to rationing, air raids, and sabotage; the "persona" of each character was based upon Sarge's observations. The setting for the characters, chosen by Vet, was a residential neighborhood in Boston, in a multifamily house; the characters "worked" for the Public Works Administration.

Anzio, a pizza delivery man, found a draft of the cartoon series left by mistake in a storage cabinet where Vet usually left money for pizza deliveries. Anzio read the draft and wrote a play based on the same characters, only changing the residential setting to a condominium development in a 1990's Boston suburb and the workplace to a defense contractor; the highlighted issues were crime, drugs and unemployment.

In 1918 Kilroy, Vet's grandfather, a famous WW I hero, had written a fictitious account (titled Blue Bivouac) of his experiences training to be a soldier. Kilroy sold all his copyright to the work to Pub, a book publisher, in 1928. Pub licensed Mogul Pictures to do a movie version of the work. The movie, also named Blue Bivouac, was released in 1932. Kilroy left his estate to Trooper in 1952.

Now, in 1995, Vet wants to include much of the material from Blue Bivouac in an autobiography of his father's life, titled Bivouac Blues. Vet is being approached for movie rights by Docudrama, Inc.

Discuss the rights and liabilities of the parties. Include in your discussion reference to any required ASCAP or Harry Fox (section 115) licenses.

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Andover General Hospital (AGH) has recently retained your services, and its General Counsel has described the following facts to you.

Dr. Bones, a former orthopedic surgeon at AGH, had taken a set of x-rays of patients' bone injuries in 1935 and displayed the negatives on the wall of the staff room where doctors and other hospital employees would gather to relax. No copyright notice or other indication of ownership was marked on the negatives. Doctors were encouraged to photocopy the negatives, however the negatives were not otherwise distributed. Dr. Bones sold the x-rays to Doctor Femur and executed a written instrument transferring "any and all of my reproduction rights therein". Doctor Femur made colorized prints from the x-rays and sold them as part of a text book on treating bone problems in 1945. Copyright in the book was registered in 1945 but was not renewed.

In 1997, Doctor Clavicle used the colorized prints to make a set of slides. Doctor Rontgen, author of "Radiology for Dummies", approached Doctor Clavicle and suggested that they should "work together" to produce a seminar on radiology practices which would integrate Doctor Clavicle's slides and Doctor Rontgen's text book. (Doctors Clavicle and Rontgen have no relationship with IDG Books, publisher of the well known consumer oriented "_____ for Dummies" series with over 100 "Dummies" titles ranging from "Art for Dummies" to "Computer Networks for Dummies".) Dr. Clavicle videotaped the seminar and sold copies of the tape for training doctors in remote areas who could not attend the seminars.

To celebrate the 75th anniversary of the founding of AGH, the hospital organized a vocal group, "Crash Cart". The group recorded an album, titled Clinical Scare, which contained re-arrangements of public domain songs from the 1920's and a work titled "Contusions" composed by Nurse Jones, a member of the group. "Contusions" was recorded by Nurse Jones but the recording was never distributed to the public.

"Crash Cart" performed Clinical Scare in the park adjacent to the hospital. The performance ended with a two minute laser light and smoke display which was computer controlled. AGH had commissioned Byte to write the program for the

software. AGH provided Byte with a description of the visual effects it wanted to create and a deadline for finishing the software. Also, Byte was required to submit periodic progress reports to AGH. Clinical Scare and the entire light show was videotaped by WZAT TV and shown on the 6:00 p.m. news.

AGH opened a medical museum and gift shop. The gift shop purchased copies of Clinical Scare and offered it for sale for the first time. The gift shop had a policy of selling the album for \$30 with a 90% refund if the tapes were returned within 15 days. The tapes could also be purchased without the refund option for \$5.

AGH had a room in the shop where customers could listen to Clinical Scare before purchasing it.

AGH placed the following newspaper ad:

AGH wishes to acquire novel craft items for sale in its gift store. Top prices paid.

Sketch brought in several hand drawn charcoal sketches he made which commemorate great moments in medicine. The pictures were numbered 1-99 and each was signed by the author.

AGH purchased all the pictures. AGH commissioned Splash to use water colors to touch up and brighten pictures 1-50 and he mounted all the pictures on colored backs, sprayed each with a sealer and framed the pictures. AGH offered the pictures for sale in the store.

Also, in response to the advertisement, Thermo submitted a model of a cigarette lighter made in the form of a thermometer. The bulb shaped end of the thermometer was replaced by a thumb wheel for activating the lighter. AGH made several changes to Thermo's design to make the lighter easier to cast in miniature and to serve as a more efficient fluid holder. AGH sold the lighter without any payment to Thermo. Copy Cat, when he saw the lighter (as redesigned by AGH) in the gift shop, made copies and sold them.

On weekends, Nurse Critique would dress in hospital scrubs and apply make-up to appear as a fictional character, "Doctor MalCon". She would perform songs composed by the popular rock group "Analgesia" and substitute lyrics which were disparaging of the country's current health care system. Nurse Critique always wore a distinctive vest as a part of her costume, which was ornately embroidered with

charts and graphs depicting the portions of the population which did not receive adequate medical services.

Vid, a video technician, made a recording of Nurse Critique's performances at a local city park and sold it under title "Doctor MalCon Speaks Out".

A city ordinance provided:

No public music performance is permitted on city property unless a letter from the composer authorizing such performance is on file with the city.

AGH used microphones to pick up performances by "Crash Cart" and Nurse Critique in the park and played them on surplus military sound amplifiers and six speakers mounted in the walls of the gift shop to attract customers. The shop's business boomed during the performances.

Scribe, an author of local history books, interviewed several physicians who had practiced at AGH and heard their anecdotes of events taking place at the hospital over the past 50 years. The interviews were videotaped by Scribe (without the physicians' knowledge). Scribe added background music, which he composed, to the tapes. Portions of the interviews were published in his book, "Fifty Years at AGH". The name and likeness of one of the doctors, Doctor Albert Swizzler, was used by Scribe in promotions for the book. Doctor Swizzler was world famous for his work on the damaging effects of alcohol.

Drama Tist secretly obtained a copy of the taped interviews and created a play based upon the tapes. The play comprised all original dialog but included all of the incidents described by the doctors. Drama Tist also rearranged the music on the tapes and played the taped interviews and rearranged music for the audience during intermissions of his play.

Scribe also interviewed patients leaving AGH and recorded their comments on the quality of medical care provided by physicians at the hospital. On the basis of their responses, Scribe published a directory of physicians, arranged by specialty and a rating of A-F corresponding to the level of satisfaction expressed by the patients for each physician. Andover Magazine received a copy of the directory and published an alphabetical directory of physicians practicing at AGH.

Discuss the rights and liabilities of the parties.