

## Law 633 Handout

### For discussion in class on Wednesday April 20

1. This handout contains a near-final draft of the instructions for your final take-home exam on the next two pages. Following that, I've included a few suggestions on how to approach the exam.

2. Here is a list of the statutory sections assigned this semester (it should be identical to the sections listed on the syllabus):

- 17 U.S.C. §§ 101, 102, 103, 104A, 105, 106, 106A, 107, 108, 109, 110, 113, 114, 115, 117, 120, 201, 202, 203, 204, 301, 302, 303, 304, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 501, 502, 503, 504, 505, 506, 507, 512, 602, 1001, 1002, 1003, 1008, 1101, 1201, 1202.
- 1909 Copyright Act §§ 1, 2, 10, 12, 19, 20, 21, 24, 26, 27, 28.

The exam will not involve all or even most of them, but you should consider anything covered by these sections to be fair game, with the following exceptions:

- I do not expect you to know the details of the statutory licenses in sections 114 or 115, although you should be familiar with the remainder of those sections.
- You don't need to worry at all about sections 104A, 106A, 117, 120, 403, 407, 506, 1001, 1002, 1003, 1008, 1101, 1201, or 1202.
- You will need to know what remedies are available for copyright infringement, but I don't expect you to know the fine details of, *e.g.*, how courts and juries calculate damages under section 504, nor should you plan to make a discussion of remedies a major focus of your answer to any question.

You should have your copy of the listed sections of the current copyright statute close at hand when you take the exam. I will include a copy of the assigned sections of the 1909 Act in an appendix to the exam, so you will not need to print out a hard copy of those sections.

3. The earliest work at issue in this year's exam was first fixed in tangible form in the 1840s.

**Law 633 Copyright**  
**Professor Litman**  
**Final Examination – Winter 2016**

This is a 48 hour take-home examination

**MATERIALS ALLOWED:**

- Casebook
- A copy of the Copyright Act
- Handwritten or typed (*not* taped) class notes or course outline prepared by you
- English language dictionary

During the examination, you may not refer to any hornbooks, treatises, F.A.Q.s, books, CDs, DVDs, audio recordings, films, videos, commercial study aids, case reports, Lexis, Westlaw, cTools, Wikipedia, any other source available over the Internet, another student's class notes, or any other material not listed above. You may not discuss the examination with anyone. You should observe the word limits for your answers to each question. Detailed general instructions for taking the examination are on the following page.

This examination consists of two files. This file contains the instructions and questions one, two and three. The second file contains appendices that you might find useful to answer the questions. Check now to make sure that you have both files.

Include your assigned Exam ID number for this course (**not** your name) as a running header in your exam answers file. Include the word counts for your answer to each question at the end of that answer.

## **Law 633 Copyright Final Examination**

**Winter 2016**

**Professor Jessica Litman**

### **GENERAL INSTRUCTIONS**

This is a limited open-book, 48-hour take-home examination. You may consult your casebook, and your copy of the copyright statute. You may also refer to a dictionary, your own class notes, and a course outline prepared by you. You may not consult *any* other material. (You may not, for example, consult any hornbook or secondary source, any notes or outlines created by another classmate or by a member of a prior year's class, any newspaper, magazine, video, audio recording, CD or DVD, podcast, or any printed out, photocopied, online or downloaded copy of any statute, case, or bill other than the current copyright statute. You may not consult any material whatsoever via the Internet.) You are forbidden to ask anyone for assistance, suggestions, ideas, or inspiration, or to collaborate with anyone on any part of the exam. If I discover that you have violated any of these rules, you will receive a failing grade.

Your answers are subject to word limits. I will not give credit for any portion of any answer that exceeds the word limit for that part of the answer to that question. Write the number of words in each of your answers immediately following that answer. Upload your completed examination answers no later than 48 hours after downloading the exam. The Registrar's guidelines instruct you to keep a copy of your answers until you receive a grade in the course. During the rest of the exam period, please keep very close track of that file, to avoid exposing your classmates to unreasonable temptation. You are responsible for ensuring the security of your answers. If I discover that someone has copied part or all of an answer from another student's exam, both students will receive a failing grade on that question.

There are three questions. I have included further instructions with each question. Please read them carefully. You should spend *much* more time thinking about the questions than you do writing your answers. In order to stay within the word limits, you will need to decide which of the issues raised in the questions require extensive discussion and which need only cursory mention. I do not give any credit for unresponsive descriptions of general legal principles or for faithful transcriptions of my own remarks, so avoid the temptation to rewrite your course outline in your answers or to feed me back the opinions I have expressed in class. I will subtract credit for flatly incorrect legal statements.

The questions are drawn from real situations that have occurred in real locations. Nonetheless, I do not expect you to apply the law of a particular circuit to cases brought in its courts. For the purposes of the exam you should assume that all cases in your casebook are persuasive authority to all courts on all relevant issues, but that more recent cases may have modified the law articulated in older cases.

## **Suggestions, and a couple of notes on how I grade:**

Everybody tells you to read the instructions on an exam carefully. I can't emphasize enough the importance of doing so here. First, each question will have a pretty tight word limit. That's meant, in part, to encourage you to think hard about the question and figure out what you think the best answer is before you start composing your answer. None of the three questions asks you to show your expertise at spotting and calling out a host of different issues. Rather, each question calls on you to analyze a handful of issues very carefully and in some depth. Second, if I ask you to, *e.g.*, draft a section of a statute within a defined word limit, you will earn a higher score if your draft consists of statutory language and that language fits within the word limit without evasions or tricks. (Writing, "the language in subsection 110(5) is hereby incorporated by reference," is an example of what I mean by an evasion or trick.) If I ask you to write an opinion following a bench trial that resolves all issues, I am asking you to resolve both legal and factual questions. If it is a bench trial, you won't have a jury, so it would be poor strategy to leave unresolved issues for the jury to decide. The instructions for each question should give you a pretty good idea of what I will be looking for when I grade your answer.

You should also read the relevant statutory sections with great care. Sometimes a careless misreading can have significant impact on your score. I deduct points for misreadings of the statute (as well as for evident misunderstandings of the law). The suggestion to read carefully applies as well to the facts recounted in each of the questions. Some of those facts will end up influencing the result you come to; others will end up not mattering. All of them though, are in the question for some reason.

You have 48 hours. I encourage you to read all three questions and give them at least a little bit of thought early in the 48-hour period. Take some time to let them rattle around in your brain before beginning to figure out how to answer them. You should spend much more of your time thinking about the questions than you do in writing your answers.

These questions are susceptible to more than one right answer: the important thing is how you get there. I'm not looking for a particular result; rather, I'm looking for a discussion that shows that you understand the law, that you have developed skill at applying that law to different factual situations, and that you appreciate the competing policy concerns raised by particular statutory provisions. If I show you two works and ask you whether one infringes the copyright in the other, you can be confident that I have chosen works for which you could reasonably decide either way. When I am grading a question like that, I'm looking at the quality of your analysis, and whether your reasoning supports the answer you reach.

I grade all of the answers to one of the questions, followed by all of the answers to each of the other questions. This means that I am unlikely to read any student's answers to all three questions in sequence. If I intend the second question, and only the second question, to inspire a discussion of fair use, and you have discussed fair use only in your answer to question 1, I won't be aware of that when I grade your answer to question 2, and won't give you any points for understanding fair use. So, before you draft your answer to any of the three questions, take some time to figure out which questions call for discussion of which issues. Any final exam will leave some important parts of the course unaddressed. (It's hard to cover everything in one test.) Still, if there is an area of the course that you expect to find on the exam, and you don't see it in any of the questions, it may be worthwhile to read the questions again just to be sure.