

TECH 780/880  
Take-Home Final Exam  
Spring 2019

This take-home exam is due on **Wednesday, May 15, 2019 at 6:00 pm**. Please email your responses to [roger.ford@law.unh.edu](mailto:roger.ford@law.unh.edu) by that time.

**Please, I implore you, follow all the instructions on this page. It makes it much easier to score the exam responses if they adhere to these instructions. I did not deduct points for failure to do so in the first quiz, but warned you that I would on the second quiz, and did so. This time, I will deduct many more points if you fail to follow the instructions.**

This exam consists of four questions, weighed equally. You may consult **any existing material you wish** while working on this quiz. You may not, however, discuss it with anyone else—classmate, friend, random lawyer on the internet, anyone—until after everyone has completed it. **Do not spend more than four hours on this**; it shouldn't take anywhere near that long. **Do not write more than 2000 words total across all four answers**. No need to include the questions with your answers. **List your total word count at the end of the document**. Please type (do not copy and paste!) the following at the top of your exam: *I affirm that I have not discussed this exam with anyone during its administration and that I have complied with the word and time limits.* (You can omit these words from your word count.)

Format your responses similarly to this document: **single-spaced with 1.5-inch margins and extra space between paragraphs**. Use 12-point Cambria, Century, Constantia, Book Antiqua, or another high-quality serif body font; do not use Times New Roman, which is a terrible font. (Or if you want to use LaTeX and Computer Modern, that's fine with me.) Number your pages and submit your answers as a PDF file—*not a Word file*—with the file name “[your last name here] final.pdf.” If you don't know how to generate a PDF file, ask. Use the subject line “IP Law final” for your email. Go back and make sure you did all these things before hitting send on the email.

If any of the questions is unclear, make reasonable assumptions and inferences, state them explicitly, and explain how your answer depends on them.

Good luck and have a wonderful summer!

\* \* \*

### Question 1

Alistair MacAllister, a master hair stylist, has a website that shows examples of his work. Each example shows two photos: a photo of a celebrity on the left and a photo of a MacAllister client on the right. In each case, MacAllister has cut and styled the client's hair to match a famous celebrity look.

MacAllister hired a photographer to take the photos of his clients, but for the celebrity photos, he just used Google Image Search to find the best-looking photo that matched the style he had produced. He then saved the photos to his computer, cropped them to just show the celebrity's head, and uploaded them to the server hosting his website.

Getty Images, a company that licenses news photos, sends MacAllister a letter demanding that he take down two of the celebrity images, in which it owns the copyrights. Both photos were taken by Getty photographers on the red carpets at awards shows (the Oscars in one photo and the Screen Actors Guild Awards in the other) and licensed to news and entertainment publications and websites. Most of those publications and websites used the photos in connection with stories about the awards shows, but some used them in connection with other stories about the celebrities. One newspaper, for instance, used one of the photos (several months later) alongside a story about the celebrity's arrest and indictment in a college-admissions bribery scandal.

MacAllister comes to you with the letter and says "I don't have to take this down, right? Isn't this obvious fair use?" Advise MacAllister. Is a court likely to conclude that his use of the photos is fair use? Are there any practical difficulties or concerns he should be worried about?

### Question 2

Consider these three potential trademarks:

- The name Great Value Detergent for a new brand of discount laundry detergent.
- The distinct neon-yellow-green color of traffic cones made by the company ConeCo.
- The photo of a lion cub on the front of a coffee-table book of photos of adorable baby animals.

For each, is a court likely to conclude that there is a protectable trademark? Why or why not?

### Question 3

Consider these three scenarios:

- The owner of a large office building downloads, without authorization from the copyright owner, a copy of the film *Die Hard* and plays it, in a continuous loop, on a video wall in the building lobby.
- A film student takes a Blu-Ray copy of the horror film *Get Out*, copies it to her laptop's built-in storage, and edits footage from the film, along with public-domain music and an original voiceover, into a romantic-comedy trailer. She submits the trailer for a class assignment by uploading it to a password-protected school server for the professor to watch.
- An artist buys magazines, cuts out photos of people from ads, and uses them in an original collage. She hangs the collage in an art gallery, open to the public; two months later, it sells for \$20,500.

For each scenario, explain which exclusive rights protected by copyright law (specifically, 17 U.S.C. § 106) are infringed, if any. Don't consider fair use or other defenses.

### Question 4

Consider these three ways in which patents provide narrower protections than trade secrets:

- Patents are issued for processes, machines, manufactures, and compositions of matter—inventions—while trade secrets can include many other things, like pure information.
- Patents are issued only after a government examiner concludes that the invention is novel and nonobvious, while trade secrets do not require any examination or registration with the government.
- Patents expire after 20 years, while trade secrets can last indefinitely.

(a) What accounts for these differences? For each difference listed above, give a short (one or two sentences is plenty) explanation for why, as a policy matter, the difference exists.

(b) In view of these differences, why would anyone opt for patent protection? Are there other advantages of patents, either generally or for specific types of inventions?