YOU MUST STOP WRITING WHEN INSTRUCTED TO DO SO BY THE PROCTOR. FAILURE TO DO SO WILL BE CONSIDERED A BREACH OF ACADEMIC DUTY AND WILL BE REPORTED TO THE DEAN'S OFFICE BY THE PROCTOR.

DO NOT LIFT THIS COVERSHEET UNTIL INSTRUCTED TO DO SO BY THE PROCTOR.
As a reminder, the best answers will be grounded in more than personal opinion, and will make reference to cases, legal theories and arguments discussed in class. Questions 1 and 2 will each contribute 37.5% of the exam score, and Question 3 will contribute 25%.

Question 1

You are O. Kanobi, Esq., an attorney in good standing with the California State Bar, with an office in Hollywood, California. Your client, Jenna Maroney, an actress, has made an appointment to see you today. You invite her into your office, and before she even sits down, she starts telling you her story in an excited manner:

“Help me, Obi-Wan, you’re my only hope! You lawyers always come to the rescue. Aren’t you the one who dealt with that wardrobe malfunction at the kindergarten for me?

Anyway, this morning was supposed to be the first day of shooting of my first film, a musical remake of “Mystic Pizza”. As I drove to the set, I called my accountant to make sure I’d gotten the pre-production payment I’m due for this film. The check had arrived and cleared, so I felt confident this was not a fly-by-night operation and I went right into make-up and hair when I arrived. An hour or so later, I’m called into a meeting with Jack Donaghy, the president of the production company, MegaPictures. Apparently, the funding for the film had fallen through. I was so furious, because I wanted my film debut to focus on my singing abilities, rather than the talent I obviously display as a dramatic actress on my soap opera, “As The World Turns Around All My Children”.

I started to storm out of the MegaPictures offices, but I was stopped by Donaghy (whom I suddenly remembered meeting about eighteen months ago at a party at a club, just down the street from here). He said “No worries, we’ve lined you up to star in another film, “The Rural Juror”, and we can start that one filming next week. You’ll love it! We won’t have those funding problems because “The Rural Juror” will be shot in only two locations over four weeks, so the budget is less than half the budget of “Mystic Pizza: The Musical”, and we can cover that ourselves. You’ll be the star of course, just as in “Mystic Pizza: The Musical”, and you’ll finally be able to nab that Oscar nomination you’ve been after. This is the role of a lifetime – the first mute to be seated on an Oklahoma jury.”

“Absolutely not,” I barked. “How will my fans react to not hearing my beautiful voice on screen?” As I again started to storm out, Donaghy responded, “I don’t think you’ll be going anywhere. Apparently you don’t remember that as you were leaving the party, you told me ‘Jack, darling, of course you can count on me. I’ll star in your next picture. Just pay me my usual fee, put my name above the title, and tell me when and where to show up. Call my agent at Almost Creative Agency. Bye, sweetie.’ Well, in case you are having sudden memory issues about our deal, there are at least three people willing to testify that they heard you use those exact words, so I’ll just assume you’ll be here on time next week when “The Rural Juror” cameras start rolling!”
I left the MegaPictures meeting and immediately drove to see Liz Lemon, my personal manager, so that she could make things right. I told her what had just happened, and you won’t believe how she responded! Lemon said that she drove me to that party because she had heard that Donaghy would be there, and that he was looking to hire a fresh face to star in one of his upcoming films. She reminded me that she had followed up my encounter with Donaghy at the party by sending him a package the next morning with my resume, headshot and a note that read “Here’s your new leading lady! But she’s so unforgettable, I’m sure you are already thinking of her as your star of “Mystic Pizza: The Musical”. Call me and I’ll make sure this happens!”

Lemon ended our meeting by saying to me, “You better not mess this up! I just made a down payment on my dream house, and I’m counting on the commission from your film. I took a chance signing you when you were fresh off the Greyhound bus, and I’ve been waiting these past two years for it to really pay off. If you don’t keep quiet and do “The Rural Juror” so I can get my money, you’ll be hearing from my attorney, Obi-Wan Kanobi, and let me assure you, he always gets me results! It’s like he has some magical force he uses or something.”

Identify and evaluate the legal issues presented by the above scenario. To the extent that you would need further information to fully evaluate any particular issue, identify the missing information and how it would impact your analysis.

Question 2

Stephen Spiegel, the owner of the New York-based Spiegel Productions television production company and the creator and executive producer of the television series "ICS: Memphis" and "Orderly Law: Crime Edition", pulled up a stool at his favorite Manhattan bar at the end of a long day. "Hit me Frankie, the usual."

"Tough day, Mr. S.?” Frankie asked with genuine concern, as he placed Spiegel’s favorite cocktail in front of him.

"You don’t know the half of it," Spiegel responded. "Directors and their egos. But you know I don’t come here to bring my work with me, I come here to forget it. How are you doing this evening Frankie?"

"Just fine, just fine," Frankie replied. "I've got a lead on a foreclosure, I'm working on Saturday at this highfalutin' holiday party for a modeling agency, and I think I got a date with that girl I mentioned to you last night, so I’ve got a smile on my face these days."

Spiegel chuckled. "That's what I like about you, Frankie, you always have that brain of yours in overtime, working five schemes at once. That would be a valuable skill in my line of work. Frankie, I think you've missed your calling."
"Well don't be so sure, Mr. S.," Frankie replied. "Are you ready to hear my latest one? I really think this could be the one that is finally my ticket out of here."

Spiegel chuckled amusingly. "OK, chief. Boy, we all have a hustle don't we. Sure, go ahead."

Frankie looks around to be sure no other customers are in hearing range, then continues. "Basically, it's the Beverly Hillbillies updated for the 00's. I'm thinking it stars Britness and Janice Sparks, and their Mom. You know, a family moves to Beverly Hills because they've suddenly hit it big time, but this time instead of striking oil, they are struck by stardom. Get it? What do you think about that one? It's my favorite idea, and I think it could really be the one that gets me out of bartending for good."

Spiegel paused and looked at Frankie, then said "Frankie, every season someone tries that fish out of water story, but you know, one of these days it is going to fly again." After some unrelated small talk, Spiegel gulps the last of his drink, leaves Frankie an unusually generous tip, and leaves the bar.

Spiegel never returns to the bar again.

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Frankie has now requested your counsel, as he is seeking compensation from Spiegel Productions, and cannot get Spiegel to return his calls or letters. He reports that last week, nine months after his conversation with Spiegel, "Brace Yourself, Beverly Hills" premiered on the BSA television network. The show stars Britness Sparks. The show features a sister and a mother character. No other actual Sparks family members portray roles in the series. The premise of the show is that the character played by Britness is discovered as a lounge singer in Texas, and becomes an instant superstar who uproots her life and is moved by her new handlers to Beverly Hills. The show follows her exploits as she adjusts to the fast life.

In your interview, Frankie indicated that he never wrote down his "update" of "Beverly Hillbillies" for any purpose. You later verify through your own research that all rights in the original "Beverly Hillbillies" television series are owned by Spiegel Productions, and have been for at least ten years. Because of these facts, you conclude that Frankie would not succeed on a claim of actual copyright infringement, and you advise him so.

Answer each of the following questions. To the extent that you would need further information to fully evaluate any particular issue, identify the missing information and how it would impact your analysis.

A. What possible claim could Frankie bring? (Do not address a claim of actual copyright infringement.) Would you advise him that he would be likely to succeed on such a claim, or not? What legal theory or theories support your answer?
B. Would your response to question A be different in any manner if Spiegel Productions were a California-based company, and all events described in the scenario above took place in a bar in Los Angeles? If so, how? If not, why not? What legal theory or theories support your answer?

Question 3

In 2005, proposed legislation entitled the “Benefit Authors without Limiting Advancement or Net Consumer Expectations” (also known as the BALANCE Act) was introduced in the United States House of Representatives. The BALANCE Act is intended “to safeguard the rights and expectations of consumers who lawfully obtain digital entertainment” by addressing what its authors claim is a flaw in the DMCA, whereby a lawful consumer cannot legally circumvent technological restrictions in a work subject to copyright protection, even if he or she is simply trying to exercise a fair use or to utilize the work on a different digital media device.

In relevant part, the BALANCE Act would allow a person who lawfully obtains a copy or lawfully receives a transmission of a copyrighted work in a digital format to reproduce, store, adapt, or access such a work:

1. for archival purposes, if all such archival copies are destroyed or rendered permanently inaccessible in the event that continued possession of the work should cease to be rightful; and

2. for purposes of performing or displaying the work via any hardware or software that converts copyrighted works in digital form into a format whereby the images and sounds are visible or audible, as long as the work is not performed or displayed publicly.

The BALANCE Act would also permit circumvention of any technological measure that controls access to the work, if such act of circumvention is necessary to make a non-infringing use of the work, where the copyright owner fails to make publicly available the necessary means to make such non-infringing use without additional cost or burden to the person seeking to make such use.

Assess the effect that adoption of the BALANCE Act would have on the various interests of copyright owners and consumers, and offer your view as to whether the BALANCE Act would be advisable for Congress to adopt. Some questions to consider in the course of your analysis could include: Is the DMCA in need of such a revision? Why or why not? There is, of course, no right or wrong answer – the best answers will not merely state a conclusion, but will thoughtfully examine the positive and negative impact(s) of the BALANCE Act on the interests of both copyright owners and consumers.