EXAM NO. ____

ENTERTAINMENT LAW

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FALL, 2009

DECEMBER 12, 2008
2:00 P.M.

2 HOURS
OPEN BOOK

Please start each answer on a new page, and clearly number each answer. Anyone taking the class pass/fail must clearly write or type the words "PASS/FAIL" at the start of each exam.

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 will contribute 40% of the exam score, Question 2 will contribute 25%, and Question 3 will contribute 35%.

Question 1

You are an attorney in good standing with the Georgia State Bar, with an office in Atlanta, Georgia. Your new client, Jimmy Roselli, has made an appointment to see you today and conveys the following information:

"My aunt, Daisy, was the cashier at a local convenience store in Athens, Georgia. Aunt Daisy was quite the character, and became famous among the University of Georgia student body for her unique appearance (Aunt Daisy teased her hair very high and wore bright make-up), unusual mannerisms (Aunt Daisy often rolled her eyes at the students) and sayings at the checkout register. Her most famous saying was to yell at the top of her voice to the next student in line "Get the lead out young missy, I have a gentleman caller tonight." Students at the university began to imitate her appearance and mannerisms in student talent shows, and the audience would cheer when the famous saying was uttered.

Sadly, Aunt Daisy passed away last month at the ripe old age of 101. As I am Aunt Daisy's sole heir (in her will, she left me all of her belongings and personal and property rights), it fell to me to sort through her house. Taking a break from the task, I took a walk through the town center, and I ran across a t-shirt shop that catered to students. To my surprise, there was a rack of t-shirts that I am sure was meant as a tribute to Aunt Daisy. The top of the circular rack had a sign that said "We Will Miss You", and there were three types of t-shirts of varying sizes on the rack.

One type of t-shirt featured the words "She lives!", and had a button that when pushed played a recording of the words "Get the lead out young missy". The voice on the recording sounded like a very close imitation of Aunt Daisy's voice - in fact, it was so close even I thought it was the actual voice of Aunt Daisy for a few seconds. Another type of t-shirt read "I have a gentleman caller tonight" and featured a silhouette of an older woman with her hair teased very high. The last type of t-shirt did not feature any words, but featured a photograph of Aunt Daisy (with her eyes rolling) that had been altered so that her features were in bright neon colors. The t-shirts sold for $14.99 each.

At first I was touched by the gesture, but then I thought about how hard Aunt Daisy had worked, and realized how unfair it was that someone else would be making money off of Aunt Daisy. I asked to speak to the owner of the store, Jeff. Jeff freely admitted that he created and distributed the t-shirts and had plans to expand the distribution to other stores. When I asked him if he had ever gotten Aunt Daisy's consent to create the t-shirts, he stormed away after responding 'Of course not, what for? I don't need it for any of the shirts I created, and in any event, there is nothing you can do about it now!'"
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 or claims could Jimmy bring? Are there any claims that Aunt Daisy could have brought (had she still been alive when the t-shirts were created and discovered) that Jimmy could not bring now? What legal theory or theories support your answer?

B. Would your responses to question A be different in any manner if all events described in the scenario above occurred in Los Angeles and at USC, and you were a licensed California attorney? If so, how? If not, why not? What legal theory or theories support your answer?

C. Would your responses to question A be different in any manner if all events described in the scenario above occurred in New York City and at Columbia University, and you were a licensed New York attorney? If so, how? If not, why not? What legal theory or theories support your answer?
Question 2

Earlier this year, the French legislature passed a law titled *loi favorisant la diffusion et la protection de la création sur Internet* or "law favoring the diffusion and protection of creation on the Internet." The law, which was eventually upheld by the French constitutional court after a judicial review process was added to the regulatory scheme created by the law, is often referred to as a "three strikes" law. For purposes of this exam only, assume that the following is the three-step procedure under a proposed "three strikes" law for the United States:

The first step (or "strike one") is that a copyright owner informs an ISP of what the owner believes to be a copyright infringement by the ISP user (who is identified by the web address for the internet connection being used), and the ISP sends an e-mail to the ISP user, stating that a claim is being made by a copyright owner and instructing the ISP user not to engage in activity that infringes on copyrights of others. The e-mail specifies the time and date of the claim, but not the name of the claimant nor identification of the specific material subject to copyright that is being allegedly infringed.

If a repeated offense is suspected by the copyright owner within the next six months, the copyright owner informs the ISP and the second step (or "strike two") is initiated. The ISP sends a certified mail to the home address of the ISP user, repeating the information sent in the original e-mail.

If a repeated offense is suspected by the copyright owner within one year following receipt of the certified mail by the ISP user, the copyright owner informs the ISP and the third step (or "strike three") is initiated. The ISP automatically suspends the internet service for the web address that had been used by the ISP user for one year and informs the ISP user that she has been placed on a list of persons to whom it will not provide an internet connection for that year. Other ISPs are also prevented from providing an internet connection to the ISP user for that year. The ISP user may request judicial review of the suspension of internet service by the ISP, in which event a court would examine the basis of the claim of copyright infringement by the copyright owner, and would then uphold or overturn such suspension.

At the USC Entertainment Law Symposium this past October, several speakers urged that the United States adopt a "three strikes" law similar to the proposed model law summarized above. Assess the effect that adoption of the proposed "three strikes" law in the U.S. would have on the various interests of copyright owners, ISPs and ISP users, and offer your view as to whether the proposed "three strikes" law would be advisable for Congress to adopt. (Limit your analysis to the proposed "three strikes" law described above and not any other version of a "three strikes" law with which you might happen to be familiar.) There is no one right or wrong answer — the best answers will not merely state a conclusion of personal opinion, but instead will be grounded in discussion of the competing policies and societal interests we discussed in class and of the cases we examined with respect to copyright infringement on the internet.
Question 3

You are an attorney in good standing with the California State Bar, with an office in Los Angeles, California. Your longstanding client, Anna Albergeiti, has made an appointment to see you today and conveys the following information:

"I need your help. I tell you, no good deed goes unpunished. Remember I told you that as a tribute to Michael Jackson, I planned to write and perform a song at a benefit concert to raise money for the offspring of Bubbles the chimpanzee? Well, I did do that -- and guess what, this morning I heard from the estate for Michael Jackson, claiming that I had engaged in copyright infringement and that they were taking immediate legal action!

I don't understand why they are reacting this way. My song 'Chimp In The Mirror,' was a heartfelt plea to remember how much joy Bubbles had brought into so many lives, and how we should honor the memory of Bubbles by taking special care of his offspring. To remind people of how much Bubbles meant to Michael, I used the melody from Michael's song 'Man In The Mirror,' but other than the words 'in the mirror,' I changed the words completely from Michael's beloved song. I don't know why the estate is coming after me -- the 'Man In The Mirror' lyrics are about changing one's life to bring about positive change in the world, while my 'Chimp In The Mirror' lyrics take that concept one step further, by saying it isn't enough to only change our own lives, we must also positively change the lives of our animal friends, including the sons and daughters of Bubbles! Why would anyone object to that?

Since it was a benefit concert, I haven't made any money from the performance, but I decided that I owed it to all of my fans who couldn't attend the concert that I should record the song for my new album -- which Walmart is very interested in selling, I might add. Yesterday I called Caitlin, a guitar player who came highly recommended. I told her I would pay her standard rate for the next week, and that the recording would start tomorrow at 11:00 A.M. sharp. Caitlin asked if I would be sending over a written agreement for her services, and I said 'Of course, I wasn't born yesterday. I always insist on signing some sort of something so we both know the deal we are getting into. I'll send you a letter that will read 'When this letter is signed, it will constitute our deal until a more formal agreement is prepared.' Caitlin responded by saying "Great, I'll cancel my nightclub gig for tomorrow night -- I don't like playing there anyway -- and I'll hop on an overnight bus." I said "Looking forward to it," and after we hung up the phone, I faxed her the letter.

This morning after I heard from the Jackson estate, Caitlin showed up at my office ready to work. Naturally, I had to tell her that in light of the response of the Jackson estate, I couldn't possibly go through with the recording. Can you believe she had the nerve to tell me she was bringing a lawsuit against me? What could she possibly claim I had done wrong? We never signed the letter!"
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. Advise Anna on the likelihood that a U.S. court would find that she has a valid legal position that her song (1) did not constitute copyright infringement when performed, and (2) would not constitute copyright infringement if recorded for her new album. What legal theory or theories support your analysis of the strength or weakness of Anna's legal position in both instances?

B. If Caitlin were to follow through with her threat to bring a lawsuit against Anna, what claim or claims would Caitlin be likely to assert, and how likely would Caitlin be to prevail? What legal theory or theories support your answer?

End of Exam