

Prof. MICHAEL J. MADISON

Intellectual property law. Copyright. Commons.

Copyright Law Memo Assignments – Spring 2010

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Assignment Three

To: Our Lawyer

From: Engulf & Devour, a Venture Capital Firm

Date: April 21, 2010

Re: Possible Investment

Engulf & Devour recently received a business plan from a pair of entrepreneurs who want to start a company that would build and offer an Internet technology that would add sound to Facebook. The details are pretty sketchy at this point, and the technology is still in development – so it could probably be modified if it needs to be for some reason. The question for Engulf & Devour is whether we should invest in this company. We'd like your advice on the relevant risks that the new company would face from a copyright law standpoint. What are those risks, how substantial are they, and how can they be overcome (if they can be)?

As we understand the proposed company, it would develop a Web-based technology that would allow Facebook users to post short musical clips – in effect, ringtones – into their Facebook profiles. Each user and his or her Facebook “friends” could tag each clip with the name of other “friends,” so that new status updates and wall posts by that friend would play that ringtone. Also, because multiple ringtones could be associated with a single friend, a new status update or wall post would be accompanied by a kind of ringtone mashup. I'm not a technical guru, so I'm not too sure of how, exactly, all this would work. I assume that I can get more technical details if you need them. I also suspect that the entrepreneurs would be willing to make changes to their technology if that meant the difference between getting an investment and not getting the investment.

As you can imagine, any new startup that extends Facebook is a hot potential commodity in the current investment climate, so our inclination is to go ahead with the investment – barring something that’s a real deal-killer from a risk assessment standpoint. We don’t want to buy into any hidden time bombs here. What do you think?

Please limit your analysis and advice to four pages. I need that memo no later than Friday, May 14, 2010, at 12 noon.

Rules and Guidelines for Assignment Three

To the extent that these rules may appear to conflict with general advice regarding memos that appears in course-related webpages, these rules take precedence.

This is an “open” problem, meaning that there are no limits on the resources that you may bring to bear on your work. Among other things, you may consult with your classmates and other human beings. If you discuss the merits of the assignment with anyone, however, you must disclose that person’s identity on or in your memo. Write the names of any student “consultants” at the top of the first page of the memo.

Use your own name in the “From” field. The memos are not anonymous.

Format

Memos must be typed or printed using a computer. Each memo, including any attachments, must be not longer than four [4] typewritten or printed pages, double-spaced, with 1” minimum margins on all sides. (“To,” “From,” “Re,” and “Date” headings may be single spaced.) You do not need to include a comprehensive statement of the facts; instead, you may refer to the factual background in my memo to you. A factual summary may be helpful, however, in framing and presenting the analysis of the memo. No footnotes are permitted. The following font must be used: Twelve [12] point Times New Roman.

Grading

Memoranda will be graded based on form, format, and writing quality as well as on content. The assignments are designed so as not to have any single correct or even best solution. Each problem may present a range of issues that the memorandum should identify, analyze, and solve in a creative way.

Due date

One hard copy of the work product prepared for this assignment must be turned in not later than Friday, May 14, 2010, at 12 noon. Memos may be turned in either to the Registrar’s Window or to Ms. Melissa Shimko, in Room 314, or handed personally to Professor Madison. Electronic (e-mailed) copies are not acceptable. Memos slipped under anyone’s door are not acceptable. There were be no extensions or exceptions to this deadline. Memoranda that do not conform to the format instructions above, or that are turned in late, are subject to grade reductions.

Assignment Two

To: Junior Lawyer
From: Senior Lawyer
Re: Termination Research
Date: March 30, 2010

I just got off the phone with Phyllis Lindstrom, a partner in our firm's corporate group. Phyllis is sending over to me a copy of a letter that one of her clients just received. She needs some quick research on copyright law – which she knows little about – so that she can advise the client.

So that you can get started, the preliminary facts appear to be these. Our firm represents Monumental Pictures, which is about to release a movie called *Bringin' in the Sunshine*. The movie tells the fictional but thinly-veiled story of the making of one of the great Hollywood movie musicals, *Singin' in the Rain*. (The new movie has a great cast – Robert Downey, Jr. as Gene Kelly, Zooey Deschanel as Debbie Reynolds, and Ed Norton as Donald O'Connor.) As you probably know, Monumental is one of Hollywood's legendary movie studios, and it produced *Singin' in the Rain* in 1952. But times in the motion picture industry have changed, and the new picture, *Bringin' in the Sunshine*, is going to be released only online, via iTunes. There will be no theatrical release, and no DVD or Bluray release.

The letter, which is dated March 27, 2010, is from a lawyer at our rival firm, Dewey, Cheatham & Howe, who represents the granddaughter of Arthur Freed. In 1929, Freed composed the lyrics to the song "Singin' in the Rain," on which the movie was based and which was performed in the original movie. The Dewey lawyers claim that Freed himself licensed the song to Monumental back in 1952, in a contract that apparently states, "Owner [Freed] agrees to license the reproduction, adaptation, and performance of the musical composition titled 'Singin' in the Rain' to Licensee [Monumental] in connection with motion pictures based thereon and any sequels thereto."

The letter claims that the new picture, *Bringin' in the Sunshine*, is not covered by that license and will be infringing if it is released as planned by Monumental. The granddaughter wants negotiate a new deal. If Monumental will not give her one, then the letter says that she will exercise her statutory right to terminate the 1952 license between Monumental and Freed.

So far, I have confirmed with Phyllis that Monumental is relying on the 1952 license to clear its rights to use the song "Singin' in the Rain" in connection with the new picture. I have also confirmed that if Monumental cannot clear those rights, then the movie cannot be released – which would cost the client millions of dollars.

Monumental is going to want to know whether it should deal with the granddaughter, or call her bluff and see if she follows up with a lawsuit and/or termination notice. Before we can answer that question, we need to know what we don't know. I need you to do some quick research. What facts and law do we need to pin down in order to advise Monumental? What questions should we be asking, why should we be asking them (we don't want to go off on wild goose chases, so justify your recommendations here), and where should we be looking for answers?

I need your four-page memo no later than Monday, April 12, 2010, at 4 pm.

[For purposes of this Assignment, you should assume that the song “Singin’ in the Rain” as described above does not refer to the actual song “Singin’ in the Rain,” which was composed by Arthur Freed and Nacio Herb Brown, but instead to a fictional song that happens to be titled “Singin’ in the Rain.”]

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Assignment One

To: Junior Lawyer

From: Senior Lawyer

Re: Defense Strategy in Clinton Lawsuits

Date: February 16, 2010

As you have probably heard, a different firm in town handled the defense of Bridgeport Music, Inc. v. UMG Recordings, 585 F.3d 267 (6th Cir. 2009), in which the funk superstar George Clinton sued a hip hop group called Public Announcement for copyright infringement (we represent the distributor of P.A.'s work, companies collectively referred to as "Universal"), and Universal took a beating. Universal has fired its former law firm and hired to us to defend it in the future.

As you can see from reading the court's opinion, there are a lot of other, similar cases coming through the pipeline, some of which probably involve George Clinton and some of which do not. George Clinton may have been stoned a lot of the time, but his music publisher, Bridgeport, is a savvy corporate outfit. Bridgeport makes a lot of money from licensing samples of Clinton's work to rap and hip hop artists.

To prepare a better defense for the next round of these lawsuits, we need to understand exactly what went wrong with this one. Take a look at the fair use section of the court's opinion. Take it apart carefully, point by point, sentence by sentence, and word by word, if necessary. Where should the defense have attacked the plaintiff's claim differently? What legal arguments should have been framed differently? What evidence was presented that was ineffective, and what evidence wasn't presented that should have been, and that might have turned the case around? I'd like you to come up with a short memo that outlines a fair use strategy for us to use in defending the next case and beyond, a strategy that is based on overcoming the weaknesses that the court identifies in this opinion. Of course, so that the client understands what we are up to, be sure to include not just a list of what to do differently, but also an explanation of how the proposed strategy is grounded in a solid analysis of this case and in the law generally.

Materials that may be relevant to your work, including a copy of the Bridgeport opinion, have been posted online here.

I need your four-page memo no later than Monday, March 1, 2010, at 4 pm.

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High Scoring Memos

The following are memos that scored at the top end of the 1-20 range for the class. They are not “model” memos, because in each case the memo could be improved.

- [Example one](#)
- [Example two](#)
- [Example three](#)