

Intellectual Property Fall 2021 Final Examination

This assignment consists of **two question** and **seven pages**. Your answer has a limit of **2,000 words per question**, which will be strictly enforced. It is due by **4:30 PM on ~~Saturday~~ Friday, December 17**. Please read these instructions carefully.

Submit your answer as a PDF and upload it following the **instructions provided by the law registrar**. To preserve **confidentiality**, your exam should not contain your name or any other identifying information. If you have any questions about the administration of the exam, you should raise them with the registrar, not directly with me. Similarly, if you are dealing with any matters that affect your ability to complete the exam, you should discuss them with student services.

This is an **open-book** examination. You should not need to consult anything beyond the casebook, the slides, and your notes, but you can if you wish. You are free to discuss the general legal principles we have covered with anyone, including each other. You are also free to post general questions about the material covered in the course or clarifying questions about the *facts* (not the law) in the problems on the exam in the designated discussion area on Canvas. I will answer all questions posted there before 11:59 PM on Monday, December 13.

Aside from that, **you may not discuss the question** with anyone else until after the deadline. Your work on this examination is subject to the Cornell Code of Academic Integrity, the Law School Code of Academic Integrity, and the Campus Code of Conduct.

Please make your answer as **specific** to the facts of the question as you can. Generic statements or suggestions, such as "Make sure that all employees follow proper security practices," will receive few or no points. Use **simple citations** (e.g. "*see Feist*") where appropriate. I include **spelling, grammar, clarity, and organization** in my grading. I appreciate the use of headings to organize your answer, but they're not required. If you find the question **ambiguous** or need to **assume additional facts**, state

your assumptions and explain how they affect your answer. No reasonable resolution of an ambiguity will be penalized.

Assume for purposes of the examination that present-day law has been fully in effect at all relevant times. Unless otherwise noted, all names are fictitious. Please disregard any resemblance to actual persons, places, or institutions, unless they are specifically incorporated into a question.

Question 1: A Series of Unfortunate Inventions

Your client is Visionary Funding and Development (or “VFD” for short), a community-development nonprofit that provides grants, working space, networking, and legal advice to support entrepreneurs in the city of Paltryville. You have been invited to a series of meetings with past grant recipients; your job is to report back to the board of directors on the IP implications.

* * *

First is Monty Montgomery, an amateur herpetologist with a large collection of exotic snakes and lizards. He would like to turn the reptile room in the back of his house into a zoo. He is concerned, however, that if he opens it up to the public, some visitors might take pictures or describe what they have seen to others, undermining the uniqueness of his collection. “Can I get a patent or copyright or something on my animals?” he asks. “That way maybe I could use the royalties to help pay for their care and feeding.”

Josephine Anwhistle is a stained-glass artist who makes impractically wide but beautifully decorative windows. Because of their size, they are site-specific and typically need to be installed during the construction of a house. An Etsy seller with the username CaptainSham has started selling Anwhistle’s designs as 8”x10” prints on glossy paper.

Next up is Esmé Squalor, who makes ersatz elevators. Her company manufactures and sells decorated flat panels, the size and shape of an elevator door, which can be installed in against a blank wall in a building lobby to make it appear that the building has more elevators than it actually does. This can make buildings more attractive to potential tenants, and is much cheaper than installing actual elevators. Squalor also explains that users tend to feel that the wait is shorter if they think there are multiple elevators and aren’t sure which one will arrive first. Unfortunately, she continues, the Gunther Elevator Corporation has threatened to sue. It claims that the decorative pattern of spirals on one of her panels copies the appearance of one of their elevator-door designs, which is protected by copyright, trade dress, and design patent; that it holds a utility patent on a

panel decorated to look like an elevator door; and that nonfunctional elevator doors constitute false advertising.

Tocuna Heimlich has developed an algorithm to help health-insurance companies deny claims. It works by comparing the billing codes submitted by a hospital for reimbursement to a list of patterns; if there is a match, it reclassifies the claim into a different category for which coverage is not required. Ms. Heimlich has heard rumors that a competitor, Dr. Mattathias Madyck-Sküll, is developing a similar algorithm.

Quigley Quagmire sells playground equipment with a red-and-purple color scheme under the brand name Slippery Slopes. His company has been in business for two years and has a single location in the Paltryville suburbs. A competitor, Carmelita Spats, has recently started selling playground equipment with a blue-and-purple color scheme under the brand name Slippery Slides.

Fiona Widdershins is a chef who sells pre-made meal kits. The recipes are not original. Her mushroom-wasabi stir-fry is a traditional recipe she learned from her father; the pasta puttanesca she got out of a cookbook (she can't remember which one).

Dewey Denouement operates the Hotel Denouement with his brothers. The hotel needs renovations, and they are planning to redecorate it while it is closed for repairs. It will need new carpets, wallpaper, furniture, light fixtures, and art. They would like to ensure, if possible, that no other hotels in the area will be able to imitate the Hotel Denouement's new decor.

* * *

*Write a memorandum of **at most** 2000 words explaining how **each grant recipient** you met with should deal with the IP issues they face. If the person holds relevant IP rights, explain whether they could be successfully asserted in a way that would be beneficial for their project. If someone else holds relevant IP rights, explain whether they pose a risk to the project. If their strategy should be revised in light of IP concerns, say so. If the IP problems are so fundamental that VFD should advise them to give up on the idea, say so too.*

Question 2: Trouble with a Capital NFT

Your client is Marian Cook, a singer and guitarist who had a moderately successful career as a musician in the 1980s and 1990s. She released four studio albums with a full band, but she is most famous for a solo concert album, *Live from River City*, recorded in 1991. Cook is the songwriter and copyright owner of the songs on *Live from River City*, and licenses them for public performance through ASCAP. The album was released on the Shipooopi record label (now a part of Universal Music Group), which owns the sound-recording copyright. The photograph on the cover of the album is a close-up of Cook with her eyes closed and a radiant smile on her face as she basks in the applause at the end of the concert. It was taken by photographer Winthrop Howard. *Live from River City* has sold about 200,000 copies, and Cook receives roughly \$20,000/year in royalties from sales and performances of her music. Cook is retired from music now, and works as a librarian in Gary, Indiana.

Cook has recently become aware that Harold Preston, an entrepreneur and technology evangelist, released a “Exclusive 30th Anniversary *Live from River City* NFT in celebration of Marian Cook’s legendary concert.” According to the webpage describing the project, the NFT consists of a smart contract on the Ethereum blockchain: a short piece of code that stores (1) the smart-contract address of the current owner, (2) a function to transfer ownership upon payment of a amount determined by the current owner, and (3) the text “LiveFromRiverCityNFT.” When the function is called by the current owner (as properly authenticated through use of the owner’s private key), the code runs and up with the address of the new owner. According to the webpage, whoever bought the NFT would also obtain “a newly-created [chiptune](#) version of *Live from River City* by MC-Marcus and an exclusive [pixel-art](#) version of the iconic album cover photo.”

The NFT was sold on Barbershop, a site that exclusively hosts NFT auctions. The winning bidder was a user with the username ProfessorHill, who paid approximately \$450,000 worth of ETH, the native cryptocurrency of the Ethereum blockchain. At the close of the auction Barbershop automatically transferred ownership of the NFT to the address specified by

ProfessorHill. In addition, ProfessorHill downloaded the bonus files Preston had uploaded to Barbershop: the chiptune and pixel-art.

ProfessorHill immediately turned around and resold the NFT to an unknown buyer for approximately \$680,000 worth of ETH. ProfessorHill also posted the chiptune cover and pixel-art image online, where they have been widely downloaded.

When she discovered the NFT, Cook was furious that a stranger was profiting off of her name, her music, and her image. If anyone is going to make fistloads of cash off of *Live from River City*, she thinks it ought to be her. She's fine with fans sharing old recordings, and loves it when other working musicians cover her songs. But she feels she was exploited by her record label back in the 1980s and 1990s, and she doesn't want to let it to happen again.

Cook consulted a tech-savvy friend, Zaneeta Shinn, who advised her to strike back by creating her own NFTs. Following Shinn's advice, Cook created an NFT that was technically identical to the NFT Preston created — including the text "LiveFromRiverCityNFT" — except that its initial owner was Cook rather than Preston. She listed it for sale on Barbershop. Preston noticed the listing and posted the following on Twitter: "@MarianTheLibrarian this was my NFT stop ripping me off im going to sue u for copyright and patent and trademark infringement if u don't take it down"



Harold Preston 🎵🚀🔒
@TheMusicNFTMan



[@MarianTheLibrarian](#) this was my NFT stop ripping me off im going to sue u for copyright and patent and trademark infringement if u don't take it down

4:49 PM · Dec 4, 2021

315 Retweets 124 Quote Tweets 1.4K Likes



Write a memorandum to your client of **at most** 2000 words explaining the IP considerations that should inform her response to this situation. Describe the relevant types of IP rights that she or others have, how they apply here, and what she should do in light of them.