

MBU 3520 - INTELLECTUAL PROPERTIES
Exam #1/Spring 2008
Professor David Moser

Instructions: Please print your name and class section legibly and mark all of your answers clearly on the Scantron answer sheet provided. Please **do not erase any answer choices on the Scantron** since this can result in the machine misreading your answer. Feel free to mark your answers first on the question sheets and transfer your final answer choices to the Scantron. **If you need to change an answer choice on your Scantron, use a new Scantron sheet (do not erase).** Each question is worth 2.5 points. You should have more than enough time to answer all questions so don't rush (**read carefully and answer only what is asked**). I do not recommend obsessing over any questions you are unsure of since second-guessing seems to result in incorrect choices more often than not. Good luck!

1. Donna, a college student, likes to listen to music while driving from her home to classes each day. Her car has a CD player, but Donna gets all her music online. She legally downloads songs from a website for 99 cents each and then copies the songs to CDs so she can play them in her car. Which of the following is true?

- a. Donna is liable for infringing the copyrights in the songs by reproducing them on CDs.
- b. Donna is not liable for infringing the copyrights in the songs since she is not distributing copies to anyone else.
- c. Donna is not liable for infringing the copyrights to the songs since playing them in her car constitutes private rather than public performances.
- d. Donna is infringing the copyrights to the songs since the Copyright Act does not allow reproduction without a mechanical license.

Answer: b

Explanation: The Audio Home Recording Act allows consumers to make copies of lawfully acquired recordings for personal use.

2. Britney purchases the latest CD by her favorite artist, Justin Timberlake and copies the music onto the hard drive of her computer. After converting the audio files into MP3 format, Britney sends a copy of the files to her best friend who is also a serious J-Tim fan. Which of the following is true?

- a. Britney's action constitutes an unauthorized exercise of the reproduction and distribution rights in a copyrighted sound recording.
- b. Britney's action does not constitute infringement since the Audio Home Recording Act allows her to make copies as long as the copies are not sold.
- c. Britney's action does not constitute copyright infringement since she legally acquired the CD and can do whatever she wants with it.
- d. Britney's action does not constitute copyright infringement since she is merely trying to help bring sexy back by making Justin's music available.

Answer: a

Explanation: Section 106 of the Copyright Act states that the owner of copyright has the exclusive right to reproduce and distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending. Although Britney owns the CD she purchased, she does not own the copyright in the sound recordings contained on the disc. Although she may make a copy or copies for her own private use, she cannot distribute copies to others.

3. Jack and Jill co-wrote a song about climbing a hill in 1980. In 1990, while on a mountain climbing expedition, Jack fell down and died due to breaking his crown. Although Jill came tumbling after, she was more fortunate and survived the fall, living until 2005 when she died of natural causes. When will the copyright to the song expire?

- a. 2055
- b. 2060
- c. 2075
- d. 2080

Answer: c

Explanation: Life of last surviving author plus 70 years ($2005 + 70 = 2075$).

4. A work that does not exhibit a high degree of creativity cannot be protected by copyright.

- a. True
- b. False

Answer: b

Explanation: In order to be copyrightable a work must be original. Originality requires independent creation and only a minimal amount of creativity.

5. A songwriter writes original lyrics to a song on toilet paper while sitting contemplating the meaning of life. Are the lyrics copyrighted?

- a. Yes as long as the songwriter doesn't flush them down the toilet
- b. No since toilet paper is not a form of fixation
- c. No since the lyrics cannot be reproduced adequately from the toilet paper
- d. No because the lyrics must be combined with music

Answer: a

Explanation: Although probably not the best method of fixation, the toilet paper (like any other paper) would be considered a "copy" under copyright law.

6. Ideally, copyright law should strike a balance between:

- a. An author's right to profit from his or her creations forever and the public's right to perpetually free information.
- b. A copyright owner's right to maximize profits and the government's right to fix royalty rates for the use of copyrighted works.
- c. An author's right to control the use of his or her creations and the public's interest in having access to creative works.
- d. A recording artist's right to record songs he or she wants and a record company's desire to have artists record songs with the most commercial potential.

Answer: c

Explanation: Copyright is ultimately intended to promote the widest public access to creative works. It attempts to achieve this goal by providing creators and those that invest in the creation and dissemination of creative works with financial incentives. Consequently, copyright must balance the rights provided to copyright owners against the interest of broad public access. This balance is achieved in various ways including limited duration of copyright, specific limitations on copyright owner's rights, etc.

7. Which of the following cannot be copyrighted?

- a. A photograph
- b. A book title

- c. A recording of dogs barking
- d. A comic book

Answer: b

Explanation: Titles are not copyrightable since they are not original enough or do not contain sufficient expression.

8. Under copyright law, if you created an original audio recording of musical, spoken or other sounds, you would own a copyright in a:

- a. Musical Work
- b. Phonorecord
- c. Sound Recording
- d. Dramatic Work

Answer: c

Explanation: The Copyright Act defines sound recordings as “works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.”

9. The Copyright Act of 1909 is no longer applicable to any works.

- a. True
- b. False

Answer: b

Explanation: The 1909 continues to be applicable to all works created prior to 1978 (the effective date of the 1976 Act).

10. The copyright in a derivative work covers only the material contributed by the author of the derivative work rather than the preexisting material upon which the derivative work is based.

- a. True
- b. False

Answer: a

Explanation: Copyright in a derivative work applies to any original expression of the author of the derivative work. You do not obtain ownership of any existing material, whether public domain or copyrighted, by creating a derivative work.

11. Which of the following is the most accurate definition of copyright?

- a. A body of law that allows authors to own certain works of art and other creations
- b. A body of law that allows record companies to sell CDs
- c. A body of law that allows authors to own anything they create
- d. An outdated concept that has been replaced by intellectual property law

Answer: a

Explanation: Copyright is essentially designed to encourage the production and dissemination of all kinds of artistic works. To do so, copyright gives ownership rights in artistic works to authors.

12. Copyright owners have which of the following exclusive rights?

- a. Reproduction
- b. Distribution
- c. Derivative
- d. Both a & b
- e. a, b & c

Answer: e

Explanation: All of the answer choices are exclusive rights of the copyright owner as specified in § 106 of the Copyright Act. Copyright owners also have the right to publicly perform and display the copyrighted work.

13. A copyright cannot be infringed more than once at any particular point in time.

- a. True
- b. False

Answer: b

Explanation: Since copyrights are intangible, they can be infringed an unlimited number of times at any particular point in time.

14. A license is an agreement which:

- a. Specifies how a work may be used
- b. Specifies the compensation the licensee must pay to the copyright owner
- c. Specifies that the copyright owner will transfer ownership of a work to the licensee
- d. Both a & b
- e. a, b & c

Answer: d

Explanation: A license authorizes someone to use a copyrighted work in a specified way usually in return for a royalty (a percentage of income derived from the use). Under a license, the copyright owner (licensor) retains ownership of the copyright. Consequently, choice “c” is not correct.

15. Renting videos and selling used compact discs do not constitute copyright infringement due to the:

- a. Public performance right
- b. Compulsory mechanical license
- c. Fair use doctrine
- d. First sale doctrine

Answer: d

Explanation: The first sale doctrine provides that once a copyright owner has authorized the distribution of a copyrighted work in copies or phonorecords, the copyright owner has no right to control further distribution of the copies or phonorecords.

16. In the United States, copyright law is historically based on which of the following philosophies?

- a. Author’s (natural) rights
- b. User’s (utilitarian) rights
- c. Owner’s rights

d. Civil rights

Answer: b

Explanation: American copyright law is based on the user's rights philosophy. In fact, Congress has specifically rejected the author's right philosophy as it recorded in the House Report on the 1909 Copyright Act which states that: "The enactment of copyright legislation by Congress under the terms of the Constitution is not based upon any natural right that the author has in his writings . . . but upon the ground that the welfare of the public will be served and progress of science and useful arts will be promoted by securing to authors for limited periods the exclusive rights to their writings."

17. Copyright registration means that someone has made a claim of ownership to a work as of a certain date.

- a. True
- b. False

Answer: a

Explanation: Copyright registration is a means of recording claims of ownership in copyrighted works. Registration does not confer ownership, which exists automatically upon creation of a copyrighted work.

18. Giving away copies of a copyrighted work without the copyright owner's permission can violate the copyright owner's distribution right.

- a. True
- b. False

Answer: a

Explanation: Section 106(3) of the Copyright Act provides that the copyright owner has the exclusive right to distribute and to authorize others to distribute "copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending." The distribution right includes not only sale, but all forms of transfer (gift, etc.).

19. The Copyright Act of 1976 became effective on January 1st, 1978.

- a. True
- b. False

Answer: a

Explanation: Although the 1976 Copyright Act was enacted in 1976, it went into effect beginning in 1978.

20. Under current U.S. copyright law, copyright protection begins upon:

- a. Creation
- b. Restoration
- c. Registration
- d. Salvation

Answer: a

21. Paris Hilton can own a copyright in the phrase "That's Hot" since she often uses the phrase and has made it a popular saying.

- a. True
- b. False

Answer: b

Explanation: Names, titles, slogans and short phrases, are not generally subject to copyright protection since they are usually either unoriginal or constitute ideas rather than expression. However, names titles and slogans may be protected under trademark law.

22. It is legal for individuals or businesses to rent CDs.

- a. True
- b. False

Answer: b

Explanation: Under the Record Rental Amendment Act of 1984, you cannot rent recordings without the permission of the copyright owners of the sound recording and the songs contained on the recording.

23. Which of the following people could potentially be authors of a sound recording?

- a. The recording artist
- b. The producer
- c. The A&R representative from the record company who drives the artist to the studio, provides encouragement and tries to make sure the artist and producer get along so the recording sessions go smoothly.
- d. Both a & b
- e. a, b & c

Answer: d

Explanation: Both the recording artist and the producer's contributions to the creation of a sound recording may be copyrightable. However, merely choosing songs to be recorded without participating in the actual recording is not a copyrightable contribution.

24. Which of the following types of works were not protected under the Statute of Anne?

- a. Books
- b. Maps
- c. Musical Compositions
- d. Charts

Answer: c

Explanation: The Statute of Anne, enacted in 1710 in England, provided copyright protection for books, maps and charts. Musical compositions were not recognized as copyrightable works in England at that time and were not protected in the United States until 1831.

25. Ideas can be protected by copyright if they are original and fixed in tangible form.

- a. True
- b. False

Answer: b

Explanation: Section 102(b) of the Copyright Act specifically states that ideas cannot be protected. However, an author's particular expression of ideas can be protected.

26. Over its history, copyright law has evolved primarily due to:

- a. Lawmakers' desire to boost the economy
- b. New technologies and businesses based on the use of those technologies
- c. Authors demanding greater rights
- d. Random acts of nature

Answer: b

Explanation: New technologies have led to new forms of creative expression and new media in which copyrighted works are used. New businesses have often developed based on new technologies.

27. If a copyrighted work is created in 1995 as a work made for hire and published in 2000, when will the copyright expire?

- a. 2115
- b. 2095
- c. 2070
- d. 2065

Answer: b

Explanation: Works made for hire last for either 95 years from first publication or 120 years from creation, whichever is shorter. In this situation, 95 years from 2000 (2095) is shorter than 120 years from creation (2115).

28. It is very rare for two musical compositions to contain similarities unless one has been copied from the other.

- a. True
- b. False

Answer: b

Explanation: The components of melodic composition are very limited. Melody is limited by the 12 notes in the musical scale as well as certain standard compositional rules (e.g., chord progression, rhythms, etc.). Consequently, it is quite possible for two independently created songs to have many similarities through sheer coincidence.

29. Sound recordings can be separately copyrightable from any underlying copyrighted works that may be contained on the recording.

- a. True
- b. False

Answer: a

Explanation: Sound recordings are a category of copyrightable works. Although sound recordings often contain an underlying copyrighted work such as a song, the copyright in the sound recording is separate from the copyright in the song.

30. Anyone is free to use a work which is in the public domain as long as they pay a royalty to the work's owner.

- a. True
- b. False

Answer: b

Explanation: A public domain work is not owned by anyone so there is no copyright owner to pay royalties to.

31. David Moser creates and produces a reality television show called “You’re Hired” which involves contestants selected from graduates of the best university music business programs in the world. On each weekly episode of the show, the contestants compete by performing various tasks related to jobs in the music business. For example, in one episode, contestants compete to see who can sign the most commercial artist. In another episode, contestants compete to see who can get the most radio adds for a new record (without payola). At the end of each episode, a group of music industry executives select a winner who is hired to work in the mailroom of a major record label (since this show involves real reality). Donald Trump, who produces the popular show “The Apprentice” and owns a copyright in the Apprentice shows finds out about Moser’s show after “You’re Hired” trumps “The Apprentice” in the weekly Nielsen T.V. Ratings. If Trump sues Moser for copyright infringement, which of the following is true?

- a. “You’re Hired” is an infringement of “The Apprentice” since its based on the same theme (i.e., contestants vying for a job by performing various challenges or tasks) and uses a variation (i.e., “You’re Hired”) on Trump’s well-known slogan from “The Apprentice” (“You’re Fired”).
- b. “You’re Hired” is an infringement of “The Apprentice” because it is confusingly similar.
- c. “You’re Hired” is not an infringement of “The Apprentice” because reality television shows cannot be copyrighted (since they’re based on reality).
- d. “You’re Hired” is not an infringement of “The Apprentice” because Moser has not copied any copyrighted elements from “The Apprentice.”

Answer: d

Explanation: Although Moser has copied the basic idea of a show involving contestants competing for jobs, ideas are not copyrightable (nor are short phrases or slogans such as “You’re Fired” although they may function as trademarks). This question involves the important distinction between ideas (which are not protected by copyright) and an author’s particular way of expressing ideas (which is protected).

32. The Broadway musical “Dreamgirls” starring former American Idol finalist Jennifer Hudson is an example of a:

- a. Literary Work
- b. Musical Work
- c. Dramatic Work
- d. Audiovisual Work
- e. None of the above

Answer: c

Explanation: A dramatic work tells a story through action, dialog and narration and the copyright in a dramatic work covers the dialog & any accompanying music.

33. An arrangement of a public domain work may be protected by copyright.

- a. True
- b. False

Answer: a

Explanation: Although public domain work is not protected by copyright, if someone uses a public domain work and adds original expression to create a new work, the new arrangement will be protected by copyright.

34. Which of the following are accurate statements based on the author’s right philosophy for copyright?

- a. Authors should be credited on all copies of a work distributed

- b. Authors should be allowed to prevent others from making major changes to the works they have created
- c. Only authors should be allowed to own the copyright to the works they create
- d. Both a & b

Answer: d

Explanation: The author's right philosophy basically states that, due to the fact that an author creates a work, he or she is inherently entitled to have certain rights in their works. These rights include attribution (the right to be credited as the author) and integrity (the right to preserve the work's integrity by preventing others from making changes to it). However, the author's right philosophy also recognizes that authors should be free to transfer their ownership to others if they want to so choice "c" is incorrect.

35. If a name is used to identify a particular record company, it could be protected by:

- a. Copyright
- b. Patent
- c. Trademark
- d. Trade Secret
- e. None of the above

Answer: c

Explanation: Although names cannot be protected by copyright, they may be protected as trademarks if used to identify a brand of products or services. A record company name could therefore operate as a trademark since the name identifies recordings sold by the particular record company.

36. Prior to the 17th century, it was common for authors to own books that they wrote and to license the use of their books to publishers who would pay them royalties based on sales of their books.

- a. True
- b. False

Answer: b

Explanation: Ownership of creations such as books by their authors did not really exist until copyright originated in 1710 with England's enactment of the Statute of Anne. The concept of paying author's royalties based on sales of their books (or other creations) did not become common until considerably later.

37. The document that states that Congress shall have the power "to promote the progress of Science and the Useful Arts, by securing for limited times to Authors and Inventors the exclusive right to their writings and discoveries" is the

- a. Statute of Anne
- b. Copyright Act of 1790
- c. Berne Convention
- d. United States Constitution

Answer: d

Explanation: Article I, section 8, clause 8 of the U.S. Constitution (the Copyright and Patent clause) provides the basis for copyright and patent law in the United States.

38. The compulsory mechanical license in United States copyright law originated in the:

- a. Berne Convention

- b. Copyright Act of 1790
- c. Copyright Act of 1909
- d. Copyright Act of 1976

Answer: c

Explanation: The Copyright Act of 1909 created a compulsory (i.e., mandatory) mechanical license to reproduce and distribute sound recordings of musical compositions. It provided for a two-cent royalty to be paid to the copyright owner of a song for each recording distributed containing that song, provided that the copyright owner had previously authorized the first recording and distribution of the song.

39. If a copyrighted recording of a copyrighted song is broadcast over the airwaves by a local radio station, which of the following will receive performance royalties?

- a. The songwriter and music publisher
- b. The recording artist and record label
- c. Both a & b
- d. None of the above

Answer: a

Explanation: Sound recordings are not subject to a general public performance right. Instead, the recording artist and record label would only have a right to royalties from digitally transmitted performances of their sound recordings such as Internet webcasting or satellite radio.

40. The amendment to the 1976 Copyright Act which extended the term of copyright by 20 years is the:

- a. Berne Convention
- b. Mickey Mouse Term Extension Act
- c. Sonny Bono Copyright Term Extension Act
- d. Digital Millennium Copyright Act

Answer: c

Explanation: Named after songwriter/Congressman Sonny Bono, the Copyright Term Extension Act increased the general term of copyright from the author's life plus 50 years to life plus 70 years.

41. Which of the following is required in order for a work to be protected by copyright?

- a. It must be created independently rather than copied from other copyrighted information.
- b. It must contain unique ideas, never expressed by anyone else.
- c. It must be embodied in some tangible form from which it can be perceived, reproduced or otherwise communicated.
- d. Both a & c
- e. a, b & c

Answer: d

Explanation: These requirements all come from section 102(a) of the Copyright Act which provides that copyright exists in "original works of authorship fixed in any tangible medium of expression, now or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device."

42. A movie producer wants to use a popular song owned by a publishing company in a movie she is producing. The producer calls the publisher requesting a license to use the song, but the publisher refuses stating that having

the song associated with a movie could reduce its value in the pop market. In this situation, the producer can obtain a compulsory mechanical license to record the song to be used in the movie.

- a. True
- b. False

Answer: b

Explanation: The compulsory license provision only applies to the reproduction of musical compositions in phonorecords (audio-only playback devices). The movie producer's use of the song would involve the reproduction of the song in an audiovisual device such as film or videotape which would be considered a copy rather than a phonorecord.

43. An online music company allows members to access a list of over 1 million CD titles. Members can trade CDs with other members by paying \$1.00 to the company for facilitating the trade plus a 49 cent shipping charge. Essentially the company's service allows members to trade physical CDs they own. Which of the following is true?

- a. This involves copyright infringement since it is illegal to resell CDs containing copyrighted music.
- b. This involves copyright infringement unless a mechanical royalty is paid to the recording artist.
- c. This does not involve copyright infringement since the first sale doctrine allows re-selling CDs without the copyright owner's permission and without payment of royalties.
- d. This does not involve copyright infringement since none of the copyright owner's exclusive rights are exercised.

Answer: c

Explanation: A new online music service (La la Media Inc.) is doing what's described in this question. Although this does involve an exercise of the distribution right, unlike illegal file-sharing services, this situation does not involve copyright infringement since owners of legally-acquired CDs have the right to transfer ownership of those CDs under the first sale doctrine.

44. Prior to the development of copyright law, some European countries such as England gave printing monopolies to certain publishers primarily for the purpose of censoring information published in print.

- a. True
- b. False

Answer: a

Explanation: Governments engaged in censorship to avoid religious and political dissent by requiring publishers to obtain a license to be allowed to print books. The English Licensing Acts gave such power to the Stationers' Company which had a monopoly over the book publishing industry in England from 1534 to 1694.

45. The majority of mechanical licenses issued are requested by artists or record companies and issued by publishers (or the Harry Fox Agency) rather than compulsory mechanical licenses.

- a. True
- b. False

Answer: a

Explanation: Although the Copyright Act provides for a compulsory mechanical license, this provision of the law is very rarely used due to its impractical accounting requirements and the obligation to pay royalties on all records distributed (rather than sold). Consequently, the vast majority of mechanical licenses are requested and voluntarily issued by publishers.

46. Moses Kahumoku, a slack key guitarist from Honolulu has written 30 songs over the past month and wants to register them with the Copyright Office. However, since he's not "lolo" (stupid), Moses doesn't want to waste a lot of money on this and he thinks it would be "mo bettah" (much better) if he can register them all together. He asks one of his "brahs" (friends) from the MELE program at Honolulu Community College who is taking an intellectual property law course about this. Moses' "brah" should advise him that in order to register his songs as a collection, which of the following are required?

- a. The songs must be by the same author or at least one author must be common to each work
- b. The collection of songs must be identified by a single title.
- c. Each song must be no longer than three minutes in length
- d. Both a & b

Answer: d

Explanation: Although you can only register songs with common authorship as a collection and you must give the collection of songs a single title, there is no requirement as to the length of songs that can be included in a collection.

47. Which of the following is a benefit to using a copyright notice on copies of a work?

- a. If you sue someone for infringement, they cannot claim to be an innocent infringer.
- b. If you sue someone for infringement, you have the right to receive statutory damages if you win.
- c. A court will presume that you own a valid copyright.
- d. All of the above

Answer: a

Explanation: Use of a copyright notice on published copies of a work prevents someone sued for copyright infringement of the work from claiming innocent infringement to reduce the amount of damages for the infringement.

48. Which of the following is a proper copyright notice under U.S. copyright law for a sound recording owned by XYZ Records which was created and released in 2001?

- a. © 2001 XYZ Records
- b. Copyright 2001 XYZ Records
- c. ® 2001 XYZ Records
- d. ® 2001 XYZ Records, All rights reserved

Answer: c

49. In order to obtain a compulsory mechanical license, which of the following conditions are required?

- a. The copyright owner must have authorized the first reproduction and public distribution of phonorecords in the United States.
- b. The licensee must file a notice of intention to obtain a compulsory license with the copyright owner and the Copyright Office.
- c. The licensee must pay the statutory royalty rate for each record made and distributed.
- d. Both a & b
- e. a, b & c

Answer: e

50. A work governed by the 1909 Copyright Act which is currently in its renewal term will receive a renewal term of how long?

- a. 28 years
- b. 47 years
- c. 67 years
- d. Life + 70 years

Answer: c