

Spring 2014

First Assignment Form

Name	Peter Harvey
Course	Entertainment & Media Law
<u>Required Text/Reading</u>	<p>Text: Paul C. Weiler and Gary Myers, <i>Entertainment Media and the Law</i>, 4th Edition.</p> <p>Assignment and reading for first class:</p> <ol style="list-style-type: none">1. Text, Prologue: "Speech for Fun and Profit," pp. 1 – 8; Hypotheticals 1 - 5, attached.2. For Hypothetical 3, listen to and compare Marvin Gaye's song "Got to Give it Up" and Funkadelic's "Sexy Ways" with Robin Thicke's "Blurred Lines"; and3. For Hypothetical 5, listen to and compare Beastie Boys' song "Girls" with video advertisement for GoldieBlox toys based on that song.
<u>1st Assignment</u>	Be prepared to discuss the issues and questions raised in the assigned reading. (Note that I do make discretionary grade adjustments, and class participation will form the basis for part of each student's grade.)
<u>Note to Students</u>	<ol style="list-style-type: none">1. At the first class, choose your seat (in the first 3 rows only, please). We will fill out a seating chart during the first class.2. My contact information: Peter Harvey Harvey Siskind LLP 4 Embarcadero Center, 39th Floor San Francisco, CA 94111 Telephone: 415.354.0100 Email address: pharvey@harveysiskind.com.3. I will hold office hours by appointment, at my law office or at USF. At the student's request, I will schedule an appointment at a mutually convenient time and location.

Hypothetical 1: Facebook

The Social Network, a docudrama focusing on Mark Zuckerberg and the founding years of Facebook, was released on October 1, 2010. The film portrays Zuckerberg as a snide, cruelly sarcastic and dweebish student who uses the early version of Facebook to punish his ex-girlfriend. The movie also strongly suggests that Zuckerberg stole key elements of the Facebook software from his fellow Harvard classmates, the Winkelvoss twins.

Aaron Sorkin wrote the screenplay, which is based on the book *The Accidental Billionaires* by Ben Mezrich. Scott Rudin and Kevin Spacey were the principal producers of the film, which was released by Columbia Pictures.

Assume (contrary to real life) that Zuckerberg brings suit over the movie. Assume also that discovery in the case reveals the following facts:

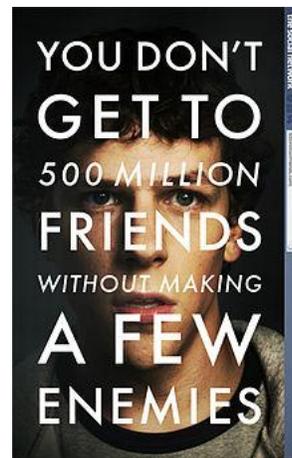
The movie is essentially faithful to the Mezrich book. The producers and Sorkin met with Mezrich, went over his investigation and sources, and were satisfied there was no reason to doubt his work.

A number of the scenes in the movie unquestionably are fictional. They are a telescoped composite of events and personalities. In key respects, however – Zuckerberg’s treatment of his ex-girlfriend, his contract dispute with his financial partner, and his lawsuit with the Winkelvoss twins – the movie generally accurately depicts events.

In his deposition, the publicist for the Mezrich book describes it as "big juicy fun rather than reportage." Screenwriter Sorkin, in his deposition, says defiantly, "I don't want my fidelity to be to the truth; I want it to be to storytelling."

Immediately after the film is released but before Zuckerberg sues, Ben Mezrich gains an interview with Zuckerberg by impersonating a graduate student writing his dissertation on the history of Facebook. During the interview Mezrich secretly videos Zuckerberg yelling that *The Social Network* is "a trash-filled smear job" and threatening to "bury" those responsible with legal actions. Columbia Pictures thereafter releases the Mezrich video as part of a mini-documentary on internet billionaires. It also uses the scene of Zuckerberg yelling in promotional trailers for *The Social Network*'s theatrical distribution and release on DVD and as streamed content.

- What claims may Zuckerberg bring on these facts?
- Which defendants will he likely name, and which defenses may they assert?
- What is the likely success of each claim?



Hypothetical 2: Grand Theft Auto

Rockstar Games, Inc. manufactures and distributes the Grand Theft Auto series of video games, including “Grand Theft Auto: San Andreas.” The series is known for an irreverent and sometimes crass brand of humor, gratuitous violence and sex, and overall seediness.

Each game takes place in one or more dystopic, cartoonish cities modeled after actual American urban areas. The games always include a disclaimer stating that the locations depicted are fictional. Players control the game’s protagonist, trying to complete various “missions” on a video screen. The plot advances with each mission accomplished until the player, having passed through thousands of cartoon-style places along the way, wins the game.

San Andreas allows a player to experience a version of West Coast “gangster” culture. The game takes place in the virtual cities of “Los Santos,” “San Fierro,” and “Las Venturas,” based on Los Angeles, San Francisco, and Las Vegas, respectively.

Los Santos mimics the look and feel of actual Los Angeles neighborhoods. Rockstar has populated these areas with virtual liquor stores, ammunition dealers, casinos, pawn shops, tattoo parlors, bars, and strip clubs. The brand names, business names, and other aspects of the locations have been changed to fit the irreverent “Los Santos” tone. Not especially saintly, Los Santos is complete with gangs who roam streets inhabited by prostitutes and drug pushers while random gunfire punctuates the soundtrack.

To generate their vision for Los Santos, some of the artists who drew it visited Los Angeles to take reference photographs. The artists took pictures of businesses, streets, and other places in Los Angeles that they thought evoked the San Andreas theme. They then returned home (to Scotland) to draw Los Santos, changing the images from the photographs as necessary to fit into the fictional world of Los Santos and San Andreas. One neighborhood in the fictional city is “East Los Santos,” the game’s version of East Los Angeles. East Los Santos contains variations on the businesses and architecture of the real thing, including a virtual, cartoon-style strip club known as the “Pig Pen.”

ESS Entertainment 2000, Inc., operates a strip club, which features females dancing nude, on the eastern edge of downtown Los Angeles under the name Play Pen Gentlemen’s Club. ESS claims that Rockstar’s depiction of an East Los Santos strip club called the Pig Pen infringes its trademark and trade dress associated with the Play Pen. You agree to represent ESS.

- **What claims will you bring?**
- **Against whom?**
- **What defenses do you anticipate?**
- **What are your clients’ chances of success?**



Hypothetical 3: Blurred Lines

Pop singer Robin Thicke released a song “Blurred Lines,” featuring Pharrell Williams and T.I., in 2013. The recording became a megahit, spending sixteen weeks as the number one single on Billboard’s Hot R&B/Hip-Hop Songs chart. The recording produced over five million downloads in twenty-two weeks, which made the song the fastest-selling in digital music history.

The estate of Marvin Gaye thereafter accused Thicke and his record company of copyright infringement arising out of Thicke’s alleged copying of the Marvin Gaye song, “Got to Give It Up.” Similar threats were made by Bridgeport Music, Inc. that “Blurred Lines” infringed Funkadelic’s song “Sexy Ways.” Thicke made a six figure settlement offer to Marvin Gaye’s estate which was rejected. Thicke, Williams, and Clifford Harris, Jr. (aka T.I.) then filed a declaratory judgment action seeking a declaration that “Blurred Lines” does not infringe “Got to Give It Up” or “Sexy Ways.”

Before class, listen to all three recordings. Be prepared to discuss the following:

- **What are the elements of copyright infringement in the music context?**
- **How will a court go about applying those elements here?**
- **How do you assess the merits of the declaratory judgment suit?**



Hypothetical 4: Sharpshooter

On New Year's Day 2009, a 48-year old man slipped off a ski lift at Vail Resort in Colorado and was caught upside down, dangling by his boot 25 feet above the ground, for 20 minutes. In the process his pants and underwear were caught and pulled completely down (or up), exposing him to the world. Marty Odom, an employee of Sharpshooter Photography, Vail Resort's exclusively-licensed mountain photography company, snapped several pictures. Odom was not on duty, but he used a camera supplied by Sharpshooter.

The case's notoriety has made the photos very much in demand. However, Sharpshooter has told Odom he cannot sell the pictures and has suspended him for "unprofessional conduct." Vail Resorts issued a statement condemning Odom's conduct, and Sharpshooter has publicly disclaimed responsibility, saying Odom violated its policy of "strictly respecting the privacy of Vail Resorts guests." Odom was quoted in the Vail Daily newspaper as saying that "the whole situation sucks. The situation was newsworthy, and I happened to be there at the right time to capture it. ... These are my photos – I took them. I've had inquiries to buy rights to them from all over the world. But my boss tells me I can't sell them, and now my job is in jeopardy."

Several legal questions arise:

- **Who owns the copyright rights to the photos?**
- **What legal claims can the unfortunate skier assert? Against whom?**
- **What are the defenses? How would you assess the likely outcome?**
- **What claims can Odom make? What are the defenses, and likely result?**



Hypothetical 5: Girls

GoldieBlox is a San Francisco Bay Area startup company which makes toys and games designed to encourage young girls to learn about science and technology. As part of any advertising campaign, GoldieBlox created a video based upon the Beastie Boys' song "Girls." The original song, which appeared on the Beastie Boys' 1986 hip-hop album "Licensed to Ill," includes the following lyrics:

Girls to do the dishes
Girls to clean up my room
Girls to do the laundry
Girls and in the bathroom.

In the GoldieBlox online video, to the tune of "Girls," girls are depicted building an elaborate "Rube Goldberg" mechanical device while singing the following:

Girls to build a spaceship
Girls to code the new app
Girls that grow up knowing
That they can engineer that

After the Beastie Boys threatened GoldieBlox with copyright infringement, GoldieBlox filed a complaint for declaratory relief seeking a declaration, among other things, that its use in the video was a noninfringing fair use.

Shortly thereafter, the Beastie Boys countersued for, among other things, copyright infringement. That case is now pending.

Before class, view the GoldieBlox "Girls" video (available at the time of this writing at http://www.slate.com/blogs/xx_factor/2013/11/19/goldieblox_commercial_rewrites_the_beastie_boys_urges_young_girls_to_pursue.html) and listen to the Beastie Boys' song.

- **Come to class prepared to discuss the merits of the infringement claim and GoldieBlox's fair use defense.**

