

**Final Examination  
Entertainment Law  
Professor Marc H. Greenberg  
Fall 2008**

1. You have three hours to complete this exam. You are not required to spend the entire time working on the exam - the average time for completion is between two and three hours. You should outline your response to each question, before writing the response. **I strongly recommend that you spend one third of the time on each question creating your outline, and the remainder of your time writing your answer.** For example, if you spend 1.5 hours per question, devote .5 hours to the outline for each question, and 1 hour writing the answer to each question.
2. THIS IS AN OPEN BOOK, OPEN MATERIALS EXAM. You may use any notes, books, or other materials to assist you in responding to the questions.
3. There are two (2) essay questions on this exam. Each question is worth fifty (50) points. Answer each question as fully as you can, citing any appropriate cases, industry standards, and statutes that are relevant.
4. Write your exam number on your exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions, and each blue book. **Do not** use your name, student ID number or Social Security Number on any exam materials.
5. DO NOT WRITE ON BOTH SIDES OF THE PAGE. WRITE LEGIBLY OR PRINT IF YOUR HANDWRITING IS DIFFICULT TO READ. If I cannot read your response to a question, your grade will be adversely affected.
6. At the conclusion of the exam, return all test materials, including blue books, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

**QUESTION NO. 1 (50 Points)**

Kraftwerk, a software company based in Munich, Germany, has created a software program containing an avatar which looks, speaks, and moves like the pop star Madonna (Note: the avatar is not a photographic image of Madonna – it is a computer graphic image that greatly resembles her). Kraftwerk, which does not have any offices, bank accounts or other contacts within the U.S., offered the Madonna avatar for sale on its German-based website. Harris Ranch, a California retail beef sales and restaurant company, bought the software avatar for one million dollars, and is using the avatar in the Second Life software program to advertise its products, which can be, and are, purchased online through a Second Life Harris Ranch beef store, as well as through the company's brick and mortar stores throughout California. Neither Kraftwerk nor Harris Ranch use the name of Madonna in connection with the avatar software program, and although the avatar sounds like Madonna, the voice recording is by an actor imitating Madonna's voice – no recordings of her actual voice are used.

The vice-president for marketing for Harris Ranch has, unknown to anyone else in his company, posted a section on the Wikipedia pages for Madonna, stating that she has decided that since her career as a pop music star is starting to come to an end, that she wants to shift her attention and resources into becoming a red meat distributor and retailer.

Madonna, a New York resident and U.S. citizen, is outraged over these actions. She is a strict vegan and never eats red meat nor has she ever consented to promote its use. She has no intention of ending her pop music career, and even if she did, it would not be followed by her entry into a red meat distribution business. She never consented to any of the uses of her image by either Kraftwerk or Harris Ranch. She comes to you seeking advice as to what her legal rights are under this situation. She also wants to know what defenses, if any, are available to any of the parties. Finally, she asks where any lawsuit she is entitled to file would be filed, and what you project would be the likely outcome of any such lawsuit(s). What is your advice?

**QUESTION NO. 2 (50 Points)**

Sam W., lead singer for the heavy metal band Optimus Prime, has come to you for advice. Three years ago the four-member San Francisco band signed a sound recording agreement with Los Angeles based Megatron Records, a major label. A number of problems have now come up regarding the terms of the contract, and Optimus Prime wants to know if any of these problems would allow the band to sue Megatron for breach of contract, which in turn would allow the band to end its contract with the label. Analyze each problem and explain to Sam whether it is a breach of contract, and if so, whether it would, either separately or cumulatively, provide a basis to end the recording contract. Here are the relevant contract terms and the related problems:

- a. The contract requires Optimus Prime to deliver commercially satisfactory sound recordings of original music per an agreed-upon schedule. The band has delivered one album per year for the first two years of the contract, and in this current, third

year, delivered a sound recording on time. In this instance, however, Megatron has rejected the recording, claiming that it is not commercially satisfactory, and is demanding that the band cancel its upcoming live performance tour in order to return to the studio to record a different album. The expense of this second recording effort would be added to the expense of the first attempt, and both efforts would be subject to recoupment against the band's royalty share. Sam and his band-mates have asked Megatron to explain why they rejected this album, which is very similar to the first two albums (each of which was a million+ seller), and Megatron has refused to provide any explanation for the rejection;

- b. The sound recording contract allows Megatron to cross-collateralize income from all albums created during the term of the contract. Optimus Prime is just beginning to receive royalty payments because the sales of the first two records have now fully recouped their costs, however if this third record requires the band to engage in two full recording sessions because the label rejected the first submission, the costs of this third record will cut off the band's entitlement to receive any more royalties until those costs are recouped as well;
- c. Megatron has paid a cumulative advance to the band of \$6000 per year since the contract was signed. One band member, co-lead singer Mikaela, has recently announced that she is going to leave the band and the label to launch a solo career. The other band members have no objection to her departure, but Megatron has filed a complaint in Los Angeles County Superior Court seeking an injunction to prevent Mikaela from leaving the band and the label;
- d. Record royalties are due and payable under the terms of the contract twice yearly, at the end of March and September. Megatron Records is also required to provide an accounting and a right to audit as to each royalty period. Megatron has failed to send any payment and failed to send the accounting statement which was due for September 2008. It explains these failures by saying that it is not obligated to send any payment or statement where the payment due is less than \$50,000, which it claims is the case in this instance. It has refused, despite demand from Optimus Prime, to allow the band to audit this statement.

**END OF EXAM**