

LAW 7822-01: ADVANCED SEMINAR ON COPYRIGHT LAW

LITIGATION EXERCISES

Prof. Bell
Spring 2005

1. Background Facts

Sarah Dvorak writes music for films. Rick Qwerty writes screenplays. They sometimes combine their products to create music-plus-screenplay packages. They pitch these packages to film producers, who sometimes buy the packages and sometimes buy the music or the screenplays separately.

One evening last month, working alone in her Hollywood studio on a new project, Dvorak struggled to find a theme that would fit the melancholy and dignity of Qwerty's latest heroine. Right then, through an open window, she heard a mourning dove sing. Inspired, Dvorak quickly re-worked the dove's song into a fitting melody. Before she had even gone to the trouble of writing her composition down, she excitedly placed a local call to Qwerty. Getting Qwerty's answering machine, Dvorak turned on her speakerphone, gave a short introduction, and played the new theme. Satisfied with her day's work, Qwerty left her studio immediately after hanging up the phone.

It turns out that Qwerty did not answer the phone because his wife, Sue, was hosting a party. Sue was celebrating having gotten Disney to pay a huge settlement to her clients, representatives of the estate of the original Mr. Potato Head. A good many of the guests -- those with the big heads, short legs, and variegated features -- came from the Potato Head family. Others represented the usual crop of well-connected Hollywood executives.

Qwerty did not know many of the guests, nor did he care to. He considered himself, as an *auteur*, above such schmoozing. Two drinks into the evening, Qwerty started arguing with the executives about how the film industry steals artists' labors. Four drinks in, he started offering tater tots to horrified members of the Potato Head clan. At six drinks, Dvorak's call came in.

Qwerty knew better than to try to work in his condition, so he just listened in as the machine began recording Dvorak's call. "Now *this*," he shouted in a slurred voice to his wife's guests, "represents the sort of genius that makes losers and tubers like *you* rich!" As Dvorak finished her short introduction, Qwerty turned up the answering machine's speaker and let Dvorak's live performance wash over the hushed crowd.

Despite his poor manners, Qwerty had made his point. The guests filtered out whistling Dvorak's tune and marveling at art's power to save a party from utter disaster. But though Sue forgave Qwerty, Dvorak got very angry when she learned that he had played her call without her

permission. "At the same time that I thought I was leaving a private message for you," she explained, "you were broadcasting my performance to a bunch of strangers!"

Because Dvorak thenceforth refused to work with Qwerty, he sought out the help of Laura Shift, another local composer of film scores. Qwerty and Shift's partnership eventually resulted in a music-screenplay package that they sold to a major motion picture studio for \$80,000. The theme music in that package included a passage reminiscent of the theme that Dvorak had played in her ill-fated call to Qwerty.

Though the movie in question remains in pre-release, Dvorak learned of and has heard its putative theme music. Infuriated, she hired an attorney and obtained a registration for the work she played for Qwerty. Qwerty swears that he did not play the recorded phone message for Shift, who was not at his party. Shift confirms that Qwerty did not expose her to the work and claims that she, too, received inspiration from a mourning dove's song.

2. Assignments

a. Demand Letter

On behalf of your client, Dvorak, write a demand letter of at least four pages to Qwerty and Shift. In your letter, explain why Dvorak believes they infringed on her rights under the Copyright Act and specify the measures they must take in order to avoid a lawsuit.

Please note that I will give a copy of your demand letter to another, randomly chosen student for him or her to use in writing a reply letter, and that I will give the resulting pair of letters to yet another randomly chosen student for him or her to use in writing a bench memo.

b. Reply Letter

On behalf of your clients, Qwerty and Shift, write a reply letter of at least four pages to Dvorak's attorney, from whom you have received a demand letter. In your letter, explain why Qwerty and Shift believe that Dvorak has no claim against them under the Copyright Act and specify the measures, if any, they are willing to take in order to avoid a lawsuit.

Please note that I will give a copy of your reply letter, together with a copy of the corresponding demand letter, to another, randomly chosen student for him or her to use in writing a bench memo.

c. Bench Memo

Notwithstanding the demand and reply letters described above, *Dvorak v. Qwerty, et al.* has been filed in the U.S. District Court for the Southern District of California. The parties have cross-moved for summary judgment. At the request of Judge Able Solomon, for whom you clerk, write a bench memo of at least four pages suggesting the proper disposition of those motions. Please note that for this exercise you will not have the parties' pleadings, but rather will have to draw the facts from the above recital and the arguments from parties' demand and reply letters.

3. Grading

The demand letter and the reply letter will each count for 20% of the grade you receive for the written work you prepare for this course. The bench memo will count for 15 % of that same grade.

Each page of double-spaced, 12-point text that you hand in for these three projects will go toward the 25 pages of text that you must complete in you plan to have your work for this course satisfy the school's writing requirement.

To facilitate my grading of your work, I'd like for you to safeguard your identity. Pick out a unique pseudonym for each project and use only it on what you hand in. Please try to avoid accidentally revealing your identity to me.

4. Deadlines

Hand in three copies of your demand letter at or before the beginning of class on April 6.

Hand in two copies of your reply letter at or before the beginning of class on April 27.

Hand in one copy of your bench memo before 5 p.m. on Friday, May 13.