

## LAW 7335: ADVANCED SEMINAR ON COPYRIGHT LAW

### LITIGATION EXERCISES

Prof. Bell  
Fall 2009

#### 1. Background Facts

Anthony Auteur grew up reading J. K. Rowling's *Harry Potter* series. Like many fans of the series, he sorely regretted reaching the last of the books, and longed to hear more adventures set in the world that Rowling so vividly described. As much as Auteur enjoyed the books, however, he thought that they presented a somewhat one-sided view of Harry Potter's magical world. Auteur thus wrote a book that picked up Rowling's story where she left off—a story in which Harry and his friends have graduated from Hogwarts and begun their adult lives—and titled it, *Harry Potter's World, Revisited: An Unauthorized Continuation*. Auteur read and distributed draft versions of the book in order to get constructive feedback from friends and fellow writers, and distributed copies of the final version in a successful bid to win a publishing contract. He now stands ready to go to press.

Aware that Rowling has defended her copyrights vociferously, Auteur has taken pains to focus his story on either entirely new characters, such as Harry's fourth child, a daughter named Astra Potter, or on characters that played only decidedly minor roles in Rowling's books, such as Parvarti Patil or Bertie Bott. Furthermore, to correct a bias he detected in the original series, Auteur has offered a more rounded view of the motives of Voldemort's followers, showing that, despite their snobbish pretensions and questionable tactics, they aim with good (if often misguided) intent to safeguard their magical world against what they see as a dire threat. Auteur's book makes liberal use of the settings described in Rowling's books, such as Hogwarts and Diagon Alley, though he always portrays them in his own words.

In the course of researching his book, Auteur discovered a hitherto obscure book called, "Howard Platter: A Young Man's Introduction to Wizarding," written and published in England in 1922 by Stamford Jorkins. The book met with success neither there nor in the U.S., where Jorkins published the book in 1924. The book fell out of print almost immediately and appears to have been almost entirely forgotten; Auteur stumbled across a rare copy quite by accident, at a magician's garage sale. Auteur's discovery of many substantial similarities between their books has convinced him that Rowling must have read and copied Jorkins. Through additional research, Auteur has learned that Jorkins published his work in the U.S. with proper notice but, having died in 1936, failed to file a copyright renewal. He has not yet disclosed this information to Rowling.

## **2. Assignments**

### **a. Demand Letter**

Assume that your client, J.K. Rowling, wields all of the copyright rights in the Harry Potter books, which she has duly registered. Through her connections in the publishing industry, she has learned of Auteur's publishing plans. (She does not at this point know, however, that Auteur has discovered the Jorkins book.) On behalf of Rowling, write a demand letter of at least four pages to Auteur. In your letter, explain why Rowling believes that Auteur's book infringes her rights under the U.S. Copyright Act and specify the measures that he must take in order to avoid a lawsuit. (Ignore other causes of action, such as those based in unfair competition or trademark law.)

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 client, Auteur, write a reply letter of at least four pages to Rowling's attorney, from whom you have received a demand letter. In your letter, explain why Auteur believes that Rowling has no claim against him under the U.S. Copyright Act and specify the measures, if any, he is 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**

Assume that, notwithstanding the parties' correspondence, *Rowling v. Auteur* has been filed in the U.S. District Court for the Southern District of California. Discovery has been completed and includes all the facts of the recital set forth above. 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 recital above and the arguments from parties' demand and reply letters. You may take judicial notice of arguments not raised by the parties if you think doing so would help resolve their dispute.

### **3. Grading**

The demand letter and the reply letter will each count for 30% of the grade you receive for the written work you prepare for this course. The bench memo will count for 25% 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 if 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. Use your exam number or 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 Wed., Oct. 28.

Hand in two copies of your reply letter at or before the beginning of class on Wed., Nov. 11.

Hand in one copy of your bench memo before 5 p.m. on Wed., Nov. 25.