# Spring 2016

## First Assignment Form

<table>
<thead>
<tr>
<th>Name</th>
<th>Peter Harvey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Course</td>
<td>Entertainment &amp; Media Law</td>
</tr>
</tbody>
</table>

Assignment and reading for first class:


2. For Hypothetical 2, listen to and compare Marvin Gaye’s song “Got to Give it Up” and Funkadelic’s “Sexy Ways” with Robin Thicke’s “Blurred Lines.”

3. For Hypothetical 4, listen to and compare Beastie Boys’ song “Girls” with video advertisement for GoldieBlox toys based on that song.

| 1st Assignment | 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.) |

| Note to Students | 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. Generally, I will be available before class on Wednesdays in the Adjunct Professor’s office, Kendrick 204, from approximately 3:15 -4:00 p.m. |
Hypothetical 1: 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 2: 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.” Ultimately, a jury awarded the Gaye children $7.4 million on their copyright infringement counterclaim. The case is on appeal.

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?
- Was the jury right?
Hypothetical 3: 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 told Odom he could not sell the pictures and suspended him for “unprofessional conduct.” Vail Resorts issued a statement condemning Odom’s conduct, and Sharpshooter 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 4: 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. The case ultimately settled.

Before class, view the “Original Goldie Blox Commercial” video and listen to the Beastie Boys’ song. Both are available on YouTube.

- Come to class prepared to discuss the merits of the infringement claim and GoldieBlox's fair use defense.
Hypothetical 5: The Monkey Selfie

David Slater is a British wildlife photographer. In 2011, during Slater’s photographic expedition to Indonesia, a black crested macaque grabbed his camera and took pictures of itself. One of its shots, shown here, turned out to be a perfectly-focused selfie.

When the photo went viral, Wikipedia picked it up and republished it. Slater asserted a claim for copyright infringement.

Subsequently, People for the Ethical Treatment of Animals sued Slater on behalf of the monkey. PETA’s complaint is available at http://www.scribd.com/doc/282396752/Naruto-v-Slater-PETA-s-Monkey-Selfie-copyright-complaint#scribd. The matter is currently pending.

- What is your assessment of Slater’s claim against Wikipedia?
- What are the merits of the PETA claim? What are Slater’s likely defenses?