

Problem Set 1

*We will discuss this problem set on the first day of class. **YOU DO NOT NEED TO TURN IN THIS PROBLEM SET, BUT YOU WILL BE CALLED UPON TO DISCUSS THE ANSWERS.** Before the class, please read Chapter 2 of *THE DIGITAL DILEMMA: INTELLECTUAL PROPERTY IN THE INFORMATION AGE* (2000) (available online at http://www.nap.edu/html/digital_dilemma/ch2.html). For more information about the course, please refer to the courseweb at <http://www.peteryu.com/music/>.*

1. Your client owns Golden Records. Last year, his company released Sarah McBride's first album, "Age Ain't No Problem—The Perfect 100 Years." McBride started her singing career two years ago at the age of 78. She has received no professional training in the past and has only a single-octave vocal range at this late age. Nevertheless, your client signed her up, hoping that the public would appreciate her efforts. Before McBride decided to try her luck as a singer, she had written more than two hundred songs while watching soap operas in the afternoon. Just before she began recording her first album, she was signed exclusively to Crappy Music as a songwriter. Thanks to the aggressive push by Crappy Music, seven of her songs eventually made the final cut to the album. The songs are pretty bad. So is her singing technique, if she has any. But her producer, Milton Jaguar, didn't care. After all, what can you do if your boss has signed a singer and asks you to help her? Also, how often will you find a 78-year-old who wants to begin her singing career at this age? (Actually very often!) To fill up the album, Jaguar included three other songs composed by his 12-year-old cousin, Mike. As Milton explained to his boss, a 78-year-old singer and a 12-year-old songwriter would give the album 100 years of perfect life experience. Mike owns his own publishing company, Jaguar Music, which was funded by Milton and managed by Mike's parents. To everybody's surprise, Mike's songs became immediate hits, and 500,000 copies of the album were sold in the first three weeks despite the other bad songs and McBride's poor singing technique. The accountant at Golden Records now has to figure out the royalties, but has no idea how to do it. Your client came to your office for help. Who is entitled to a royalty check? Why?

2. Your niece just started a new punk rock band called "Nightingales Suck." You love birds and don't understand why her band would use that name, but you don't want to ask. You don't understand much about college teenagers anyway. She is now desperately looking for a manager, and you agreed to help her even though you have never had any clients in the music business. At a cocktail party last week, you met Bill Smith, an executive from a well-known national artist management company. Smith offered to manage your niece's band for 20% of the band's gross earnings. You made a counteroffer of 15%, but Bill refused, suggesting that managing a new artist requires a lot of effort. How would you respond? Assume you have finally negotiated a deal for Nightingales Suck. When you asked Smith when you could bring the management contract over for him to sign, he refused and responded, "Handshake deals usually last longer than black-and-white deals." What would you do?

3. A reporter from *The Detroit News* recently contacted you about a story on peer-to-peer file sharing. The reporter was interested in finding out how consumers could distinguish between legal and illegal file-sharing websites. He called the Recording Industry Association of America and was told that the industry had a list of legitimate websites. When asked if that list was complete, he was told that the list was not complete and some unlisted websites might be legal. He was very confused and called you up for clarification. What would be your response?

4. In October 2003, Roxio relaunched Napster as a subscription-based service, featuring music from the five major record labels. Unlike the old Napster, which the industry sued out of existence, Napster 2.0 offers 99¢ downloads of single songs to anyone who downloads the free software. The service also gives those who pay a monthly subscription fee of less than \$10 access to an unlimited number of music streams and “tethered” downloads that expire when they stop subscribing to the service. Since its re-emergence, Napster has completed deals with several universities, including Penn State University and the University of Rochester, to provide students with campus-wide subscriptions to the service. You represent Green and White University as an outside counsel. Yesterday, the University counsel called you for advice. Would you recommend the university make an arrangement with Napster? Why and why not?

5. In the past few years, the recording industry was deeply affected by a rampant piracy problem created by individuals sharing music over the Internet using peer-to-peer file-sharing networks. Record sales have dropped dramatically. The industry recently hired you as an outside counsel to assist the industry in rectifying the problem. What would be your \$500-per-hour advice (other than speaking very slowly and repeating yourself again and again and again)? (Use your imagination. Keep in mind that \$500 of creativity is worth more than \$500 of legal advice.) Would your response be different if the movie industry hired you? Why and why not?