

CopyrightX: Final Examination

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Question #1

Dragons have appeared in many stories. Famous dragons include the one guarding the golden fleece in *Argonautica* (third century BC); the one slain by St. George in *The Golden Legend* (1260); and the seven-headed dragon who appears in one of the *Grimm's Fairy Tales* (1812).

Most dragons have been unnamed. An exception is Smaug, the principal villain in J.R.R. Tolkien's novel, *The Hobbit*, published in 1937. The passage from the novel in which Smaug is first described is set forth below:

There he lay, a vast red-golden dragon, fast asleep; a thrumming came from his jaws and nostrils, and wisps of smoke, but his fires were low in slumber. Beneath him, under all his limbs and his huge coiled tail, and about him on all sides stretching away across the unseen floors, lay countless piles of precious things, gold wrought and un-wrought, gems and jewels, and silver red-stained in the ruddy light.

Smaug lay, with wings folded like an immeasurable bat, turned partly on one side, so that the hobbit could see his underparts and his long pale belly crusted with gems and fragments of gold from his long lying on his costly bed. Behind him where the walls were nearest could dimly be seen coats of mail, helms and axes, swords and spears hanging; and there in rows stood great jars and vessels filled with a wealth that could not be guessed."

Unlike most of his predecessors, Smaug has some traits more often associated with humans: intelligence, greed, and vindictiveness. Tolkien's own illustration of him follows.



In 1995, Warner Bros. Pictures produced an authorized movie adaptation of *The Hobbit*, called *The Desolation of Smaug*. Three of the many images of Smaug that appear in the movie are set forth below:



Game of Thrones (GOT) is a popular television series produced by Home Box Office (HBO). The series started in 2011; it is now in its final season. GOT is based upon *A Song of Ice and Fire*, a series of novels written by George Martin starting in 1996. HBO bought the movie rights from Martin and continues to pay him substantial license fees.

Among the many characters in Martin’s books and GOT are three dragons, who are depicted as the children of Queen Daenerys Targaryen. Although loyal to the queen, they are otherwise destructive and uncontrollable. In a recent GOT episode, one character asks the queen, “What do dragons eat?” She responds, “Whatever they want.”

To give the dragons as much personality and texture as possible, HBO hired Anger in Motion (AIM), an independent computer animation company, to create the images that appear in GOT. The AIM animators claim never to have seen *The Desolation of Smaug*. Instead, they say that that they modeled the GOT dragons on vultures.

Screenshots of the GOT dragons appear below.



Link is a tattoo parlor in New York City. Like many parlors, it offers tattoos containing images drawn from famous television series and motion pictures – but has not obtained licenses for the use of those images. Recently, tattoos containing images that appear in *Game of Thrones* have been especially popular among Link’s customers. The most popular of all have been images of the GOT dragons.

The New York Times recently described this aspect of Link’s business:

[A]bout 30 people, mainly women in their 20s, [stood] in a line [outside Link] to get “Game of Thrones” tattoos.... The show, a fantasy epic produced by HBO, is in its final season.

[M]any standing in line spoke passionately about how “Game of Thrones” had inspired them....

Even the oldest fans in the line, [John and Lisa,] both 43, ... said the show’s characters meant a lot to them. [Both were getting dragon tattoos. John’s tattoo was fairly simple, but Lisa’s included all three dragons accompanied by an image of Queen Targaryen.]



“Daenerys, she’s come from nowhere to where she is now,” [John] said. “She’s been through so much. That’s inspiring.” “That’s one reason I’m getting it,” he added. “Oh, and because dragons are cool.” ...

[Another customer waiting to get a dragon tattoo explained the appeal of Queen Targaryen:]

[She] sets slaves free, and “wants to crush the oppressive system of the monarchy.” “That speaks to me a lot,” he said. He added, however, that he was not against Britain’s queen. Daenerys Targaryen wasn’t “against monarchies, just oppression in general,” he said. “Fighting injustice is really inspiring.”

Has anyone in this sequence of events engaged in copyright infringement? If you need any additional information to answer the question, say what that information is and why it matters. Your answer may not contain more than 1200 words.

[This question contains a fictionalized composite of several true stories. Most of the statements made in the question are true, but others are “alternative facts” – i.e., either distortions of true events or outright fabrications. If you happen to know (or learn) about aspects of the true stories that are inconsistent with the narrative set forth above, you should ignore that knowledge when framing your answer.]

Question #2

In 1984, Bruce Springsteen composed and recorded the ballad, “Born in the USA.” Some of the lyrics of the song are set forth below.

Born down in a dead man's town
The first kick I took was when I hit the ground
End up like a dog that's been beat too much
Till you spend half your life just covering up

Born in the U.S.A., I was born in the U.S.A.
I was born in the U.S.A., born in the U.S.A.

Got in a little hometown jam
So they put a rifle in my hand
Sent me off to a foreign land
To go and kill the yellow man

Born in the U.S.A., I was born in the U.S.A.
Born in the U.S.A., born in the U.S.A.

The fast tempo and seemingly upbeat chorus have led many listeners to misinterpret the song as patriotic.

In January 2016, Donald Trump, a candidate for the presidency of the United States, instructed Corey Lewandowski, his campaign manager, to find “a patriotic song we could play at my campaign rallies.” Lewandowski selected “Born in the USA.” He bought a compact disc (CD) containing a recording of the song. At each campaign event, Lewandowski used the CD to play the song over a loudspeaker system immediately prior to Trump’s appearance.

In February 2016, Springsteen learned that the song was being used by the Trump campaign without his permission. He wrote Trump a letter, demanding that he cease the practice immediately and issue a public apology. Otherwise, Springsteen said, “I will use every legal weapon available to me.”

After he read the letter, Trump handed it to Lewandowski, saying simply, “Take care of this.” Lewandowski met with his staff, one of whom was a lawyer familiar with copyright law in the United States. The group discussed three options: ignore the letter and continue playing the recording at campaign rallies; cease playing the recording and apologize to Springsteen; or ask Ted Nugent (a singer who supported Trump) to perform and record Springsteen’s composition and then play Nugent’s recording at campaign rallies.

Lewandowski asked the lawyer:

- (a) Are we doing anything illegal when we play at our events the CD containing Springsteen's recording?
- (b) If so, who is liable for the illegality?
- (c) If we continued to play Springsteen's recording, he sued us, and we lost, what remedies would be available to him?
- (d) Could we avoid liability by commissioning and using a recording of the song by Nugent?

Had you been that lawyer, how would you have answered Lewandowski's questions? Your answer may not contain more than 1200 words.

[Like the preceding question, this question contains a fictionalized version of a true story. If you happen to know (or learn) about aspects of the true story that are inconsistent with the narrative set forth above, you should ignore that knowledge when framing your answer.]

Question #3

Select one of the following dimensions of copyright law:

- a) exceptions and limitations to authors' exclusive rights;
- b) joint authorship; or
- c) the availability of injunctions as a remedy for copyright infringement.

Briefly describe how the issue is addressed under the law of the United States and how it is addressed under the law of one other country or region (such as continental Europe or Latin America). Which of the two approaches, in your judgment, is superior? Why? Your answer may not exceed 1200 words.

Question #4

Select one of the following dimensions of copyright law:

- a) the "safe harbor" enjoyed by online service providers;
- b) moral rights; or
- c) traditional knowledge.

Then select two of the four intellectual-property theories that were examined in this course. What insight into how copyright law should address the dimension you select might be derived from the theories you select? How does your analysis illuminate the relative strengths and weaknesses of the two theories? Your answer may not exceed 1200 words.

End of Exam