Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Digital Media & The Law Midterm Exam

***MULTIPLE CHOICE - Please read the fact pattern and then insert the correct corresponding letter on the line. (3 points each- total 24)***

***After spending countless hours and money, your band records its first album at a Cranston studio in Rhode Island and files all music rights with the Federal Copyright office. Before your first tour, a band member calls and informs you that the owner of the recording studio stole your band’s work, labeled it his own and uploaded it to You Tube where it has gone “viral.” You are livid, engage an attorney and prepare to go to court.***

1. \_\_\_\_\_ Your action would be filed in:

1. RI state court where the members of your band are located
2. RI federal district court in the circuit where members are located
3. In the Appeals Court for the First Circuit
4. None of the above because your music was a “work for hire”

2. \_\_\_\_\_ The source of law or cause of action that would provide you with the grounds to sue the slimy owner is:

1. Federal statutes regulating copyright infringement
2. The RI state constitution
3. Cranston’s local ordinances
4. An executive order issued by the Governor of RI

3. \_\_\_\_\_ If you want You Tube to take the song down while you litigate the case in court you should:

1. File a take down notice with You Tube
2. You are out of luck – you cant’ do anything until the case is concluded
3. File a counter notice with You Tube
4. None of the above

4. \_\_\_\_\_ If You Tube does not take the infringing song down after you send a proper take down notice the following would be true:

1. You Tube could not take advantage of the safe harbor provisions under section 512 of the DMCA
2. You Tube could be held vicariously liable for infringement
3. You Tube has no duty to take down material unless a counter notice is filed
4. Both A and B

5. \_\_\_\_\_ If the defendant is this case appeals from the trial court, the court, on appeal, would:

1. Listen to witnesses and relative facts relating to copyright infringement
2. Review the lower court decision by reading briefs and hearing oral argument
3. Begin an entirely new trial of the case
4. The defendant cannot appeal

6. \_\_\_\_\_ In determining what remedies you would be seeking as plaintiffs at the trial level, it is likely your attorney would ask for:

1. Only actual damages resulting from the defendant’s actions
2. Only the pain and emotional distress suffered as a result of the defendant’s actions
3. Actual damages, statutory damages and injunctive relief to prevent the sound assistant from any further distribution of your songs
4. Injunctive relief would not be allowed in this type of action

***II . After playing a computer game based on solving detective mysteries called “Sherlock Holmes” you are inspired to design a highly original detective mystery game called “Dick Tracey.” You register the copyright with the US Copyright Office and market your video game. A competitor then publishes a strikingly similar detective mystery game called” Sam Spade” that closely resembles your game in its external graphic features.***

7. \_\_\_\_\_ If you wanted to sue the creator of “Sam Spade” for copyright infringement you would likely:

A. Lose because you stole the idea of detective solving mysteries from the “Sherlock Holmes” game and so your game is not original

B. Win because the Copyright Act provides copyright protection to an idea or concept

C. Win if the thematic, sound and graphic external characteristics of “Sam Spade” are extremely similar to those in your game “Dick Tracey.”

D. Both B and C

1. \_\_\_\_\_ Assume at the end of play on both your “Dick Tracy” video game and on the “Sherlock Holmes” video game, the player can hit a save icon that allows him to resume play where he left off. If you were sued for copyright infringement by the “Sherlock Holmes” creator for incorporating this command function you would likely:

A. Lose because commonly used software icons are creative expressions and therefore you infringed upon the copyright when you included it in your game

B. Lose because commonly used software elements are patented by the first who invents and you infringed upon the patent

C. Win because commonly used software elements do not receive copyright protection

D. Both A and B

***TRUE/FALSE - Please insert the correct answer on the line provided. For false answers please provide the correct term or reasoning at the end of the sentence. (2 points each- total 24 )***

9. T or F \_\_\_\_\_ The United States Supreme court rulings are part of a body of common law.

10. T or F \_\_\_\_\_ If Nike wanted to protect its logo (the swoosh) it would register for a copyright.

11. T or F \_\_\_\_\_ Federalism refers to the sharing of power among the three branches of government.

12. T or F \_\_\_\_\_ The majority of cases that are filed in a court of law go to trial.

13. T or F \_\_\_\_\_ A decision rendered by the Supreme Court of Rhode Island would NOT be binding upon Massachusetts.

14. T or F \_\_\_\_\_ Given the 9th Circuit court ruling in Lenz v. Universal case, parties issuing take down notices under the DMCA in that circuit may still rely solely on algorithms to flag infringing material.

15. T or F \_\_\_\_\_ Given a recent New York federal district ruling, embedding a tweet into your website may constitute infringement.

16. T or F \_\_\_\_\_ Titles of books may be copyrighted.

17. T or F \_\_\_\_\_ If you invented a flying car and wanted to prevent others from stealing your invention for the longest period of time, you would get a patent.

18. T or F \_\_\_\_\_ The Federal Communications Commission is an agency of the legislative branch.

19. T or F \_\_\_\_\_ Coca Cola’s name is protected by a trade secret.

20. T or F \_\_\_\_\_ The doctrine of federal preemption might legally prevent states from enacting laws that require net neutrality within their respective states.

***MULTIPLE CHOICE – Please insert the correct corresponding letter on the line provided . (4 points each – total 32)***

21. \_\_\_\_\_ All of the following statements relative to the current status of net neutrality are true EXCEPT:

1. There have been several lawsuits filed around the country challenging the FCC’s ruling
2. Congress failed to use the Congressional Review Act to overturn the FCC’s ruling because they could not get the requisite vote
3. There is nothing that can be done at this point – net neutrality is dead
4. Congress could pass its own law reinstating net neutrality but probably won’t because both the Senate and the House are under Republican control

22.\_\_\_\_\_\_ By classifying broadband providers as common carriers under Title II of the Communications Act, the FCC can:

1. Only take action against a broadband provider after a consumer complains
2. Regulate broadband providers
3. Enforce net neutrality regulations
4. Both B and C

23. \_\_\_\_\_ If you enter into an End User License Agreement (EULA) that prevents you from reverse engineering software and you violate that provision, the copyright owner would sue you for:

1. Patent Infringement
2. Breach of Contract
3. Trademark infringement
4. Copyright infringement

24. \_\_\_\_\_ Each of the following arguments support amending section 215 of the DMCA take down provision EXCEPT:

A. Free speech is stifled because a party who contests the take down must agree to litigate the issue if she contests the take down

B. Freedom of speech does not apply to communications on the internet

C. The provision can be used to censor opponents

D. The provision can be used against competitors

25. \_\_\_\_\_ The fair use doctrine is a defense to copyright infringement because of the following amendment in the Bill of Rights to the US Constitution:

1. The 4th
2. The 1st
3. The 2d
4. The Bill of Rights has nothing to do with fair use

26. \_\_\_\_\_ John uses an entire Nirvana song in the background of a You Tube video to show off his new car and the video gets taken down: What factor under the Fair Use doctrine is not working in John’s favor?

1. The purpose of the work
2. The nature of the work
3. The amount of the work
4. The effect of the work

27. \_\_\_\_\_ Tom Brady can trademark his name only if:

1. He proves he has celebrity status
2. His name gets attached to a product
3. He registers with the US Patent and Trademark office
4. Both B and C

28. \_\_\_\_\_ A decision rendered by the Unites States Supreme Court is:

1. Only binding upon the parties in the case
2. Binding upon the states located in the Circuit from which the case originated
3. Binding upon the entire nation – all states and all people in the US
4. Only binding upon all states if the decision is ratified by Congress

***SHORT ESSAY: (Worth 20 points) Carefully read the fact pattern, view the accompanying pdf images and then answer the question accordingly:***

***Jennifer is a well known and widely published photographer. Among her most recognizable works is a photograph of the actress Demi Moore that appeared on the cover of the August 1991 issue of Vanity Fair magazine. Moore, who was pregnant at the time, was depicted nude, in profile, with her right hand and arm covering her breasts and her left hand supporting her distended stomach — a well known pose evocative of Botticelli's Birth of Venus. A ring adorns the middle finger of Moore's right hand. Moore's facial expression is serious, without a trace of a smile. The appearance of the photograph attracted widespread attention, and that issue became one of Vanity Fair's best selling issues of all time.***

***In August 1993, Paramount solicited advertising ideas from an outside advertising agency, in connection with its forthcoming release of the motion picture” Naked Gun 33 1/3: The Final Insult.” This film was the third in a series of*** ***slapstick comedies starring the actor Leslie Nielsen as the maladroit detective Frank Drebin.***

***Paramount asked its advertising firm to come up with ideas for a "teaser" advertising campaign, to be launched in advance of the March 1994 release date of the film. In response, the firm suggested that the teasers superimpose Nielsen's face on readily recognizable photographs of famous women. It then forwarded to Paramount copies of four composite photographs, each superimposing Nielsen's face in place of what had been the faces of the actresses Sharon Stone, Madonna, Jane Fonda, and Demi Moore. Each proposed teaser included a slogan referring to the March release date of the film. The composite photograph depicting Nielsen as the pregnant Moore slyly proclaimed, "DUE THIS MARCH."***

***Paramount approved the concept, and selected the composite of Moore's body and Nielsen's face. However, rather than mechanically copying the portion of the original Leibovitz photograph depicting Moore's body, Paramount commissioned another photograph to be taken of a nude, pregnant woman, similarly posed. Great effort was made to ensure that the photograph resembled in meticulous detail the one taken by Jennifer. The model was carefully posed so that her posture and hands precisely matched those of Moore in the Leibovitz photograph. A large ring was placed on the same finger as the one appearing on Moore's hand. The photograph was digitally enhanced by a computer to make the skin tone and shape of the body more closely match those of Moore in Jennifer’s photograph. The final step was to superimpose on the model's body a photograph of Nielsen's face, with his jaw and eyes positioned roughly at the same angle as Moore's, but with her serious look replaced by Nielsen's mischievous smirk.***

***Paramount ran its teaser in a magazine ad campaign. Jennifer protested the use, and ultimately brought action in Federal District Court.***

YOU ARE THE JUDGE HEARING THIS CASE. WHICH PARTY WOULD YOU RULE IN FAVOR OF AND WHY. BE SURE TO ANALYZE EACH OF THE FOUR FACTORS IN DETERMINING WHETHER THE FAIR USE DOCTRINE HAS BEEN MET. PLEASE TYPE YOUR ANSWER BELOW: