

STANFORD UNIVERSITY
School of Law

Final Examination for Law 310: Law of Open Source
Instructor: Lawrence Rosen

Date of Exam: May 16, 2006
One-Day Take-Home (8:30 a.m.—4:30 p.m.)
Seven Questions
Open Book

INSTRUCTIONS

1. This is an eight-hour take-home examination. It is open book.
2. This examination is based upon a single fact pattern. There are seven questions which follow and build upon the fact pattern. You must answer all seven questions.
3. The first six questions count for 20 points each. The seventh question counts for 60 points. The total points for the exam are 180 points.
4. I am most interested in your ability to recognize issues and to explain how those issues affect the resolution of the questions being asked. Write your answers as if you were communicating to another attorney or the client in email. If there is more information you need in order to answer a question completely, identify what information you need. Polished sentences and erudite prose count for less in this exam than issue spotting and an explanation of why those issues matter.
5. If you type, please double space your answers and number each page. If you are writing your examination by hand, please write on every other line on one side of the page only.
6. Please write at the end of your examination the following statement: "I acknowledge and accept the Honor Code." Sign (or type) your examination number (not your name).
7. Unless your exam paper is turned in promptly at the end of the examination period, collectors will be required to report your examination as being late. The decision whether to accept late examinations will be dependent on faculty action.

Good luck!

Please note last page of exam regarding honor code statement.

LAW 310: Law of Open Source

Fact Pattern for Final Exam

Our law firm represents Prof. Aldous Shockley, who teaches in the computer science department at State University.

While working at State University on a research project sponsored by the Department of Homeland Security, Prof. Shockley invented a method for identifying patterns in graphical images. With the help of the University Technology Licensing Office (“UTLO”), Shockley obtained a patent on his invention.

Working alone on evenings and weekends, Shockley implemented software using his invention to search fingerprint data for matches. He licensed his fingerprint software on a non-exclusive basis to a private company, and Shockley began to use his portion of the royalties from that company to support further graphics research. The University liked this arrangement because, under the terms of its employment agreement with Prof. Shockley, the University gets a portion of anything Shockley receives.

Now that he had the financial freedom to do so, Shockley began concentrating on his real love: Building autonomous cars that can navigate on roads without human drivers. He found that he could apply his previously patented techniques in new ways to process data from small webcams on the cars, converting the graphical information into instructions for steering cars around obstacles. He wrote new software, combined it with a web services package from the Apache Software Foundation, and distributed it under the name “ICitClearly” on SourceForge. His license is the GPL (version 2).

Despite its enthusiastic reception, the ICitClearly project has so far actually received very few contributions. One contributor in Poland (who is Shockley’s wife’s cousin and who runs a small contract programming shop outside Warsaw) added an entire module for recognizing and avoiding potholes. Another programmer in Japan submitted a small change that made the software run three times faster. A few Belgian programmers working for a digital camera company wrote a driver for miniature webcams so that cheaper hardware can be used in cars. A journalist in Canada who is an avid robotics fan wrote a user manual that explains how the software works. All of this is now distributed on SourceForge and on the website, ICitClearly.com, which Shockley set up when he first started to think about his invention; he actually reserved the domain name even before his software was ready.

ICitClearly software has become quite popular in the robotics community. Robotics competitions involving university computer science and engineering departments have encouraged many software applications to be written to the ICitClearly application programming interfaces (APIs), and these solutions are beginning to be adopted by many car companies in a variety of ways. The Department of Defense is reportedly even using the software on some highly secret research and development activities.

Prof. Shockley just received letters from General Motors and Toyota requesting permission to use ICitClearly software on their new model cars. Both companies, however, say that they will not accept software under the GPL because of fears that it will “contaminate” their proprietary code.

Questions Based Upon the Fact Pattern

Write your answers in the form of brief communications to our client, Shockley. He's not just interested in "yes" or "no." He wants to understand the subtleties of the issues given the fact pattern. If there's more information that you need in order to answer completely, ask him for it.

1. Shockley has asked us to help him identify who might have a claim to the ICitClearly software so that he can clean up outstanding intellectual property ownership issues. Assuming Shockley wants to own all the intellectual property in ICitClearly, who might have a claim on which specific intellectual property?
2. Our client informs us that his wife's cousin in Warsaw is willing to assign all his intellectual property interest in ICitClearly to Shockley, but that everyone else refuses. Is that likely to be enough for him to license ICitClearly to General Motors and Toyota under a license other than the GPL? What technical information do we need from Shockley to be able to answer this question adequately? What questions should we ask our engineers?
3. With promises of stock or future royalties or simply money up front, Shockley has managed to obtain all the intellectual property rights in the ICitClearly project. Unfortunately, he is now viewed as a greedy monopolist and all his previous collaborators want to fork the ICitClearly project and distribute the same software on their own under the GPL. Can they do that? What part of Shockley's intellectual property can't they "fork"?
4. Shockley has decided not to buy the rights to the software but instead to continue to work with his friends within the GPL project. In exchange for a percentage of the royalties received, Shockley's friends have agreed to license their work to Shockley's company for Shockley's separate "dual licensing" opportunities with General Motors and Toyota. Can those contributors who previously licensed their work under the GPL now "sell" another license through Shockley to the auto companies? How should Shockley plan for the contributions of future contributors?
5. Shockley's cousin-in-law in Poland claims that Shockley didn't tell him everything about the licensing opportunities for ICitClearly when he agreed to assign his intellectual property. Seeking "revenge," he says he will turn his consulting company into a European distribution and support company for ICitClearly software, under his own (nearly unpronounceable) Polish trademark. Can Shockley stop him?
6. One of the large venture capital firms on Sand Hill Road has approached Shockley to fund the company, and a larger software firm has also proposed buying ICitClearly outright. What intellectual property disclosures should Shockley make during the due diligence process?
7. Shockley has decided to keep his company. With the full agreement of his colleagues and friends in the project, he has decided to convert to the Open Software License ("OSL 3.0") as the distribution license for ICitClearly software. Write a 1-2 page explanation of this license for publication on the ICitClearly.com website to reassure companies like General Motors and Toyota that they no longer need to worry about having to disclose the source code of applications that they write to the ICitClearly APIs. Point out specific provisions of OSL 3.0 that act differently, in this respect, from the GPL. Within the 1-2 page limit (after all, you are writing for a website!), also identify other important differences between the two licenses that Shockley's customers ought to be aware of. Since Shockley is likely to change his mind yet again, don't waste time writing a polished final document; a good first draft that hits all the important points is what he needs now.

Please remember to write, "I acknowledge and accept the Honor Code" and sign (or type) your examination number.