

Examination Identification Number: _____

FACULTY OF LAW

**LAW 518: A1 — INTELLECTUAL PROPERTY (PROF. RENKE)
MIDTERM EXAMINATION - OCTOBER 14, 2003**

Time Allotted: One hour and 15 minutes reading time (75 minutes).

Code Number: DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS OR BOOKLETS. A list shall be circulated and your name is to be entered opposite a number on that sheet. That number shall be your code number FOR THIS EXAMINATION ONLY and should be entered on THIS EXAMINATION in the space provided above. Following these procedures will ensure anonymity during marking.

- Special Instructions:**
1. This examination consists of **18** questions on **24** pages (including this page). Check to ensure that the examination is complete before starting.
 2. Answer **ALL** questions and parts of questions. **READ ALL INSTRUCTIONS IN QUESTIONS. IN YOUR RESPONSES, REFER TO ALL PERTINENT CASES AND STATUTES.**
 3. This is a **CLOSED BOOK** examination, except that you may use an unannotated *Consolidated Intellectual Property Statutes and Regulations*.
 4. The examination is graded out of **60** marks, and is worth 30% of your final grade. This examination is “fail-safe” (if the percentage scored on the final examination is higher than the percentage on this examination, then only the final mark will be used for the calculation of your final grade; if the percentage scored on this examination is higher than the percentage scored on the final examination, then this examination’s weighting will remain at 30% of the total mark).
 5. Do not make up facts.
 6. **Write legibly.**
 7. Adhere to the time limitation imposed on this examination strictly. Failure to do so may lead to a reduction of grade or a refusal to accept the examination paper.
 8. To avoid disrupting students finishing the examination, no person shall leave the examination room during the **last 15 minutes** of the examination period.
 9. **Times for responses to questions are SUGGESTIONS ONLY.**
 10. Write your answers in the spaces provided in THIS EXAMINATION. Feel free to write on backs of pages, or in examination booklets, if you require more space.

Question	Score	Question	Score
1		11	
2		12	
3		13	
4		14	
5		15	
6		16	
7		17	
8		18	
9			
10			

TOTAL/60

Value Question

Suggested Time for Questions 1 - 5: 2 minutes

For Questions 1 - 5, circle the best answer. Circle only one answer per question.

- (1) **1.** Which federal Cabinet Minister/Ministers is/are responsible for copyright *policy*?
- (a) the Minister of Industry
 - (b) the Minister of Canadian Heritage
 - (c) the Minister of Industry and the Minister of Canadian Heritage
 - (d) none of the above.
- (1) **2.** Under which provision of the *Constitution Act, 1867* does Parliament obtain its authority to legislate respecting copyright?
- (a) s. 92(13)
 - (b) s. 92(14)
 - (c) s. 91(22)
 - (d) s. 91(23)
 - (e) none of the above.
- (1) **3.** Which court/courts has/have jurisdiction to hear and determine an application for judicial review respecting a decision of the Copyright Board of Canada? Assume that the decision concerned only Alberta-based persons and transactions.
- (a) Federal Court (formerly, the Trial Division)
 - (b) Federal Court of Appeal
 - (c) Court of Queen's Bench of Alberta
 - (d) Court of Appeal of Alberta
 - (e) Federal Court of Appeal or Court of Appeal of Alberta
 - (f) Federal Court (formerly, the Trial Division) or Court of Queen's Bench of Alberta.

Value Question

- (1) **4.** Your client has good causes of action for both wrongful dismissal and copyright infringement. The causes of action relate to a single set of transactions with the former employer, and should be litigated together. All of the events took place in Alberta. In which court should you commence proceedings?
- (a) Federal Court (formerly, the Trial Division)
 - (b) Federal Court of Appeal
 - (c) Court of Queen's Bench of Alberta
 - (d) Court of Appeal of Alberta
 - (e) Federal Court of Appeal or Court of Appeal of Alberta
 - (f) Federal Court (formerly, the Trial Division) or Court of Queen's Bench of Alberta.
- (1) **5.** SOCAN is a collective society that administers
- (a) mechanical reproduction rights
 - (b) public performance rights
 - (c) rights to communicate works to the public by telecommunication
 - (d) mechanical reproduction rights and public performance rights
 - (e) mechanical reproduction rights and rights to communicate works to the public by telecommunication
 - (f) public performance rights and rights to communicate works to the public by telecommunication.

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Suggested time for Questions 15 - 18: 20 minutes

The following facts apply to Questions 15 to 18

In 2002, Fingal was a graduate student at the University of Alberta (the “U of A”), doing a Ph. D. with the Department of Computer Science. Fingal is a citizen and ordinary resident of Ruritania, a country that came into existence in 2001, as the result of the break-up of Pottsylvania, the (former) tyrannical European country. In 2002, in partial completion of his Ph. D. requirements, Fingal developed a new computer program that allows extremely accurate facial recognition, when coupled with video technology (the “Program”). The Program is unique, and does not rely on any computer code elements used for other types of facial recognition technology. Fingal used U of A computer equipment, office facilities, and stationery supplies when developing the Program. Fingal’s supervisor, Prof. Dweems, directed Fingal to facial recognition as a promising area of research, made some suggestions concerning the simplification of some lines of Fingal’s computer code, and pointed out that certain elements of the program had created redundancies; Fingal followed Prof. Dweem’s lead, and corrected the code as Prof. Dweems had suggested. Prof. Dweems (who is appointed to both the Department of Computer Science and the Faculty of Engineering’s Computer Engineering Department) also informed Fingal about the operations of the video technology that could work with facial recognition computer programs. With this knowledge of video technology, Fingal was able to prepare computer code that was compatible with readily-available hardware. Days after completing the Program in 2002, Fingal assigned copyright in the Program to Blix Co. (“Blix”), an Alberta corporation (the “Assignment”). Days after receiving the Assignment in 2002, Blix licensed the Program to a variety of provincial and federal governmental agencies, allowing them to make copies of the Program for specified purposes. The agencies used the Program to help secure sensitive locations.

(5) **15. Who is the author/who are the authors of the Program? Explain.** (Note: I am not asking about *ownership* in this question.)
