
HOWARD UNIVERSITY SCHOOL OF LAW

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Professor Steven D. Jamar

202-806-8017

SPRING 2009 COPYRIGHTS
FINAL EXAM INSTRUCTIONS

April 27, 2009

General instructions

1. You have three (3) hours for the exam.
2. Times noted for the questions reflect the amount of time I estimate it would take to answer each question. They may not add up to 3 hours, but you have 3 hours for the exam. Please note that although the time noted for each question does relate somewhat to the points for that question, it does not do so in a strict one-to-one fashion.
3. There are three (3) questions worth 70, 50, and 60 points respectively for a total of 180 possible points.
4. Write legibly and clearly in blue or black ink.
5. Use headings as appropriate.
6. Respond to the question asked, not to questions that might have been asked. Even within your responses, do not spend time on matters that are not issues just to show me how much you know. This exam tests professional judgment as well as knowledge of copyright law.

Permissible exam materials

This exam is completely open book. You may use any materials you bring with you to assist you during the course of the exam including but not limited to the text, statutory supplement, handouts, commercial outlines, personal outlines, notes, hornbooks, pre-prepared answers, etc. Computers, cell phones, electronic communications devices, and other electronic devices are not allowed.

Exam components

The exam consists of (1) this instruction page, (2) the 3 questions on the one page following these instructions, and (3) the fact pattern attached hereto. Although the fact pattern attached to this exam is substantially the same as the one distributed in class several weeks ago, be sure to use the exam fact pattern attached hereto in answering the questions because some of the paragraphs relating to the specific questions asked have been edited and a few facts added, changed, or clarified.

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Question 1. 50 minutes. 70 points.

Assess the likelihood of success of InfoComm in obtaining the injunction it seeks in Paragraph 79. Explain your analysis and reasoning fully.

Question 2. 40 minutes. 50 points.

Who owns the copyright in the musical composition, "Living Water," under the facts as provided in paragraphs 80-88? Explain your analysis and reasoning fully.

Question 3. 75 minutes. 60 points.

Assume noncommercial television station KDOC made a documentary film about Shane's life, cryptically entitled "The Water Rites." It was based primarily on Shane's book, "Shane's Triumph" (fact pattern ¶101). It used scenes shot on location in Africa, Senecene, Washington, DC, and elsewhere. "The Water Rites" uses the song "Living Water" as the soundtrack for the opening and closing credits and uses portions of the song at various other places. KDOC did not obtain permission from anyone to make or to show the movie or for any works used in it.

After the film was shown on KDOC, National Public Radio, a noncommercial educational public radio network, did an "All Things Considered" piece on Shane in which it played both Sera's version and Shane's version of the song "Living Water." Many noncommercial educational public broadcasting stations broadcast "All Things Considered" as part of their regularly scheduled programming.

Consider the actions of KDOC, National Public Radio, and the stations that broadcast "All Things Considered" in light of section §118(c) of the Copyright Act. Explain your analysis and reasoning fully. You may need to consider other subsections of §118 and other sections the copyright act to fully address whether §118(c) applies and if so how it applies, but you are not to consider other possible issues beyond those directly implicated by §118(c). In answering the question, assume that no licenses were negotiated under the provisions of §118(b) but that the Copyright Royalty Judges provisions have been complied with, and that KDOC, NPR, and all of the radio stations involved are public broadcasting entities under §118(f).

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SPRING 2009 COPYRIGHTS EXAM FACT PATTERN

The Candidate¹

1. Shane is an historian specializing in military leaders. Or she was an historian before she decided to run for the U.S. Senate from the State of Senecene.
2. Shane specialized in biographies of great and near-great generals, or at least well-known or infamous, especially from the 20th Century. One of Shane's earliest books, published in 1972 when she was 30, was entitled: *Allen McTyne: Poet Warrior*. (Originality was not Shane's long suit.) The publisher of the book, Matlantic University Press, held the copyright in the book and complied with all formalities required in 1972 to obtain a valid copyright.

General McTyne

3. McTyne was a U.S. general in World War I in Europe. Though mostly forgotten now, he had achieved a degree of fame, or at least notoriety, during his life.
4. While in Europe, engaged in the trench warfare that characterized WWI, he wrote a long, multi-stanza poem about the war and the men fighting in his regiment. Each stanza was five lines with an a-b-b-a-b rhyming scheme.
5. In June 1919, just after the end of the war, he addressed 1000 of his assembled troops and read them his poem, including the following five-line verse:

The men in the trenches
Gave all their best fight
So that the true right
Would reign from court benches
And not from pure might.
6. The sentiment was hardly original; nor was the use of five-line stanzas with an a-b-b-a-b rhyming scheme though the latter is unusual. The press was at the speech, and it was widely reported in newspapers across the United States that he had read aloud his war-composed poetic hymn to his men as his homage to them. The news accounts were published in

¹ The story, characters, and all depictions and events in it are fictional. Any resemblance to anyone alive or dead is not only purely coincidental, but downright amazing!

- June 1919. His hometown newspaper, the Wayback Sentinel, printed the poem in full, upon his visit home in August 1919.
7. McTyne remained in the military for most of the inter-war period, but did not serve in active duty in WWII, having retired in 1938 at age 65.
 8. As part of the WWII effort, Hollywood began making movies about war and war heroes. One of the subjects of the movies was none other than General McTyne. The movie was entitled "The Poet General" and emphasized how McTyne came from humble beginnings in Wayback, Dakota; overcame some early life tragedies (one of which sent him into the military); how he rose through the ranks from non-commissioned officer to general based (according to the movie) on his ability to inspire troops through his poetry, and on his ability, which, again according to the movie, came from his "poetic mind," to see and implement creative strategies to apply in military campaigns.
 9. Twentieth Century Fox, the producer and distributor of the film held the copyright in it and complied with all formalities to obtain a copyright when it released the film in 1941.
 10. Remarkably, given the length of the poem, the movie included a scene of McTyne reading the entire poem to his troops and indeed included the entire poem in writing in the credits. In some of the newspaper and billboard advertising for the movie the single stanza from paragraph 5 above was used.
 11. McTyne died in 1943 at age 70 and as his epitaph his family used the stanza quoted in paragraph 5. The whole poem was recited at his memorial service, the 5-line stanza was printed in the memorial brochure printed for the service, and was engraved on his headstone. Many newspapers printed that stanza; a few printed the entire poem.
 12. Shane was inspired to write this particular biography after watching the movie "The Poet General" on late night TV. In the book she included the entire poem in an appendix with a few other poems McTyne wrote. McTyne's family had kept his poems in a binder in a box along with a few other personal effects like medals and commendations and provided much of the information used by Shane.
 13. Shane's book, *Allen McTyne: Poet Warrior*, was successful by the standards for such books, selling about 30,000 copies between 1972 and 1982 when it went out of print. There was a bubble of interest in the book about the time Ronald Reagan was elected President.

Mayor

14. Shane had tried to run for office once before, in 1986 when she was 44—she ran for mayor of Palton, Senecene, a small city of about 80,000 residents. She did not have much money for the campaign, and she lost the election.
15. During the campaign she outfitted her minivan with sound equipment similar to the Good Humor ice cream trucks that travel city streets in hot weather selling various confections. She used this truck to drive around the city blaring her political message of lower taxes, less

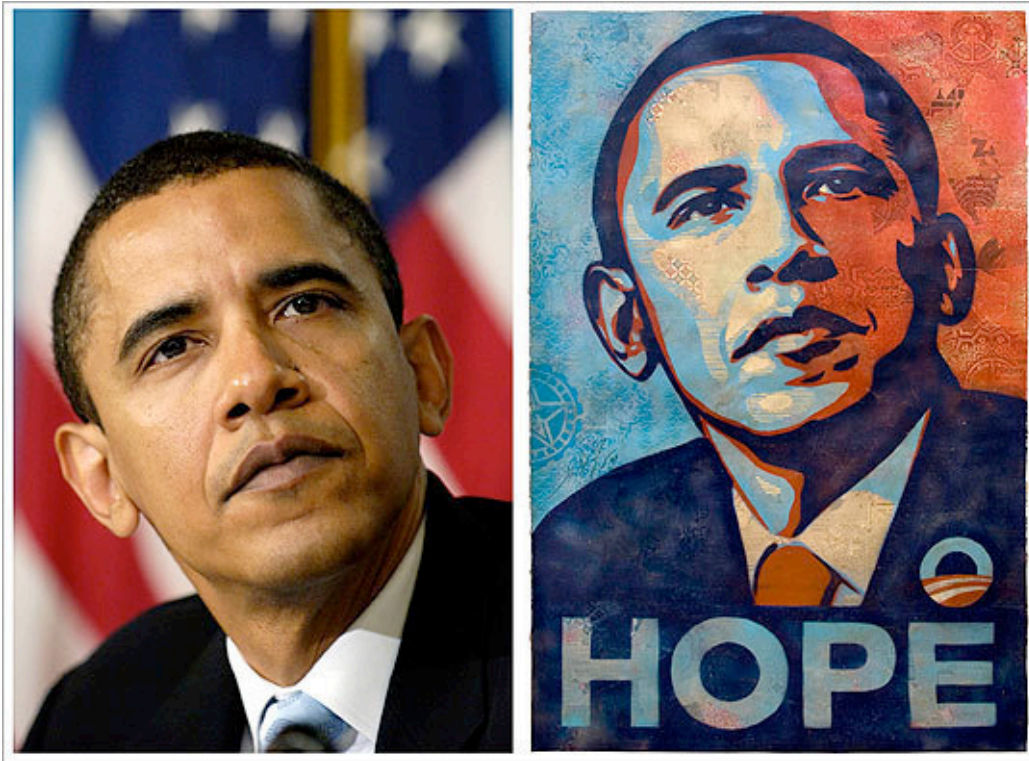
government, and better service from the remaining parts of the government. The spoken message was played over a soundtrack of various types of music, which Shane changed to suit her perceptions of the music appropriate to the particular neighborhood she was driving through.

Soccer

16. After she lost the election, but before she sold the van with the loud speakers and sound system, she used the truck at the picnic following Tarica's (her youngest daughter from her second marriage) last soccer game of the season. The picnic was in a public park where the games were played. There were 12 families involved—the families of her daughter's teammates.
17. Shane played music from various CDs she owned. She played some music she liked from the 50s and 60s as well as some from the 70s and 80s that some of the younger parents had grown up with, and some that the 11 year old girls liked (whoever was the "Hannah Montana" of those years and whatever the then-current boy band was).

The Senate Campaign

18. In 2009 she decided to run for the Senate. She had of course seen the artwork by Shepard Fairey who had become famous for his "Hope" poster of Barack Obama. Shane hired another artist, Art Dust, and asked him to make a portrait of her in the style of Fairey.



19. Garcia-AP photo; Fairey Hope poster based on it.

20. Dust did pretty much what Fairey had done in making the Obama likeness for the “Hope” poster: Dust found a digital image of Shane from an online blogger that he liked. The blogger did not credit the photographer nor identify the copyright holder of the photograph. The picture Dust found showed her smiling and looking at someone who was giving her a copy of her book to sign.
21. Art Dust modified the digital image in a number of ways. Dust cropped the photo to be just a headshot, thereby removing the book, arms, hands, and most of the background from the photo. He also reduced the degree of the smile and made the face more into a friendly but resolved expression to show strength and determination. He removed the remaining background (a bookstore interior) and replaced it with a patriotic wash calling to mind the American flag. And finally, and perhaps most significantly (and in Fairey’s signature fashion), Dust changed the colors, removing the natural skin colors replacing them with textured shadows in complex shades of red, off-white, and blue.
22. The Dust print was then used as a campaign poster with the words “Shane: Responsibility” on it – “Shane” across the top; “Responsibility” across the bottom. For a left-side border was “United States” and on the right was “Senate.”
23. During the campaign Shane hosted a number of events to raise money, to rally her supporters, and to get press coverage. Some were carefully orchestrated; others less so. Some were relatively private (fundraising dinners); others intentionally open to all comers.
24. At her largest fundraiser, Shane had an expensive dinner that only paid supporters could attend. The members of the press were not allowed in, nor were members of the public at large.
25. At the fundraiser, various works were displayed, including the following items:
 - a. a printed copy of a speech by Shane’s opponent, Jim Combert, made before he was elected to office. The copy displayed was one Combert’s campaign had distributed to the press as part of his campaign;
 - b. a copy of a book written by her opponent;
 - c. a 10 minute campaign video of Shane contrasting her positions on issues with those of Combert through the use of clips of Combert’s campaign appearances followed by hers. It was being run in a loop with 30 seconds between ending and starting;
 - d. Shane’s campaign posters; and
 - e. Photos of Shane with various other politicians.
26. Various speeches were made after dinner including one by a comedian, Hal Leftoe, impersonating her opponent as he “read” an amalgam of Combert’s speeches. Of course Leftoe was exaggerating Combert’s speech patterns and mannerisms for comic effect. He also modified the speeches themselves not merely in cutting and pasting and arranging the content, but also changing the text itself in a variety of respects, mostly using word substitutions to change the meaning. Some portions of the

speech were from speeches made on the Senate floor; others from campaign appearances; and still others from printed versions of speeches made before he was elected to the Senate in 2004.

27. One of the Combent campaign speeches from 2004 before his first election to public office included in part:

We have many challenges facing us and must not flinch in the face of threats, foreign and domestic. But we must not give up on our freedoms and rights to obtain security. And we must not put the financial burden on only the middle class and the lower class – we must share the burden, financial and personal among us all.

28. Leftoe's version was:

We must run from the challenges facing us and must flinch in the face of all threats, foreign and domestic. But we must deny the government the power to protect us by expanding the rights of criminals against law-abiding citizens. And we must put the financial burden only on the rich since we must become a true collective socialist nation.

29. Leftoe's talk went on like this for some time, playing to the largely conservative supporters of Shane.
30. Smith, one of the people in attendance, had a cell phone with video recording and transmission capability. He was upset that Shane had defeated his candidate in the primary and he considered Shane insufficiently conservative on abortion and on taxation. He recorded a portion of Shane's eight minute speech at the end of the program.
31. In that speech Shane lambasted her opponent using explosive language never used in gatherings intended to be open to the public, calling him a "liberal coward who would trade our safety for the rights of terrorists," a "socialist who plays Robin Hood and who would ruin our economy and freedoms," "a veritable terrorist who would undo American values," and a "baby killer."
32. Shane read from a prepared text, but did ad lib from time to time, deviating somewhat from the prepared text. Indeed, the last two comments quoted above about her opponent being a terrorist and baby killer were not in the original written version.
33. Smith, even before he left the gathering that night, uploaded the video of Shane's speech to youtube because he was happy that Shane had finally really shown conservative backbone (in Smith's opinion), and thought that this video would help her win. He thought she had been too soft and timid thus far.
34. Shane held a number of town hall meetings that were open to the press. At each meeting she gave just a few minutes of prepared remarks centered on one theme of the campaign and then opened the meeting up to a question and answer session. She had all of her appearances at these sessions videotaped from several angles for study later to help her improve her presentation.

35. Most of the town hall meetings were carried live on one or more cable news stations like CNN. Other press was there as well and reported on each of the meetings.
36. Print media had reporters who wrote stories and photographers who took pictures during the sessions. The print media published stories in their newspapers and magazines and in their online versions.
37. Broadcast and cable TV networks and local stations used video clips of her town meetings for their news stories.
38. Commentators used some of the news clips to highlight parts they agreed with or disagreed with. Comedians like Jay Leno and Jon Stewart used clips as jump-off points for lampooning the candidates and the press.
39. Shane made a number of advertisements with her in front of famous buildings and sculptures. Some were print ads, but most were videos for TV.
40. She filmed a number of ads in Washington, DC with the Capitol and the Lincoln Memorial in the background.
41. She also filmed in front of the Ronald Reagan office building (which was designed and built between 1990 and 1995) making sure people knew what the building was. Like most other conservatives, she wanted to associate her name with his.
42. One ad was filmed in New York including at various landmark locations including Times Square with the famous billboards obviously displayed (including Coca Cola signs and many corporate logos (some of which were copyrighted)), and in front of the Prometheus sculpture in front of Rockefeller Center.
http://en.wikipedia.org/wiki/File:Prometheus_at_Rockefeller_Center_by_David_Shankbone.jpg
43. Prometheus Sculpture, 1934, by Paul Howard Manship. Photo by David



Shankbone, 2007.

44. This photo is from http://en.wikipedia.org/wiki/File:Prometheus_at_Rockefeller_Center_by_David_Shankbone.jpg and its use is subject to the Wikipedia license noted there.
45. In her ads, Shane did not credit the work. Although she was filming with the camera focused on and centered on her with the sculpture in the background, it was nonetheless obvious and recognizable.
46. In an attempt to reach another part of the potential voting electorate, Shane hired an amateur to videotape her four year old granddaughter dancing to her campaign's theme music. The effect she was going for, but failed to achieve, was not unlike the youtube posting of the kid dancing to the Prince song "Let's Go Crazy" <http://www.youtube.com/watch?v=NiKfJHFWlhQ>. Shane's attempt at this was obviously contrived and as a result was universally considered lame and a failure.
47. She also used the "Cat Riding Roomba" video from youtube for a commercial with a voice-over by her primary commercial announcer and with some text superimposed on it. The image was used with words to make two points: (a) the government in Washington was just going round and round in meaningless circles without direction; and (b) the government was in control and the people were being taken for a ride to nowhere. <http://www.youtube.com/watch?v=LQ-jv8giYVI>
48. Shane, like most candidates, had a theme song for her campaign: she used, with proper permission, Lee Greenwood's "I'm Proud To Be an American," <http://www.alighthouse.com/usa.htm>.
49. She used phrases from the original lyrics, but dropped the opening verse about "if tomorrow all the things were gone." She mostly used the chorus. Sometimes she used the Greenwood original recording, especially in her early ads. But later, she hired a female country music performer to sing the song with modified lyrics about her (Shane) and her love for and plan to save America. As the campaign went along, this became her entry and exit music as well as the background music for most of her commercials.

Response by Public

50. Comedians on TV showed clips of her town meetings and of the video clip from the fundraiser and made humorous comments about her positions on issues and about any blunders she made in syntax, word usage, or otherwise.
51. A number of people made works poking fun at her youtube efforts. Perhaps the best one took the "Cat Riding Roomba" video and superimposed Shane in place of the cat, while keeping exactly the same text from Shane's own version.
52. Another one used an image of Shane on a Roomba and every time it turned a new direction, the voice-over quoted something from Shane that seemingly contradicted a previous statement she had made.

53. Another youtube video took the Shane campaign theme song and wrote a vicious and hyperbolic attack on her as a false patriot who would sacrifice our freedoms for false security. The video used clips from Shane's own video ads as the imagery for the video part of the youtube posting.
54. Shane demanded that youtube take down all of the videos noted above as violating her copyright in her ads and music. Greenwood demanded that the ones that used his song be taken down as well since he did not authorize the use of his song for those purposes.

Election

55. As things turned out, Shane was elected.
56. She had her official portrait taken in her Senate office, but she had it arranged so that she had a portrait of Reagan in the background, a marble table in the foreground with her, and she was standing with her hand resting on the table. Windows, a wall, and blue curtains were in the background. She herself arranged the photo so it would look like the ones of Michelle Obama and Hillary Clinton.
- 57.



- 58.
59. The photographer denied having seen either of these photos, but Shane had.
60. In her acceptance speech on election night, Shane quoted, almost verbatim, a 3 minute portion of McCain's 2008 concession speech and

about 4 minutes from Obama's 2008 acceptance speech. She did not give attribution to either McCain or Obama nor otherwise indicate she was quoting them as she read her speech or when it was distributed in print form to the press.

Shane's Office

61. After her election, Shane hired an architectural firm, Pampus-R-U's, to design her office suite. The leading architect from the firm, Russ Pampus, designed an oval office for her with décor that matched the White House's Blue Room where Hillary Clinton's and Michelle Obama's pictures were taken. It was not an exact replica of *the* Oval Office, but it did call it to mind. The whole suite was laid out to emphasize power. The suite had many architectural features that are unusual in an interior office space, including columns that seemed to come from the Lincoln memorial and a dome over the reception area that was modeled after Capitol dome. Pretty much every other feature of the office suite was ordinary and determined by the needs of the office staff, functions, and the limitations of the space available for the suite.
62. No part of her office was visible from the outside public walk, but it was visible from the inside corridors. However, access to the building was controlled by security guards and it was not generally open to the general public.
63. Alberto Foto visited his new senator and while in the hall took a picture of the office through the all-glass door, capturing the sense of the reception and waiting area with its rather bizarre dome. Foto then photoshopped himself into the picture as if the dome were a space ship beaming him down into the office like in a Star Trek show. He posted that modified photo on his facebook site for his friends to see.
64. Shane had her official portrait painted by Ilsa Voelik. The contract with Voelik provided that Shane would own the painting, the time during which it would be painted, and the price. It did not explicitly provide anything about copyright. The portrait was a full-length portrait with Shane in very stylish business clothing.
65. Shane hung the portrait in the waiting area in the entrance to her office suite. She also had a digital image made of it which she posted on her official Senate website.
66. The online version of the portrait became something of a sensation for reasons that were obscure. Perhaps it was the incongruity of the almost Elizabethan style of the portrait with a woman in a modern business suit. Whatever the cause, within weeks of the online version being posted, the photoshopped versions of the portrait showed up online. Some showed her with a Renaissance European dress and wig; others had her nearly naked with tattoos and dressed as a "goth." Most were rather ordinary modifications with horns, or a mustache, or some other simple addition to the original.
67. A few were sexually explicit with a man or a woman in, shall we say, a compromising position, under her dress. A few were explicit and gross showing her pregnant with the fetus being aborted. This was not only in

very bad taste, but also was anathema to her since she was vehemently anti-abortion.

68. In no instance did any of the modified works identify the original painter. However, Shane's website did in fact credit the painter under the online version of the portrait, complete with a link to the painter's bio and website.

Raising Money

69. Shane reserved the use of a hotel ballroom in Senecene for use for a Superbowl party fundraiser for her next campaign. Shane sold access by tables and by individual tickets.
70. In the ballroom were multiple projectors and large screens showing the game.
71. Various people who attended used their cell phones to call other people to talk about the game. After the game, some of the people in attendance wrote their opinions about the game on their personal blogs. In the blogs some quoted particularly insightful or inane comments by the Superbowl commentators. A few used screen captures from the game on their blogs.
72. The NFL repeated its normal copyright claim several times during the broadcast: "This telecast is copyrighted by the NFL for the private use of our audience, and any other use of this telecast or of any pictures, descriptions or accounts of the game without the NFL's consent is prohibited."

Behind the Scenes

73. Within her office Shane hired a number of communications and computer specialists to insure she communicated with her constituents using the latest techniques.
74. The lead programmer was Jan Hart. Jan was very skilled at what he did, but had never been in a position where his work would be scrutinized by the public.
75. Hart built the entire information management system using open source software made just for information management with a customer or client or in this case, constituent, communication focus. The core product, InfoComm, had been around for about 8 years. It was provided to the public in accordance with an open source license much like the well-known GNU General Public License 3.0. A few portions of the license are reproduced below with a number of modifications. Refer to the website for the entire license. <http://www.opensource.org/licenses/gpl-3.0.html> . Some of the provisions have been modified to simply things for purposes of this exam. You still should be familiar with (though not have memorized) the contents of the official version. The numbering below is awkward because in some instances I have included both a subparagraph number for the exam structure and the original number from the public license.

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10. 11. Sharing Improvements.

Each modification to the source code that adds a feature, eliminates a bug, or improves the efficiency of the program must be shared with InfoComm users by posting the modified source code and a description of the improvement online at InfoComm.com/productrevisions/.

76. Hart used InfoComm and made a number of modifications to it. Most of them were done just to make it work within the particular office computing environment and thus did not meet the standards of paragraph 11 of the license regarding “Sharing Improvements”.
77. Hart developed a new feature that automated categorizing communications by automatically adding xml syntactic and semantic coding through use of a topical index. This was a very valuable, time-saving feature. It also allowed for the automation of rss communications based on the xml coding. This feature definitely qualified as a new feature and improvement to which license paragraph 11 regarding “Sharing Improvements” applies.
78. Hart did not share his improvements as required by License paragraph 11.
79. InfoComm learned of Hart’s improvements and sued to enjoin Hart and Shane from using the InfoComm product.

Shane’s Pet Project

80. Shane had a pet project to help women in underdeveloped parts of the world. She had worked on this project for years. She was an advocate for supplying safe, clean, local water through wells using solar-powered electric pumps in underdeveloped parts of the world. This effort would help women in Africa by providing not only healthy water, but also through reducing the amount of time women spend getting and hauling water.
81. In early 2009, Shane decided she wanted some new music to support a series of PSAs (public service announcements) for her solar pump water project so she hired a composer, Kay Sera.
82. The contract with Sera provided as follows:
 - a. Sera agrees to compose music and lyrics for Shane’s project to support provision of solar-powered wells in sub-Saharan Africa.
 - b. Sera agrees that this work is a work made for hire and that the copyright is owned by Shane.
 - c. Sera agrees not to record the song or give it to others to record until the PSA campaign has been underway for 3 months.
83. Sera signed the contract, but Shane did not.

84. Sera delivered sheet music of the composition, "Living Water," to Shane in both hard copy and electronic form, and also gave Shane a recording of Sera singing it.
85. Sera wrote the music and lyrics on her own schedule, using her own equipment, in her own home studio.
86. Shane had provided detailed instructions about the message the lyrics had to convey and guidance about the sound of the music itself. The lyrics had to be positive, uplifting, and about the importance of lending a hand to those who help themselves. The music had to be melodically simple but catchy and the rhythm had to use traditional polyrhythmic drum patterns from West Africa.
87. Sera then recorded it herself separately from the recording she had given to Shane, and commercially released the record three months before the PSA campaign started in October 2009. In both her recording for Shane and in her commercial recording, Sera gave the music more of a jazz sound than the world-music inspired folk sound Shane had wanted.
88. Shane still used the Sera composition for her project worldwide, but did not use the version Sera recorded and released. Instead Shane had the music and lyrics recorded by performers of Shane's choosing to get the world-music folk sound she wanted.

Six Months Later

89. In March 2010, Sera and Shane were sued by Klint, an unknown composer, who claimed that Sera had copied his work. Shane had registered the copyright in her name as a work for hire, and the Copyright Office had issued her a registration certificate.
90. At trial an expert, Muse I. Cologist, testified on behalf of Klint that the chord progressions in the two works were nearly identical, with only an occasional substitution by Sera of a more complex chord for a simpler one in Klint's work. Cologist also testified that both compositions were written in the same key (F), that the 16-bar structure for the chord progression was the same, and that the use of an overriding funk beat was the same. Cologist also highlighted the ways in which the melodies themselves were similar in many respects, and were in fact different only in trivial details. Indeed, he was of the opinion that the differences themselves showed not only that there was copying, but also that the copier (Sera) was trying to hide her tracks. (This last opinion was stricken from the record as unknowable speculation on the part of the expert because he could not read Sera's mind.)
91. Sera's expert, a former Marine Band director, Major Cord, agreed that the 16 bar structure, music key, and chord progression were indeed almost identical between Klint's piece and Sera's composition. But he further testified that this was a very common structure and proceeded to perform on the piano 20 different popular songs stretching back into the 30s up to the current time which use essentially the same structure.
92. According to Cord, the beat was not really a simple, typical funk beat, properly understood, but rather it was a polyrhythmic-based beat of

which the dominant core rhythm was indeed a funk beat, but with complex counter-rhythms placed over and around it. Cord stated that the differences might be subtle to one untrained in polyrhythmic beats, but to percussionists and musicians in general, important differences existed which he demonstrated on a djembe and bass guitar (to get the real feel of it).

93. Cord went on to testify that while the order and rhythm of the melody was indeed quite similar (there were differences along the way), it was not particularly creative or unusual. It was not like “Nature Boy” or Sondheim or something that different. It was just an ordinary, albeit somewhat catchy, melody with typical harmonies. He also pointed out that the phrasing of the two melodies, with the rests, quarter notes, eighth notes, and half notes, were, in his expert opinion, driven by the lyrics. That is, the melody’s rhythm was the natural result of the “sound” or rhythm of the language itself and the particular funk beat and polyrhythmic schemes used in the composition. He even went further and showed how the rise and fall of the melody fit the drama and meaning of the lyrics.
94. The lyrics of the songs are very, very different from each other – one is about helping others in need of clean water in a folk-melody tradition; the other (Klint’s song, “Artist’s Lament”) is about the difficulty of being a misunderstood artist in love in a funk-fusion ballad tradition. Despite the difference in content, the phrasing, down to the syllable count and meter, was, both experts agreed, very, very much the same.
95. Ultimately Klint testified how he played at various private parties and how many musicians came to those parties. He said he had seen Sera at at least one of them, but he could not say for certain that he had played this song that time. Klint believed he had played it then because that year he generally played “Artist’s Lament” almost every chance he got.
96. Sera admitted going to a few of the parties in the past two years, but said they were noisy and she only made an effort to listen to composers she really admired. Typically composers like Klint had to play in a side room, to a small group, and were not generally heard by most at the party. She denied every hearing “Artist’s Lament” before she wrote “Living Water.”

Shane’s Scandal

97. After two years in office, a fictional work was published called “Shana’s Shame.” The book was written by a former intern of Shane, Rosalie Lindton, about a woman named “Shana” who came from humble rural origins and rose to become a United States Senator. Along the way, Shana had been a gospel singer, had gone on to a successful academic career as an anthropologist specializing in the transition of undeveloped cultures to modern ones, and had sponsored projects involving women’s development, especially Grameen bank development and water projects.
98. Lindton admits that she was inspired to write the book by her work with Shane and by Shane’s own life.
99. Shane is upset with the book because in it Shana became pregnant as a teenager and had an abortion. According to Shane, the story tracks

Shane's life very closely, with just changes in detail. Shane herself had published a biography as part of her campaign for the Senate that included the major events described throughout this fact pattern as well as many less public bits of biographical information.

100. Lindton's book does indeed track Shane's life very closely, but all of the locations, names, and even particulars about career path are changed.
101. Shane claims the "fictionalized" account of her life defames her and that the fictionalized version by Lindton violates Shane's copyright in her own book, "Shane's Triumph," both because it copies so much detail and because it is a derivative work.
102. A search of past records reveals that in fact Shane did have an abortion when she was 19 (not at 16 as in "Shana's Shame") while she was in college.