

THIS EXAMINATION CONSISTS OF **SIX** PAGES  
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA  
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2021

LAW 422.001/570C.001  
Intellectual Property Law

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**TOTAL MARKS: 100**

**WRITING TIME ALLOWED: 3 HOURS**  
**AND READING TIME ALLOWED: 10 MINUTES**

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This is an open book examination, meaning that you can refer to class notes, the course casebook (Canadian Intellectual Property Law: Cases and Materials (2<sup>nd</sup> Ed.)), the course PowerPoint slides, and other class readings. Unless otherwise indicated, assume the applicable laws are the laws of British Columbia and Canada.

You have 10 minutes of reading time. The reading time is in addition to the 180 minutes of writing time. During the reading time, you should only make notes on the question sheet or on the scrap paper. During the reading time, do not write anything that you want marked. The reading time is in addition to the times suggested for each question.

Students writing by hand:

- a. Please write legibly on every second line of your exam booklet. Write on one side of the page only.
- b. Do not put your name on the exam booklets. Use only your exam number.
- c. At the end of the exam, please return all exam booklets, including blank ones. No credit will be given for anything written in a booklet that is removed from the exam room, even briefly.

Do not begin your exam until you are instructed to do so.

Please put your exam code on the question paper and return the question paper at the end of the exam.

**This examination consists of THREE (3) questions. ANSWER ALL QUESTIONS.**

**If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing, and continue answering the question.**

**Have a great winter break!**

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**Question 1 |50 marks, 90 minutes recommended|:**

On October 28, 2021, Mark Zuckerberg introduced “Meta” which brings together Facebook’s apps and technologies under one new company brand. Meta’s focus will apparently be to bring the metaverse to life and help people connect, find communities, and grow businesses.

Wikipedia defines the metaverse as a hypothesized iteration of the Internet, supporting persistent online 3-D virtual environments through conventional personal computing, as well as virtual and augmented reality (“VR/AR”) headsets. It appears that the term metaverse was first used by author Neal Stephenson in his 1992 novel titled Snow Crash. In Stephenson’s version people represented by avatars interact with each other and with various digital tools in a 3-D virtual space that metaphorically represents the real world.

During the COVID summer of 2020, two UBC computer science students, good friends, and huge Star Trek fans, Angela Verse (not to be confused with the Angela Verse of Richmond Virginia) and Jack Meta (not to be confused with the (ex)musician/singer of the same name whose Twitter handle is @redefinedjack) had a lot of time on their hands. They spent it envisioning their own version of a metaverse. They set to work creating and coding specific features for their version of metaverse and have amassed a series of copyright and trademark questions that could impact their designs. You are an Allard Law student who participates in the Allard Business Law Clinic, and as luck would have it, Verse and Meta’s queries come to you to be answered.

Here are Angela and Jack’s questions:

- A. Our system creates a unique signature for every person wearing our AR/VR equipment by gathering many forms of biometric, eye-tracking, and brain-wave data. The data is then plotted through an artificial intelligence that we have programmed to plot out a unique three-dimensional diagram which represents the individual user’s data and is highly predictive of their likely future behaviors. Based on copyright law alone (absent any contract or privacy law issues), do we have copyright in: (i) the data generated from everyone; (ii) the individual diagrams of that data; (iii) the code for the Artificial Intelligence (“A.I.”) tool we designed?
- B. If we do not have copyright in either (i) or (ii), under what conditions might we have a user’s right of fair dealing allowing us to use the data to improve the performance of our metaverse? For example, can we use the massive amount of information we have respecting every user to generate highly targeted advertising that we have little doubt will be highly effective in generating sales for our advertisers?

*Question 1 Continued*

- C. Our AR/VR headsets are leased to the user but belong to us. They constantly video record 360-degree images of everything in the real-world outside of the headsets. Outside of a simple on/off switch for the headset itself, the person wearing it is never controlling the camera. All focusing, zoom, pan and other functions are fully automated. Using their computer, the user can after the fact choose to save any part of any image or recording with the ability to zoom, pan, cut etc. Based on copyright law alone (absent any contract issues), are we the owner of the copyright in all the recorded images, or is the user? Similarly, would we be the owners of the copyright in the images highlighted and saved by the user, or would the user be?
- D. Because we see connectivity and interoperability as the key to this new world, any two users can share music or video content created by others to watch or listen to that content together. For example, if one user is a subscriber to Netflix or Spotify, they can invite other users who are not Netflix or Spotify subscribers into their metaverse space to watch or listen. This feature is scalable from two people to two thousand people. To respect copyright, we have sensing and eye detection technology to ensure the person who is sharing the audio or video is also watching and listening. Through our terms and conditions that our users agree to, we also try to make sure they are not charging others for the viewing and listening. Finally, we use copy control technology to ensure that no copies can be made on the viewers and listeners headsets for later use. Do these safeguards go far enough to ensure that copyright in the musical or video works is not breached? If copyright is breached who may be liable for the breach: (i) our company once formed as the providers of the linking technology (even though we don't know what content is be watched or listened to together); (ii) the user originating the content; (iii) the other users watching and listening to the content; or (iv) some combination of the above?
- E. Google Maps has recreated in digital form the outdoor world including buildings, roads etc. We would like to do the same for indoor venues like, arenas, restaurants, bars etc. Based on copyright law alone (absent any contract or privacy law issues), can we use the 3D mapping technology embedded in our headsets to gather and recreate virtual versions of those venues that exist only as virtual spaces and do not directly compete with those real spaces?

**Question 2 [32 marks, 57 minutes recommended]:**

Some months later, Angela and Jack come to see you again, this time with a series of trademark and passing off questions:

- A. When we were asking you question 1F immediately above, we forgot to ask you whether we could run into any **trademarks** or **passing-off** trouble if we use the names and logos of places like Rogers Arena, White Spot Restaurants, The Roxy Cabaret (on Granville Street) in our virtual world? We figure it's not a problem because being virtual, we are not competing with what they do so there is no confusion. Are we right?
- B. We've decided on a name for our business. Our favorite is just a combination of our last names "MetaVerse". We would be fine if you wanted to hyphenate between the names ("Meta-Verse").

We have, of course, seen Facebook's various "Meta" announcements, but we are hopeful that the combination of our last names will allow us to obtain the trademark.

We have also noted that Facebook's U.S. trademark application for "Meta" (there is no Canadian application we have seen yet) is 16,789 words long and seems to cover a great many trademark categories. Facebook proposed services for Meta include, among other claims:

- "Artificial intelligence software, namely, machine learning software, visual perception software, speech or language recognition software, decision-making software, translation software, touch recognition software, conversational query software, software for converting natural language into machine-executable commands, and digital assistant software"
- "Multifunctional electronic devices for displaying, measuring, and uploading to the Internet information including time, date, heart rate, global positioning, direction, distance, altitude, speed, steps taken, calories burned, navigational information, changes in heart rate, activity level, hours slept, quality of sleep, and silent wake alarm."
- "Application programming interface (API) for use in developing AI (artificial intelligence) platforms, namely, bots, virtual agents and virtual assistants"
- "Social networking, social introduction and dating services provided via access to computer databases and online searchable databases in the fields of social networking, social introduction and dating"

*Question 2 Continued*

Given all of this, do you think we would succeed in a **trademark** application for “MetaVerse” or “Meta-Verse”? Why or why not?

Alternatively, what do your legal impression of the name “HoloVerse” for a **trademark** application? Do you think we would succeed in a **trademark** application for “HoloVerse” or “Holo-Verse”? Why or why not? In this regard, our research indicates that the Greek word “HOLO” which means “entire or whole” is used quite a bit as a name for the technologies that generate 3-D virtual environments. We are huge Star Trek fans and know that there have been various attempts to trademark the name “HOLODECK” in Canada. We also know that Microsoft Corporation has a registered trademark for “HOLOLENS” (Registration number TMA1020620 expiring 2034-05-02) for its augmented reality (“AR”).

- C. Another possible choice for a name is “MetaFace”. We like the name because we believe it’s high time that humanity turns to ‘face the meta world’. Do you see any **passing-off** problems with the mark “MetaFace”?

**Question 3 [18 marks, 33 minutes recommended]:**

Please assess the strengths and weaknesses of Canadian patent law from the perspective of Canadian competitiveness in the global drug industry. Please discuss what in your view are the relevant areas of patent law that might need to be reformed to ensure Canadian companies can compete, and why these reforms may be necessary. In your answer, please ensure that you directly address the issue of the patentability of higher life forms.

**END OF EXAMINATION**