

**ESSAYS FROM FALL 2011 CIVIL PROCEDURE I EXAM**

**ESSAY QUESTIONS**

*(Two questions, suggested total time of 100 minutes)*

***Instructions for essays – read carefully!***

- Below you will find two essay questions. I recommend that you read the questions carefully before you begin to outline and write your answers. Pay close attention to each “call of the question” so that you answer the questions posed. Also pay close attention to the suggested completion times because the points allotted for each question correspond proportionally to the suggested time.
- Facts stated in multiple-choice questions have no relevance to essay questions, and facts stated in essay questions have no relevance to multiple-choice questions.
- Facts from Essay Question 1 may be relevant to your analysis of Essay Question 2.
- However, you may not use any facts from Essay Question 2 in your analysis of Essay Question 1. This is because the issue in Essay Question 2 arises after the disposition of the motion at issue in Essay Question 1.

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**QUESTION 1 – SUGGESTED TIME OF 60 MINUTES**

**MEMORANDUM**

From: The Hon. Eugene Wesley Roddenberry, United States District Judge  
To: Law Clerk for Judge Roddenberry  
Date: Nov. 28, 2011  
Re: Motion to dismiss in *Takey v. Chatner*, Civil Action No. CV-NCC-1701A

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Dear Law Clerk,

Attached is the plaintiff's complaint in *George Takey v. William Chatner*. The lawsuit alleges a claim for copyright infringement. The defendant William Chatner has moved to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). In his motion, defendant argues that plaintiff fails to allege a plausible claim for copyright infringement. In particular, defendant Chatner argues that the complaint fails to plausibly allege that defendant had access to the plaintiff's manuscript.

Please write a memorandum regarding the motion to dismiss in the case of *Takey v. Chatner*. Objectively analyze Chatner's motion to dismiss for failure to state a claim upon which relief can be granted. Please be sure to include a recommendation as to whether I should grant or deny the motion.

In so doing, you should consider the applicable law regarding copyright infringement:

To allege copyright infringement, the plaintiff must allege copying. Copying can be proven either directly or indirectly. **Direct proof** includes admissions or other proof that show *actual copying*. An example would include an admission by the defendant that she copied. **Indirect proof** includes allegations that permit a reasonable *inference of copying*. To plead indirect proof of copying, the plaintiff must allege that: 1) the defendant had **access** to the copyrighted work; and 2) that the works are **substantially similar**.

As always, thank you for your hard work.

The Judge.

Attachment: complaint in *Takey v. Chatner*

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

GEORGE TAKEY,	)	
	)	<b>FILED: NOV 3 2 011</b>
Plaintiff	)	
	)	Civil Action No. <b>CV-NCC-1701</b>
v.	)	
	)	<b>JURY TRIAL DEMANDED</b>
WILLIAM CHATNER,	)	
	)	<b>ASSIGNED: EWR/MBR</b>
Defendant	)	
	)	

**COMPLAINT FOR COPYRIGHT INFRINGEMENT**

**THE PARTIES AND JURISDICTION**

1. Plaintiff George Takey is a citizen of California.
2. Defendant William Chatner is a citizen of Iowa.
3. The parties are diverse and the amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332(a), giving rise to diversity jurisdiction. Additionally, this action arises under the copyright laws of the United States and therefore gives rises to federal-question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.
4. Personal jurisdiction is appropriate in the State of Florida pursuant to the Florida long-arm statute, Fla. Stat. § 48.193, and Federal Rule of Civil Procedure 4(k)(1)(A) because the defendant's tortious conduct in the State of Florida gave rise to this lawsuit, creating sufficient minimum contacts and making it reasonable to hale defendant before the courts of Florida.
5. Venue is appropriate pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the lawsuit arose within this judicial district.

**THE UNDERLYING EVENTS**

6. Plaintiff incorporates here by reference the allegations in paragraphs 1 through 5, above, as though fully set forth herein.
7. Plaintiff Takey is a famous and highly respected actor who has appeared in many successful television series such as *Space Trek* and theatrical films such as *Space Trek 1-6*. In the *Space Trek* TV series and films, plaintiff played the role of Lieutenant Sooloo,

- the helmsman of the Starship Interprise. Plaintiff frequently attends *Space Trek* fan conventions.
8. Defendant William Chatner is also an actor. He played the character Captain Quark in a number of *Space Trek* TV series and films.
  9. *Space Trek* is one of the most successful television and movie franchises in the history of popular entertainment. Since its debut in 1966, the *Space Trek* franchise has led to six television series and eleven theatrical films. Plaintiff and defendant appeared together in the first two television series—*Space Trek* and *Space Trek: The Animated Series*—and the first six theatrical films.
  10. On March 7, 2009, defendant and plaintiff appeared together at a *Space Trek* fan convention in Miami, Florida: The 2009 Miami *Space Trekathon* (hereinafter, “*Trekathon*”). Plaintiff Takey and defendant Chatner were slated to appear together at 1:30 PM on that day as part of a panel of *Space Trek* actors assembled to speak about their experiences working together for many years on *Space Trek*.
  11. On or about noon on March 7, 2009, and prior to their appearance together in the *Trekathon* panel, plaintiff sat in his dressing room working on his laptop. Plaintiff was working on final revisions to the unpublished manuscript for a book entitled *Captain Sooloo’s Adventures*. The book was slated to be published in the fall of 2009. The book told a story of how Lieutenant Sooloo took over command of the Starship Interprise after Captain Quark turned evil on the forbidden planet Talos V from consuming large quantities of Talosian chicken wings. In the book, “Captain” Sooloo saves the day and is awarded permanent command of the Starship Interprise. Even better, the story introduced a brand-new character, Ensign Hikaru Sooloo, Jr., Captain Sooloo’s son.
  12. While plaintiff worked on his manuscript, Chatner knocked on Takey’s door and entered. Although the two men had not talked for at least a decade, Chatner acted friendly. Because Takey thought the two men were getting along well, Takey decided to tell Chatner about the manuscript for *Captain Sooloo’s Adventures*. Takey did not provide many details, only telling Chatner: “I am going to publish a book shortly called *Captain Sooloo’s Adventures*. In the book, Lieutenant Sooloo seizes command of the Starship Interprise from an evil Captain Quark. After saving the day, Sooloo is made Captain and given permanent command of the Interprise.”
  13. Because Takey did not trust Chatner, Takey did not reveal any additional details about the book such as the planet Talos V, the chicken wings, or the introduction of the new character Ensign Hikaru Sooloo, Jr. At all times, Takey kept his computer screen turned away from Chatner.
  14. Chatner showed no interest in hearing about Takey’s manuscript. Instead, Chatner told Takey that Chatner’s laptop computer was broken. Chatner asked Takey if he could use Takey’s computer. He said “My laptop is broken and I need to check my email. Also, could I use your laptop to show my PowerPoint slides to the audience?”

15. Takey gave Chatner permission to use his laptop. Takey closed the word processor containing *Captain Sooloo's Adventures*, which had been facing away from Chatner the entire time the two men spoke. He handed the laptop to Chatner. While Takey stood watching behind Chatner, Chatner checked his email using the unsecured public wireless network at the hotel where *Trekathon* was being held. After checking his email, Chatner inserted a USB "thumb-drive" (a miniature storage device that can be inserted into a computer's USB slot) into Takey's computer and copied a file to the computer. Chatner said the file was a Microsoft PowerPoint presentation file used to display slides to an audience.
16. During the 1:30 panel, both Takey and Chatner spoke to the assembled fans. Chatner never used Takey's laptop to show a PowerPoint. During the panel, Chatner barely acknowledged Takey's presence. Chatner left immediately afterwards without saying a word to Takey.
17. Curious about the file that Chatner had uploaded to Takey's laptop, Takey tried opening the file later that day. The computer slowed down briefly, and then nothing else seemed to happen. No presentation loaded. Takey deleted the file.
18. Approximately a month later, plaintiff Takey was horrified to learn about a manuscript-length story entitled *Captain Quark Saves the Day* that had been posted to the website SpaceTrekFanFic.com. The plot of *Captain Quark Saves the Day* was essentially the same as *Captain Sooloo's Adventures*. However, instead of Captain Quark turning evil, Lieutenant Sooloo turns evil and tries to seize command of the *Interprise* and become Captain. In the story, Captain Quark defeats Lieutenant Sooloo and saves the day. Lieutenant Sooloo is arrested and confined to the *Interprise's* brig (an on-ship jail cell) pending court martial.
19. The story *Captain Quark Saves the Day* was posted to SpaceTrekFanFic.com on or about April 1, 2009. The screen name of the person posting *Captain Quark Saves the Day* was IAMCAPTAINQUARK. The posting of the story was accompanied by a message from IAMCAPTAINQUARK, stating "Too bad, so sad, 'Captain' George. Sorry you didn't get the promotion. Better luck next time."
20. On April 18, 2009, plaintiff's publisher cancelled the publishing contract for *Captain Sooloo's Adventures*, noting that the market for the book had been destroyed by the online posting of *Captain Quark Saves the Day*.

### **FIRST CLAIM FOR RELIEF**

#### **Copyright Infringement under 17 U.S.C. § 501 Against Defendant Chatner**

21. Plaintiff incorporates here by reference the allegations in paragraphs 1 through 20, above, as though fully set forth herein.
22. Before March 7, 2009, plaintiff Takey, a United States citizen, wrote an unpublished

manuscript entitled *Captain Sooloo's Adventures*.

23. *Captain Sooloo's Adventures* is an original work of authorship that is fully protected by copyright under United States law.
24. At all relevant times, plaintiff has remained the sole owner of the copyright.
25. Plaintiff timely applied to the United States Copyright Office for both pre-registration and registration of *Captain Sooloo's Adventures*, protected by Registration No. TX-20091966.
26. After the copyright registration for *Captain Sooloo's Adventures* was effective, the manuscript for *Captain Sooloo's Adventures* was copied from the plaintiff's laptop without authorization, and the unauthorized book-length manuscript entitled *Captain Quark Saves the Day* appeared on the fan fiction website SpaceTrekFanFic.com.
27. *Captain Quark Saves the Day* is substantially similar to *Captain Sooloo's Adventures*. The plots are almost identical, including a good character who turns evil and the inclusion of the planet Talos V and Talosian chicken wings. Both manuscripts include the brand-new character, Ensign Hikaru Sooloo, Jr. In dozens of places, entire pages are word-for-word identical.
28. Plaintiff permitted nobody to have access to the manuscript for *Captain Sooloo's Adventures* prior to the date *Captain Quark Saves the Day* appeared on the website SpaceTrekFanFic.com.
29. Upon information and belief, defendant William Chatner copied the manuscript for *Captain Sooloo's Adventures* from the plaintiff's laptop without authorization, used that manuscript to write the adaptation *Captain Quark Saves the Day*, and posted that adaptation to the website SpaceTrekFanFic.com.

THEREFORE, plaintiff demands judgment against defendant for:

- (1) An injunction providing that defendant, his officers, agents, servants, employees, representatives, and attorneys, and all persons in active concert or participation with him be permanently enjoined from infringing *Captain Sooloo's Adventures* or any other work authored by plaintiff;
- (2) Actual damages and profits for copyright infringement, pursuant to 17 U.S.C. § 504(a)(1) and (b);
- (3) Statutory damages of \$150,000 for willful copyright infringement, upon election of plaintiff prior to final judgment and in lieu of actual damages and profits, pursuant to 17 U.S.C. § 504(a)(2) and 504(c)(2);
- (4) Attorney's fees and costs pursuant to 17 U.S.C. § 505;
- (5) Prejudgment interest; and

(6) Any other and additional relief as the Court may deem just and appropriate.

Dated: Nov. 1, 2011

THOMAS, THOMAS, and THOMAS, PLLP

A handwritten signature in black ink on a light yellow background. The signature reads "Leonard Nimoe" in a cursive script.

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Leonard Nimoe  
Attorney for Plaintiff George Takey  
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305-474-2454

**QUESTION 2 – SUGGESTED TIME OF 40 MINUTES**

**MEMORANDUM**

From: The Hon. Eugene Wesley Roddenberry, United States District Judge  
To: Law Clerk for Judge Roddenberry  
Date: Sept. 10, 2012  
Re: Relation-back in *Takey v. Chatner*, Civil Action No. CV-NCC-1701A

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Dear Law Clerk,

Thank you for your earlier work regarding the motion to dismiss in the case of *George Takey v. William Chatner*. As always, I considered your arguments carefully, and in the end, decided to deny the motion to dismiss.

After I denied the motion to dismiss, the case proceeded to discovery. On Aug. 13, 2012, a deposition was taken of Jeff Albertson, the operator of the website SpaceTrekFanFic.com, where the story *Captain Quark Saves the Day* was posted online.

During the deposition, Albertson admitted to the following:

- Albertson is the operator of SpaceTrekFanFic.com.
- Albertson states that he is the “world’s # 1 William Chatner fan.”
- The USB “thumb-drive” that William Chatner inserted into George Takey’s laptop originally belonged to Albertson.
- Albertson gave the thumb-drive to Chatner as a gift during the 2009 Trekathon.
- Albertson told Chatner that the thumb-drive contained a funny PowerPoint that he could use to amuse the audience at Chatner’s Trekathon panel.
- Albertson knew that the file was actually a virus that would transmit files from any infected computer to Albertson’s computer.
- When asked why he gave Chatner an infected thumb-drive, Albertson said that he hoped to obtain the contents of Chatner’s computer. He was surprised to instead obtain the contents of George Takey’s computer.
- Because Albertson despises George Takey, he changed Takey’s story from *Captain Sooloo’s Adventures* into the adaptation *Captain Quark Saves the Day*. He then uploaded *Captain Quark Saves the Day* to his website SpaceTrekFanFic.com.



- Albertson learned about a lawsuit between Takey and Chatner several years later, on or about Nov. 10, 2011, when he saw a short posting on the site “Twitter.com.” Twitter allows people to post short messages that can be read publicly. The message, or “Tweet,” said “Lieutenant Sooloo sues Captain Quark for stealing!” The Tweet included a link to a news article, but Albertson said that he didn’t click the link or read the story, because he worried that the lawsuit might have arisen from his virus, his copying and adaptation of Takey’s story, and his online posting of *Captain Quark Saves the Day*.

On Aug. 20, 2012, George Takey moved for leave to amend his complaint to add Jeff Albertson as an additional defendant to his complaint for copyright infringement. The amended complaint would add allegations similar to those provided in the bullets above. (You should also re-review the original complaint filed in that case.)

I am inclined to grant Takey leave to amend to add Albertson. However, I would also like to know whether a claim for copyright infringement against Albertson would be untimely. The statute of limitations for copyright infringement is three (3) years. *See* 17 U.S.C. § 507(b).

Here’s what I want you to do: please write a memorandum that objectively analyzes whether Takey’s claim for copyright infringement against Albertson would relate-back. Please be sure to tell me your recommendation on how I should rule.

As always, thank you for your hard work.

The Judge.