

001010

File

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**BENCHMARK
1**

Alaska Bar Examination

**FEB
2006**

This book is for your answer to

MPT 1 *Only*

Be Sure to Write in the Proper Book

1. Harris still owns his copyright to Bimby Harris did not in his "work made for hire" (w.f.h) agreement grant more than implied ~~or~~ non-exclusive license for a limited time - until full media production began.

ⓐ Facts supporting Harris's position are that trade practices regularly use initially and then for extended use the licensee may purchase the copyright or pay royalties for continued extensive use. Furthermore Harris had the © copyright and author/claimant on his work submitted and CBL was on notice that this intellectual property right was

Contract CBL/Harris

That CBL only retained Harris for 6 months at \$7000 per month shows intent to terminate implied license at that time for use of "Blinky." Although 1.03 indicates that "all designs-etc" prepared by Harris were CBL property, Harris never signed a transfer document required ^{by} 17 USC 204 to convey his rights to copyright in writing.

⊕ Harris further relied in 1.02 that he would supervise "all broadcast and other marketing materials" and CBL breached this portion of the contract.

Atkins Library - Case law distinguished ¹⁻³
Harris never expressly indicated

CBL could use "Blinky" indefinitely
nor that CBL owned "Blinky" & copy
right. Nor did Harris get in
writing that he retained ownership
as did Atkins in Atkins vs Fisher.

Atkins likewise was a 2-stage
work project & the initial fee was
2000⁵⁰ how as to negate implied
sale/license to Red Barn (Fischer).

Harris only got fees for 6 mos
w/out express sale of copyright.

17 USC 204 invalidate transfers
without a writing. Neither Harris

Atkins lays out scope of rights granted to licensee 1) Amount consideration exchanged & licensee's investment

2) Expectations expressed in negotiations

(Harris ^{was} promised ~~to~~ more work, and

by implied ~~but~~ trade practice & royalties.

• Subsequent conduct - ~~with~~ Harris

^{never} acquiesced - (Harris objected in email 2/16 + CBL ignored, cancelled further work promised & paid off 6 months only).

3) task specific — Harris only agreed to initial work not future use by licensee w/out fees & compensation.

4) Harris was told he work retain control + CBH denied this.

5) Custom + practice counters argument that CBH got ownership by "W-F-A" contract.

Thus, CBH appears to have overstepped boundaries of implied license per Atkins.

Wilkes - Wilkes offers no support to Harris but is distinguished in that he submitted no copyright notice w/ a "©" - thus weakening his position to the Harris case, which submitted the "©" prior to submission

2. Assuming Harris owns copyright
 a) Harris did give an implied non-exclusive license to use Blinky by only for the terms of the contract, i.e. term for initial work.

b) CBH's use of Blinky in its multimedia ~~cap~~ campaign was not within the scope of its non-exclusive license for reasons listed, including breach of contract, failure to transfer copyright in writing ^{- Harris to continue} required by 17 USC 204, and other promises to Blinky + non-exclusive



001015

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BENCHMARK
2

**Alaska
Bar Examination**

**FEB
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This book is for your answer to

MPT 1 Only

Be Sure to Write in the Proper Book

MPTI:

As per your request the following is a discussion as to: 1. whether or not our client Steve Harris, owns the copyright to Blinky, or whether Columbia Biotech Laboratories Inc. owns it as a "work made for hire" or as a result of a transfer of ownership; or 2. or as a result of a transfer of ownership? You also requested that if Mr. Harris owns the copyright did Columbia Biotech Laboratories receive permission via an implied non-exclusive license to use Blinky and whether or not such use in a multimedia campaign was within the scope of the implied non-exclusive license.

In short, Steve Harris stands on firm ground.

The controlling statute is U.S.C. Tit. 17 concerning copyrights. Section 101 (1) identifies "work made for hire" as "a work prepared by an employee within the scope of his or her employment." There is no evidence written or oral that even remotely suggests that Mr. Harris was an employee of Columbia biotech laboratories. Moreover, Columbia makes no such assertion.

WORK MADE FOR HIRE

Under section 101 (2) a work made for hire arises when "a work [is] specially ordered or commissioned for use as a contribution to a collective work." The court in *Wilkes* quotes the language in the statute that states "the parties [must] expressly agree in a written instrument signed by them that the work shall be considered a work made for hire," and opines the writing must be executed before the copyrighted material is created but is not dispositive where the writing does not confirm a prior agreement, explicit or implicit that was "made before the creation of the work protected by copyright." "the writing requirement may be met by a document signed by both of the parties and executed after the work is traded only if the writing confirms a prior agreement, either explicit or implicit, maybe for creation of the work protected by copyright. *Id.*

Here, the agreement is for the term beginning on November 15th 2005 and extends to May 15th 2006 a six-month contract. Mr. Harris submitted his work on the 18th of November 2005 after three weeks of independent work at his own expense and direction.

Mr. Harris was initially contacted on the 21st of October 2005 by Mr. Cabot via e-mail. Mr. Cabot merely invited Mr. Harris to submit a proposed cartoon character recognizable as "Mr. Peanut" as part of a competition with five other graphic artists. Mr. Cabot stated in that same e-mail that he "will most likely hire the winner." This statement can hardly qualify as an unequivocal or even implied offer of employment, thus no confirmation. Additionally, the *Wilkes* court notes in a footnote that a copyright notice with submission to his "evidence of his intent regarding ownership." Mr. Harris made such a submission and Columbia was on notice of his intent in that regard.

"Mr. Harris owns the copyright.

TRANSFER OF OWNERSHIP

Section 204 (a) of the Copyright Act clearly states that a transfer of copyright ownership is not valid without an instrument of conveyance, or a note signed by the owner of the right.

Although section 1.03 of the marketing services agreement indicates that the work and materials prepared by Harris are Columbia's property, nothing is mentioned concerning a transfer of ownership. Furthermore the court in *Atkins* observes that this section of the Copyright Act "Invalidates Transfers of Copyright Ownership Made without a Writing."

Because there is no evidence of a writing transferring ownership Mr. Harris owns the copyright for Blinky. It is also worthy as a reminder that Columbia initially asked for a character by the name of Mr. Peanut, not Blinky.

IMPLIED NON-EXCLUSIVE LICENSE

"A non-exclusive license permits a licensee to use the copyrighted material, but does not transfer ownership" and arises where the licensee requests creation of a work, the creator creates and delivers a particular work, and where the creator intends that a licensee copy and distribute the work. *Id.* The Court recognizes the following factors:

Request Creation of a Work

Columbia requested the creation of an animated cartoon character to express, for advertising purposes the values of their new i-chip. Although Columbia requested that the cartoon be recognized as Mr. P. Net they offered no real descriptions of the character of the character. In fact, Columbia allowed Mr. Harris wide latitude in the creation of the character requested and were quite pleased by their own admission with the character Blinky.

Nonetheless, there seems little argument that a character was requested.

Delivery

Again, no dispute exists as to whether or not the cartoon character was delivered. However, there may be an issue that Blinky was delivered not Mr. Peanut where the language in *Atkins* states "the particular work."

Intent That the Licensee Copy and Distribute concerning the rights granted to the licensee and looks to five further factors for the answer.

The *Atkins* court recognizes that this 3rd factor is a question of SCOPE.

1. Consideration. Mr. Harris, according to the agreement is compensated any amount of \$42,000 for six months which includes the creation of the cartoon character. Since we

have determined that there is no ownership of Blinky, it is our jewel fold that Mr. Harris has or will receive no compensation for his creation. Consequently, Mr. Harris receives compensation only for the multimedia marketing campaign not any transfer. This factor ways in Mr. Harrisfavor.

2. Expectations Expressed during Negotiations and Party Subsequent Conduct. Mr. Harris was aware that Columbia intended to use Blinky and that he did sign the agreement concerning such use. On the other hand, Mr. Harris, in oral conversations with Columbia indicated that when he entered the competition he was hoping that he would be selected to develop and lead from marketing campaigns accompanied with the transfer of the rights to the character in return for royalty payments or a lump sum. None of this was forthcoming.

3. Task Specific: was the agreement task specific is your Mr. Harris favor. Mr. Harris was assured a for the by Columbia and and in the agreement that his services would continue beyond the six months and Columbia represented that a whole lot of money would be at stake. Mr. Harris will only receive a total of \$42,000 for his entire contribution. Again this weighs in Mr. Harris favor.

4. Advisement: Columbia only represented that they were happy to work with Mr. Harris concerning the development of their multimedia program. Although there is inference of an ongoing relationship such inferences came abruptly to a halt with the e-mail from Columbia to Steve on February 16th 2006 that they had established their own marketing department. Columbia has repudiated the contract but does intend to pay the full value of the contract. Columbia suggests that Mr. Hannah's reputation will be enhanced by his work and consequently an inference of financial gain exists.

5. custom and practice: as discussed above Mr. Harris suggests that graphic artists enter these competitions in order that they gained secure and ongoing employment with the individuals conducting the competitions. Such expectations were indicated in the agreement and any e-mails between Columbia and Mr. Harris. Mr. Harris relied on such inferences and in good faith went forward with his work on behalf of Columbia. Columbia quite likely is unjustly enriched as a result of Mr. Harris's efforts.

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1. HARRIS OWNS BLINKY COPYRIGHT

Harris created Blinky in response to an invitation to submit a proposed animated cartoon character to market a computer chip (the I-Chip) that mimics many functions of the human eye. The invitation did not specify that if the character was accepted that it would be a work-for-hire. In Wilkes v. Monterey Festival, Inc., an artist created a similar character for an audition and at the time of the invitation for the audition, the artist was informed that "the winning submission ~~was~~ would be a 'work for hire' and that the artist would be paid \$5000." The character was accepted and with payment, the buyer reiterated that the "design is a work^{made} for hire and is property of the Festival." The court ruled that the character was a work-made-for-hire because when the artist responded to the audition invitation which included language that submissions were "works made for hire" and subsequently signed an agreement reiterating same, he fulfilled the statutory requirements making his character a "work made for hire." Our case can be distinguished because the invitation asking for submission of the animated cartoon character did not specify that the work would be designated ~~to~~ as a work made for hire, and Harris manifested a clear intent that he retained the copyright.

The Wilkes court acknowledged that § 101(2) of the Copyright Act states that "the parties [must] expressly agree in a written instrument signed by them that the work shall be made a work made for hire," and that this writing must be executed prior to the creation of the copyrighted material. The Court went on to say, "A written work-made-for-hire-agreement, signed after the creation of the material, ordinarily does not meet the statutory ~~mandate~~ mandate." The writing requirement protects against false claims of ^{unwritten} copyright agreements and allowing after-creation writings would foster confusion and undermine the goals of the Copyright Act. In Harris's case, he signed an after-creation ~~written~~ boilerplate writing containing the work-made-for-hire clause. He did not agree to this provision before the work was created. Additionally, Harris manifested a clear intent to retain copyright on Blinky. Harris's submission included a copyright symbol (© Harris) to put the company on notice that he had a personal copyright on the work. The Wilkes court states that a copyright notice is evidence of [the artist's] intent regarding ownership of the work when he entered the contest. Additionally, Harris's character Blinky was not created during the "scope of employment." Harris was an independent

CBL was under no obligation to hire him or use his work.

In conclusion, Harris owns the copyright to Blinky. He manifested clear intent to CBL that he intended to keep the copyright on Blinky until and unless CBL made additional payments for the transfer of the copyright. The agreement Harris signed containing the "work-made-for-hire" clause was signed after Blinky's creation and is not valid. Harris never acquiesced on this issue and he emailed CBL about his lack of agreement and payment for Blinky's copyright.

2.A. HARRIS GRANTED CBL AN IMPLIED NONEXCLUSIVE LICENSE TO USE BLINKY

A nonexclusive license permits a licensee to use the copyrighted material, but does not transfer ownership. "An implied nonexclusive license will arise where 1) a person (licensee) requests the creation of a work, 2) the creator (licensor) makes the particular work and delivers it to the licensee who requested it and 3) the licensor-creator intends that the licensee-requestor copy and distribute the work." Atkins v. Fischer d/b/a Red Barn Brewing Co. In our case, CBL requested the work, Harris created the work and delivered it to CBL, and Harris intended that CBL would copy and distribute the work in its marketing campaigns. Harris

understood that Blinky was to be used in a multi-media marketing campaigns. CBL clearly expressed its intentions to use the work in its marketing campaigns and use Blinky like Mr. Peanut.

2.B. ^{CBL'S USE OF BLINKY IN MULTIMEDIA CAMPAIGN} The scope of the rights granted CBL ^{IS WITH SCOPE OF IMPLIED NONEXCLUSIVE LICENSE} is determined by evaluating the following factors in their totality: 1) amount of consideration exchanged and/or licensor's economic investment in the product; 2) expectations expressed during negotiations and the parties' subsequent conduct, especially if the licensor knew of and acquiesced to uses that are later claimed to be infringing; 3) whether the agreement was task-specific or if future involvement by the licensor was assumed; 4) any advisements indicating that the licensor intended to retain control of the work; and 5) evidence of custom or practice that may serve to clarify the terms of the implied license.

Atkins. In Harris's case, he was paid \$42,000, CBL's Marketing Director specified that Blinky would be used in multimedia marketing campaigns, the agreement expressed a probability or expectation that the licensor would be involved in further work, but it was not guaranteed, the licensor presented the work with his copyright and manifested his intent directly in an email to ~~a~~ ^{the} company representative and all...

it is a common practice to be paid for the transfer of the copyright, CBL is using Blinky in their marketing campaigns which Harris fully expects from the onset.

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MPT 1 *Only*

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MPT # 1

MEMORANDUM:

TO: Jerrin Perwin

FROM: APPLICANT

DATE: February 21, 2006

RE: HARRIS V. CBL

MS. Perwin,

AS REQUESTED I HAVE DRAFTED THE FOLLOWING MEMORANDUM TO SPECIFICALLY ADDRESS THE TWO POINTS YOU ARE CONCERNED ABOUT WITH OUR CLIENT STEVE HARRIS.

PLEASE REVIEW THE FOLLOWING. SHOULD THERE BE ANY FURTHER CONCERNS OR QUESTIONS, PLEASE DO NOT HESITATE TO CONTACT ME.

QUESTION 1 - DOES MR HARRIS OWN THE Blinky COPYRIGHT, OR DOES CBL OWN IT EITHER AS A "WORK MADE FOR HIRE" OR AS THE RESULT OF A TRANSFER OF OWNERSHIP.

a) IT IS MY ASSERTION THAT OUR CLIENT, MR. HARRIS, OWNS THE Blinky COPYRIGHT. MR HARRIS WAS CONTACTED BY CBL TO SUBMIT A PROPOSED CHARACTER FOR FUTURE USE ON INTERNET ADS.

MR. HARRIS ACCEPTED THE WRITE, ULTIMATELY CREATED "Blinky" + SUBMITTED IT TO CBL. PRIOR TO OR AT THE SAME TIME OF SUBMISSION, OUR CLIENT, REGISTERED HIS CREATION WITH THE UNITED STATES COPYRIGHT OFFICE, AND NAMED HIMSELF AS "AUTHOR" AND "COPYRIGHT CLAIMANT", FURTHERMORE HE

In The United States Code, Title 17 Copyrights
Chapter 2 § 201(a) ~~states~~

Defines ownership of copyright as

- a) Initial ownership. - copyright in a work protected under
this title vests initially in the
author or authors of the work.

In Applying This clear definition derived from USCA Title 17
our client Mr. Harris clearly owns the copyright to his creation.
Furthermore in Wilkes v. Monterey Festival Inc (ISAC12.1997)
Footnote 1. speaks to the issue of evidence of intent of
ownership, and although not dispositive, clearly states that
a copyright notice included in his submission would have
been evidence of his intent regarding ownership.
Our client clearly meets this standard as he included
notice of copyright with his submission.

b) Does CBL own the work as a "work made for hire"?

This argument on the part of the S is actually pretty clear
but in our case a misstatement of the law.

USCA Title 17 Copyrights Defines work made for hire as:

- 1) A work prepared by an employee within the scope of
his/her employment

2) A work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, ... if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

The first part of the definition of the code is clearly inapplicable to our client as he was not an employee of CBL nor is he currently an employee of CBL.

As for part two of the definition, this is the part the Δ is seeking to rely on.

In Wilkes v. Monterey Festival, Inc., (15 Cir. 1997) the court addressed the specific issue of a work made for hire.

The issue that differentiates that case from ours is that in Wilkes the original notification specifically stated that the winning submission would be a "work made for hire" + subsequently when Wilkes signed the agreement conferring the prize agreement it fulfills the statutory language.

In our case, CBL never indicated that the winning entry would be a work made for hire, in fact they indicated "we will most likely hire the winner to perform substantial additional work", this didn't happen either.

The other test the court in Wilkes, so spoke about was that the statute ~~see~~ § 10102 expressly states that the parties must agree in writing prior to the creation of the copyrighted material that

In Wilkes II the parties executed an agreement
in our case the "work made for hire" provision was
not added or included until the product was produced by
our client, copyrighted by our client + sent to CBL.
Then after acceptance of the material CBL sent a
marketing services agreement to our client, Mr. Harris,
with a § 1.03 work made for hire section.
Although our client signed this agreement, it is
by statute unenforceable + thereby void.

c) Does CBL own the copyright as a result of
a transfer of ownership?

USCA Title 17 § 204 Defines Execution of Transfers
of Copyright Ownership as.

a) A transfer of ownership (copyright), other than by operation of
law, is not valid unless an instrument of conveyance, or a
note or memorandum of the transfer, is in writing + signed
by the owner of the rights conveyed or such owner's duly
authorized agent.

Our client is the rightful legal owner of the copyright
as defined in USCA § 201 Title 17.

The only mention of any transfer of ownership from our client to
CBL was in the E-MAIL DATED 01/11/06 from our client to
CBL which was never received.

2) Assuming our client owns the copyright:

a) Did the grant CBL permission, via an implied nonexclusive license, to use Blinky.

The test established by the court in Atkins v. Fischer d/b/a Red Barn Brewing Co (15 Cir. 2003)

⊗ Determined no Real Bright Line test exists, but rather a series of factors to be determined + analyzed.

1) Amount of consideration exchanged, the greater the compensation the greater the possibility of a non-exclusive license being found to be granted.

In our case the client was paid \$7,000 per month for 4 months = \$28,000 with \$14,000 more promised, but according to our client this is the normal range of monies for this type of work.

2) expectations expressed by the parties by negotiations, + subsequent conduct

In our case the D clearly stated "we will most likely hire the winner of the competition to perform substantial additional work." + CBL knew or should have known the value of the product as in their first e-mail to our client they stated "By using Blinky, it would solidify your reputation ~~in the~~ as a leading commercial graphic artist" The expectations on the part of our client can easily be shown to go far beyond the..."

3) Was Agreement task specific or was future involvement
By licensor assumed.

As previously stated, CBL clearly stated they intended
to hire the licensee to perform substantial additional
work, thereby indicating a BIS paying for our
client.

4) were there any admissions indication licensor intended
to retain control of work.

Our client clearly manifested his intent by
both copyrighting the product, sending notification along with
design, + exhibiting in e-mail dated 1-11-06
in this discussion asking when is the going to transfer
his copyright to CBL.

In looking at these factors, I believe that our client
intended to retain control of "Blinks", until such time
that CBL purchase "Blinks" from him for a FNU.
This never occurred, and as such I believe NO non-exclusive
license was granted.

b) even assuming a court were to find an implied non-exclusive license, CBL's use in its multi-media campaign exceeds this scope.

The original offer was to create a cartoon character to be used on the Internet. Our client created this character, and CBL used it accordingly, now that its popularity has soared it intends to broaden its horizons and expand into TV. + Marketing.

Fed. Atkins v. Fischer (15 Cir 2003) The court addressed the scope of use of a non-exclusive license.

It detailed the existence of an agreement and the use of the drawings at a convention. Here the original agreement specifically addressed use on the Internet only NOT TV. or Marketing, or Advertising.

Accordingly, CBL's use of the cartoon beyond the Internet is a violation of a non-exclusive license (assuming one exists at all)

Sincerely,
Applicant
February 21, 2006

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**BENCHMARK
5**

**Alaska
Bar Examination**

**FEB
2006**

This book is for your answer to

MPT 1 Only

Be Sure to Write in the Proper Book

Moscowitz & Perwin

Memorandum

To: Jean Perwin

From: Applicant

Re: Harris v. CBL

Our client, Steve Harris, a local graphic artist has entered into a contract with CBL, to create an animated cartoon character, Blinky for their Internet advertisements. Harris brought a copyright infringement claim against CBL due to their cancellation of the contract. The issue in the case concerns the ownership of "Blinky" under the Copyright Act as well as the case law. ~~It's apparent~~ ~~that~~ even though the law is not clear ~~as to ownership~~ ~~in copyright cases involving~~, it ~~seems~~ the law favors the artist when ~~at~~ the artist takes precautionary measures in trying to retain his/her rights to the creation. The main issue in the case ~~revolves around~~ and which the court will have to consider ~~the~~ the intent of the parties in ~~starting their relationship~~ ^{the initial} the initial stages of the relationship as to the ownership of "Blinky". In answering this question, this memo^{ist} will cover whether CBL or Mr. Harris considered the owner of the "Blinky" ~~entity~~. In the second part, it will discuss possible arguments ~~also~~ against Mr. Harris' ownership under the Copyright Act (C.A.A.).

I. Who owns "Blinky"?

~~Under~~ Under CA § 201, an ownership of copyright vests initially in the author of the work. Mr. Harris is the author of "Blinky" and therefore should be considered as the owner of the cartoon.

In response to this argument CBL will claim the cartoon as a work-made-for-hire, CBL owns the ~~the~~ cartoon under CA § 101. Under this section in (2) a work specifically ordered to be used in a collective work as part of a motion picture or other audiovisual work is ~~the~~ owned by the ~~hire~~ the person hiring the artist if the parties expressly agree in writing ~~and~~ that the work shall be considered ~~for~~ a work ~~made~~ made for hire. Mr. Harris here can argue that "Blinky" was not made to be used in an oversweeping ad campaign or audiovisual marketing project, but he will probably fail in this case, because of the correspondence between the parties. In their first correspondence with Mr. Harris CBL made it clear that they were looking for a character similar to Mr. Peanut which they intended to use extensively in their marketing. However, Mr. Harris will probably prevail in his argument that the written agreement which is required by CA § 101(2) ~~will not be met~~ will not meet the requirements of the statute ~~because~~ ~~it will not be met~~

Under Wilkes v. Monterey Festival, a writing must ~~be~~ be executed prior to the creation of copyrighted material in order to protect against false claims of unwritten copyright agreements. ~~Here~~

This requirement can also be met even when the writing is signed after the work is created only if the writing confirms a prior agreement, either explicit or implicit made before creation of the work protected by the copyright.

Here, the ~~written~~ written agreement was not signed until December even though it covered a time period starting in November - a few days prior to Mr. Harris' delivery of his cartoon for the competition. ~~Mr. Harris~~ The written

The written agreement...

a prior agreement between the parties because Mr. Harris made known his intent by filing a copyright claim ~~that~~ ^{with} ~~the~~ US Copyright Office and attaching a copy of that document. He also included (c) signing his submission. These submissions were indicative of his intent and was "evidence of his intent regarding the ownership of his work when he entered the contest", Wilkes case. Footnote

I. B. ~~CA transfer was~~ Did Mr. Harris transfer his ownership to "Blinky" to CBL under CA and appropriate case law?

Under ~~to~~ CA § 204 transfers of copyrights must be in writing. ~~CA makes an exception~~

~~When the writing is in...~~

~~license~~ Atkins v. Fischer (Cherchaffe Atkins)

~~Therefore, a nonexclusive license permits a licen-~~
~~see to use the copyrighted material, but does not~~
~~transfer ownership. This license can be created~~
~~implied or ~~either~~ expressly.~~

Since there was no writing of a transfer of
of copyright to Blinky, Mr. Herri's will prevail
that he did not transfer the ownership and
he still has the ownership to "Blinky".

II ~~to~~ A. ~~Consider~~ Assuming Mr. Herri's owns the
copyright to Blinky, did he grant ~~an~~ permission
for the use of Blinky or grant an implied non
exclusive license to Blinky?

An implied nonexclusive license permits

a licensee to the use of the copyrighted material, but does not transfer ownership of the material. Atkins v. Fischer (hereinafter Atkins.) This can be granted expressly or may be implied from conduct. An implied nonexclusive license requires three elements to be met.

- 1) Licensee requests the creation of the work,
- 2) the licensor makes the particular work and delivers it to the licensee
- 3) licensor intends that the licensee copy and distribute the work. Atkins.

~~Since there is no transfer of ownership,~~
In this case, there was no expressed nonexclusive license.

because from the beginning Mr. Harris maintained his ownership right to "Blinky". His registration with US. Copyright office along with his inclusion of (c) notation showed his intent to CBZ. He continued to inquire about his right to "Blinky" in further emails when he inquired about discussing his transfer of his copyright to "Blinky" to CBZ and the royalty payments that he planned to receive for them. His manner of dealing with this contract can be distinguished from ~~with~~ Mr. Wilkes' dealing with the Monterey Festival Inc. in their case because in that case Mr. Wilkes entered his work to the auditor and was made aware of

Festival Inc's intentions from the beginning.

(The work became property Festival Inc.)

In this case CBL shared their intent for "Blinky"
~~with~~ with Mr. Harris as being in charge of
the marketing operations and having a long term
relationship with Mr. Harris. (Email 10/21
~~12/01~~)

CBL also:

B. Even if ~~Mr. Harris~~ CBL considers that Mr.
Harris granted them

B. Copyright Did CBL's use of the "Blinky"
go beyond the scope of an alleged implied
nonexclusive license?

Even if CBL considers Mr. Harris as granting
them an implied nonexclusive license, it's possible
that CBL ...

agreement. The courts have not identified a ~~set~~ a strict test for the scope of an implied license but consider the amount of consideration exchanged ~~to~~ between the parties, expectations expressed in the parties and parties subsequent conduct, ~~what the parties~~. They also consider whether the conduct was task-specific, indication of licensor's intent to maintain the ownership and evidence of custom or practice.

EAHkins.

Assuming that such a license existed for CBL, CBL ~~was~~ appears to have gone beyond the scope of their license by using "Blinky" as the center line for their marketing. They only

hired Mr. Harris for a short amount of time and only paid him for the duration of their agreement without making any regards to their plans of creating an internal marketing department. They also extended the use of ~~the product~~ ^{the} cartoon by creating more products such as toys which is outside the internet ads that they hired Mr. Harris. They planned to use Blinky Alsa's p. This ~~was a task specific~~ Mr. Harris will argue that this was a task specific deal with that he agreed to conduct with CBL which ended up beyond ~~the~~ his expectations and infringed on his rights.

In conclusion, it's apparent that Mr. Harris' case

is distinguishable and unique compared to
the case law and ^{the CA} ~~statute~~ also protects his
rights. Therefore, Mr. Heron's should pursue
his claim.