

## **Master Program in European Intellectual Property Law Home Exam Module 1 (10 p)**

Lory thinks the Internet and the new Christy's GmbH (Germany) online auction are revolutionary ideas. She is now able to get rid of all her unwanted junk i.e. old jewellery, nicnacs, porcelain etc. to people who are actually willing to pay top dollar for it! From her home in Sweden, she is able to reach a worldwide market. Christy's online auction web site is (for the purposes of this exam) at [www.christys.com](http://www.christys.com)

Lory has been so successful that her brother asked her to sell on his behalf a framed sketch by the well-known American artist R.F. Outcault. In order to sell the sketch, Lory took a number of pictures of the sketch with her digital camera. She then uploaded these pictures onto Christy's server in Germany so that potential buyers could view the sketch. Since Lory is a clever business woman, she also took a close up of the artist's signature so that the buyers could see that the sketch was indeed a signed original. Additionally, in order to show the fine details of the sketch, Lory took a number of close up pictures of what she considered to be the important details in the sketch. In order to get close enough however, Lory had to cut off the surrounding parts of the sketch.

A few weeks later Lory received a call from the artist's granddaughter, Adrienne Outcault, in France who is the owner of the copyright in the work. Adrienne tells Lory that she doesn't like the idea that her grandfather's serious art has become an object of cheap commerce and demands that Lory remove the pictures from the web site. Lory answers with surprise, "How am I supposed to sell the sketch if I can't show what it looks like!"

Lory ignores the call, sells the sketch for a very high price to a Swedish art collector and removes the pictures from the web site. Adrienne Outcault however has not forgotten the matter.

Meanwhile, Christy's online auction house receives a letter from Christie's, the well-known international auction house. Christie's owns the domain name <http://www.christies.com/> and has registered CHRISTIE'S as Community trade mark. Christie's demands that Christy's online auction house turn over their domain name to Christie's and cease using the name Christy's for their services.

The president of Christy's GmbH, Kristian Christy, is appalled by the behaviour of Christie's. It never occurred to Kristian Christy to register his name since it has been his family's name for many generations.

Mr. Christy has other problems. Godzilla Inc., a U.S. firm, recently contacted Christy's GmbH online auction house and accused them of infringing Godzilla's patent for a single action on-line ordering system. Godzilla has an EPC patent for this system for the UK, France, Italy and Sweden. The patent claims call for a "single action on-line ordering system." Specifically, the claim states "a method and system in which a consumer can complete a purchase order for an item via Internet using only a single action (such as the one click on the mouse) once information identifying the item is displayed on the computer. In response, the client system sends to a server system the provided identifier and a request to order the identified item."

Christy's online auction allows a bidder to make a bid by clicking once on their mouse. Mr. Christy developed this system himself after having read about CompuServe system whereby subscribers were able to obtain stock charts for a surcharge of 50 cents by clicking once with their mouse.

The senior partner of your firm asks you to write a memorandum of law that identifies the legally significant facts and legal issues, references the relevant sources of law, applies the law to the relevant operative facts, and draws logical and well-documented conclusions. Among the issues that you should discuss in your memo is who can be sued, in which country or countries can suit be brought, what legal claims are relevant, what if any grounds for defence are applicable, and what sanctions are available. You can ignore any conflict of interest issues.

Your task is to evaluate not advocate. Thus, the memorandum should be objective and should identify both the strengths and weaknesses of your conclusions. Each issue should be treated separately. Excessive overlapping of thought in the discussion indicates that you have not identified the issues with sufficient precision.

The teaching staff will take into consideration both the substantive treatment of the facts and issues as well as the more formal aspects of the memo, namely, the correct treatment of sources, the use of clear and concise legal English or Swedish and brevity. Indeed, the memorandum of law may be a maximum of five pages but may be shorter.