

Copyright

Spring 2017

Professor William Fisher

This examination has two parts. Part I is a three-hour in-class test, which will be administered from 9:00 a.m. to noon on April 27, 2017. Part II is an unlimited-time “take-home” essay, due at 4:30 p.m. on May 5, 2017. Your responses to the two parts will be given equal weight when determining your grade.

Instructions for Part I

Part I of the exam consists of two questions. You must answer both. You have three hours to complete your answers to the two questions. Neither of your answers may contain more than 1200 words (including footnotes). The exam mode, for this portion of the exam, is CLOSED. This means that you will not have access to the hard drive of your computer or to the Internet. Nor will you have access to your answer once you have submitted it.

This portion of the exam is also “closed-book.” You may not bring into the exam room any written material, paper, or electronic devices other than your computer. (The only exception to this rule is that a student who is not a native speaker of English may bring into the exam room a paper copy of a dictionary enabling him or her to translate English words into his or her principal language.) The proctors will supply scrap paper that you may use to take notes during the exam. In preparing your answers, you may not consult in any way with your fellow students or with any other person.

Exam4 will automatically put your Anonymous ID and word count on the exam copy. Do not write your name on any part of your response. To preserve the anonymity of your response, avoid including any information that would enable the instructor to identify you.

Until 5:00 p.m. on May 5, please do not discuss Part I of the exam with your classmates or submit to an online discussion forum any comments or questions that refer to any part of the exam. The reason for this request is that, until May 5, one or more of your classmates may be taking the exam on a delayed basis, and students in some of the other courses affiliated with CopyrightX will be answering questions identical or similar to those contained in Harvard Law School exam.

DO NOT TURN TO PAGE TWO UNTIL THE PROCTOR TELLS YOU TO BEGIN.

Part II

This portion of the exam is open-book, and the exam mode is TAKEHOME. In preparing your answer, you may read any material you wish. You are also free to discuss your answer with your classmates or other persons. However, you must indicate in your answer the sources of any ideas you have derived from others.

Answer one and only one of the following two questions:

- (A) In April 2009, the Economist magazine organized an online debate concerning the merits and demerits of the copyright system. Participants included Justin Hughes (Professor at Loyola Law School and a treaty negotiator on behalf of the United States), John Kennedy (Chairman of the IFPI), Dale Cendali (Partner at Kirkland & Ellis and Adjunct Professor at HLS), Jennifer Urban (Director of the IP and Technology Law Clinic at USC), Jessica Litman (Professor at the University of Michigan Law School), David Lammy (Minister for Higher Education and IP, United Kingdom), and William Fisher. Read the contributions to the debate: http://cyber.law.harvard.edu/people/tfisher/cx/Economist_Debate_2009.htm. Then draft your own contribution.
- (B) Should tattoos enjoy copyright protection? If so, what should be the ambit of that protection? Should the scope of the fair-use doctrine, the work-for-hire doctrine, or the rules governing secondary liability be different with respect to tattoos than with respect to other types of copyrighted works? Your response should reflect familiarity with at least two of the four theories of copyright examined in this course.

In preparing your essay, you might find it helpful to consult the following articles, which describe some recent controversies surrounding copyright protection for tattoos:

- Aaron Gordon, “Who Owns Tattoos?,” https://sports.vice.com/en_us/article/who-owns-tattoos;
- Lisa Johnson, “Before the Ink Dries,” <https://www.legalzoom.com/articles/before-the-ink-dries-copyright-law-tattoos>;
- Shontavia Johnson, “Why Your Tattoo May Leave You Open to a Copyright Infringement Suit,” <http://www.rawstory.com/2016/08/copyright-and-trademark-laws-mean-your-tattoo-may-leave-you-open-to-an-infringement-lawsuit/>;
- Nicole Martinez, “Who Owns the Copyright in Your Tattoo Art?” <http://artlawjournal.com/who-owns-the-copyright-in-your-tattoo-art/>.

Your answer to Part II of the exam may not exceed 2000 words (including any footnotes or references). You must submit it before 4:30 p.m. on May 5, 2017, to the Registrar’s Office using the Exam 4 software.

End of Exam