

Copyright^X

Spring 2024

Professor William Fisher

Final Examination

This is an “open-book” examination. When preparing your answer, you may read, watch, or rely on any material you wish. However, you may not consult in any way with any other person concerning any aspect of the test, and you must abide by the CopyrightX Policy on Academic Honesty Policy, available at <http://ipxcourses.org/exam/>.

The exam will be available starting at 21:00 UTC on April 24, 2024. It is due no later than 21:00 UTC on April 28, 2024. Answers must be submitted via the [CopyrightX portal](#); email submissions will not be accepted. To submit your answer, please follow these steps:

- (i) log in your [CopyrightX account](#);
- (ii) click on the "Exams" option in the main menu;
- (iii) click on "CopyrightX 2024";
- (iv) click on the “Choose File” button and then select your answer file; and
- (v) click “Upload.”

Please note that only one (1) file in **PDF format** can be uploaded. You should receive an **email confirmation** shortly after the submission of your answer file; if you do not receive it, please reach out to copyrightcourse@law.harvard.edu as soon as possible.

When submitting your exam, please adhere to the following formatting guidelines:

- The subject line of your email should include: [Last name], [First name] - Section: [Full Name of Teaching Fellow]
 - *For example:* Warhol, Andy - Section: Laurie Ann Taylor
- Please name your exam file as follows: [Last name], [First name] – CopyrightX Exam
 - *For example:* Warhol, Andy – CopyrightX Exam
- Please include your name and email address at the top of the first page of your submission.

During the examination, all of the course materials (including the assigned readings, recorded lectures, and maps of copyright law and theory) will remain available at <http://ipxcourses.org/copyrightx/>.

Neither the course team nor your teaching fellow will respond to questions concerning the exam unless those questions involve emergencies. If an emergency does arise, please email copyrightcourse@gmail.com, providing details. Someone will respond as soon as possible. Exam answers should NOT be submitted to this email account.

If you find any aspect of the exam’s content or instructions to be ambiguous, do not request a clarification. Instead, develop your own interpretation that resolves the ambiguity and make that interpretation explicit in your response.

The exam contains two Parts; you must answer both. Part I has several questions; you must answer all of them. Part II has three options; you must answer one and only one. The word limit for each question and the weight it will be given in the grading are indicated below.

	Word Limit	Weight
Part I, Question a	500 words	13%
Part I, Question b	200 words	5%
Part I, Question c	300 words	7%
Part I, Question d	400 words	11%
Part I, Question e	300 words	7%
Part I, Question f	300 words	7%
Part II	2000 words	50%

Until May 15, 2024, please do not redistribute this examination to anyone or submit to any publicly accessible website any comments concerning it. The reason for this request is that, until that date, students in some of the other courses affiliated with CopyrightX will be answering questions identical or similar to those contained in this exam.

Part I

Artificial Intelligence Images, Inc. [“AI3”] is a recently launched private corporation, based in Delaware in the United States. Its primary product is an image generator that relies upon artificial intelligence [“AI”]. AI3 promises that users of its generator can make “a vivid, arresting image depicting virtually any subject matter for a reasonable fee.” AI3 acknowledges that its model (like those of its principal rivals, Dall-E2 and Midjourney) was trained on large databases of audiovisual works – both still images and films. However, the company has not made public a list of the works contained in those databases – or even the identities of the databases.

Brad is studying computer science at Swarthmore, a liberal-arts college located in Pennsylvania, in the United States. He is both fascinated and frightened by artificial intelligence.

Brad’s favorite film is *The Matrix*, a science-fiction epic first released in 1999. The film depicts the adventures of a small band of revolutionaries seeking to free humanity from enslavement by “the machines.” The title of the film refers to a delusion created and maintained by the machines to keep people docile and to help mask the fact that their bodies are being used as batteries. The central character of *The Matrix* is “Neo,” a taciturn messiah, played by Keanu Reeves. In most of the scenes of the movie, he wears a black trench coat and narrow dark sunglasses. During the film, Neo gradually comes to recognize that he alone has the power to defeat the machines – and to accept responsibility to do so. A promotional poster for the film appears below.



In one scene in the film, Neo, while waiting to meet “the Oracle,” observes a gifted boy bending spoons through telekinesis. The boy teaches Neo how to do the same by telling him to believe that “There is no spoon.”

The Matrix was a critical and commercial success. It won four Academy Awards, including the prizes for “Best Visual Effects” and “Best Sound.” The cost to create the film was \$63 million, but it reaped box-office revenues of \$172 million in the United States and \$295 million in other countries.

The copyrights in *The Matrix* and all of its sequels are owned by Warner Bros. *The Matrix* was directed by siblings, Lana and Lilly Wachowski. At the time they made the film, they were known as Larry and Andy Wachowski. Years later, they both transitioned from male to female. In the original script for the film, one of the characters had a different gender when inside the matrix and when outside the matrix, but Warner Bros. vetoed that feature. Some film critics have argued that other features of the plot constitute more subtle comments on the complexity of gender identity.

Carol is one of Brad’s friends at Swarthmore College. In the fall semester of 2023, Carol was enrolled in a course on film studies. For her final project, she decided to create a short film entitled, “The Perils of Masculinity in the 21st Century” [*Perils*]. She asked Brad if he’d be willing to help make the movie. “My rough idea,” she explained, “is to place a character, who had been steeped in the ethos of toxic masculinity, into scenes that force him to confront and reconsider his values.” Brad agreed, but suggested that she adjust the plot to be less didactic.

Knowing of Brad’s affection for *The Matrix*, Carol proposed that he play the central character in *Perils*, adopting the persona of Neo. Dan and Ellen, two other members of their group of friends, agreed to play minor characters in the film. To prepare for the filming, Brad took a copy of the promotional poster (reprinted on the previous page) to a local salon and asked the barber for a haircut that would maximize his resemblance to Neo. Throughout *Perils*, Brad wore a long black trench coat and narrow dark glasses. In hopes of approximating Reeves’ speech pattern, he spoke slowly and in a low register.

The script for *Perils*, written by Carol, contained some gaps, where the characters were instructed to “improvise.” Brad eagerly embraced this opportunity. For example, he created spontaneously many of lines spoken by his character in the scene in which he discusses his traumatic childhood with a female therapist (played by Ellen). For example, at the end of the therapy session, the therapist asks Brad’s character whether he believes that he has the mental stamina to break free of his childhood and fashion a new identity. He responded, cryptically, “There is no spoon.”

The collaboration among the four classmates proved remarkably successful. Carol received a grade of “A” in the film-studies course. People persuaded to watch the finished version of *Perils* expressed surprise at the subtle interweaving of social commentary and humor.

In January of 2024, Brad, buoyed by the success of the film, decided to create a website where he could post (and elicit comments on) memorabilia and reflections pertaining to *The Matrix*. He registered the domain name, “allthingsneo.org.” The centerpiece of the website that Brad created

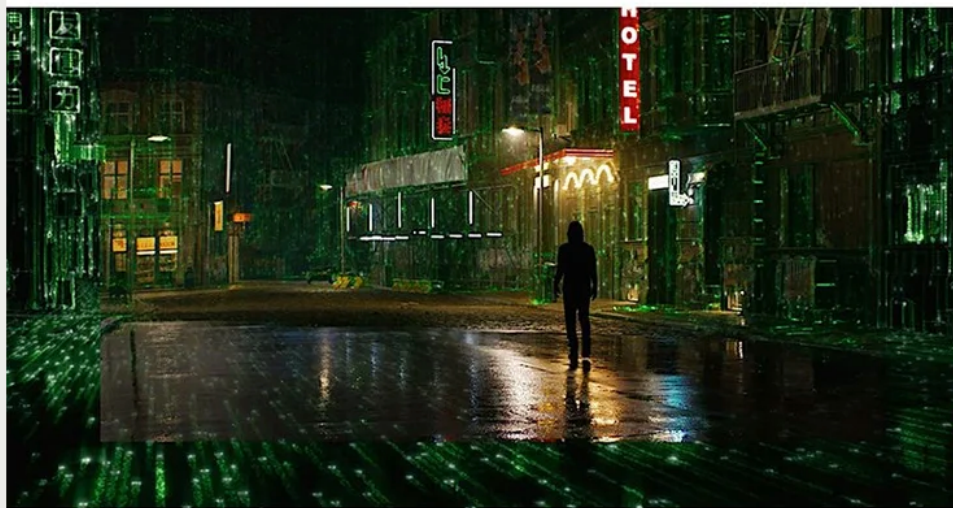
is a blog in which he discusses with visitors to the site the evolution of the character of Neo in the many sequels to *The Matrix*.

For the splash page of the website, Brad wanted a scene that evoked the overall mood of the Matrix series of movies. Vaguely aware of the hazards of copyright infringement, he decided not to use for this purpose a still image from any of the films. Instead, he signed in to his AI3 account and ask the program to create an image based upon the following prompt: “Neo in the rain.” AI3 responded by producing the image set forth below.



“Neo in the rain.”

Pleased by the tenor of the image, Brad uploaded it to his website. With Carol’s permission, Brad then uploaded to Youtube a copy of *Perils*, and then placed on his own website a link to the version of the film now available on Youtube. Unbeknownst to Brad, the image set forth above resembles the screenshot set forth below from one of the Matrix films.



from *The Matrix Resurrections* – © Warner Bros.

In March of 2024, Fred, a lawyer employed by Warner Bros., happened upon Brad's website, which in turn led him to the copy of *Perils* available on Youtube. Fred promptly wrote Brad and Carol cease-and-desist letters, demanding that Brad's website be taken down, the Youtube copy of *Perils* removed, and all copies of *Perils* destroyed.

Brad and Carol, reluctant to comply, have asked you for advice concerning their legal position. Draft a memorandum in which you address the following questions:

- a) Does *Perils* infringe Warner Bros.' copyright in *The Matrix*? (500 words)
- b) If the answer to question (a) is no, who owns the copyright in *Perils*? (200 words)
- c) If the answer to question (a) is yes, what remedies are available to Warner Bros.? (300 words)
- d) Is "Neo in the rain" *substantially similar* (in a legal sense) to the screenshot from *The Matrix Resurrections* set forth on page 5, above? (400 words)
- e) If "Neo in the rain" is deemed to violate Warner Bros.' copyright in *The Matrix Resurrections*, who is liable for that violation? (300 words)
- f) Does the AI3 generative-AI model itself violate Warner Bros.' copyrights? (300 words)

You may assume that the law governing all of these questions is the copyright law of the United States. If you need any additional information to answer any of these questions, say what that information is and why it matters.

Part II

Select one and only one of the following three options. Your response may not contain more than 2000 words.

- (A) In your opinion, how should the controversies described in Part I be resolved? Your answer should reflect familiarity with the four theories of intellectual property considered in this course.
- (B) The recorded lecture that you watched during the 9th week of this course surveyed the diverse ways in which countries throughout the world have created and interpreted exceptions and limitations to the exclusive rights enjoyed by copyright owners. In your opinion, which country has the best approach?
- (C) Select a country with which you are familiar. Suppose that the legislature of that country initiated a comprehensive reform of the copyright statute. Describe and justify three significant modifications of the statute that you would advocate.

End of exam