

Copyright^X

Spring 2025

Professor William Fisher

Final Examination

This is an “open-book” examination. When preparing your answer, you may read, listen to, or watch any material you wish. However, you must abide by the following rules:

- (1) When preparing and drafting your answer, you may not consult in any way with any other person.
- (2) Plagiarism is strictly forbidden. Guidelines concerning mandatory attribution of sources and associated citation requirements are available at <https://usingsources.fas.harvard.edu/harvard-plagiarism-policy>.
- (3) Although you are permitted to use artificial intelligence when preparing your answer, you must abide by the following constraints:
 - a) As you likely know, large language models (LLMs), such as “ChatGPT” or “Claude,” sometimes “hallucinate.” In other words, they fabricate material and then present it as real. If, as a result of using such a model, your answer contained false information, you would be penalized – in much the same way that a journalist who included false information in an article, or a lawyer who included false information in a brief, would be penalized. Thus, if you consult a LLM when preparing your answer, you should certainly verify the accuracy of the information it provides you.
 - b) Appropriate attribution of material obtained from a LLM is just as essential to academic integrity as it is for any other source. Thus, if you derive an idea or an argument from such a model, you must include in your answer a footnote clearly identifying the model in question.
 - c) Finally, if any of the text you include in your answer consists of language generated by artificial intelligence (or a paraphrase of such language), you must underline the text at issue in addition to providing an appropriate footnote.

The exam contains two Parts; you must answer both. Part I contains seven 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 that will be assigned to each of your answers are indicated below.

	Word Limit	Weight
Part I, Question a	600 words	15%
Part I, Question b	200 words	5%
Part I, Question c	300 words	6%
Part I, Question d	300 words	7%
Part I, Question e	400 words	9%
Part I, Question f	400 words	9%
Part I, Question g	400 words	9%
Part II	1500 words	40%

The exam will be available starting at 21:00 UTC on May 1, 2025. It is due no later than 21:00 UTC on May 5, 2025. 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 2025";
- (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:

- 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/>.

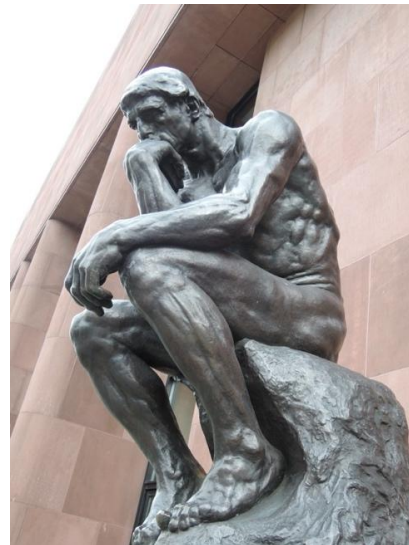
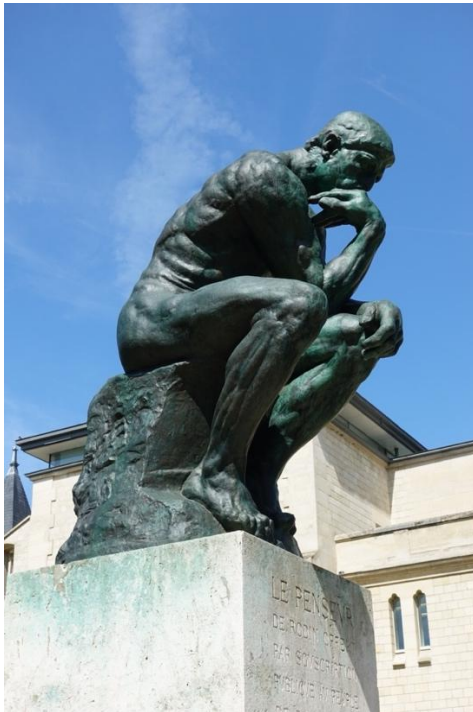
Neither the course team nor your teaching fellow will respond to questions concerning the exam unless those questions involve emergencies. If an emergency does arise, please email copyrightcourse@law.harvard.edu, providing details. Someone will respond as soon as possible. Exam answers should NOT be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

Part I

[The following is a fictionalized composite of several events. Many of the statements made in the narrative are true, but others are “alternative facts” – i.e., either distortions of true events or outright fabrications. If you happen to know (or learn) about aspects of the actual events that are inconsistent with the narrative, you should ignore that knowledge when framing your answer.]

The most famous work of Auguste Rodin is *The Thinker*. Photographs of two of the bronze castings of the sculpture appear below.



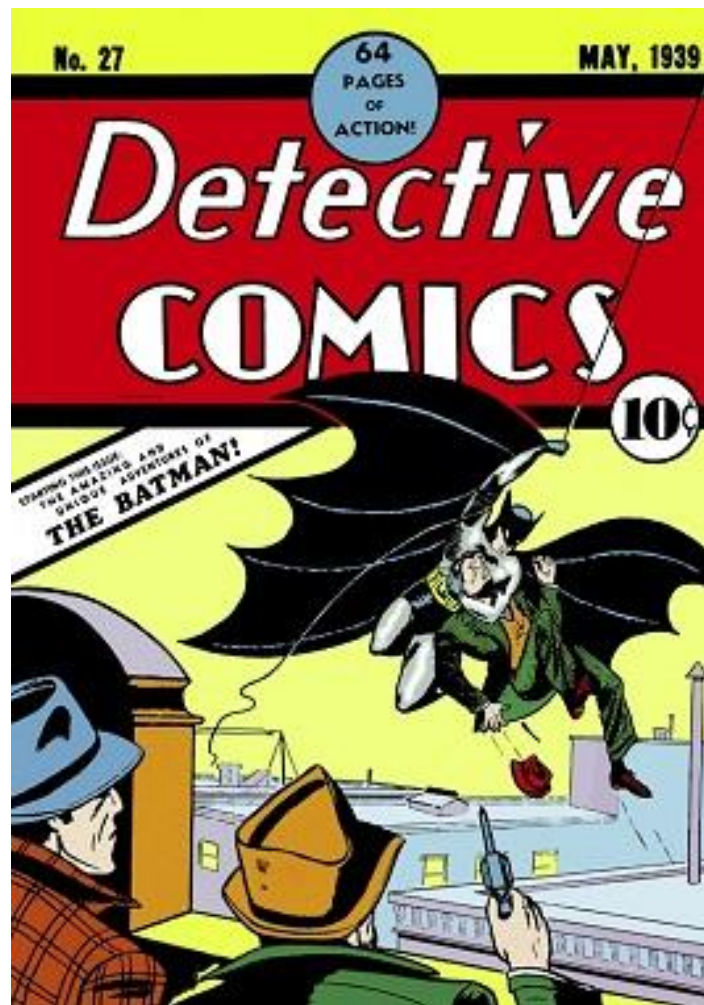
“*The Thinker* was originally called *The Poet* and was conceived as part of *The Gates of Hell*, initially a commission (1880) for a pair of bronze doors to a planned museum of decorative arts in Paris. Rodin chose for his subject Dante’s *Inferno* from *The Divine Comedy* (c. 1308–21)... The nude form is seated on a rock, his back hunched forward, brows furrowed, chin resting on his relaxed hand, and mouth thrust into his knuckles. Still and pensive, he observes the twisting figures of those suffering in the circles of Hell below.”¹

The Gates of Hell, the monumental work for which *The Thinker* was originally intended, was never cast during Rodin’s lifetime. However, once disentangled from *The Gates*, the figure of the seated man enjoyed wide acclaim. 27 full-sized bronze castings of *The Thinker* were made, all with Rodin’s permission. Several are currently on public display in museums and universities throughout the world, including in the United States.

¹ Britannica, “The Thinker.”

In January of 1939, Bob Kane, an independent graphic artist, created a fictional superhero, whom he called “Batman.” In Kane’s original conception, Batman was a wealthy, obsessive, merciless crimefighter, embittered by the murder of his parents. In February of 1939, Kane wrote and published a few comic books featuring the new character.

In March of 1939, executives of DC Comics, a fledgling company, offered to buy from Kane his interest in Batman – and then to employ him to create additional stories. After a brief negotiation, the parties came to terms. On April 15, 1939, Kane assigned to DC Comics “all my right, title, and interest in Batman” and quickly set to work. The cover of the first publication growing out of this collaboration, is shown below.



Since 1939, DC Comics has deployed Batman in many media – comic books, films, merchandise, etc. During that period, the character of Batman has shifted periodically, partly in response to changing consumer tastes, partly to fit the personalities of the actors who have depicted him in audiovisual works. One of the most memorable of Batman’s incarnations was that of “the dark knight,” one of the central characters in the acclaimed 2008 film of the same name. That version of Batman, played by the actor, Christian Bale, is shown below.



Bob Kane, the original creator of Batman, died in 1998, leaving all of his assets to his wife, Elizabeth Sanders, who is still alive.

Derek Driver, a resident of Los Angeles, is a passionate fan of the Batman movies. In 2022, he located and purchased one of the few remaining “Batmobiles” that had been produced by Mark Towle before he lost his famous copyright case.

Among Driver’s friends is the sculptor, Léo Caillard. (His biography is available at <https://leocaillard.com/#fullbio>.)

In November of 2023, Driver purchased a Batman costume at a novelty shop, drove his Batmobile to Caillard’s home in Tahoe City, California, and (wearing the costume) strode into Caillard’s studio with a flourish. Delighted, Caillard asked Driver to pose for some photographs. At one point in the ensuing photo shoot, Driver (still in costume) sat on a stool and adopted the position made famous by Rodin’s *The Thinker*. Caillard laughed and took a photograph of Driver in that pose.

After Driver returned home, Caillard decided to create a life-sized sculpture based on the photo he had taken of the costumed Driver. He titled the work *Dark Knight Thinker*.

When the work was completed, Caillard asked the manager of Heavenly Valley (a ski resort near his studio), if he might offer the sculpture for sale by placing it in a prominent location on the slopes of the resort. Thinking that the sculpture would amuse skiers, the manager happily agreed. In January of 2024, Caillard installed the sculpture at Heavenly Valley. A photo of the work in that location appears below.



As yet, no one has offered to purchase the sculpture. However, it has become well known among the visitors to the resort.

In February of 2024, Driver went skiing at Heavenly Valley and saw the sculpture. Annoyed, Driver called Caillard and asked why he had not been given any credit for helping to create it. Caillard brushed him off.

Warren Miller produces documentary films about skiing. (Examples can be found at <https://warrenmiller.com/film-archive>.) One of the segments of Miller's 2024 film "Breaking Good" features Heavenly Valley. One of the clips in that segment shows Caillard's sculpture. The narrator of the film subtly suggests that *Dark Knight Thinker* is an unimpressive piece of art and moreover that it looks especially ludicrous in a ski resort. Last week, Caillard saw the film and was enraged. He promptly contacted a law firm based in San Francisco and asked for advice.

Caillard's primary concern is what rights he might have against Miller. But he is also worried about his own exposure to liability for copyright infringement, and he is curious concerning the potential claims of other actors in this drama.

You are an associate in the law firm. The partner in charge of the case asks you to draft a memorandum, in which you address the following questions:

- a) Does *Dark Knight Thinker* infringe DC Comic's copyright in *Batman*? (600 words)
- b) Might Sanders assert any rights to *Batman*? (200 words)
- c) Might Driver claim any interest in *Dark Knight Thinker*? (300 words)
- d) Assuming the answer to question (a) is yes, does DC Comics have a copyright claim against Heavenly Valley? (300 words)
- e) Assuming the answers to questions (a) and (c) are no, would Caillard prevail in a copyright infringement suit against Miller? (400 words)
- f) Would DC Comics prevail in a copyright infringement suit against Miller? (400 words)
- g) If the answer to question (e) is yes (and thus Caillard prevailed in a suit against Miller), what remedies would be available to Caillard? (400 words)

You may assume that the law governing all of these questions is the copyright law of the United States as interpreted by the United States Supreme Court and the Court of Appeals for the Ninth Circuit. If you need 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 1500 words.

- (A) Select one and only one of the four theories of intellectual property that we have considered in this course. Select a country with whose copyright law you are familiar. Suppose that the copyright law of that country were reconfigured to align more closely with the theory you have chosen. How, if at all, would that reconfiguration affect the outcome of disputes of the sort exemplified by question (a) in Part I, above?
- (B) Select one and only one major issue in copyright law that we have examined this semester. (Examples of such issues include: originality; formalities; fair use; and secondary liability.) Solicit the opinion of the IP Theory Chatbot concerning how each of the four theories of intellectual property might help guide reform of the rules with respect to that issue. (The Chatbot is available through <https://ipxcourses.org/ip-theory-chatbot/>.) Then write an essay indicating the respects in which you disagree with the response provided by the IP Theory Chatbot. (At the start of your answer, you should reprint both the prompt(s) you used to solicit the Chatbot's response and the text of the response itself. However, you may exclude the words contained in your prompt(s) and in the Chatbot's response when calculating the total number of words in your answer. In other words, the limit of 1500 words only applies to the essay in which you explain how you disagree with the Chatbot.)
- (C) Under what circumstances, if any, should a work created with the assistance of artificial intelligence enjoy copyright protection? Under what conditions, if any, should a for-profit company be permitted to use copyrighted works to train a large-language model without the permission of the owners of the copyrights in those works?

End of Exam