Copyright refers to an area of law that gives creators (like writers, artists, and photographers) protection for their works. Through copyright law, creators can prevent others from copying or using their works without their permission.

**What does copyright protect?**

Only expressions of ideas are copyrightable. Ideas are not. An expression is an idea made real. An author may have an idea for a story, but it is not until she writes it down that she has an expression. The author can then use copyright law to prevent others from copying her expression. However, she cannot prevent other people from using the same or similar idea.

*For example,* J.K. Rowling cannot prevent others from writing about an orphan wizard, but she can prevent others from copying the Harry Potter books.

**How does copyright protection work?**

Copyright protection gives creators the right to prevent others from (1) making copies of their work, (2) preparing “derivative works” (works based on other works—like sequels or movie adaptation of books), (3) distributing copies of their work, (4) performing the work publically, (5) displaying the work publically, and (6) playing the work over digital transmission.

Anyone who violates any one of these is a copyright infringer. A copyright owner could then sue the copyright infringer in court.

1) Which of the following is copyrightable?
   - a) A painting
   - b) A poem
   - c) The theme of a book
   - d) All of the above
   - e) None of the above
   - f) a) and b)

2) Which of the following is NOT copyright infringement?

   - a) Jessica went to a museum with a pen and paper and drew several of the paintings she saw.
   - b) Ashley typed up the book Green Eggs and Ham word for word and then only changed the title to Blue Carrots and Chicken, and sold copies.
   - c) Carl wrote a sequel to one of his favorite books.
d) Jeremy carved a wooden statue of his state senator.

**WHAT ARE THE REQUIREMENTS FOR COPYRIGHT PROTECTION?**

To get copyright protection, or, in other words, to be *copyrightable*, a work must be:

1. **original**
2. a work of authorship
3. in a “fixed in any tangible medium of expression”

*Original*, for the purposes of copyright law, means that a work is not a direct copy of a previous work. Even if the new work is similar to something else, so long as it adds something new or is expressed in a different way, it will be considered *original* enough to get copyright protection.

*For example*, Sam paints a portrait of his little sister in the same style as the Mona Lisa. Sam’s painting is not a direct copy of the Mona Lisa, so it is an *original* expression that will get copyright protection.

“*Authorship*” means that the work has an author—someone worked on it and created it. Works can have multiple authors. All those authors become copyright owners of that work and share rights. Only an author of a work can get copyright protection for their work.

Facts are not created by anybody—they are just true statements about something that exists in the world. Like ideas, facts are not copyrightable and anybody can use them.

A creator can incorporate facts into an expression, but only the expression of those facts is created by the creator and therefore copyrightable.

*For example*, if it is true that “Elena lives at 100 Copyright Lane”, then that information is fact.

*However*, a biographer can write “At the end of Copyright Lane, there was a charming house with a blue mailbox. It was in this house, number 100, that Elena resided.” That writing is an expression created by the biographer, therefore it is a work of *authorship* and gets copyright protection.

*However*, a second biographer can write “In the twilight of her life, Elena lived happily at 100 Copyright Lane, which was a modest and quaint home with a blue mailbox at the front.” The second biographer can use the same fact as the first biographer, so long as she expresses it differently. Since the second biographer created her expression, it is also a work of *authorship* and gets copyright protection.

“*Fixed in a tangible medium of expression*” means that the work exists in some physical or digital form. Lawyers also call this the *fixation* requirement, or can say the expression is *fixed*.

*For example*, Rob came up with an original song. After tinkering with the song on his guitar for a few days, he finally recorded himself playing the song and uploaded it to his
Facebook page. The moment he recorded the song, it became fixed. From that point on, it was copyrightable.

Also, instead of recording his song, Rob wrote down the composition of the song on some sheet paper. Once written down, the song became fixed. From that point on, it was copyrightable.

3) Which of the following are you a copyright owner of?

   a) A poem you wrote about a trip to the zoo.
   b) A handful of leaves you picked up from the park.
   c) A copy of the first page of your chemistry textbook.
   d) A picture you ripped out of a magazine.

4) After the Yankees game, a journalist wrote an article about the game. Which element is copyrightable?

   a) The number of hits each team had.
   b) The journalist’s opinions on the coaching decisions.
   c) The names of the pitchers.
   d) The location and duration of the game.

WHAT IS FAIR USE AND HOW DOES IT APPLY TO COPYRIGHT LAW?

Fair use is an exception to copyright law. Normally, a copyright owner can prevent people from copying or using their work. With fair use, someone can use part of or all of a copyrighted work without the copyright owner’s permission and not get in trouble.

To determine if a particular case is fair use, the Copyright Act lists four factors to consider. The four factors are:

1) the purpose and character of the use;

   Is the purpose of using someone else’s work to make money or for a nonprofit purpose, like using it for education? Generally, educational purposes such as criticism lean more towards fair use.

2) the nature of the copyrighted work;

   What is the copyrighted work? Is it a fictional novel? An advertisement? Factual works tend to lean towards fair use.

3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;

   How much of the copyrighted work was used? Was it 50 percent? 100 percent?

   Was an important part of the work used, for example, the chorus of a song, or an insignificant part, for example, a couple of random notes? The important or significant
part of the work is called “the heart” of the work. Using smaller and less significant portions tends to lean towards fair use.

and;

(4) the effect of the use upon the potential market for or value of the copyrighted work.

By using a copyrighted work, did the new user take away any customers, readers, viewers, etc. from the copyright holder? An answer of no or not really tends to lean towards fair use.

Courts balance the four factors for each particular case. There is no formula for how much each factor matters. The analysis is different each time.

5) Max read Harry Potter and the Prison of Azkaban. He is writing a newspaper article about the book. Which of the following articles is likely a fair use?

a) Max wrote a book review containing his personal opinions and references to specific characters.
b) Max wrote an article about how Harry Potter is an allegory for World War II, and used a few quotes from the book.
c) Max wrote an article titled “My Favorite Chapter from Harry Potter and the Prison of Azkaban”, and then explained why Chapter 4 was the best part of the book, and described events that happened in the book.
d) Max wrote an opinion piece about how Sirius Black is the true hero of the story and referenced scenes and dialogue in the book.

e) All of the above.
f) None of the above.

6) Which of the following is most likely fair use?

a) Christina copied an article and printed it as her own.
b) Christina videotaped the movie “Avengers” in theaters and posted it on her YouTube page.
c) Christina read a book review she disagreed with. She took quotes from the article, and criticized the author of the book review’s points.
d) Christina posted an entire Nike advertisement on her YouTube page, titled the video “Nike Ad 2016”, and at the end of the video has two seconds of text that says “I don’t like this ad.”

7) Which of the following is likely not a fair use?

a) Ashley took the entire Taylor Swift “Shake It Off” video, added a 2 second clip of her dancing at the end, and posted it on her YouTube page.
b) Ashley took a 5 second clip from the “Shake It Off” song, and included it in a 2 minute video of her dad “dad dancing.”
c) Ashley made her own video making fun of how crazy the choreography is in the “Shake It Off” video and recreated a few scenes.
d) Ashley painted a picture of Taylor Swift.

8) Which of the following may help videos to become more fair use?

a) Changing the music or other sounds in the video.
b) Editing or removing portions of the original material.
c) Adding comments that critique the video, such as pointing out any sexism or racism in the video.
d) All of the above.
e) None of the above.

The LAMP teaches youth, parents and educators to comprehend, create and critique media and technology. MediaBreaker/Studios is the LAMP’s online video editing tool to remix and talk back to commercials, news clips, music videos and more. Breaking videos teaches about how, why and for whom media are made. Now that you have some knowledge about fair use, let’s test you to see if these Broken videos are fair use!

9) Given what you know, watch these two video and determine which one is more likely fair use and why.

VIDEO 1:
https://www.youtube.com/watch?v=X_l0Z0PSLtl&list=UUedR5HpWqfaImbW5_q0AefA&index=16
VIDEO 2:
https://www.youtube.com/watch?v=B9LUvI9X7L4&list=UUedR5HpWqfaImbW5q0AefA&index=24

a) Video 1 because it inserts critical commentary about public perception of what men should look like.
b) Video 1 because it was posted online earlier than Video 2.
c) Video 2 because it includes a description of the runners’ physical build.
d) Video 2 because it includes one comment critiquing the video’s use of female stereotypes.
e) Video 2 because it uses a style of language made popular by internet memes.

10) Which of these videos offers a better “critique-to-video” ratio?

VIDEO 1:
http://www.youtube.com/watch?v=pswJ8gpeQkQ&list=UUedR5HpWqfaImbW5_q0AefA
VIDEO 2:
http://www.youtube.com/watch?v=ZZVulOUJYG1&list=UUedR5HpWqfaImbW5_q0AefA

a) Video 2, because Video 1 pauses the video to add commentary, but doesn’t change the actual commercial clips.
b) Video 2, because the creators inserted video footage from real students into the commercial.

c) **Video 1, because Video 2 plays the entire commercial with only two brief interruptions with minimal critique.**

d) Video 1, because it questions why the dog is wearing eye shadow.

e) Video 1, because it critiques children’s toys instead of cars.

11) How can the following Media Breaker submission be changed to be a stronger example of fair use?

**VIDEO:**
https://www.youtube.com/watch?v=byBJDLRD8o&list=UUedR5HpWqfaImbW5_q0AefA&index=77

a. Change the background music or voice in the commercial.

b. Change some of the description of the commercial to critique about how the commercial has nothing to do with the advertised product.

c. Edit and remove portions of the video so the entire video is not played.

d. Add additional video to break-up and transform the video.

e. **Any of the above.**