



Handout 1 - Pre-Trial Research for All Groups

The definitions and concepts found in the articles below will guide the arguments for both sides in the courtroom trial that follows. Read the following entries together with your group, taking notes on the central ideas and definitions of key terms. These materials will inform your evaluation of the issues and support your team's position in the courtroom activity that follows.

Concepts:

From *LegalZoom*, "**What Copyright Protects**":

Copyright protects original works of authorship in a variety of categories, including literature, music, choreography, drama, motion pictures and other audiovisual material, architecture, pictures, sculptures and sound recordings. The owner of a copyright has the right to sell or lease his work. He can make and distribute copies of it, display it and/or perform the protected work. The copyright owner may also authorize other persons to use the work. This right typically lasts for the life of the owner plus an additional 70 years; this period may differ slightly in certain circumstances, such as when there are joint owners.

From *LegalZoom*, "**Meaning of Original Works**":

To receive copyright protection, a work must be *original*. Generally, this means the work is new and different, which usually requires a minimum level of creativity. For example, while the alphabet is not an original work for copyright purposes, if someone uses the letters of the alphabet in a painting, the artistic rendering of those letters is original. A work must also be set in a fixed, tangible form or it can't be copyrighted. The moment the artist turns his idea about incorporating the alphabet into visual art by creating an actual painting using the letters, copyright attaches to the painting and the artist owns that copyright. You cannot copyright ideas.

From Stanford University Libraries, "**Fair Use**"

Fair use is a copyright principle based on the belief that the public is entitled to freely use portions of copyrighted materials for purposes of commentary and criticism. For example, if you wish to criticize a novelist, you should have the freedom to quote a portion of the novelist's work without asking permission. Absent this freedom, copyright owners could stifle any negative comments about their work.



In its most general sense, a fair use is any copying of copyrighted material done for a limited and “transformative” purpose, such as to comment upon, criticize, or parody a copyrighted work. Such uses can be done without permission from the copyright owner. In other words, fair use is a defense against a claim of copyright infringement. If your use qualifies as a fair use, then it would not be considered an illegal infringement. The definition of a “transformative” use is deliberately open-ended and, thus, has been contested many times in court.

Lawyer often use two guiding questions about “transformation” in “fair use” cases. First, has the material you have taken from the original work been transformed by adding new expression or meaning? Second, was value added to the original by creating new information, new aesthetics, new insights, and understandings?