

Suggested Answers to the Questions in Chapter 1

1. Has copyright protection expanded so far that protection can no longer be justified? If so, would it not be better to abolish copyright altogether?

The good answer will:

- Demonstrate knowledge of the theories that justify copyright protection – including economics and moral theories - and their relationship with copyright in practice. It would also be useful to refer to e.g. the duration of copyright term, which has been extended on a number of occasions since the Berne conventions, as well as recent developments in the doctrine of infringement, including defences and limitations to copyright protection.
- Demonstrate engagement with the key cases discussed in the chapter such as *Green*, *Baigent*, *Sawkins* and reflect upon the question of whether these cases indicate a growing enclosure by, or expansion of, copyright (*Sawkins*) or drawing a line between what is and what is not protected (*Green*, *Baigent*).
- Conclude by considering whether abolition of copyright is appropriate or an over-the-top response to recent expansionary legislation and court decisions. Whatever the conclusion, students will be expected to have explained both sides of the argument and made their own persuasive argument by the end of the essay.

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2. Can a new adaptation of a public domain work be protected by copyright? Discuss.

The good answer will:

- Begin by explaining that only original works of copyright are protected by the law and that copyright is a time-limited right, lasting for 70 years after the death of the author in the case of literary, dramatic, artistic and musical works. Once copyright expires, the work is in the public domain. Common examples should be cited such as Shakespeare's plays. The student should then explain that where a new author adds originality to a public domain work, the new author can claim authorship/ownership of this new adaptation or arrangement, but only to the extent of the new originality. The existing public domain work remains in the public domain and can be adapted by other authors.
- Focus on the case of *Sawkins*, which dealt with these issues in the music context – explaining what exactly Dr Sawkins was able to claim as his work of authorship, and why the dispute with Hyperion Records occurred.
- Conclude by reflecting on the consequences of this legal doctrine, examining whether it could, through the incentive/reward theory, encourage further acts of creativity and adaptation or whether it simply adds to the 'enclosure' of the public domain and the 'expansion' of copyright.

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3. Is the idea/expression dichotomy a useful one, or is it simply misleading?

The good answer will:

- Explain the notion of the ‘idea-expression dichotomy’ in detail, beginning with the basic notion that a broad or generic idea cannot be protected, and that copyright law favours protection of detailed expressions (ideally those that have been ‘fixed’ in some form). Expand on this by explaining that some detailed ideas (fleshed-out characters, a detailed plot, etc.) could be protected by copyright while a broad pitch would not. In other words, the idea of a film script based on the love triangle plot would not be protected, but a detailed outline of a script with named characters and plot descriptions, even if incomplete, could be protected.
- Discuss relevant case law such as *Green*, *Sawkins* and especially *Baigent* – the key U.K. legal statement on the idea-expression dichotomy in the literary context.
- Conclude by explaining the core argument – ultimately, is the use of this doctrine useful or does it just lead to confusion given the fact that detailed ideas can actually be protected and it is only broad ideas that are excluded?