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MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Guidance Concerning Works Protected By Copyright

1. With the advent of the digital age, copying, transmitting and viewing movies, music, and other works has become ever increasingly easy. The ease with which a picture or a video can be duplicated, distributed, or posted to an internet site has often caused many to forget that works of original authorship are protected by copyright in the United States. Anyone copying, distributing, publicly displaying, or publicly performing a work of original authorship must be certain of his or her right to do so. This can be difficult as there is no requirement for copyright holders to mark their works to indicate their rights. Anyone exercising a right exclusively granted to the holder of a copyright may be subjecting themselves or the United States (U.S.) Government to a claim of copyright infringement if there is no legal right to the use the work.

2. Temptations abound: many presenters want to punch up their slides by including interesting material such as cartoons, movie clips, or musical accompaniment. There is no universal "Fair Use" exception to a copyright holder's rights merely because the user is an employee of the Federal Government or because the use involves training and is not-for-profit. Determining whether a use is a fair use or a use entitled to an exemption in the course of face-to-face teaching activities usually requires a detailed analysis - an analysis that a court may not agree reached the correct conclusion.

3. Copyright law is complex. Unless a work was published before 1923, is a work of the U.S. Government, or is a work known to be covered by a license to use the work in the manner specifically authorized, the use of such work may risk exposure to liability. Commanders, Directors, and supervisors at all levels are responsible for ensuring that those under their command or control do not infringe a third party's copyright. Unless you are 100% certain that a use of a work is permitted under copyright law, contact your servicing legal counsel for assistance before you use the work. Plan ahead: identifying copyright holders and attempting to acquire a license to use a work can be a time consuming process and may result in a request for a significant fee even for a one time use.

4. Copyright licenses involving the Government must comply with all applicable federal contract law; however, standard commercial copyright licenses frequently do not. Defense Federal Acquisition Regulation Supplement terms generally do not apply outside of technical data and software; therefore, when copyright licenses are obtained, care must be taken to understand and ensure compliance with all license terms. Ensuring compliance frequently includes educating persons who were not involved with the original acquisition of copyrighted works concerning the continuing license obligations. Care should also be taken to recognize that projects that involve obtaining media "content" or "products" may implicitly require copyright licensing but may do so without ever mentioning copyright, intellectual property, or licensing.

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