

UIC JOHN MARSHALL LAW SCHOOL



Copyright Use Policy

1. Copyright Use Policy:

- a. The copyrights of authors and other creators must be respected. Any use of copyrighted materials in violation of copyright law is a violation of school policy.
- b. Copyright protected materials should not be used for educational purposes, including use in a classroom setting, as instructional materials, or otherwise unless the educator has either obtained permission of the copyright owner for the use in question, or the use is a privileged under copyright law.
- c. Where time and circumstances permit, educators should obtain the permission of the copyright owner for the use of the materials in question unless such use is clearly privileged.
- d. Use of work is privileged if it either qualifies under a statutory exemption such as the TEACH Act (granting extended use rights for various class uses of instructional materials under Section 110 of the Copyright Act), or qualifies as a fair use, and meets the Law School's Copyright Use Policy. Use of a work is also privileged if the use is within the scope of an applicable license for use of the work.
- e. Educators cannot direct third parties, including without limitation staff, faculty or students, to use a copyrighted work in a manner which violates copyright laws and/or this Policy.
- f. In order to avoid violating this Policy each educator must evaluate each work which s/he intends to use in connection with educational activities, using the guidelines set forth in this Policy.
- g. When copyrighted materials are provided to students, including through posting of materials on websites associated with a course, a notice regarding the copyright protectable nature of such materials must be provided. The Administration shall promptly establish procedures regarding the form and placement of such notices and shall be responsible for revising any such form and placement in accordance with legal obligations under copyright law.

- h. When in doubt as to whether a proposed use complies with this Policy, educators must contact the individual[s] designated by the Administration to determine if their proposed use complies with the Policy. The Administration shall designate individual[s] to develop and thereafter assume responsibility for establishing and managing a set of procedures that will allow individual faculty members who may need permission to use copyrighted materials in their classes to obtain permission from the pertinent copyright holders. At the individual faculty member's option, this designated person (or his or her delegates), rather than individual faculty members, shall handle the ministerial task of obtaining necessary copyright permissions.
 - i. Where materials are used for in class instruction, UIC John Marshall Law School itself, rather than individual faculty members, shall bear the reasonable cost of obtaining needed copyright permissions. For materials which are used as outside class study materials, the students shall bear the reasonable costs of necessary permissions. The arrangements for such costs shall be made by person[s] designated by the Administration and shall not be the responsibility of the individual faculty member.
 - j. The policy only applies to the ability to use materials under copyright law and does not address other laws which may prohibit or restrict the intended use, including, for example, privacy, right of publicity and contract. The policy does not confer legally enforceable rights upon any third party, and shall not be interpreted to expand the scope of copyright protection or prohibit any otherwise legal use of copyright protected materials.
- 2. Guidelines for Copyright Use for Faculty, Staff and Other Educators:** These guidelines are provided to assist individuals who are engaged in educational activities, whether via the classroom, distance learning or in a clinical setting, at the Law School, including any educational activities that take place under the auspices or with the sponsorship or affiliation of the Law School, regardless of their location, content or method of delivery to comply with US copyright laws in the creation, distribution and other use of copyrighted materials in connection with their educational activities.
- 3. Guidelines for Applying the Policy:** Because of the complex nature of copyright protection use issues as they apply to the educational environment, it is impossible to establish black letter "rules" governing such uses. What this policy does is establish general rules of thumb regarding the types of uses that are appropriate in the educational setting. In the event that you have questions about the application of these policies to a particular use of a copyrighted work in connection with educational activities at the Law School, you must contact the individual[s] designated by the Administration to provide assistance in copyright use issues before you use the work. If you need to obtain permission to use the

work, you must contact the individual[s] designated by the Administration to help obtain such permission for you. In accordance with school policy, the Law School will bear the reasonable costs of obtaining permission for use of materials in class and will take the necessary steps to charge the students the reasonable cost of permission for materials used for outside class study, including for example, in course packs.

- 4. Why Bother?** It is a violation of school policy to use copyrighted works in violation of copyright law. Failure to comply with this policy can result in administrative sanctions.

Furthermore, individuals, including educators, are liable for copyright infringement and have in the past been successfully sued for violating copyright. Present US copyright law provides for significant penalties, including awards of statutory damages of up to \$150,000 per work infringed. Ignorance of copyright law is no defense.

As described more fully below, just because you are using a copyrighted work for educational purposes does not exempt your activities from copyright liability. All educational uses do not qualify as a fair use under copyright. Instead each use is judged on a case by case basis. Consequently, you must evaluate each educational use of materials created by a third party to determine if the work is copyright protectable. If it is then you must determine if your proposed educational use is privileged under copyright law. If your proposed use is not privileged, you must either obtain the permission of the copyright owner for use of the work in question, or **YOU MUST NOT USE THE WORK**. If you follow the guidelines set forth in this policy, it is more likely that your use will be considered a fair (privileged) use and you will be in compliance with School Policy.

- a. In order to determine whether you need to obtain prior permission of the copyright holder to use a work for educational purposes, you should ask yourself the following questions:
 - i. Is the work that I want to use protected under copyright?
 - ii. Does my use potentially violate one of the copyright owner's exclusive rights?
 - iii. Is my use exempted or excused from liability for infringement?
- b. You should note that these guidelines only address issues of copyright law. There may be other laws that prohibit your use of materials, including privacy law.
- c. To assist in determining whether your proposed use violates copyright, this policy sets forth a series of questions to help you answer the questions, as well as rules of thumb to apply in determining your need to seek permission of the copyright owner for the work in question.

- 5. What works are protectable under copyright?** Under US copyright law, copyright protection is extended to "original works of authorship fixed in any tangible medium of expression now known or later developed from which they can be perceived, reproduced or otherwise communicated..." (17 U.S.C. §102(a)) Copyright protection does not extend to "any idea, procedure, process, system, method of operation, concept, principle or discovery." (17 U.S.C. §102(b)) In essence, so long as a work has been recorded, filmed, written or otherwise set out in a tangible form, it may be subject to protection under US copyright law. Consequently, literary, dramatic, musical, artistic or other intellectual works, including original collections of information may be protected. Thus, under US copyright law, virtually any type of material which you may seek to use for instructional purposes, texts, sound recordings, power points, images, videos, music and the like are potentially copyright protectable.

The absence of a copyright notice does not mean that the work is not subject to copyright protection. Copyright notices are not required. The presence of such a notice, however, may be considered strong evidence of copyright protection for purposes of this policy.

For purposes of legal education, however, there is a significant body of work that falls outside the scope of copyright protection. Works of the US government are not subject to copyright protection. This category of excluded work does not include every work that is published or distributed by the US Government but only those which are created by employees of the US Government within the scope of their employment.

Among this category of generally unprotected works are cases, statutes and regulations. However, only the unannotated versions of such governmental materials are outside the scope of copyright protection. Headnotes and other annotations such as appear in Westlaw and Lexis versions of cases are potentially copyright protectable. Similarly edited versions of cases created by someone other than a governmental employee within the scope of his/her employment are potentially copyright protectable.

- 6. Are some works too old to be protected under copyright?** Under present law, copyright protection lasts for the life of the longest-lived author plus an additional 70 years. Due to historical statutory term extensions, however, the earliest work that can be generally assured to be outside the scope of copyright protection in the United States is one created on or before 1923. Every other work is potentially copyright protectable and should be treated that way. Moreover, while a work may have been created before 1923 and therefore falls outside the term of copyright protection, any annotations or arrangements of the work may still be protected. Thus, for example, if you intend to use a sound recording of Beethoven's Fifth, the composition is not subject to copyright protection because it was composed before 1923. BUT if the sound recording was created before 1923, then you can perform that recording in class unless

you have either obtained permission from the copyright owner, or your use is privileged.

- 7. What rights are authors granted under US copyright laws?** Upon the creation of a copyright protectable work the author (or copyright owner) is entitled to a bundle of six rights. These rights include the exclusive right to do or authorize the following acts:
- a. The right to reproduce, in whole or in part, the work in copies;
 - b. The right to prepare derivative works based upon the original;
 - c. The right to distribute copies of the work to the public;
 - d. The right to perform the work publicly;
 - e. The right to display the work publicly;
 - f. In the case of sound recordings, the right to perform the work publicly by means of a digital audio transmission.

Neither copyright registration, nor a notice of copyright is required for copyright protection to attach. Furthermore, you do not need to reproduce an entire work to violate an author's copyright. Reproduction of a book chapter or even smaller portion of the work is sufficient to give rise to a potential copyright infringement claim.

Public performance includes, for example, the playing a song or a video for the class, or even the public recitation of a copyrightable work. Any unauthorized use of a copyrighted work that violates any of the author's rights is a potential copyright violation. Without permission of the copyright owner or a privilege to use such work such as fair use or through a statutory exemption is a violation of copyright and is prohibited under this policy.

US Copyright law provides for a complete panoply of remedies for copyright infringement, including injunctive relief, seizure and destruction of the infringing copies as well as all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which infringing copies or phonorecords may be created, actual damages (including lost profits), statutory damages, up to \$150,000 per infringement for willful infringement....costs and reasonable attorneys' fees. The parties that may be held liable for copyright infringement include the party which committed the infringing act (referred to as a "direct infringer"), the party which knew of the infringing activity and induces, causes or materially contributes to it (referred to as a contributory infringer) and the party which has the right and ability to supervise the parties engaged in the infringing activities and who had a direct financial interest in the exploitation of the copyrighted material (referred to as "vicarious liability").

Thus, for example, you may be liable for copyright infringement if you either make an unauthorized copy of a copyright protected work, or if you direct others (including your students or other school personnel) to make such a copy. You will violate this policy by directing others to do what you cannot do under the policy, and you will also face potential liability under copyright laws.

- 8. What rights do I get under copyright if I own a legitimately purchased copy of a work?** If you have obtained a legal copy of a copyrighted work, you have the right to further distribute that work. This means you generally have the right to loan your copy or even sell it, unless you have agreed to the contrary in a license agreement regarding the use of such copy. You do not have the right to make copies of these works unless it is authorized by a governing license agreement or unless such copies are privileged under copyright, either by statutory exemption or fair use.
- 9. Do I violate copyright by placing a legitimate copy of the materials on reserve in the library for the students to read before class?** No. So long as the copy is a legally created version which has been legally obtained and making it available to others does not violate any license limitations that may apply, and the student is using it for private study purposes, such reservation should be acceptable. Thus, for example, if you have purchased a legal copy of a magazine and you want your students to read a particular article, you may place the original version of the article on reserve for them to read. You may not, however, make a copy of the article or advise students to copy the article, unless such copying has been authorized by the copyright owner, or is privilege. In the event of questions about library reserve policies, you should always check with the library staff.
- 10. Do I violate copyright by posting someone's law review article on the associated website for the course?** You may. Whether you post the article yourself or direct someone else to post it for you, absent permission of the copyright owner, you may be violating the author's copyright since such posting might be considered either an unauthorized reproduction or an unauthorized distribution. Such use is only permissible if it either qualifies as a fair use or is otherwise privileged under US copyright law. While US copyright law recognizes a privilege to use a copyrighted work without the author's permission, as discussed more fully below, there is no absolute or categorical fair use defense for educational uses of copyrighted materials. Each use must be judged on its own merits.
- 11. What qualifies as a privileged use under this policy?** A privileged use is one which has not been authorized by the copyright owner but is either exempt from copyright liability under the statute, or which qualifies as a "fair use" under the statute.
- 12. How do I decide if a proposed use is exempt from copyright liability?**
Exemptions for the use of copyrighted works for purposes of education are set

forth in Sections 110(1) & (2) of the Copyright Act. (17 USC 110(1) & (2)) Your ability to use a work, and the types of uses that are permitted under Section 110(1) & (2) depend upon a variety of factors, including whether you intend to use the materials in face to face (classroom) teaching, study materials for individual student use, or in distance learning settings (including through websites and streaming video).

13. What exempted uses exist for face-to-face (classroom) teaching? Section 110 only exempts certain uses involving the performance and display of copyrighted works. All other uses for classroom teaching, including the preparation of instructional materials and their distribution to students are governed by the fair use doctrine discussed below.

The performance or display of a copyrighted work in a classroom or similar place devoted to instruction is generally permissible provided that a lawful copy of the work is being used for such performance. Thus, for example, if you want to show a video or play a movie as part of classroom instruction such use is permissible so long as you are using a lawful copy of the work for such performance. This means the copy you intend to perform or display must have been lawfully acquired and the use in question cannot exceed that of any license provided in connection with the copyrighted work.

In connection with any such performance or display you should always be conservative in the amount of the work performed or displayed. You should display any copyright notice found on the original as well as any other appropriate citations and attributions to the source of the work, and you should NOT provide any copies of the displayed materials unless such copies are permitted under a separate privilege (such as under fair use). The performance and display right exempted in this section is limited to those uses.

Such permitted uses however do not include any performance which is achieved by circumventing any electronic encryption, copy code, or other technological protection which has been placed on the copyrighted work to prevent unauthorized performances. Thus, for example, this Section does not authorize the "ripping" of DVD protection codes for purposes of creating digital clips.

14. How do I know if the copy of the work I am using is lawful? To qualify as a lawful copy, the work must have been obtained through lawful channels. This means that the copy of a song that you have downloaded from a peer to peer file trading network does not qualify unless the download was authorized by the copyright owner. Lawful copies of works may include not only legally purchased works, but also works that have been borrowed from the library, through interlibrary loan or from colleagues so long as the original copy was lawful. In addition if you are using materials that are governed by a license or agreement establishing restrictions on its use, you must abide by those restrictions to fall within the copyright liability exemption of Section 110.

15. If I own a lawful copy of a work can I make copies of the work for my students or post it on a website for them to read without obtaining the permission of the copyright owner? You do not have the right to make a copy of a lawful work absent the permission of the copyright owner unless such copies are privileged. Section 110 does not authorize the making of a copy to facilitate the performance or display of a work. However, such copies for purposes of performance or display are authorized under Section 111 which authorizes the creation of copies for secondary transmissions the creation of ephemeral copies. Thus, to the extent you must make a copy of a work in order to display or perform it in face to face classroom teaching, such copy is authorized. Furthermore, under Section 112, you may keep one archival copy of the work. You may not, however, provide copies of the performed work to students, including its posting on a website connected with a class or for distance learning unless such reproductions qualify as a fair use.

16. What about the performance of power points and other materials that I have created using other works, including video clips, photos and the like? The use of power points and other's materials in the performed works is not covered by Section 110. Such uses are governed by Fair Use.

17. What about materials that I create for students to study, read, listen or watch on their own time, outside of class? Section 110 does not deal with materials which are created for use by individual students outside the classroom. The creation of instructional materials, including the posting of video or audio materials for the students to review or study outside of class are governed by the doctrine of fair use, discussed below.

18. What are exempted uses for distance learning (non face-to-face or mediated) instructional activities? The right to use materials in connection with mediated or distance learning activities is more limited under Section 110 than the right to use materials in face to face classrooms settings. For example, while Section 110 does not restrict face to face classroom performances to any particular medium, for mediated instruction, audio visual and dramatic musical works may only be shown in "reasonable and limited portions." In other words, only the performance of clips of such works is exempted.

For any work used in connection with distance learning, the display of any such work on, for example, an associated webpage must be limited to an amount "which is typically displayed in the course of a live classroom session." Furthermore any performance or display of works must be "directly related and of material assistance to the teaching content" of a course.

The use of materials specifically marketed for distance or digital education are specifically excluded from the exemptions provided under Section 110. So are course packs, textbooks, electronic reserves and similar materials which are typically purchased by students for independent review outside the classroom.

Such uses are only permissible if they qualify as a fair use. (See discussion below)

Receipt of any transmission of copyrighted materials for distance learning must be made solely for "students officially enrolled in the course" and its receipt must be limited to such students by "reasonable" technological measures. Furthermore, even these limited exceptions do not apply unless the educational institution "institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection." For materials which are transmitted digitally, the educational institution must also apply technological measures that "reasonably prevent ... retention of the work in accessible form by recipients of the transmission ...for longer than the class session." Such measures must also "reasonably prevent" "unauthorized further dissemination of the work in accessible form by such recipients to others."

In creating and transmitting materials for intermediated instruction, you cannot interfere with any technological measures used by copyright owners to prevent such retention or unauthorized further dissemination. Thus, for example, while you must use a video clip to qualify for the distance learning exemption under Section 110, you cannot rip or otherwise circumvent any technological measures the copyright holder has placed on the DVD from which you wanted to obtain the clip. Thus, you may need to make your video clips from an analogue copy of the film if the digital version is protected by a technological measure designed to protect against ripping.

19. What is fair use? Fair use is one of the most significant defenses to a claim of copyright infringement under US law. In certain limited situations, the doctrine of fair use permits the use of a copyrighted work without the permission of the copyright owner and without compensation. Where your use of a copyright work is not exempted under Sections 110, 111 or 112, fair use is the only other basis on which you can use a copyrighted work without violating copyright. Fair use is an equitable doctrine. The less that you use of a work generally the more likely your use might qualify as a fair one.

The fair use doctrine is presently codified in Section 107 of the Copyright Act. Section 107 establishes four statutory factors to consider in determining whether a particular use qualifies as a fair one. They are:

- a. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (however educational purposes alone do not automatically make a use a fair one)
- b. The nature of the copyrighted work, including whether it is factual in nature;

- c. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; (the less that you use of a work, the more likely your use will be considered fair)
- d. The effect of the use upon the potential market for, or value of, the copyrighted work. (17 U.S.C. §107)

Each of these factors must be considered in determining whether a particular use qualifies as privileged fair use. They are not, however, the only factors that courts consider to determine if a particular use is a fair one. To the contrary, courts often consider additional factors, including, for example, whether the use in question is protected under the First Amendment's free speech protections.

Although the statutory language states that "the fair use of a copyrighted work ... for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright" there are no categorical fair uses in US copyright law. Even the use of copyrighted materials for purposes of education may fail to qualify as a fair use. Fair use determinations must be made on a case by case basis.

The best rule of thumb in any fair use determination is to be as conservative as possible in the amount of others' works that you use without permission. Use only as much as you need and only for the uses that are necessary if you intend to rely upon fair use as a defense to a charge of copyright infringement. Furthermore, regardless of the use you make, you should always use only lawful copies of the works you are using in creating or in using another's work. And you should always reproduce any copyright notice on the original work, as well as any other source attributions that may apply. Credit and conservative uses are some of the hallmarks of fair use determinations.

As a general rule, literary works are subject to a greater amount of protection than factual works such as telephone directories and other factual compilations. Consequently, it is generally harder to obtain a fair use exception for the unauthorized reproduction of a literary work than for a fact work.

There is no bright line rule for the amount of copying which automatically qualifies as outside the parameters of a fair use. Courts have found copying of as little as 55 seconds out of a 1 hour and 29 minute film to qualify as outside the scope of fair use. See, e.g., *Roy Export Co. Establishment v. Columbia Broadcasting System, Inc.*, 503 F. Supp. 1137 (S.D.N.Y. 1980), *atrd*, 672 F.2d 1095 (2d Cir.), *cert. denied*, 459 U.S. 826 (1982). Similarly, copying the "heart of the matter" even if quantitatively small is sufficient to place such copying outside the scope of fair use. Thus a good rule of thumb is to be conservative in the amount of material which you are using. If you must use another's work, do so sparingly.

The key to fair use is really a four part rule of thumb - small portions, limited times, limited access and with appropriate copyright notices and source attributions. Thus, if you are incorporating others' works into your classroom materials, for such incorporation to qualify as a fair use, you should incorporate such works sparingly and only if you or the Law School possess a legal copy of the work. You should use the smallest portion of the copyrighted work that you need for educational materials. You should limit access to such materials to students enrolled in the class and administrative staff as needed. You should terminate access to the materials at the end of the class term.

If you are going to use the materials for the same class each time you teach it, you must obtain permission for those materials. Thus, for example, if you always assign an excerpt of a law review article as part of the classes reading materials, you must obtain permission from the copyright holder to use those materials. Fair use in an educational setting is based on equitable considerations, including to a certain extent the spontaneous nature of the use in a classroom setting. Repetitive use of another's work generally does not support fair use. Thus, if you intend to use the article as part of the students' study materials outside the classroom, you must obtain permission for such uses before you use the materials.

20. Is there a difference in fair use if I use others' works for performance (such as in a power point) and if I provide or post copies of such works as part of the instructional materials for the course? Yes. Generally performance in a classroom setting, limited to enrolled students in a course is more likely a fair use, or privileged under Section 110 (discussed above), than the provision of copies of such materials to students.

21. Are there copyrighted materials whose use is more difficult to defend as a fair use? Yes. Unauthorized uses of materials that have been created for educational instruction, such as text books and their accompanying video or audio discs, generally do not qualify for fair use or a copyright exemption. Thus, for example, even the permitted performance or display of materials for distance learning under Section 110 does not apply to materials created by others for such purposes. The use of such materials would generally be considered to have an adverse impact on their market and cannot be used absent permission of the copyright owners.

22. Do I violate copyright by simply providing a link to the website containing the materials? Generally providing a link to lawful site containing the materials, such as a link to a law review's web site containing downloadable copies of a law review, does not raise issues of copyright liability. Where such a lawful site exists, this is one of the preferred methods for providing digital access to copyrighted materials for educational purposes.

23. Do I violate copyright by digitizing images of others to include in multimedia materials for classroom uses? You may. Digitization is generally

perceived to qualify as a "reproduction" under copyright law. Your ability to use such digitized copy as a fair use will depend on the purposes for which you are creating the digitized copy. If you are creating such copy for purposes of performing a multimedia work (such as a power point or audio or video clip), such uses will more readily qualify as a fair use. The same general rules of thumb apply for determining fair use outlined elsewhere in this policy.

24. Do I violate copyright by using materials downloaded from P2P filing networks? You may. Unless such download has been authorized by the copyright owner such material would not qualify as a lawful copy and could not be the basis for a fair use defense or exemption under Section 110.

25. Where can I read more about statutory exemptions and fair use? The US Copyright law is codified in Title 17 of the US Code. A downloadable copy of this law is available from the website of the US Copyright Office at www.copyright.gov. The Copyright Office also has a downloadable Circular 21 that directly addresses the use of copyrighted materials in an educational setting and contains excerpt from the critical legislative history dealing with the Agreement on Guidelines for Classroom Copying. It does not presently address rights under Section 110.

- a. There are numerous sources for additional information regarding the application of copyright laws to educational materials. The Library has several books on reserve which you may wish to read, including:
 - i. Marc Lindsey, Copyright Law on Campus
 - ii. Steven A. Armatas, Distance Learning and Copyright: A Guide to Legal Issues
 - iii. Carol Simpson, Copyright for Administrators
- b. For information regarding obtaining licenses for copyrighted material for academic uses, see generally The Copyright Clearance Center website at www.copyright.com. You should also check with the library staff to determine if your use is already covered by a pre-existing license.
- c. Finally, there are several online websites maintained by other educational institutions which may provide additional useful information. Among those sites which provide useful information are:
 - i. Brown University
 - ii. Catholic University
 - iii. Columbia University
 - iv. Cornell University

- v. Indiana University
- vi. Stanford University
- vii. University of Texas

These materials are listed here for informational purposes only. They are not incorporated into the Copyright Use Policy but are merely intended to give further guidance on the complex issue of copyright and educational uses.

26. If I use copyrighted materials as part of a fair or exempted use, what type of notice should I provide? It is always preferable to place a notice or give appropriate credit for the source of the copyrighted materials you are using at the time of use. The type of notice may be specified in any license or other agreement authorizing you to use the materials. At a minimum such notice must generally identify the holder of the copyrighted materials, the fact that the work is copyright protectable, and the year of first publication of the work. Standard notice generally takes the following forms: Copyright [date of first publication] [name of author or holder] or Copyright [name of author or holder] [date of first publication]. For example: Copyright 2009 UIC John Marshall Law School or Copyright UIC John Marshall Law School 2009. Where materials are distributed to students as hard copies or as downloadable copies, the notice should generally appear on the first page of the materials.

27. Clearance Checklist for Use of Copyrighted Works

- a. Is the work that I want to use protected under copyright?
 - i. Does it Lack originality?
 - ii. Unoriginal reprint of public domain work?
 - iii. Logical, comprehensive factual compilation (like a phone book)?
 - iv. Is it a work in the public domain?
 - v. Term of copyright has expired?
 - vi. Author has expressly chosen to make publicly available without restrictions?
 - vii. Work of US Government by US Government employees? Facts?
 - viii. Ideas, processes, methods and systems described in copyrighted works?
- b. Does my use potentially violate one of the copyright owner's exclusive rights?

- i. Make a copy (reproduce)?
 - ii. Use a work to create a new work (create a derivative work)?
 - iii. Electronically distribute or publish/post copies of the work?
 - iv. Publicly perform music, prose, poetry, or a play or play a video or audio tape, or a CO-Rom or provide streaming video?
 - v. Publicly display an image on a computer screen or on an associated projection screen (publicly display a work)?
- c.** Have I obtained the necessary permissions to use the materials under copyright and other applicable laws?
- d.** If not, is my use exempted or excused from liability for infringement?
- i. Is the class for which you are creating/using the materials part of the regular (approved) offerings by the Law School? If not, your use is not exempted or excused from liability.
 - ii. Do you have a lawful copy of the materials you intend to incorporate into your teaching? If not, your use is not exempted or excused from liability.
 - iii. Does the original, lawful copy contain encryption or other technological protection measure that you must circumvent to make the use you intend? If so, your use is not exempted or excused from liability.
 - iv. Regardless of the use, do you intend to use these materials each time you teach the class or have you used in previous years to teach the same class? If so, you must obtain permission of the copyright owner for the repeated use you intend to make of the materials.
 - v. Are the materials you intend to use marketed as education or instructional materials, such as textbooks, educational videos and otherwise? If so you must obtain permission of the copyright owner for your use unless it is allowed under fair use doctrines.
 - vi. Do you intend to use the materials for face to face classroom instruction?
 - 1. If yes, do you intend to use the materials every time that you teach the course? If so, you must obtain permission per the Policy.

2. If not, have you restricted use of the materials only to enrolled students and administrative staff required to assist in delivering those materials?
- vii. Have you further restricted access so that students will only have access for a period of time relevant to the classroom instruction and so that no copies will be distributed to the students?
- viii. Have you included the appropriate notice of copyright and other required attributions on your materials?
- ix. Have you used only those portions of others' works in accordance with the Law School Policy?
- x. Do you intend to use the materials for distance learning (mediated) instruction?
 1. If yes, do you intend to use it for students to study, view review or use for instructional purposes beyond what you would use in face to face classroom instruction?
 2. Have you restricted access so that students will only have access for a period of time relevant to the classroom instruction and so that no copies will be distributed to the students?
- xi. Have you included the appropriate notice of copyright and other required attributions on your materials?
- xii. Have you used only those portions of others' works in accordance with the Law School Policy?
- xiii. If you intend to use the materials in distance learning as a replacement for what you would normally use in a class to class setting, have you further restricted access so that students will only have access for a period of time relevant to the classroom instruction and so that no copies will be distributed to the students?
- xiv. Have you included the appropriate notice of copyright and other required attributions on your materials?
- xv. Have you used only those portions of others' works in accordance with the Law School Policy?

If you are uncertain of whether your use is permitted, contact the appropriate administrative staff for guidance before you use the materials.

This checklist is designed to assist you in determining whether your use of copyrighted materials by others violates copyright law. It does not take the place of the Copyright Use Policy on this subject. The Policy and these accompanying Guidelines should always be consulted in determining what uses are authorized. When in doubt, seek permission.

Copyright Infringement Policy adopted August 13, 2014. The policy will be reviewed on an annual basis and modified as necessary to ensure its continuing effectiveness. Last reviewed, January 15, 2016. Copyright Use Policy approved by the Assembly May 4, 2009.