

GardenNotes #017

Using Copyrighted Materials

Are You Legal?

Self-Test

Quickly answer the following questions on legal copying of materials.

- | | |
|--|---|
| <p>1. If there is no copyright statement on the material, is it OK to make copies as needed?</p> <p style="text-align: center;">Yes No</p> | <p>5. In <u>this month's</u> magazine, you find an article that would make a great handout in class next week.</p> <p>A. Can you legally make copies for all class participants?</p> <p style="text-align: center;">Qualified Yes No</p> |
| <p>2. A garden book has a list of shade tolerant flowers that would be useful for a handout for general distribution. Can you legally make copies?</p> <p style="text-align: center;">Yes No</p> | <p>B. Can you legally make copies next year when you teach the class again?</p> <p style="text-align: center;">Qualified Yes No</p> |
| <p>3. Who owns the copyright on materials you produce as part of your Colorado Master Gardener service?</p> <p style="text-align: center;">You CSU</p> | <p>6. You find a great article on the Web for your program.</p> <p>A. Can you legally print a copy for your own scholarly reference?</p> <p style="text-align: center;">Qualified Yes No</p> |
| <p>4. A client wants a copy of <u>the page</u> in a book you used for reference.</p> <p>A. Can you legally make a copy of this page for a client?</p> <p style="text-align: center;">Qualified Yes No</p> | <p>B. Can you legally make multiple copies for class handouts?</p> <p style="text-align: center;">Qualified Yes No</p> |
| <p>B. Can you legally make copies of this page for a handout for general distribution?</p> <p style="text-align: center;">Qualified Yes No</p> | <p>C. Can you legally download a copy onto your web site?</p> <p style="text-align: center;">Qualified Yes No</p> |

Background and Answers to Test

The following information is not intended as legal counsel. It is provided only to create awareness of copyright issues commonly encountered in Cooperative Extension programs.

Copyright

Copyright is legal protection giving authors and other artistic creators exclusive rights to reproduce copies, make derivative works, use materials in other works, transfer format (such as from tape to CD), enlarge or reduce size, distribute, perform publicly, and display publicly.

Examples of copyrighted materials include:

- Print materials
- WWW materials
- Computer programs
- Pictorial works
- Graphic works
- Musical works
- Dramatic works
- Sculptural works
- Motion picture and video works
- Sound recordings
- Architectural works

What is not covered by copyright protection?

- Titles (covered under trademark or servicemark registration)
- Ideas (but rather “tangible expression” of the idea)
- Common knowledge (but rather the “tangible expression” of the knowledge)
- Lists and bibliographies (but rather the “tangible expression” of the knowledge)
- Blank forms (but rather the “tangible expression” of the form)
- List of ingredients (But rather what you do with the ingredients is covered.)
- Some federal government documents

Duration of copyright

- After 1978
 - Life of author + 50 years
 - “Works for hire” – shorter of 75 years from first publication or 100 years from first creation
- Before 1978 – 28 years, renewable for 47 years

Question 1.

If there is no copyright statement on the material, is it OK to make copies as needed? **NO**

- Copyright registration is no longer mandatory for works published after May 1, 1989.
- Registration (filling out copyright application and paying fee) only enhances the copyright holder's ability to collect damages.
- **Basically anything in a fixed tangible form is automatically protected by copyright.**

Question 2.

A garden book has a list of shade tolerant flowers that would be useful for a handout.

May you make copies for a handout for general distribution? **NO**

- While the "list" is not covered by copyright, the "tangible expression of the knowledge" is covered.

Copyright Ownership

- The employer owns copyright for any work done by employees as part the work assignment and responsibilities, unless other arrangements are made in writing in advance.
- Specially ordered or commissioned works depend on contractual agreement.
- Unpublished materials – Writer owns copyright, not the owner of the materials
- Computer software – Purchaser "buys" license to use software only as outlined in agreement.
- Pictures – Person who takes the picture owns copyright, not the person who owns the picture.
- Video taping –
 - The presenter holds rights on the presentation.
 - The video taper holds rights on the taped version.
- Music – Writers (words and music) and performers (vocal and instrumental) all have copyright right on what they contributed.

Question 3.

Who owns the copyright on materials you produce as part of your Colorado Master Gardener work? **Colorado State University**

- Unless other arrangements were made in writing, in advance, Colorado State University owns copyright of materials you produce as part of your Colorado Master Gardener service.

Fair Use Doctrine

“Fair Use” doctrine defines the privileges of others to use materials in a reasonable manner without consent for “purposes such as criticism, comment, news reporting, teaching, scholarship or research”.

Criteria for “fair use” include:

1. Use must be non-profit, educational in nature.
2. Nature of work – “Fair use” extends further in factual works, and is very limited in fictional works or artistic creations.
3. Amount vs. total work – The laws get into word counts and percentages. Basically, the use must not convey the nuts and bolts of the work.
4. Potential on market – The bottom line is how the use impacts potential sales of the product. Use must not circumvent sales in any way.

Criteria for single copy – Under “fair use” doctrine, for “scholarly review”, a single copy may be made of

- a chapter from a book
- an article from a periodical
- a short story, essay, or poem
- a chart, graphic form from a book, periodical or newspaper

Criteria for multiple copies, classroom distribution – Under “fair use” doctrine, the making of multiple copies is extremely limited, and must meet all 5 tests:

1. “Spontaneity” –
 - Used within 60 days, thus the instructor doesn’t have reasonable time to seek copyright permission.
 - Used with “instance and inspiration of the teacher”.
 - Note: In Cooperative Extension work, it is uncommon that copies will pass this “spontaneity” test, since we typically use and re-use materials that have been in print for more than 60 days.
2. “Cumulative effect” – supportive to the educational process, but not the focus of the class.
3. Brevity – Keep it short, never more than 10% of the works
4. Profit – Distributed without profit, (may recover printing costs).
5. Copyright notice must be included on all copies.

Student use

- Students have “fair use” for classroom projects.
- But, if the project goes beyond the learning classroom, copyright permission is needed. The scope of “fair use” is broader for factual works than fictional and creative works.

Misconceptions – Contrary to popular opinion, the following situations do NOT make copying “OK”:

- Educational
- Non-profit
- Volunteers
- Church
- Out-of-print
- As a means of bypassing fees or purchase price

Common violations of “fair use” include:

- Copying consumable works (unless copyright statement gives permission)
- Copying without including the copyright notice
- Copying more than one work from a single author per class and/or per project
- Copying the same item each time a class is taught (spontaneity test)
- Creating course packets
- Copying as a substitute for purchase
- Copying on direction of the “boss”

Question 4.

A client wants a copy of the page in a book you used for reference.

A. May you make a copy? **Qualified YES**

“Fair use” criteria permits a single copy for scholarly review of the page. Remember it must also include the copyright statement from the book (see single copy criteria above).

B. May you make multiple copies of this page for a handout? **NO**

Making multiple copies for distribution does not meet criteria for “fair use”. You must seek permission of the copyright holder.

Question 5.

In this month’s magazine, you find an article that would make a great handout in class next week.

A. May you make copies for all class participants? **Qualified YES,**

This would meet “spontaneity” criteria for multiple copies.

B. May you make copies next year when you teach the class again? **NO**

Must seek copyright holder’s permission. Next year (actually after 60 days) it doesn’t meet “spontaneity” criteria.

Question 6.

You find a great article on the Web for your program.

- A. May you print a copy for your own scholarly reference? **Qualified YES**

Meets single copy criteria for “fair use”.

- B. May you make multiple copies for handout? **NO**

Doesn't meet “fair use” criteria for multiple copy distribution

- C. May you download a copy onto your web site? **NO!**

Down loading it onto your web site will be clear violation of copyright law, unless you have permission of the copyright holder. However, you may link from your web site to their web site.

Contrary to popular belief, WWW materials are NOT free for the taking. WWW information is protected just as any other print material. It's just easier to violate copyright in the electronic media.

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- o Colorado Master Gardener *GardenNotes* are available on-line at www.cmg.colostate.edu.
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