

CMG GardenNotes #018

## 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 style="text-align: center;">Qualified Yes    No</p>   |
| <p>2. A garden book has a list of shade-tolerant flowers that would be useful as a handout for general distribution. May you legally make copies as handouts for general distribution?</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. May you legally make copies for all class participants?</p> <p style="text-align: center;">Qualified Yes    No</p> <p>B. May 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. May you legally print a copy for your own scholarly reference?</p> <p style="text-align: center;">Qualified Yes    No</p> <p>B. May you legally make multiple copies for class handouts?</p> <p style="text-align: center;">Qualified Yes    No</p> <p>C. May you legally download a copy onto your Web site?</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. May you legally make a copy of this page for a client?</p> <p style="text-align: center;">Qualified Yes    No</p> <p>B. May you legally make copies of this page as a handout for general distribution?</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 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

- 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 service mark 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)
- 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

**Digital Millennium Copyright Act (DMCA)** of 1998, from the U.S. Copyright Office, is legislation that implements two 1996 World Intellectual Property Organization (WIPO) treaties: the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The DMCA also addresses a number of other significant copyright-related issues

### 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 a copyright application and paying a 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 legally 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 the 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 – The writer, not the owner of the materials, owns the copyright.
- Computer software – The purchaser "buys" a license to use software only as outlined in the agreement.
- Pictures – The person who takes the picture , not the person who owns the picture, owns the copyright.
- Videotaping –
  - 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 copyrights 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 Extension owns the 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 nonprofit, 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 five 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 reuse 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 work.
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
- Nonprofit
- Volunteers
- Church
- Out of print
- As a means of bypassing fees or purchase price

**Common violations** of “fair use” include:

- Copying consumable works (unless the 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 legally make a copy of this page for a client? **Qualified YES**

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

B. May you legally make multiple copies of this page for a handout for general distribution? **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 legally make copies for all class participants? **Qualified YES,**

- This would meet “spontaneity” criteria for multiple copies.

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

- You must seek the 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 Internet for your program.

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

- Meets single copy criteria for “fair use.”

B. May you legally make multiple copies as a class handout? **NO**

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

C. May you legally download a copy onto your Web site? **NO**

- Downloading it onto your website will be clear violation of copyright law unless you have permission of the copyright holder. However, you may link from your website to their website.
- Contrary to popular belief, Internet materials are NOT free for the taking. All information found on the Internet is protected, just as any other print material. It's just easier to violate copyright in the electronic media.

**Resources:**

- The Digital Millennium Copyright Act of 1998
  - [www.copyright.gov/legislation/dmca.pdf](http://www.copyright.gov/legislation/dmca.pdf)
  - [www.gpo.gov/fdsys/pkg/PLAW-105publ304/pdf/PLAW-105publ304.pdf](http://www.gpo.gov/fdsys/pkg/PLAW-105publ304/pdf/PLAW-105publ304.pdf)
- Using the Name or Likeness of Another
  - [www.dmlp.org/legal-guide/using-name-or-likeness-another](http://www.dmlp.org/legal-guide/using-name-or-likeness-another)
- A document designed to collect resources and ideas for participants in the workshop “Opening Doors for Multimodal Composers: Intellectual Property and Fair Use in the Classroom” at CCC 2014 in Indianapolis.
  - <http://tinyurl.com/ipworkshop2014>
    - <http://web.law.duke.edu/cspd/comics>
    - <http://creativecommons.org/licenses/by-nc-sa/2.5/>

- 
- Colorado Master Gardener *GardenNotes* are available online at [www.cmq.colostate.edu](http://www.cmq.colostate.edu).
  - Colorado Master Gardener training is made possible, in part, by a grant from the *Colorado Garden Show, Inc.*
  - Colorado State University, U.S. Department of Agriculture and Colorado counties cooperating.
  - Extension programs are available to all without discrimination.
  - No endorsement of products mentioned is intended nor is criticism implied of products not mentioned.
  - Copyright 2003-2017. Colorado State University Extension. All Rights Reserved.

Revised October 2016

