

# WHAT YOU NEED TO KNOW ABOUT COPYRIGHT

Educational materials created by Denton County Master Gardeners for distribution to the public in either print form or on our website are subject to copyright laws. The copyright laws protect our ownership of the documents we create, but also place a burden on the document creator if wanting to copy written material or photographs from the web or books.

## **What is copyright?**

Copyright is a form of protection provided by the laws of the United States (Title 17 of the United States Code) to the authors of original works of authorship including literary, dramatic, musical, artistic, and certain other intellectual works. **Copyright protection arises automatically once an original work of authorship is fixed in a tangible medium of expression, now known or later developed; e.g., written, filmed, and recorded. It does not require that a copyright notice be placed on the work,** that the work be published, or that the work be deposited or registered with the Copyright Office or any other body. (<http://www.cendi.gov/publications/04-8copyright.html>, page 6)

## **What works are eligible for copyright protection?**

Categories of copyrightable works under Title 17 USC § 201 include: literary works such as educational materials and computer programs; musical works, including any accompanying words; dramatic works, including any accompanying music; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works. (<http://www.cendi.gov/publications/04-8copyright.html>, page 7)

## **Do I have to register my copyright to secure protection?**

Copyright protection actually begins at the moment the work is created on paper, recorded, or otherwise made permanent. However, for certain types of works, registration may be a good idea because you get certain additional benefits. Registration establishes a public record, which is necessary if you need to sue someone in court for infringement. If you win your case, you may also be eligible for statutory damages and attorney's fees.

(<http://www.loc.gov/teachers/copyrightmystery/text/reading/>)

## **How do I get permission to use somebody else's work?**

You can ask for it. If you know who the copyright owner is, you may contact the owner directly. If you are not certain about the ownership or have other related questions, you may wish to request that the Copyright Office conduct a search of its records or you may search yourself.

(<http://www.copyright.gov/help/faq/faq-fairuse.html>)

## **How much of someone else's work can I use without getting permission?**

Under the fair use doctrine of the U.S. copyright statute, it is permissible to use limited portions of a work including quotes, for purposes such as commentary, criticism, news reporting, and scholarly reports. There are no legal rules permitting the use of a specific number of words, a certain number of musical notes, or percentage of a work. Whether a particular use qualifies as fair use depends on all the circumstances. (<http://www.copyright.gov/help/faq/faq-fairuse.html>)

## **What is the "Fair Use Doctrine"?**

Remember even if applying Fair Use Doctrine, you need to give attribution to the author by citing the author's name, the name of the publication or website and the date of publication. For more information citing sources, see: ([MLA Works Cited: Electronic Sources \(Web Publications\)](#) and [Citation Style Chart](#)).

To determine whether you are within fair use, the law calls for a balanced application of these four factors:

- the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

These four factors come directly from the fair use provision, Section 107 of the U.S. Copyright Act, and they have been examined and developed in court rulings. The following summaries explain the significance of the factors as they relate to many university needs.

<http://copyright.columbia.edu/copyright/fair-use/what-is-fair-use/>

### **Factor 1: The Purpose and Character of the Use**

The fair use statute itself indicates that nonprofit educational purposes are generally favored over commercial uses. In addition, the statute explicitly lists several purposes especially appropriate for fair use, such as criticism, comment, news reporting, teaching, scholarship, or research. Courts also favor uses that are “transformative,” or that are not merely reproductions. Fair use is more likely to be found when the copyrighted work is “transformed” into something new or of new utility, such as quotations incorporated into a paper, or perhaps pieces of a work mixed into a multimedia product for your own teaching needs or included in commentary or criticism of the original.

### **Factor 2: The Nature of the Copyrighted Work**

This factor centers on the work being used, and the law allows for a wider or narrower scope of fair use, depending on the characteristics or attributes of the work. For example, the unpublished “nature” of a work, such as private correspondence or a manuscript, can weigh against a finding of fair use. The courts reason that copyright owners should have the right to determine the circumstances of “first publication.” Use of a work that is commercially available specifically for the educational market is generally disfavored and is unlikely to be considered a fair use.

### **Factor 3: The Amount or Substantiality of the Portion Used**

Although the law does not set exact quantity limits, generally the more you use, the less likely you are within fair use. The “amount” used is usually evaluated relative to the length of the entire original and in light of the amount needed to serve a proper objective. Photographs and artwork often generate controversies, because a user usually needs the full image, or the full “amount,” and this may not be a fair use. On the other hand, a court has ruled that a “thumbnail” or low-resolution version of an image is a lesser “amount.” Such a version of an image might adequately serve educational or research purposes.

### **Factor 4: The Effect of the Use on the Potential Market for or Value of the Work**

Effect on the market is perhaps more complicated than the other three factors. Fundamentally, this factor means that if you could have realistically purchased or licensed the copyrighted work, that fact weighs against a finding of fair use. “Effect” is

also closely linked to “purpose.” If your purpose is research or scholarship, market effect may be difficult to prove.

### **Can I use government documents without infringing on copyright?**

It depends. Works by the U.S. government are not eligible for U.S. copyright protection. (<http://www.copyright.gov/circs/circ01.pdf>). However, this applies only to documents created by the U.S. government. If a “.gov” webpage or printed document uses pictures or text from a copyrighted source, the material continues to be copyright protected.

### **Can I use text or pictures from educational web sites?**

Look at the bottom of the page or the home page of the institution publishing the work. If the page says, “copyright (date) all rights reserved, the answer is, “no”. You need to get written permission from the author. Some sites will have “Terms of Use” with a link at the bottom of the page. Read the terms of use to understand what you can and cannot use. The Smithsonian page provides an excellent example,

*Terms of Use --Use of Content from this Website*

*The Smithsonian Institution (the “Smithsonian”) provides the content on this website ([www.si.edu](http://www.si.edu)), other Smithsonian websites, and third-party sites on which it maintains a presence (“SI Websites”) in support of its mission for the “increase and diffusion of knowledge.” The Smithsonian invites visitors to use its online content for personal, educational and other non-commercial purposes. By using the SI Websites, you accept and agree to abide by the following terms.*

*Intellectual Property Rights in Content*

*The Smithsonian is the owner of the compilation of content that is posted on the SI Websites, which consists of text, images, audio, video, databases, design, codes and software (“Content”). However, the Smithsonian does not necessarily own each component of the compilation. The Content that the Smithsonian makes available on the SI Websites may be owned by the Smithsonian, owned by others and used with their permission (such as user-generated content), or used in accordance with applicable law. Some Content is in the public domain and some Content is protected by third party rights, such as copyright, trademark, rights of publicity, privacy, and contractual restrictions.*

*Smithsonian **Content is identified as having “no known copyright restrictions”** when the Smithsonian is unaware of any copyright restrictions on its use. The Smithsonian endeavors to provide information that it possesses about the copyright status of the Content and to identify any other terms and conditions that may apply to use of the Content (such as trademark, rights of privacy or publicity, donor restrictions, etc.); however, the Smithsonian can offer no guarantee or assurance that all pertinent information is provided or that the information is correct in each circumstance. It is your responsibility to determine what permission(s) you need in order to use the Content and, if necessary, to obtain such permission.*

### **Permitted Uses**

*The Smithsonian welcomes you to make fair use of the Content as defined by copyright law. Information on United States copyright fair use law is available from the United States Copyright Office: <http://www.copyright.gov/fls/fl102.html>. Please note that you are responsible for determining whether your use is fair and for*

responding to any claims that may arise from your use. In addition, the Smithsonian allows personal, educational, and other non-commercial uses of the Content on the following terms:

- **You must cite the author and source of the Content as you would material from any printed work.**
- You must also cite and link to, when possible, the SI Website as the source of the Content.
- You may not remove any copyright, trademark, or other proprietary notices including attribution information, credits, and notices, that are placed in or near the text, images, or data.
- You must comply with all terms or restrictions other than copyright (such as trademark, publicity and privacy rights, or contractual restrictions) as may be specified in the metadata or as may otherwise apply to the Content.

Source: <http://www.si.edu/TermsOfUse>

### **Where can I get pictures for my DCMGA presentation without violating copyright laws?**

Pictures taken by the author or owned by DCMGA can be used – attribution would be nice but is not required.

Here are two web sources for pictures that only require attribution.

1. [Flicker creative commons](#) has over 40 million pictures. Here are the guidelines for using pictures from Flickr.



**Attribution** means:

You let others copy, distribute, display, and perform your copyrighted work - and derivative works based upon it - but only if they give you credit.



**Noncommercial** means:

You let others copy, distribute, display, and perform your work - and derivative works based upon it - but for noncommercial purposes only.



**No Derivative Works** means:

You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.



**Share Alike** means:

You allow others to distribute derivative works only under a license identical to the license that governs your work.

2. [Wikimedia Commons](#) has about 18 million pictures.

### **Sources for more information:**

Can I Use Someone Else's Work? Can Someone Else Use Mine?

<http://www.copyright.gov/help/faq/faq-fairuse.html>

Frequently Asked Questions about Copyright

<http://www.copyright.gov/help/faq/>

Frequently Asked Questions About Copyright

<http://copyright.columbia.edu/copyright/copyright-in-general/>

Reproduction of Copyrighted Works by Educators and Librarians

<http://www.copyright.gov/circs/circ21.pdf>