



CTAG

Certification & Training Assessment Group — National Partnerships for Safe & Effective Pesticide Management through Education, Training & Competency Assessment

Copyright and C&T

Fact Sheet – July 2007

The Certification and Training Advisory Group (CTAG) encourages the sharing of pesticide education materials, certification exams, and other related resources among states, tribes, and territories to get the most leverage of funding dollars and existing resources. A universal sharing of materials and ideas increases the overall efficiency of certification and training (C&T) programs nationwide, and often gets sound educational materials and tools in the hands of more educators and regulators sooner than without this flowing exchange of resources. Consequently, the Pesticide Safety Programs national database of resources

(<http://pep.wsu.edu/psp/scripts/index.html>) is a great asset in assisting programs become familiar with the wealth of materials being used by others. However, using works created by others must be done with accepted business etiquette, with professional respect to the original author, and legally.

The focus of this fact sheet will deal with the legal aspects. Therefore, it is to provide guidance to certification and pesticide safety education staff in the basic understanding of one's responsibility under U.S. copyright laws when using other people's work in your state's educational effort. Although this document is approved by CTAG for your reference and use, it is neither a legal document nor intended to provide all of the nuances of copyright responsibility. For detailed information on copyright and intellectual property rights, refer to the sources mentioned at the end of this document.

What is copyright?

Copyright is a form of protection to the author of "original works of authorship" (a.k.a. the copyright holder). It gives the holder the exclusive right to control reproduction and adaptation of such works.

Who can claim copyright?

Only the author or those deriving their rights through the author (e.g., works for hire) can rightfully claim copyright. Thus, works created by state, county, or municipal public employees, organizations, agencies, or universities are copyrighted materials, even if created under a federal grant (unless the grant specifically stated that the finished product cannot be copyrighted). Works are not copyrightable when created by employees of the United States Government in the course of their official duties.

Copyright is a personal property right and can only be transferred in writing. Mere ownership of a work (e.g., purchasing a state's applicator training manual) does not transfer ownership of its copyright.

What works are protected?

Copyright protects "original works of authorship" that are fixed in a tangible form (i.e., written down or recorded) of expression. This protection is available to published (available to the public) and unpublished (letters, diaries, sermons, lectures, photographs, etc.) works.

Works in the public domain are not protected by intellectual property rights (e.g., copyright). These include factual information, works with expired copyrights or, as is the case with works created by the federal government, uncopyrightable.

Although factual data (e.g., LD_{50s}, the alphabet) are not copyrightable, presentation of that data is (e.g., a table or database to present factual data). A public domain work may be freely used by anyone because there is no person or other legal entity that can establish proprietary interest. However, even if you use works from the public domain, you still should recite the original source to avoid being accused of plagiarism.

Again, works created by state, county, or municipal public employees, organizations, agencies, or universities are NOT in the public domain. Neither is the Internet.

When does copyright take effect?

Copyright protection is automatic at the time the work is created in fixed form, and immediately becomes the property of the author. After March 1, 1989, it lasts for the lifetime of the author, plus an additional 70 years. Works created before this date come under different copyright laws. For example, works created from 1978 are given the same protection as above provided the works were published with “notice of copyright”.

What is “notice of copyright”?

A copyright notice consists of three elements: the symbol ©, or the word “Copyright”, or the abbreviation “Copr”; the year of publication, and the name of the copyright holder. Although a copyright notice is no longer required, a benefit of printing a notice on one’s work is that it informs others the work is copyrighted, thereby eliminating the infringement argument of “I didn’t know”. If used, the copyright holder does not require advance permission from, or registration with, the U.S. Copyright Office.

What is copyright registration?

Copyright registration is a legal formality to make a public record of a copyrighted work. Like the “notice of copyright”, registration is not a condition of copyright protection even though there are benefits to the author in doing so. Authors register their works with the U.S. Copyright Office.

What is licensing?

Only the copyright holder can issue a licensing agreement to another person or entity to use his/her copyrighted material. Licensing does not transfer copyright ownership – it only provides permission for use (e.g., how a training manual is to be used by another state, limit on the number of copies to print, restriction of sales to other states, etc.).

In the case of the Internet, a license is implied (i.e., no actual agreement created). A web page author, for example, has given end users an implied license to download and view the web page but only to the extent that the author would have allowed had the parties negotiated an agreement.

What is fair use?

The guiding principle behind “fair use” is one where the user is not diverting monetary income from the creator. It is designed to permit the limited use of copyrighted materials for such purposes as criticism and commentary, news reporting, classroom instruction, scholarship, and research. Limited photocopying or other reproduction is permitted; copying an entire work is not. What constitutes fair use is a bit gray but, to illustrate a point, copying a portion of a chapter on pesticide toxicity for classroom use or using copyrighted material in a PowerPoint presentation for one-time use is considered fair use as intended by law. But it’s quite a different matter if you would print the entire chapter for distribution to the classroom, or to include this chapter in your training manual for distribution in your state. To help decide whether it is fair use or not, ask yourself, “Is using this material substituting for purchasing or subscribing to the copyrighted work?”. If your answer is hedging on “yes”, then it’s no longer fair use and using that material would require permission from the copyright holder.

Commercial use of copyrighted materials is not fair use, and always requires permission from the copyright holder.

How does copyright differ from . . . ?

Plagiarism: protects the author from others falsely representing themselves as the original author (e.g., you use someone else's work in your creation without acknowledging the copyright holder). On the other hand, if you did acknowledge the copyright holder but did not seek his/her permission, you essentially are informing everyone whence you stole the material.

Plagiarism involves intellectual property expressed in tangible format (copyrightable) or as concepts or ideas (not copyrightable). Most of us can easily grasp where copying verbatim the words of someone else is plagiarism. But so is changing or rearranging only a few of the original author's words, as is "copying" someone else's idea without even using any of the author's original words. The bottom line: if the works or ideas are not your own, cite the source.

Patent: protects ideas, methods, processes, principles, concepts, inventions, discoveries, etc. No fixation (tangible product) is required. For example, an idea on how to get every pesticide applicator to wear chemical-resistant gloves may be granted a patent which gives the patent holder the right to prevent others from practicing the invention without seeking a license. But, the idea itself is not protected by the copyright law and others can devise their own, and different, idea. On the other hand, the way in which an idea is expressed or presented in tangible form is copyrightable.

Trademark: protects words, phrases, symbols, or designs identifying the source of the goods or services.

Intellectual property: protects the creation of the intellect. This creation can be in the form of an idea (ideological property) or physical property (tangible property). Intellectual property is protected by copyright, patent, trademark, or other law. It gives intellectually or artistically gifted people the same right as owners of physical property to prevent the unauthorized use or sale of their creations.

Why use copyright in C&T?

Copyright protects your works from being misused. For example, you prepared a bulletin about using pesticides safely which gives a well rounded view of pesticides and how to handle them properly to keep risks at a minimum. But an advocacy group against pesticides could take just portions of your bulletin (out of context) and paint an entirely different picture, even truthfully attributing the "out of context" words to you for greater impact.

Copyright protects your investment. Many states are using delivery methods (web based, exams via web, long distance education, CDs, etc) which are much more resource intensive than printed text. Copyright allows you, the copyright holder, to recover the cost of development.

Why honor another's copyright?

- Extends professional courtesy to author
- Clearly identifies the work contributed by others
- Points others using your works to the correct source in seeking permission (just because you sought permission from the copyright holder, doing so doesn't extend this permission to others)
- Assures you are not in violation of U.S. Copyright law

Will copyright hinder the sharing of C&T materials among states?

Seeking permission will take time, especially if the employing agency's legal staff get involved. Sometimes, finding out who the original author is may not be all that easy, particularly for materials already "borrowed" by one state and that material "borrowed" again by another state. And, yes, licensing (and fees) may be required. But ignoring copyright doesn't alleviate your legal responsibility. On the flip side, getting permission to use someone else's material could save you time and resources from having to spend that effort in creating your own works.

Where can I get more information on copyright?

For detailed information about copyright basics, frequently asked questions, copyright law and current legislation, downloadable publications, etc., go to the U.S. Copyright web site: <http://www.copyright.gov>. Another source is U.S. Department of State's Bureau of International Information Programs: <http://usinfo.state.gov> (search for "intellectual property").

Authors

CTAG extends their appreciation to Roger Flashinski, University of Wisconsin-Extension, and Dr. Dean Herzfeld, University of Minnesota-Extension, for researching and preparing this document.