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BRIEFS

Check It Out

The May issue of *National Geographic* features photos and copy about the Station and Cornell in an article entitled "How Altered?" The article explores the GMO issue world wide, who's involved, the potentials versus the risks and what the future holds. A full-page photo of one of Herb Aldwinckle's apple plantlets in a baby food jar graces the title page of the article. This is just one of the many photographs taken around the world for the article by *National Geographic* photographer Jim Richardson, who was on the campus here and down in Ithaca for a few days.

If you don't get *National Geographic* at home the Station library subscribes, so have a look next time you're in Jordan Hall. You can also visit the *National Geographic* website: <http://magma.nationalgeographic.com/ngm/0205/feature2/index.html> and see a summary of the article, related material and some additional photos. "Zoom in" on the second photo in the left-hand column of the page.

Color Processor Down

The color slide processor located in the photolab in Barton Lab is temporarily not working. Until we get someone in here to look at it we will be sending film to Industrial Color labs in Syracuse. This will take 3 - 4 (working) days. Please keep in mind that this affects the turnaround time for PowerPoint slides as well since these are imaged on Ektachrome film, so factor this additional time into your own deadlines.

Please give Joe Ogrodnick or Fred Hickey a call or e-mail us if you have any questions. We apologize for any inconvenience this may cause.

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The Use of Electronic Images : Legal, Moral and Ethical Considerations , Part II

Part one of this article provided an overview and history of copyright law and answers to Dave Rosenberger's questions from two professional photographers regarding photo credits and legal issues connected with scanned and web-based images. Part two begins with Associate University Counsel Patricia McClary's responses.

#1 - Should photos used in PowerPoint presentations always include credits to the person who took the photo? What if it comes from a website where the ownership is unclear? If the person gave me the photos and said I could use them, do I still need to credit them?

PMC: Providing credits where available is always a good practice. While it is not a legal requirement, it could reduce your liability exposure in the unlikely event of a lawsuit.

#2 - Is giving credit on the photo good enough, or does one need written permission for each use?

PMC: Whether you need to obtain permission from the copyright holder depends on whether your use falls within the "fair use" exception to the copyright law. The law identifies four factors to be considered in making this determination:

- the nature of the use (not for profit educational uses are favored),
- the nature of the work being copied (creative works receive more protection than factual works and news reporting),
- the amount of the work (e.g. journal article, photograph, illustration) copied (fair use usually involves the copying of a small portion of the original works; under certain exceptional circumstances the entire work can be copied under "fair use";
- and the impact on the potential market for the original work (courts treat this as the most important factor - if your use will result in a reduction in sales of the original, it is unlikely to be found to be a fair use). This is a fact-specific case-by-case analysis.

#3 - Where credits are required, what is needed? Just the person's name at the bottom of the photo?

PMC: If the photo has a copyright notice, i.e. (C) name and date of creation, you should reproduce that. In the absence of that, I do not believe there are any rules.

#4 - Are requirements for a one-time extension presentation different than they would be for presentations that I might make as a consultant hired by a chemical company? Different than for posting on a website? Different than for print media?

PMC: (1st part of question) See discussion of "Fair Use" factors above. (2nd part of question). Yes. Posting to a publicly accessible website would potentially be a distribution to millions of individuals and unlikely to be a fair use. (3rd part) The "fair use" analysis could produce different results. i.e. for profit vs. not for profit. The number of copies being made is significant for assessing the impact on the market for the original.

#5 - Provided the source is acknowledged in the presentation, is it legal or ethical to use a digital photo of the front of a magazine cover or of newspaper headlines without express permission of the publisher?

PMC: Here again, a "fair use" analysis should be performed. Providing an acknowledgement does not "legalize" what would otherwise be a copyright infringement.

#6 - In my own photos, should I always superimpose my name (using Photoshop) in the lower corner of photographs I use on the web or in shared Powerpoint files so that owner-

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(BRIEFS, continued)

Arbor Day Ceremony 2002



This year's Arbor Day Tree Ceremony will honor the memory of George Mittak. The ceremony will take place on the South Lawn of Barton Laboratory at 3:30 pm, on Friday, April 26. A red maple, 'October Glory', will be planted in memory of George, a long time member of the Department of Plant Pathology. George's friends and colleagues donated the funds for this planting. The campus' Geneva Arboretum Association has been coordinating the event with Buildings and Properties; (greenhouse and grounds crew) George's colleagues, his family, and Director Jim Hunter. We hope to see a great turnout, so please come.

M. Goffinet, Chairman, Geneva
Arboretum Assn.

ATTENTION:

If you cancel a meeting at a Geneva campus location, please have the courtesy to cancel it in Corporate Time as well so the custodians do not spend time setting up rooms for non-existent meetings. Also, please call Gemma Osborne, ext. 2248.

One thing
you can
give and
still keep...
is your
word.

(ELECTRONIC IMAGES, continued)

ship will be transmitted with the photo, or is that approach presumptive or arrogant?

PMC: I cannot speak to what is considered "presumptive and arrogant" in your field, but this sounds like a sensible self-help method to me. Various technological means such as watermarking etc. are being employed by copyright holders and the law has been amended to protect such efforts. Under the Digital Millennium Copyright Act, it is unlawful to remove or alter copyright management information encoded with an electronic work.

"FAIR USE"

Pat McClary makes reference in several of her responses to the "fair use" exception of copyright law, and in her response to question #2 lists the four factors that must be considered in determining what is and what is not fair use. A University of Texas website says of fair use that "We would all appreciate a clear, crisp answer to the question, what is fair use? But far from clear and crisp, fair use is better described as a shadowy territory whose boundaries are disputed, more so now that it includes cyberspace than ever before. In a way, it's like a no-man's land. Enter at your own risk."

From what I have read, (and remember from Part 1 that I am not a lawyer) my interpretation of the "fair use" exception is that it favors the *limited* use of scanned images and images from websites in scenarios such as department seminars, national and international professional meetings and extension talks since these situations are *educational* and *not for profit*. I would, however, be reluctant to say that the same materials used in a presentation made to say a chemical company as a paid consultant would be considered fair use.

Ms. McClary has graciously extended an invitation to all Station faculty and staff to contact her regarding the "fair use" exception in connection with their presentations on a case-by-case basis. She can be reached by calling (607)255-5124, or e-mailing her at pam4@cornell.edu

PROSECUTION

Someone recently mentioned to me that copyright in most cases is a "toothless" law. I passed this along to Ms. McClary whose response was: "I would disagree to some extent with this statement. The copyright law contains several provisions that are helpful to plaintiffs and encourage the bringing of infringement suits. These include: 1) the awarding of 'statutory damages' (generally ranging from \$750 to \$30,000 per infringement) to owners of infringed works even when the owner is unable to prove that he or she has suffered any economic loss, and 2) the awarding of attorneys' fees to the prevailing party — this is rare under US law; a copyright owner with a strong case would not have to hesitate to bring a lawsuit because of the fear that he/she would have to pay his/her attorneys large fees; these could be recouped from the infringer in addition to other damages. The law does contain provisions reducing the amount of damages that can be assessed by innocent infringers (having no reason to believe that his/her actions constitute infringement) and non-profit educational institutions and their employees who have reasonable grounds for believing that their use of copyrighted material is a 'fair use' (under the 4 factor test). These latter provisions tend to discourage lawsuits against colleges and universities."

CONCLUSION

And so it appears that copyright law in the digital age remains as complicated, convoluted and vague as it has been over the many years of its existence. Perhaps the best advice is to exercise caution and/or ask permission. Thomas Field, Jr., from the Franklin Pierce Law Center, points out on one of the Center's web pages, that "A poem or picture is as much protected on a disk or hard drive as it is on a piece of paper or canvas. And this from The USGenWeb Project: "The internet is nothing more than another method of publication. Original wording appearing on a web page cannot be reproduced without permission. A web page cannot reproduce material subject to a valid copyright without permission." It can be inferred from the above statement that *original photographs* are entitled to the same protection as *original wording*. Even the manufacturers of digital hardware echo a cautionary note. Epson's Operator's Manual for their Perfection 1250 Flatbed Scanner, 2001, includes a note concerning responsible use of copyrighted materials. "Digital cam-

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Changing to Meet the Times

A number of labs here at the Station have been undergoing face lifts and improvements to help scientists here prepare for new programs and work with new technologies. Entomology has just recently had Doug Knipple's lab remodeled. Plant Pathology has two labs in the basement of Barton that have been remodeled, and one of the two will more than likely be used by the applied

genomics person when that position is filled. The Lab renovations in Barton will support research in genomics and proteomics; equipment for research in these new areas will be centralized in the Surge Building. Buildings and Properties, which did the work in Barton, has also remodeled two labs in Hedrick, one for the USDA apple rootstock breeder Gennaro Fazio and one for Terence Robinson, who previously used the lab being renovated for Fazio.

The changes made in these facilities were partially paid for using funds provided by the state for the Station through the budget of the NYS Department of Agriculture and Markets. Over the past few years a significant amount of these special monies was used to purchase new equipment for the research farms, food processing pilot plant and the Vinification and Brewing (V&B) Technology Laboratory, as well for remodeling the V&B lab in the Food Research Building.



Doug Knipple in his newly remodeled lab in Barton.

"The Station is extremely fortunate to have received special allocations through the Governor's budget and legislative additions to the budget in the past few years," said Station Director, Jim Hunter. "With these monies, we have now begun to renovate labs and purchase equipment essential for the station to develop programs in



Lise Rosenfield using new real-time PCR equipment.

genomics and proteomics that will lead to new tools to benefit agriculture and the food industry."

Entomologist Doug Knipple, who's research program uses molecular genetic approaches to investigate unique aspects of insect biology that can be exploited for crop protection, is very pleased with the improvement to his lab. "The renovations to my lab create high quality research space for as many as four additional scientists. This effectively doubles the carrying capacity of my lab, which presents me with the opportunity to expand my research program," said



Sara Wyatt works in new lab space in the basement of Hedrick Hall.

(ELECTRONIC IMAGES, continued)

eras and scanners, like photocopiers, conventional cameras, and ink jet printers, can be misused by improper copying or printing of copyrighted material. While some countries' laws permit limited copying of copyrighted material in certain circumstances, those circumstances may not be as broad as some people assume. EPSON encourages each user to be responsible and respectful of the copyright laws when using digital cameras, scanners, and ink jet printers."

I contacted *Bugwood*, an insect photo archive and asked the following question:

"The use of images section on your web page does not say anything about using images in a talk or seminar as opposed to publication. These presentations are made to peers at department seminars or regional or national entomology meetings. Should information be superimposed on the image itself (slide or electronic image) - if so, how much? - the example citations you provide would prove rather unwieldy. Is there an abbreviated form that could be used as to not detract too much from the photo? -or could attribution be given verbally or in an acknowledgement slide?" The owner of the site replied "For presentations, just use the image as is. If you want to give the photographer credit then list it for example as C. Barger/forestryimages.org. Or as you said, list the site as part of the acknowledgements. For presentations to chemical companies, that would still be considered educational use as far as we are concerned." These requirements will, of course, vary from site to site and may not be as "easy" as this particular one.

Cornell is developing a copyright site as a joint effort by the University Library, University Counsel, and Information Technologies. Although the site is not yet complete, there is some information currently available including Cornell's Copyright Policy and a section entitled: Web Page Guidelines: Content, Ownership and Responsibilities. (<http://www.library.cornell.edu/copyright/policy.htm>). In the meantime, Pat McClary offers these guidelines: "In general, the rules for scanned images are the same as those that apply to hard copies, i.e. those which provide access to the materials may impose

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CALENDAR of EVENTS

APRIL 26 - MAY 3, 2002

SEMINARS

PLANT PATH

Date: Tuesday, April 30, 2002
Time: 3:30 PM, Coffee at 3 PM
Place: Room A130, Barton Lab.
Title: "The Regulation of Agricultural Biotechnology in the United States"
Speaker: Dr. Terry Stone, Regulatory Affairs Team Leader Specialty Corps, Monsanto, St. Louis

FOOD SCIENCE

Date: Wednesday, May 1, 2002
Time: 10:30 AM
Place: FST Conference Room, Second Floor
Title: "How Do Insects Handle Food?"
Speaker: Dr. Ping Wang, Geneva

LTC

Date: Tuesday, April 30, 2002
Time: 2:30-4 PM
Place: Jordan Hall Staff Room
Title: Access Basics
Instructor: Jane Irwin

FITNESS

Aerobics

Date: Monday and Friday
Time: 12:10 - 1 PM
Place: Sawdust Cafe

Taekwondo Class

Date: Monday, April 29, 2002
Time: 12:10 - 1 PM
Place: Jordan Hall Auditorium

Taekardio Class

Date: Wednesday, May 1, 2002
Time: 12:10 PM
Place: Sawdust Cafe

CLASSIFIED

FOR SALE: 1996 Honda Civic DX, 2D, black, 5-speed, air-conditioning, CD-changer, mileage 74,000. \$5,500. Contact P. Griffiths @ 2222 or pdg8@cornell.edu

HELP WANTED: Need part time work? Billsboro Winery is looking for people to staff its sales room. Thursday - Sunday afternoons. Must be at least 21 years old. Call 789-9571 or e-mail: rmp2@cornell.edu

FOR SALE: Used Tonneau Cover for Chevy S-10 reg. box. Excellent Condition \$100 or best offer. Contact (Continued)

(CLASSIFIED, continued)

Lou Ann at B&P ext. 2301 or 585-526-6620.

FOR SALE: 1995 Geo Prizm Sedan. 4D, red, automatic, air conditioning, cruise control, mileage 91,000. \$3,900. Please feel free to check it out at the Surge Lab parking area or contact me by e-mail: ca33@cornell.edu, or find me in Surge Lab office 109B.

FOR SALE: 1994 Transport. 96,000 miles. Very clean with power steering, power brakes, passenger side power sliding door, fiberglass body, no rust. No salt Florida car, stored in a barn. Just completed full service checkup. \$6500. Contact Tim Dreyer at 607- 582-6690 or e-mail trd26@cornell.edu

BEACH HOUSE RENTAL: Beautiful location, southwest shore of Canandaigua Lake. Getaway, golf, fish, relax. Canoe and rowboat included. By the week or weekend. Suitable small family/two couples. Off-season openings (and off-season rates!) remain in June, September and October. Serious inquiries only. elg2@cornell.edu

Walk America

Sunday, May 5, '02, 1 PM

Did you know that if you give to the United Way through payroll deductions at work, you can designate your entire donation or a portion of it to go to the March of Dimes? Join the Station Team. **Contact Kathy DeRosa, kad2@cornell.edu, x-2236**

Perennial Plant Exchange

Saturday, May 4th, 10 am - Noon
 Experiment Station Pavilion

Bring divisions of your favorite perennials.

Come at 10 am to set up your plants.
 The exchange will begin at 10:30

(CHANGING, continued)

Knipple, who is a member of the Cornell Genomics Task Force. He is also currently teaching a graduate level course, "Problems and Perspectives in Computational Molecular Biology," with Golan Yona (Computer Science) and Marty Wells (Biological Statistics and Computational Biology).

In Knipple's Lab all three phases of this project, with the exception of some asbestos abatement, which was out-sourced, were done by our people in Buildings and Properties. In the initial planning phase Joe Freeland worked closely with Pat Marsella-Herrick and Knipple to develop a plan that made the best use of the available floor space and utilities. The second phase involved

(ELECTRONIC IMAGES, continued)

license conditions (look for the fine print on those image repositories). 'Fair use' permits the making of one copy for individual research or scholarship. Beyond that, one should probably get permission. You should assume that all works are copyrighted even if they don't have a copyright notice because the notice requirement was removed from the law back in the 1980's."

Some Pertinent Web Resources

- United States Copyright Office, The Library of Congress, <http://www.loc.gov/copyright/>
- Copyright on the Internet, <http://www.fplc.edu/tfield/cOpyNet.htm>
- 10 Big Myths about copyright explained, <http://www.templetons.com/brad/copymyths.html>
- Copyright Law in the Electronic Environment, <http://www.utsystem.edu/OGC/IntellectualProperty/faculty.htm#apply>
- Copyright Basics, <http://www.loc.gov/copyright/circs/circ1.html#wci>
- Web Law FAQ, <http://www.patents.com/weblaw.sht#scan>
- The Great Internet Panic: How Digitization is Deforming Copyright Law, <http://journal.law.ufl.edu/~techlaw/2/fujita.html#s4>
- Copyright and Fair Use in the Classroom, on the Internet, and the World Wide Web, <http://www.umuc.edu/library/copy.html#internet>
- Fair Use of Copyright Materials, <http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm>

J. Ogradnick

constructing some partitions and gutting the half of the lab that contained three old, non-functioning built-in growth chambers, and removing asbestos that was on the outside wall behind them. The last phase, which took only a few weeks, involved building new walls, floors and ceiling, rewiring, replumbing, installing two new lab benches and cabinets, and painting.

"The final result is extremely functional and looks fantastic. I can't say enough about the talent and professionalism of the guys from B&P who worked on this job," said Knipple.

Kudos, once again for another job well done, to the all the staff at B&P who worked on these and other renovations around the Station.

J. Zakour