

Fair Use

The purpose of the following explanation is to raise the issue of fair use; it should not be construed as legal counsel.

The issues

Teachers are seldom the creators of the authentic materials they incorporate into lessons. This being the case, how to fairly and legally collect and use authentic materials becomes a salient issue. The laws governing proprietary rights in America are robust but not without ambiguity. The laws governing the authentic materials that the LCTL teacher uses will vary from originating country to originating country. Here, American law will serve as the basis for discussion.

Duane Goehner has written an overview¹ of the general issue in which he explains that there are three primary arguments supporting copyright laws: “to reward authors for their creative works; to encourage availability of the works to the general public; and to facilitate access and use of the works by the public in appropriate situations.” While there are incentives that motivate us to protect the copyrights of creators, the US Copyright Act of 1976 explicitly allows the fair use of copyrighted material *for teaching and research purposes*.

Generally speaking, using realia such as newspapers, cereal boxes, and song lyrics does not pose a legal problem for teachers. The University System of Georgia has posted a lengthy document² that highlights how quickly a relatively simple legal use of copyrighted material can become a murkier situation. Currently, the biggest complication in the U.S. these days is related to the Internet broadcasting of lessons. If you teach distance education classes that are being broadcast over any media, please consult your institution for further guidance on the issue.

This may or may not apply to your language context or not, in the U.S. great consideration is given to the effect the use of the copyrighted material has on the potential economic value of the copyrighted work. Thus it behooves the teacher to tread lightly or not at all in the realms of mass dissemination and profit making. If the use of the material returns a profit to the teacher or allows many people to access the material without paying the creator, the teacher may be beyond the limits of fair use.

Meanwhile much of the realia used by LCTL teachers will originate from countries outside of the United States and may be subject to a different set of laws.

Links

➤ www.copyright.iupui.edu

This site contains “New Copyright Law for Distance Education: The Meaning and Importance of the TEACH Act” Teachers involved in distance education will find this pertinent and useful.

¹ www.goehner.com/copyright.htm

² <http://www.usg.edu/admin/legal/copyright/>

➤ <http://www.utsystem.edu/ogc/IntellectualProperty/cprtindx.htm>

University of Texas crash course on copyright. Covers fair use, courseware, copyright management, and licensing resources.

➤ <http://www.cetus.org/fairindex.html>

The electronic version of *Fair Use of Copyrighted Works*. It also contains links to fair-use guidelines and other resources that are intended to promote a fuller understanding and appreciation of copyright laws.

➤ <http://james-boyle.com/>

Extensive site by James Boyle, Duke University Law School on public domain and copyright issues.