

## Usage Issues and Sourcing Images for Teacher-Made Materials

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Today's students are more comfortable using language learning materials that incorporate both text and images, and teacher-writers creating materials for use in their own classrooms should be considering including images. Teacher-writers should be aware of the copyright issues related to using images in language learning materials including local copyright laws, as well as alternatives such as paid licenses, creative commons, and public domain images. Additionally, teacher-writers should be aware of alternatives for finding suitable images beyond mainstream image search functions such as Google. This paper outlines issues related to licensing and copyright, including the educational exemption under Japanese copyright law. In addition, it presents some advantages and disadvantages for several leading online sources of images including Google Images, Flickr, iStockphoto, and Wikimedia as well as some other minor online image sources.

今日の学生は文章と画像の両方を取り入れた言語学習の教材を使うことに対して以前ほど抵抗が無いため、授業内で使用するための教材を作成する教師にとっては、画像の使用を検討する必要性も出てくる。その際、教材内の画像使用に関連したその国・地域の著作権法、並びに支払い済みのライセンスやクリエイティブ・コモンズ及び著作権設定の無い画像等について認識していなければならない。加えて、Googleなどの主流な画像検索機能以外で適切な画像を探す為の代替方法を知っていなければならない。本稿では、教育分野での適用除外条件を含め、日本の著作権法に基づいたライセンスと著作権に関連する問題点の概要を述べる。また、Google Images, Flickr, iStockphoto, Wikimedia等、オンライン画像業界トップのソース並びにその他のマイナーなソースの長所と短所についても述べる。

The world has seen an unprecedented explosion in visual media (Huang, Le, Paine, Khorrami, & Tariq, 2014), and today's students are quite used to deriving meaning from both textual and visual sources (Lai, 2010). Teaching materials with visuals are greatly preferred by students (Ezzedine, 2011) who expect visually rich learning materials

(Brinton, 2014), and in fact many students think less of materials that are not visually appealing (Hutchinson & Waters, 1987). Finally, the use of multimedia for learning has demonstrably better learning outcomes than single media learning (Mayer, 2009). Therefore, teachers creating their own materials should consider the inclusion of visual media, specifically images.

However, most teacher-writers are primarily concerned with the “hows” and “whys” of images, that is the advantages of images and specific tasks and activities, and are unaware of some of the nonpedagogical issues with incorporating images into their teaching materials. For example, finding suitable images is a task that is not easily done. Along with the unprecedented consumption of visual media has come an unprecedented creation of visual media (Heyman, 2015; Huang et al., 2014). The fact is that there are more images now than ever.

In this paper I discuss some of these nonpedagogical issues that teacher-writers may not be aware of. Specifically, I draw attention to usage rights issues involved in adding images to teacher-made language learning materials, offer guidance for some of the more common sources of images, as well as examine some lesser known sources for images.

### Usage Issues

Perhaps the most pressing issue, and one often ignored by teacher-writers, is the issue of usage rights. Assuming that a teacher-writer can find a suitable image to use in their<sup>1</sup> materials, do they have the right to use it? This is, of course, a difficult question to answer as there are many variables involved, and the answer will vary greatly according to the exact situation in which the image will be used. It should be noted that although this paper seeks to offer teacher-writers assistance in navigating the difficult issue of usage rights; it is not and does not constitute legal advice. Teacher-writers should familiarize themselves with the laws, rules, and regulations of their specific context and seek professional legal advice as needed.

## Copyright

Perhaps the most misunderstood usage issue, and potentially the most precarious one, is using images that are copyrighted. One of the reasons why the use of copyright issues is so misunderstood is that there are a number of misconceptions about copyright.

First and foremost among these misconceptions is that copyright law is the same all over the world. Although countries that are signatories to the Berne Convention (World Intellectual Property Organization [WIPO], 1982) have laws that are generally the same in principle, the laws do vary by country (WIPO, n.d.), and in some instances they can vary quite significantly. In the experience of this author, many teacher-writers seem to think that following the guidelines for one country, often the country of their origin, applies everywhere. But teacher-writers should be aware that the laws in the country in which the images are to be used, that is where they are teaching, take precedence.

Another common misconception among teacher-writers is that an image is only copyrighted if it has been registered with a regulatory agency. In the case of Japan, this would be the Agency for Cultural Affairs. However, Japan is a signatory to the Berne Convention, which states that all intellectual property, including images, receive copyright protections at the time of their creation regardless of whether or not they have been registered (WIPO, 1982).

Related to this issue is the common misconception that if an image has been posted somewhere on the Internet, it is in the public domain, is copyright free, and therefore can be used by anyone (Templeton, 2008). However, unless the image is accompanied by specific language by the creator of the image stating that it is in the public domain (Templeton, 2008) or if the website has a general license that allows reuse, for example creative commons (see below), it is copyrighted (WIPO, n.d.).

A final misconception is that taking a picture of a picture is a loophole that removes copyright restrictions (Schultz, 2010). Most recently this comes in the form of taking a screen shot of an image. However, making a new image of a copyrighted image is considered to be a reproduction, and therefore the copyright is still valid (Verbauwhede, 2006).

### *Japan Copyright Law: The Educational Exemption*

In many countries around the world, teachers and students are allowed to use copyrighted materials for the purposes of studying and learning under the general fair use provisions of the copyright law (U.S. Copyright Office, 2014). Although Japan does not have a general fair use provision (Sugiyama, 2001), Article 35 of the Copyright Act of 1970 deals with the reproduction of copyrighted items in educational settings and is the most rele-

vant section to teacher-writers working in Japan. In general, Article 35 makes it possible for teachers to use copyrighted works in classrooms provided that several conditions are met. Under these conditions, teachers may use copyrighted materials provided that

- they are only used at nonprofit institutions,
- they are only used for teaching and learning,
- they are not taken from educational materials, and
- their distribution is limited to only students in class.

The first condition is that the exemption applies only to nonprofit educational institutions such as universities and secondary schools. It does not apply to *eikaiwa* and *juku* schools, nor does it apply to private tutoring.

Second, copyright protected materials can only be used for teaching and learning. Schools would not be allowed to reproduce copyrighted images for advertising, including on-campus advertising, entertainment, or other noncurricular uses such as club websites or school festivals.

Third, the exemption only applies to materials that are not already educational materials. In other words, teachers cannot use images from textbooks or picture dictionaries in their materials but could use images from newspapers or magazines.

Finally, teachers are limited to making only copies for the students in their class. They cannot use copyright protected images in their materials and then distribute them to other teachers or upload them to the Internet.

Please see Appendix for the official translation of Article 35 in English.

## Public Domain

Public domain images are images that are not copyright protected, and teacher-writers are free to use them in any way that they like. In general, there are three types of public domain images. The first type is images whose copyright has expired. The length of copyright varies by country (WIPO, n.d.), and whether or not the image is still under copyright will depend on the law in the country where the image was made. This is an instance in which the copyright law of another country is applicable here in Japan or elsewhere. For images made in Japan the limit is 50 years after the original author's death (Copyright Research Information Center [CRIC], n.d.). The second type of public domain images are images that were created before the copyright law existed. For example, classic Hokusai *ukiyo-e* images were created in the Edo Era (1603-1868), long before

copyright existed, and are therefore in the public domain. The final type of public domain image, and the type most likely to be used by teacher-writers for language learning materials, is an image whose rights have been forfeited by the creator. In this case, the photographer or artist of the image has specifically given up their rights to the image and made it available to the public. It is common for government agencies, for example tourism boards, to release images into the public domain for promotional purposes.

### **Paid Licenses**

Paid licenses are copyrighted images that can be used for teaching materials, including commercial materials, provided that the teacher-writer pays a commission to the image creator. Restrictions to the license will vary but commonly include the number of times that the image can be reproduced (i.e., the number of times the teaching materials can be copied), which may require attribution of the image source and may have a time limit for using the images (e.g., 10 years, before the image would have to be relicensed).

The advantage of paying for a license is that teacher-writers do not need to worry that the copyright holder of the image will later try to assert their rights and possibly demand removal of the image or seek monetary damages, but licenses can be expensive.

### **Creative Commons**

Creative Commons is a series of no-cost copyright licenses that allow image creators to retain a limited amount of control over their images but also allow others to use their images. In general, Creative Commons can be thought of as a license that sits between full copyright and public domain. There are four copyright restrictions: attribution, share alike, noncommercial, and no derivatives, combined to make six different types of licenses (Creative Commons, n.d.a). See Table 1 for the complete list of Creative Commons licenses.

**Table 1. List of Creative Commons licenses**

License	Description	Attribution
Attribution	Attribution of the image only. The most open license.	CC-BY
Attribution and share alike	Attribution of the image with the condition that any works created with the image also be Creative Commons.	CC-BY-SA
Attribution and noncommercial	Attribution of the image with the condition that no commercial works can be created with it.	CC-BY-NC
Attribution and no derivatives	Attribution of the image with the condition that the image not be altered or changed in any way.	CC-BY-ND
Attribution, noncommercial, and share alike	Attribution of the image with the conditions that no commercial works can be created with it and that any works created with the image also be Creative Commons.	CC-BY-NC-SA
Attribution, non-commercial, and no derivatives	Attribution of the image with the conditions that no commercial works can be created with it and that the image not be altered or changed in any way.	CC-BY-NC-ND

The basic restriction that applies to all six Creative Commons licenses is attribution. Teacher-writers are always required to attribute the image to the original source of the image (i.e., the image creator) whenever they use a Creative Commons image. For electronic materials, such as .pdf files distributed to students electronically, teacher-writers should use a hyperlink attribution that redirects the user to the website that originally published the image (e.g., flickr.com). For paper based materials teacher-writers need to include a text attribution.

According to the Creative Commons Organization, there is no set format for a Creative Commons attribution, but every attempt should be made to include the following four pieces of information: title, author, source, and license (Creative Commons, n.d.b).

A typical text attribution for an image used in teaching materials might be the following: TITLE by AUTHOR available under LICENSE via SOURCE. For example, the attribution for the image in Figure 1 would be: Graduation13\_IMG\_7890 by sau-

mag available under CC-BY via flickr.com. For electronic materials the text attribution, or the image itself, should also include the hyperlink to [https://c1.staticflickr.com/9/8401/8713617079\\_00a6581afa\\_b.jpg](https://c1.staticflickr.com/9/8401/8713617079_00a6581afa_b.jpg).

Although the text attribution is rather long, it does not need to be attached in an intrusive way. For the example in Figure 1, the attribution is made in small but readable type, placed to the side of the image, in gray text. This attribution is unobtrusive yet allows anyone who is curious to find the original image.

For language learning materials that make use of numerous images, such as a complete textbook or a packet of handouts, attributions can be made in one consolidated location similar to lists of image sources found on the copyright or acknowledgment pages in commercially available language learning textbooks. In the case of a consolidated list, teacher-writers would need to include both the title, author, license, and source information as well as a description of where the images can be found in the materials (e.g., “image on page 11” or “image for the reading activity in the technology unit”).



*Figure 1.* Example of a Creative Commons attribution (Graduation13\_IMG\_7890 by saumag available under CC-BY via flickr.com).

### **Plagiarism**

A final consideration for teacher-writers, and one that in the experience of the author almost all teacher-writers overlook, is the issue of plagiarism. There are several basic principles used to define plagiarism, one of which is to use another person’s work without properly crediting the source (American Psychological Association, 2014). This is obvious when it comes to words and ideas, but it also applies to images. Plagiarism.org specifically states, “using an image . . . in a work you have produced without . . . appropriate citation is plagiarism” (2014). The irony is of course that teacher-writers regularly reproach students for cutting and pasting words from the Internet, but they themselves cut-and-paste images from the Internet and use them without citation.

Regardless of how images are sourced for language learning materials, whether they are Creative Commons images, copyrighted images used under the educational exemption, or even public domain images, appropriate citations are needed to “give credit where credit is due” (American Psychological Association, 2014, p. 15) and to avoid plagiarism.

### **Sourcing Images**

#### **Google Images (<https://images.google.com/>)**

Google Images is a subdivision of the Google search engine that can be used to find images on the Internet. The biggest advantage of Google Images is that the search engine indexes images across the full spectrum of the Internet and can return results in the tens of thousands. However, this is also its greatest weakness as the search results can be overwhelming and often return results that are only tangentially related or not related to the search query. It is especially important the teacher-writers use as many keywords as possible to narrow their search to minimize the off-topic results. For example, if a teacher-writer were looking for an image of a family eating dinner and searched using the term *dinnertime*, the search results would include a few images of families eating dinner but also corporate logos and pictures of clocks superimposed on plates using eating utensils to indicate the time. Using a more accurate search phrase of *family eating dinner* would result in only images of a family eating dinner.

Another disadvantage of using Google Images is that most of the images returned are copyright protected and therefore may be of limited use for educational materials. However, teacher-writers can set the search tools feature of Google images from *not filtered by license* to *labeled for reuse* to return creative commons and public domain images.

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Finally, care should be taken when using Google Images because despite Google's best efforts to limit inappropriate images, so-called not-safe-for-work (NSFW) images can still appear in the search results.

**Flickr** (<https://www.flickr.com/>)

Flickr, pronounced flicker, is one of the largest collections of user-uploaded images on the Internet with an estimated collection size of over 10 billion images (Stadlen, 2015) and is one of the largest collections of Creative Commons images on the Internet.

However, like Google Images' searches the large number of images on Flickr can make finding specific images difficult. Unlike Google Images that looks at the text surrounding the image, search on Flickr can only look at the image title and any keywords added by the uploader. Taking the same example of looking for images of a family eating dinner, using the search term *dinnertime* returns only a few pictures of families eating dinner but also includes images of pets, children's toys, snow storms, and even graffiti.

Another issue with images on Flickr is that because they are user uploads, many of the images are of varying quality and include images that are poorly composed, improperly exposed or processed, out of focus, or are too small to be used in print materials.

**The ELT Pics Collection** (<https://www.flickr.com/photos/eltpics/>)

One subset of images hosted on Flickr that may be of interest to teacher-writers is the ELT Pics collection. This is a collection of images taken by language teachers for use in language learning situations. The images were uploaded to SNS sites such as Facebook or Twitter, tagged with the hashtag #ELTPics, and then collected on Flickr.

Unfortunately, the ELT Pics collection suffers from a number of issues that make the image collection difficult to use. First and foremost is that the images are not tagged with keywords or labeled in a way that makes searching easy. Users simply have to go to the ELT Pics' Flickr page and manually search through the loose organization of albums. Images are only uploaded to one album, making images with multiple themes or topics difficult to find.

Second, the images are not curated, so any and all submissions are included in the collection. For example, the *jobs* album includes images of palace guards and street performers. Although technically jobs, they are so uncommon that they are likely to be of little use for materials writers. Further frustrating, however, is the inclusion of images that are not at all related to the album theme. For example, there are images of children in Halloween costumes in the jobs album. If a teacher-writer needs an image of a doctor,

a child in a doctor costume will not likely suffice. Furthermore, an image of two 7-year-olds dressed as 18th century pirates jumping on a bed is unlikely to be of use to a teacher-writer looking for images of people at work. The album also includes images of statues, figurines, blurry train scenery, and other images that do not seem to be connected to jobs at all. Although it is admirable that the creators of the ELT Pics collection are trying to be as inclusive as possible, as the collection grows it becomes more and more difficult to filter out the noise and find useful images. If the collection were more searchable with better keywording, the addition of tangentially related images would be a minor issue.

Finally, as with images in the general Flickr collection, the quality of images varies widely and the collection includes low quality images shot on cellphones and images with heavy artistic filters added.

**iStockphoto** (<http://www.istockphoto.com/>)

iStockphoto is one of the original microstock photo agencies on the Internet selling high quality images at a reasonable price. Many of the problems associated with obtaining images from sources such as Google Images or Flickr are not a problem with iStockphoto as the images are high quality, competently curated, and well-indexed professional level images.

However, the main disadvantage is that a licensing fee is required to use images from this site. iStockphoto has two main collections: Essentials and Signature. Images in the Essentials collection typically cost ¥1200, and images in the Signature collection are ¥3400 per image. In a one-off situation, paying for an image may not be of great concern, but if a teacher-writer needs one image per week for the entire 30-week school year, the expense would add up quickly.

It is possible to use images from iStockphoto without paying for the license, but the image will be watermarked with the iStockphoto logo. Using a watermarked image broadcasts not only the teacher-writer's lack of skill in finding images, but also a lack of professionalism and a disregard for the intellectual property rights of the photographer. Using watermarked images also sends mixed messages about plagiarism to students. It is not recommended that teacher-writers use images from iStockphoto or another microstock agency without purchasing a license.

**Wikimedia Commons** (<https://commons.wikimedia.org/>)

Wikimedia Commons is one of the largest collections of public domain images on the Internet and is the main repository of images used in the Wikipedia encyclopedia. The

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Commons contains few contemporary images, as the majority of images are historical. For example, a search again using the keywords *family eating dinner* returns mostly black-and-white images from the 1940s and 1950s but also illustrations of families eating in the 18th and 19th centuries.

The commons are well indexed and easily searched, but care should be taken as a number of off-topic images can appear in the search results. For example, a search again using the keyword *dinnertime* returns a large number of images of farm animals eating.

### Miscellaneous

In addition to the main image collections discussed above, there are a few miscellaneous image collections that can be of benefit to teacher-writers for making language learning materials. Generally, these are smaller collections of very specific kinds of images.

#### United States Government Sites

The United States government makes large numbers of images available to the public domain that are created by various government agencies. These include images of politicians, images of national parks, images from space exploration, and so on. Teacher-writers can search the main online portal ([usa.gov](http://usa.gov)) or can search through a specific agencies website (e.g., [nasa.gov](http://nasa.gov)).

#### Libraries and Museums

Another common source for public domain images can be found on library and museum websites. For example, the United States Library of Congress has a large number of both historical and contemporary images of the United States, and the New York Public Library has a large number of images of the city of New York. Images on these kinds of websites are not typically indexed by Google and will not appear on Google Image searches, so teacher-writers have to search each site individually.

The United States Library of Congress' prints and photographs catalog can be found at <http://www.loc.gov/pictures/> and the New York Public Library's digital collections can be found at <https://digitalcollections.nypl.org/>

#### Pics 4 Learning (<http://www.pics4learning.com/>)

Pics 4 Learning is a collection of images submitted by teachers and other photographers from around the world for use in a broad range of learning situations, not just language

learning. The images are copyrighted, but the photographers have allowed the images to be used in noncommercial educational materials or student projects.

#### University of Pittsburg: Visuals for Foreign Language Instruction (<http://images.library.pitt.edu/v/visuals/>)

The University of Pittsburg hosts a collection of illustrations created for use in language learning classrooms. The drawings are copyrighted, but teacher-writers are free to use them in noncommercial, nondistributed materials. Although the illustrations were specifically drawn for language learning, they are somewhat dated and may be of limited use.

#### University of Victoria: Language Teaching Clipart Library (<http://hcmc.uvic.ca/clipart/intro.htm>)

The University of Victoria in Canada has a collection of clipart images specifically drawn for teaching vocabulary. There are 1500 images that come with either a transparent or white background. The collection is not extensive, and many of the images can be quite stylized, for example stick person drawings, but may be useful to some teacher-writers.

### Conclusion

Because of the ubiquity of the images in contemporary print and electronic media, today's students are quite used to deriving meaning from multiple sources and prefer language learning materials that include images. Teachers writing their own materials should consider including images when appropriate and should be aware of the usage issues surrounding images. Furthermore, finding appropriate images with appropriate usage licenses may require searching further afield than just Google Images.

### Note

1. In this paper, *they* and *their* are used as singular, gender-free pronouns.

### Bio Data

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## Appendix

### The Copyright Law of Japan: Article 35

Retrieved from <http://www.cric.or.jp/english/clj/cl2.html>

#### Article 35.

(Reproduction, etc. in schools and other educational institutions)

- (1) A person who is in charge of teaching and those who are taught in a school or other educational institutions (except those institutions established for profit-making) may reproduce a work already made public if and to the extent deemed necessary for the purpose of use in the course of lessons, provided that such reproduction does not unreasonably prejudice the interests of the copyright owner in the light of the nature and the purpose of the work as well as the number of copies and the form of reproduction.
- (2) In the case of the exploitation of a work already made public, by offering or making public the original or copies of such work to those who take lessons directly in the course of lessons in educational institutions mentioned in the preceding paragraph, or in the case of the exploitation of such work by publicly performing, presenting or reciting it in accordance with the provision of Article 38, paragraph (1) in the course of such lessons, it shall be permissible to make the public transmission (including the making transmittable in the case of the interactive transmission) of such work intended for reception by those who take lessons at the same time at a place other than that where such lessons are given; provided, however, that such transmission does not unreasonably prejudice the interests of the copyright owner in the light of the nature and the purpose of the work as well as the form of the transmission.