

Intellectual Property

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CALL Star Turns

At the IALLT Summer Leadership Meeting, as group portraits and casual snapshots were being taken to commemorate the activities, Sharon Scinicariello of the University of Richmond brought up a point nobody took too seriously, in the context. She suggested that we all needed to sign a clearance or waiver form allowing the organization to use these images on the website. Although the collegial sense was that, simply by being at the meeting and smiling for the photographer, we were all ready to have our mugs shot for the greater glory of IALLT, her comment rang a warning bell in my own mind.

More and more instructors are up to their elbows in multimedia projects. These often involve videos of native speakers, allowing students to appreciate the body language that reinforces and interprets enunciations in the target language. Or it may be an audio recording of a dialogue or a reading, meant to give the students an idea of the wide range of acceptable pronunciations among native speakers.

The "actors" may be graduate students, friends, and family recruited for the little production. Sometimes they are paid, sometimes they do it for love, sometimes it is part of an academic assignment. Should they sign releases?

A few years ago, clearing the right to use someone's personal image was a matter of a photo of a group of summer program students smiling in front of a fountain or monument,¹ or perhaps of a teacher making a point to a classroom of attentive faces. I have such photos on my lab website, and the waiver I tended to get was likely to consist of an implied answer to a question like: "Peter, can you pose over there, as if you were a student getting an audiotape? Great. This is going on the web if it turns out, O.K.?" Or: "Excuse me. I just love the way you're sitting there using your laptop to take notes on the movie. Do you mind if I take a photo of you and put it up on the lab website?" Or: "Everybody, may I have your attention? I am

taking a couple of pictures I might use on the lab website. Is that all right with everybody? Professor X, just go right on teaching, please, and I'll try to get a few good shots."

In other words, silence gives consent. If you let me take your picture after one of the above warnings, you implicitly acknowledge my purpose and agree to illustrate the University of Florida Language Learning Center on the web until the technology you're using is embarrassingly outdated (and even beyond, if the pedagogical energy is good). My sense is that nearly everyone whose picture has gone up has been quite pleased by this (one professor asked to use the same picture on his own website).

Should I have a paper trail, though? I had always been nervous about this. Watching *À la rencontre de Philippe* is not a compromising situation, but what if the person so depicted later regrets the image, and feels that consent was not really given? Of course, I would remove the picture if the person objected to it. But at the IALLT meeting Sharon Scinicariello was proposing that one should indeed have a signed waiver from any and all participants in such photographs for public display.

The answer, according to the Stanford University Copyright and Fair Use website, is that a paper trail is probably not needed for this kind of use, because:

- The use of the images is informative, and in no way commercial; moreover, my "models" have no celebrity value. I have not violated the individuals' right of publicity.
- The photos were taken in a (semi-) public place, not in private; they are not an invasion of privacy.
- The images invariably depict exemplary students and instructors; they are not defamatory.

See http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter12/index.html

On the other hand, what about all these instructor productions? They could cross the lines defined above. This is because they are likely to involve fictional or otherwise provocative scenarios, and because they might be good enough to have commercial value.

- Commercialism & right to publicity: A set of video clips might be good enough to package and sell to students, or

even to a textbook company. Or the course for which friends recorded dialogues could become an online moneymaker. Or the photo might end up on the cover of a textbook, or a flyer advertising a program.

- Privacy: this should not be a problem, since the models/actors know what they are doing when they pose or speak.
- Defamation: This is unlikely to arise, but a model or actor might have second thoughts about a role played in a dialogue, clothing worn, even statements made in an interview format, etc.

In short, a written release form is a good idea if one is trying to develop materials using native speakers, or even students. In a university environment, there is a great deal of trust as to how such materials will be handled and used, but they might have a value for the developer that goes beyond what is covered by a casual oral agreement. It is also the nature of the university that the students are likely to finish their studies before the project on which they worked is completed.

A written form of this kind is called a "Model Release" form, and the term is productive on Google. Photographers routinely carry packets of such forms (often reduced to a small card) so that they can document any good pictures they take, should commercial potential for it arise. Such a form should be short, clear, and unambiguous. The simplest possible release might be:

In exchange for consideration received, I hereby give permission to _____ to use my name, recorded voice, and photographic or filmed images for any lawful purpose, including trade and advertising.

Print Name:

Signature:

Date:

Some points to note:

- Models or actors under 18 need parental consent for the form to be valid, requiring a second signed form.
- This form states that some "consideration" has been given in return for the rights granted. This is part of making a binding contract. The consideration might be

payment, grade credit, a specified segment of hours of employment.

- The Stanford site suggests more complex wording, comprising both a grant of rights and a release from the threat of specific claims.

Among the most relevant points in the Stanford wording are the grant to “_____ (‘Company’) and to Company’s assigns, licensees and successors” of rights “including composite or modified representations.” These would be good clauses to include, foreseeing the possibility of selling or licensing the multimedia, and also of modifying the elements (for example, by adding subtitles).

Another clause which one might want to think about in the Stanford form is:

“Company is permitted, although not obligated, to include my name as a credit in connection with the image.” This might lead one to consider getting release forms not only from “models” and “actors” but from graduate students and others who contribute materially, in one way or another, to a multimedia project. Perhaps the student put in some hours formatting a project or doing photography, and was paid under a grant. A signed form including this wording would be helpful in defining this contribution as something which the main authors are free to acknowledge or not.

The Stanford site includes other forms—a limited grant for specific uses, and a written release for rights to an interview.

I am going to get to work now on some forms for the videos our Chinese and Japanese instructors are making! ♦

Note

¹ But watch out! Some monuments in the US are trademarks, and new works of architecture are considered copyrighted intellectual property (though one is allowed to use publicly accessible views of them without permission). Stick with backgrounds that are likely to be in the public domain....

