

# Fair Use & Open Library

Jessamyn West

*<[librarian.net/talks/txla14](http://librarian.net/talks/txla14)>*

*@jessamyn*

Thanks! There are links for all the stuff I'm talking about at the URL on this slide. Thanks for having me. All the images in this talk are either free, used with permission or screenshot-ish type stuff that I believe falls under fair use. This talk is part "what's happened this year" and a bit of "what I'd like to see happen and how you can help"





I had a slide with all my jobs but they're not important. I have worked in libraries, I now run a big website and teach people computers. I fill in at Open Library. I come at this from one specific side of the issue, the Free Culture Movement. Our goal is to make sure that culture belongs to the people. I don't expect you or other people to be Free Culture people, I'm just telling you where I am coming from. Copyright is real, and problems with copyright are real.

Everyone needs to find their own comfy place within this system. Your place depends on the values of you and of your institution, your comfort with risk and uncertainty, and your own personal moral compass. As I tell people, I'm aware that I'm way out on one end of this issue and I'm okay with that. I just feel that my job is to nudge people in my direction.





I also went googling around for some "exciting librarian" images and found this in a training manual from 1921. "Some Day this hamlet will have its own permanent structure..." which is funny because now we talk about the libraries of the future being virtual and others having an impermanent (pop up?) structure if they have any structure at all. I know I always say that it's an exciting time to be a librarian, but I think it's because I like my job(s) and I am excitable. But it's also because the library culture of my reality is coming closer to being the library culture of my dreams. There's been a lot going on just in the last year and a half



# **FAIR USE: IT'S THE LAW**



## **EXERCISE YOUR COPYRIGHT RIGHTS IN THE CLASSROOM**

There are exceptions to copyright law. Public Domain is one. Right of first sale is another. Fair Use is the big one. "any copying of copyrighted material done for a limited and "transformative" purpose, such as to comment upon, criticize, or parody a copyrighted work" Use some of it, with good reasons and good justifications, and that's legal, as in written into copyright law legal. There have been some changes to what we have thought is and isn't okay in the world of copyright in the last to years. I'd like to take a ramble through some of them.



# **FAIR USE: IT'S THE LAW**



## **EXERCISE YOUR COPYRIGHT RIGHTS IN THE CLASSROOM**

<http://www.flickr.com/photos/sixteenmilesofstream/2596569134/>

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# Georgia E-Reserves



May 2012: Georgia State won, or mostly won, the lawsuit over e-reserves and access and making them available to students under fair use guidelines. Brandon Butler from Association of Research Libs said "Oxford University Press reported \$1-billion in sales last year, \$180-million in profits. Is that what a publisher on the verge of collapse looks like?" OUP is appealing and 50% of their legal costs are being paid by the Copyright Clearance Center. I bet they won't win. Part of what made this okay was the access control Georgia State was using.



# Authors Guild v. Hathi

## DUTIES AND RESPONSIBILITIES OF ENGINEERS.

### FIREMAN'S FIRST EXAMINATION.

How long have you been in the service?\*

How long have you served as a fireman?

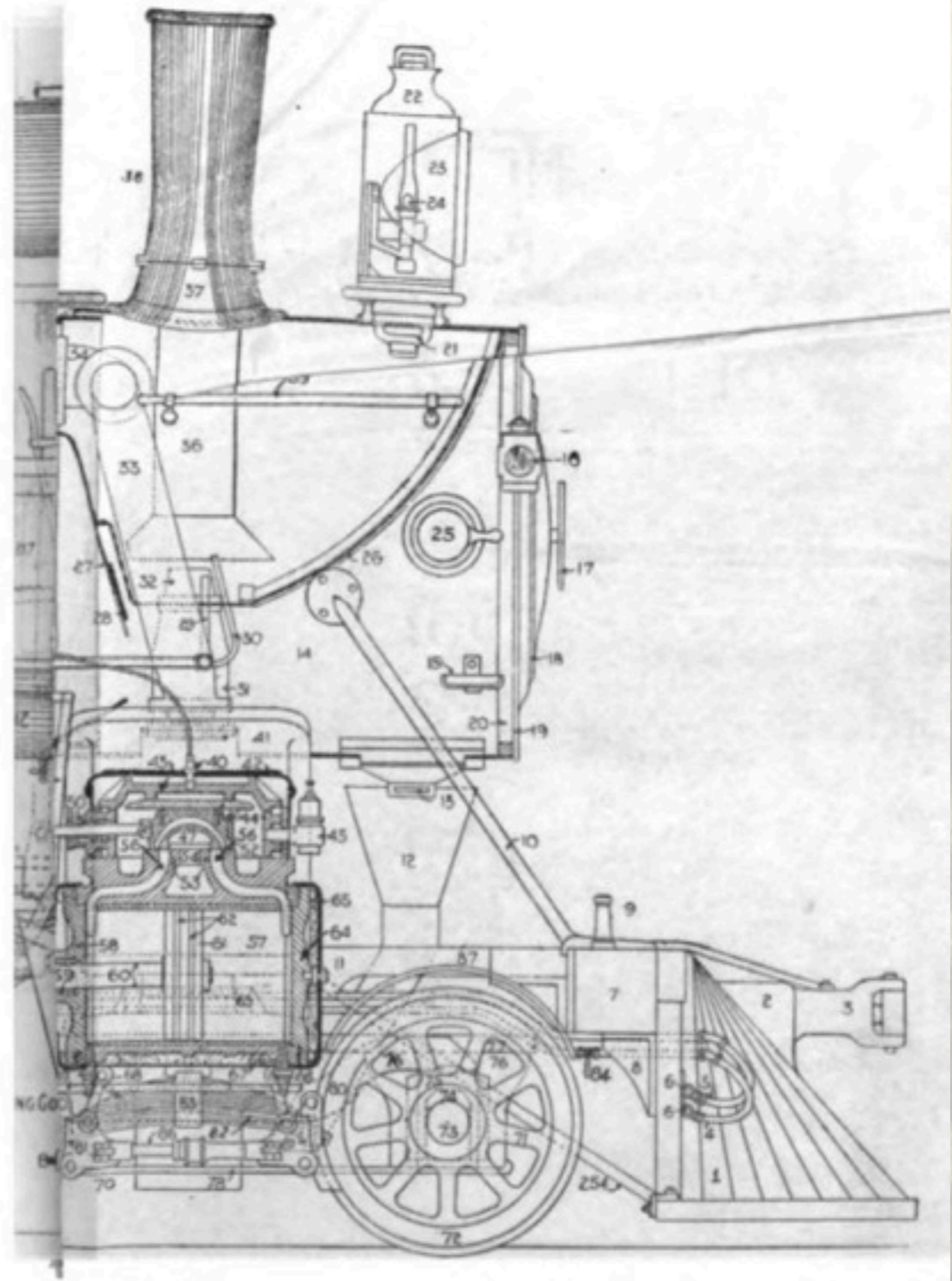
What should you do on arrival at the round-house previous to your departure therefrom with your locomotive? I should draw the necessary supplies and see that the lubricators, lamps, oil cans, tank and sand boxes are filled. If the coal be bituminous, I should see that it is broken and wet down, that the cab and its fittings are wiped, the ashpan cleaned, and the grates straight, so that coal will not drop through them.

When on duty, do you compare your watch with that of the engineer to see that they agree?

As it is the duty of the engineer to show you any train orders that he receives, are you particular to see that the rule is always observed?

Are you familiar with the signals?

\*In the army and navy, fitness being the same, promotion is dependent on length of service. Promotion in the railway world also depends on length of service, provided the qualifications of applicants are alike. Continued and trusted service, it will thus be seen, in the employ of a particular railroad company is a matter of the greatest importance to those who seek preferment.



Oct. 2012: HathiTrust's use of books scanned by Google was declared Fair Use under US Copyright Law. The decision specifically mentioned "transformative uses" such as indexing. Many people felt that this decision paved the way for other large digital repositories. The thing about Hathi that is so appealing is their access control. Some users get some access, other users get different access. All the stuff is behind your password. I don't even have access to a lot of the stuff on Hathi, I just admire it from afar. The admins are handling it.



# UCLA Streaming



November 2012 – Lawsuit from Association for Information Media and Equipment dismissed with prejudice meaning "quit asking". "not obviously a case of infringement" and some other discussion about whether a streaming copy is "fixing" a work which is required for copyright claims. This is also an **access** issue, was the stuff restricted enough being made available via the school's CMS? "streaming previously purchased video content over its intranet for educational purposes is not a copyright violation or a violation of any contract."



# Kirtsaeng v. Wiley

According to publishers...



 Public Knowledge

(Argument Oct 12) Decision March 13: “The ‘first sale’ doctrine, which allows the owner of a copyrighted work to sell or otherwise dispose of that copy as he wishes, applies to copies of a copyrighted work lawfully made abroad.” BAM first sale is upheld. Yay us.



# MPAA & Fair Use

MediaPost **NEWS**

## ONLINE MEDIA DAILY

Home > [Online Media Daily](#) > Tuesday, Mar 19, 2013

### MPAA Backs Authors Guild Against Universities

by [Wendy Davis](#), Mar 18, 2013, 6:10 PM

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Hollywood is siding with the Authors Guild in its attempt to revive a copyright lawsuit against five universities that worked with Google to digitize books.

The Motion Picture Association of America argues in a friend-of-the-court brief that the trial judge incorrectly ruled that the universities were protected by fair use principles.

Among other arguments, the MPAA contends that U.S. District Court Judge Harold Baer in New York didn't adequately consider Google's role in the digitization initiative. According to the MPAA, Google's

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#### TAGS

books, copyright, digital, digital content, google, legal

Even the MPAA has been acting weird. After their March swipe against universities (and Google) and their fair use activities....



# MPAA & Fair Use

POSTED  
APR  
9  
21 HRS

## Why Hollywood Studios Care About the NFL's Baltimore Ravens Logo

12:05 PM PDT 4/9/2013 by Eriq Gardner

[f](#) 3 [t](#) 33 [g+](#) 4 [in](#) 1 [s](#) 0 [Email](#) [Print](#) [Comments \(1\)](#)

**The MPAA says that if an artist suing the league is victorious at an appeals court, it could raise problems for movies containing logos, signs, billboards and other copyrighted works.**



....they then filed a support brief in April for fair use supporting the Baltimore Ravens in their defense against the guy who designed one of their old logos (94-96). Suddenly they were like "oh yeah fair use PROTECTS us as moviemakers..." funny how that works.



# Viacom v. YouTube



**Broadcasting Ourselves ;)**  
**The Official YouTube Blog**

THURSDAY, APRIL 18, 2013

## **YouTube wins case against Viacom (again)**

Today is an important day for the Internet. For the second time, a [federal court](#) correctly rejected Viacom's lawsuit against YouTube. This is a win not just for YouTube, but for the billions of people worldwide who depend on the web to freely exchange ideas and information.

In enacting the Digital Millennium Copyright Act, Congress effectively balanced the public interest in free expression with the rights of copyright holders. The court today reaffirmed an established judicial consensus that the DMCA protects web platforms like YouTube that work with rightsholders and take appropriate steps to remove user-generated content that rightsholders notify them is infringing.

In April 2013 Viacom's case against YouTube was rejected. Viacom was arguing that YT had more of a responsibility to keep copyright violations from ever being uploaded instead of just taking them down when notified. Big year.



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## Broadcasting Ourselves ;) The Official YouTube Blog

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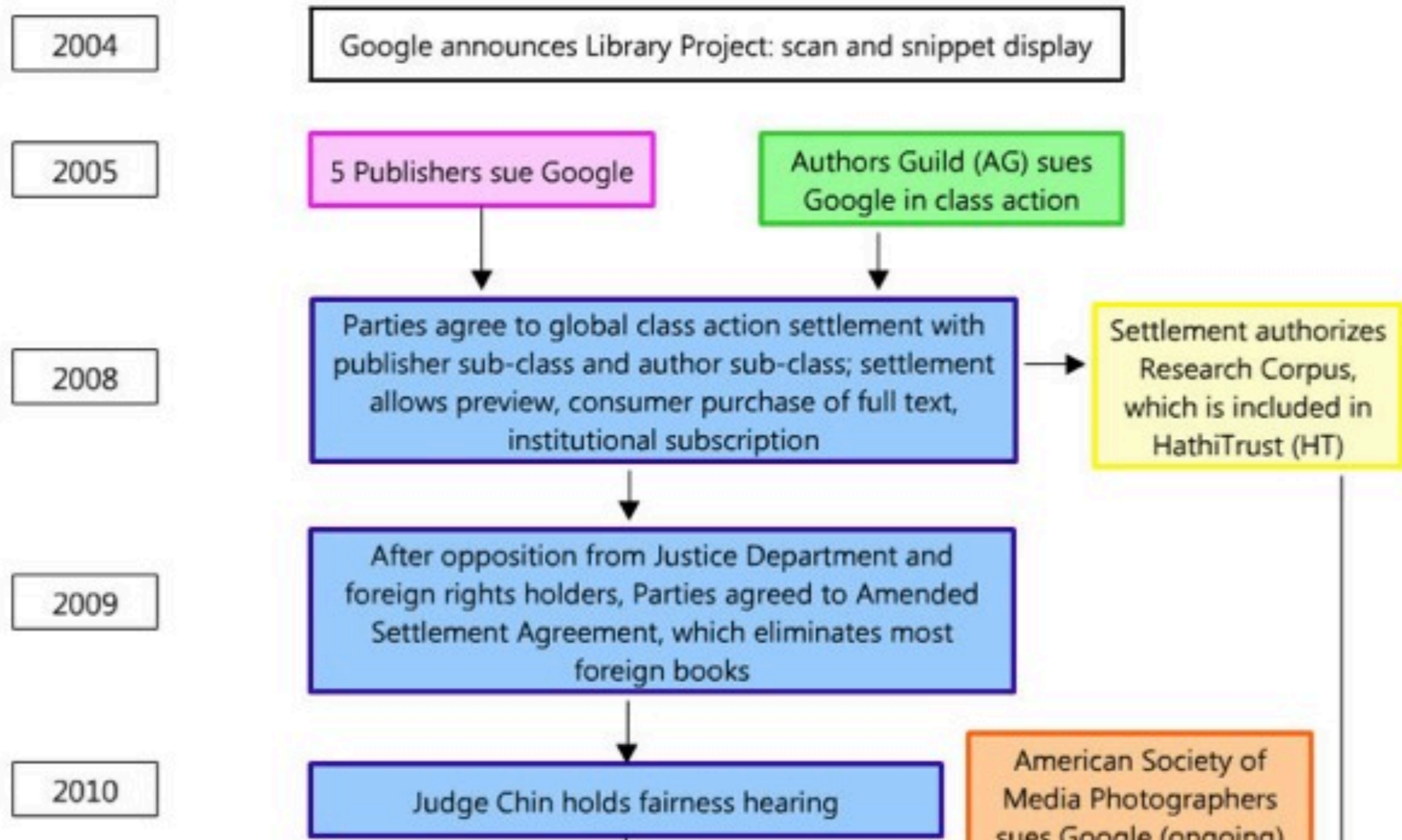
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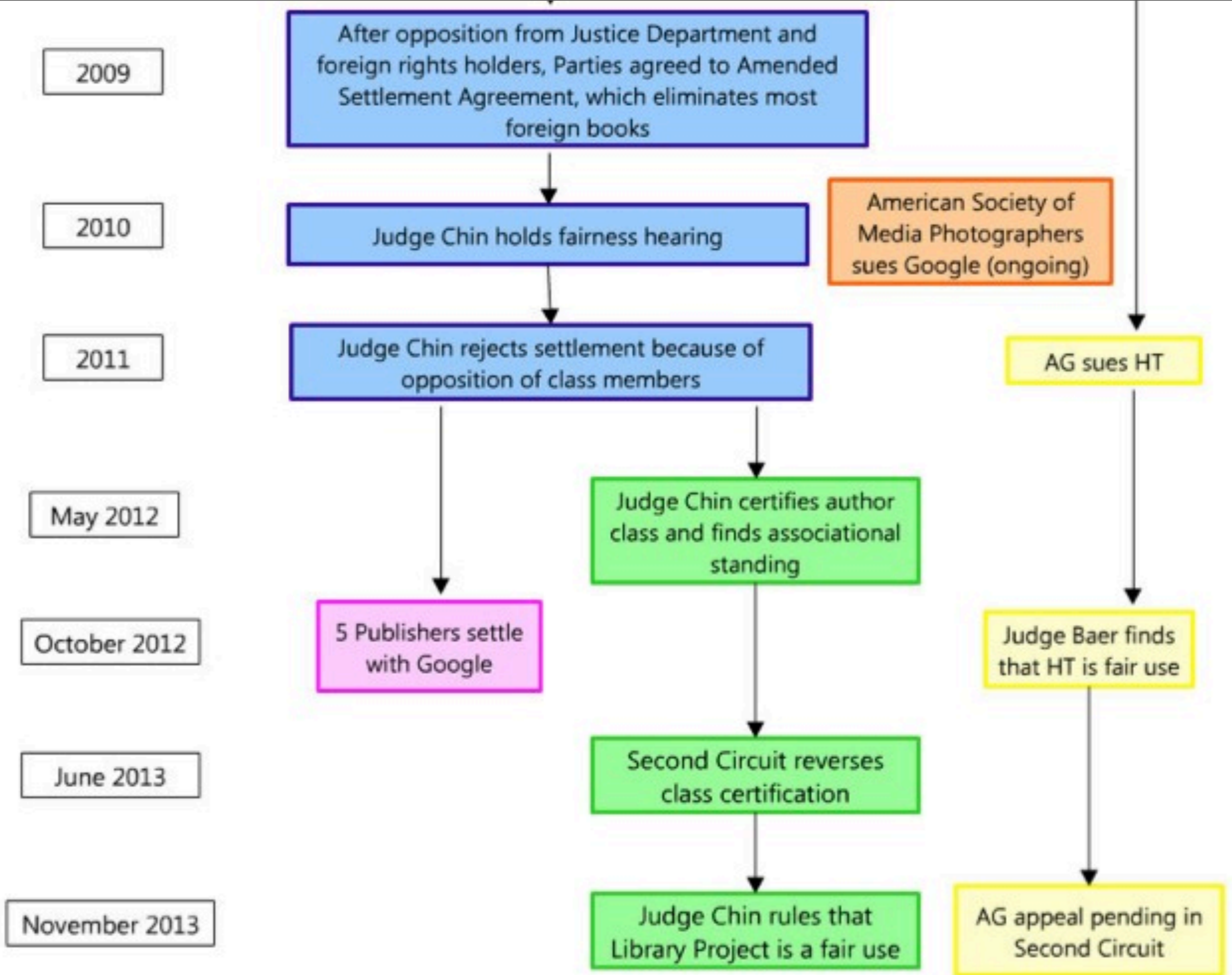
# Google Books

## Google Books Litigation Family Tree



The Google Books thing wrapped up late last year (slightly diff from the Hathi trust thing) has been kicking around since 2005. We've only had Google Books since 2004 and it's been in litigation most of that time.





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# FAIR USE ENABLES MISSION



- **Mission to serve knowledge past, present, future**
- **Need to access copyrighted work**
- **Digital innovation/obsolescence**

And the thing about Fair use is that it is--just like this slide from ARL outlines--one of the MAIN things we do. Share as much as we can. And as more content is digitized, that's all about access and EQUITY of access which is usually my hobbyhorse for another time, but worth keeping in mind. People seem to basically no longer care about the moral panic of photocopying whole books as long as you're not digitizing them and putting them on Scribd



# dp.la launch

The screenshot shows the homepage of the Digital Public Library of America (DPLA). At the top left is the DPLA logo, consisting of the letters 'D', 'P', 'L', and 'A' in blue boxes, followed by the text 'DIGITAL PUBLIC LIBRARY OF AMERICA'. To the right of the logo is a navigation menu with links for 'Home', 'Exhibitions', 'Map', 'Timeline', and 'Apps'. The 'Home' link is underlined. Below the navigation is a large hero image of a young boy in a hat and bowtie jumping in a field. In the bottom right corner of this image are three small icons: an information icon 'i', a left arrow, and a right arrow. Below the hero image is a dark banner with the text 'A Wealth of Knowledge from libraries, archives, and museums' and a search bar containing the text 'Search the Library' and a magnifying glass icon. To the right of the hero image is a grid of three featured content blocks. The top block is titled 'Exhibitions' and features a photo of people with a tractor, with a 'View all »' link below. The middle block features a map with 'Clemson' marked and a photo of a man speaking at a podium. The bottom block is titled 'Explore by Date' and features a photo of a horse race, with a 'Timeline »' link below and a year selector showing '1946', '1947', and '1948'.

Fair Use + libraries gives us projects like the DPLA. I have some mixed feelings about the publicness of the DPLA as well as the libraryness of it, but their heart is well in the right place. But seriously, it's 2014, no search for rights? I've often talked about how many web archives seem to have this "Hey it works!" aspect to it, as if getting stuff online is so difficult, they can be forgiven for lack of features. It's time to move past that (and they've hired some folks so let's hope they're doing that)



# dp.la launch

**D P L A** DIGITAL PUBLIC LIBRARY OF AMERICA

[Home](#) [Exhibitions](#) [Map](#) [Timeline](#) [Apps](#)

## Can I download items?


Each metadata record in the DPLA contains a link to the digital object on the content provider's website. Digital copies of some objects are available for download, based on the content provider and the individual rights status of the object.

## What is the copyright status of items in the DPLA?

The copyright status of items in the DPLA varies. Many items are in the public domain. For individual rights information about an item, please check the Rights field in the metadata or follow the link to the digital object on the content provider's website for more information.

## A Wealth of Knowledge

from libraries, archives, and museums

Explore  
by Date

Timeline »



1946 1947 1948

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Web

**Images**

Maps

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Search tools

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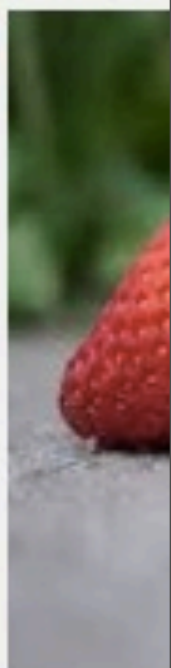
Usage Rights ▾

More tools ▾



Sea Turtles

- not filtered by license
- labeled for reuse
- labeled for commercial reuse
- labeled for reuse with modification
- labeled for commercial reuse with modification



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SUBJECTS

AUTHORS

ADD A BOOK

LISTS

RECENTLY

HELP

# OPEN LIBRARY

One web page for every book.

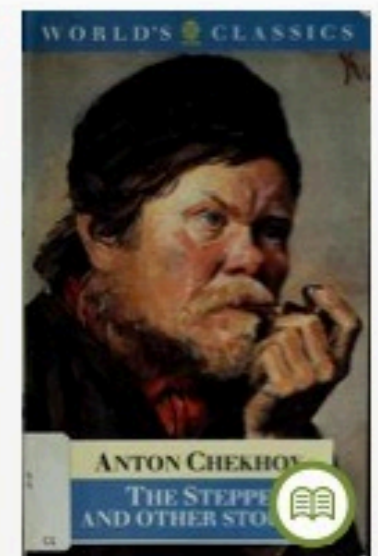
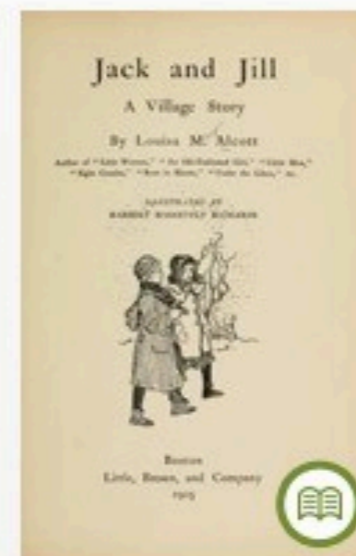
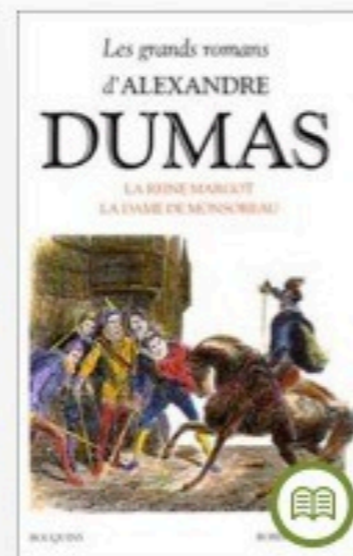
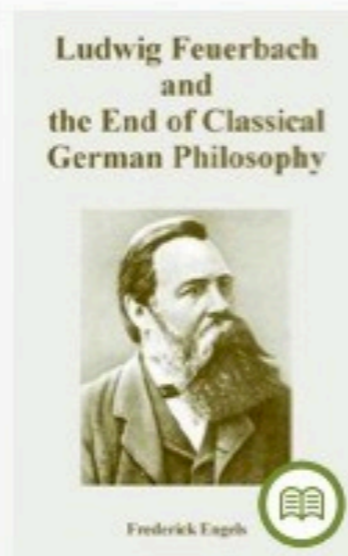
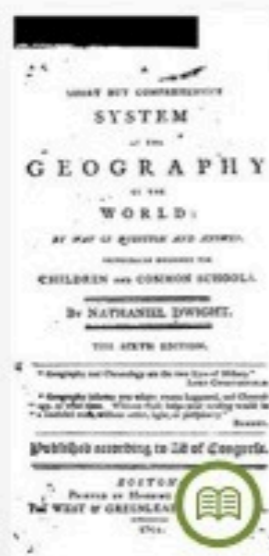
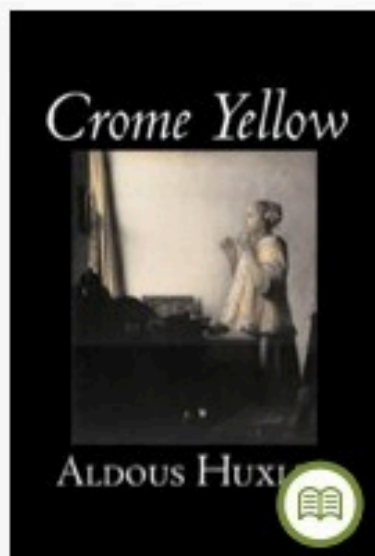
Search

Show only eBooks

[More search options](#)

Open Library is yours  
to borrow, read & search.

**Books to Read** The World's classic literature at your fingertips. Over [1,000,000 free ebook titles](#) available.



**Books to Borrow** Here's a sample of recently returned books from the [eBook lending library](#).

In contrast, there's Open Library. I'm not sure how much you know about Open Library. I've been working there doing support email as a hobby for about a year now. It's project of the Internet Archive but somewhat different. It allows lending of books, Ebooks. To anyone (in the US). It's a bit of a scheme. Let me explain.



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AUTHORS

ADD A BOOK

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HELP

# OPEN LIBRARY

One web page for every book.

Search

Show only eBooks

[More search options](#)

## Around the Library

Here's what's happened over the last 28 days. More [recent changes](#).



**8,450,600**  
UNIQUE VISITORS



**29,525**  
NEW MEMBERS



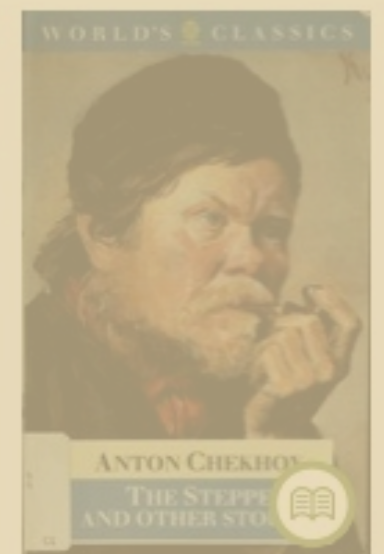
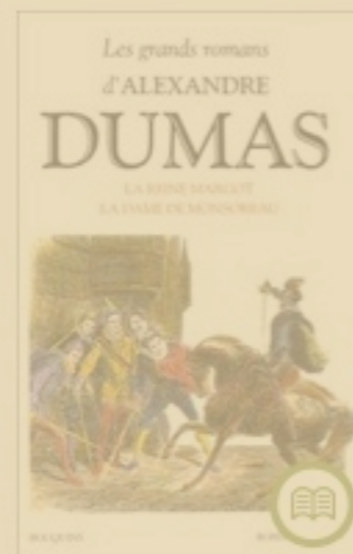
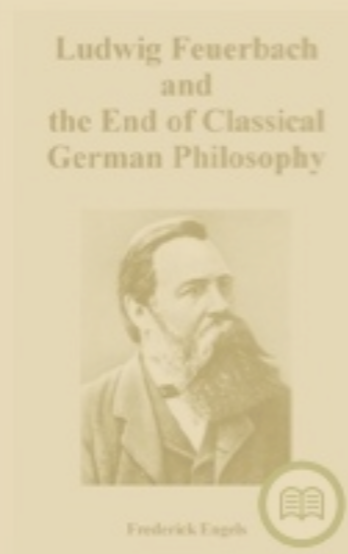
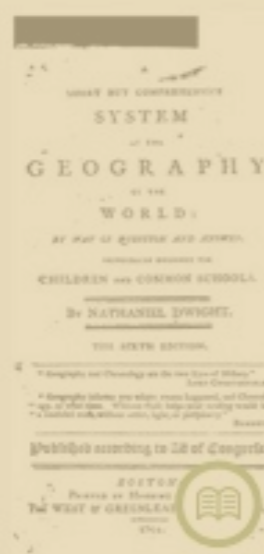
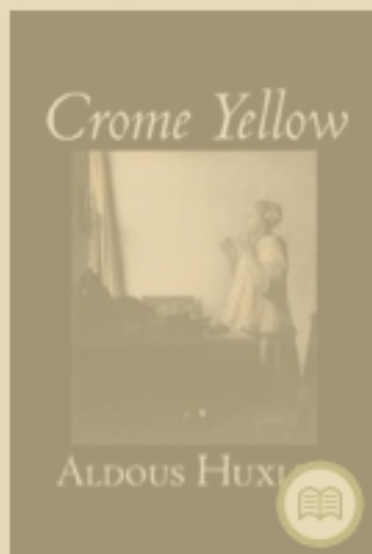
**54,781**  
CATALOG EDITS



**1,597**  
LISTS CREATED



**140,357**  
EBOOKS BORROWED



## Books to Borrow

Here's a sample of recently returned books from the [eBook lending library](#).

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# Read...

10

Creator made us for climbing. It's quite natural and perfectly safe."

Then why did it look so . . . so unnatural and so unsafe to me, I wondered. But I knew better than to answer back to Mother.

She pushed me back away from her and I knew what would happen next. She was going to climb that tree and leave me on the ground again. I couldn't stand the thought. I hated to be alone. I decided to follow her, clinging to her if possible. I reached for another handful of her thick hair and held on tightly as she took her first step toward the tree.

"Now Pordy," she said, turning to look at me, "You can't climb if your hands are full of something else. You'll have to let go of me and use your paws on the tree trunk."

Let go? I couldn't think of it. Mother was my safety. How could I let go and trust my own small paws on the trunk?

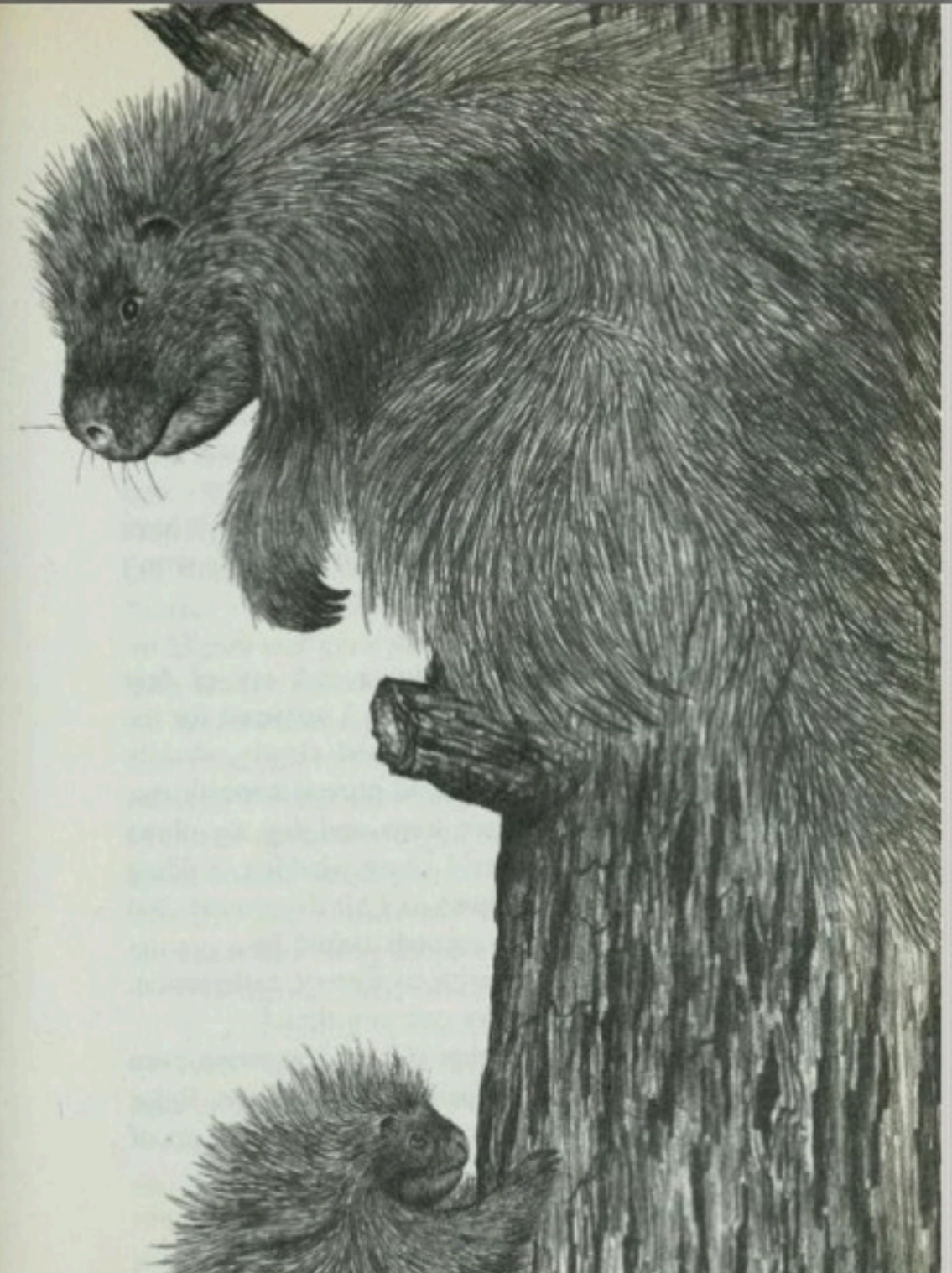
"Let go, Pordy," she said again.

I began to shiver again - and I wasn't even off the ground.

"Let go."

I let the handful of Mother's coat slip from my fingers. I wanted to curl up into a ball and close my eyes again. Oh, if only I could go back to the snug nest in the hollow of the tree trunk.

"Now put up the first paw and grab the trunk tightly just like you clutched me," advised Mother.



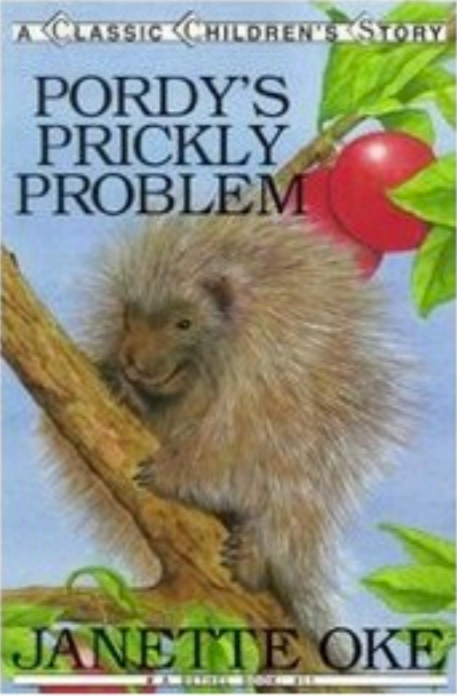
You can read books online with one click (not like an overdrive "one-click" an actual single click), you can also



# Borrow...

3 editions of [Pordy's prickly problem](#) by [Janette Oke](#) • [Add edition?](#)  
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**Pordy's prickly problem**  
Janette Oke ; [illustrated by Brenda Mann ; edited by Grace Pettifor].  
Published **1993** by [Bethel Pub.](#) in [Elkhart, IN.](#)  
Written in [English](#).

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**About the Book**  
Young porcupine Pordy learns that to have a friend you must be one.

**Edition Notes**  
"A Bethel book, #11"--Cover.  
"A classic children's story."

**Classifications**  
Dewey Decimal Class [Fic]  
Library of Congress PZ7.O4144 Po 1993

[Manage Covers](#)

borrow books, even ones that are in copyright thanks to an agreement with partner libraries and a bit of envelope pushing. You see Open Library takes books that are not heavily circulated (this is a 20 year old kids book) and scans them and puts the original away. Then it circulates the digital copy, one copy at a time, to anyone the Open Library serves. Which recently expanded to include the entire world. It's sort of nuts. They're sort of waiting for someone to sue them. One of their partners is Boston Public Library (and NY State Library) and I've seen them talk about this. But I bet when (or if) they're sued, they will win. Here's a little quote from an article on Copyright Risk Management in ARL's Digital Library Issues publication about what you really need to worry about.



---

**First, try to reduce the number of risky items that a collection contains. Second, try to reduce the number of people who are likely to want to sue you over the collection.**

---

Edit

vser

Cat

borrow books, even ones that are in copyright thanks to an agreement with partner libraries and a bit of envelope pushing. You see Open Library takes books that are not heavily circulated (this is a 20 year old kids book) and scans them and puts the original away. Then it circulates the digital copy, one copy at a time, to anyone the Open Library serves. Which recently expanded to include the entire world. It's sort of nuts. They're sort of waiting for someone to sue them. One of their partners is Boston Public Library (and NY State Library) and I've seen them talk about this. But I bet when (or if) they're sued, they will win. Here's a little quote from an article on Copyright Risk Management in ARL's Digital Library Issues publication about what you really need to worry about.



# BUT...



- **Insecurity and hesitation=staff costs, mission deformed**
- **Fair use would help, but is under-used**
- **Risk aversion substituted for fair use analysis**

And here's ARL talking about our major impediments. This is also from the ARLs Code of Best Practices. Often the impediments to actually USING things in a fair use fashion aren't technological they're what we like to call "wetware" Or like we say on MetaFilter "you are trying to employ a technological solution for a social problem" or more simply, PEBCAK





So we're really in the job of not always knowing the rules but of doing some level of risk assessment. And the more we're willing to risk, the more of our cultural content we can share.





This image is of a **poster**, and the copyright for it is most likely owned by either the publisher or the creator of the work depicted. It is believed that the use of **scaled-down, low-resolution** images of posters

- **to provide critical commentary on the film, event, etc. in question or of the poster itself**, not solely for illustration
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qualifies as **fair use** under [United States copyright law](#). **Any other uses of this image, on Wikipedia or elsewhere may be copyright infringement.** See [Wikipedia:Non-free content](#) for more information.



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**Documentary Filmmakers' Statement of**

# **BEST PRACTICES IN FAIR USE**

Association of Independent Video and Filmmakers  
Independent Feature Project  
International Documentary Association  
National Alliance for Media Arts and Culture  
Women in Film and Video, Washington, D.C., Chapter

One big takeaway from ARLs research on Best Practices and Fair Use is that they found just the presence of a set of guidelines had a chilling effect on people's desire to sue people. That is: if you have a set of standards and apply them fairly just the presence of these guidelines helps you stay safe. If you don't have some best practices, it's worth the time and effort to make some, seriously.





# CODE OF BEST PRACTICES IN FAIR USE FOR POETRY

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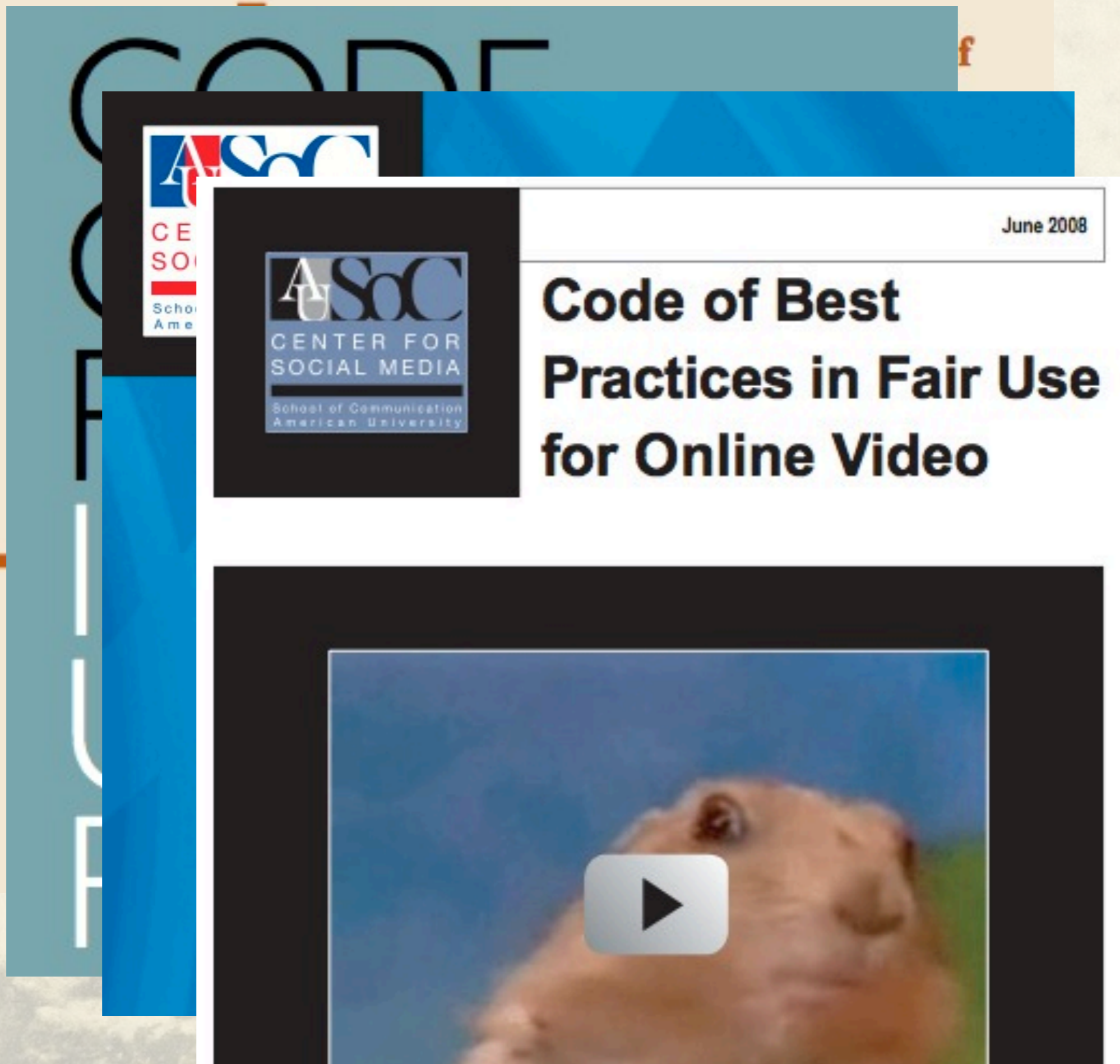


October 2009

# Code of Best Practices in Fair Use for OpenCourseWare

One big takeaway from ARLs research on Best Practices and Fair Use is that they found just the presence of a set of guidelines had a chilling effect on people's desire to sue people. That is: if you have a set of standards and apply them fairly just the presence of these guidelines helps you stay safe. If you don't have some best practices, it's worth the time and effort to make some, seriously.





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# Google Books...

- Gives scholars the ability, **for the first time**, to conduct full-text searches of tens of millions of books.
- Preserves books, in particular out-of-print and old books that have been **forgotten in the bowels of libraries**, and it gives them new life.
- Facilitates access to books for **print-disabled and remote or underserved** populations.
- Generates new audiences and creates **new sources of income** for authors and publishers.

***Indeed, all society benefits.***

according to the summary judgement by Judge Chin Google Books does some pretty terrific things. Things that look sort of familiar to us, right (you might want to skip the part about forgotten library bowels). I'm all about access so I'm most excited about the third item. But the summary: this actually helps everyone.



- **Exercise** your Fair Use rights.
- **Encourage** sharing.
- **Demand** rights metadata.
- **Promote** rights awareness.
- **Open** sharing-oriented licenses on content you create.

What can YOU do?

This is my TODO list for anyone working extensively with digital content. As I said, I'm aware that everyone's priorities differ so this is less "To the vanguards" and more "While you're already doing great at your jobs, here are some things to consider as you implement projects, if you wouldn't mind. Please. Thank you."





AS  
SEEN ON  
TV

# PASSWORD

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10 TO  
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SPRINGFIELD  
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So the old way of looking at access and sharing was the librarians and educators were the ones with the passwords and if you were nice or deserving they might share them with you. The new model is more about using our access to appropriately monitor and moderate access to create an environment where sharing, discovery and collaboration can flourish, an environment that works for content owners, researchers and casual users.

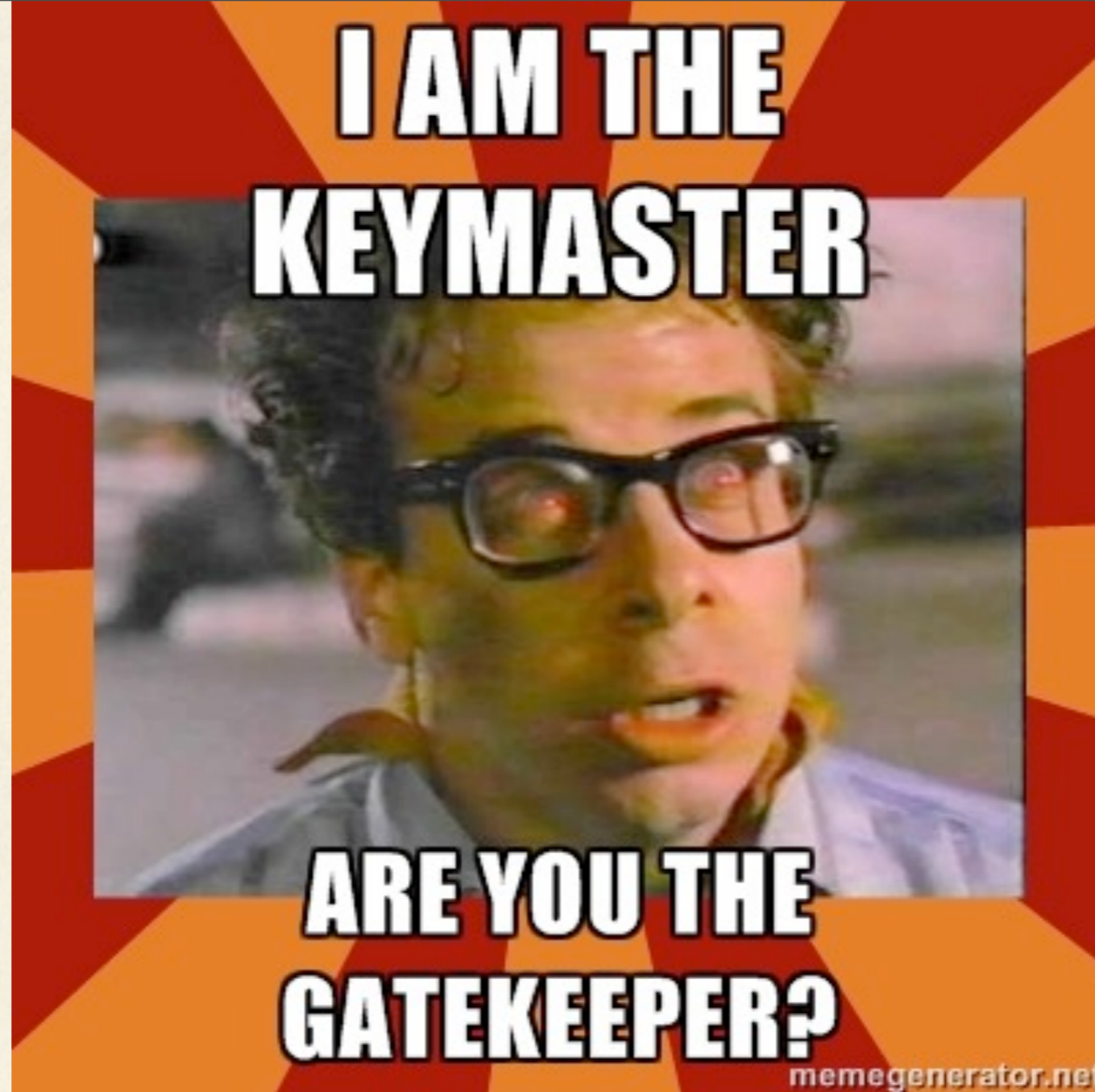


# You're it. Open up.



At the end of the day, someone's got root. That used to be the people running the servers. Now, more and more, it's us, the people facilitating access. And you don't just all know the passwords. You ARE the passwords. Open 'em up.





**Thank you.**

*<librarian.net/talks/txla | 4>*