Open Resources & Fair Use

share ALL the things!

Jessamyn West

<librarian.net/talks/usnh-ati>

Thanks! There are links for all the stuff I'm talking about at the URL on this slide. **That** URL also has the link to last year's talk. I'll try not to repeat too much. Thanks for having me. So I hear you have a challenge "prepare an instructional challenge that you would like to solve using technology" I have one of my own that I'll leave til the end here. 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 new this year" and a bit of "what I'd like to see happen and how you can help"

the modern librarian

- Director of Operations, MetaFilter.com
- "Intrepid part-timer" Kimball Library
- Tech instructor, RTCC
- Volunteer email support Open Library
- I blog & write & talk a little. Hi.

I am only sort of a librarian. I don't think it's that I've changed so much, it's that libraries have changed, and keep changing. My current job titles now are...

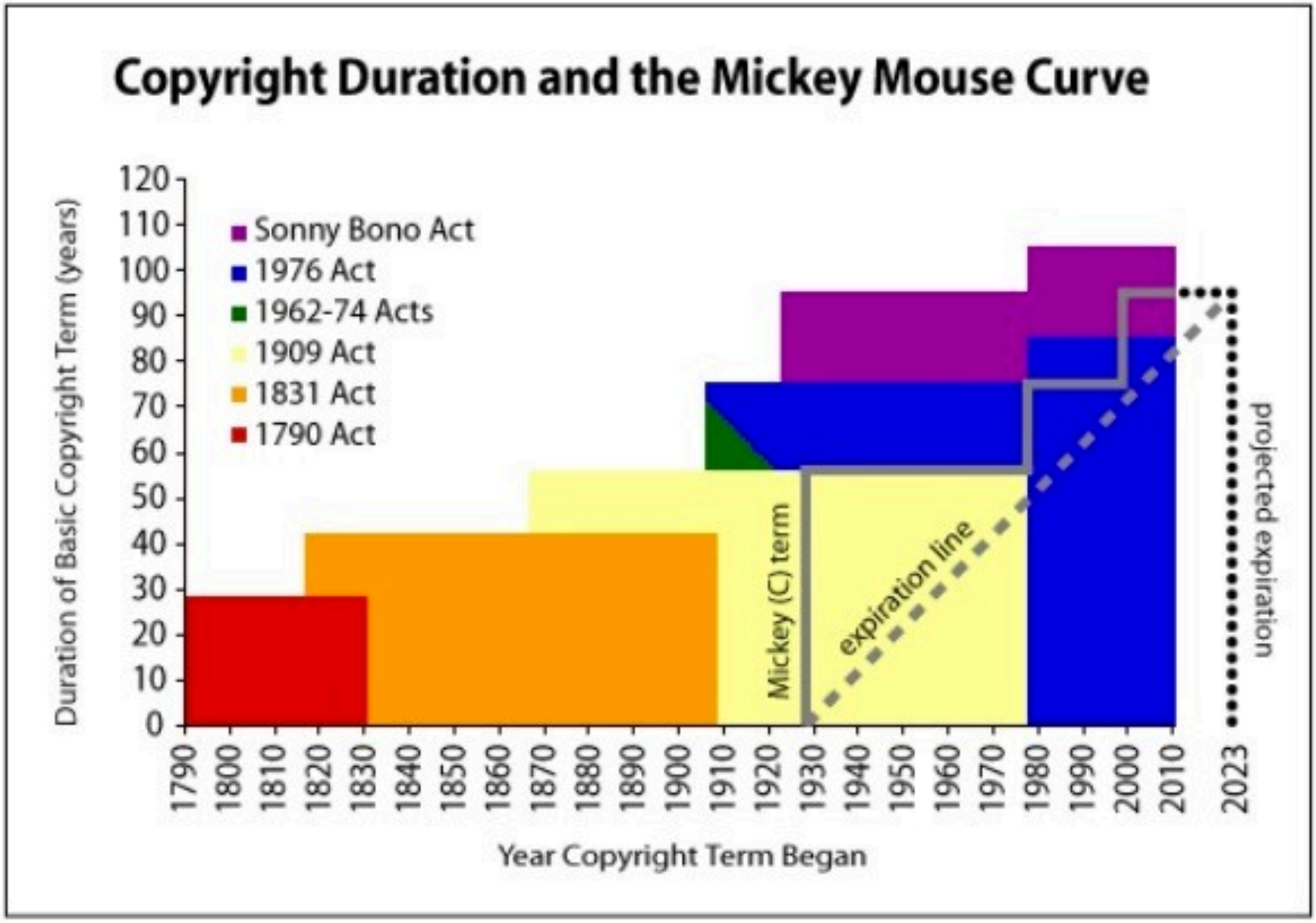
(verbatim from last year) I come at this from one specific side of the issue, the Free Culture Movement. Our goal is to make sure that culture belongs to the people. I don't expect you or other people to be Free Culture people, I'm just telling you where I am coming from. Copyright is real. Problems 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 am also, it goes without saying, not a lawyer. I am a justice of the peace. This is Belva Ann Lockwood, she is a lawyer. I got her photo from Wikimedia Commons via a Google Image search looking for female lawyer pictures that I could use, modify and share.

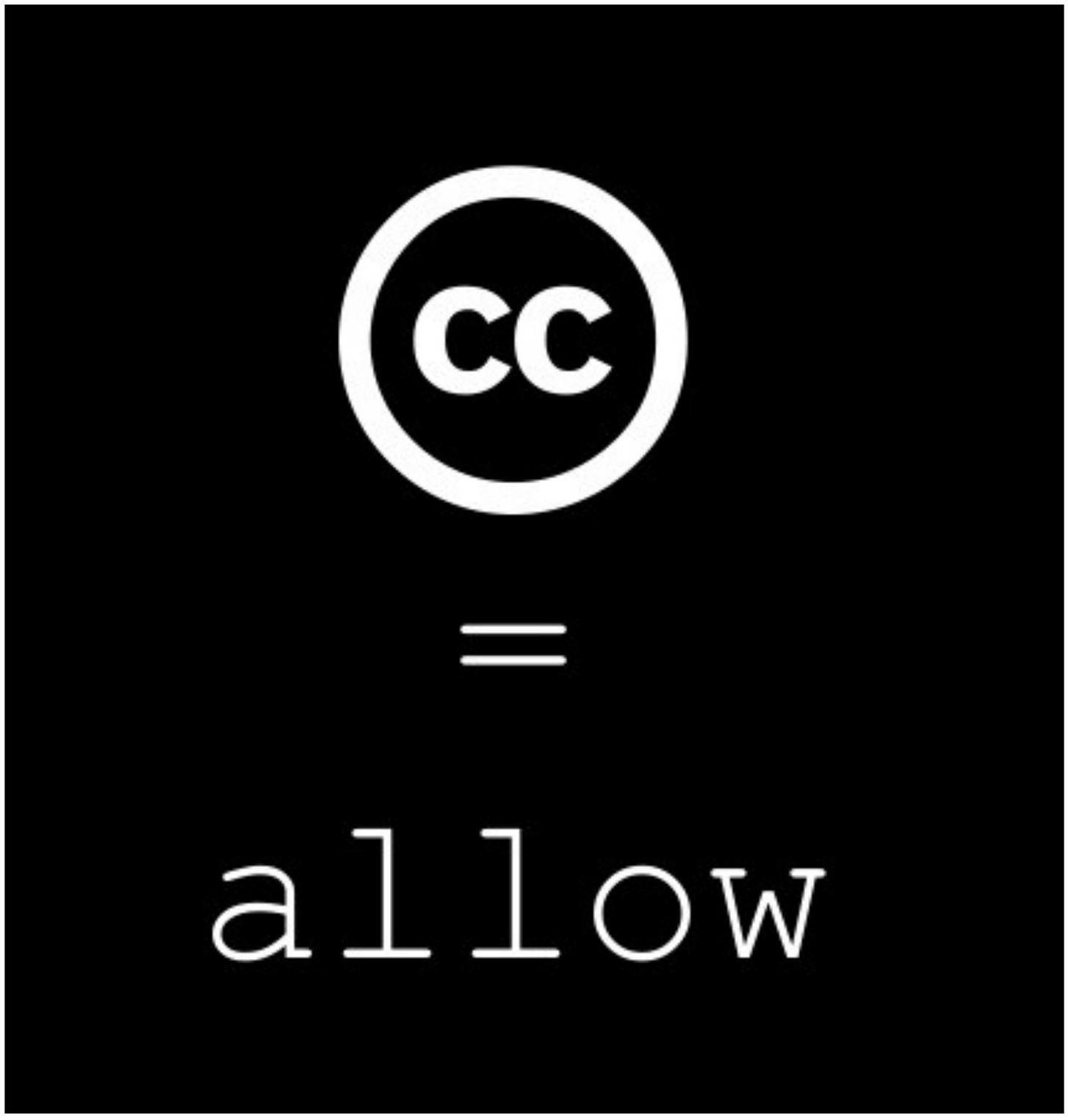
I also went googling around for some "exciting librarian" images and found this in a training manual from 1921. "Some Day this hamlet will have its own permanent structure..." which is funny because now we talk about the libraries of the future being virtual and others having an impermanent (pop up?) 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.

A quick note about the two aspects of controlling/sharing content.

First let's start with terminology. Copyright. "legal concept, enacted by most governments, giving the creator of an original work exclusive rights to it, usually for a limited time." Loose idea is that people are encouraged to create culture if people don't steal their things all the time. Something copyrighted has restrictions placed on it. In and of itself that is fine. (Michael Sauers made this image for his talk, I am borrowing it. I know Michael won't mind)



However there's some debate about how long those restrictions should be in effect and just how punished people should be if they circumvent those restrictions. Used to be that making a copy of a thing always meant you had sort of a lousy copy (cassette tapes anyone?). Not anymore. This has changed the playing field. I am not telling you anything you do not know.



Creative Commons tries to turn this on its head. They've been around about ten years. These licenses allow creators to communicate which rights they reserve, and which rights they waive for the benefit of recipients or other creators. By definition if you're dabbling in creative commons, you're looking to share. Lots more detail about CC in last year's talk.

FAIR USE: IT'S THE LAW

EXERCISE YOUR COPYRIGHT RIGHTS IN THE CLASSROOM

Fair Use is what you get to do with some of the in-betweener stuff. 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 this year, I'd like to take a ramble through some of them.

FAIR USE: IT'S THE LAW

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http://www.flickr.com/photos/sixteenmilesofstring/2596569134/

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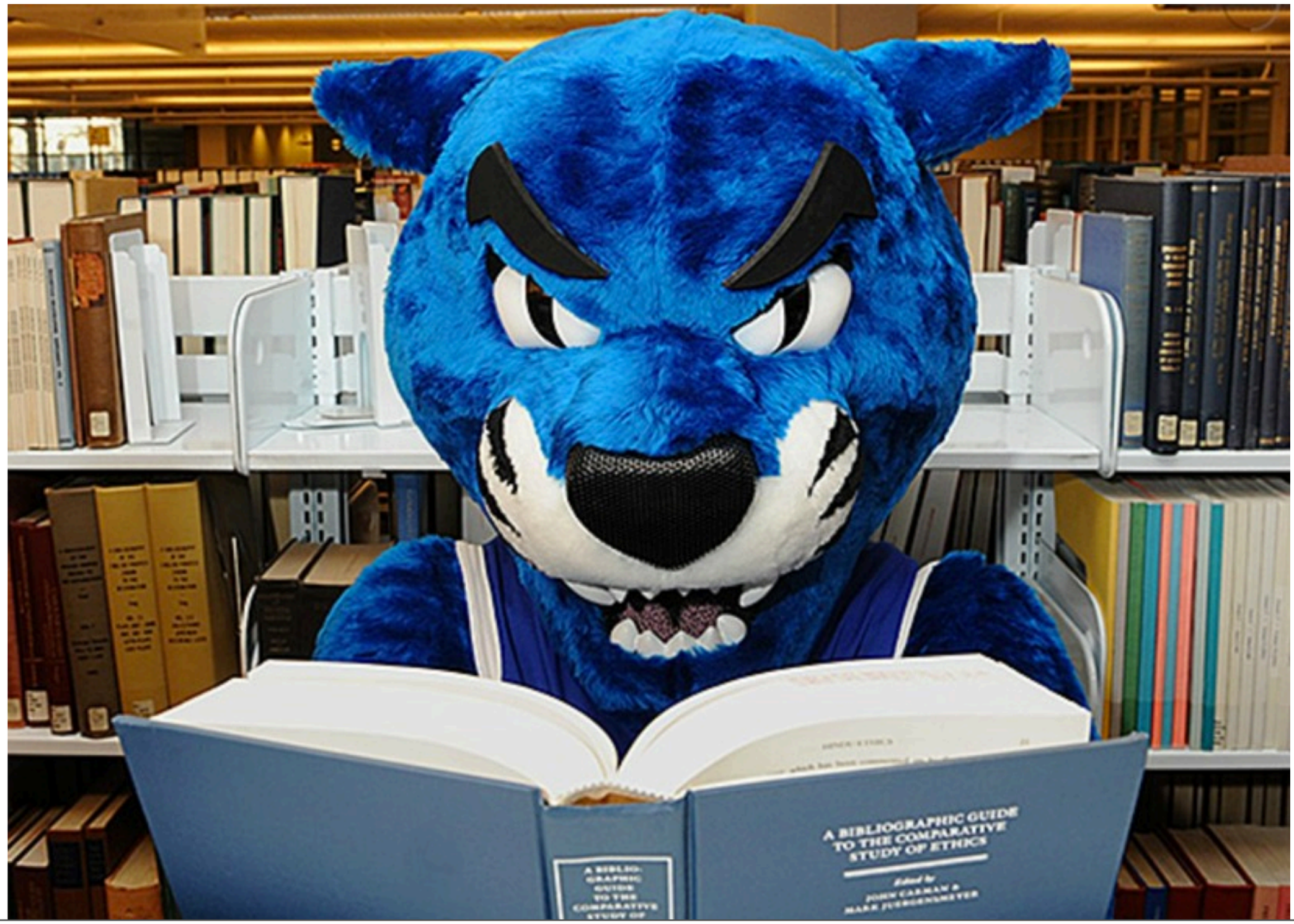
Georgia E-Reserves



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 ARL 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 this year, I bet they wont win. Part of what made this okay was the access control Georgia State was using.

MLA: OA Friendly

MLA Journals Adopt New Open-Access-Friendly Author Agreements

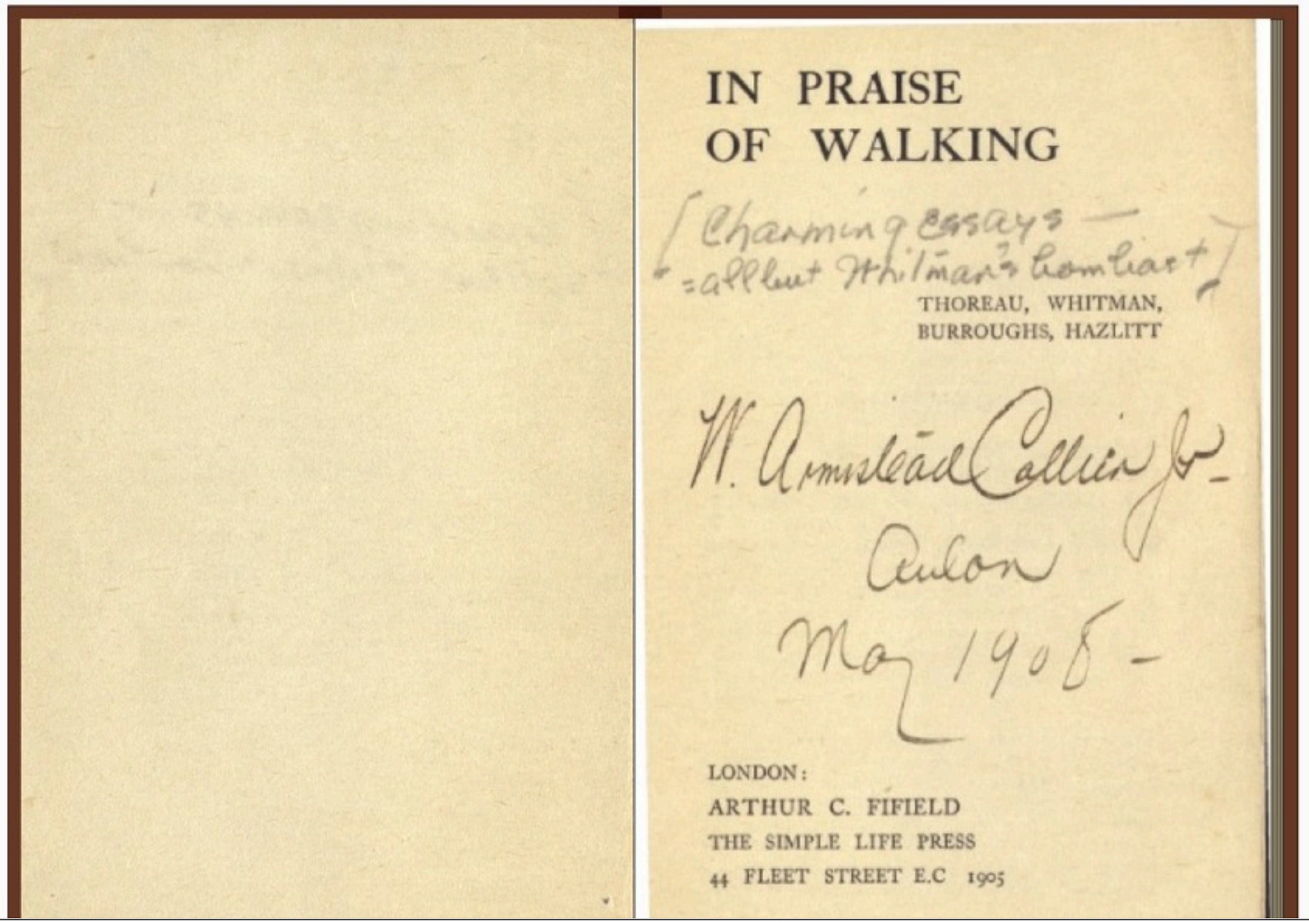
The journals of the Modern Language Association, including *PMLA*, *Profession*, and the ADE and ADFL bulletins, have adopted new open-access-friendly author agreements, which will go into use with their next full issues. The revised agreements leave copyright with the authors and explicitly permit authors to deposit in open-access repositories and post on personal or departmental Web sites the versions of their manuscripts accepted for publication. For more information on the new agreements, please contact the office of scholarly communication.

Added 5 June 2012

Modern Language Association MLA

June 2012: the journals of the modern language association have changed their author agreements to leave copyright in the hands of the authors & share them in repositories. Basically saying "hey if this is a cultural value we have, we should walk the talk." Nice job MLA.

Authors Guild v. Hathi


IN PRAISE
OF WALKING

[Charming Essays —
=about Thoreau's Companions]

THOREAU, WHITMAN,
BURROUGHS, HAZLITT

W. Armistead Collier Jr.
Acton
May 1908 –

LONDON:
ARTHUR C. FIFIELD
THE SIMPLE LIFE PRESS
44 FLEET STREET E.C 1905

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 stuf fon Hathi, I just admire it from afar.

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?

Public Access to Research

WE the PEOPLE

YOUR VOICE IN OUR GOVERNMENT

CREATE A PETITION | OPEN PETITIONS | RESPONSES | HOW & WHY

OFFICIAL OFFICE OF SCIENCE AND TECHNOLOGY POLICY RESPONSE TO

Require free access over the Internet to scientific journal articles arising from taxpayer-funded research.

Increasing Public Access to the Results of Scientific Research

By Dr. John Holdren

Thank you for your participation in the We the People platform. The Obama Administration agrees that citizens deserve easy access to the results of research their tax dollars have paid for. As you may know, the Office of Science and Technology Policy has been looking into this issue for some time and has reached out to the public on two occasions for input on the question of how best to achieve this goal of democratizing the results of federally-funded research. Your petition has been important to our discussions of this issue.

Feb 2013 in response to a We the People petition that got over 60K signatures "Fed agencies with more than $100 million in R&D expenditures have to develop plans to make the results of federally-funded research publicly available free of charge within 12 months." So it's not just hippies... Again, access, the stuff exists, the question is who to we make it available to and for how much?

Kirtsaeng v. Wiley

(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

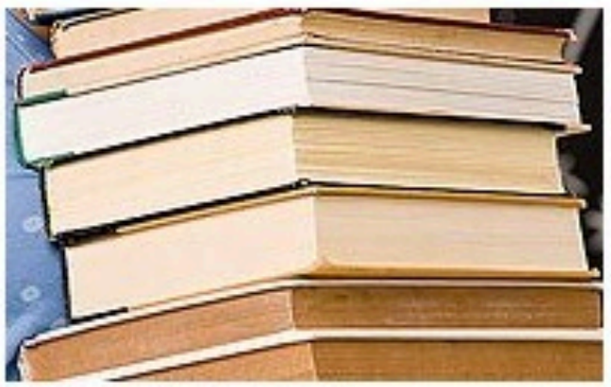
MediaPost NEWS

ONLINE MEDIA DAILY

MPAA Backs Authors Guild Against Universities

by Wendy Davis, Mar 18, 2013, 6:10 PM

Comment (1) Recommend (1) Tweet 12 Share +1 0



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 involvement gave the digitization project a commercial purpose that "weighs heavily against a finding of fair use."

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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

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

12:06 PM PDT 4/9/2013 by Eriq Gardner

3 33 4 1 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.

Getty Images

The Baltimore Ravens celebrate their Super Bowl victory.

The Motion Picture Association of America is usually associated with its aggressive advocacy of expansive copyright laws. On Monday, however, the MPAA sided with the NFL and the Baltimore Ravens in defending limits to a copyright holder's authority to object to use of protected material.

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

Viacom v. YouTube

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.

Just last month 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. That brings us up to date. Big year.

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Fair Use in Libraries

So there's been a lot of agitating about Fair Use and libraries and just like other legal wrassling that is reaching a tipping point this year, this is the time to start moving the goalposts our way.

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 if you're photocopying whole books as long as you're not digitzing them or putting them on Scribd

Speaking of Scribd, I stole my own book a few weeks ago, just for laughs, uh, "research". It was easier to find, download and read than purchase the version on my publisher's website. The publisher wanted me to create an account, all the stuff....

Scribd. Search the world's digital library. Browse

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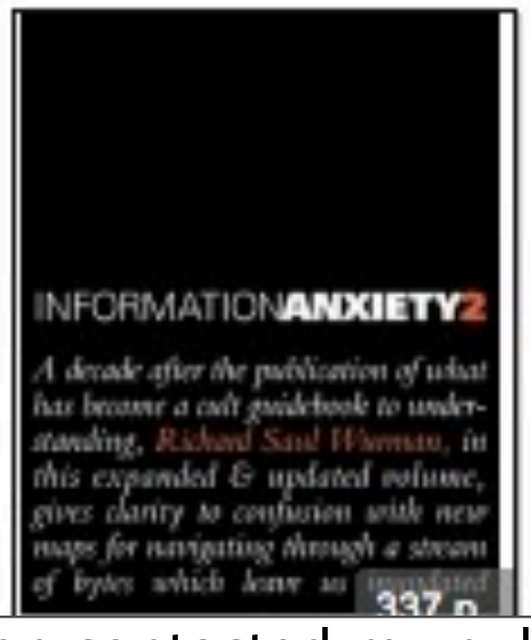

Information Anxiety 2

Rodrigo Genu published this 10 / 29 / 2011 2,120 reads 0

I then contacted my publisher and said "Hey maybe you want to do something about this" and they sent a DMCA notice and the book was taken down. But that was it. No one went to jail. No one even got arrested. With the exception of the RIAA/MPAA going after file-sharers, most people are reasonable about this sort of thing.

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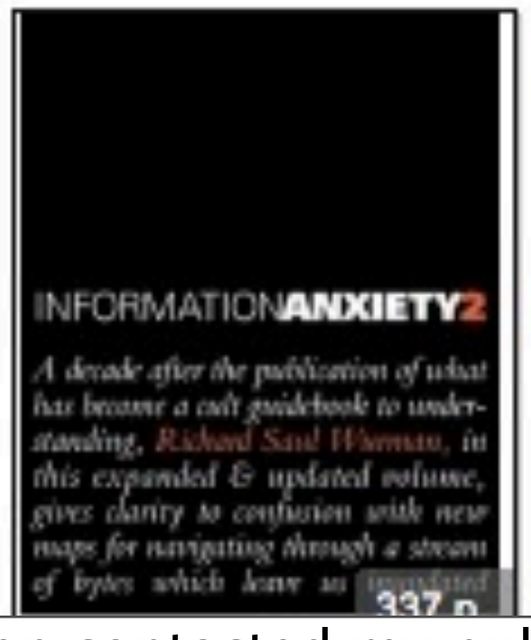

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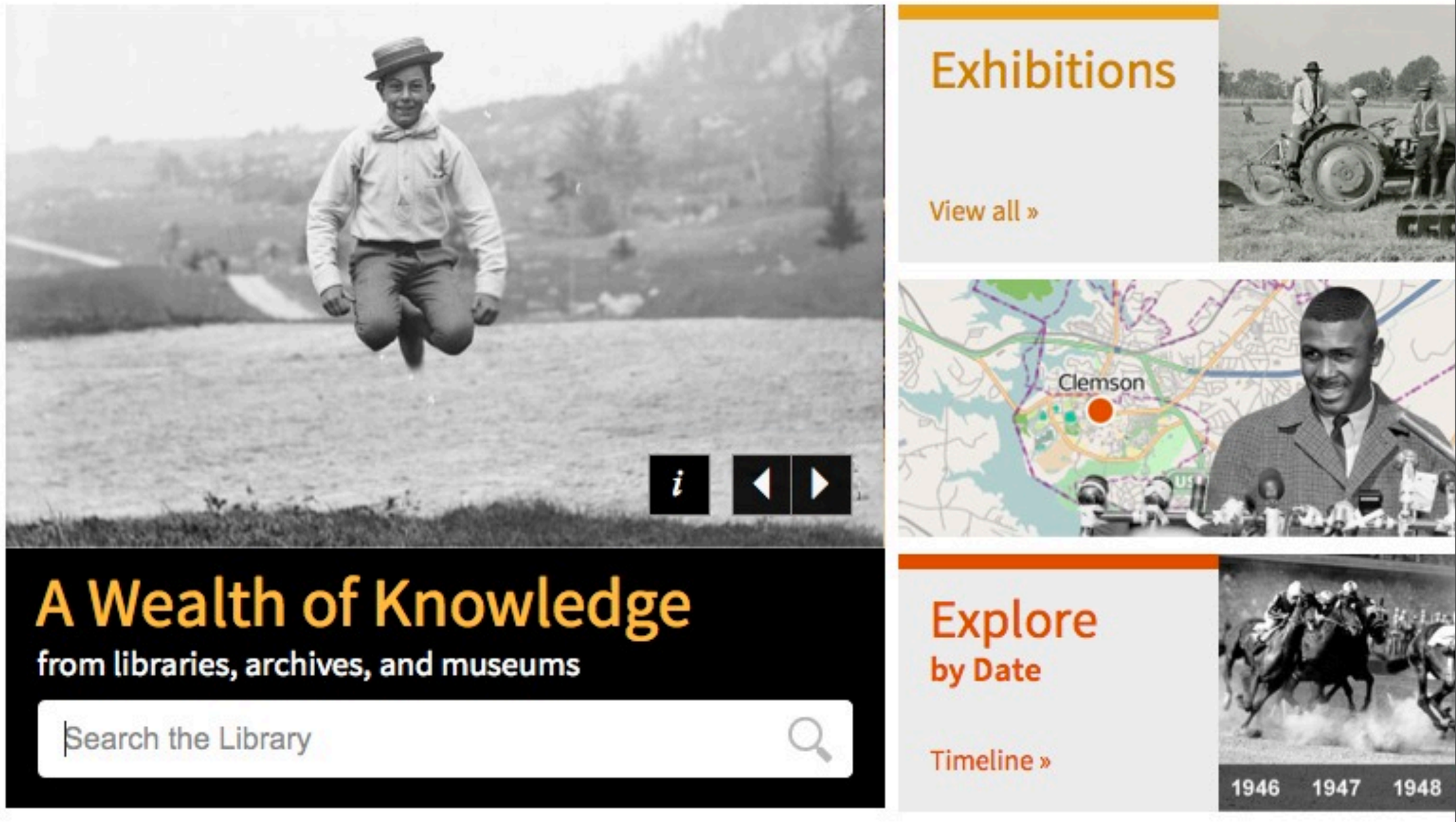
dp.la launch



Back to fair use... 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 2013, 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

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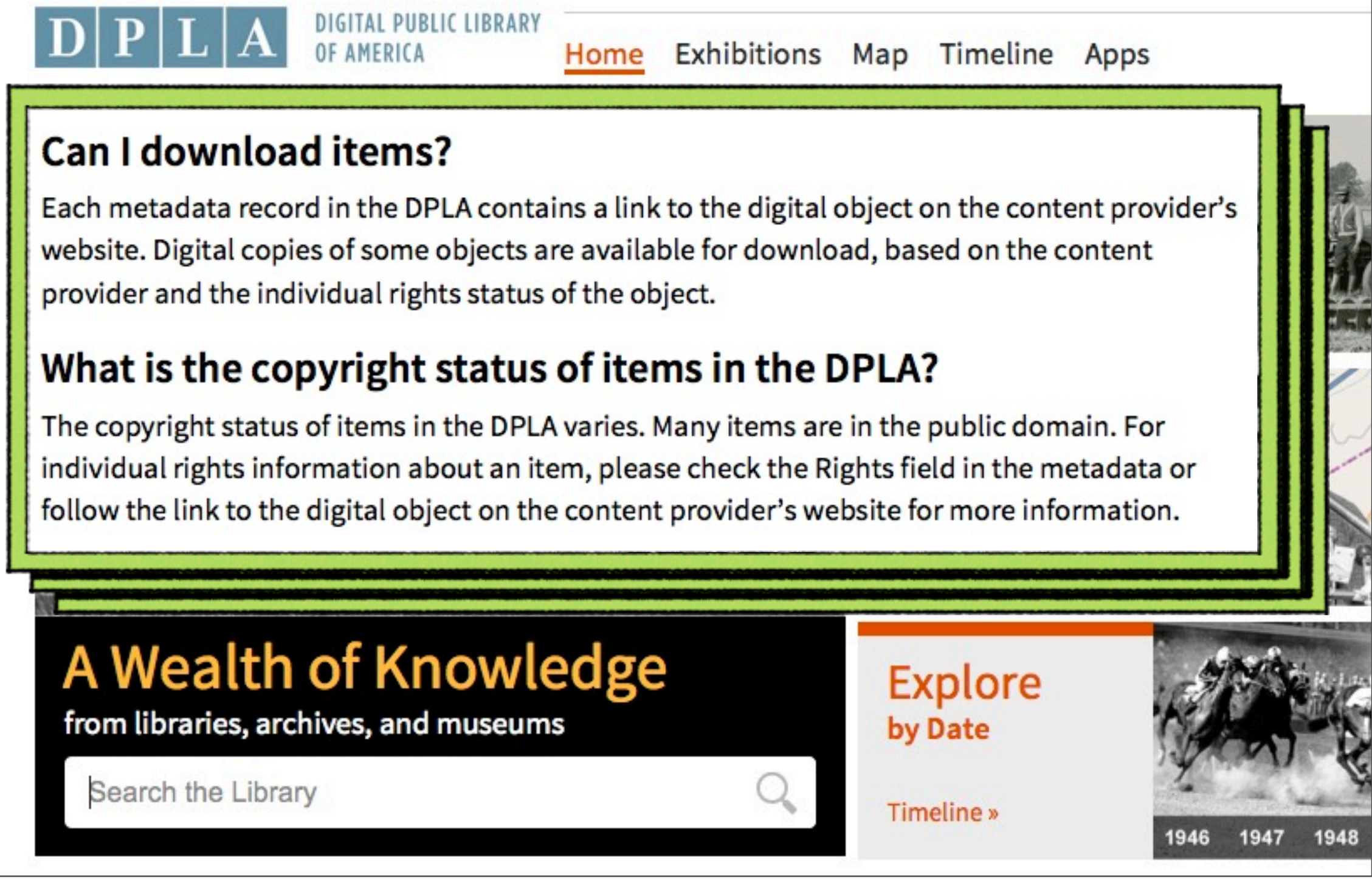

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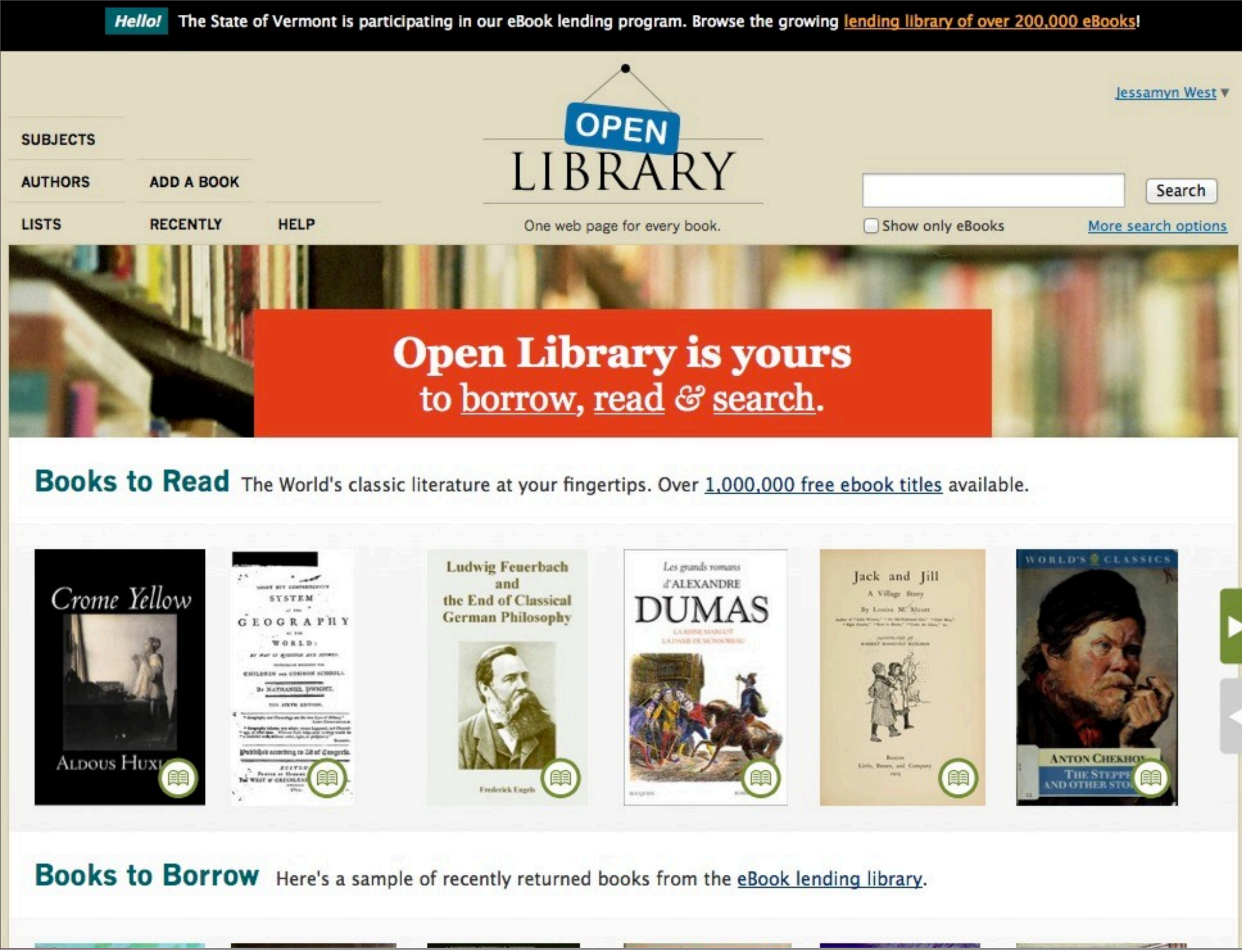
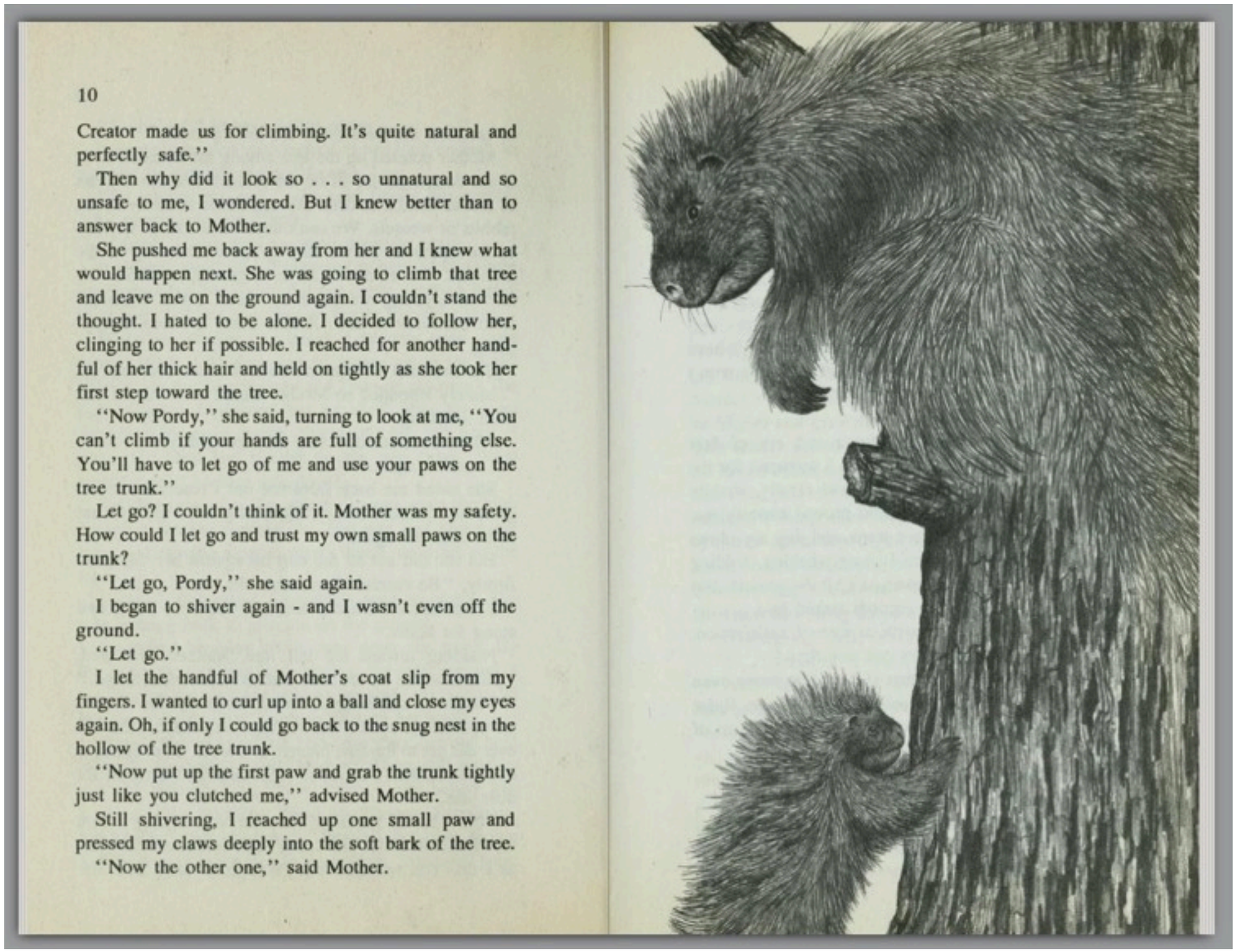


In contrast, there's Open Library. I'm not sure how much you know about Open Library. I've been working there doing support email as a hobby the past few months. It's project of the Internet Archive but somewhat different. It allows lending of books, Ebooks. To anyone (in the US). It's a bit of a scheme.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

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.

Still shivering, I reached up one small paw and pressed my claws deeply into the soft bark of the tree.

"Now the other one," said 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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August 12, 2011 | History

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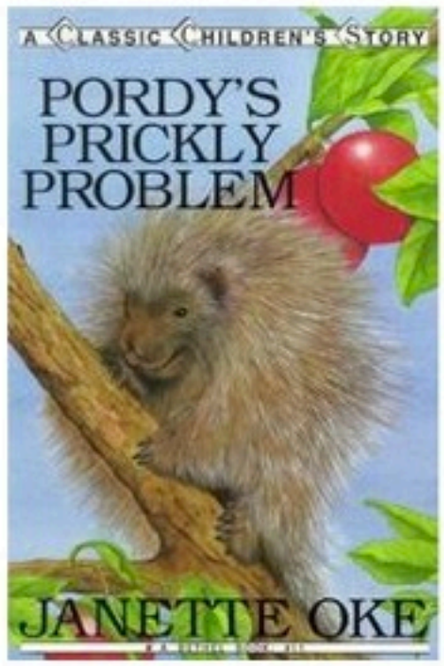

Manage Covers

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.

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]
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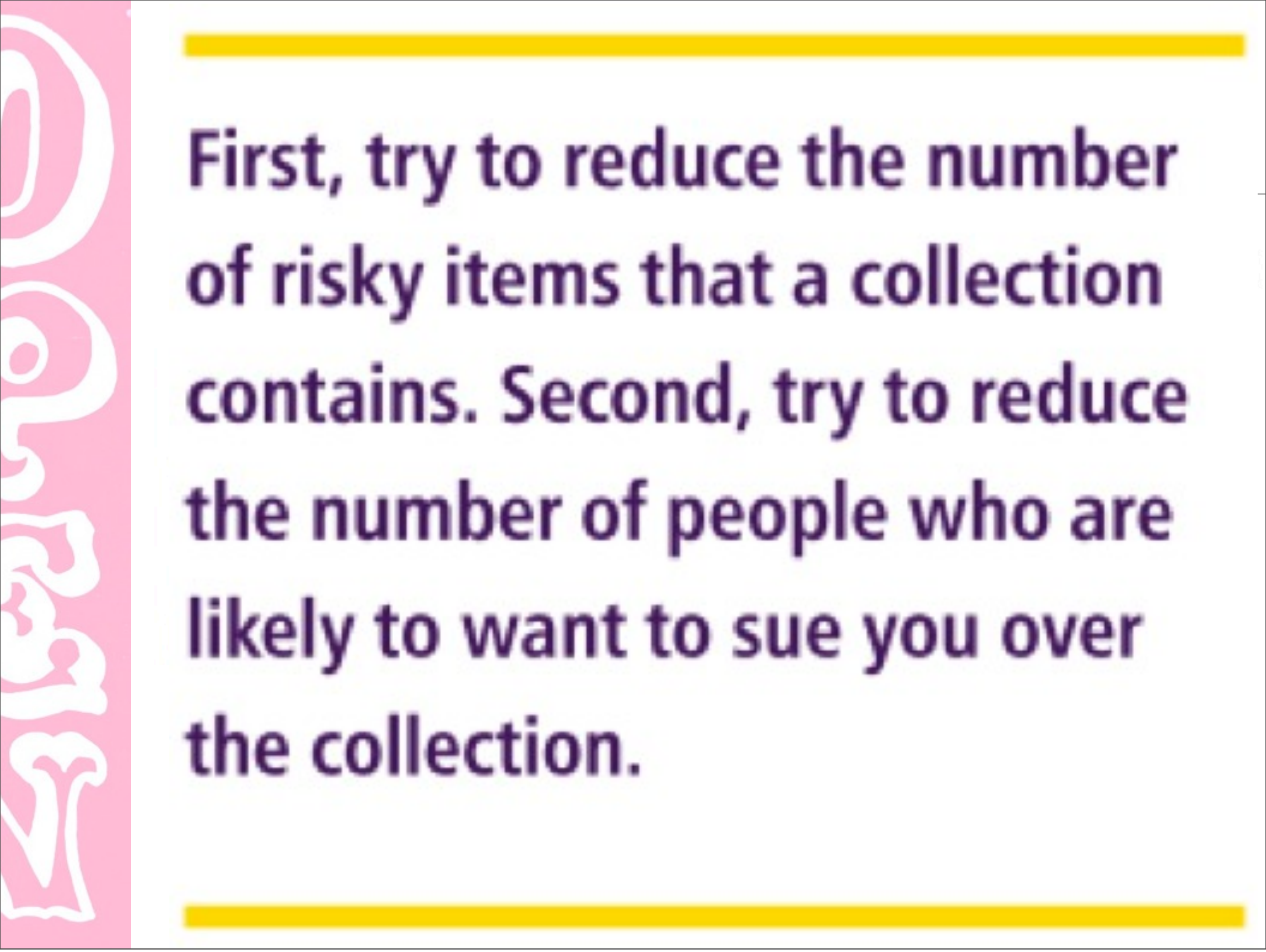
borrow books, even ones that are in copyright thanks to an agreement with partner libraries and a bit of envelope pushing. You see Open Library takes books that are not heavily circulated (this is a 20 year old kids book) and scans them and puts them away. Then it circulates the digital copy, one copy at a time, to anyone the Open Library serves. It's sort of nuts. They're sort of waiting for someone to sue them. One of their partners is Boston Public 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.



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 them away. Then it circulates the digital copy, one copy at a time, to anyone the Open Library serves. It's sort of nuts. They're sort of waiting for someone to sue them. One of their partners is Boston Public 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

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
- on the English-language Wikipedia, hosted on servers in the United States by the non-profit Wikimedia Foundation,

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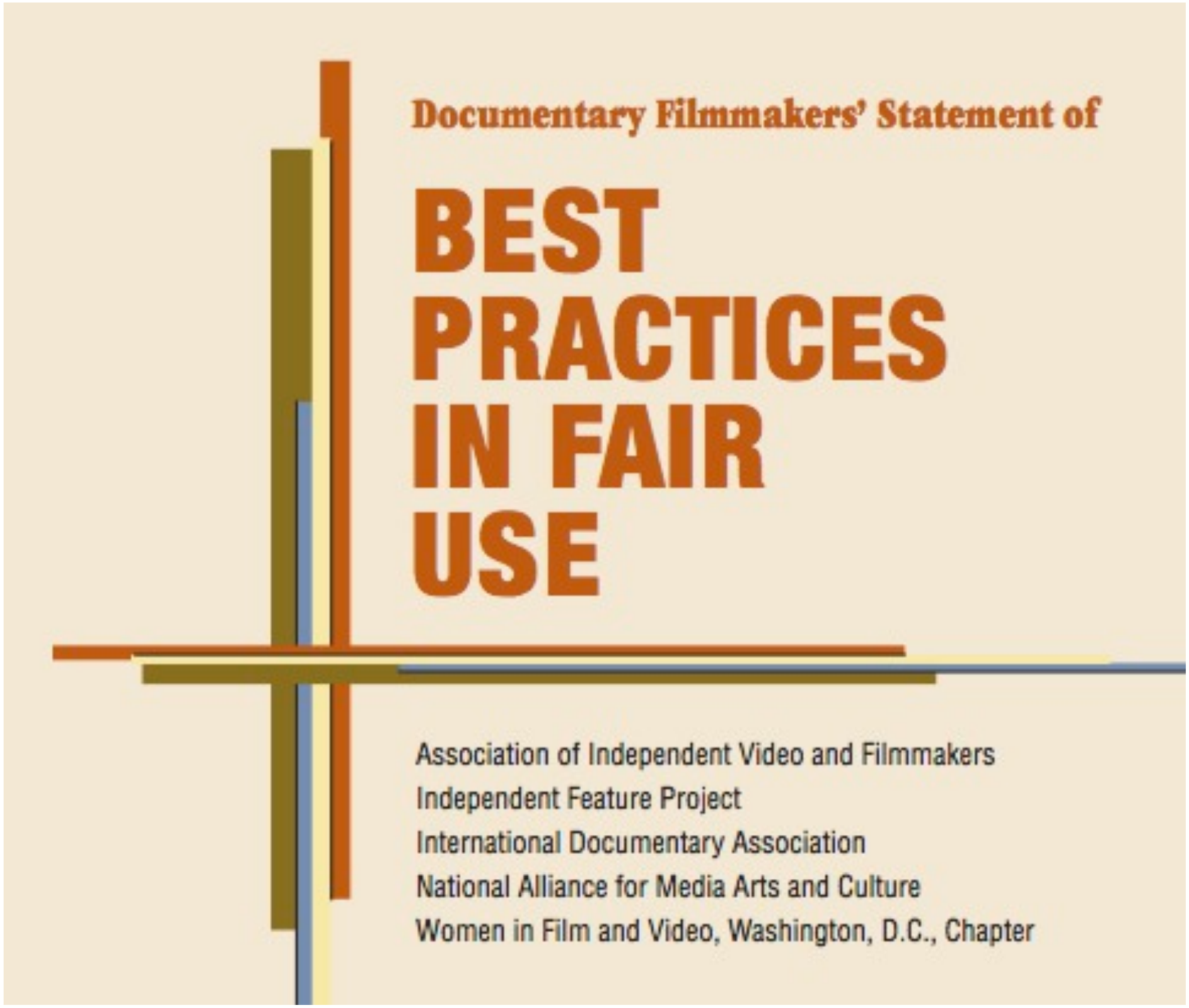
So we're really in the job of not always knowing the rules but of doing some level of risk assessment. And the more we're willing to risk, the more of our cultural content we can share.

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

So I said I had a challenge for you earlier. This is my TODO list for anyone working extensively with digital content.



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 one, seriously.

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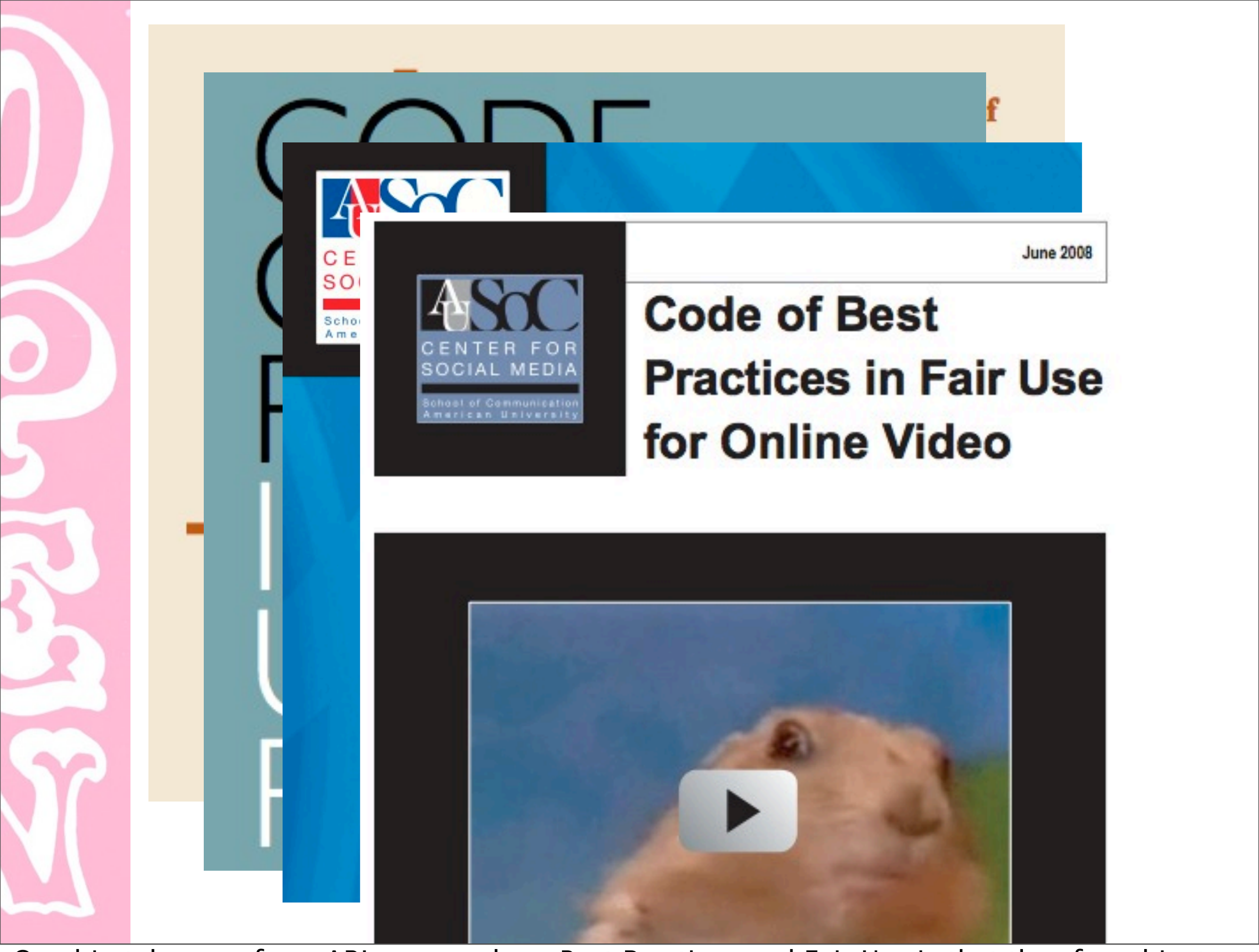

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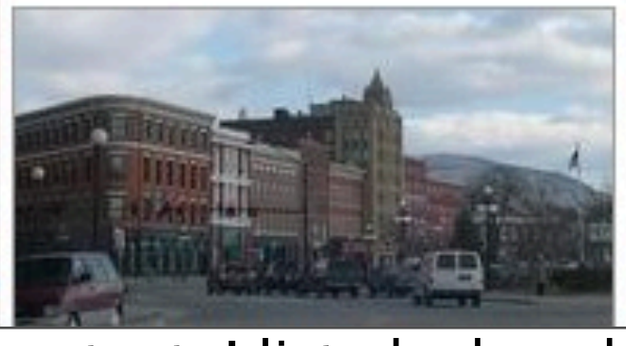
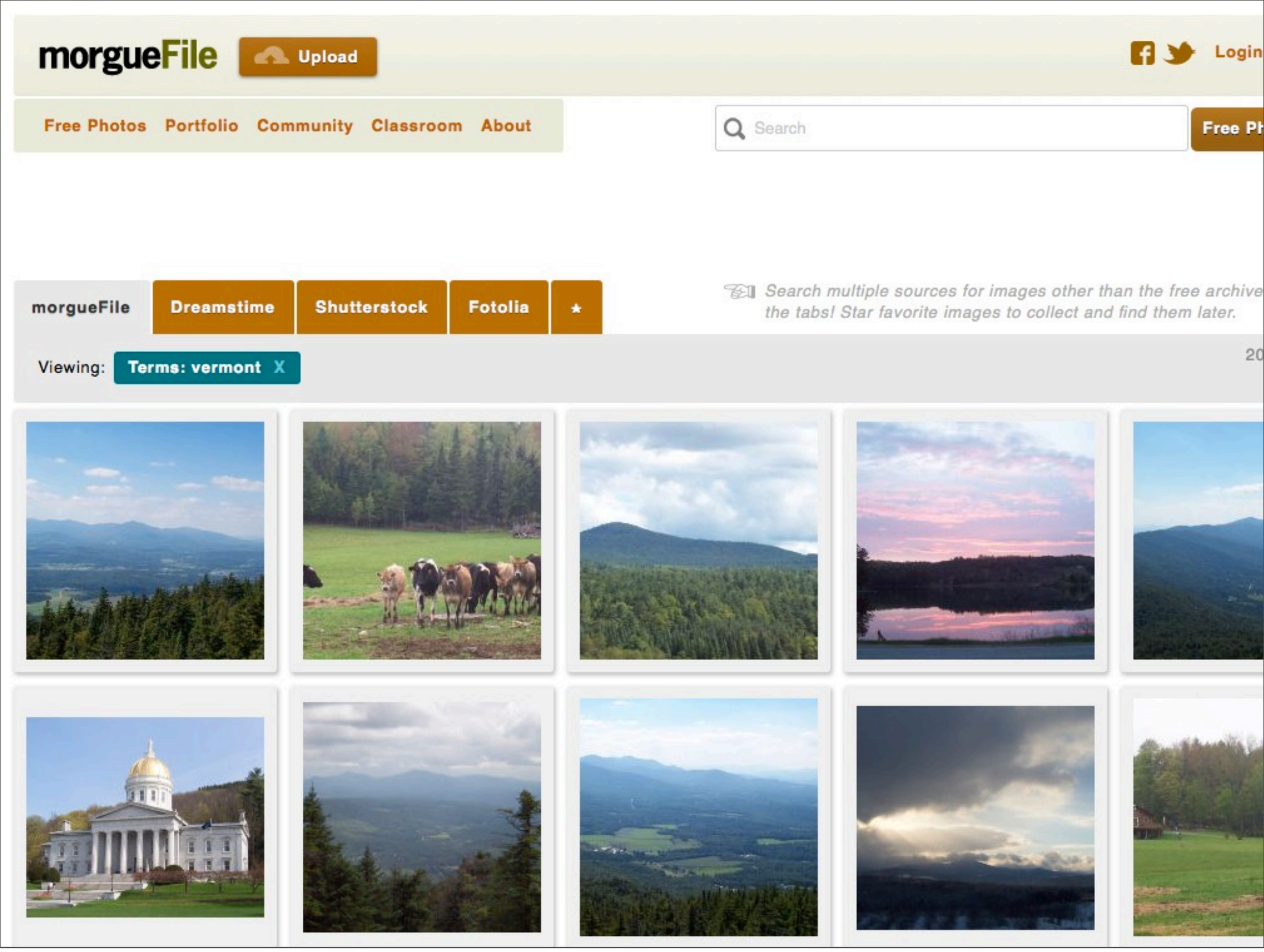


There are the standard places to go to get content. I listed a bunch last year, highlighting the good ones and some new ones.



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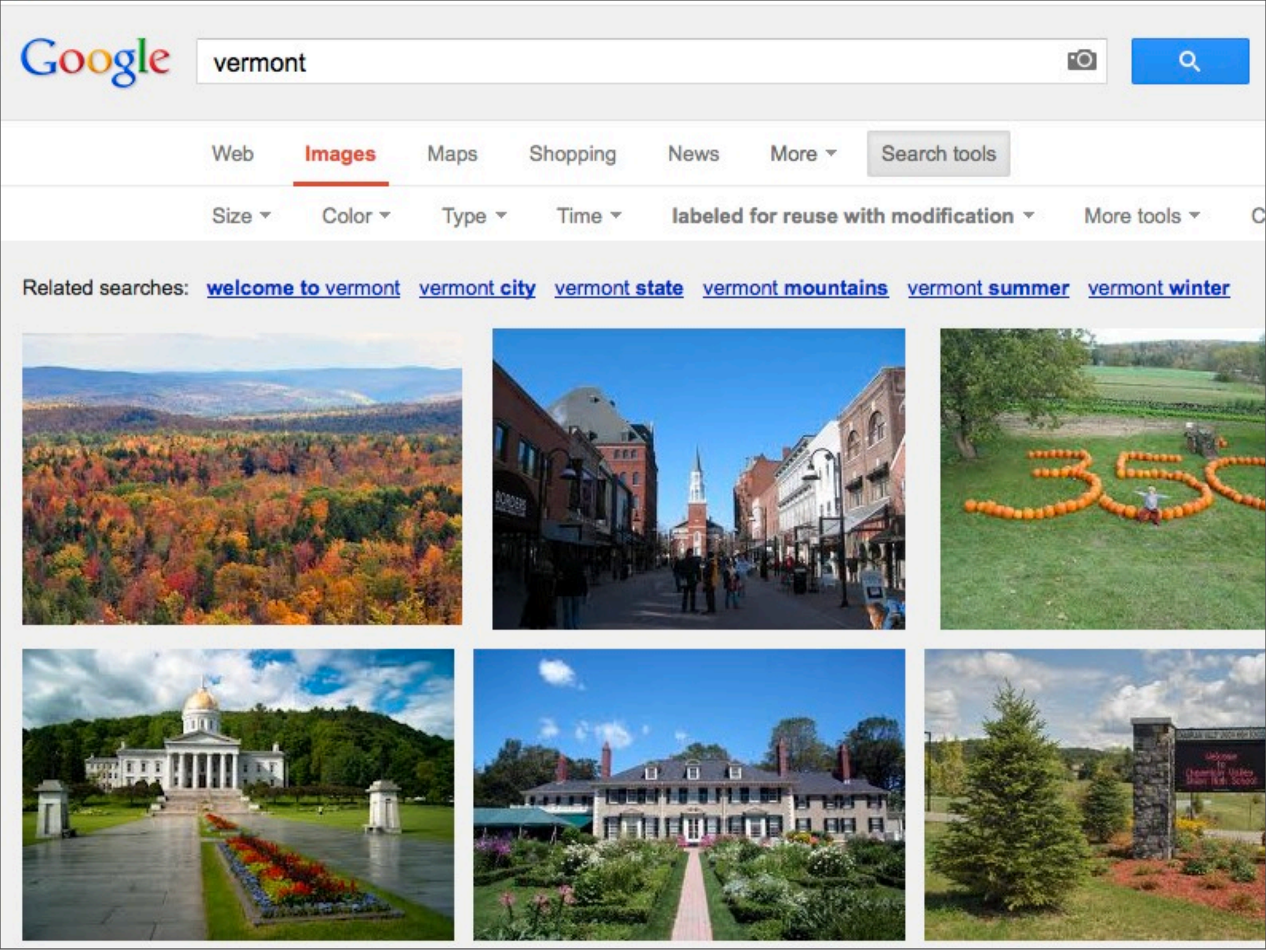

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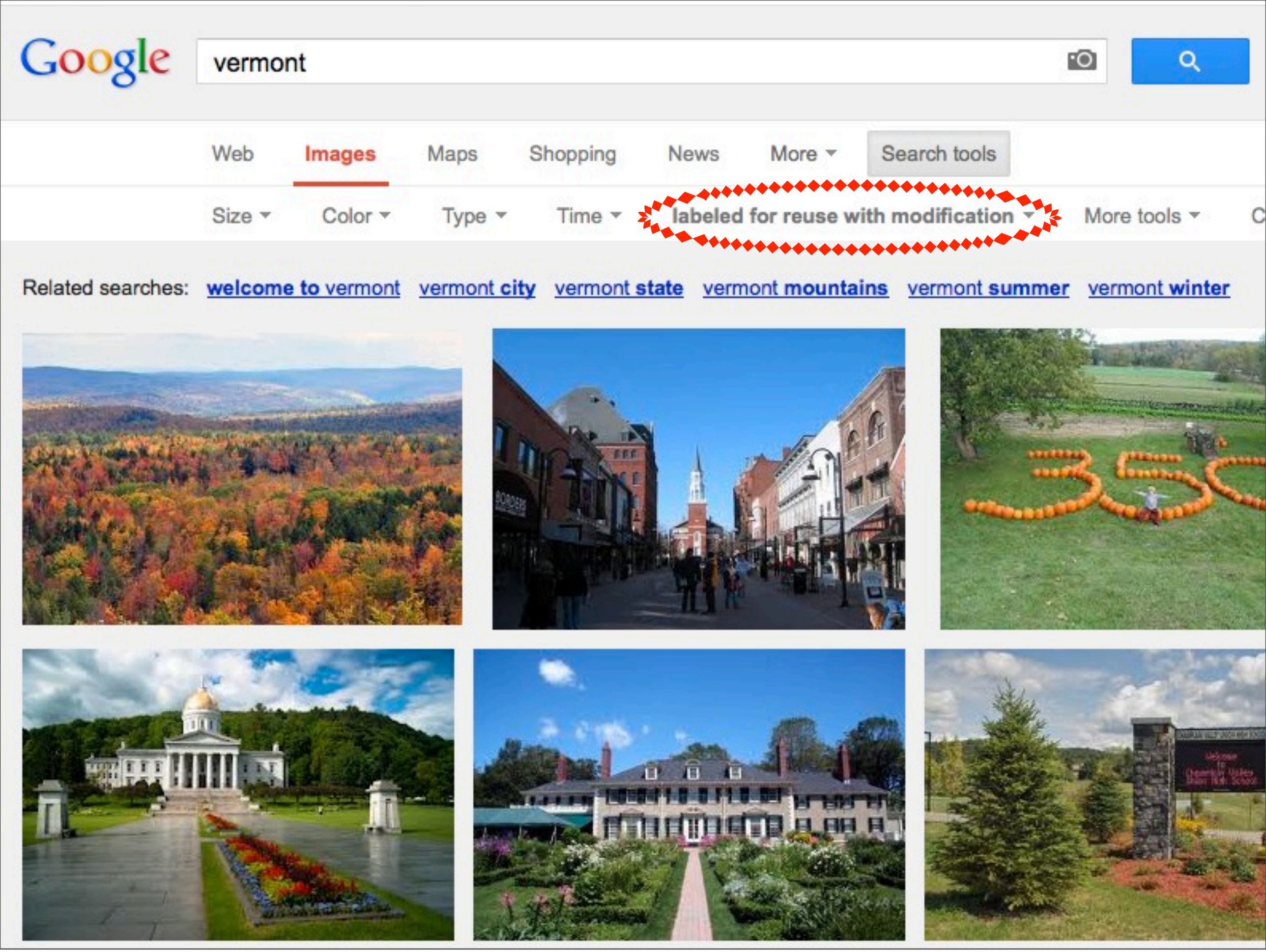

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Here are some recently added bits and pieces:

Attribution License

From wizgnome

From wizgnome

From Derek John Lee

From bdecot

From Derek John Lee

» **38,141,504** photos (See mor

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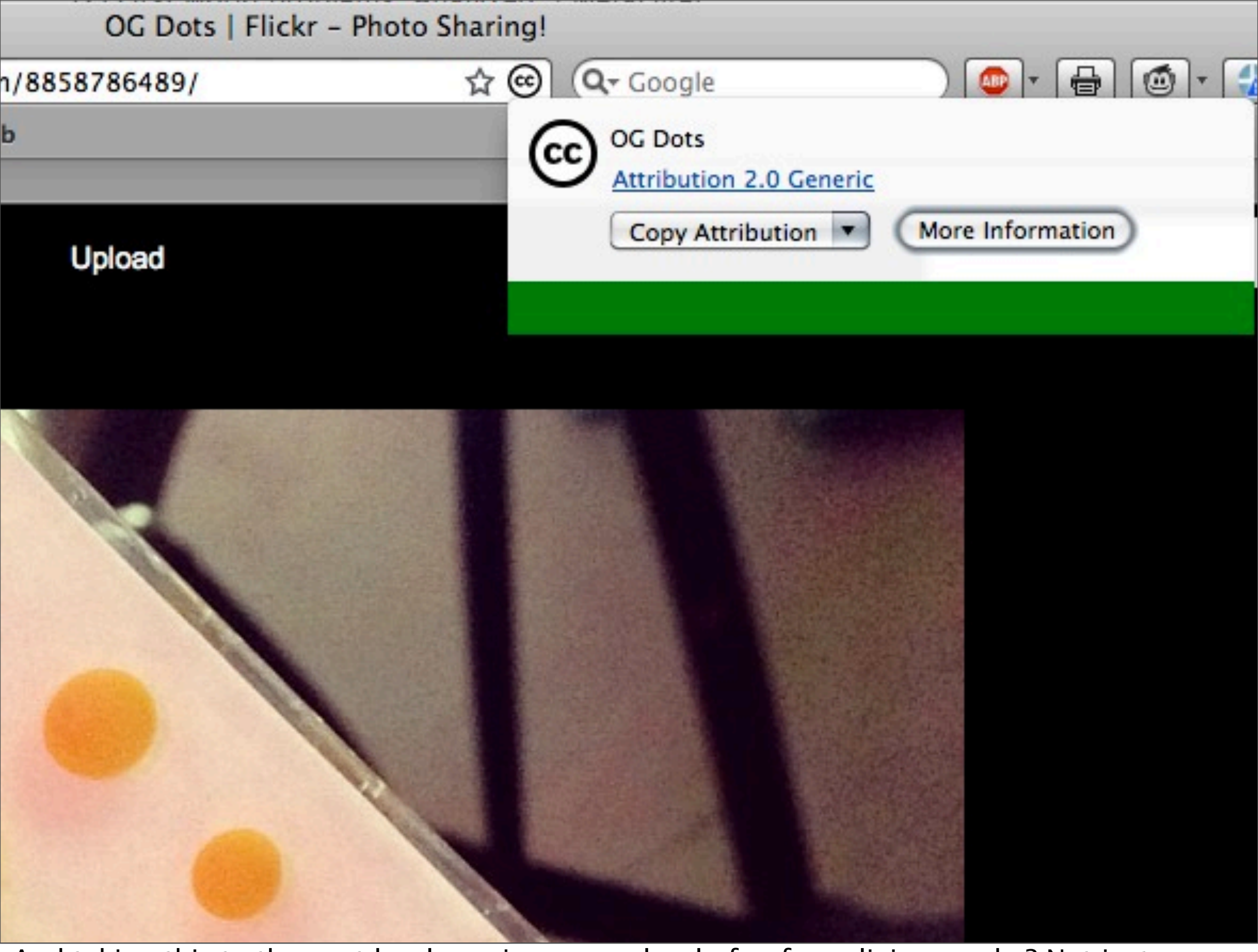
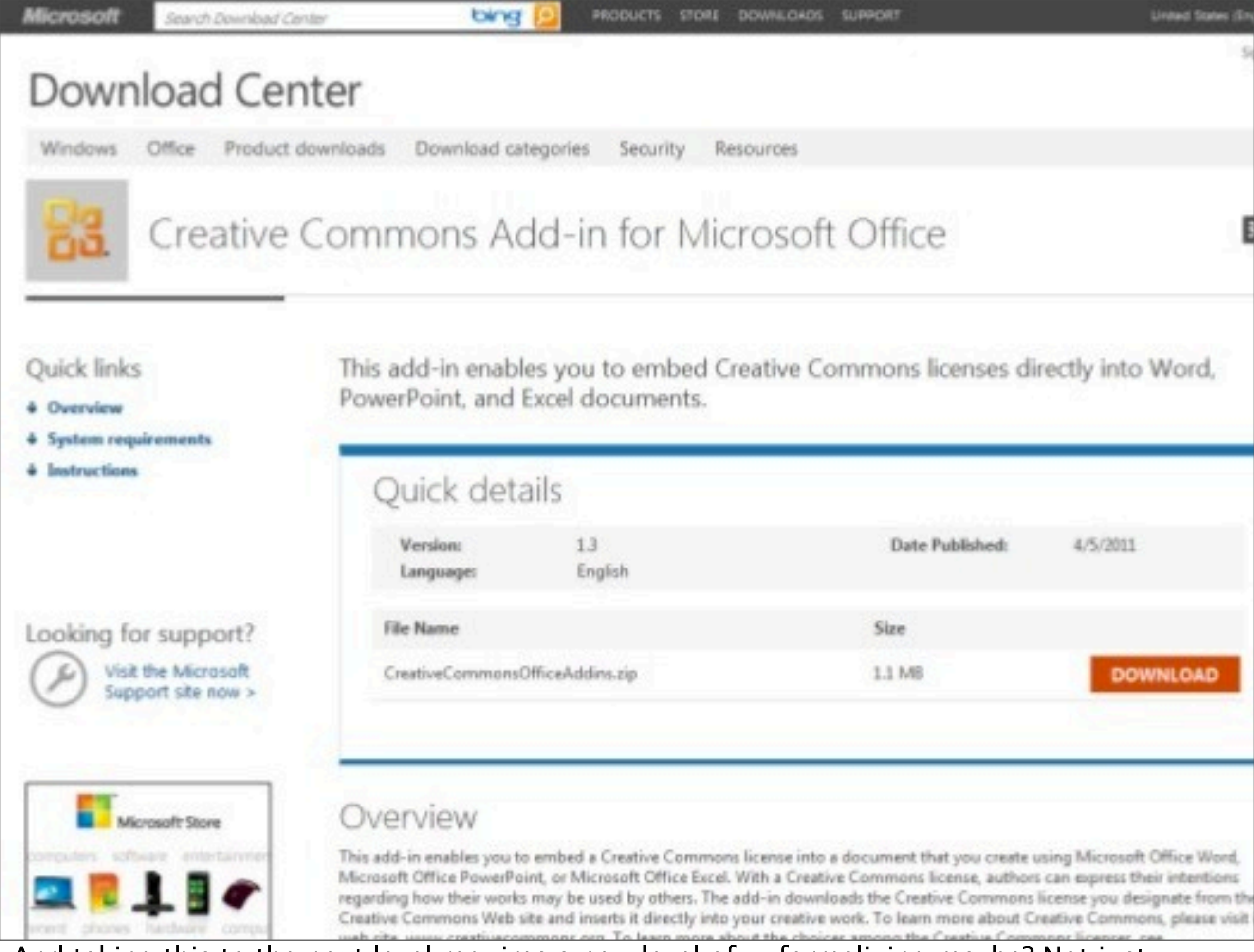


And taking this to the next level requires a new level of ... formalizing maybe? Not just making this sort of sharing and licensing into the next big idea but formalizing it into out workflow, making it "normal" which is weird for me to say but the more you can sell this idea to tomorrow's middle managers as "good for culture, good for business" the more it's likely to stick around.



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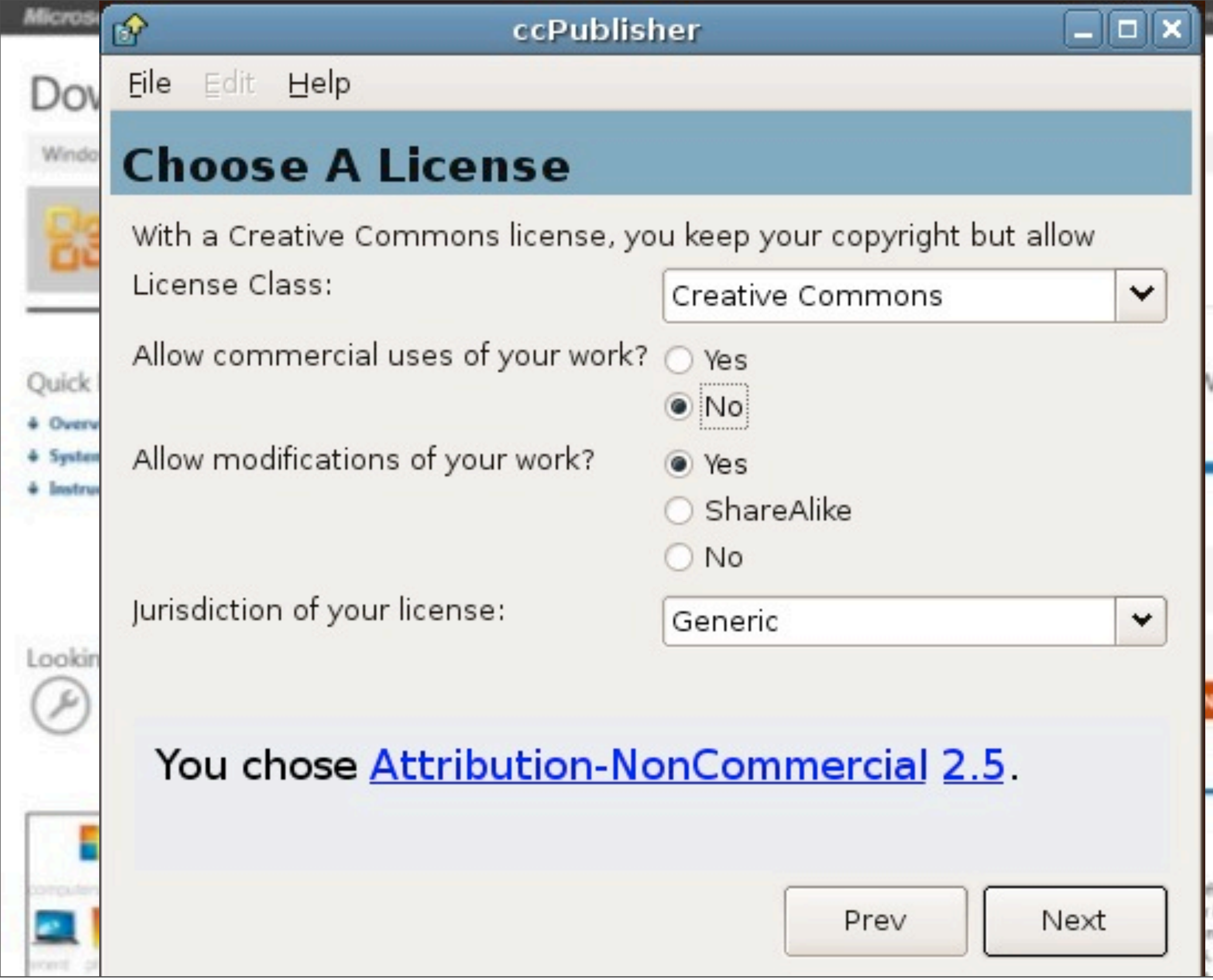

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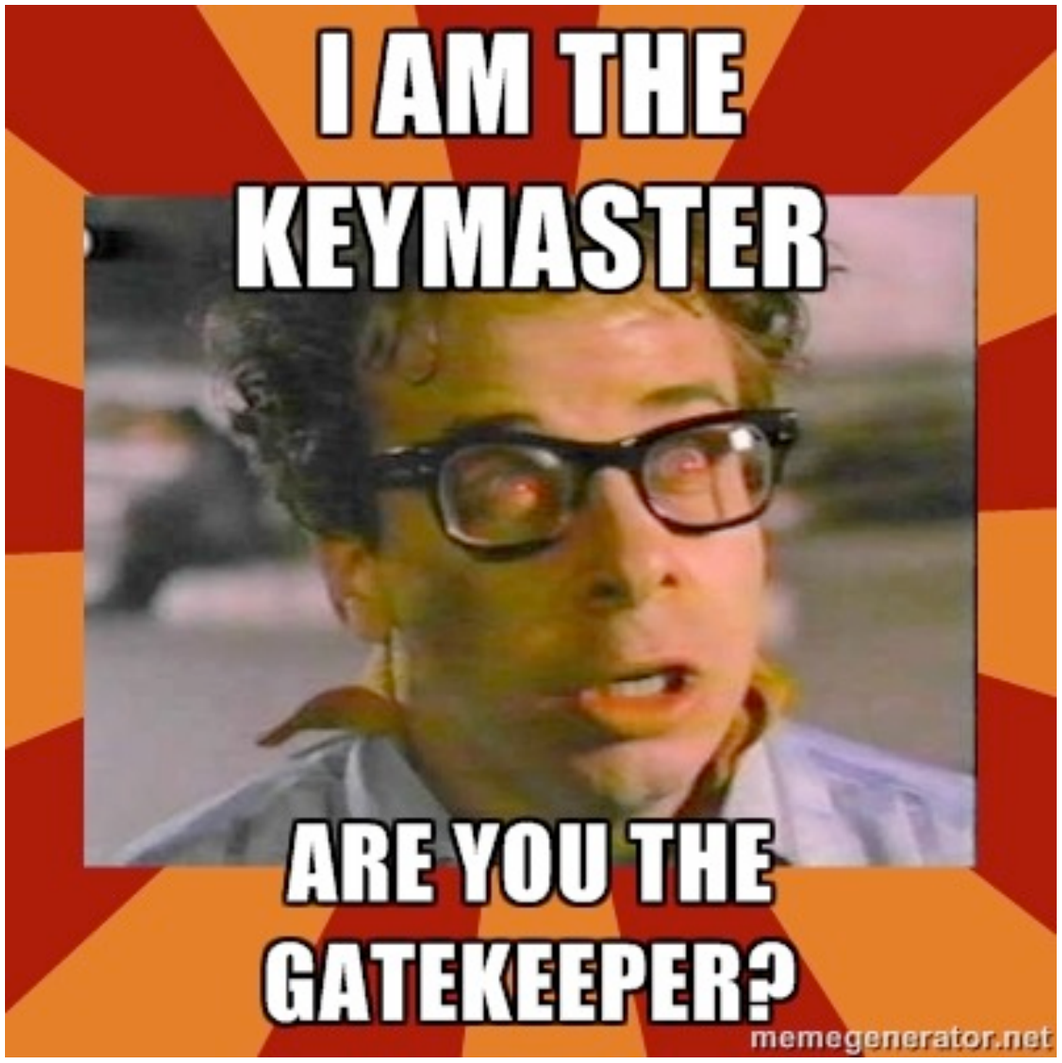
So the old way of looking at access and sharing was the librarians and educators were the ones with the passwords and if you were nice or deserving they might share them with you.

You’re it.

At the end of the day, someone’s got root. And you don’t just all know the passwords. You ARE the passwords. Open ‘em up.



Thank you.

<*librarian.net/talks/usnh-ati*>