



# Open, Now!

Jessamyn West

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

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**

Fig. 6.

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" Just a quick zip through what fair use determinations look like. Fair Use is what you get to do with some of the in-between 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 in the last 18 months. 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 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 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?

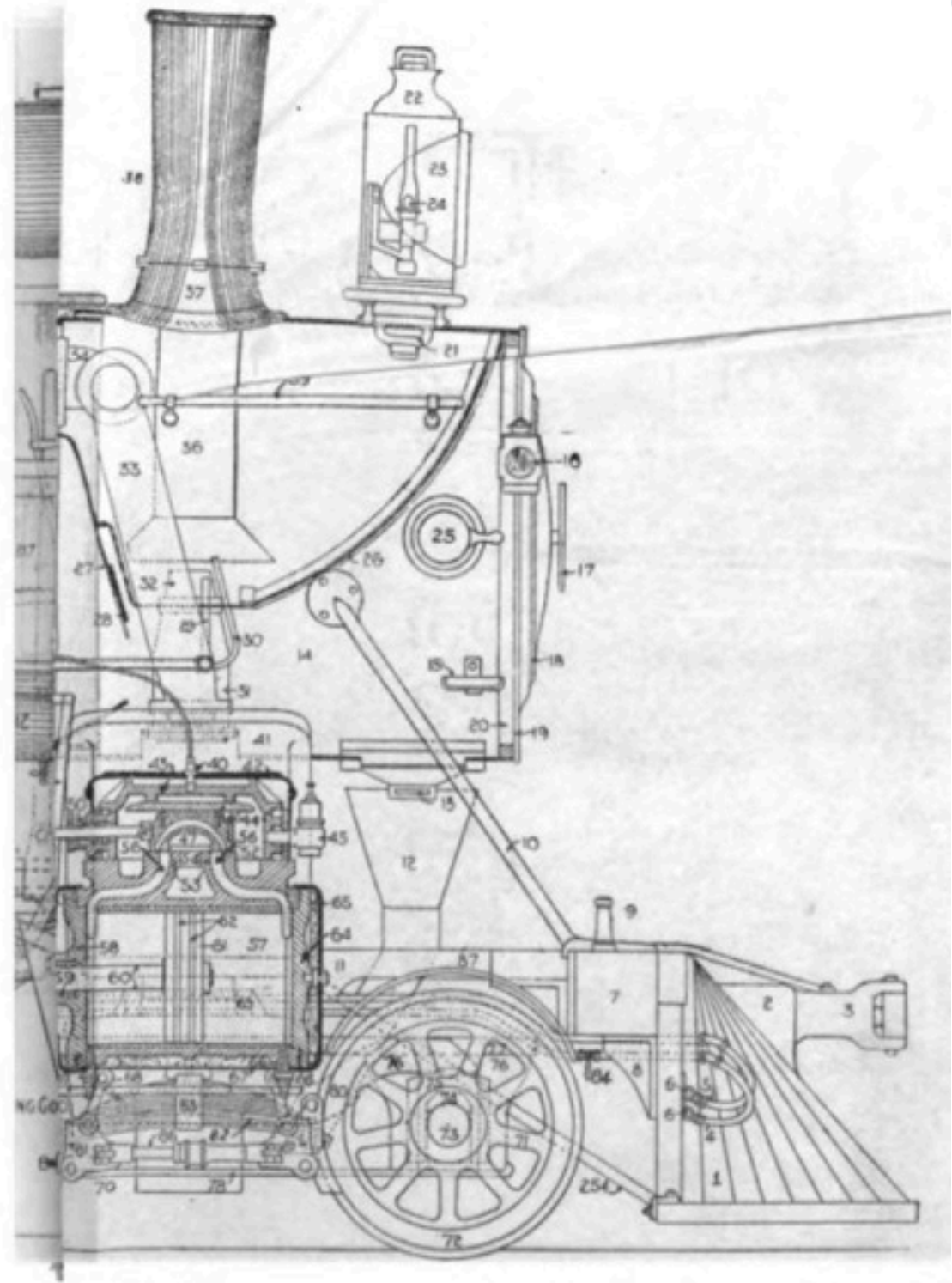
What should you do on arrival at the round-house previous to your departure therefrom with your locomotive? I should draw the necessary supplies and see that the lubricators, lamps, oil cans, tank and sand boxes are filled. If the coal be bituminous, I should see that it is broken and wet down, that 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.



# 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



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.



....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. 1996 through 1998



# 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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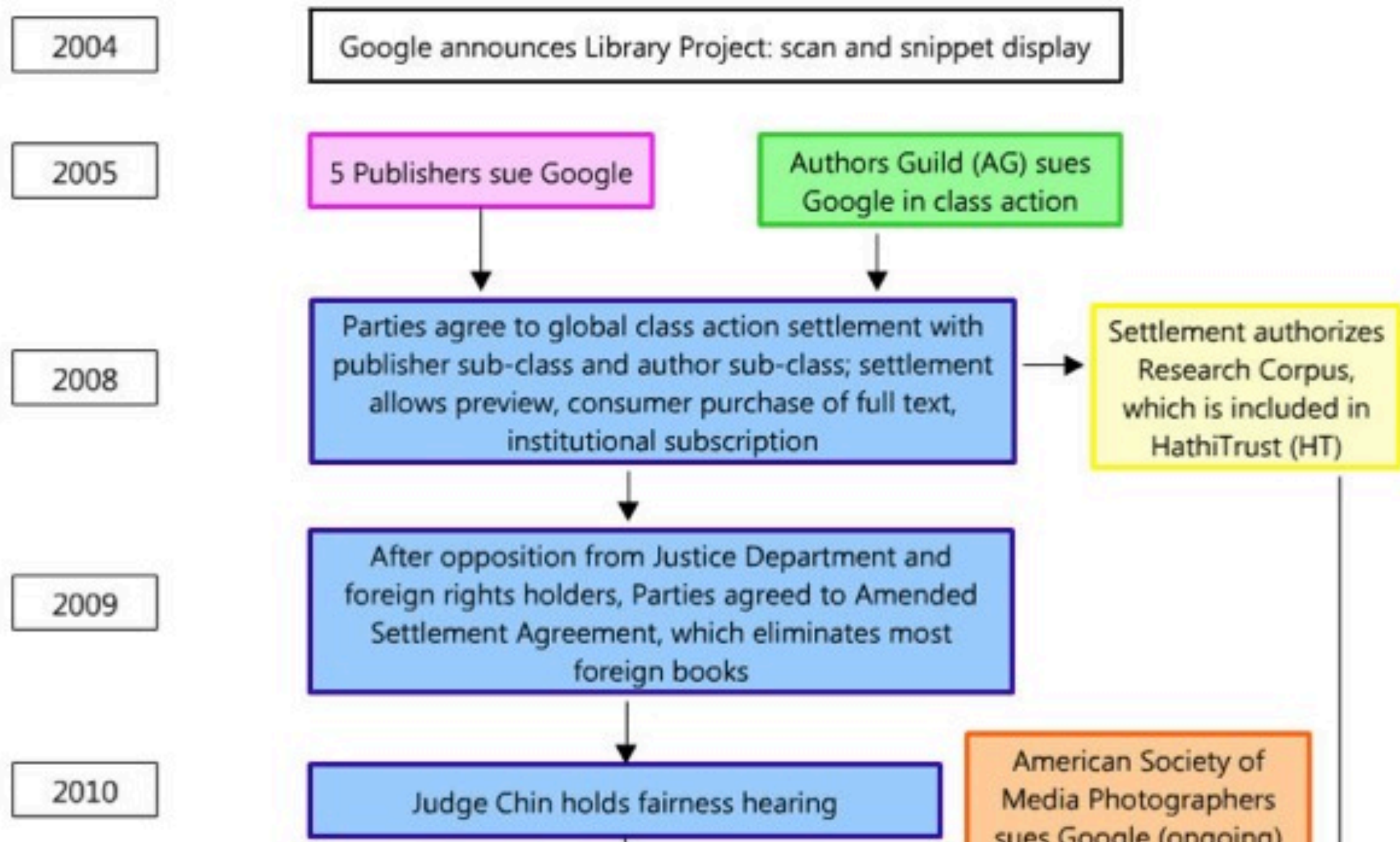
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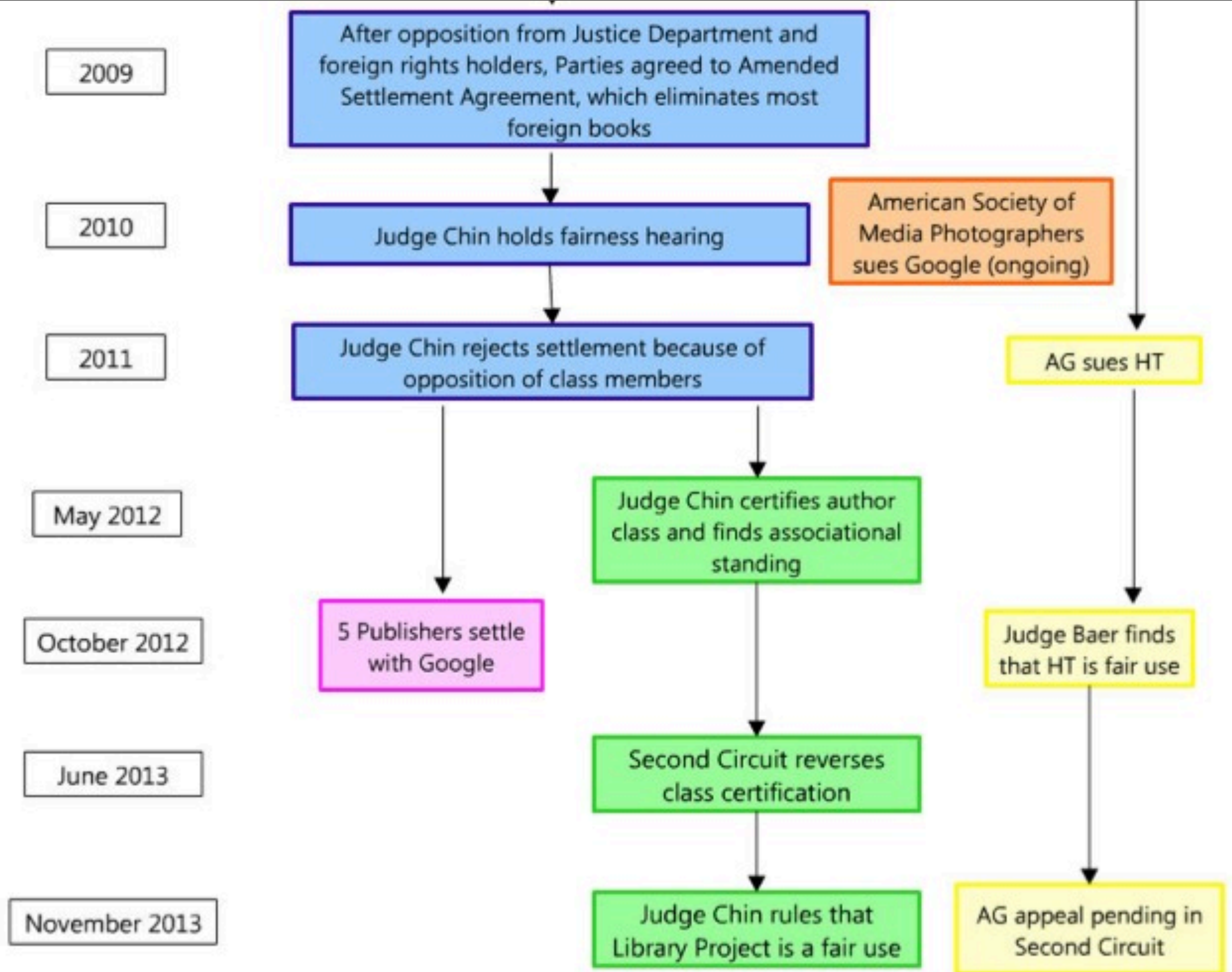
# Google Books

## 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.





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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 or putting them on Scribd



# dp.la launch



DIGITAL PUBLIC LIBRARY  
OF AMERICA

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## A Wealth of Knowledge

from libraries, archives, and museums



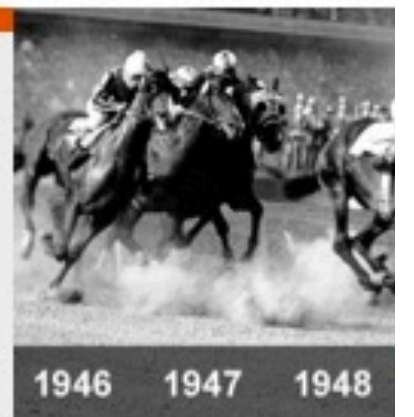
## Exhibitions

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## Explore by Date

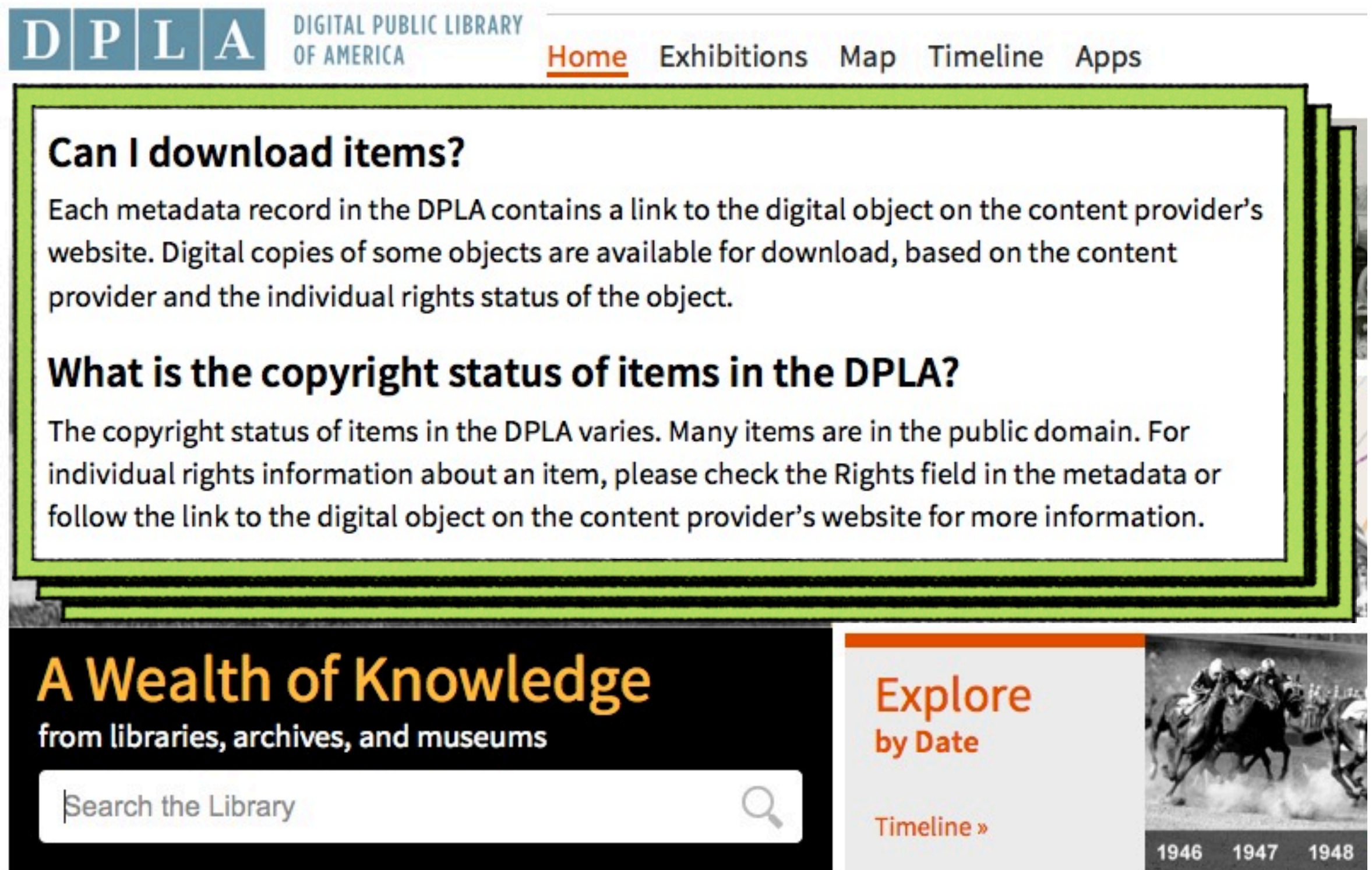
[Timeline »](#)



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



The screenshot shows the top of the DPLA website. At the top left is the DPLA logo with the text 'DIGITAL PUBLIC LIBRARY OF AMERICA'. To the right are navigation links: 'Home' (underlined), 'Exhibitions', 'Map', 'Timeline', and 'Apps'. Below the navigation is a large green-bordered box containing two sections. The first section is titled 'Can I download items?' and explains that each metadata record contains a link to the digital object on the content provider's website, and that digital copies are available for download based on the content provider and the individual rights status of the object. The second section is titled 'What is the copyright status of items in the DPLA?' and explains that the copyright status varies, with many items in the public domain, and that users should check the Rights field in the metadata or follow the link to the digital object on the content provider's website for more information. Below the green box is a dark blue banner with the text 'A Wealth of Knowledge from libraries, archives, and museums' and a search bar labeled 'Search the Library'. To the right of the search bar is a section titled 'Explore by Date' with a 'Timeline »' link and a small image of a horse race. Below the image are the years '1946', '1947', and '1948'.

**DPLA** 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

Search the Library

Explore by Date

Timeline »

1946 1947 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)



SUBJECTS

AUTHORS

ADD A BOOK

LISTS

RECENTLY

HELP

# OPEN LIBRARY

One web page for every book.

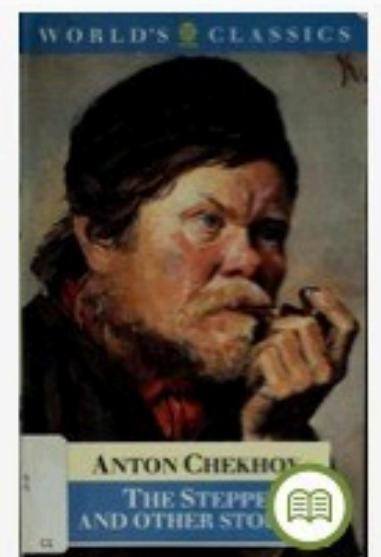
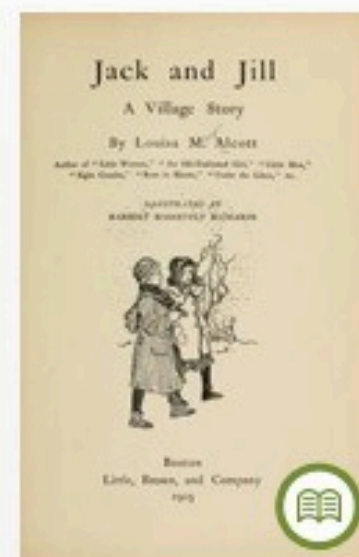
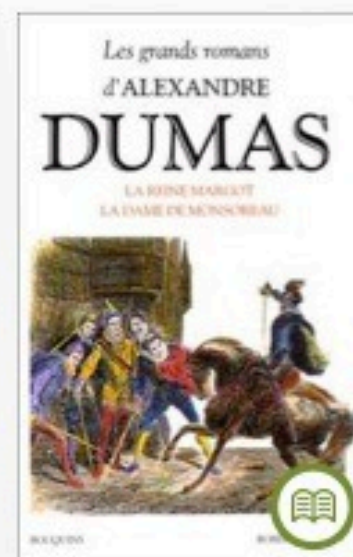
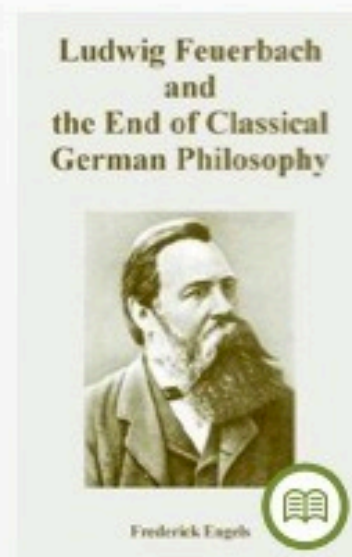
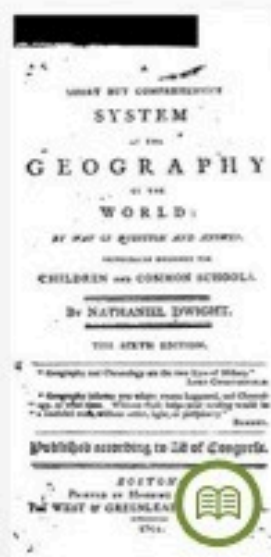
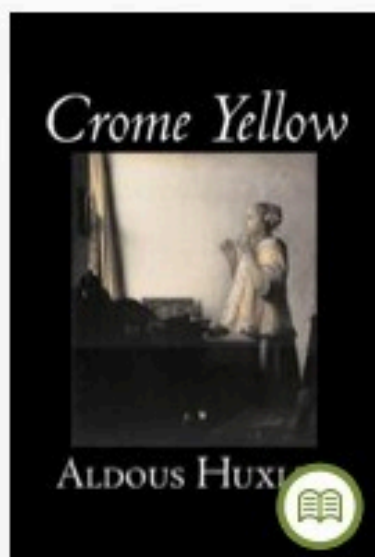
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**Open Library is yours**  
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**Books to Read** The World's classic literature at your fingertips. Over [1,000,000 free ebook titles](#) available.



**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 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?

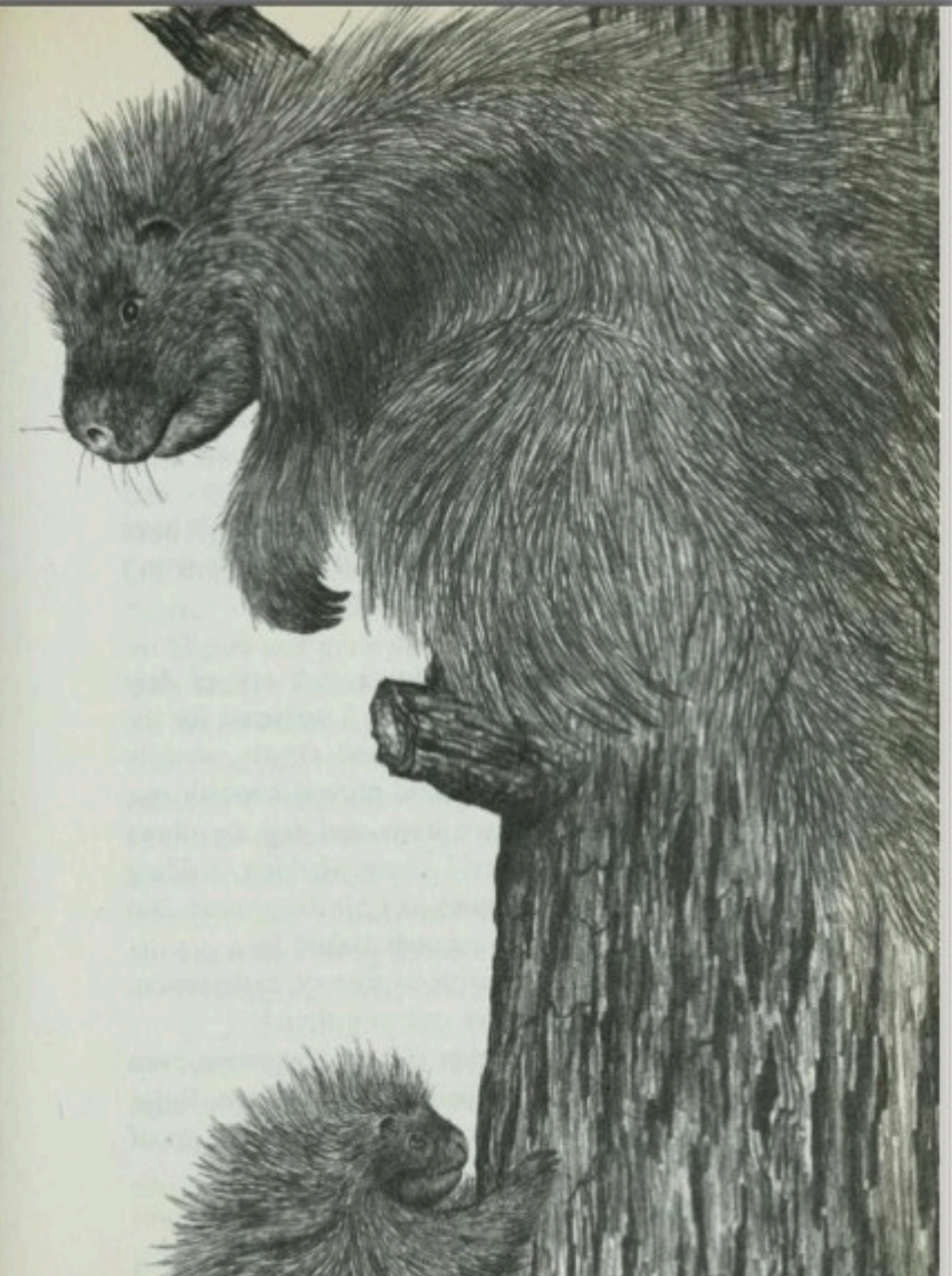
"Let go, Pordy," she said again.

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.



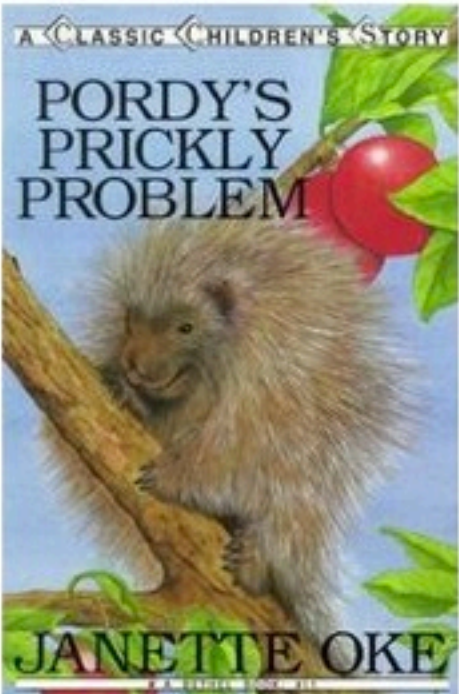
You can read books online with one click (not like an overdrive "one-click" an actual single click), you can also



# 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](#).

**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

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Fig. 6.

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.





**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

user

Cat

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# 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

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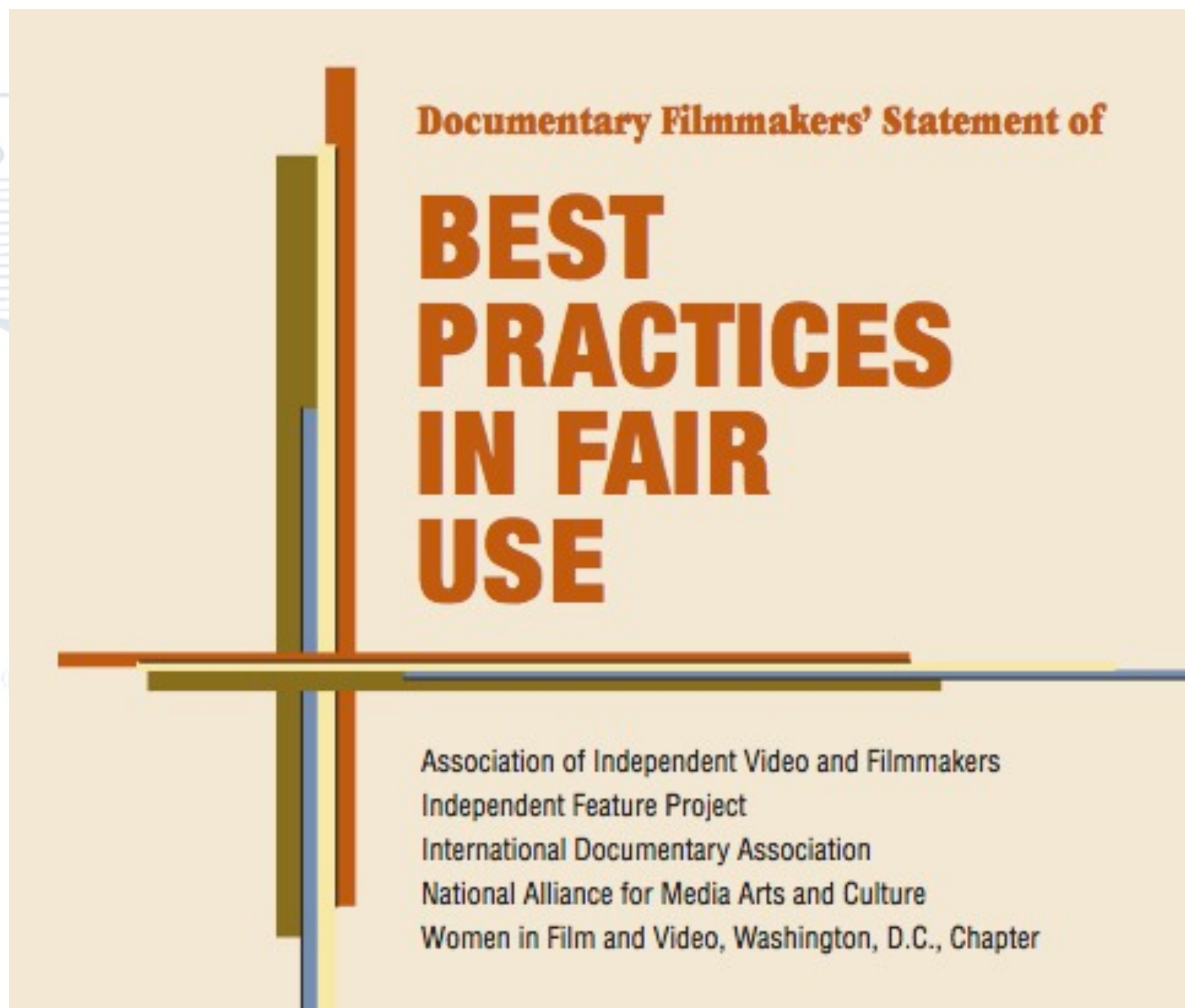


Fig. 6.

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.



A graphic featuring a central teal rectangle with the text 'CODE OF BEST PRACTICES IN FAIR USE FOR POETRY'. The words 'CODE OF BEST PRACTICES' are in black, while 'IN FAIR USE FOR POETRY' is in white. The teal rectangle is set against a light beige background. On the left and right sides of the beige background, there are faint, stylized line drawings of books. The left drawing has the letters 'c' and 'o' near it, and the right drawing has the letter 'b' near it. There are also small orange and yellow rectangular accents on the beige background.

# CODE OF BEST PRACTICES IN FAIR USE FOR POETRY

Fig. 0.

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October 2009

# Code of Best Practices in Fair Use for OpenCourseWare

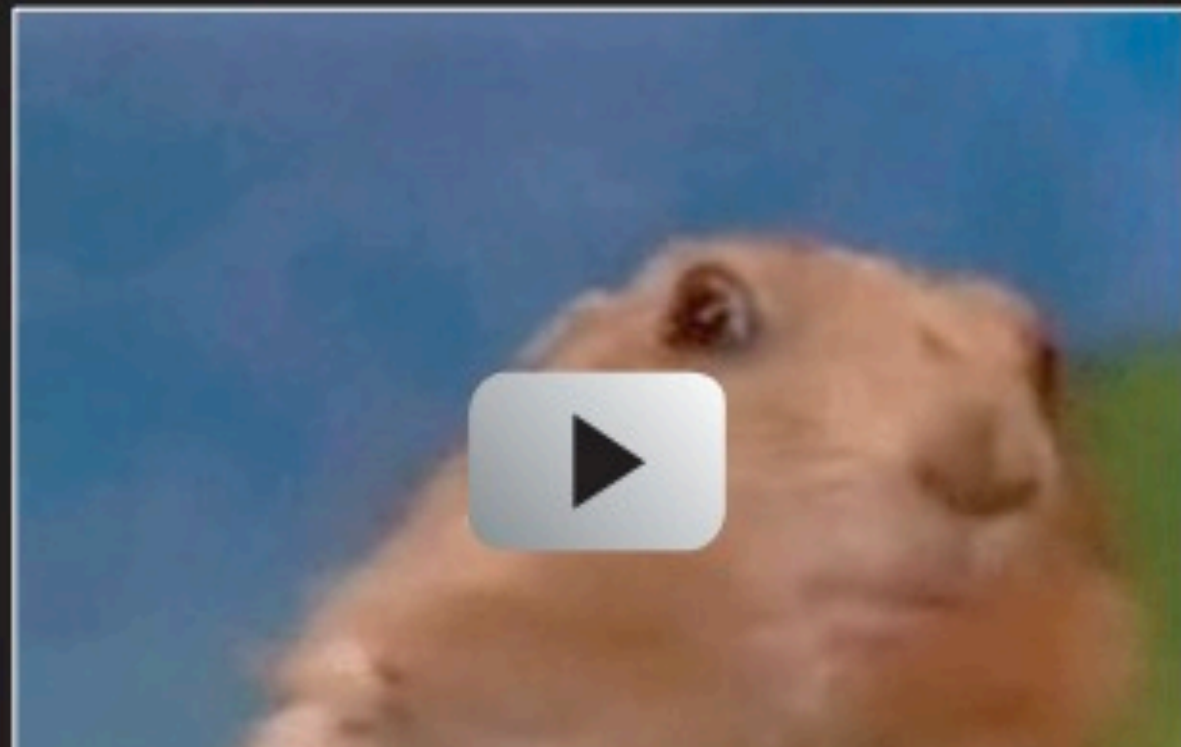
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June 2008

## Code of Best Practices in Fair Use for Online Video



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.



# 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



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

Fig. 6.

What can YOU do?

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





FOR  
AGES  
10 TO  
ADULT

MILTON  
BRADLEY  
COMPANY

SPRINGFIELD  
MASSACHUSETTS

4260

MADE IN U.S.A.



AS  
SEEN ON  
TV

# PASSWORD

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UNDER TRADE & UNIVERSAL COPYRIGHT CONVENTIONS

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.

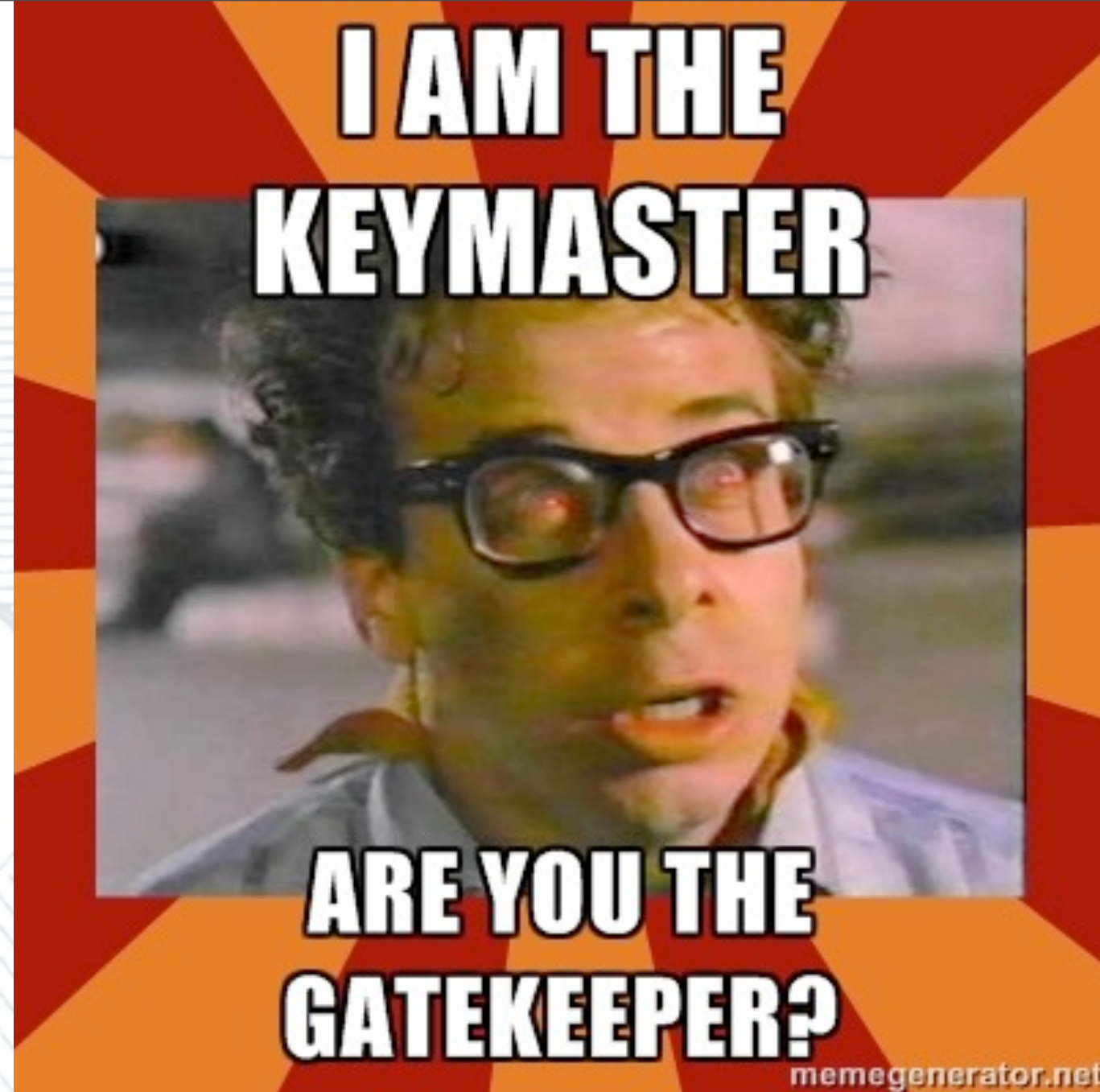


# You're it.



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/metro>*