



## “Borrowing” Graphics and Text for Library Web Pages: Fair Game, Fair Play and Fair Use

Office for Information  
Technology Policy  
American Library Association  
March 3, 2005  
12:00-1:00 p.m. PST

Instructor:  
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LibraryLaw.com  
consult@librarylaw.com



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## Legal Disclaimer

- Legal information
- Not legal advice!



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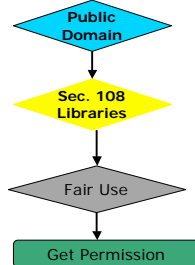
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## Agenda

1. Overview and Risks
2. What’s in Public Domain?
3. When is it “Fair Use” ?
4. Getting Permission

Flowchart to analyze  
library copyright problems



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## Housekeeping

- Today's webcast:
  - presentation: 50 minutes
  - Q&A: final 10 minutes
- Submit your questions via 'Chat' *during* webcast so presenter gets them in time
- Fill out evaluation during Q&A

Don't wait  
for Q&A to  
submit  
questions

Webcast Archives: <http://infopeople.org/training/webcasts/archived.php>

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## When to Use Chat

- Get help with technical difficulties
  - send message to "HorizonHelp"
- Ask presenter questions
  - send message to "ALL"
- Chat with other participants
  - "select name from dropdown list"



Chat Area There



List of Participants There



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## 1. Overview and Risks

*The Congress shall have power...  
to promote the progress of science and useful arts, by  
securing for limited times to authors and inventors the  
exclusive right to their respective writings and  
discoveries*

U.S. Const., Art. I, § 8, Cl. 8

Users



Owners

Warning: Works do not need © notice  
Crediting author ≠ getting permission

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## Liability



### Cease and Desist Letters

chillingeffects.org – has annotated examples

### Lawsuits – if you lose, you pay:

- © Damages, lost profits of copyright holder
- or
- © \$750 - \$30,000 per incident

17 U.S.C. § 504

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## Risk Management

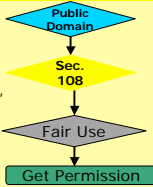
- Familiarize yourself with "Fair Use"

-If library shows reasonable belief it's Fair Use, ...liability can go to \$0 17 U.S.C. § 504(c)

- Insurance – check "advertising injury" clause

- Take-down policy

- Disclaimer examples from Library of Congress  
[memory.loc.gov/ammem/copyrit2.html](http://memory.loc.gov/ammem/copyrit2.html)  
[www.loc.gov/homepage/legal.html#copyright](http://www.loc.gov/homepage/legal.html#copyright)



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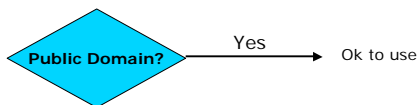
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## 2. What's in the Public Domain?



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Public Domain: In the  
**FRIDGE**



- F**acts
- R**ecipes
- I**deas
- D**edicated works
- G**overnment works (U.S.)
- E**xpired works

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**FACTS**

- F**ridge
  - Library address, hours
  - Call numbers
  - URLs
  - Population statistics

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**Compilations of Facts**

*Thin Copyright*

- Directories
- Bibliographies
- Pathfinders
- List of links
- Cookbooks

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**Users** 

## Court Cases

### Database Producers Lose

Telephone white pages - not original-no copyright

- *Feist v. Rural Telephone Service* 499 U.S. 340 (1991)

Yellow pages - not original-no copyright

- *BellSouth Advertising v Donnelly* 999 F.2d 1436 (11th Cir. 1993)

School selection criteria - no copyright

- *Schoolhouse v. Anderson* 275 F.3d 726 (8th Cir. 2002)

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## RECIPES



**FRidge**  
 Mere listings of ingredients as in recipes, formulas, compounds or prescriptions = NO COPYRIGHT

but, **R**ecipe or formulas accompanied by substantial literary expression or when there is a combination of recipes, as in a cookbook = Copyright

[www.copyright.gov/fls/fl1122.html](http://www.copyright.gov/fls/fl1122.html)

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## IDEAS



**FRidge**

- Not copyrightable
- Not copyrightable
- Not copyrightable

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## Stack of Books - Great Idea!



NOT COPYRIGHTABLE

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## DEDICATED



### FRI DGE

Copyright owners may dedicate works to the public domain

- Use creative commons
- or
- Write dedication notice on work
- e.g. "This work is dedicated to the public domain"

[creativecommons.org/licenses/publicdomain/](http://creativecommons.org/licenses/publicdomain/)

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## "Dedicated" Clip Art



- Who dedicated it
  - Naive "dedications" by enthusiastic folks who don't have copyright authority
- e.g. **Yahright!**
- Cool site - fun!
  - Site closed!

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## Clip Art – Read Terms



- Some in public domain
- Some licensed to user with terms  
e.g. must credit, link

www.lii.org

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### FRIDGE

Govt (U.S.) works PUBLIC DOMAIN

State govt works

- only cases, codes
- or if dedicated
- copyright is source of income in California

17 U.S.C. § 105

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## Government Images

Image search for parking meter in ".gov"

If image created by U.S. govt, it's not copyrightable okay to use

Domain .gov




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# EXPIRED

| Date of Publication | Conditions  | Copyright Term  |
|---------------------|---|---|
| Before 1923         | None  | In the public domain  |
| 1923 through 1977   | Published with a copyright notice                             | In the public domain  |
| 1978 to 1992        | Published with the U.S. and certain foreign copyright notices | Life plus 70 years  |
| 1993 to March 1989  | Published with notice and certain subsequent registrations    | Life plus 70 years  |
| 1993 through 1989   | Published with notice but no copyright notice or renewal      | 70 years after the death of author or 70 years of creation, whichever is longer, or 95 years from publication, or 120 years from creation |
| 1993 through 1989   | Published with notice but no copyright notice or renewal      | In the public domain  |
| 1993 through 1989   | Published with notice and for                                 | 95 years after publication  |

## FRIDGE

- Law changed several times
- Some older works expired under earlier law
- See Hirtle/Gasaway copyright charts

[www.copyright.cornell.edu/training/Hirtle\\_Public\\_Domain.htm](http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm)  
[www.unc.edu/~uncclng/public-d.htm](http://www.unc.edu/~uncclng/public-d.htm)

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# EXPIRED



## FRIDGE

- Life of author plus 70 years
- Corporate works
  - 95 years from publication or
  - 120 years from creation

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Finding images for your web page

## FRIDGE



- F**acts
- R**ecipes
- I**deas
- D**edicated works
- G**overnment works (U.S.)
- E**xpired works

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## Sect. 108 Library Exception

**Important for libraries for**

- Preservation
- Replacement
- interlibrary loan and user requests

**Not too useful for web pages**  
except allows libraries to copy works in their last 20 years of copyright if not subject to "normal commercial exploitation"

[www.librarylaw.com/DigitizationTable.htm](http://www.librarylaw.com/DigitizationTable.htm)

```

graph TD
    A{Public Domain} --> B{Sec. 108 Libraries}
    B --> C{Fair Use}
    C --> D[Get Permission]
            
```

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### 3. When is it FAIR USE?

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graph TD
    A{Public Domain} -- Yes --> B[Ok to use]
    A --> C{Sec. 108 Libraries}
    C --> D[N/A]
    C --> E{Fair Use}
    E -- Probably --> F[Use it according to your risk tolerance]
    E --> G[Get Permission]
            
```

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### Fair Use?

Court will Use **PNAM** Factors

- **P**urpose
- **N**ature of work
- **A**mount
- **M**arket harm

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## Fair Use

*"...the fair use of a copyrighted work...for purposes such as criticism, comment ... scholarship, or research is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include...[PNAM]"*

17 U.S.C. § 107

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### Is your use a FAIR USE? Use PNAM Factors

#### Fair Use - Purpose

|               | Likely YES  | Likely NO  |
|---------------|-------------|------------|
| Your Web Page | Nonprofit + | Commercial |

\*the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes\*

**PNAM**

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#### Fair Use Purpose

|                          | Likely YES | Likely NO |
|--------------------------|------------|-----------|
| New use "transformative" | +          |           |
| Merely copies            |            | -         |

thumbnails index as a "transformative work"  
Kelly v. Arriba Soft, 336 F.3d 811 (9<sup>th</sup> Cir. 2003)

**PNAM**

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**Fair Use**  
Nature of Work

|                | Likely YES                                | Likely NO                    |
|----------------|---|------------------------------|
| Thin copyright | reference directories, science, history + |                              |
| Strong         |   | Creative fiction art music - |

"the nature of the copyrighted work;"

PNAM

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**Fair Use**  
Nature of Work

|                 | Likely Yes  | Likely No     |
|-----------------|-------------|---------------|
| Work "borrowed" | published + | unpublished - |

"The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors"

PNAM

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**Fair Use**  
Amount & Substantiality

|                         | Likely Yes  | Likely No          |
|-------------------------|---|--------------------|
| Amount & Substantiality | Small <b>in relation to whole</b> (of original) + | Whole or "heart" - |
| Your Web Page           | Use small amts +                                  |                    |

"the amount and substantiality of the portion used in relation to the copyrighted work as a whole"

PNAM

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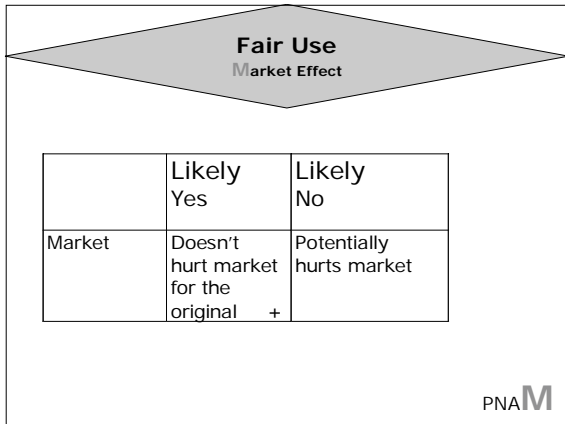
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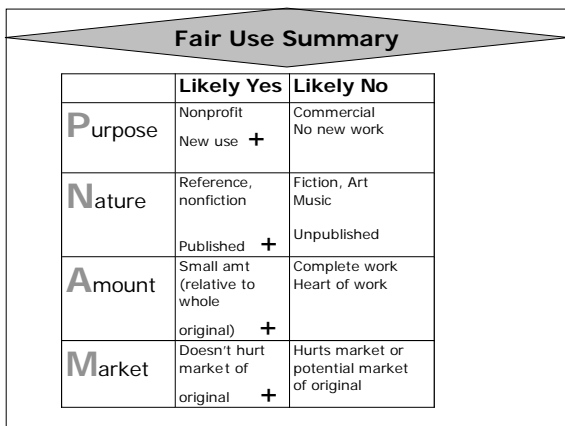
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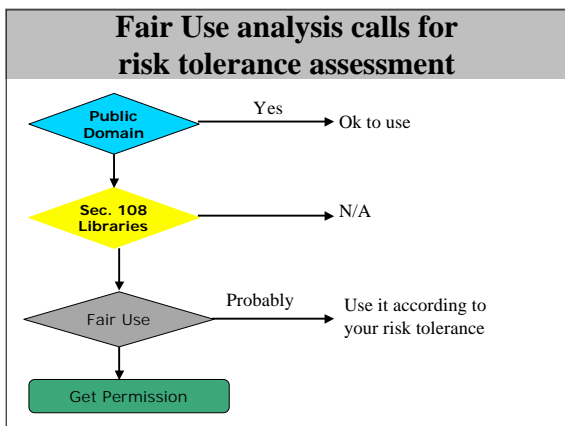
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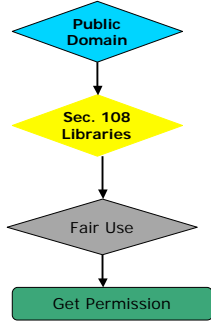
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## 4. Getting Permission

- Determine copyright holder
  - Copyright © 2005 Mary Minow
- Identify rights you need
  - nonexclusive, in perpetuity
- Put the agreement in writing
  - Email permission is okay
  - Keep on file




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## Permission Form

*I am the owner to the rights to  
Title of Work and I authorize a  
nonexclusive right to reproduction,  
distribution, adaptation, performance  
and/or display by \_\_\_\_\_ Library*

Sample Forms listed on handout  
e.g. [www.librarylaw.com/perm.htm](http://www.librarylaw.com/perm.htm)

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## Copyright Clearinghouses

Established to collect payments  
From users and distribute to  
copyright owners



- Copyright Clearing Center (text)  
[www.copyright.com](http://www.copyright.com)
- Corbis.com - (photographs)
- Art Resource (fine art)- [artres.com](http://artres.com)
- Cartoonbank.com (New Yorker)

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## Further Resources

- Carrie Russell, Complete Copyright: An Everyday Guide for Librarians (ALA: 2004)
- American Library Association Copyright Issues [www.ala.org/copyright](http://www.ala.org/copyright)

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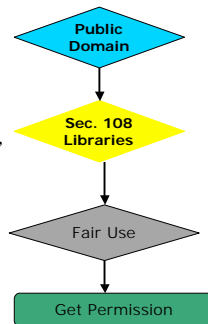
## Summary

**Overview and Risks**  
- can minimize

**Public Domain – FRIDGE**  
- Facts, Recipes, Ideas, Dedicated works, Government (U.S.), Expired

**FAIR USE – PNAM**  
- Purpose, Nature, Amount, Market

**Permissions – a safe bet**



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