



COPYRIGHT STATEMENT
DRAFT OF JUNE 10, 2004

The New Jersey Digital Highway (NJDH) does not claim ownership of materials (e.g., metadata and images) in the portal, but operates under the principle of "**shared access, local ownership**," with ownership remaining with the content contributors.

Physical ownership of an item, however, is not the same as ownership of the **copyright** of a work. For example:

- Sally Smith owns a copy of *Midsummer's Night's Dream* ... but the copyright has expired and the work is in the public domain.
- The Smallsville Public Library owns a copy of *The Narrows* ... but the copyright is held by Little, Brown, and Co.
- The Louvre owns the Mona Lisa as a physical painting ... but the copyright of the image itself is in the public domain.

This separation in ownership between physical items and copyright is expressed in the **First Sale Doctrine** -- which allows Sally to sell her copy to a used bookstore, the Smallsville Public Library to offer its copy for loan, and the Louvre to control access to the physical copy for image reproduction purposes via **licensing** agreements.

The philosophy and overall intent of the NJDH is to enable its content contributors to make its digital content available to NJDH users within the **intellectual property** framework of **Creative Commons licenses** (www.creativecommons.org). However, as a decentralized organization, most copyright-related responsibilities lie with the individual NJDH content contributors.

As such, these content contributors are responsible for any and all appropriate steps when providing content to the NJDH portal, such as:

- Securing the copyright
- Securing the right or license
- Undertaking any **Fair Use** analysis
- Clearing donor restrictions
- Evaluating potential **FERPA, NAGPRA**, and other **privacy law** concerns
- Deciding on the terms in which the content is made available in the NJDH portal (e.g., Creative Commons license, public domain, Founders copyright, GNU, etc.)



As such, the range of **copyright-ownership-licensing scenarios** will vary. Some examples to illustrate the point,

Scenario A:

- Item copyright owned by NJDH content contributor
- Physical copy owned by NJDH content contributor
- Digital copy provided to NJDH portal under Creative Commons

Attribution-NonCommercial License

Scenario B:

- Item copyright in **public domain**
- Physical copy owned by NJDH content contributor
- Digital copy provided to NJDH portal under Creative Commons

Attribution-NonCommercial-NoDerivs License

Scenario C:

- Item copyright owned by third party
- Physical copy owned by NJDH content contributor
- Digital copy provided to NJDH portal under Fair Use

TRAINING AND EDUCATION OF NJDH CONTENT CONTRIBUTORS:

The NJDH will provide information and periodic educational opportunities to its content contributors to guide them in determining best practices for copyright. It will not, however, provide a centralized decision-making body to determine case-by-case copyright questions by NJDH content contributors.

NJDH content contributors should consult their institution's legal counsel with questions about their copyright policies and liability thresholds.



REASONABLE GOOD FAITH DEFENSE:

Section 504(c)(2) of the Copyright Act says that employees of nonprofit educational institutions who are found by the court to violate copyright cannot be held liable for statutory damages if the court believes the employee had made a **reasonable good faith decision** that their use of the material was covered under Fair Use.

Congress included this provision because they knew that Fair Use is murky and grey. They included this provision to *encourage* educators to use materials under Fair Use with a little more confidence and assurance.

The philosophy inherent in Section 504(c)(2) -- coupled with complete lack of legal challenges from would-be copyright holders to cultural heritage organizations digitizing items in their collections -- lead the NJDH to encourage NJDH content contributors to be liberal in their interpretation of Fair Use.

However, all copyright decisions are exercises in **risk assessment**. Any party can sue any other party -- rightly or wrongly. And two equally reasonable people can come to complete opposite opinions given the same facts.

NJDH has developed an **interim risk assessment strategy** for all materials to be submitted and made available via the *New Jersey Digital Highway*. Only materials that fall within the continuum of acceptable resources according to the interim risk assessment strategy can currently be accepted for inclusion in NJDH. This risk assessment strategy will be revised and codified by the NJDH collections working group after the reorganization of NJDH management, currently underway (2006-7)

COPYRIGHT STATEMENTS IN THE NJDH PORTAL:

Each digital item in the NJDH portal will include a copyright statement as part of its metadata. Each metadata statement will allow NJDH users to link to more detailed information about the copyright of the item and the intellectual property terms under which it is being provided to the NJDH portal and NJDH users. Each metadata statement will also allow an NJDH user to provide feedback to the NJDH for the purpose of (a) providing unknown copyright information and (b) registering requests to have items withdrawn from the NJDH portal due to conflicting copyright claims. Such requests will be considered and evaluated by the NJDH Advisory Committee, the NJDH Content Committee, and the NJDH content contributor for the item(s) in question.



FURTHER RESOURCES:

Northeast Document Conservation Center -- **Handbook for Digital Projects: A Management Tool for Preservation and Access** (see **Chapter V: Overview of Copyright Issues**) (Jan 2003)

>> <http://www.nedcc.org/digital/tofc.htm>

Library Digitization Projects and Copyright by Mary Minow (Jun 2002)

>> <http://www.llrx.com/features/digitization.htm>

University System of Georgia Regents' Guide to Copyright and Fair Use

>> <http://www.usg.edu/admin/legal/copyright>

Creative Commons

>> <http://www.creativecommons.org>

Copyright Term and the Public Domain in the United States

>> http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm