

A common answer to Commons problem

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Two Disclaimers

1. I am NOT an expert in US Copyright Law
2. As a result of this lecture – images MAY be deleted from Wikipedia Commons

What is Wikipedia Commons?

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GLAM

תמיד רציתם להיות עורכים בוויקיפדיה? זו ההזדמנות שלכם!
ביום רביעי, 20 ביוני, יערך מרתון עריכה בספרייה הלאומית בירושלים במסגרת פרויקט "גלאם - הספרייה הלאומית". לפרטים והרשמה לחצו כאן.

Welcome to Wikimedia Commons,

a database of 13,091,254 freely usable media files to which anyone can contribute.

 [Images](#)

 [Sounds](#)

 [Videos](#)

Picture of the day



Contribution by the Walters Art Museum



The [Walters Art Museum](#) has contributed over 19,000 professional photographs of objects in their collections. Objects include art from ancient Egypt, pre-Columbian art, Japanese art and weapons, Islamic manuscripts, Renaissance art and much more.

We can use your help categorizing the images. You can read more about how to help [here](#).

See also: [Commons:Partnerships](#)

- “Wikimedia Commons is a **media file repository** making available public domain and freely-licensed educational media content (images, sound and video clips) to everyone, in their own language”

The aim of Wikimedia Commons is to provide a media file repository:

- that makes **available public domain and freely-licensed educational media content to all**, and
- that acts as a **common repository** for the various projects of the Wikimedia Foundation .
- The expression “educational” is to be understood according to **its broad meaning** of “*providing knowledge; instructional or informative.*”

Must be freely licensed or public domain

- Wikimedia Commons accepts only **free content**, in other words files that are either freely licensed or which are in the **public domain**.
- A file is considered public domain if either
 - (1) all copyright has expired or
 - (2) if the copyright owner(s) has voluntarily placed the content of the file into the public domain by irrevocably renouncing all copyright.
 - (3) A file which is ineligible for copyright protection is also considered public domain.

- Any file hosted here must normally be freely licensed or public domain according to both the law of the United States and according to the law of the source country.

Really?

- Faithful reproductions of two-dimensional works of art, such as paintings, which are in the public domain are an exception to this rule. In July 2008, following a statement clarifying WMF policy, Commons voted to the effect that all such photographs are accepted as public domain regardless of country of origin, and tagged with a warning.

A rule of tumb

- US law – complicated
And getting worse
(Sonny Bono Act)

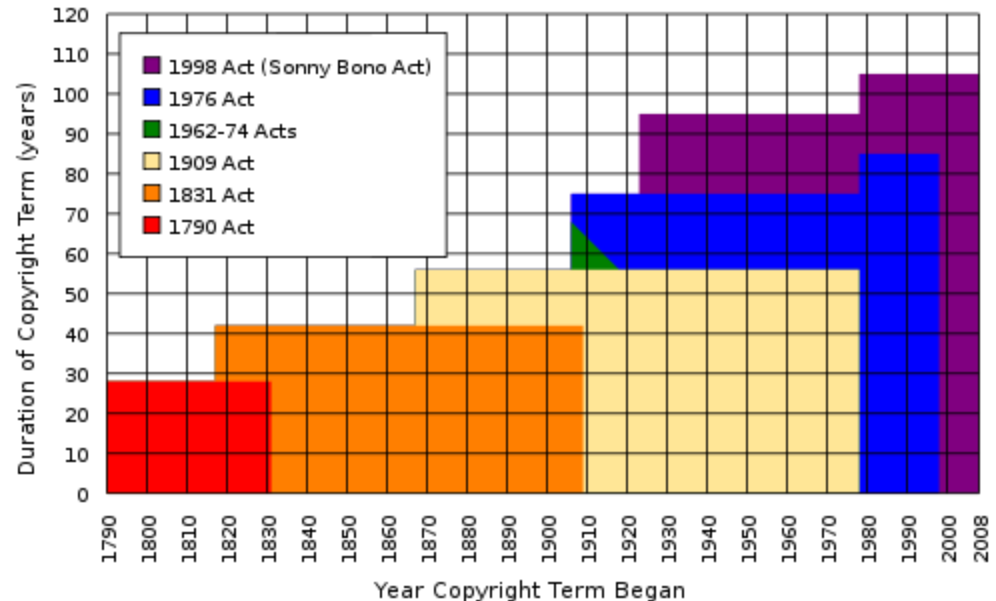


Chart from EN
Wikipedia

- Other countries simpler –
 - 70 years from death or
 - Freedom of Panorama

So – not really.

- The US Law is very problematic and very restrictive compared to other countries.
- Problems may arise in:
 - Copyright terms
 - Freedom of panorama
 - De minimis
 - Interpretation (threshold of originality)

Bern Convention

- **Article 3**

Criteria of Eligibility for Protection:

1. *Nationality of author; place of publication of work;*

2. *Residence of author;*

3. *“ :Published” works;*

4. *“Simultaneously published” works*

- (1)The protection of this Convention shall apply to:
 - a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;
 - b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.
- (2)Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.

Two element

- Place of publication
- Length of protection (from publication or death of author)

Freedom of Panorama

- Some countries has it. Others do not.
- US – Buildings only.
- UK, New Zealand, Australia, Canada – Buildings, Statues and 3D artistic work
- Germany, Switzerland – Buildings, statues
- France, Italy – None
- Israel – Buildings, Statues and any “useful art”

Roy Lichtenstein Born: New York, New
York 1923 Died: New York, New York
1997



Fliker - Wikipedia Saves
Public Art, CC



Yale
Ragesoss, PD

Israel Copyright Law 1911/2007

- Broadcasting, or copying by way of photography, drawing, sketch or similar visual description, of an **architectural work**, a work of **sculpture** or work of **useful art**, are permitted where the aforesaid work is permanently situated in a public place."

paragraph 23



Yitzhak Rabin Memorial

RickP, CC

- **Robert Indiana** (born September 13, 1928) – age 83 – copyright ends ???



Charles Rotmil,

EN wikipedia,
PD - attribution

Category: Love by Robert Indiana

Subcategories

This category has only the following subcategory.

L

- [~~x~~] [Love sculpture \(University of Pennsylvania\)](#) (2 F)

Media in category "Love by Robert Indiana"

The following 22 files are in this category, out of 22 total.



[20030831-Love.jpg](#)
196 KB



[Ahava.jpg](#)
240 KB



[Glass House, Park Mall...](#)
611 KB



[Indiana 10.jpg](#)
464 KB



[Indiana 11.jpg](#)
1,007 KB



[Langen Foundation SIMG...](#)
788 KB



[Love logo ripoff.jpg](#)
2.13 MB



[Love Sculpture - Shinj...](#)
5.38 MB



[LOVE sculpture NY crop...](#)
3.03 MB



[LOVE sculpture NY.JPG](#)
3.35 MB



[Love01.jpg](#)
138 KB



[Love02.jpg](#)
2.59 MB



Can copyright be claimed in the US?



The Israel Museum, Jerusalem
Collection; Photo copyright by
Talmoryair .CC

Anish Kapoor

- born 1954 in Bombay/India. A Turner Prize winning English sculptor.

- Participate
- Upload file
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- Latest files
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- Help
- Contact us
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- Toolbox
- What links here
- Related changes
- Special pages
- Printable version
- Permanent link
- RSS feed
- Nominate category for discussion

Category:Cloud Gate

Media in category "Cloud Gate"

The following 15 files are in this category, out of 15 total.



2005-10-13
2880x1920 c...
685 KB



20080602 Park Grill
wi...
1.65 MB



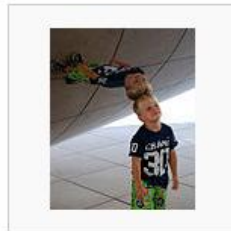
2008TIBE Day5 Hall1
Th...
667 KB



Bean Empty Scene
Chica...
2.14 MB



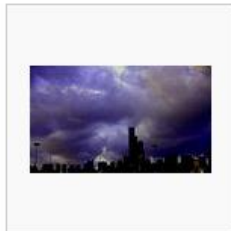
ChicagoBean550.jpg
86 KB



Cloud Gate boy
reflect...
1.18 MB



Cloud gate
constructio...
70 KB



Cloud gate, Chicago
sk...
58 KB



Kapoormirror2.jpg
49 KB



Kapoor tent.jpg
48 KB



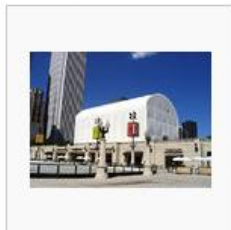
OmphalosCloudGate.j
pg
1.34 MB



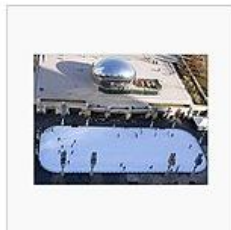
ParkGrillIceSkating.jpg
31 KB



Plaza and Cloud
Gate.jpg
961 KB



Tented cloud gate.jpg
34 KB



The Bean and
McCormick...
141 KB

- ge pump
- articipate
- load file
- recent changes
- test files
- andom file
- elp
- contact us
- onate
- olbox
- hat links here
- related changes
- pecial pages
- rintable version
- ermanent link
- RSS feed
- ominate category for
- discussion

Category:Turning the World Upside Down, Jerusalem



The reproduction of this architectural work, work of sculpture or work of applied art, is covered under the Israeli copyright statute (2007), which states that "Broadcasting, or copying by way of photography, drawing, sketch or similar visual description, of an architectural work, a work of sculpture or work of applied art, are permitted where the aforesaid work is permanently situated in a public place." (paragraph 23)

See [Commons:Freedom of panorama#Israel](#) and [Commons:De minimis#Israel](#) for more information.

العربية | [English](#) | עברית | [Italiano](#) | [Русский](#) | [+/-](#)

Media in category "Turning the World Upside Down, Jerusalem"

The following 11 files are in this category, out of 11 total.



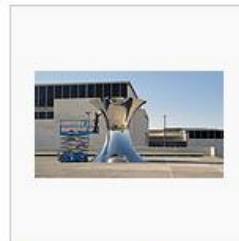
Anish IMG 6029.JPG
4.16 MB



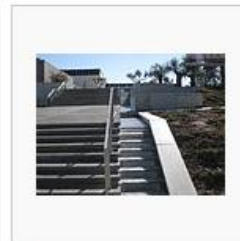
Anish IMG 6030.JPG
4.06 MB



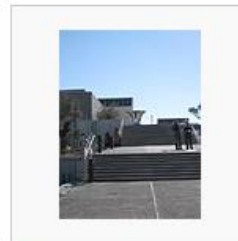
Anish IMG 6035.JPG
4.08 MB



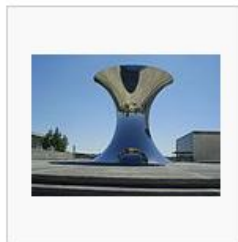
Cleaning the Turning
t...
5.15 MB



Entrance to the
Israel...
4.73 MB



Entrance to the
Israel...
4.24 MB



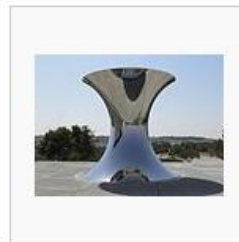
PikiWiki Israel 19475
...
699 KB



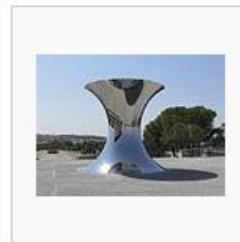
Turning the world
upsi...
709 KB



TWUP Jerusalem
190810 ...
723 KB



TWUP Jerusalem
190810 ...
736 KB



TWUP Jerusalem
190810 ...
766 KB

Categories: [Anish Kapoor](#) | [Sculptures in the Israel Museum, Jerusalem](#)

- **Santiago Calatrava** (born 28 July 1951) is a Spanish architect ,sculptor and structural engineer whose principal office is in Zürich ,Switzerland. Offices also in New York City

Category: Ponte della Costituzione

These works or works by this artist may not be in the public domain, because the artist has not been dead for at least 70 years. Please do not upload photographs or scans of works by this artist, unless they meet one of the following exceptions:

- The work was first published in the United States and one of the [United States public domain tags](#) applies;
- The work is permitted by a legal exception such as [freedom of panorama](#) or *de minimis*;
- The work was released by the author or their heirs via [E-mail confirmed authorisation](#);
- The work is known to be in the public domain for some other clear reason.

For more information, see [Commons:Licensing](#) and [Commons:Derivative works](#).

[Català](#) | [Deutsch](#) | [English](#) | [Español](#) | [Suomi](#) | [Français](#) | [Italiano](#) | [日本語](#) | [Македонски](#) | [Nederlands](#) | [Polski](#) | [Português](#) | [Русский](#) | [Slovenščina](#) | [ไทย](#) | [Türkçe](#) | [+/-](#)

Object location

 [45° 26' 20.35" N, 12° 19' 14.4" E](#)

This and other images at their locations on: [Google Maps](#) - [Google Earth](#) - [OpenStreetMap](#) - [Proximityrama](#)

[\(Info\)](#)

Media in category "Ponte della Costituzione"

Following 11 files are in this category, out of 11 total.



idge in Venice by
...
1 MB



Calatrava, Venezia.jpg
839 KB



Cuarto puente.JPG
687 KB



La nouvelle
passerelle...
1.06 MB



Ovovia ponte della
cos...
248 KB



Ponte calatrava,
costi...
41 KB

Category:Jerusalem Chords Bridge

Media in category "Jerusalem Chords Bridge"

The following 56 files are in this category, out of 56 total.



028 2010-09-04
14-55-4...
1,010 KB



Bridge site.jpg
357 KB



Calatrava bridge
site.jpg
347 KB



Calatrava
Jerusalem.jpg
438 KB



Calatravabridgefloorin.
..
98 KB



Es jer bridge.jpg
257 KB



JE Chords Bridge
01.jpg
2.44 MB



JE Chords Bridge
02.JPG
3.06 MB



JE Chords Bridge
03.JPG
2.41 MB



Jerusalem Bridge
progr...
1.91 MB



Jerusalem Chords
Bridg...
1.31 MB



Jerusalem Chords
Bridg...
1.38 MB



- Indiana/ Kapoor

US	Israel
Copyrighted	Free

- Calatrava

Italy	Israel	US
CR	Free	Free? (Bridge? Statue?)

Summary so far

- FOP – changes from one country to another.
- May change for the same object – if moved from one country to another.
- May apply differently to buildings/ statues/ Applied art/ 2D objects (Mosaics, stained glass)

Threshold of originality

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Random file
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▼ Toolbox
What links here
Related changes
Special pages
Printable version
Permanent link
Nominate for deletion

File:Disneyland Fantasyland IMG 3958.jpg

[File](#) [File history](#) [File usage on Commons](#) [Metadata](#)



Size of this preview: 450 × 600 pixels. Other resolutions: 180 × 240 pixels | 360 × 480 pixels | 576 × 768 pixels | 768 × 1,024 pixels.

[?](#)

[Full resolution](#) (2,736 × 3,648 pixels, file size: 5.29 MB, MIME type: image/jpeg); ([request rotation](#)); ZoomViewer: [flash/no flash](#)



This media file has been nominated for deletion since 25 April 2012. To discuss it, please visit [the nomination page](#).

Do not remove this tag until the deletion nomination is closed.

Reason for the nomination: *This appears to be a [derivative work](#) of Disney's copyright and therefore cannot be hosted here.*

- Latest files
- Random file
- Help
- Contact us
- Donate

File:Disneyland Fantasyland IMG 3955.jpg

[File](#) [File history](#) [File usage on Commons](#) [Metadata](#)



Size of this preview: 800 × 600 pixels. Other resolutions: 320 × 240 pixels | 640 × 480 pixels | 1,024 × 768 pixels | 1,280 × 960 pixels.

Full resolution (3,648 × 2,736 pixels, file size: 7.12 MB, MIME type: image/jpeg); (request rotation); ZoomViewer: flash/no flash



This media file has been nominated for deletion since 25 April 2012. To discuss it, please visit [the nomination page](#).

Do not remove this tag until the deletion nomination is closed.

Reason for the nomination: *This appears to be a derivative work of Disney's copyright and therefore cannot be hosted here.*

Different protection period

US	Israel (until 2008)	Israel (now)	Poland	Ukraine
Changes – now 110 +	50 years	70+	50	50

Example of a problem



nurith grindlinger via
PikiWiki - Israel free the
image collection project

PD

Commons:Deletion requests/File:Beit Alpha 1933.jpg

< Commons:Deletion requests

This deletion debate is now closed. Please do not make any edits to this archive. You can read the [deletion policy](#) or ask a question at the [Village pump](#). If the circumstances surrounding this file have changed in a notable manner, you may [re-nominate](#) this file or [ask for it to be undeleted](#).

File:Beit_Alpha_1933.jpg

[edit]

The grandson of the creator claims copyrights still exist. [80.179.112.106](#) 21:28, 13 November 2010 (UTC)

Kept. - please provide some evidence, this is too vague - [Jcb \(talk\)](#) 21:43, 25 December 2010 (UTC)

User:Deror avi had a long dispute with this grandson about these photos. Maybe he can explain better. —Preceding [unsigned](#) comment added by [80.179.112.106](#) ([talk](#) • [contribs](#)) 27. Dezember 2010, 11:26 Uhr (UTC)[Túrelío \(talk\)](#) 10:48, 21 November 2011 (UTC))

Dear all,

The photo was taken in 1933 by my Grandfather, the late Ze'ev Aleksandrowicz, in what was then the British Mandate for Palestine. It was scanned and uploaded to the internet about a year ago by Israel's National Library, under the permission of the copyright holders.

This is the origin of the photo: http://dlib.nli.org.il/j2k/jpegNav.jsp?pid=15485&mimetype=image/jpeg&filename=%D7%97%D7%93%D7%A8+%D7%94%D7%90%D7%95%D7%9B%D7%9C+%2C%D7%A7%D7%99%D7%91%D7%95%D7%A5+%D7%91%D7%99%D7%AA+%D7%90%D7%9C%D7%A4%D7%90&identifier=69&locale=en_US&compression=70&img_size=best_fit&VIEWER_URL=/j2k/jpegNav.jsp?&DELIVERY_RULE_ID=69&convert_script=/exlibris/dtl/j3_1/digitool/home/system/bin/convert.sh&frameId=1

The photo is protected under US copyright laws (<http://www.copyright.gov/circs/circ1.pdf>, page 5, "Works Originally Created Before January 1, 1978, But Not Published or Registered by That Date"), and therefore should be deleted from the Commons project. The reasons for that are as follows:

- The photo was not published anywhere until 2010, when it was uploaded to Israel National Library site.
- My grandfather - the creator of the photo - passed away in 1992.
- The copyright on the photo was transferred to the photographer's sons, i.e. it still belongs to the photographer's family.
- The photo was downloaded from Israel National Library site and cropped to hide a copyright statement that was added to the photo as a watermark. This was done against the explicit will of the copyright holders. Since it was downloaded by the Israeli Wikipedia user, the watermark on the original image was changed and moved to the center of the image in order to prevent similar acts.

Simplified Facts

- Image taken in Israel (Kibutz Beit Alfa) in 1933
- Author – Polish domiciled in the Ukraine. Moved to Israel in late 1940's, Passed away in 1992
- Image published first time – In Israel in 2010
- Alleged by family: “The photo is protected under US copyright laws (<http://www.copyright.gov/circs/circ1.pdf>, page 5, "Works Originally Created Before January 1, 1978, But Not Published or Registered by That Date"), and therefore should be deleted from the Commons project.”
- “The photo was downloaded from Israel National Library site and cropped to hide a copyright statement that was added to the photo as a watermark.”
- Deleted in commons

- Berne convention – free:

First place of publication	Domicile/ nationality at time of publication (1992)	Place where picture was taken	Domicile/ nationality at time picture was taken
Israel	Israel	Israel	Poland/ Ukraine
Free	Free	Free	Free

- Deleted – as first published in the US (by commons?) in 2010
- Result so far – everything published by commons is first time published in the US, thus copyrighted, and thus should be deleted – as the “shorter term rule” of the Bern Convention does not apply in the US

Meaning

- Failure of GLAM projects and GLAM cooperations



Adi Ness (born 1966), Israel
Museum, CC

Some Solutions

- Move main servers to Europe.

- For full-text search we use [Lucene](#), with extensive customisations contributed by Robert Stojnic.
- <http://noc.wikimedia.org/conf/> - Wikimedia configuration files

Hosting

[edit]

For a list of servers, please see [server roles](#).

As of June 2010, we have four colocation facilities:

pmtpa

Hostway (formerly PowerMedium) in Tampa, Florida.

sdtpa

Equinix (formerley Switch and Data) in Tampa, Florida.

knams

Kennisnet in Amsterdam, the Netherlands.

esams

EvoSwitch in Amsterdam, the Netherlands.

The backend web and database servers are divided between our two Tampa facilities. At EvoSwitch, we have a Squid cache cluster and several miscellaneous servers. The Kennisnet location is now used only for network access and routing.

EvoSwitch and Kennisnet are recognised as benefactors for their in-kind donations. See the [current list of benefactors](#).

Donations

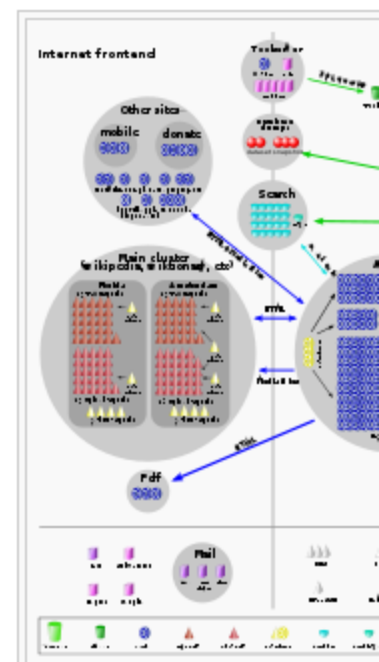
[edit]

While Wikipedia is free in both the "free speech" and "no charge" senses of the word, running the web site does cost money. You can help with purchasing new server hardware by donating to the non-profit [Wikimedia Foundation](http://wikimediafoundation.org/wiki/Donate): <http://wikimediafoundation.org/wiki/Donate>

Status and problems

[edit]

You can check one of the following sites if you want to know if the Wikimedia servers are overloaded, or if



overview, December 2010 (layout diagrams)

Legal Answer

- Private International Law
- Forum non convenience

From Wikipedia:

- ***Forum non conveniens*** (Latin for "forum not agreeing") (**FNC**) is a (mostly) common law legal doctrine whereby **courts may refuse to take jurisdiction over matters where there is a more appropriate forum available to the parties**. As a doctrine of the conflict of laws, *forum non conveniens* applies between courts in different countries and between courts in different jurisdictions in the same country.
- A concern often raised in applications of the doctrine is **forum shopping, or picking a court merely to gain an advantage in the proceeding**. This concern is balanced against the public policy of deferring to a plaintiff's choice of venue in claims where there may be more than one appropriate jurisdiction. The underlying principles, such as basing respect given to foreign courts on reciprocal respect or comity, also apply in civil law systems in the form of the legal doctrine of *lis alibi pendens*.

Creative Technology v. Aztech Sys.

F.3d 696 61 ,PTE

- Given the existence of **an adequate alternative forum**, a district court must consider the balance of private and public interest factors to determine whether to dismiss on grounds of forum non conveniens.
- The public interest factors include: (1) administrative difficulties flowing from court congestion; (2) imposition of jury duty on the people of a community that has no relation to the litigation; (3) **local interest in having localized controversies decided at home**; (4) **the interest in having a diversity case tried in a forum familiar with the law that governs the action**; (5) **the avoidance of unnecessary problems in conflicts of law**.

See also:

- **Overseas Media, Inc. v. Skvortsov**, 441 F. Supp. 2d 610
- **Murray v. BBC**, 81 F.3d 287

- When deciding a forum non conveniens motion, a court may properly rely on the difficulties attending the **resolution of questions of foreign law**.
Scottish Air Intern., Inc. v. British Caledonian Group, PLC 81 ,F.3d 1224, 1234 (2d Cir. 1996)
- The public interest factors point towards dismissal **where the court would be required to untangle problems in conflict of laws, and in law foreign to itself**
Piper Aircraft 454 ,U.S. at 251
- The likelihood that Belgian law would govern in turn lends weight to the conclusion that the suit should be prosecuted in that jurisdiction.
Calavo Growers v. Generali Belgium 632 ,F.2d 963, 967 (2d Cir. 1980)
- In the first place, courts of one state are reluctant to impose liability upon a person who **acts pursuant to a privilege conferred by the law of the place where the acts occurred**,
Vanity Fair Mills, Inc. v. T. Eaton Co 234 ,.F.2d 633, 646 (2d Cir. 1956)
- Dutch courts are far better situated to apply and interpret Dutch law.
Beekmans v. J.P. Morgan & Co 945 ,.F. Supp. 90, 94 (S.D.N.Y. 1996)

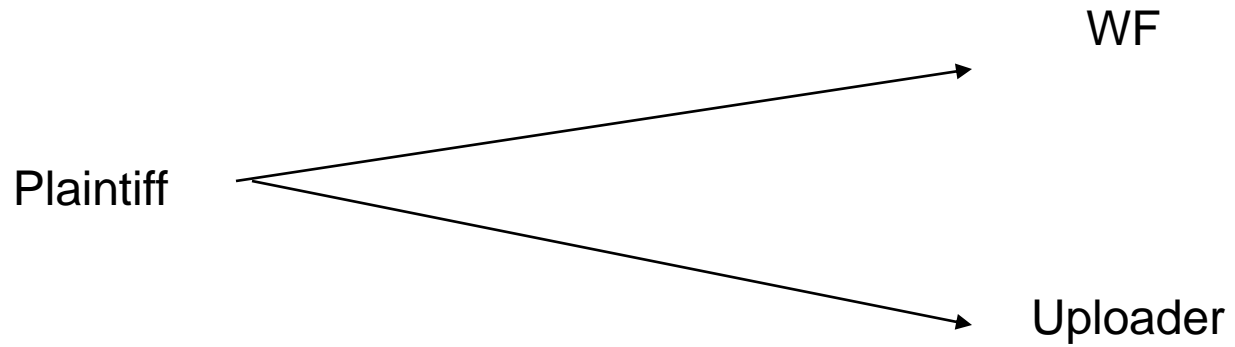
Beit Alfa Picture

Image taken	Israel
Photographer's domicile when taken	Poland
Photographer domicile when published	Israel
Place of first publication	Israel

Claimant Domicile	Israel
Uploader Domicile	Israeli

Convenient forum	???
Applicable law (in US court)	???

Parties to a claim



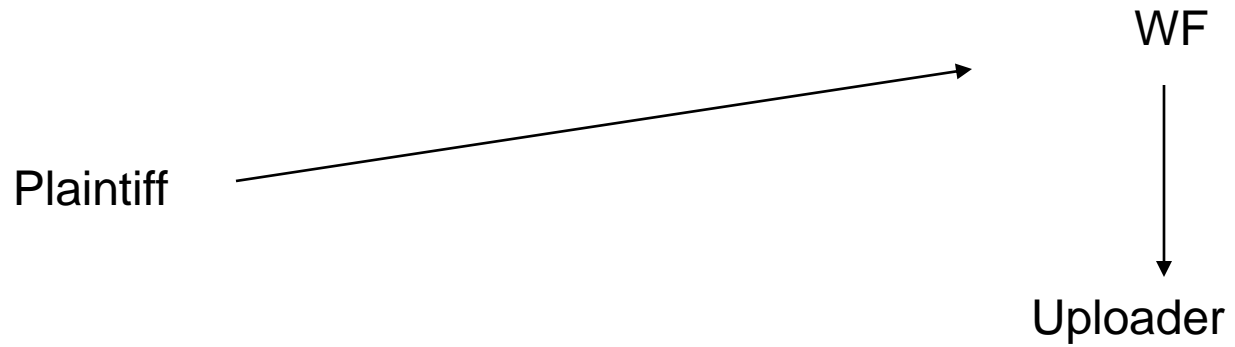
Lenz v. Universal Music Corp. (You Tube)

- February 2007, Stephanie Lenz posted on YouTube a twenty-nine second clip of her children dancing to Prince's "Let's Go Crazy." The audio was of poor quality, and the song was audible for approximately twenty seconds of the twenty-nine second.
- June 2007, Universal, the copyright holder for "Let's Go Crazy", sent YouTube a takedown notice.
- YouTube removed the video and notified Lenz of the removal and the alleged infringement.
- June 2007, Lenz sent YouTube a counter-notification, claiming fair use and requesting the video be reposted.
- YouTube reposted the video.

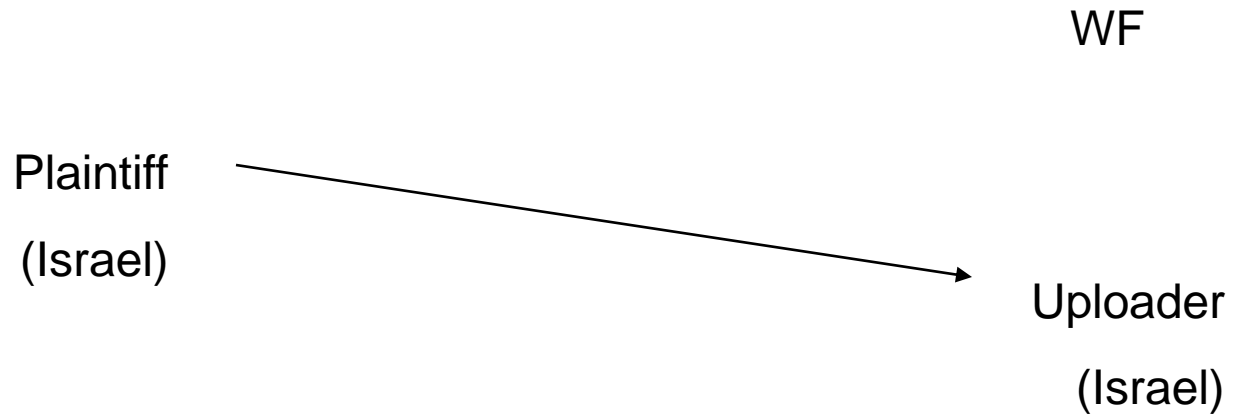
Online Copyright Infringement Liability Limitation Act

- a conditional safe harbor for online service providers OSP
- Applies to You Tube and to Commons

Parties to a claim



Parties to a claim



Beit Alfa Picture

Image taken	Israel
Photographer's domicile when taken	Poland
Photographer domicile when published	Israel
Place of first publication	Israel

Claimant Domicile	Israel
Uploader Domicile	Israeli

Convenient forum	Israel
Applicable law (in US court)	Israeli

Suggestion

- Change of rules - Apply only the local law first, unless first published in the US (not by commons)
- Less scrutiny by commons = lesser responsibility on WF
(Unless clear breach – Atomium, Calatrava Constitution Bridge)

Questions?