

# Copyright and Digital Humanities: *A Transatlantic Perspective*

***COST-Action Training School***

**Ghent, Belgium**

4 April 2013

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Columbia University Libraries

Copyright Advisory Office

# Digital Humanities and Copyright?

- ***Clash* with Copyright?**
- ***Test* of Copyright?**
- ***Ignorance* of Copyright?**
- **Is Ignorance Really Bliss?**



# Consider these DH Projects...

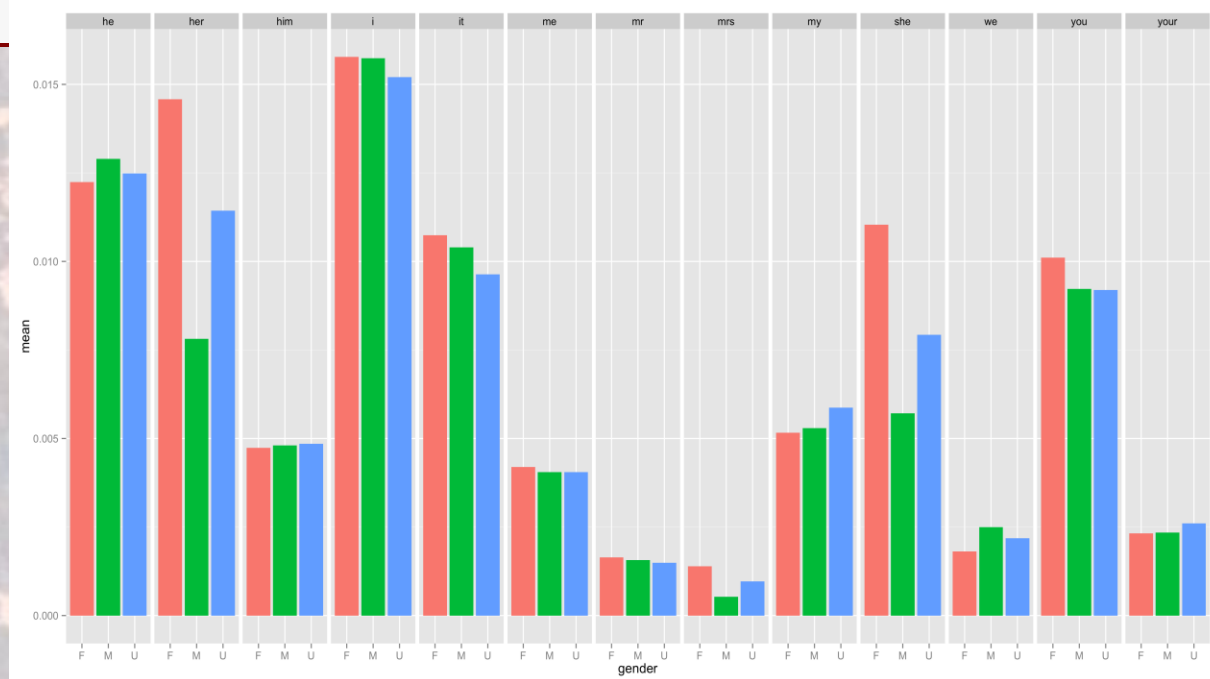
- **The Shakespeare Machine**
- **Text Mining of 19<sup>th</sup> Century Novels**
- **Hypermedia Dante**
- **DIY History**
  - **University of Iowa**

[www.artinfo.com](http://www.artinfo.com)





# *Text Mining of 19<sup>th</sup> C. Novels*



“the frequency of 13 pronouns in a corpus of ~3,500 19th century novels. The bar graph (seen again here) breaks down pronoun usage by author gender (M, F, and U).” Source: <http://www.matthewjockers.net/>

# Hypermedia Dante

- <http://www.worldofdante.org/>

**THE WORLD OF DANTE**

INFERNO \* PURGATORIO \* PARADISO


Gallery / Maps / Music / Timeline / Search / Teacher Resources / About

## MAPS & CHARTS

### Botticelli, Chart of Hell

Source: Botticelli, Sandro Chart of Hell, c.1480-c.1495. Vat. Lat. 1896. Reproduced with permission of the Biblioteca Apostolica Vaticana.

Source  
Bibliote



List of  
List of Maps



# DIY History

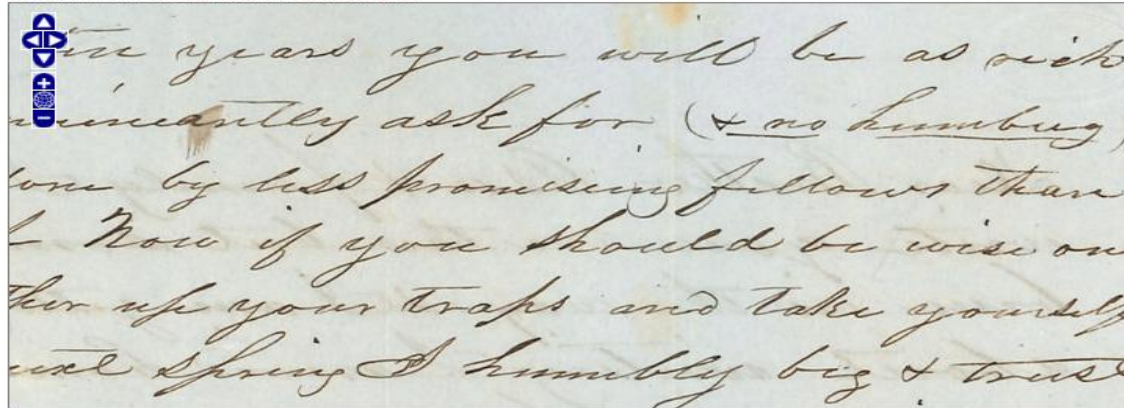
Home / Bean family letters, circa 1855-1880 / 1855-09 Page 02

## Bean family letters, circa 1855-1880

1855-09 Page 02

image 2 of 16

more information: Iowa Digital Library | collection guide



Enter your transcription below:

- Copy the text as is, including misspellings and abbreviations.
- No need to account for formatting (e.g. spacing, line breaks, alignment); the goal is to provide text for searching.
- If you can't make out a word, enter "[illegible]"; if uncertain, indicate with square brackets, e.g. "[town?]"
- View more transcription tips

word for it in two years you will be as rich as you can conveniently ask for (and no humbug) I have seen it done by less promising fellows than your dear self Now if you should be wise once & fly round & gather up your traps and take yourself & family west next spring I humbly beg & trust you will come by us & make a call if nothing more & as much longer as you please. Eliza promised to come this way I hope to see you all in the Spring at my humble dwelling. The cars are running past my door 4 or 5 times a day now & I feel same as Old Rough & Ready did at peace with all the world & the rest of mankind & we are a mighty people out west here (that's so Doot). very little slaying yet very mild scarce any frost in the ground expect to catch it soon Well now Doot what about the Know Nothings I just happened to think about it and have thought much about it since I saw you. we have them here in our cities & villages, but I do not trouble them (neverless I am one of

Save edits

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<http://diyhistory.lib.uiowa.edu/>

# Common Elements of Digital Humanities Projects

- Technologies
- Multiple Participants
- Cross-Disciplinary Analysis
- Quantitative Analyses
- Innovations in Methodologies



# Elements of DH Methodologies

- Creation of New Works
- Mass Digitization
- Mass Downloading
- Storage & Retrieval
- Networking and Collaboration

# Copyright Questions Abound...

- Creation of New Works
  - Protectibility
  - Ownership
- Manipulate and Alter
  - Derivative Works
- Download, Store, and Retrieve
- Network and Share

# What Does Copyright Do?

- Legal Protection for New Works
- Rights of Copyright Owners
  - Reproduction
  - Distribution
  - Derivative Works
  - Much More
- Limitations and Exceptions



# Those Common DH Elements

- Creation, Storage, Manipulation, Networking, Sharing
- Who **Owens** the Originals?
- Who **Owens** the New Works?
- Are the **Uses** Infringements?
- Are the **Uses** within Fair Use or Other Exception?

# The Copyright Give and Take



- Grants Rights to Owners
  - Original Works of Many Types
  - Broad Set of Rights
  - Long Duration of Protection
- Limits Rights of Owners
  - Copyrights Expire
  - Diversity of Exceptions

# Diverse Exceptions

- Education, Scholarship, Research
- Library Preservation and Services
- Visually Impaired and Print Impaired
- Architecture and Panorama Right
- Exhaustion and First Sale
- Cover Songs and Sound Recordings
- Retransmission of Cable Television



# Three-Step Test



- Article 13 of TRIPs: “Members shall confine limitations or exceptions to exclusive rights to ***certain special cases*** which ***do not conflict with a normal exploitation*** of the work and ***do not unreasonably prejudice*** the legitimate interests of the right holder.”

# Internat'l Sources



- Berne Convention (1886)
- TRIPs (WTO, 1994)
  - Trade-Related Aspects of Intellectual Property
- WIPO Copyright Treaty (1996)

# E.U. Directives



- Information Society (2001)
- Term of Protection (1993)
- Protection of Databases (1996)
- Orphan Works (2012)



# The Copyright Construct

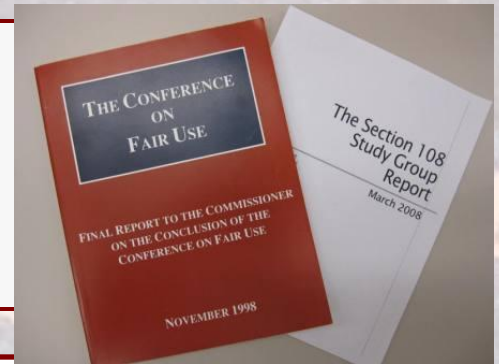
- Is it Eligible for Copyright Protection? [Go!](#)
- Is it Protected? [Go!](#)
- Who Owns the Copyright? [Go!](#)
- What are the Rights of Copyright? [Go!](#)
- Has the Copyright Expired? [Go!](#)
- Is it Fair Use (or other Exception)? [Go!](#)

# Getting Copyright Protection



- Eligibility for Protection:
  - Original Works of Authorship
  - Fixed in a Tangible Medium of Expression
- Securing Protection
  - Automatic Protection
  - No Requirement of Notice/Registration
- Excluded Works

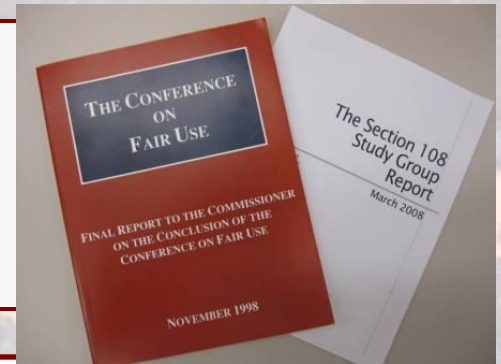
# U.S. Public Domain



- Works of the U.S. Government
  - Produced by officers and employees
  - U.S. federal gov't only
- Expired Copyrights
  - Published in U.S. before 1923
  - Unpublished works by author deceased more than 70 years
  - (Then gets more complicated....)



# E.U. Public Domain



- Works of the Government
  - National Govt? International?
  - Local Governments?
- Expired Copyrights
  - Life of the Author + 70 Years
  - Sound Recordings: 70 Years
  - *Previously Unpub Works: 25 Years*

# Who Owns the Copyright?

- Basic Rule: Author is the Owner
- However: Copyrights are Transferable
  - Must be in a Signed Writing
  - Often in Publication Agreements (Resist!)
- Ownership may be Shared
  - Joint Ownership or Contractual Sharing
- Work Made for Hire
  - Addressed in University Policies

# Rights of Owners

- What are the Rights of Ownership
  - Reproduction in Copies
  - Distribution to the Public
  - Derivative Works
  - Public Display or Performance
- Recent Additions
  - Moral Rights and DMCA Provisions

# U.S. Copyright Exceptions

- Section 107: Fair Use
- Section 108: Library Copying
- Section 109: First-Sale Doctrine
- Section 110(1): Classroom Displays
- Section 110(2): Distance Education
- Section 120: Architectural Works
- Section 121: Persons with Disabilities



# European Exceptions (2001)

- Private Use, with compensation
- Libraries, Schools, Museums
- Research & Study at Dedicated Terminals
- Teaching, noncommercial & credited
- Persons with Disabilities
- Quotations for Criticism & Review
- Parody, Caricature & Pastiche

# What is Fair Use?

- Section 107: Fair Use
  - ***Purpose*** of the Use
    - Education vs. Commercial
    - Transformative
  - ***Nature*** of the Work Used
  - ***Amount*** Used
  - ***Effect*** of the Use on Market or Value



- Sundeman v. Seajay Society (1998)
  - Purpose: Scholarly and “Transformative”
  - Nature: Unpublished manuscript
  - Amount: Consistent with scholarly needs
  - Effect: May actually help market



- **Bill Graham v. DK Publishing (2006)**
  - Purpose: Scholarly and “Transformative”
    - Good!
  - Nature: Art, but historically important
    - Bad! Wait, Maybe GOOD!
  - Amount: “Thumbnail”
    - Good!
  - Effect: May help market; does not compete
    - Good!



# Quest for Flexibility

- Dutch Court Decisions
  - Dior v. Evora (perfume bottle photos)
- French Court Decisions
  - Saif v. Google
- German Court Decisions
  - Germania 3 (quotation right in a play)
  - Google Bildersuche (implied consent)

# Two Cases: Germany & U.S.

- Germany:
  - Ruling from Landgericht in Frankfurt
  - Application of Library Exception (52b)
  - Interpretation of EU Directive (Art 5.3.n)
  - License language
  - Referral to the ECJ

# Two Cases: Germany & U.S.

- United States:
  - Authors Guild v. HathiTrust
  - Decided in October 2012
  - Collection of 10 million Digital Books
  - Publicly Searchable Database
  - Little Access to Content
  - Issue: Is it Fair Use?



# Return to the Four Factors

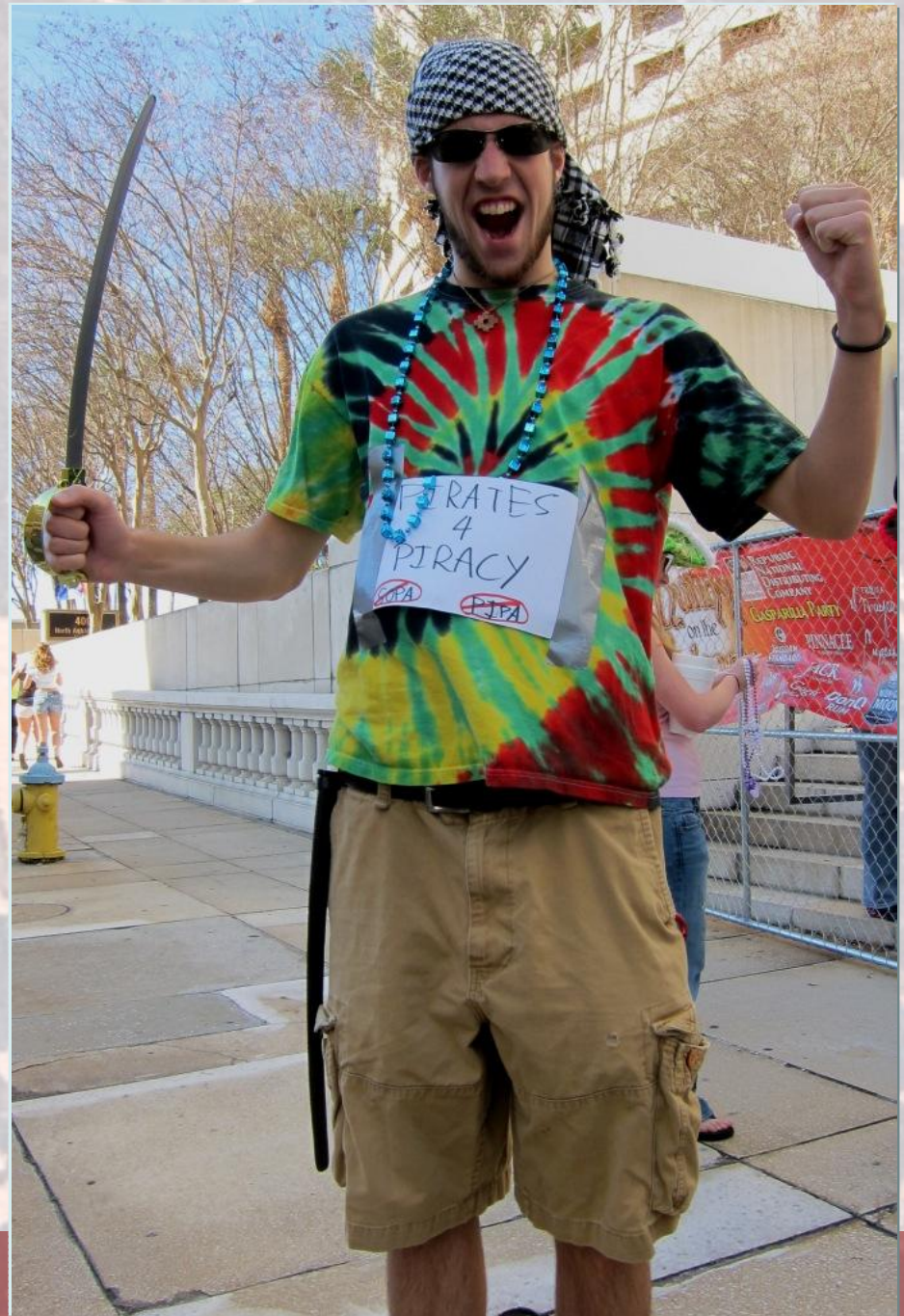
- ***Purpose:***
  - Preservation, Research, Scholarship
- ***Nature:***
  - Not Decisive
- ***Amount:***
  - Full Text is Necessary for Purposes
- ***Effect on the Market:***
  - No Realistic License



# Challenges for the E.U.

- Harmonization of Law
  - Closed Exceptions vs. Open Norms
  - *Droit d'Auteur* vs. Incentive to Create
- Competitive Position with the World
  - Fair Use opens New Opportunities
- Relationship to the Three-Step Test
  - Can Fair Use Survive?

***The Issue is  
NOT Piracy!***



# The Issue is Flexibility

- *Hugenholtz and Senftleben:*  
“The need for more openness in copyright law is almost self-evident in this information society of highly dynamic and unpredictable change.”



# Consider *Again* these Digital Humanities Projects...

- The Shakespeare Machine
- Text Mining of 19<sup>th</sup> Century Novels
- Hypermedia Dante
- DIY History at the University of Iowa
  - Public Domain Works
  - Collaborative Ownership
  - Downloading and Database Licensing
  - Fair Use



# Taking Control of Ownership

- Dedications to the Public Domain
- Creative Commons Licensing
- Open Access Publishing
- Agreements among Researchers
  - “Terms of Use” among Collaborators



# Taking Control of Exceptions

- Importance of Fair Use
  - Work with the Four Factors
  - Develop a Written Policy
  - Implement an Education Program
- Keep Your Options Open
  - Public Domain
  - Permissions & Licenses
  - Special Exceptions for Dist Ed & Libraries

# A Few Bits of Advice



- Accept Uncertainty
- Keep Your Focus on Scholarship
  - Promote Versatile Fair Use Policymaking
- Manage Your Own Copyrights
  - Don't Transfer them in full to Publishers
  - Support Open Access
  - Consider Creative Commons
  - Map the Copyright issues for you D.H. Projects

# ***The Future?***



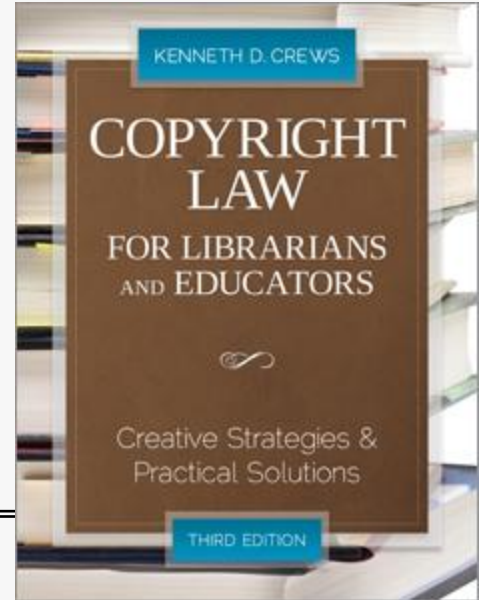
- **Copyright will not Disappear**
- **Digital Humanities will Expand**
- **The Tension will Continue**
- **The need to Take Control will Grow**

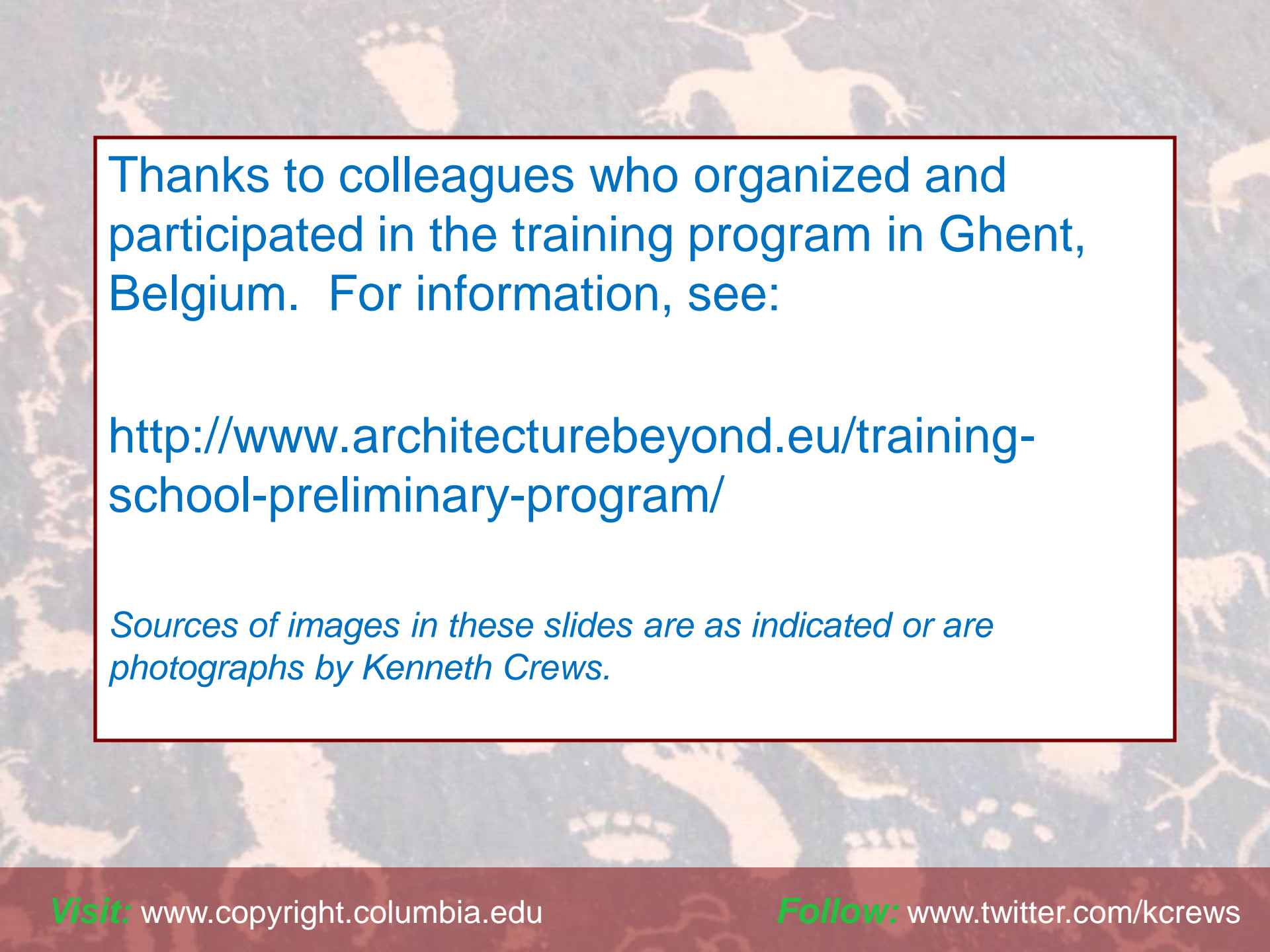
Credit: The other Martin Taylor on Flickr



# ***Thank You!***

- **Kenneth D. Crews**
- ***[www.twitter.com/kcrews](http://www.twitter.com/kcrews)***
- ***[www.copyright.columbia.edu](http://www.copyright.columbia.edu)***





Thanks to colleagues who organized and participated in the training program in Ghent, Belgium. For information, see:

<http://www.architecturebeyond.eu/training-school-preliminary-program/>

*Sources of images in these slides are as indicated or are photographs by Kenneth Crews.*