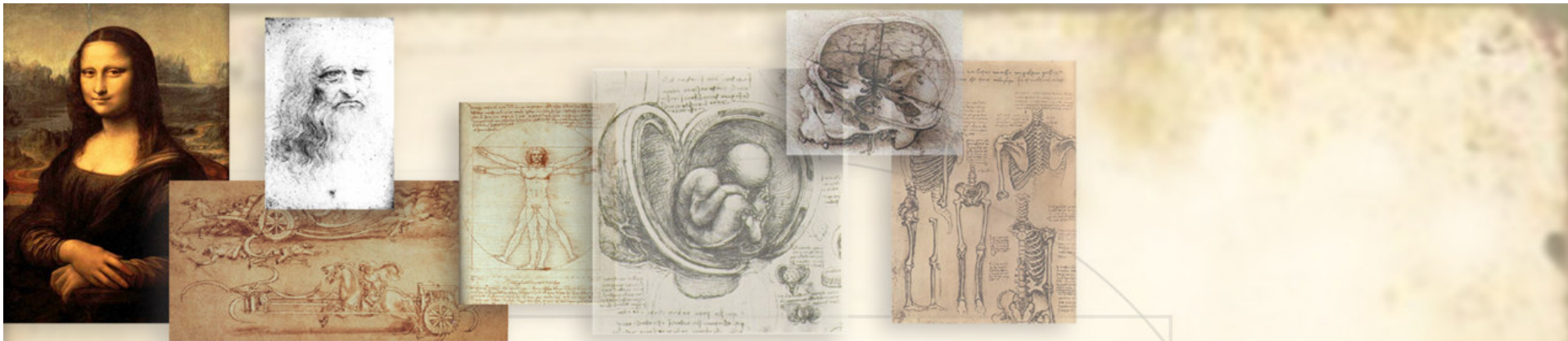


Copyright Basics

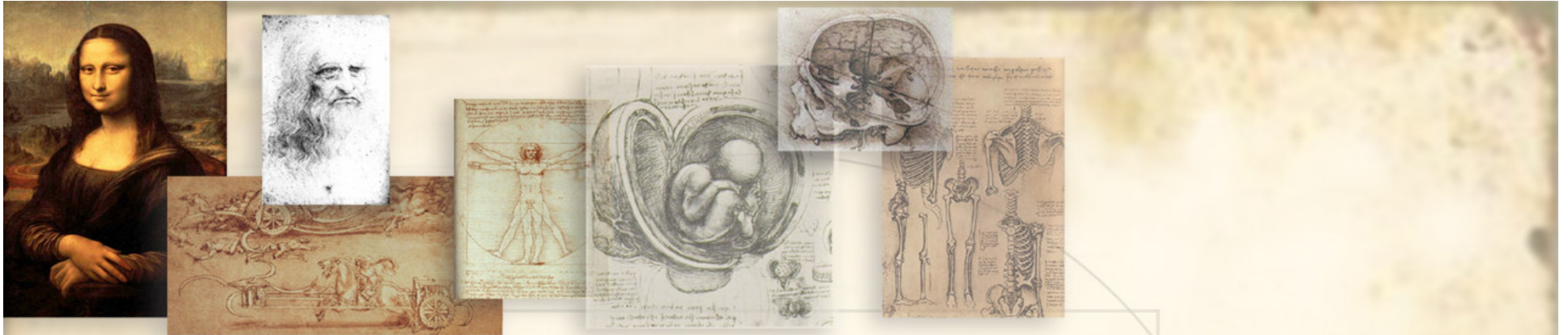
Fair Use

March 23, 2005



Major Source for this Presentation:

*Complete Copyright: An Everyday Guide
for Librarians.* Carrie Russell. Office
for Information Technology Policy.
American Library Association 2004.



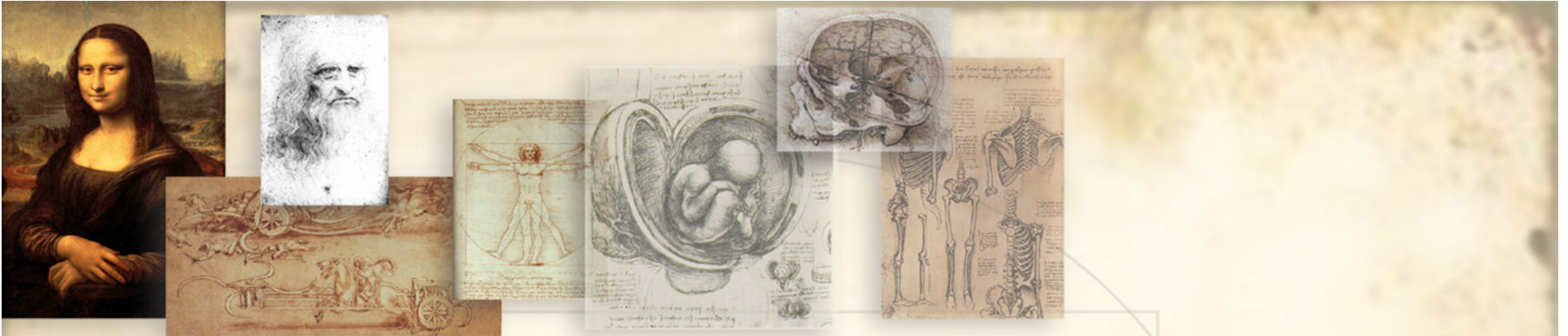
Another source:

Copyright Essentials for Librarians and Educators. Kenneth D. Crews.
American Library Association. 2000.



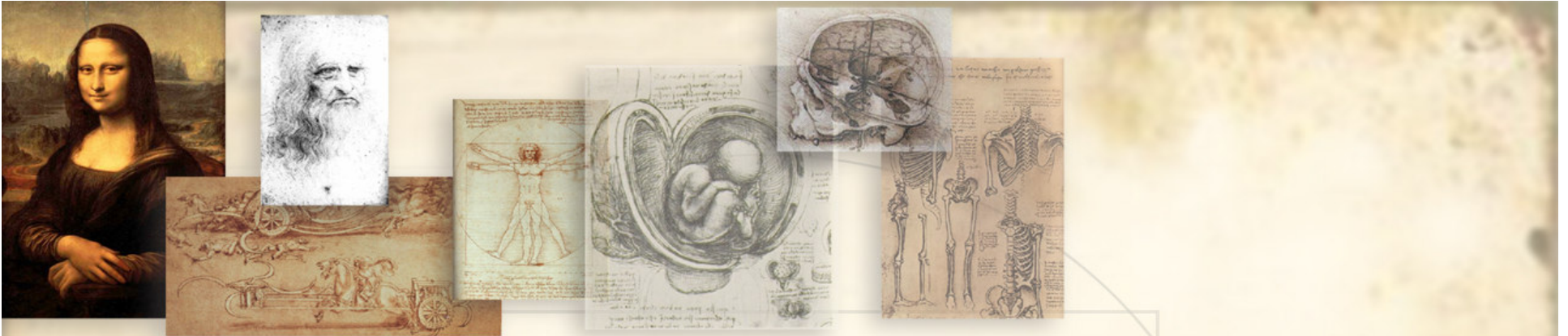
U.S. Constitution Article 1, Section 8

“The Congress shall have the power . . .
to promote the Progress of Science
and useful Arts, by securing for limited
Times to Authors and Inventors
exclusive Right to their respective
Writings and Discoveries.”



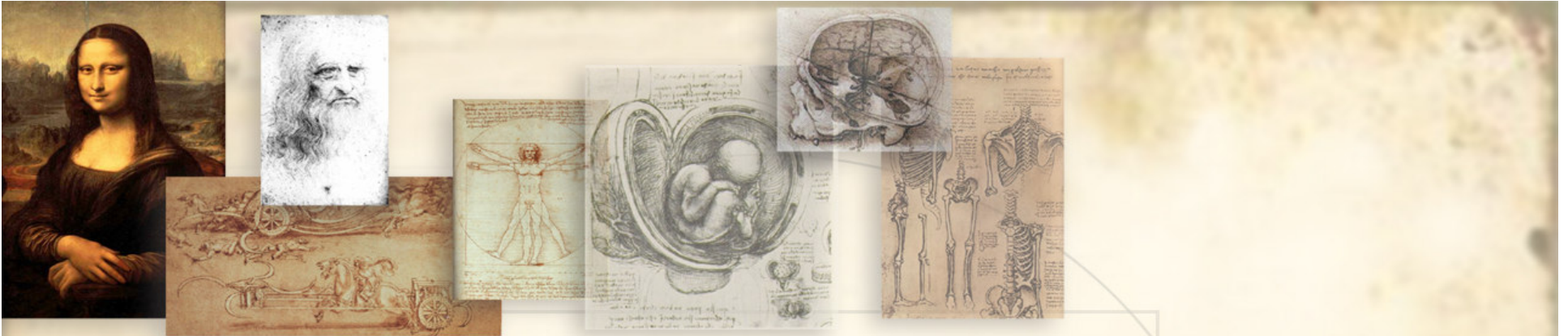
Key Points of Copyright

- Science and arts should be encouraged.
- The purpose of copyright is to create and disseminate knowledge.
- That authors and inventors benefit is a *side effect*.
- Rights are granted for a limited time.
- These rights are granted and are not intrinsic.



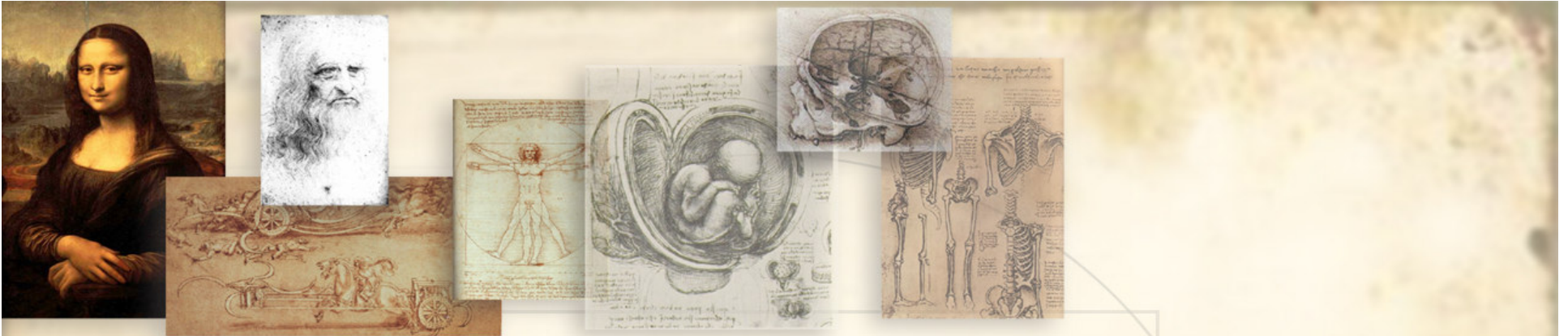
Copyright Exemptions

- First Sale (s109)
- Reproductions for libraries (s108)
- Performance or display of work in the course of face to face teaching (s110)
- Fair Use (s107)



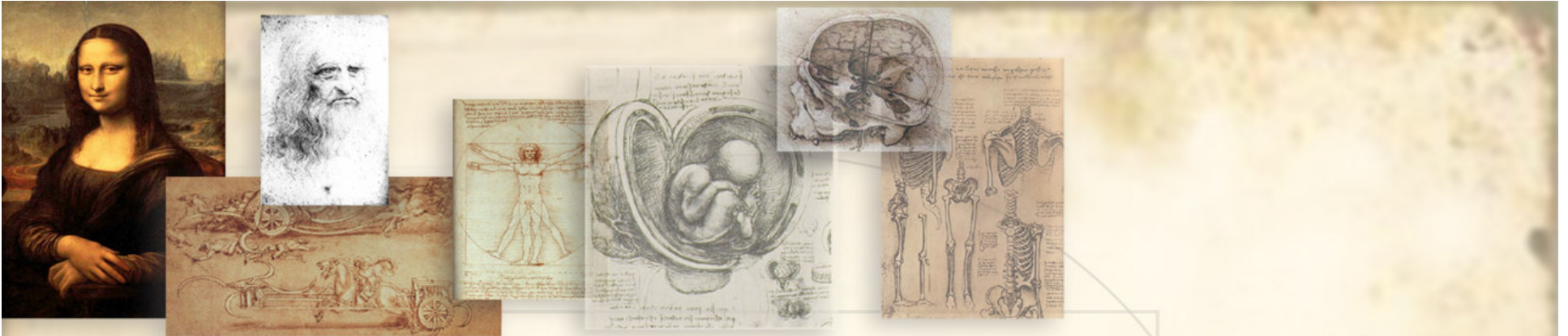
Section 107: Fair Use

- . . . the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means . . . , for purposes such as criticism, comments, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright.
- . . .



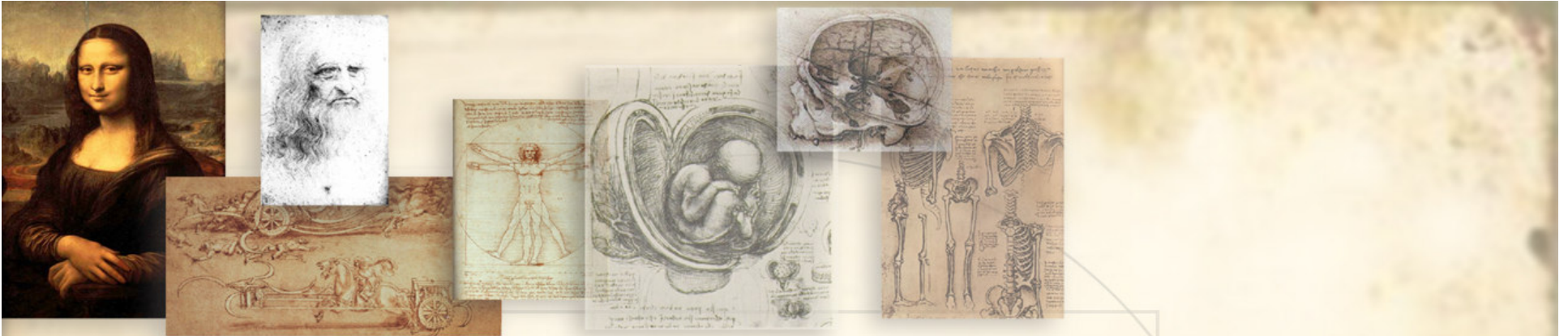
Four Fair Use Factors

- Purpose and Character of Use:
 - Is the use for a commercial or nonprofit educational purpose?



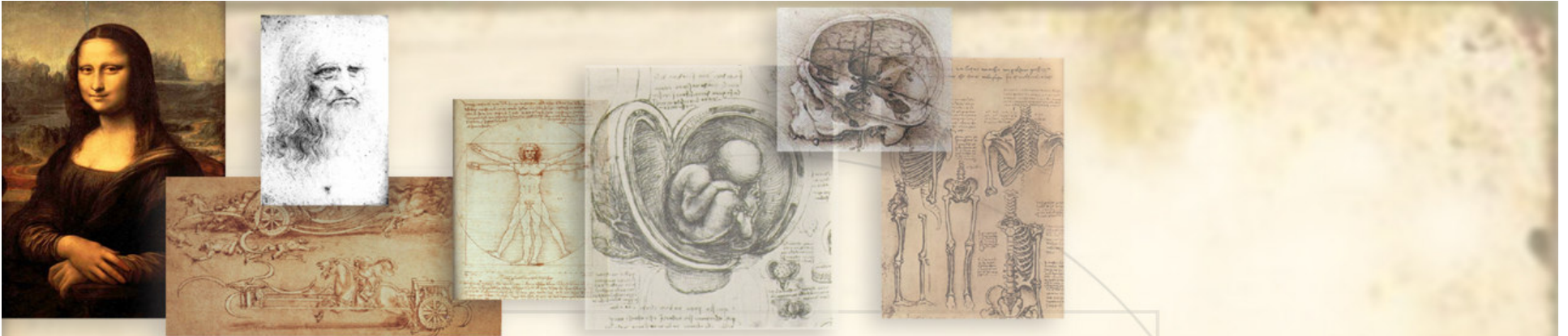
Fair Use Factors, cont.

- Nature of the copyrighted work.
 - Published or unpublished.
 - Factual/nonfiction or highly creative.
 - Importance to favored educational objectives.



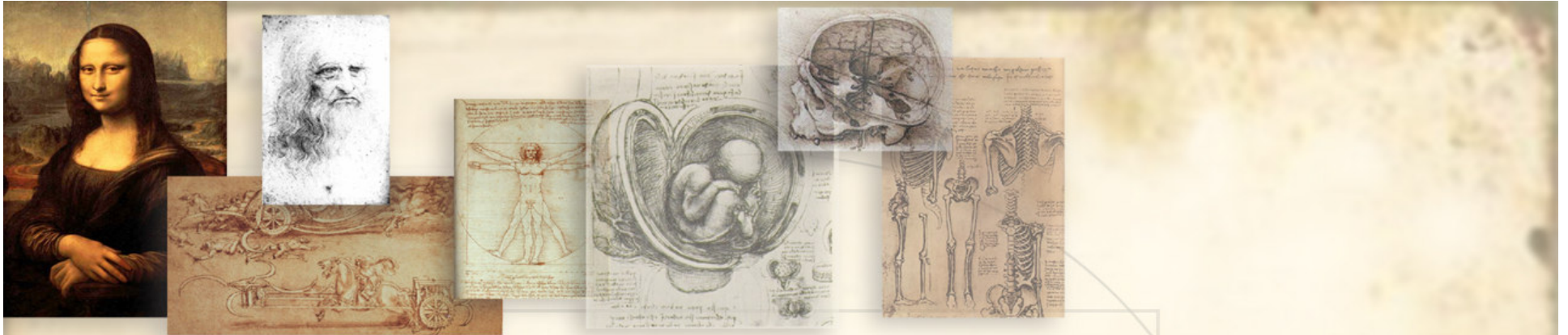
Fair Use Factors, cont.

- The amount used.
 - Portion not central or significant to the entire work.
 - Appropriate for favored educational principles.



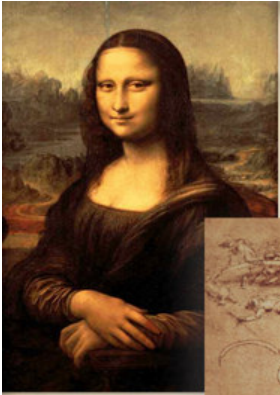
Fair Use Factors, cont.

- Effect of the Use
 - User owns lawfully acquired copy.
 - One or few copies made.
 - No significant effect on market.
 - Short-term use.



Examples

- Each month, the math department meets to discuss what's new in math. They often distribute copies of journal articles (found in the library) prior to the meeting for discussion. Is this fair use?



Yes or No ?

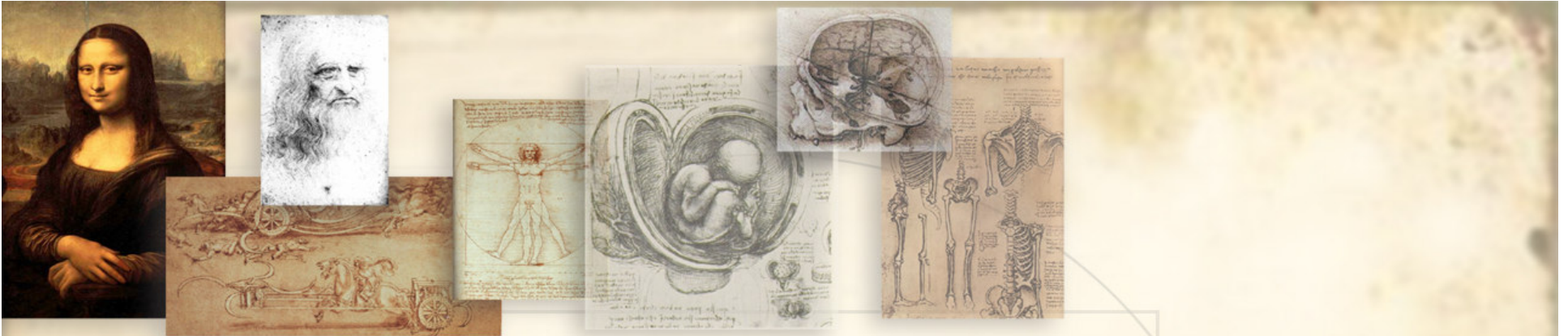
- Purpose?
- Nature?
- Amount?
- Effect?



Yes!

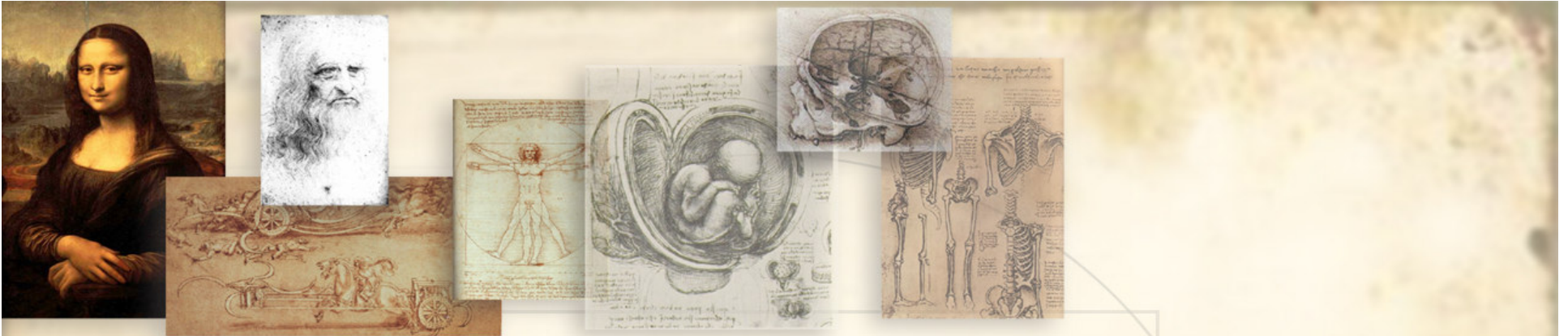
The math department is following fair use guidelines.

12/15/2006



Example 2

- Professor Munz teaches an undergraduate history course each semester. Frequently, she finds a program on television that addresses a current class topic. She tapes these programs for class viewing. Is this a copyright concern?



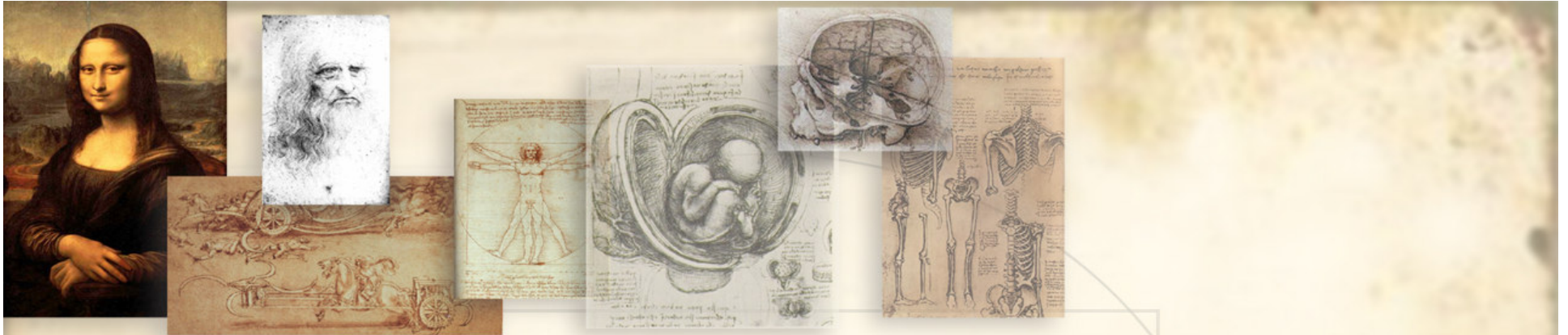
Let's apply the 4 guidelines:

- Purpose?
- Nature?
- Amount?
- Effect?

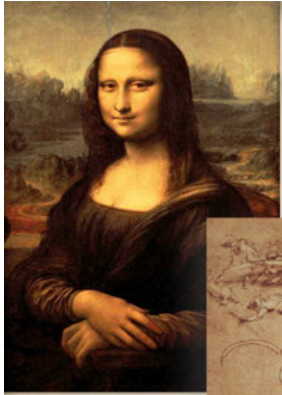


**Dr. Munz seems to be
within the fair use
guidelines!**

What if Dr. Munz wants the library
to catalog the tape or put it on
reserve every semester? OR



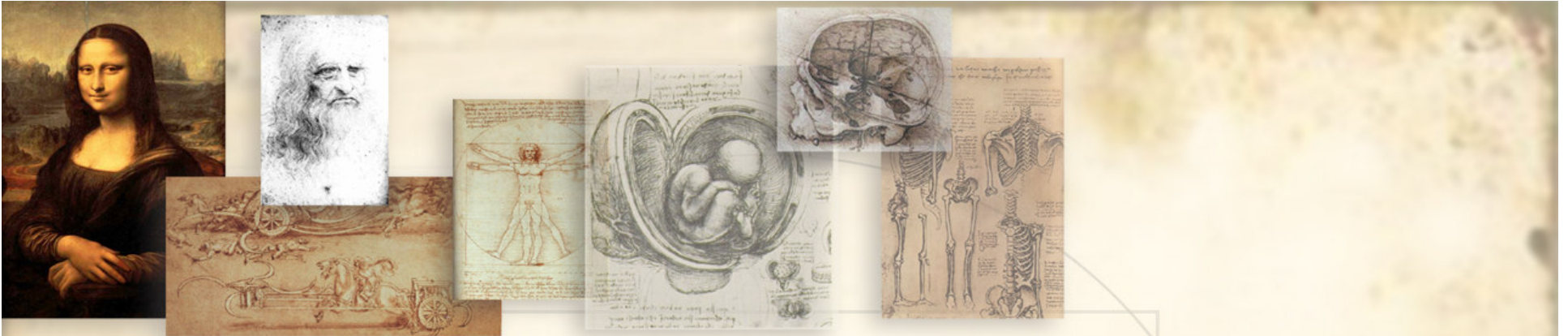
What if Dr. Munz wants to store the tape in WebCT making it available to students via streaming media?



Has Dr. Munz become a copyright crook?

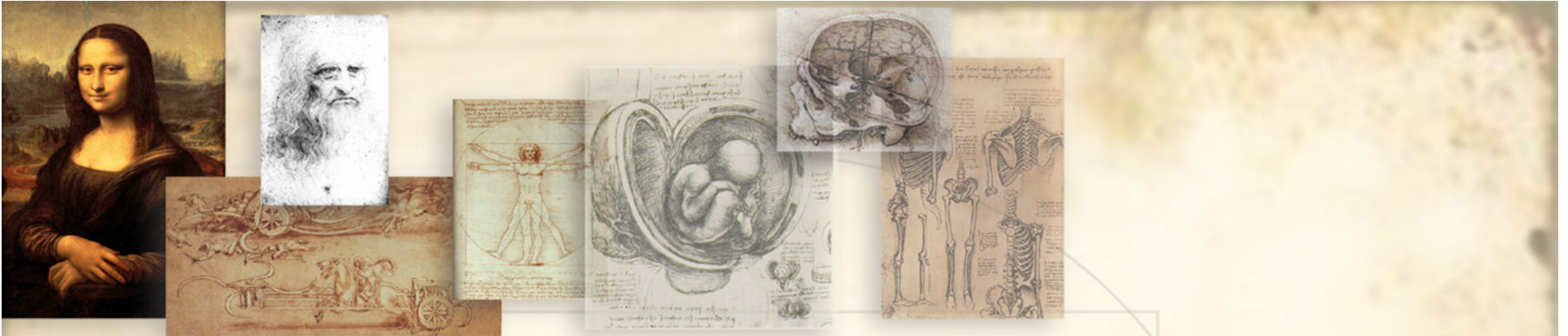


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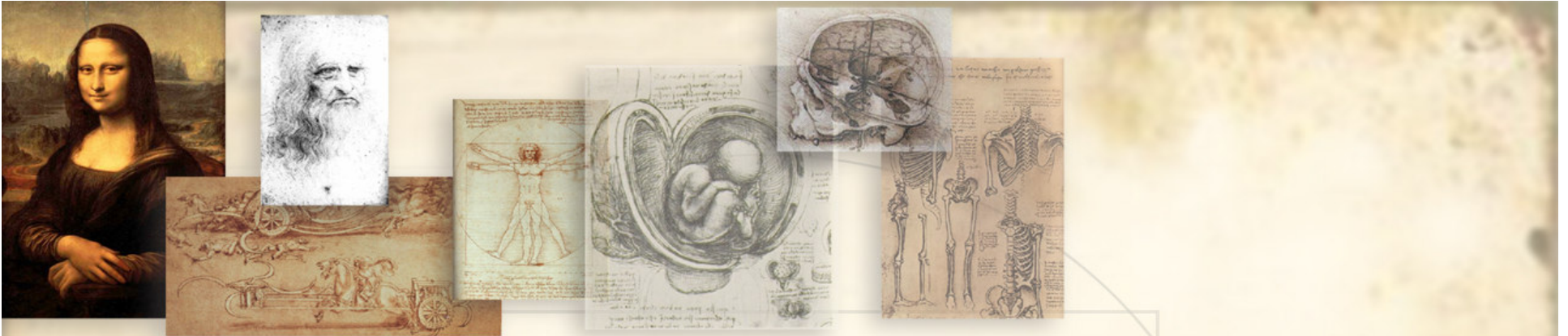
Answer: It depends!

- Can the institution buy the video?
- Consider students' computer capability.
- Dramatic literary works tend to have greater copyright protection.



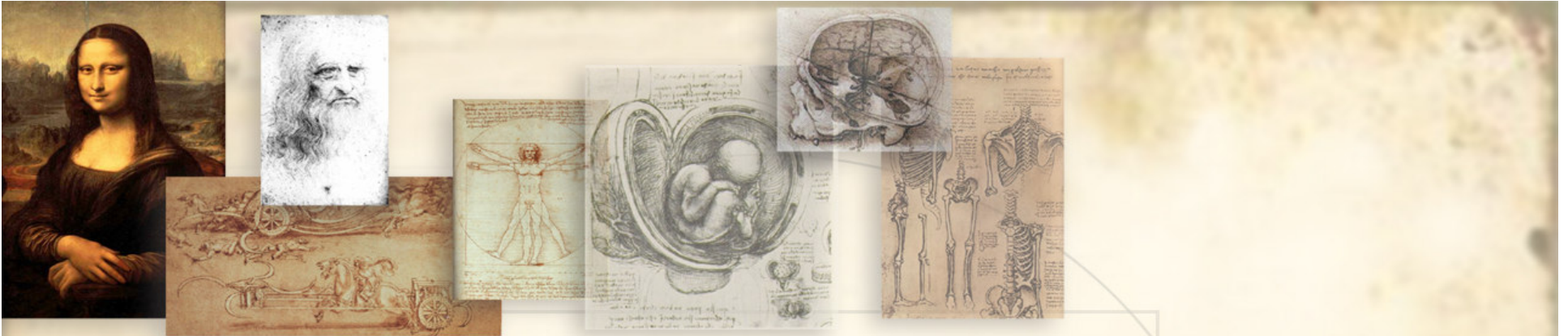
Example 3

- Doctor Ray wants to assign some chapters out of a book for his class to read. Since the book is out of print, is Dr. Ray free from copyright worries if he makes copies of chapters and hands them out to students?



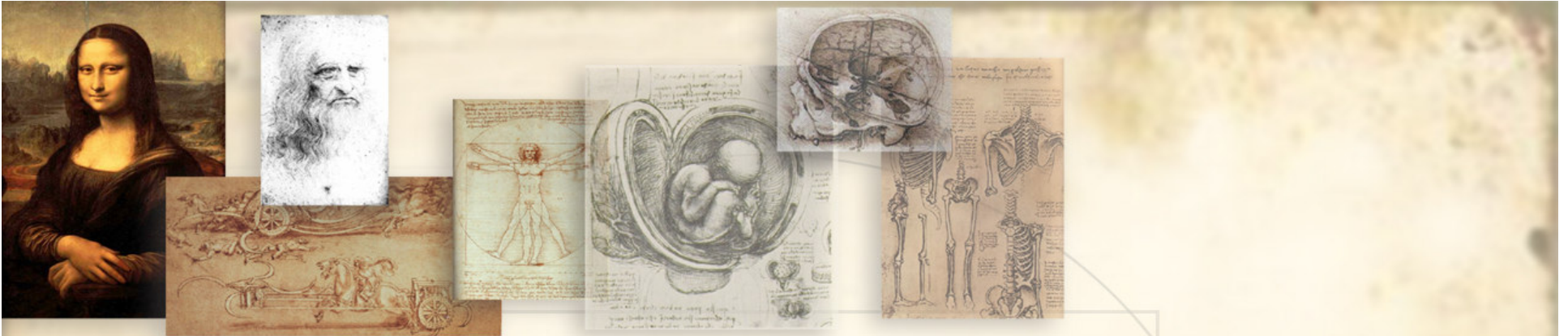
Poor Dr. Ray!

- Materials don't lose copyright protection when they go out of print. He would need to check.
- However, fair use might still apply.



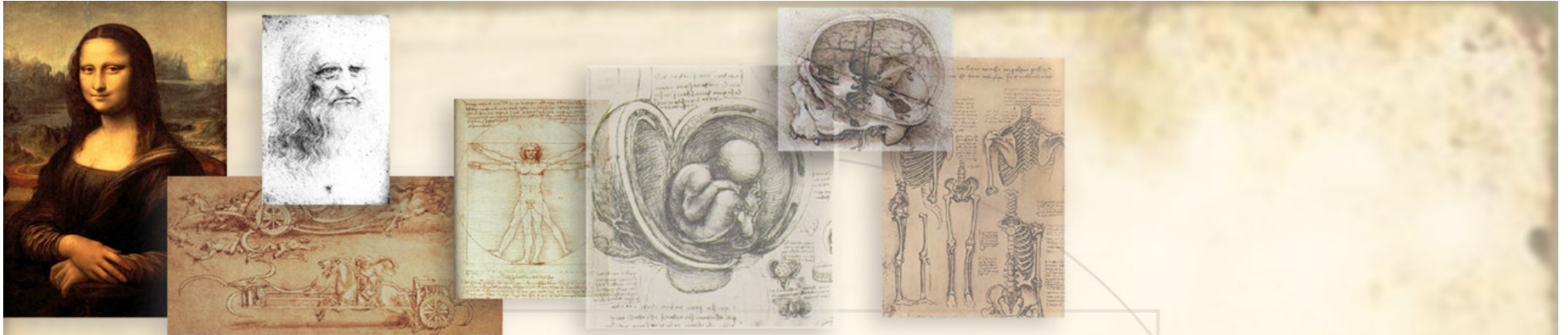
Example 4

- Dr. Smith has developed a course pack consisting of excerpts from government documents, textbooks, and several scholarly journals. Is this a fair use?



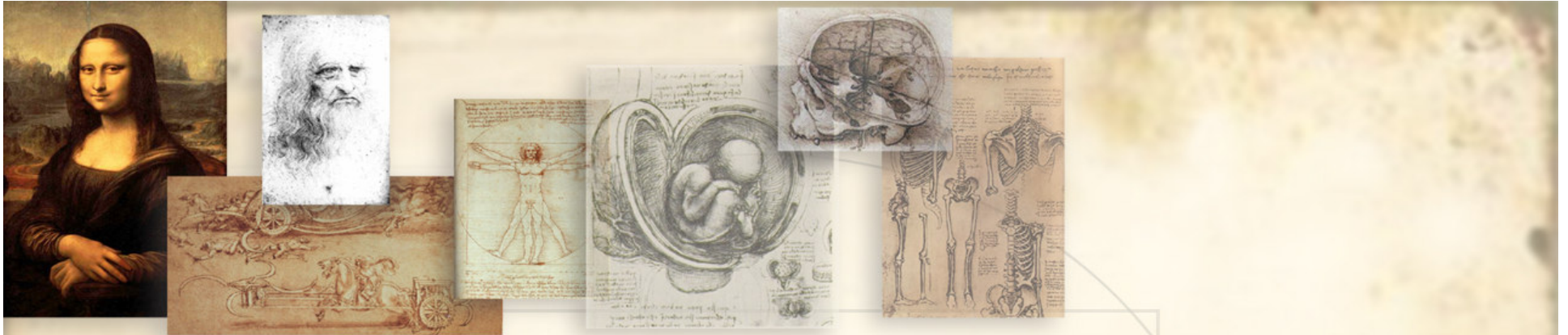
The Controversy of course packs:

- Profits are affected. (Publishers)
- Fair use applies? What's the difference between thirty separate handouts and one course pack? (Educators)



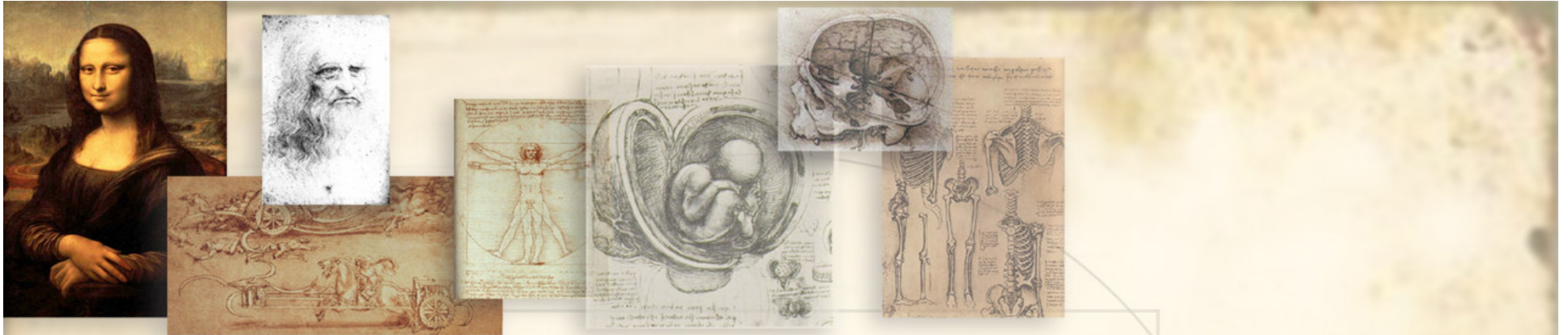
Course Pack Customs:

- Most universities pay royalties or copyright permission fees for each copyrighted work within a course pack.
- Some require instructors to clear permission before placing materials in the pack.
- For many, it's handled through the campus bookstore.



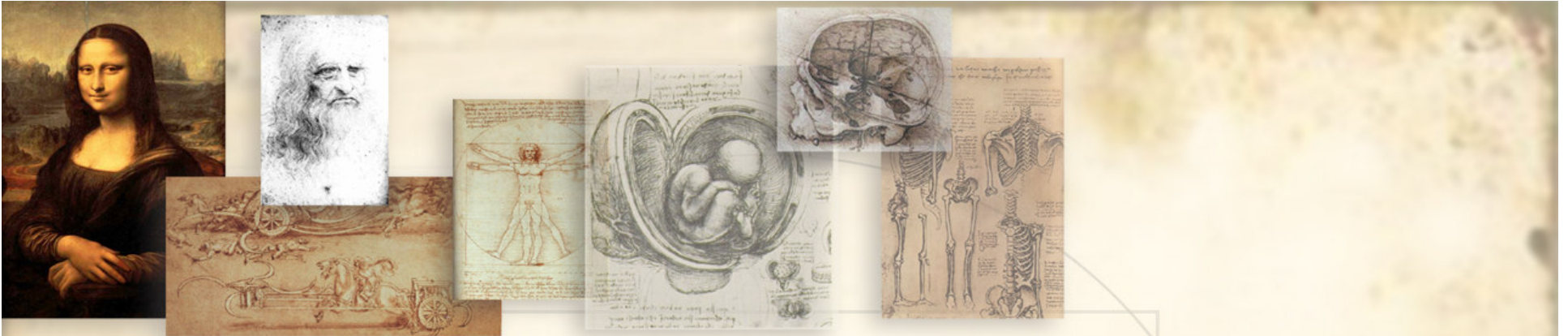
What should never be included in a course pack?

- An entire text or resource just to avoid purchasing an actual copy.
- Consumables not created by the instructor.



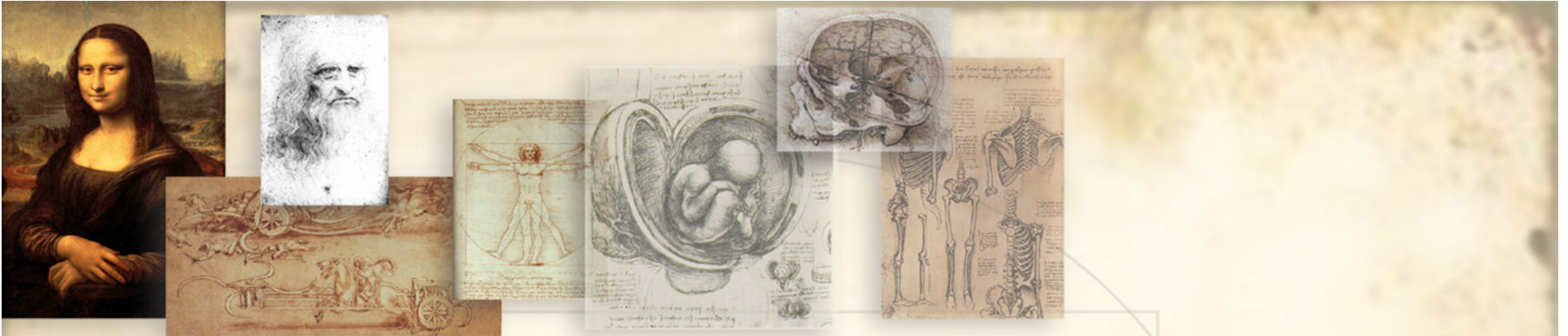
What about photographs?

- Protected under Copyright Act as an artistic work.
- The rules for ownership, public domain, and fair use are the same as with print.
 - HOWEVER... ?



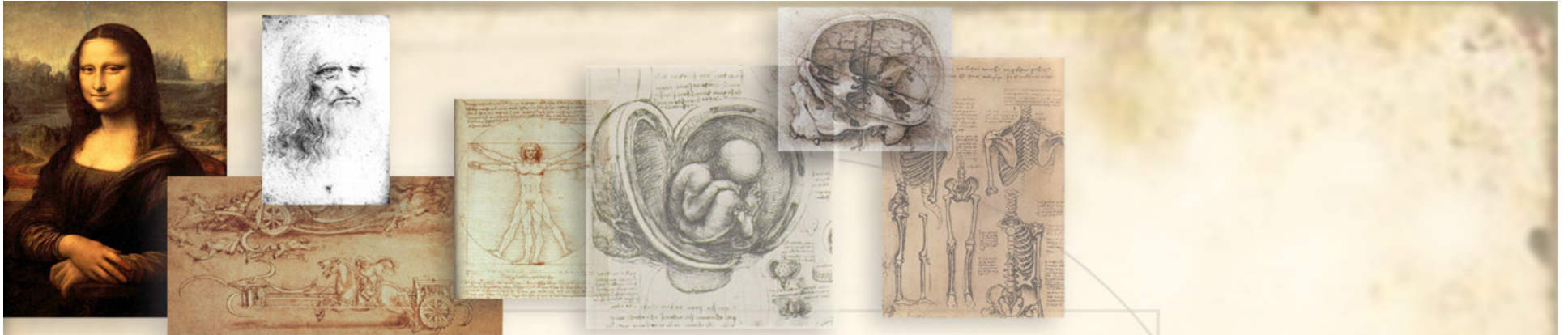
Photos are iffy!

- Historically, there has been some debate whether photos can have copyright protection:
 - Is it art?
 - Is it a record of reality?



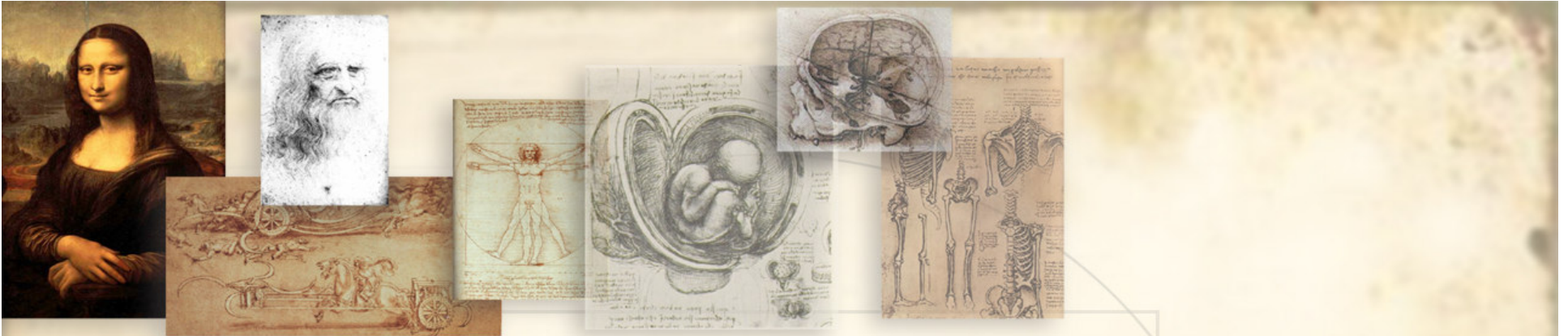
Photos

- “If a photo is an exact reproduction of a work in the public domain, it is not protected under copyright law. But if the photo varies in some way from the original work, only those ways can be copyrighted. The original work is still in the public domain.”
 - Russell 2004



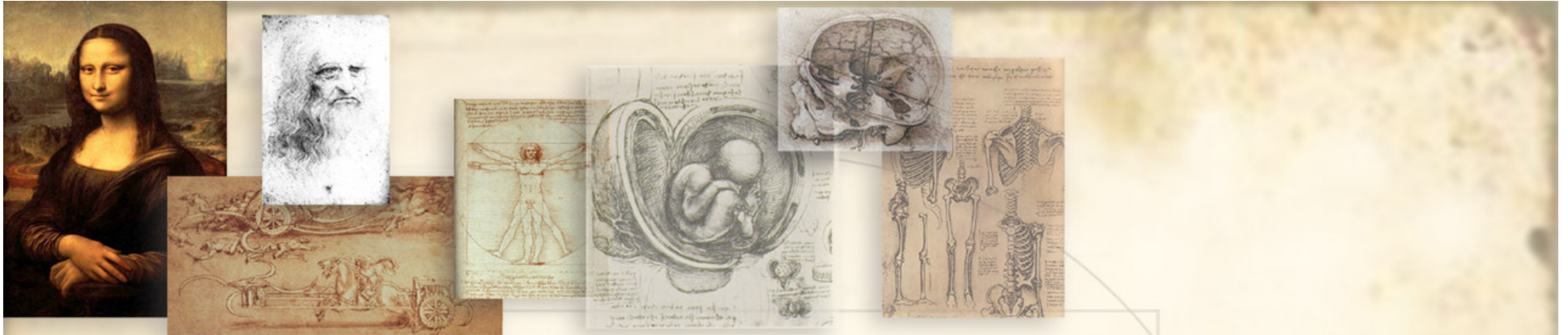
Courts and Diverse Media

- Higgins V. Detroit Educational Broadcasting Foundation (1998)
 - Short excerpts of a musical work were placed in a video production that was broadcast on a local PBS station and sold in limited copies to other educational institutions.



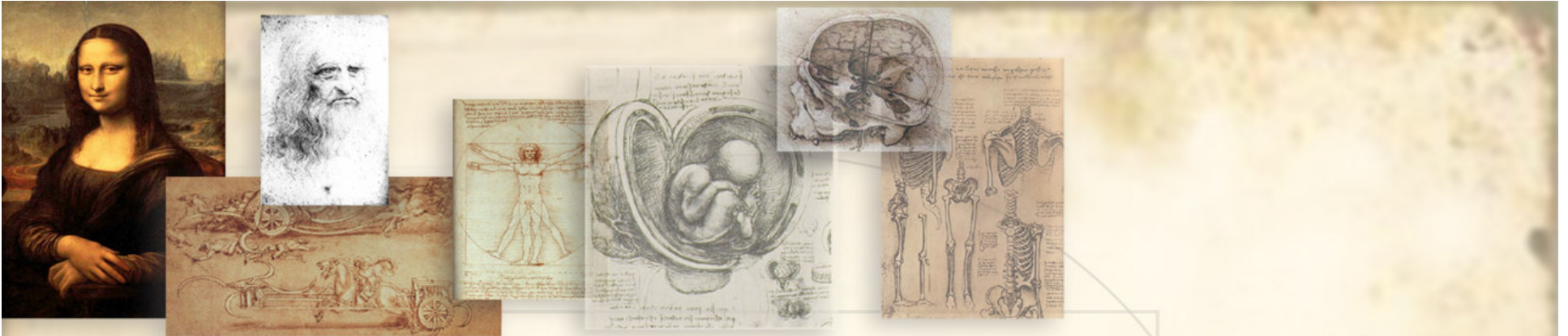
Diverse Media (cont)

- Courts held that three of the four fair use standards had been met:
 - Public service purpose.
 - Only 35 seconds of the song used.
 - No adverse market effect.
 - Ruled for fair use.



Practical Steps to Avoid Copyright Problems!

- Use only essential amounts of copyrighted materials.
- Use them for the shortest time feasible.
- Make sure access to them is controlled.
- Make sure the original source is legally owned.
- Place copyright notice on work.



Sandra Day O'Connor

- “Copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work.”



In short:

- Use it (fair use) or lose it!

