

INLS 787: Legal Issues for Librarians

Instructors: Kevin Smith and William Cross

Tuesday Evenings from 6-8:45pm

Manning 208

“A person graduating from an ALA-accredited master’s program in library and information studies should know and, where appropriate, be able to employ . . . the legal framework within which libraries and information agencies operate. That framework includes laws relating to copyright, privacy, freedom of expression, equal rights (e.g., the Americans with Disabilities Act), and intellectual property.”

-American Library Association Core Competencies of Librarianship, 1G

Learning Outcomes

At the end of this class students will be able to:

- Read and analyze primary legal materials such as statutes and case law.
- Identify the major legal issues facing librarians and the legal regulations that govern them.
- Locate and employ reliable sources of legal information to support practice and guide institutional decision making in a changing legal environment.
- Create policy to guide best practice in a specific type of institution in their chosen field.

Texts

Kenneth Crews, Copyright Law for Librarians and Educators (2011) (on reserve)

Assignments

Copyright Case Analysis (15%)

Free Expression Case Analysis (15%)

Stakeholders List and Analysis (15%)

Policy and Reaction Paper (40%)

Presentation (5%)

Class Participation (10%)

Topics

1. Week of Jan 14: Overview of Course; Need for Legal Education for Librarians; U.S. Legal System

Readings:

- Ruth Ann McKinney, *Reading Like a Lawyer*, p. 17-32 “Basic Briefing: Developing an Initial Strategy for Managing Cases” (2005) (Course site)
- Orin S. Kerr, [How to Read a Legal Opinion](#), GWU Legal Studies Research Paper No. 414 (2007)
- Cross & Edwards, [Preservice legal education for academic librarians within ALA-accredited degree programs](#), *Portal: Libraries and the Academy*, 11(1) (2011)

2. Week of Jan 21: Copyright – Overview: Purpose and Formalities; Exceptions for Education

Readings:

- Crews, Parts I and II
- [Everything is a Remix \(36 minute film in 4 parts\)](#)
- Scan the headings of Title 17 and read 17 U.S.C. § 110 (1) & (2), available at: <http://www.copyright.gov/title17/>
- [Copyright Term and Public Domain in the United States chart](#)
- [Feist Publications, Inc. v. Rural Telephone Service Co.](#), 499 U.S. 340 (1991)

3. Week of Jan 28: Copyright – Fair Use

Readings:

- Crews, Part III
- Gerhardt & Wessel, [Fair Use and Fairness on Campus](#), *North Carolina Journal of Law and Technology*, Vol. 11, (2010)
- 17 U.S.C. §107
- [Campbell v. Acuff-Rose Music](#), 510 U.S. 569 (1994)
- [Cambridge University Press et al. v. Patton et al](#) Read pp. 1-89

4. Week of Feb 4: Copyright – Library Exceptions, including the doctrine of First Sale [Groups and topics for final project due]

Readings:

- Crews, Part IV
- Kevin L. Smith, [Copyright Renewal for Libraries: Seven Steps Toward a User-Friendly Law](#), *portal: Libraries and the Academy*, 10/1 (Jan. 2010): 5-27
- 17 U.S.C. §108, 109 and 504(c)

5. Week of Feb 11: *Licensing Content* [Copyright Case Analysis due]

Readings:

- Eric Posner, *Contract Law and Theory* (Kluwar, 2011), Chap. 2, "Building Blocks," p. 5 - 40 (Course site)
- Brian E.C Schottlaender, "[The Development Of National Principles To Guide Librarians In Licensing Electronic Resources](#)," *Library Acquisitions: Practice & Theory*, Volume 22, Issue 1, Spring 1998, p. 49-54
- [IFLA/CLM Licensing Principles](#) (2001)
- Elizabeth Winston, "[Why Sell What You Can License? Contracting Around Statutory Protection of Intellectual Process](#)," (2006) *George Mason Law Review*, vol. 14 (Course site)

6. Week of Feb 18: *Scholarly Publishing and Open Access*

Readings:

- Charles Lowry, "Scholarly Communications: Can the Academic Community Agree on a Common Path Forward?" (AAU Panel Presentation for Chief Academic Officers), September 12, 2011 (Course site)
- Eric Priest, "[Copyright and the Harvard Open Access Mandate](#)" *Northeastern Journal of Technology and Intellectual Property*, v. 10: 377

7. Week of Feb 25: *Free Expression as Constitutional Value & Library as Public Forum* [List of stakeholders with analysis due]

Readings:

- Minow & Lipinski, Ch. 6: Meeting Rooms & Displays: The Public Soapbox Inside the Library (On Reserve)
- Erwin Chemerinski, *Constitutional Law: Policies and Principles* (Aspen, 2011): 921-942 (Course site)
- [Citizens for Community Values, Inc. v. Upper Arlington Public Library](#) (S.D.Ohio 2008)

8. Week of March 4: *Free Expression and Collection Management* [Free Expression Case analysis due]

Readings:

- Hirsh & Cross, [Intellectual Freedom Toolkit](#) (2012)
- Anne Klinefelter, [First Amendment limits on library collection management](#), *102 Law Library Journal* 343 (2010)
- [Island Trees Sch. Dist. v. Pico by Pico](#) - 457 U.S. 853 (1982)

SPRING BREAK (no class): Week of March 11

10. Week of March 18: *Privacy and Library Records (& FERPA)*

Readings:

- Theresa Chmara, *Privacy and Confidentiality Issues: A Guide for Librarians and Their Lawyers*, pp. 1-54. (On Reserve)
- Anne Klinefelter, [Privacy and library public services: Or, I know what you read last summer](#), 26 *Legal Reference Services Quarterly* 253-279 (2007)
- N.C. Gen. Stat. § 125-18, §125-19

11. Week of March 25: *The Library as Place - Facilities Issues: Access, Security, and Liability*

Readings:

- [United States v. American Library Association](#), 539 U.S. 194 (2003)
- [ARL Report on Services to Patrons with Print Disabilities](#)
- Kautzman, [An Active Shooter in the Library](#) *Library Leadership & Management*, 25(1)(2011)

12. Week of April 1: *No Class – Group Work*

13. Week of April 8: *The Profession of Librarianship – Employment Issues, Professionalism, and Liability*

Readings:

- Minow & Lipinski, Ch. 8: *Issues in Library Employment* (On Reserve)
- Paul D. Healey, *Professional Liability Issues for Librarians and Information Professional* (NY: Neal-Schumann Publishers, 2008), pp. 73-94 (beginning through section 4.2 of Chapter Four).

14. Week of April 15: *Discussion of Negotiation Techniques and Wrap-Up and Review*

Readings:

- Fischer and Ursay, *Getting to Yes: Negotiating Agreement Without Giving In*. (2nd edition, Penguin Books, 1983): 3 – 14 (Course site).
- [Negotiations in Law Libraries](#), Private Law Libraries section of the AALL.

15. Week of April 22: *Class Presentations*

Final Assignments due Thursday, April 24th

Deliverables

Two Case Analyses (2-4 pages each)

There is no better way, and perhaps no other way at all, to understand how legal principles are applied to actual fact situations than to read court decisions in real cases. In addition to the several cases we will read as a class, this exercise is designed to increase your facility in analyzing what happened in a particular case (factually and legally) and how it might apply to your context.

For each of the two case assignments, you are asked to select a case from the list provided, read the case decision (some decisions are edited for length) and write a short analysis. These analyses will be shared in class first with the others who selected the same case for that assignment, then in more general discussion.

Your analysis should consist of five parts. The first four are the ones usually taught to law students – Issue, Relevant law, Application to the facts and Conclusion (outcome of the case) – which is often called IRAC. You can find a short, excellent summary of the IRAC technique at:

<http://www.tsu.edu/pdf/academics/law/life/support/IRAC.pdf>

To this analysis you should add a fifth section, in which you respond to two additional questions. First, are there aspects of the reasoning or the outcome of the case that you disagree with or that you think mis-applies either law or facts? Second, what impact do you think this case would have on the normal practices of a library located within the jurisdiction of the specific court?

Being concise is a virtue in this assignment. Try for accurate and complete expression of the core of the case in as few words as possible. In general 2-4 pages should be sufficient if you understand the case clearly and summarize it carefully. You should quote the actual words of the court as little as possible.

For the first assignment (due Feb. 11) choose one of these cases:

- [Patrick Cariou v. Richard Prince](#) 714 F.3d 694 (2d Cir. 2013) (“Appropriation” art based on previously published photographs.)
- [Bill Graham Archives v. Dorling Kindersley, Ltd.](#), 448 F.3d 605 (2d Cir. 2006) (Use of Grateful Dead posters in published book)
- [Warner Brothers Entertainment, et al. v RDR Publications](#), 575 F.Supp.2d 513 (S.D.N.Y. 2008) (re. *Harry Potter Encyclopedia*)
- [Salinger v. Colting](#), 641 F.Supp.2d 250 (2009) (Sequel to *Catcher in the Rye* challenged as infringement)

For the second assignment (due March 4) choose one of these cases:

- [Minarcini v. Strongsville \(Ohio\) City School District](#), 541 F.2d 577 (6th Cir. 1976) (Suppression of Kurt Vonnegut's books)
- [Kreimer v. Bureau of Police for Morristown](#), 958 F.2d 1242 (3d Cir. 1992) (Public library as limited public forum)
- [Parents, Families, and Friends of Lesbians and Gays, Inc. v. Camdenton R-III School District](#) (Public school's use of filtering software to remove GLBT websites)
- [Sund v. City of Wichita Falls](#), Texas, 121 F. Supp. 2d 530 (N.D. Texas, 2000) (Challenge to *Heather Has Two Mommies* in the public library's children's section)

Due Tuesday February 11th and March 4th

Policy Project

Selecting a Group and a Topic

Early in the semester you will organize into groups of roughly five students and select an area of focus for your subsequent assignments. The focus of this group will be on a type of organization such as a public library, an academic unit, or a school media center but you may suggest others that seem interesting.

Your group should also select a legal issue or area related to this institution that is particularly important for stakeholders associated with the institution. It may be an issue we discuss in class such as copyright, privacy, or free expression but, again, you should feel free to identify the issue that is most relevant to your interests.

For the remainder of the semester you will gather legal and policy information about this issue in preparation for a final project that asks your group to draft a policy document or set of best practices for stakeholders in your institution affected by the issue you have identified. You should begin thinking about these issues as early as possible and identifying students who share your interests and might be good partners.

If you have questions about selecting a topic or the mechanics of the assignment you should feel free to raise them in class – we will dedicate time for in-class discussion throughout the semester – or to send Kevin or Will an email.

A list of group members and the topic of the policy they will work on is due from each group on Feb. 4.

Stakeholder List and Analysis (4-6 pages)

Policy is not made in a vacuum, however, and your policy must reflect the needs of numerous major stakeholders and the negotiated compromises they make. In preparation for the group policy project, each class member will prepare, individually, a list of the stakeholders that would be most invested in the particular policy your group will be engaged with and an overview of the stakeholder group they will represent.

You should begin with a brief overview - no more than a page - of the type of institution you are focusing on (public, academic, school, etc.) and the legal area (copyright, free expression, privacy, etc.) about which you wish to develop expertise.

You should then list four to five stakeholders who would have a significant interest in the policy creation task your group will undertake. These stakeholders will, obviously, be closely related to both the specific setting and the issue you have selected. For each stakeholder group you list, you should include a few sentences identifying the group as specifically as you can and indicating what their particular interest(s) in the topic would be.

Finally, you should select one stakeholder that you will represent in negotiations and prepare a short overview of the needs and concerns of that stakeholder. What is their stake in and how is the work that they do impacted by the policy? What are their goals and priorities during negotiations and what outcomes must they see in the policy to continue to survive and do their work? Your analysis should include citation and discussion of at least one source that provides an overview of the group (a book, a web page, etc.) and their interests as well as several sources articulating mainstream policy for these stakeholders (white papers, editorials, etc.). This document should provide a good sense of who your stakeholders are, what they need, and how the policy should look so that their needs are met.

Due Tuesday, February 25th

Policy and Reaction Paper in an Information Institution (8-10 page policy document or set of best practices and 3-5 page reaction paper)

Having familiarized yourself with the background issues in your chosen context you should be prepared to draft a model policy to guide institutional practice. Your final project asks you to evaluate the major legal issues that arise in your chosen context and make normative decisions that will inform and guide your colleagues and users.

Policy or Best Practices

Once stakeholders have been assigned your group will design a policy or set of best practices to address the issue in the context you have selected. As the specifics of the document are negotiated you will advocate for the interests of your stakeholder and the ideas and priorities they support. As in real life your advocacy should be tempered by the need to find workable, reasonable solutions, not just to “win” the argument today. Using the principled “interest-based” negotiating skills discussed in the course readings you should aim to reach a compromise that meets the needs of your stakeholders as well as generating a wise, sustainable policy that serves everyone.

The policy document or set of best practices should begin by describing your institution in some detail: who are the stakeholders you identified? What information needs exist? What legal issues must be addressed? In what situations might some legal risk be appropriate and where should a more prudent approach be followed?

Once you have described your institution your group should jointly draft a policy document or set of best practices for a major legal issue in that institution. This should be a detailed document describing the major legal issues and how your institution is responding to them. Be sure to discuss the relevant legal regulations as well as your policy decisions and your rationale for making those decisions.

Your group may also choose to create a set of best practices to guide users in the context you have selected. These should be concise and easy for a student assistant or paraprofessional to understand. They should each address a specific issue and answer a specific question that comes up regularly in

practice. **You may choose to create a policy document, a set of best practices, or a hybrid that contains both, depending on what seems most appropriate to your specific context.**

Paper

Along with this group policy or set of best practices you should submit a short (3-5 page) reaction paper describing your efforts to negotiate the policy on behalf of your specific stakeholder constituency. How did your needs as a stakeholder conflict or dovetail with other stakeholders? In what areas were you able to compromise and when did you need to hold firm? Did you find natural partners or feel isolated in negotiations? Were most people open to strategic negotiations and calculated horse trading, or were some motivated by idealistic or philosophical beliefs that made compromise more difficult? How well did you feel that the needs of your stakeholder were met by the final document?

Your paper should also reflect your relationship to the stakeholder you represented. Did their beliefs and priorities align with your own and did that fact make negotiation easier or more difficult? Did you learn something new about other stakeholders or come to see familiar issues in a new light? In particular, how did representing this stakeholder change your view of the law in this area? Does the law reflect the needs and outlook of your stakeholder? How well-positioned would your stakeholder be to change laws that did not reflect their perspectives? How well is the law, and the legal system, serving its intended function?

Due Thursday, April 24th