

INLS 787: Legal Issues for Librarians

Instructors: William Cross & Anne Gilliland

Spring 2017, Thursday, 6-8:45pm

Manning 001

“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%)

Privacy Case Analysis (15%)

White Paper (45%)

Class Participation (10)

Topics

1. Week of Jan 12: *U.S. Legal System and Legal Education in LIS Programs*

Readings:

- McKinney, Reading Like a Lawyer, p. 17-32 “*Basic Briefing: Developing an Initial Strategy for Managing Cases*” (2005) (Course site)
- Kerr, [How to Read a Legal Opinion](#)
- Cross & Edwards, [Preservice legal education for academic librarians within ALA-accredited degree programs](#)

2. Week of Jan 19: *Copyright - Purpose & Formalities; Exceptions for Education*

Readings:

- Crews, Parts I and II
- [Everything is a Remix \(36 minute film in 4 parts\)](#) (this is optional but fun and instructive)
- Scan the headings of [Title 17](#) and read 17 U.S.C. § 110 (1) & (2)
- [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 26: *Copyright - Fair Use*

Readings:

- Crews, Part III
- Brandon Butler, [Transformative Teaching and Educational Fair Use after Georgia State](#)
- 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 2: *Copyright in Library Collections [Copyright Case Analysis due]*

Readings:

- Crews, Part IV
- Smith, [Copyright Renewal for Libraries: Seven Steps Toward a User-Friendly Law](#)
- 17 U.S.C. §108, 109 and 504(c)
- ARL Infographic on [Library Role in Balanced Copyright and Academic Freedom](#) (2014).

5. Week of Feb 9: *Licensing Content* [Topics for final project due]

Readings:

- Posner, *Contract Law and Theory*, Chap. 2, “*Building Blocks*,” p. 5 - 40 (Course site)
- Schottlaender, “[The Development Of National Principles To Guide Librarians In Licensing Electronic Resources](#)”
- [IFLA/CLM Licensing Principles](#)
- Winston, “[Why Sell What You Can License? Contracting Around Statutory Protection of Intellectual Process](#)”

6. Week of Feb 16: *Free Expression as Constitutional Value & Library as Public Forum*

Readings:

- Minow & Lipinski, Ch. 6: *Meeting Rooms & Displays* (On Reserve)
- Chemerinski, *Constitutional Law: Policies and Principles* p. 921-942 (Course site)
- Raizel Liebler, [Institutions of Learning or Havens for Illegal Activities: How the Supreme Court Views Libraries](#)
- [Citizens for Community Values, Inc. v. Upper Arlington Public Library](#)
- ALA [Library Bill of Rights](#) and [Interpretations](#)

7. Week of Feb 23: *Free Expression and Collection Management* [Free Expression Case analysis due]

Readings:

- Kimberly Hirsh & Will Cross, [Intellectual Freedom Toolkit](#) (2012)
- Anne Klinefelter, [First Amendment limits on library collection management](#)
- [Island Trees Sch. Dist. v. Pico by Pico](#) - 457 U.S. 853 (1982)
- Resource Selection policies for [Durham](#) and [Chapel Hill](#) Public Library

8. Week of March 2: Scholarly Publishing and Open Access

Readings:

- Kevin L. Smith, [Owning and Using Scholarship: An IP Handbook for Teachers and Researchers](#) (Chicago: ACRL, 2014) Chapter 5, pp. 127 - 176.
- Peter Suber, *Open Access* (Cambridge: MIT Press) Chapter 1 “What is Open Access” p. 1-27 (Course Site)
- Vincent Larivière, Stefanie Haustein, and Philippe Mongeon, [The Oligopoly of Academic Publishers in the Digital Era](#)

- Michael Carroll, [Sharing Research Data and Intellectual Property Law: A Primer](#), *PLoS Biology*, August 27, 2015, DOI: 10.1371/journal.pbio.1002235.
- Michael Specter, *Rewriting the Code of Life*, *The New Yorker*, January 2, 2017. (course site)

9. Week of March 9: *International Issues*

- Carol A. Rohrenbeck, [Repatriation of Cultural Property – Who Owns the Past? An Introduction to Approaches and to Selected Statutory Instruments](#). *International Journal of Legal Information*, vol. 38/2 (Summer 2010).
- WIPO reports by Kenneth Crews on library exceptions in many countries. Please read over the summary of U.S. library exceptions on p. 414ff of the [2008 report](#). Then read and compare two of the following charts of recently revised laws from the [2014 report](#): Canada, the Russian Federation, the United Kingdom, Japan, India
- Schimmer, R., Geschuch, K.K., and Vogler, A. [Disrupting the subscription journals' business model for the necessary large-scale transformation to open access](#). A White Paper from the Max Plank Institute, doi:10.17617/1.3 (2015).
- Frederick Noronha and Jeremy Malcolm, eds., [Access to Knowledge: A Guide for Everyone](#) Consumers International, 2010.
- [Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries, and Archives](#), World Intellectual Property Organization, Pt. 1, pp. 9-20

10. Week of March 16: *Spring Break*

11. Week of March 23: *Privacy and Library Records*

Readings:

- Daniel J. Solove and Paul M. Schwartz, *Privacy Law Fundamentals*, International Association of Privacy Professionals, 2015. (course site)
- Theresa Chmara, *Privacy and Confidentiality Issues: A Guide for Librarians and Their Lawyers*, pp. 1-54. (On Reserve)
- N.C. Gen. Stat. § 125-18, §125-19
- Jasmine McNealy, [The Privacy Implications of Digital Preservation: Social Media Archives and the Social Networks Theory of Privacy](#)
- FERPA policy pages for [UNC](#), [Duke](#), [NC State](#), and your undergraduate institution
- Judith A. Wiener and Anne T. Gilliland, [Balancing between two goods: Health Insurance Portability and Accountability Act and ethical compliancy considerations for privacy-sensitive](#)

[materials in health sciences archival and historical special collections](#), Journal of the Medical Library Association, 99 (1) January 2011, pp. 15-22.

12. Week of March 30: *No Class – Anne and Will in L.A.*

13. Week of April 6: *Privacy as a Practice [Privacy case analysis due]*

Readings:

- Judith Donath, *The Social Machine: Designs for Living Online*, MIT Press, 2014, pp.279-306. (course site)
- Anne Klinefelter, [Privacy and Competing Library Goals: How Can Library Directors Lead When Values Collide?](#)
- Amanda Nichols Hess, Rachele LaPorte-Fiori, and Keith Engwall, [Preserving Patron Privacy in the 21st Century Academic Library](#)
- Barbara Swatt Engstrom, Jan Hartley, Susan Kezele, and Kara Phillips, [Evaluating Patron Privacy on Your ILS: How to protect the confidentiality of your patron information](#)
- Dorothea Salo, [Protecting Patron Privacy on Library Computers](#) (Slide Deck)
- Eric Stroshane, [Defense Against the Digital Dark Arts](#) (Slide Deck)

14. Week of April 13: *Employment Issues*

Readings:

- “Interview Questions You Should Never Ask” (Course Site)
- “Examples of Interview Questions” (Course Site)
- “Acceptable Pre-Employment Inquiries Under EEOC Guidelines” (Course Site)
- Read around on the [“Hiring Librarians” blog](#).
- Frank Albetta, “Hiring and Recruitment” (Partial essay from Continuing Legal Education materials, Dec. 2015) (Course Site)

15. Week of April 20: *Professionalism and Negotiation*

Readings:

- Healey, *Professional Liability Issues for Librarians and Information Professionals* p. 73-94 (beginning through section 4.2 of Chapter Four) (On Reserve).
- Fischer & Ursay, [Getting to Yes: Negotiating Agreement Without Giving In](#). (2nd edition, Penguin Books, 1983): 3 - 14 (Course site).

- Tina L. Stark, "[Thinking Like a Deal Lawyer](#)," 54 J. Legal Educ. 223 (2004).

16. Week of April 27: *Safety, Equality of Access & Accessibility*

Readings:

- [United States v. American Library Association](#), 539 U.S. 194 (2003)
- ALA Policy Brief, [Fencing Out Knowledge: Impacts of the Children's Internet Protection Act 10 Years Later](#)
- [ARL Report on Services to Patrons with Print Disabilities](#)
- Association of Research Libraries, [Web Accessibility Toolkit](#)
- Meeting Room Policies for [Durham](#) and [Chapel Hill](#) Public Libraries

Final Assignments due May 5

Deliverables

Three 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 three 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.tsulaw.edu/academics/academic_support/What%20is%20IRAC.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. 2) 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 Kinderley, 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 Feb. 23) 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)

For the third assignment (due Mar. 29) choose one of these cases:

- [Zurcher v. Stanford Daily](#), 436 U.S. 547 (1978) (Search of student newspaper's records for photos of a crime)
- [Brown v. Johnston](#), 328 N.W.2d 510 (Iowa 1983) (Library challenges subpoena of confidential circulation records)
- [Marcus v. Young](#), 538 N.W.2d 285 (1995) (Former student sues university for release of his embarrassing academic records)
- [Tattered Cover, Inc. v. City of Thornton](#), 44 P. 3d 1044 (2002) (Review of police search of a bookstore's records to identify customer suspected of manufacturing meth)

Due Tuesday February 2, February 23, and March 29

Final Project:

White Paper Evaluating Challenges and Advocating for a Policy in a Specific Information Organization

Selecting a Topic for your White Paper

Early in the semester you should select a type of organization that you want to know more about or where you hope to work after graduation. This may be a public library, an academic unit, a museum, a school media center, or any other organization that seems interesting and relevant.

As you move through the semester you should also identify a legal issue or area related to this organization that is particularly important for the stakeholders. It may be an issue we discuss in class such as accessibility, privacy, or copyright but, again, you should feel free to identify the issue that is most relevant to your interests. Whatever issue you select, it should involve multiple stakeholders and different possibilities for its resolution.

For the remainder of the semester you will gather legal and policy information about this issue in preparation for a final project that asks you to draft a White Paper that advocates for a certain solution to this issue. 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 Anne or Will an email.

A preliminary topic should be selected by Feb. 19

The White Paper (between 8 and 12 pages, or roughly 2,000 - 4,000 words long)

Having familiarized yourself with the background issues in your chosen context, you should be prepared to draft a [White Paper](#) 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.

You can find a brief overview of the White paper format here:

<https://owl.english.purdue.edu/owl/resource/546/1/>

In addition to the legal requirements and prohibitions discussed above, you should also consider practical issues. Policy is not made in a vacuum and your White Paper must reflect the needs of numerous organizational stakeholders and the negotiated compromises they make. Identify the major stakeholders who would have a significant interest in the issue and who have the ability to shape policy – these are the people you need to convince!

Your final White Paper should include these elements:

1. A description of the issue and why a decision about it is a necessary part of developing an overall policy in the area you have selected

2. Who the major stakeholders are and what their perspectives on the issue would be
3. Specific obstacles and challenges to resolving your issue. These should include both legal requirements and practical considerations of finite resources and competing values
4. An outline of the decision points and how you propose to resolve them, giving reasons for your suggested resolution(s).
5. A suggested best path forward for your library's policy process in regard to the issue you have chosen.

At each stage of your White Paper you should justify and give reasons for the decisions you are advocating, including citations to legal, scholarly, and practitioner sources where appropriate, and explain how those decisions will impact different stakeholders.

Examples of White Papers:

- [Complying with the NIH Public Access Policy - Copyright Considerations and Options](#)
- [Intersections of Scholarly Communication and Information Literacy: Creating Strategic Collaborations for a Changing Academic Environment](#)
- [Disrupting the subscription journals' business model for the necessary large-scale transformation to open access](#)

The final White Paper is due by 5pm on Friday, May 5