INLS 690-325: Law and Policy for Information Professionals

Instructors: Will Cross & Dave Hansen

Spring 2024

Tuesdays from 5:45 to 8:30pm

Manning 304

“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

This course will prepare students to understand the legal and policy issues that affect a wide range of roles in information organizations, from social media companies to online publishers to libraries, archives, and museums. Students will learn to analyze legal materials, identify current and emerging information law and policy issues, and understand how to develop best practices to guide information organizations.

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 information professionals.
- 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.

Assignments

Copyright Case Analysis (15%)

Free Expression Case Analysis (15%)

Privacy Case Analysis (15%)

Memo (45%)

Class Participation (10%)
**Tuesday, January 16: U.S. Legal System**

Readings:

- Watch [Legal System Basics: Crash Course Government and Politics](#)
- Watch [Structure of the Court System: Crash Course Government and Politics](#)
- Kerr, [How to Read a Legal Opinion](#)
- “Steamboat Willie is in the public domain! An explainer for public domain Mickey Mouse”
- “Mickey, Disney, and the Public Domain: a 95-year Love Triangle”

**Tuesday, January 23: Copyright - Purpose & Formalities; Exceptions**

Readings:

- Scan the headings of [Title 17](#) and headings of [Chapter 1](#)
- [Copyright Term and Public Domain in the United States chart](#)
- [Naruto v. Slater, 888 F. 3d 418](#) (9th Cir. 2018)

**Tuesday, January 30: Copyright - Fair Use**

Readings:

- [17 U.S.C. §107](#)
- [Authors Guild v. HathiTrust](#), 755 F. 3d 87 (2d Cir. 2014)
- Brandon Butler, [Transformative Teaching and Educational Fair Use after Georgia State](#)
- [Code of Best Practices in Fair Use for Academic and Research Libraries](#)
Tuesday, February 6: Copyright in Library Collections [Copyright Case Analysis due]

Readings:

- 17 U.S.C. §108, 109 and 504(c)
- The Publisher Playbook
- Copyright Crash Course Section 108
- ARL White Paper: Modern Interlibrary Loan Practices: Moving beyond the CONTU Guidelines
- The Copyright Principles Project: Directions for Reform (2010)
- Position Statement on Controlled Digital Lending by Libraries

Tuesday, February 13: Licensing and Contracts [Topics for final project due]

Readings:

- The “Buy Now” Lie
- https://www.biggestlieonline.com/
- ProCD, Inc. v. Zeidenberg, 86 F.3d 1447 (7th Cir. 1996)
- Schottlaender, “The Development Of National Principles To Guide Librarians In Licensing Electronic Resources”
- Hansen, How to Evade Fair Use in Two Easy Steps

Tuesday, February 20: Trademark, Counterfeits, etc.

Readings:

- Jack Daniels v. VIP, 143 S.Ct. 1578 (2023)
- Jack Daniels and the Freedom to Parody and Comment in the United States (Kluwer Copyright Blog).
- Jamie Boyle & Jennifer Jenkins, Mark of the Devil: The University as Brand Bully,

Tuesday, February 27: International Issues

Lionel Bentley, Global Mandatory Fair Use

Summary of the Marrakesh Treaty, WIPO

Tuesday, March 5: Privacy as a Practice [Privacy case analysis due]

Readings:

- Sarah Lamden, “The Data Cartels, An Overview” in Data Cartels, pp. 1-27 (Course site)
- Anne Klinefelter, Privacy and Competing Library Goals: How Can Library Directors Lead When Values Collide?
- The Textbook that Reads You (course site) and Idea Lab: on Library Social Media Ethics
- FERPA policy pages for UNC, Duke, NC State, and your undergraduate institution
- What is GDPR
- Skim Library Freedom Resources
- IRA Records case

Tuesday, March 12: Spring Break

Tuesday, March 19: Open Knowledge Law and Policies

Readings:

- “Introduction to Open” and “Open Access” in Scholarly Communication Librarianship and Open Knowledge, pages 81 - 129
- OSTP Memo: Ensuring Free, Immediate, and Equitable Access to Federally Funded Research
- Section 552 in House Appropriations Bill p. 128
- Open Access and University IP Policies in the United States
Tuesday, March 26: SUPER-Illegal Stuff (hacking, FISA)

Readings:

- Van Buren v. United States, 593 U.S. ___ (2021)
- Watch: The Internet’s Own Boy

Tuesday, April 2: AI, Computational Research, and Text Data Mining

Readings:


Tuesday, April 9: Free Expression, Book Bans, and Content Moderation [Free Expression Case analysis due]

Readings:

- Anne Klinefelter, First Amendment limits on library collection management
- Raizel Liebler, Institutions of Learning or Havens for Illegal Activities: How the Supreme Court Views Libraries
- ALA Library Bill of Rights and Interpretations
- Resource Selection policies for Durham and Chapel Hill Public Library
- PEN America Banned Book Report 2023
- Skim:
  - Every Library: https://www.everylibrary.org/
  - Book Riot’s Literary Activism newsletter: https://literaryactivism.substack.com/
- Libraries for the people: https://www.librariesforthepeople.org/
- Fight for the First: https://www.fightforthefirst.org/
- United Against Book Bans: https://uniteagainstbookbans.org/
- NYPL's Teen Banned Book Club
  - "I'm so tired of these psychos": Moms for Liberty is now a toxic brand

**Tuesday, April 16**: Platforms

Readings:

- 47 U.S. Code § 230
- Why The Internet’s Most Important Law Exists and How People Are Still Getting it Wrong

**Tuesday, April 23**: Safety, Equality of Access, and Accessibility

Readings:

- Robles v. Domino's Pizza, LLC, No. 17-55504 (9th Cir. 2019)
- Association of Research Libraries, Web Accessibility Toolkit
- Meeting Room Policies for Durham and Chapel Hill Public Libraries

**April 30**: Final Assignments and Student Presentations
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: https://en.wikipedia.org/wiki/IRAC

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. 6), we have identified these cases as worthwhile. If you have other cases that are of interest to you (or have a subject area that you’d like to focus on—e.g.,
copyright and computer code), you can suggest them to us for approval before writing your case summary:

- **Andy Warhol Foundation v. Goldsmith**, 598 U.S. ____ (2023) (use of photograph as basis for artistic work for license on magazine cover)
- **Bill Graham Archives v. Dorling Kindersley, Ltd.**, 448 F.3d 605 (2d Cir. 2006) (Use of Grateful Dead posters in published book)
- **Lenz v. Universal Music Corp.**, 801 F.3d 1126 (9th Cir. 2015) (fair use and DMCA liability in dancing baby case)

For the second assignment (due March 5) choose one of these cases. If you have other cases that are of interest to you, you can suggest them to us for approval before writing your case summary:

- **Marcus v. Young**, 538 N.W.2d 285 (1995) (Former student sues university for release of his embarrassing academic records)

For the third assignment (due April 9) 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 6, March 5, and April 9*
Final Project

Memo Evaluating Challenges and Advocating for a Policy in a Specific Organization

Selecting a Topic for your Memo

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 memo 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 Dave or Will an email.

A preliminary topic should be selected by Feb. 13

The Memo (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 memo 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.

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 memo 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 memo 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 memo 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.

*The final memo is due by 5pm on Friday, April 30th*